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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable MARK L. PRYOR, a Senator from the State of Arkansas.

PRAYER

The PRESIDING OFFICER. Today's opening prayer will be offered by guest Chaplain Rev. Dr. Charles W. Starks, district superintendent of the Wytheville, VA, district of the United Methodist Church.

The guest Chaplain offered the following prayer:

Let us pray.

As we pray, we remember the wisdom of Proverbs 24:10, ''If you falter in times of adversity, your strength is too small.''

O loving and eternal God, we are humbled and grateful for the privilege of gathering here in Your presence. We lift up to You our President, Barack Obama, and Vice President, JOE BIDEN. We lift to you, O God, each elected, appointed, and employed public servant at each level of government across these United States.

And this day, O God, we particularly intercede on behalf of the women and men of this Senate. We pray for these Senators to stand in unity of purpose, like great and sturdy trees in the face of the swirling and perilous storms of this day. We ask for the roots of their strength, courage, and wisdom to be nourished in Your abundant grace, even the grace of Jesus, who reminds us to treat others in the same manner we desire to be treated. From that rich grace, O God, allow these Senators the privilege of bearing good fruit which will be a blessing to the people of this great land and Your entire good Earth.

O God, we lift this prayer to You, our Creator, Redeemer, and Sustainer who loves us this day and for all times. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK L. PRYOR led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 26, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK L. PRYOR, a Senator from the State of Arkansas, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. PRYOR thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will resume consideration of the District of Columbia House Voting Rights Act. At 10:30, the Senate will proceed to a rollcall vote in relation to the Kyl amendment regarding retrocession. Additional rollcall votes are expected to occur throughout the day.

Last night, I filed cloture on the bill. If we are unable to complete action on the bill today, the cloture vote will occur tomorrow. Under rule XXII, the cloture rule, the filing deadline for germane first-degree amendments is 1 o'clock today.

MEASURES PLACED ON THE CALENDAR—S. 478, S. 482, H.R. 1105

Mr. REID. Mr. President, I understand there are three bills at the desk due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the titles of the bills for the second time.

The assistant legislative clerk read as follows:

A bill (S. 478) to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board.

A bill (S. 482) to require Senate candidates to file designations, statements, and reports in electronic form.

A bill (H.R. 1105) making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

Mr. REID. Mr. President, I would object to any further proceedings with respect to these bills en bloc.

The ACTING PRESIDENT pro tempore. Objection is heard. The bills will be placed on the calendar.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

DISTRICT OF COLUMBIA HOUSE VOTING RIGHTS ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 160, which the clerk will report by title.

The assistant legislative clerk read as follows:

A bill (S. 160) to provide the District of Columbia a voting seat and the State of Utah an additional seat in the House of Representatives.

Pending:

Ensign amendment No. 575, to restore second amendment rights in the District of Columbia.

Coburn amendment No. 576 (to amendment No. 575), of a perfecting nature.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Thune amendment No. 579, to amend chapter 44 of title 18, U.S. Code, to allow citizens who have concealed carry permits from the State or the District of Columbia in which they reside to carry concealed firearms in another State or the District of Columbia that grants concealed carry permits, if the individual complies with the laws of the State or the District of Columbia.

Kyl amendment No. 585, to provide for the retrocession of the District of Columbia to the State of Maryland.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:30 will be equally divided and controlled between the Senator from Arizona, Mr. KYL, and the Senator from Connecticut, Mr. LIEBERMAN, or their designees.

The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, under the previous order, the Senate will now move to the Kyl amendment, I believe, on retrocession, not to be confused with retrogression, although there may be some similarity between the two.

I am looking at the Senator from Maryland, who will rise to the defense in a moment.

As my colleagues know, last night the majority leader filed a cloture motion on this bill, S. 160, the District of Columbia House Voting Rights Act. We made some progress yesterday. There are a few amendments still pending. Obviously, it is our hope that we will be able to complete the bill today and hopefully not have to go to the cloture vote. But that depends on our colleagues.

So I would yield on the pending Kyl amendment to the distinguished Senator from Maryland.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

AMENDMENT NO. 585

Mr. CARDIN. I thank my friend from Connecticut for his leadership on this issue. Let me tell my colleagues, I think this is a major human rights issue. I have the opportunity of representing this body as the chairman of the Helsinki Commission. The Helsinki Commission deals internationally with issues of human rights. It is interesting that the United States has taken the leadership on protecting the rights of individuals to vote and to be able to determine their own government. So we have invested a lot of resources in the Helsinki Commission to protect steps to monitor elections around Europe and central Asia and to fight for minority communities to have the right to vote and to have open and honest voting.

Let me tell you, last year there was a resolution filed in our Parliamentary Assembly of the CSCE to encourage America to give the people of the District of Columbia the right to vote. The international community understands that we are out of compliance with basic international norms on giving our citizens the right to participate in their parliament.

So I look at this bill first as a basic right, that every American should be able to have their voice heard here in the Congress of the United States. I support this bill because it moves us in the right direction. But I must tell you, I believe the people of the District should have two Members of this body, two U.S. Senators, and a voting Member of Congress, and I know we tried to do that in the 1970s with a constitutional amendment. I was proud at that time to be a State legislator in Maryland as speaker of the Maryland House. We passed and ratified that constitutional amendment because we thought it was the right thing for the District to have full representation in this body and to have a voting representative in the House of Representatives.

So this legislation, as I said, moves in the right direction. It gives the people of the District a voting Representative in the House of Representatives. That, we should do. And then it even goes further, recognizing the political sensitivity of having another Congressman who may represent one political party. Since the District registration is heavily Democratic, the compromise is to give another Representative to the State of Utah because they are the closest to having been able to obtain another Representative and the registration in Utah is heavily Republican. So it balances it from a political point of view. I understand that is how the system works here. I think this is a fair compromise. What I do not understand is why we are getting all of these other amendments on this bill as an effort to try to kill the underlying bill. Let's have an up-or-down vote on it.

The people of the District have been waiting a long time. I think it is the right thing for us to do to say: Let's give them a vote. Let's get rid of these amendments because these amendments are not aimed at trying to solve the problem, they are aimed at trying to defeat the bill, which brings me to the amendment offered by Senator KYL that is currently pending.

I find this amendment somewhat surprising. Let me tell you why. It would cede the District back to the State of Maryland. It would change the border of my State that I represent in this body. Now, I would have thought—maybe I am naive about this—that if a Senator was introducing an amendment which would change the border of a particular State, that he would talk to the Senators from that State, he would talk to the Governor from that State, he would try to work with the Representatives from that State because if this amendment were adopted, it would affect every single person in Maryland. Our formulas for aid to our counties and Baltimore City are based upon population. If all of a sudden Maryland grows by a couple hundred thousand people, it affects the way our counties operate essential services. Yet there was no effort made by the author of this amendment to consult with the political leadership of my State.

I do not know how another Senator would feel if I introduced an amendment—and I am glad to see Senator KYL has returned to the floor. I don't know how Senator KYL would feel if I introduced an amendment that said, perhaps, Arizona's borders should change a little bit because it makes more sense to do it that way, and there is no need to talk to the Senators from Arizona about it or the government of Arizona, we are just going to do it. I do not think that is the right thing to do.

So I am somewhat puzzled. I must tell you, to me, it is a matter of an unfunded mandate on my State. It is a matter of what federalism is about. It is a matter of States rights, and it is a matter of common decency.

Now, I read the amendment coming over, and I am not sure how these lines were drawn, but I would have thought, if Maryland were to get the District, we would at least get the Kennedy Center. But it looks as if they took the Kennedy Center out, for reasons I cannot explain. I do not know how these lines were drawn. So perhaps my friend will help me understand this better and understand whether the courtesies of the Senate mean you can put legislation in affecting the borders of one State or another without even having the courtesy to talk to the Members of that State.

I can tell you that Maryland very much works very closely with the Mayor of Washington and the people of the District. We have a wonderful regional governmental organization. We work cooperatively on providing services to the people of this region. We have an excellent relationship. We support giving the people of the District representation in Congress because it is the right thing to do, and we want them to have their own Representatives here. We think it is a wrong suggestion to now say: Oh, we can solve this problem by changing the borders of the State of Maryland for that.

I urge my colleagues to reject the Kyl amendment and let us get on with passing this very important bill for Americans who have been denied a voice in the Congress of the United States.

I yield the floor.

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

Mr. KYL. Mr. President, if the Senator from Maryland has a moment, I would be very happy to respond to some of the concerns he raised. They are all legitimate questions, I acknowledge up front. No State should have territory foisted upon it. That is absolutely true. And the questions raised here were good questions.

First of all, the amendment before us is an amendment that has frequently been offered in the House of Representatives. It has been vetted over there for a long time. So this is not something new.

Secondly, it is absolutely clear from section 6 of the amendment that nothing happens with regard to retrocession unless the State of Maryland agrees.

The effectiveness provision reads as follows:

Not later than 30 days after the State of Maryland enacts legislation accepting the retrocession described in section 1(a), the President shall issue a proclamation announcing such acceptance.

Unless the State of Maryland affirmatively, through an act of the people's representatives of that State, vote to do this, there is no retrocession to the State of Maryland.

That answers the question of States rights.

Mr. CARDIN. Will the Senator yield?

Mr. KYL. Of course.

Mr. CARDIN. Does he believe it is fair to say to the people of the District of Columbia that their right to have a voice in the House of Representatives depends upon the will of the people of Maryland?

Mr. KYL. I say to my colleague, the first point he made was that the State of Maryland should have a say in this, and it should be a definitive say. If the State of Maryland doesn't want the residents of the District of Columbia to be part of the State, that informs our decision about what the people of the State of Maryland want. I wouldn't force that decision upon them any more than the Senator suggests should be the case. The State of Maryland should have that say. If the Senator is saying: I can tell you right now Marylanders don't want these folks from the District as part of their State, we ought to know that by a definitive process rather than assuming it to be the case going into the debate. That would be my response.

Mr. CARDIN. Will my colleague yield further?

Mr. KYL. I am happy to engage in a colloquy.

Mr. CARDIN. I am wondering how my colleague would feel if legislation was introduced here by a Senator not from Arizona saying: I understand what the people of Arizona want better than the Senator does. I want to introduce a bill affecting land rights or property rights or anything in the State of Arizona, and I will make it subject to the vote of the people of Arizona. It will change the border area a little bit, and I know you don't want this, but I am going to do it anyway. I am curious how the Senator would respond if such legislation was introduced and the Senator who introduced it said: I am allowing your Governor to take it to the people. I know there will be a lot of pressure building up on that. But it is not relevant to the Senators from Arizona.

Mr. KYL. Mr. President, my colleague makes a good point. I will respond in two ways. First, I appreciate the sentiment and would hope that when western land issues are dealt with in this body, our eastern colleagues would apply that same principle. Frequently, there is a sense that folks in the east know best about what we should be doing with Federal lands in the west. I certainly respect that sentiment. Obviously, in some respects, that is not as important as the fundamental political jurisdictional issue we are facing here. The question of retrocession is a fundamental issue, and it has to do with a fundamental right the District of Columbia residents would have to participate in State government. I recognize there are some differences, but I offer that first response.

Second, I am not presupposing anything with the amendment. The question will always be before the Maryland electorate whether they want to do this. I don't know whether the Maryland electorate wants to do this. I presume there would be a debate. The result of that debate, decided by the people of Maryland or their elected representatives, would be dispositive on the question. Nobody is foisting anything on anyone. I would be the first to say: If the people of Maryland don't want the residents of the District to be part of the State of Maryland, then the Congress would have to be informed by that decision. I would think it would be dispositive.

Could I respond to a couple other points first and then I will be happy to engage in a further colloquy.

On the matter of the way the lines were drawn, the history of this is that the so-called national areas, the areas where the Federal buildings, various Government departments are located, the Mall, the monuments and those sorts of things, would not be part of the retrocession. The bulk of the bill draws those lines. I can't tell my colleague exactly what the philosophy was with respect to each of those areas. Any question about what should or should not be in, be it the Kennedy Center or anything else, is a legitimate subject of discussion. It could be the subject of amendment. This has been a matter that has been not frequently but not infrequently debated in the House of Representatives. So there is some history of the rationale behind the line drawing. But with respect to where any of these particular lines are drawn, obviously, the Senators from Maryland should be key in helping us to decide where those lines would be. There is nothing locked in stone here that could not be considered the subject of an amendment.

Finally, with respect to the unfunded mandate part, I am not sure it wouldn't work the other way around. I cited a couple days ago the statistics about the money that the Government provides for the District of Columbia. Some of that money has to do with the running of these Government departments, the construction of buildings, maintenance of the buildings, and so on, but much of it does not. Much of it has to do with what the Constitution provides as to the general welfare of the people within the District. I suspect that under any scenario, the money that has been provided to the District of Columbia would still be far in excess of the money returned to any of the several States. And because of the unique nature of the District and the history and traditions, much of that funding would naturally carry over to future years. There is no way the Federal Government is not going to fund all of the national areas that are retained in this legislation.

As the District's Delegate NORTON said in a press release recently, much of the money in the stimulus bill that is going to refurbish or construct office buildings that are Federal Government buildings provides employment opportunities for the residents of the District. While we should obviously be sensitive to any issues of transfer, if the State of Maryland were to accept the residents of the District of Columbia, it is a very legitimate point, and all of those things are appropriate for discussion.

On the matter of the unfunded mandate, it would probably work the other way around, that Maryland would receive a lot of money from the Federal Government. In any event, the Federal national areas that would be receiving the amount of money that they naturally do would certainly help the residents who work here in what is now the District of Columbia.

There is nothing in this amendment that is intended to jam anything down the throats of the people of Maryland. They have the final and ultimate say of what is done. I wouldn't propose anything different from that.

Mr. CARDIN. Will the Senator yield?

Mr. KYL. Absolutely.

Mr. CARDIN. Let me make a brief comment with regard to the mandate on Maryland. Maryland would be under tremendous pressure to change funding formulas consistent with what aid the District currently receives. It would have a major impact on the ability of our State to carry out its fundamental aid formulas to local governments, considering how significant the District would be, the population, relative to the State of Maryland.

The second point is, I can tell you how the people of Maryland feel. They believe the residents of the District of Columbia should have their voting representative in the House of Representatives. That is how the members of our congressional delegation have acted. That is how Senators are acting. We know that is what the District wants. We agree with that. I hope we can get an up-or-down vote on this bill and let's move forward.

I thank the Senator for yielding.

Mr. KYL. If I may make one other point, we will have an up-or-down vote on this amendment at 10:30 and on the bill, of course. I want to conclude my comments to the Senator, because he, obviously, has a good sense of what the people of Maryland want. I concede that. Again, I concede the premise of his point which is that the people of Maryland should have a say before this is done. The reason for the amendment is simply this: We believe it is unconstitutional for the Congress to simply provide a congressional district without an amendment to the Constitution.

I personally think the residents of the District should be represented in the House. The only other way to do that, for those of us who believe it is unconstitutional to pass the legislation pending before us, and a court will in relatively short order make a determination on whether that is true, and let's assume that the court says, you can't do it, Congress, by simple legislation, then short of a constitutional amendment, this is the only other way to achieve the objective. It is presented in good faith. It is presented as the only other logical alternative for the residents of the District of Columbia to have their own congressional district. Because of the number of people who live in the District, something over 600,000, and because the representation from House congressional districts today is approximately a shade over 600,000, the fact is that the residents of the District could have a district of their own or essentially exactly as the District is configured today without presumably modifying the lines of other Maryland districts. Of course, that would be up to the State of Maryland in the way that it sets its congressional district lines.

Mr. CARDIN. Will the Senator yield on that point?

Mr. KYL. I am happy to.

Mr. CARDIN. Having served in the House and also going through redistricting, the courts are now requiring an exact number of equality. So it would be improbable that the lines would remain the same.

Mr. KYL. I said that is why it would be ''almost.'' You might have to include a few residents of what are now Maryland within the District, and I acknowledge that to be the case. In any event, I accept the fundamental premise of the Senator. Our amendment addresses that specifically. My hope would be that if the courts should declare that we cannot by legislation do what this bill attempts, then the people of Maryland would strongly consider whether the next best alternative is to provide for the retrocession we have in this amendment as the next best way to provide a vote for the residents of the District of Columbia.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Senator from Arizona and the Senator from Maryland for a thoughtful discussion. I rise to oppose amendment No. 585, offered by the Senator from Arizona. Unlike some of the other amendments pending, this one goes to the heart of what the underlying bill that came out of committee is all about, which is how do we give voting rights in Congress to 600,000 Americans who happen to live in our Nation's Capital who don't have such representation now. I disagree with the method, but I appreciate the fact that this is not germane in a parliamentary sense, but it is directly relevant to the underlying injustice and inequity. But for the reasons that the Senator from Maryland made clear, this is not a practical solution to the problem before us, the longstanding injustice.

It requires the consent of the people of Maryland, and all their leaders tell us that the people will not support it. So it may be a solution on paper, but it is not going to be a solution and a fix to the problem in fact. It is also full of complications that would ensue.

For instance, section 2 of the amendment would automatically transfer all pending legal actions in the District of Columbia to an ''appropriate Maryland court.'' We can only imagine the legal and political tangle that could create given that Maryland and the District actually have distinct legal structures, rules, and precedents. Section 3 of the amendment describes at some length the boundaries of a small but still sizable national capital service area that would continue to be controlled by Congress and which would consist of key Federal buildings and monuments. There are complications there too. Who would police and maintain those streets and otherwise administer this large swath of downtown Washington?

As has been said, it would require a constitutional amendment to repeal amendment XXIII which granted the District of Columbia three electoral votes in Presidential elections. If amendment XXIII were not repealed, presumably the effect would be to grant a disproportionately large role in Presidential elections to a relatively small population that would continue to reside in that national capital service area and that would remain under congressional control. In fact, the amendment recognizes this and, therefore, would not become effective until such a repeal amendment to the Constitution is ratified.

As I have said, this is an alternative solution to the problem. I appreciate it in that it would, if it overcame the obstacles, actually be a remedy, but it is not the right or realistic remedy to the injustice of nonvoting representation in Congress for residents of the District. The right and reasonable and realistic solution is the underlying bill before us, S. 160. That is why I oppose the amendment and urge the passage of the bill.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, let me respond to two points my colleague made, and they are both legitimate questions. The first is some of the technical problems. I am sure there are a lot of technical problems we have not even thought about that would attend. This is a big change. Whether you adopt the underlying legislation or you go through a process such as retrocession, there will have to be a lot of adjustments and accommodations, to be sure.

But on questions such as, for example, policing the Mall and so on, those things are already well understood and resolved. For example, I have spoken recently with Capitol Police and asked them about the overlapping jurisdiction: Where, for example, does the Capitol Police jurisdiction end and where does the DC Police jurisdiction begin, and so on? They have all these things worked out. I do not think there is any difficulty with those kinds of technical issues. But there will be, undoubtedly, others that will have to be addressed as well.

Secondly, my colleague is correct, in order to avoid the anomalous situation where a few people who might be technically residents downtown and not have other residence downtown—being in the Federal areas or national areas as described in this legislation—we would have to eliminate the twenty-third amendment to make sure those people would not have three electoral votes for the Presidency. I cannot imagine that if retrocession did occur the citizens of the country would not follow through on that essentially technical issue and approve the recession of the twenty-third amendment. But it is one of the things that will have to be done. That is absolutely true.

Again, I will conclude by saying, for those of us who believe it would be preferable for the residents of the District to have their own representative in the House of Representatives and, in fact, to be able to vote for Senators, and have that representation as well, if they are part of a State—if, in fact, the underlying legislation is unconstitutional, as many of us believe it is—then this amendment offers a constructive way to achieve the same result, I would suggest, with very little in the way of adjustment, but with some adjustment that would have to occur—again, subject solely to the approval of the people of the State of Maryland.

I say to our colleagues, this vote is scheduled for 10:30, so if there are people who want to discuss other amendments or other matters, or to further debate this amendment, this would be a good time to do so.

Mr. LIEBERMAN. Mr. President, I thank my friend from Arizona. He is absolutely right. I have been informed that the senior Senator from Delaware is on his way to the floor to speak on this amendment. But I echo what Senator KYL has said, that we have some other pending amendments. The floor is open until the vote at 10:30, and I urge our colleagues to come and take advantage of that opening.

With that, Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CARPER. Mr. President, yesterday morning, at about 8 o'clock, down

in, I think, S. 115, there was a prayer breakfast. Actually, that happens about every week. And for many weeks in the last year or two, our Acting President pro tempore was one of two Members—one a Democrat and one a Republican—who brought people together for an hour of fellowship. They would have breakfast together and sing a hymn—or at least try to sing a hymn—or a song of some kind, and they would share their story, if you will, their spiritual journey with one another.

I usually do not get to go to those; I am on a train coming down from Wilmington, DE. But I have been a time or two, and I find it very uplifting. There is a smaller gathering that will occur today a little after noon, right here off the Senate floor, and it will be a group convened by our Chaplain, Barry Black, who is a retired Navy rear admiral. He used to be Chief of Chaplains for the Navy and the Marine Corps.

What we have is a little bit like an adult Sunday school class. There are people of different faiths who show up. Sometimes we may have five or six or seven or eight or nine people there, Democrats and Republicans.

I always like to tell the story that happened about a couple years ago, when we were having orientation for new Senators—something our Acting President pro tempore has been a part of establishing—but we had a last session of orientation for new Senators—I think it was about 2004, right after the election—a last session where John Breaux, a Democrat, was leaving and Don Nickles, a Republican, was leaving the Senate, and they both were talking to our new Senators and their spouses about bridging the partisan divide.

Don Nickles talked—he has a great sense of humor; so does John Breaux, as we know—and Senator Nickles was about to leave the Senate. He was talking to the Democrats and Republicans who had just arrived, and their spouses, and he said: You all ought to think about going to this Bible study group. It is uplifting. It is inspiring. It is refreshing. You get to know your colleagues better. It does not take that much time every week. He said: You ought to try to do it. TOM CARPER and I go to that Bible study group. He is a Democrat and I am a Republican.

He said: Week after week, month after month, you sit together, you read Scriptures together, you talk and share with one another your thoughts and problems and what you are facing in your life. You pray for each other. He said: You know, after I do that, it is hard to walk out on the Senate floor and stab TOM CARPER in the back. He said: It is not impossible, but it is hard.

One of the other things that is hard is for us to actually figure out how our faith should guide us in the decisions we make here. I am always inspired by the depth of conviction of the floor manager, the chief sponsor of this bill, Senator LIEBERMAN, and how his faith guides him in the work we do here.

But Barry Black, our Chaplain, often challenges us in the Senate—Democrats and Republicans—and not just there, but, later today, in our Bible study class, and also at the Wednesday morning prayer breakfast, and throughout the week—he is always challenging us: How should we use our faith to help guide us in the decisions we make?

The other thing he is good at doing is reminding us, about every other week, of the two great Commandments in the New Testament. The first: Love Thy Lord Thy God with all thy heart, all thy soul, all thy mind. And the second one is: To love thy neighbor as thyself—which we also call the Golden Rule: Treat others the way we want to be treated. Chaplain Black likes to say the ''CliffsNotes'' of the New Testament is the Golden Rule: Treat other people the way we want to be treated.

When I run into great leaders in my life, in this country and in other countries, a lot of times the good leaders are those who actually internalize the Golden Rule, who do try to treat others the way they want to be treated. I am pleased to say that the two Senators who are here on the floor right now certainly embody that rule too.

How does that pertain to the legislation before us? Well, I think it pertains to the legislation before us because there are about 600,000 people who live in the District of Columbia. Some of them actually work here with us, but they live here in the District of Columbia and they pay taxes. They pay Federal taxes. They don't get to vote. They don't have a vote here in the Senate. They don't have a Representative, if you will, who can vote for them and for their interests and concerns in the House of Representatives.

Delaware has about 850,000 people, so we have a few more people than the District of Columbia. There are some other States that have fewer people than we do. There is actually probably a State or two that has fewer people living in it than does the District of Columbia. I won't call out those States here this morning. They are pretty big in geography but not so big in population. They have two Senators and at least one U.S. Representative. Whether the issue is foreclosures, budget, or stimulus package, they have somebody here to vote, to represent them, to speak on the floor and to offer legislation, amend legislation, and to vote on legislation. We saw in the stimulus package how critical one or two votes can be. The District of Columbia has nobody here and they have nobody voting for them in the House. They have a delegate—a very good one—who can vote in committee, offer legislation, offer amendments, and introduce bills, but can't actually vote when the time comes. There is something about that that seems unfair to me. It seems unfair to me. I think it certainly seems unfair to the sponsor of the bill, Senator LIEBERMAN, and to a lot of people who cosponsored the legislation, as have I.

None of us is suggesting that there ought to be two Senators representing folks from the District of Columbia. In allowing the delegate to become sort of a full-fledged U.S. Representative over in the House, there is a trade that—we would expect that person to be a Democrat, at least initially; maybe someday Republican—but the idea would be to provide an additional Republican representative, in this case from the State of Utah. That seat may become a Democratic seat. I wouldn't want to bet my paycheck on it, but it might. So we are trying to come up with an equitable, a fair, a reasonable compromise. Isn't politics the art of compromise? This is a compromise.

There are some who have suggested that is unconstitutional. I am not a constitutional expert. I know a lot of smart people have considered it. We will have an opportunity—if this legislation is passed and signed by the President, there will be an opportunity for an expedited process and the Federal courts, the appropriate courts will determine whether this measure, this statute actually is constitutionally sound. My hope is it will be. A lot of forethought has gone into this issue already.

In closing, let me say in the minute or so that is left on our side, I wish to thank Senator LIEBERMAN for his steadfast leadership on this issue and for making it not just a bipartisan issue but a tripartisan issue, by making sure we have both Republicans and Democrats and Independents such as himself and BERNIE SANDERS to weigh in and to support this legislation; not just to offer the bill but actually to stand up and call on the rest of us to do what we know in our hearts is fair and just, and to put ourselves in the shoes of the folks who live here in Washington, DC and who work and pay their taxes and who deserve a full-fledged vote, at least in the House of Representatives. We will wait another day to take up that battle here in the Senate.

That having been said, I yield back my time.

The ACTING PRESIDENT pro tempore. The time for the majority has expired.

Mr. LIEBERMAN. Mr. President, seeing no one on the other side in the Chamber, I ask unanimous consent to speak for no more than 5 minutes, probably less.

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

Mr. LIEBERMAN. I thank the Chair. I will yield if anyone on the other side comes in.

I thank my friend from Delaware for his very eloquent and thoughtful statement. The pending amendment is on retrocession. As the Senator began his remarks about the Bible study and prayer groups, I thought he was going to talk about redemption and not retrocession, but he got to the point. I must say, if I may continue the argument the Senator from Delaware made

very eloquently in two ways, S. 160, the underlying bill, does provide—please allow me some license here for a kind of political redemption—for the voters of the District of Columbia who up until this time have been denied a voting representative in Congress. The whole premise of our Government is that we govern with the consent of the governed, but here we have 600,000 Americans who, through historical anomalies and maybe more recently partisan disagreements, don't get to consent or object to anything we do to them or even for them.

The second—and I thank my friend from Delaware for making this point about the Golden Rule. I hope all of our colleagues in the Senate will apply that fundamental ethical human principle to this vote and think about how we would feel if we were the District's Delegate in the House of Representatives. ELEANOR HOLMES NORTON is a gifted and wonderful person. I have known her—I won't state the year because I don't want to compromise the privacy of her age; mine has already been compromised this week. We were at law school together. She is an extraordinarily gifted person and a very diligent and passionate and aggressive advocate for the people of the District of Columbia. Imagine how we would feel if we were occupying the seat she occupies in the House of Representatives. She gets to debate issues. She gets to talk. But when the roll is called, imagine how we would feel—my friend from Delaware and our dear friend from Arkansas who occupies the Chair at the moment, myself—if there were a major item here in the Senate and we could debate it, but then the roll is called and it is as if our mouths are stifled, muffled. We couldn't vote. That is what Delegate NORTON goes through in the House of Representatives. If we think about it that way, in the terms the Senator from Delaware stated, to treat others as we would like to be treated ourselves, it seems only fair, reasonable, human to give Delegate NORTON and the 600,000 people she represents the right to vote on the floor.

So I thank my friend for taking the time to come over and speak as eloquently and convincingly as he has.

With that, I yield the floor and suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. GILLIBRAND). Without objection, it is so ordered.

Under the previous order, the question is on agreeing to amendment No. 585.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Tennessee (Mr. CORKER).

Further, if present and voting, the Senator from Tennessee (Mr. CORKER) would have voted ''yea.''

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

The result was announced—yeas 30, nays 67, as follows:

[Rollcall Vote No. 69 Leg.]

YEAS—30

Alexander	Crapo	Kyl
Barrasso	DeMint	Martinez
Bennett	Enzi	McCain
Bond	Graham	McConnell
Bunning	Grassley	Risch
Burr	Hatch	Roberts
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Cornyn	Johnson	Wicker

NAYS—67

Akaka	Gillibrand	Nelson (FL)
Baucus	Gregg	Nelson (NE)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johanns	Rockefeller
Boxer	Kaufman	Sanders
Brown	Kerry	Schumer
Brownback	Klobuchar	Sessions
Burris	Kohl	Shaheen
Byrd	Landrieu	Snowe
Cantwell	Lautenberg	Specter
Cardin	Leahy	Stabenow
Carper	Levin	Tester
Casey	Lieberman	Udall (CO)
Collins	Lincoln	Udall (NM)
Conrad	Lugar	Voinovich
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Ensign	Mikulski	Wyden
Feingold	Murkowski	
Feinstein	Murray	

NOT VOTING—2

Corker	Kennedy

The amendment (No. 585) was rejected.

Mr. LIEBERMAN. Madam President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LIEBERMAN. Madam President, I believe two of our colleagues wish to speak as in morning business at this time. After that, our intention is to pick up the amendment offered by the Senator from South Carolina, Mr. DEMINT, on the fairness doctrine, and then Senator DURBIN also will be offering a matter on the fairness doctrine as well.

With that in mind, I yield the floor to one of the two Senators to my right, and they may joust as to who goes first.

Mr. BOND. Madam President, I thank my colleague from Connecticut, with whom I worked so closely last fall and at the end of January, for allowing us to go forward. I ask unanimous consent to speak as in morning business, and my colleague, the Senator from Iowa, I believe, wishes to speak as in morning business after that, as indicated by the manager of the bill.

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

(The remarks of Mr. BOND and Mr. GRASSLEY are printed in today's RECORD under ''Morning Business.'')

Mr. ENSIGN. Madam President, I ask unanimous consent that the pending amendment be set aside to call up the amendment No. 587.

The PRESIDING OFFICER. Is there objection?

Mrs. FEINSTEIN. Reserving the right to object, it is my understanding that the Senator from Nevada wishes to call up the amendment and speak very briefly—he mentioned to me 2 minutes. I believe I am in the line to speak and I wish to speak on this amendment.

Is that the agreement?

Mr. ENSIGN. Madam President, I ask unanimous consent that I be allowed to call up my amendment, get it pending, and speak on it for 2 minutes.

Mrs. FEINSTEIN. Is the subject of this amendment vouchers?

Mr. ENSIGN. Yes.

Mrs. FEINSTEIN. No problem.

AMENDMENT NO. 587

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 587.

Mr. ENSIGN. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To reauthorize the DC School Choice Incentive Act of 2003 for fiscal year 2010)

At the end, add the following:

SEC. ___. REAUTHORIZATION OF THE DC SCHOOL CHOICE INCENTIVE ACT OF 2003.

(a) REAUTHORIZATION.—Section 313 of the DC School Choice Incentive Act of 2003 (title III of division C of Public Law 108–199, 118 Stat. 134) is amended by striking ''fiscal year 2004 and such sums as may be necessary for each of the 4 succeeding fiscal years'' and inserting ''fiscal year 2010''.

(b) SEVERABILITY.—Notwithstanding section 7, if any provision of this Act (other than this section), and amendment made by this Act (other than by this section), or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, this section, the amendment made by this section, and the application of such to any person or circumstance shall not be affected thereby.

Mr. ENSIGN. Madam President, I rise to offer a DC voucher program for low-income children at or below 185 percent of the Federal Poverty Line. Children would be eligible to receive up to $7,500 to attend a private school in the District.

It has been said that education, especially K–12 education is a civil right. I

believe it is. In Washington, DC, public schools are failing too many of our kids—especially our low-income kids. These children are trapped in schools that are failing.

About half the kids in Washington, DC, public schools do not graduate, and this is not because of money. The District spends perhaps the most in the country, on education. They spend almost $15,000 a year per student per year in public schools. That is almost three times the amount we spend per student per year in Nevada. Yet the performance of the public schools in the District is pathetic. There are very few Members of Congress who would allow their kids to go to these failing schools.

The reason I am offering my amendment today, which would reauthorize, for 1 year, a very valuable voucher program, is because the upcoming Omnibus appropriations bill basically guts the program. We need to make sure this program is in place in time for parents to plan for their children's education in the fall.

This is an important amendment. This is a civil rights amendment. We are talking about the right to a DC Representative voting here, we should care enough about our children to give them the right to a good education. That is what this amendment is about. Now, we are going to try to work this out. We may not be offering this amendment if we can get an agreement from the majority leader for time on the floor sometime this spring to be able to debate a full bill. That is what I would hope we could be able to do. If not, then we will hope for a vote on this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, if I may very briefly respond to my friend from Nevada, I appreciate the statement he has made. Personally, I agree with him on this DC scholarship program which I supported in past years. The authorization is running out.

The Homeland Security and Governmental Affairs Committee, as my friend knows, actually still possesses jurisdiction over matters related to the District of Columbia. So we would be the proper committee to consider an authorization bill.

As I have said to my friend, I do not know what I would support. I do not know what the outcome of the committee would be. But I appreciate the spirit in which he has presented this amendment. I agree with him totally that we ought to be reauthorizing this program, and we will work together to see, with the majority leader, whether we can get an agreement that there will be floor time with a time limit given to a debate and an attempt to reauthorize the program when it expires, which I believe is in this fiscal year, meaning that it would affect the school year that begins in September.

So I will pursue that with the leader and will continue our conversations. I thank him for offering the amendment.

I now yield the floor to our distinguished colleague from California.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 575

Mrs. FEINSTEIN. Madam President, I thank the manager of the bill. I rise today to speak in strong opposition to amendment No. 575 offered by Senator ENSIGN. This amendment is not the instant amendment that he just spoke about; it is the amendment that essentially would repeal all commonsense gun laws in the District of Columbia.

I believe the amendment is reckless. I believe it is irresponsible. I believe it will lead to more weapons and more violence on the streets of our Nation's Capital. It will endanger the citizens of the District, the Government employees who work here, our elected officials, and those who visit this great American Capitol. And, of course, if successful, it will be the first new step in a march to remove all commonsense gun regulations all over this land.

The Ensign amendment repeals gun laws promoting public safety, including DC laws that the U.S. Supreme Court indicated were permissible under the second amendment in the Heller decision. I strongly disagree with the Supreme Court decision in Heller that the second amendment gives individuals a right to possess weapons for private purposes not related to State militias, and that the Constitution does not permit a general ban on handguns in the home. But that is the law. It has been adjudicated. It has gone up to the highest Court, and I am one who believes if we do not like the law, we should try to make changes through the proper legal channels. However, it is important to note that Heller also stands for the proposition that reasonable, commonsense gun regulations are entirely permissible.

As the author of the original assault weapons ban that was enacted in 1994, I know commonsense gun regulations do make our communities safer, while at the same time respecting the rights of sportsmen and others to keep and bear arms.

Just yesterday, the Department of Justice announced the arrest of 52 people in California, Minnesota, and Maryland. In addition to seizing 12,000 kilograms of cocaine and more than 16,000 pounds of marijuana, the DEA also seized 169 illegal firearms from members of the Sinoloa Cartel.

Where did they get those guns? It would be interesting to find out because this cartel is one of several that law enforcement believes is responsible for kidnappings and murders within the United States in addition to engaging in violent gun crimes.

In talking about the Sinoloa Cartel yesterday, Attorney General Holder noted that reinstituting the assault weapons ban would benefit the United States, as well as help stop the flood of weapons being sent from the United States to Mexico for use by drug cartels to cause violence on both sides of the border.

I am prepared to wage the assault weapons battle again and intend to do so. I have been quiet about this because there are many pressing needs of this Nation. But with the help of the President, the administration, and the people of this great country, we do need to fight back against these kinds of amendments.

Justice Scalia wrote in the majority opinion on the Heller case that a wide variety of gun laws are ''presumptively lawful,'' including the laws ''forbidding the carrying of firearms in sensitive places'' and regulations governing ''the conditions and qualifications of the commercial sale of arms.''

I cannot think of any place more sensitive than the District of Columbia. Even bans on ''dangerous and unusual weapons'' are completely appropriate under the Heller decision. So it is interesting to me that you have this decision, and then you have the Senate moving even to obliterate what is allowable under the decision.

Senator ENSIGN's amendment completely ignores Heller's language and takes the approach that all guns for all people at all times is called for by Heller. It is not.

We have all seen the tragic consequences of gun violence: the massacre of students at Virginia Tech University in 2007, the murders at Columbine High School in Colorado, the North Hollywood shootout where bank robbers carrying automatic weapons and shooting armor-piercing bullets shot 10 Los Angeles Police Department SWAT officers and seven civilians before being stopped.

We have seen criminal street gangs able to buy weapons at gun shows and out of the back seats or the trunks of automobiles. We have seen their bullets kill hundreds, if not thousands of people across this great land—men, women, and children.

I remember one case in the San Francisco Bay area not long ago where a youngster taking a piano lesson in a home had a bullet from a gang member pierce the wall of the home, cut his spine, and today he is a paraplegic. It is unbelievable for me to think of the ease with which people can buy weapons.

As Senator SCHUMER said, if this amendment becomes law, even if you cannot see, even if you cannot pass a sight test, you can have access to firearms. That is not what this Nation should encourage. Those incidents and the gun violence that occurs every day across this country show us that we should be doing more, not less, to keep guns out of the hands of criminals and the mentally ill and not give them unfettered access to firearms.

It is worth noting just how far this amendment goes in repealing DC law and just how unsafe it will make the streets of this Capitol. Here is what it

would do: It would repeal DC's ban on semiautomatic weapons, including assault weapons. If this amendment becomes law, military-style assault weapons with high-capacity magazines will be allowed to be stockpiled in homes and businesses in the District, even near Federal buildings such as the White House and the Capitol. Even the .50 caliber sniper rifle, with a range of over 1 mile, will be allowed in DC under this amendment. This is a weapon capable of firing rounds that can penetrate concrete and armor plating. And at least one model of the .50 caliber sniper rifle is easily concealed and transported. One gun manufacturer describes this model as a ''lightweight and tactical'' weapon and capable of being collapsed and carried in ''a very small inconspicuous package.''

Is this what we want to do? There is simply no good reason anyone needs semiautomatic, military-style assault weapons in an urban community. It is unfathomable to me that the same high-powered sniper rifle used by our Armed Forces will be permitted in the Nation's Capital. Yet this is exactly what the amendment would allow if passed by the Senate.

Next, the amendment would repeal existing Federal anti-gun trafficking laws. For years, Federal law has banned gun dealers from selling handguns directly to out-of-State buyers who are not licensed firearms dealers. This has helped substantially in the fight against illegal interstate gun trafficking, and it has prevented criminals from traveling to other States to buy guns.

Senator ENSIGN's amendment repeals this longstanding Federal law and allows DC residents to cross State lines to buy handguns in neighboring States. Illegal gun traffickers will be able to easily obtain large quantities of firearms outside of DC and then distribute those guns to criminals in DC and in surrounding States.

And no one should be so naive as to say that this amendment will not do this. It will. The amendment repeals DC law restricting the ability of dangerous and unqualified people to obtain guns. The amendment also repeals many of the gun regulations that the Supreme Court said were completely appropriate after Heller.

So all of those who will vote for this amendment should not do so thinking they are just complying with the Heller decision. This is part of a march forward by gun lobby interests in this country to begin to remove all commonsense regulations, and no one should think it is anything else.

This would repeal the DC prohibition on persons under the age of 21 from possessing firearms, and it repeals all age limits for the possession of long guns, including assault weapons.

Do we really want that? I think of the story of an 11-year-old who had a reduced barrel shotgun and just recently killed somebody with it. Is this what we want to see all over this country, the ability of virtually anyone to obtain a firearm regardless of their age? I don't think so.

The amendment even repeals the DC law prohibiting gun possession by people who have poor vision. I heard Senator SCHUMER speak about this yesterday afternoon. Unbelievably, under this amendment, the District would be barred from having any vision requirement for gun use, even if someone is blind. Is this the kind of public policy we want to make for our Nation? Is this how co-opted this body is to the National Rifle Association and others? I hope not.

One of the reasons we have 6-year terms is to allow us to make difficult decisions. There is no higher charge than protecting our public safety. We should protect individuals. The way we protect individuals is by enacting public policy that is prudent, reasonable, and subject to common sense. This amendment does none of the above.

I ask my colleagues to think carefully about this amendment, because if it succeeds, trust me, the march for similar legislation will be on. I introduced the assault weapons legislation. I survived. I had an election in 1994, just after I had introduced it. I survived. The people of my State want commonsense gun control. They don't want local jurisdictions stripped of any ability to enact prudent regulation.

The Presiding Officer is in the chair. The husband of one of her colleagues, going home on the Long Island train, was shot and killed by someone who never should have had a weapon. How many of these incidents do we have to have? How many businesses employing people who are mentally ill have to suffer when they have a grudge against an employee, and kill 6, 7, 8, 9, or 10 people? How many schools do we have to have where aggrieved students go out and acquire the most powerful weapons and come into cafeterias, libraries, or classrooms and mow down students? A vote for this amendment, any way we look at it, makes this easier to happen.

I believe passionately about this. I will never forget, many years ago, before I was mayor, walking into the robbery of a corner grocery store. When people die of gunshot wounds, it is not the way it is on television or in the movies. I saw brain matter all over the walls. I saw the husband, a proprietor, the wife, a proprietor. This individual who came in even shot the dog. People are capable of terrible criminality. We should not encourage that criminality by making their access to weapons so very easy.

As I say, this is the first step in a march to see that there is no ability to enact prudent gun regulation throughout the United States.

I ask every colleague, before they vote for this, to think about the people they represent and whether society is going to be safer because of their vote. How deep have we sunk in catering to these interests? For shame.

The amendment before the Senate repeals all firearm registration requirements in the District, making it even more difficult for law enforcement to trace guns used in crimes and track down the registered owner. The amendment repeals all existing safe-storage laws and prohibits the District from enacting any additional safe-storage laws. After the Heller decision, the District passed emergency legislation to allow guns to be unlocked for self-defense, but requiring that they otherwise be kept locked to keep guns out of the hands of children and criminals. We all ought to want that. The Ensign amendment repeals even this modest limitation and prevents the District of Columbia City Council from enacting any law that discourages—whatever that means—gun ownership or requiring the safe storage of firearms. How can we, in the Capital of the United States where we have had so many tragic events, possibly do this? This is simply ridiculous and goes well beyond the Supreme Court's ruling in Heller.

Think about what this means. Consider that every major gun manufacturer recommends that guns be kept unloaded, locked, and kept in a safe place. Under this amendment, the District could not enact any legislation requiring that guns be stored in a safe place, even in homes with children. How can anyone believe this broadbrush amendment is the right thing to do? How can any of us believe it provides protection for the people we represent?

Let me make one other point. The American people clearly do not agree with this amendment. Last fall, when a virtually identical bill was being considered in the House of Representatives, a national poll found that 69 percent of Americans opposed Congress passing a law to eliminate the District's gun laws—69 percent. That is about as good as we get on any controversial issue. Additionally, 60 percent of Americans believe Washington will become less safe if Congress takes this step. Is this what we want? Do we want the Capital of the United States to become less safe? I don't think so. Today, if this amendment passes in the Senate, it will be directly against the wishes of the American people. It will not pass because it is good public policy—it will only be passed to placate the National Rifle Association. I say for shame.

As a former mayor who saw firsthand what happens when guns fall into the hands of criminals, juveniles, and the mentally ill, I believe this amendment places the families of the District of Columbia in great jeopardy. The amendment puts innocent lives at stake. It is an affront to the public safety of the District. It is an affront to local home rule. This isn't just a bad amendment; it is a very dangerous one. I very strongly urge Senators to join me in opposing it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I appreciate the debate on several key

amendments. I also want to recognize my colleague from California and her strong support—indeed, key position—on the voucher program, the DC scholarship program that she has been one of the primary architects of and wants to get measurables on it. It is in the subcommittee on appropriations on which I serve, and she has been a key person on that. It is my hope we can work that out, whether it is going to be at a later time for reauthorization or if we can pass it here today. It is a key program, and I want to recognize what my colleague has done on that historically. That is what I come to the floor to talk about, as well as a couple of other things that are coming up but particularly the DC scholarship program. It is an amendment. We have it appropriated in the appropriations bill, but it is required for reauthorization. It needs to be reauthorized. My hope is that the majority leader will say, yes, we will bring this up for reauthorization and give us floor time to do that. I understand the manager of this bill has said he would bring it up in his committee and do a markup in committee.

I have worked for this program for some period of time. I have worked with the students and parents in this program. They love it. They appreciate the chance to succeed in a failed school system. The DC Opportunity Scholarship Program has received applications from over 7,000 low-income students, has served over 2,600 of these children. We have far more applicants than we do slots. When these students entered the program, they had average math and reading test scores in the bottom third of all test takers. Recent evaluation by the U.S. Department of Education—this goes back to last year—affirms academic gains among scholarship students less than 2 years after receiving a scholarship. Last year, after less than 1 year in the program, two subgroups of students, representing 83 percent of participating students, showed positive results in math, and both years showed overwhelming parental satisfaction. Parents like it. Students are doing better. It is working.

I certainly wish to salute Mayor Fenty and DC school chancellor Michelle Rhee for making education reform and support for this program something important in the District. They made this a high priority.

Certainly, we have to get the schools functioning in the District of Columbia. This is a piece of it that is working for 1,700 students. We need it reauthorized to be able to continue to move it forward. It would be heartless for us not to do it.

I recognize a number of people have a problem with it on this bill. I understand that. If there is a chance we can get an agreement that the reauthorization would take place later, that would be a wise route to go, and then follow through regular order. But this one is working and is working well. It is being well received by parents and students. It has an odd sort of support base where it has both left and right. It has a lot of people in a low-income situation supporting it. It is one of those pieces of legislation that have a broad base of support ideologically and practically. People want to see it moving forward and have it succeed as an overall program. I am very hopeful this Congress can do that.

Two other quick points. One is coming up on the fairness doctrine that will be considered. The fairness doctrine, to educate my colleagues—I am sure everybody is familiar with it—was promulgated by the FCC in 1949 to ensure that contrasting viewpoints would be presented on radio and television.

In 1985, the FCC began the process of repealing the doctrine after concluding that it actually resulted in broadcasters limiting coverage of controversial issues of public importance.

Now we are hearing from some voices saying this doctrine should be put back in place. I urge colleagues to not do that. This isn't the way for us to get a good discussion going in the public marketplace. Indeed, the results in the past, and I believe today, would be that the doctrine would actually result in less, not more, broadcasting of important issues to the public. Airing controversial issues would subject broadcasters to regulatory burdens and potentially severe liabilities. They simply would say: We will not put anything on.

Just think about the changing landscape in broadcast radio and television that has taken place since 1949. These numbers are startling. In 1949, there were 51 television stations in the country and 2,500 radio stations. Maybe a lot of people wish we would go back to that era of less media, but we will not. In 1958, there were 1,200 television stations and 9,800 radio stations. Today, there are 1,800 television stations and 14,000 radio stations. There is simply no scarcity to justify content mandates such as the fairness doctrine that would be a regulatory nightmare for radio and television stations. Plus, we have all the new media, social networking, and individual citizen access to information on the Internet that does not warrant this being put back into place.

Finally, to comment on the second amendment rights, the Supreme Court, in a historic ruling, has found that second amendment rights apply to the individual, and that applies to individuals across the country, that applies to individuals in the District of Columbia. I think those should be continued and guaranteed and supported by this body as well. I think it would be appropriate for us to support that and support that in this legislation.

Madam President, in conclusion, I would like to have printed in the RECORD two editorials in agreement from two publications that frequently do not agree. One is from the Wall Street Journal and the other is from the Washington Post. Both are in support of the DC voucher program, saying it works—it works for kids, it works for parents—and is something that should be continued. I have never had printed in the RECORD before editorials from those two publications at the same time agreeing on the same topic, particularly in education. I think what it says is that this one is working and should be continued.

So I ask unanimous consent that the editorials be printed in the RECORD.

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

[From the Wall Street Journal, Feb. 25, 2009]

OBAMA'S SCHOOL CHOICE

President Obama made education a big part of his speech Tuesday night, complete with a stirring call for reform. So we'll be curious to see how he handles the dismaying attempt by Democrats in Congress to crush education choice for 1,700 poor kids in the District of Columbia.

The omnibus spending bill now moving through the house includes language designed to kill the Opportunity Scholarship Program offering vouchers for poor students to opt out of rotten public schools. The legislation says no federal funds can be used on the program beyond 2010 unless Congress and the D.C. City Council reauthorize it. Given that Democrats control both bodies—and that their union backers hate school choice—this amounts to a death sentence.

Republicans passed the program in 2004, with help from Democratic Senator Dianne Feinstein, and it has been extremely popular. Families receive up to $7,500 a year to attend the school of their choice. That's a real bargain, given that D.C. public schools spend $14,400 per pupil on average, among the most in the country.

To qualify, a student's household income must be at or below 185% of the poverty level. Some 99% of the participants are minority, and the average annual income is $23,000 for a family of four. A 2008 Department of Education evaluation found that participants had higher reading scores than their peers who didn't receive a scholarship, and there are four applicants for each voucher.

Vouchers also currently exist in Arizona, Florida, Georgia, Ohio, Louisiana, Utah and Wisconsin. And school choice continues to proliferate elsewhere in the form of tax credits and charter schools. The District's is the only federally funded initiative, however, and local officials from former Mayor Anthony Williams to current Mayor Adrian Fenty and Schools Chancellor Michelle Rhee support its continuation. As Ms. Rhee put it in a December 2007 interview with the Journal, ''I would never, as long as I am in this role, do anything to limit another parent's ability to make a choice for their child. Ever.''

Ms. Rhee is working to reform all D.C. public schools, which in 2007 ranked last in math and second-to-last in reading among all U.S. urban school systems on the federal National Assessment of Educational Progress. Without the vouchers, more than 80% of the 1,700 kids would have to attend public schools that haven't made ''adequate yearly progress'' under No Child Left Behind. Remember all of those Members of Congress standing and applauding on Tuesday as Mr. Obama called for every American child to get some education beyond high school? These are the same Members who protect and defend a D.C. system in which about half of all students fail even to graduate from high school.

On Tuesday, Mr. Obama spoke of the ''historic investment in education'' in the stimulus bill, which included a staggering, few-strings-attached $140 billion to the Department of Education over two years. But he also noted that ''our schools don't just need more resources; they need more reform,'' and he expressed support for charter schools and other policies that ''open doors of opportunity for our children.''

If he means what he says, Mr. Obama won't let his fellow Democrats consign 1,700 more poor kids to failing schools he'd never dream of letting his own daughters attend.

[From the Washington Post, Feb. 25, 2009]

VOUCHER SUBTERFUGE

Congressional Democrats want to mandate that the District's unique school voucher program be reauthorized before more federal money can be allocated for it. It is a seemingly innocuous requirement. In truth it is an ill-disguised bid to kill a program that gives some poor parents a choice regarding where their children go to school. Many of the Democrats have never liked vouchers, and it seems they won't let fairness or the interests of low-income, minority children stand in the way of their politics. But it also seems they're too ashamed—and with good reason—to admit to what they're doing.

At issue is a provision in the 2009 omnibus spending bill making its way through Congress. The $410 billion package provides funds for the 2009–10 school year to the D.C. Opportunity Scholarship Program, a pioneering effort that awards scholarships of up to $7,500 a year for low-income students to attend private schools. But language inserted by Democrats into the bill stipulates that any future appropriations will require the reauthorization of the program by Congress and approval from the D.C. Council.

We have no problem with Congress taking a careful look at this initiative and weighing its benefits. After all, it was approved in 2004 as a pilot program, subject to study. In fact, this is the rare experimental program that has been carefully designed to produce comparative results. But the proposed Democratic provision would short-circuit this study. Results are not due until June, and an additional year of testing is planned. Operators of the program need to accept applications this fall for the 2010–11 school year, and reauthorizations are complicated, time-consuming affairs. Indeed, staff members on various House and Senate committees scoffed yesterday when we asked about the chances of getting such a program reauthorized in less than a year. Legislation seeking reauthorization has not even been introduced.

If the Democratic leadership is so worried about process, it might want to review a recent report from the Congressional Budget Office listing the hundreds of millions of dollars that have been appropriated to programs whose authorizations have expired. Many of these programs get far more than the $14 million allocated to the Opportunity Scholarships. House Minority Leader John A. Boehner (R-Ohio) was right to call out the Democrats for this back-door attempt to kill the voucher program. The attention should embarrass congressional Democrats into doing the right thing. If not, city leaders, including D.C. Mayor Adrian M. Fenty (D), need to let President Obama know that some 1,800 poor children are likely to have their educations disrupted.

Mr. BROWNBACK. Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I ask unanimous consent that the Senate now debate concurrently the DURBIN amendment No. 591 and the DEMINT amendment No. 573; that no amendments be in order to either amendment prior to a vote in relation to the amendment; with the time equally divided and controlled between Senators DURBIN and DEMINT or their designees; that at 2 p.m. today, the Senate proceed to vote in relation to the Durbin amendment No. 591, to be followed by a vote in relation to the DeMint amendment No. 573; that prior to the second vote, there be 2 minutes of debate equally divided and controlled in the usual form, and the second vote be 10 minutes in duration.

The PRESIDING OFFICER. Is there objection?

The Senator from South Carolina.

Mr. DEMINT. Madam President, reserving the right to object—and I will not object—will the time be equally divided between now and 2 o'clock?

Mr. LIEBERMAN. That was my understanding. As a point of clarification, it actually is as I suggested earlier, which is that the floor is open for debate from now until 2 and that the time is equally divided. Obviously, if others want to come to the floor and speak about something else, they can ask unanimous consent to do that.

Mr. DEMINT. Madam President, I have no objection.

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

Mr. LIEBERMAN. I thank the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 573

Mr. DEMINT. Madam President, I ask unanimous consent to set aside the pending amendment and call up DeMint amendment No. 573.

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

The clerk will report.

The bill clerk read as follows:

The Senator from South Carolina [Mr. DEMINT] proposes an amendment numbered 573.

Mr. DEMINT. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prevent the Federal Communications Commission from repromulgating the fairness doctrine)

At the end of the bill add the following:

SEC. 9. FAIRNESS DOCTRINE PROHIBITED.

(a) LIMITATION ON GENERAL POWERS: FAIRNESS DOCTRINE.—Title III of the Communications Act of 1934 is amended by inserting after section 303 (47 U.S.C. 303) the following new section:

''SEC. 303A. LIMITATION ON GENERAL POWERS: FAIRNESS DOCTRINE.

''Notwithstanding section 303 or any other provision of this Act or any other Act authorizing the Commission to prescribe rules, regulations, policies, doctrines, standards, guidelines, or other requirements, the Commission shall not have the authority to prescribe any rule, regulation, policy, doctrine, standard, guideline, or other requirement that has the purpose or effect of reinstating or repromulgating (in whole or in part)—

''(1) the requirement that broadcasters present or ascertain opposing viewpoints on issues of public importance, commonly referred to as the 'Fairness Doctrine', as repealed in In re Complaint of Syracuse Peace Council against Television Station WTVH, Syracuse New York, 2 FCC Rcd. 5043 (1987); or

''(2) any similar requirement that broadcasters meet programming quotas or guidelines for issues of public importance.''.

(b) SEVERABILITY.—Notwithstanding section 7(a), if any provision of section 2(a)(1), 2(b)(1), or 3 or any amendment made by those sections is declared or held invalid or unenforceable by a court of competent jurisdiction, the amendment made by subsection (a) and the application of such amendment to any other person or circumstance shall not be affected by such holding.

Mr. DEMINT. Madam President, I ask unanimous consent to add as cosponsors to my amendment Senators VITTER, INHOFE, WICKER, BOND, BENNETT, ENZI, BARRASSO, BROWNBACK, and ALEXANDER.

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

Mr. DEMINT. Thank you, Madam President.

This has been a good debate, not just about DC voting rights but constitutional rights in our country, and if we are going to go by our own opinions and good intentions or are we going to follow the Constitution. Clearly, a lot of us wish to give fair representation to everyone who lives in the District of Columbia. But our oath of office is not to our good intentions, it is to protect and defend the Constitution of the United States.

The Constitution is very clear that Congressmen and Senators are allocated only to States. The District of Columbia was set up as a neutral entity, certainly where people will live and work associated with the business of the Federal Government, but there is nothing in the Constitution that would give a Congressman or Senators to this Federal District of Columbia. So we are talking about a constitutional issue.

We have had other constitutional issues, such as the Bill of Rights guarantee to bear arms, and there will be an amendment to that effect with the bill. I wish to bring up another constitutional issue, which is the right of free speech and the freedom of the press.

A number of Members of Congress have been talking about the annoyance of having radio talk show hosts talk about what we are doing here. I do not blame the other side for being annoyed when a radio talk show host actually describes what is in a bill, since we have gotten in the habit of not actually reading them ourselves. When we have radio talk show hosts all around the country going through page by page, contradicting what is actually being said here, I can understand that people wish to muzzle those radio talk show hosts. That could be the opinion of some of those in Congress today, but it happens to go against the Constitution when we try to decide what people can say and what they believe.

There is actually a doctrine that was mentioned by the Senator from Kansas

called the fairness doctrine that is one of those political doublespeak titles that is radio censorship that actually tries to control what radio talk show hosts could say. That doctrine was dispensed with by Reagan, and since then we have thousands of radio talk shows with wide varieties of opinion. But many are starting to talk about bringing back this radio censorship idea to try to force radio stations to present alternative opinions every time a radio talk show host presents an opinion of their own.

What this would do is create a dysfunctional situation where no radio station could afford to have a talk show host express an opinion of any kind if they had to go out and find someone to express the opposite opinion and in the meantime face lawsuit after lawsuit from the ACLU and others. Because whose opinion is going to determine what is fair, what is balanced, what is diverse? But the whole implication here is that the Federal Government and the Federal Communications Commission are somehow going to decide for us what is fair and what is balanced and what is diverse.

The amendment I am offering today, which we call the Broadcaster Freedom Act, would prohibit the Federal Communications Commission from reestablishing any part of what is called the ''fairness doctrine'' into their regulatory structure today.

Plain and simple, most people here have said they do not want it to come back. President Obama said last week he is against the fairness doctrine. So who could oppose us making it a law that some bureaucrat over at the Federal Communications Commission could not write into regulations all or parts of this censorship of radio talk shows across the country?

It is a pretty simple amendment, but I have a feeling it is getting ready to sound lot more complicated when the other side starts presenting what is in it. We have found in this body that the facts, the truths, sometimes do not make a lot of difference. But anyone who votes against my amendment, the Broadcaster Freedom Act, is voting against the Constitution. They are voting against the freedom of the press. They are voting against the freedom of speech in this country.

The one hope we have to turn this Government around, to stop this spending, and the intervention in all areas of our life, is a free press that can tell people the truth about what is going on. More and more, we have the radio talk show hosts and the bloggers and some cable news that every day are telling Americans more about what we are doing, and Americans are getting more informed, they are getting more engaged and increasingly more outraged about what we are doing.

I encourage my colleagues to support my amendment and to vote against this side by side that is being presented by the Democratic majority. What we are seeing in this side by side is the real intention of the Democratic majority as far as dealing with this fairness doctrine. They are going to propose that we as a Congress direct the Federal Communications Commission—that we are going to say: ''shall take actions to encourage and promote diversity in communication media ownership.''

Now, they are not just saying radio here. This is ''communication.'' This includes the Web, the Internet, the blogs, blogisphere, television, newspapers. This language would direct the Federal Communications Commission to take action to enforce diversity in communication. This is Soviet-style language that you are going to get some rosy picture of in a minute. But it is so open and so vague that about every communication outlet in this country is going to be faced with accusations that their ownership is not diverse.

What does ''diverse'' mean? Does it mean ''white and black''? What they are after is what they believe, what their opinions are. If this were applied to our offices here in the Senate, we could not say anything, I could not express my opinion today without being obligated by law to go find somebody to say something completely opposite of what I am saying. This is not freedom. Anyone who votes for this alternative is voting to repress the freedom of speech in this country, the freedom of media.

The second part of what they have after ''promote diversity in communication media''—all media; only the lawyers and the bureaucrats are going to tell us what that means—is ''to ensure that broadcast station licenses are used in the public interest.'' That is already a law, and that is good, and television and radio stations that use the public airwaves all over the country are held accountable by current law to do things in the public interest, and many of them are very good at that, and it is very helpful in our communities.

But I will ask my colleagues not to let this distraction confuse them about the real intention. If we pass the broadcaster freedom amendment today, we are going to close the front door to taking away the freedom of speech in this country. But this alternative opens the backdoor to what the Democratic majority is after; that is, to muzzle this annoyance of people on the radio who are telling the truth about what is going on in this Congress.

If they can go out and threaten a station that they are not diverse in their ownership, and some judge or some bureaucrat is going to decide whether they are diverse—and who knows what that means—we are going to create such risk and such liability and such intimidation that this will not even look like America in a few years.

This is dangerous material that is being offered on the other side. I will encourage my colleagues to remember our oath of office. It has nothing to do with enforcing our opinions or some judge's opinion on some radio station out there that is trying to give its opinion to the American people. We are dangerously close to the enslavement of socialism in this country with the expansion of Government on every front.

This is intolerable. Do not let the pretty language you are getting ready to hear confuse you because this is against everything we swear an oath to in this Congress. I encourage my colleagues to vote against the Durbin amendment, vote for the Broadcaster Freedom Act, and I would appreciate their support.

Thank you, Madam President, and I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 591

Mr. DURBIN. Madam President, I am beginning to believe the Senator from South Carolina opposes my amendment. He has called it unconstitutional, Communist, socialistic, enslavement, and he is just getting started. So I wish to explain what the debate is all about.

It is a fundamental question, and it is one I have reflected on. The fairness doctrine is the idea that broadcasters should cover issues important to local viewers and should cover these issues fairly; in other words, allow for different viewpoints to be heard and allow those ideas to be presented in a way that is balanced or, as one of the networks say, fair and balanced.

The fairness doctrine isn't a new idea; it is one that has been around in some shape or form since the 1920s, and it was formally adopted by the Federal Communications Commission as a standard in 1949—60 years ago. Back then, though, the world was a lot different. Television was in its infancy. It was just starting. In the 1950s, of course, there emerged three major television networks—NBC, ABC, and CBS. Congress and the FCC had a legitimate concern that these three networks and their local stations could abuse their power, because when you broadcast to radio and television consumers, you are not using something you own, you are using the public airways. We own it. All of us collectively as Americans own it. We license those who use it and say: You are allowed to broadcast your television signal or your radio signal and you have to do it under certain rules and regulations. Listening to the Senator from South Carolina, he is basically saying: Government, step aside. If a private entity wants to get involved in broadcasting, that is an exercise of free speech.

Well, historically, the courts have not agreed with my friend from South Carolina. They have said that you can impose reasonable obligations on those who have licenses to use the airwaves. They don't own the airwaves; the public owns the airwaves, and there is a public interest in reaching certain goals in those airwaves. One of those

public interests was expressed and defined for many years as the fairness doctrine. The fairness doctrine basically said Americans are entitled to hear both sides of the story so there is balance and fairness in the news and in the expressions of ideas on these radio and TV stations. The fairness doctrine was clearly I think American, not Communist; constitutional—no one struck it as unconstitutional during the period of time it was in effect—and I don't know about the enslavement of socialism; I will have to reflect on that for a minute. But the fact is, it was the law of the land. The mightiest broadcast stations, radio and TV stations that could have gone to court, I say to my friend from South Carolina, and challenge that idea as unconstitutional were not successful in doing so. It is hard to imagine we would restrict their broadcasting and they wouldn't challenge it if it was unconstitutional. Well, that is a fact. Facts sometimes are hard to deal with in debates such as this, but that was the reality.

That was then and this is now. The world has changed. The world of broadcasting has changed. We still have the major networks—ABC, NBC, and CBS—but we also have CNN, FOX News, MSNBC, and hundreds of other channels on cable TV. We have public broadcasting. We have more than 14,000 AM and FM radio stations, hundreds of satellite radio stations, and we have the Internet. It is clear that technology has changed dramatically since 1949 and the institution of the fairness doctrine. There are more ways now than ever to hear a variety of perspectives on a number of issues.

So when the fairness doctrine was repealed in 1987, many of us objected. The basic argument: Americans have the right to hear both sides of the story; television and radio stations should still hold themselves to that standard. Let the American people decide. Don't let one major network jam through a political viewpoint over the public airwaves that the American people, frankly, have to take or leave. I thought that was the right position then in 1987, but I will tell my colleagues the world has changed.

President Obama has said while on the campaign trail and in the White House that he doesn't support reinstating the fairness doctrine, and neither do I. You will find no mention of the fairness doctrine on the White House Web site; you will find no effort to reinstitute the fairness doctrine in my amendment. Because, quite honestly, now it isn't a question of NBC giving me one point of view and I have to take it or leave it. We all know what happens when you go home with the remote control; you have more choices than you know what to do with. That gives a variety of opinions an opportunity to be expressed on television—the same thing is true on radio—for Americans to hear a different point of view. If they want to switch from Rachel Maddow to Bill O'Reilly, they will hear a much different view of the world. It is there. It reflects the reality of technology and media today.

So I think it is interesting that the Senator from South Carolina still bangs away at this notion that some people on the floor want to reinstate the fairness doctrine. I don't. There may be others who do. My amendment has nothing to do with that.

The amendment Senator DEMINT has written was not carefully written. I don't know if he understands some of the language he included. I call his attention to a paragraph in his amendment, paragraph 2 of section 303A. It seems like a very general statement that shouldn't cause any trouble, but I am afraid it does, because after he goes after eliminating the fairness doctrine, he also includes any similar requirement that broadcasters meet program and quotas or guidelines for issues of public importance. Now, that is a problem. I don't know if he understands it is a problem, but it is. This amendment does more than ban the FCC from doing something it wasn't going to do anyway. Incidentally, nobody is talking about reinstating the fairness doctrine. This is the ''bloody shirt.'' That term is a political term that came about after the Civil War when people would come to the floor and try to inflame passions, and they said: You are waving the bloody shirt of the war; stop that. Let's have a rational conversation.

Well, the rightwing broadcasters on their side, conservative broadcasters, have been waving this bloody shirt of the fairness doctrine for months. They love this. They have set up this kind of false choice that you are going to take away the right of free speech and they are trying to impose the fairness doctrine. It hasn't happened, it isn't going to happen, and I am not trying to make it happen.

The DeMint amendment also contains a provision which I read to my colleagues that seriously cripples the FCC's ability to ensure responsible broadcasting. Remember: Public airwaves that the radio and TV station owners apply for a license from the Government to use to make money. The public airwaves truly are the property of the American people. We say to broadcasters that in return for a license to use those airwaves, your Government is going to ask that you use them in the public interest. Now, what does it mean to say we use the airwaves in the public interest? According to Senator DEMINT, it is the enslavement of socialism. Well, here are the 14 major elements listed by the FCC when it comes to defining the public interest: Opportunity for local self-expression, development and use of local talent, programs for children, religious programs, educational programs, public affairs programs, editorialization by licensees, political broadcasts, agricultural programs, news programs, weather and market services, sports programs, service to minority groups, and entertainment programming.

Senator DEMINT's amendment—that second paragraph I read which has not been carefully written—goes way beyond stopping the fairness doctrine; it undermines the FCC's ability to make sure broadcasters meet these public interest obligations. So what. What if the public interest requirement disappeared tomorrow? What difference would it make? Let me tell my colleagues the difference it would make. There would be no requirement that your local station provide local news and weather. There would be no requirement that your local television station provide children with programming that is free from sex and violence. There would be no requirement to make sure advertising to children is subject to appropriate limitations and no requirement to provide a minimum amount of educational programming on each channel. Does that have anything to do with the fairness doctrine? It doesn't. What Senator DEMINT is doing is undermining broadcasting in the public interest.

If a station decided to run a religious program, they would be doing it in the public interest. Senator DEMINT removes that definition of public interest. In fact, he says—let's go back to the exact language of his amendment. He says, ''any similar requirement that broadcasters meet programming quotas or guidelines for issues of public importance.'' So his language goes too far.

What we have tried to do is to make sure we don't limit the FCC's ability to protect the most vulnerable and impressionable viewers and listeners in America—our kids and our grandkids. The DeMint amendment takes away that requirement of licensees, radio and TV licensees, to protect children from sex and violence. They might do it anyway, they might not, but there would be no license requirement under the DeMint language.

I still believe broadcasters who use public airwaves should use them in a fair and reasonable way in the public interest, and I believe the FCC should be able to enforce this. If the DeMint amendment is passed and if it became law, if you wanted to enforce the fact that on Saturday morning, when a lot of kids are watching television, the local television station is running a gory movie or one that is on the edge when it comes to sexual content, it would be hard, if not impossible, to do it. I am sure that is not the Senator's intent, but that paragraph was very poorly written, and that is why I change it.

Now, there is also the suggestion by the Senator from South Carolina that if we encourage diversity of media ownership, somehow that is communistic. From my point of view, it is not. Diversity of ownership opens the public airwaves to a variety of different owners. I am not saying here—and no one is suggesting—that the law for the Federal Communications Commission says you can give this license to a Republican and this one to a Democrat or

this one to a liberal and this one to a conservative. When I talk about diversity of media ownership, it relates primarily to gender and race and other characteristics of that nature. We don't mandate it, even though you would think we did when you hear Senator DEMINT read from my amendment. What we say is the Commission shall take actions to encourage and promote diversity in communications media ownership. I don't think that is a mandate to give licenses to any one group; it just says ''take actions to promote and encourage,'' something that is already in the law.

I might say to the Senator, section 307B of the Communications Act—and I hope you will have your staff look at it—requires that the FCC ensure that license ownership be spread among diverse communities. It is there already. It is there already. This enslavement of socialism, in the words of the Senator from South Carolina, is already there. I don't think this is socialistic, communistic or unconstitutional. It is in the law. So to say we are going to promote what the law already says is hardly a denial of basic constitutional freedoms. Second, the Communications Act requires the FCC to eliminate market entry barriers for small businesses to increase the diversity of media voices. That is section 257, which I hope your staff will look at too.

To argue that what I am putting in here is a dramatic change in the law or is going to somehow muzzle Rush Limbaugh is not the case. What we are suggesting is, it is best that we follow the guidelines already in the law to promote and encourage diversity in media ownership. Even with cable, satellite, and Internet, broadcast TV and radio, there are still important ways we learn about what is going on in our communities and in our country.

The Senator from South Carolina went on to say this amendment would affect the Internet and blogs. I have to remind the Senator they are not licensed. They don't have FCC licenses. They are not affected by this debate. You can start a blog tomorrow, I can, too, and I don't have to go to the FCC for approval. They certainly cannot monitor that blog to determine whether it is in the public interest. That is not the law. The Senator is on this rampage and, yet, when you look at the facts, they do not apply to the Internet or blogs.

We should be concerned, however, that the policies of the last decade have led to bigger and more consolidated media outlets controlling more of the stations and more of the content. As a result of these policies today, women and minorities are less likely to own media stations, even though the existing law says that is a goal when it comes to licensure. Nationwide, women own just 5 percent of all broadcast TV stations. Racial or ethnic minorities own just 3.3 percent. In Chicago, the city I am proud to represent—diverse and vibrant with many significant minority communities—there is only one commercial TV station owned by a racial or ethnic minority. The numbers are almost as dismal in radio. Nationwide, women own just 6 percent of broadcast stations; minorities, 7.7 percent. In Chicago, only four radio stations are owned by minorities. That is about 5 percent of the radio stations in Chicago, less than the national average.

The content of the media should reflect the diversity of America. These statistics show this is not currently the case. The law says that should be our goal. The existing law says that should be our goal. I restate the existing law, and the Senator from South Carolina calls it communism. I don't think it is. I think it is still a worthy goal so that there is diversity in ownership, diversity in stations. I am acknowledging the obvious.

I am acknowledging the obvious: We are no longer in the world of three television networks; we are in a world where we have many different choices. I ask that we reaffirm diversity and media ownership so there will be choices. I hope the Senator from South Carolina cannot argue that we should not have choices, that we cannot turn the dial to our favorite stations, or punch the remote control to reach those stations. I think that as long as America has those choices, it serves the original goal of letting us hear different sides of the story and doesn't reimpose the fairness doctrine, which none of us are asking for.

We need to make the media more accessible to all voices in America. Isn't that what we are all about in this country? Don't we basically say we trust the people of this country to hear both sides of the story and make up their own minds? We sure do. We give them a right to vote. I guess that is the most instructive delegation of authority you can give to a person: you get to pick your leadership based on your opinion.

All I am asking is that we encourage diversity of media ownership so there are more options, more opinions being shared, and Americans can choose the ones they want. I will repeat so my friend from South Carolina understands clearly, I do not favor the reinstatement of the fairness doctrine. The world has changed. The world of media and technology has changed. I believe Americans are entitled to hear different points of view, and that is why I restate the existing law—and I have given citations for both sections of the Communications Act—which is that we need to have more diversity in media ownership in America. I have not proposed taking away a license from anybody or giving one to anybody. Setting this as a goal is as American as apple pie and has nothing to do with communism or Marxism.

I say to the Senator I was careful in writing this amendment, so I included a section very similar to his section (2) but narrowing it to the issue of fairness. I say—and this is so short that I will read parts:

> The Commission shall take actions to encourage and promote diversity in communication ownership and ensure that broadcast station licenses are used in the public interest.

That is so there is diversity in ownership and we protect kids from sex and violence. If the Senator thinks that is communism, I disagree with him.

Then I say:

> Nothing in section 303A—

Which is what we are talking about in this amendment—

> shall be construed to limit the authority of the commission regarding matters unrelated to a requirement that broadcasters present or ascertain opposing viewpoints on issues of public importance.

I protect what I think was the intent of his amendment to prohibit the reinstitution of the fairness doctrine, which nobody has suggested, but to make it clear that is as far as we go. We are not eliminating the requirement of broadcasting in the public interest for obvious reasons: We want to protect kids; we want to protect families; we want to keep sex and violence away from kids; and make sure there is local news and weather so people can turn on the TV stations and learn about it.

All of these things, from my point of view, are constructive, and I hope we all agree. The Senator from South Carolina has said that old DURBIN will argue for the fairness doctrine. Let's correct the record. I am not doing that. The fairness doctrine, in 2009, doesn't make sense. It might have made sense in 1948. We should not reinstitute that, but let's not give up on fairness. Let's make sure American viewers of television and listeners of radio have choices. Making those choices can form an opinion that leads to their expression of points of view and their votes. There is nothing wrong with that.

For the people who want to take a license and use the airwaves, there are basic rules. We don't want you to put gory movies and sex on television during early morning hours on a Saturday when kids are watching. We want you to be careful in your content so you don't do something that is abusive of your use of our public airwaves.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Madam President, I always enjoy a good debate with the Senator from Illinois. He is certainly good at what he does and, in this case, that is confusing facts. The good news for us and all Americans is, this afternoon, on radio talk shows all across the country, they can find out what is in both of these amendments and what it really means. They are not going to hear it here today. There have been a lot of distortions but interesting admissions.

Certainly, the Senator from Illinois made it very clear that he should be a part of determining what is fair and balanced and how we should determine

what is both sides. He mentioned there are 14,000 radio stations. What he does with his amendment is he orders ''shall take action to encourage and promote diversity and communication media ownership.'' He wants our FCC to monitor 14,000 radio stations to decide if their ownership is diverse. He said it doesn't apply to the Internet, but we do regulate the Internet. We regulate everything in America, folks—everything that a Federal dollar touches.

Believe me, this language is not just about radio stations; it is about doing the impossible, and that is to centrally manage the ownership of radio and other communications in this country. It goes back to his original opinion that, yes, he believes there should be fair and balanced perspective presented in the media. But what he believes—and what many on his side believe—is that fairness should be determined by those of us in Government rather than the listeners and viewers who tune into that radio or the TV station or go to that Web site.

It is not for us to determine what is fair and balanced. His distortion about my amendment and what it does is exactly wrong. We do not address or change in any way the requirements of radio stations to act in the public interest. The nonsense about children's programming and indecency has nothing to do with this. It is another section in the law. I don't affect that in any way.

What this is about is, saying to your face, America, that they are not for reinstating the censorship of radio, while at the same time introducing an amendment that would allow us to go in and make our judgment, our opinion, about what is diverse ownership of a radio station.

Let me read again what this provision in my amendment addresses. He says it takes away the public interest clause. It has nothing to do with that. But it prohibits this backdoor approach to getting back to the principles of the fairness doctrine by saying broadcasters do not have to meet programming quotas and guidelines. In other words, we can't decide how many opinions they have to offer and what the guidelines for those opinions are. It is not for us to say. They have to fulfill their public interest obligations. We don't change that. But this clause would keep the good Senator from Illinois and those on his side who want to censor radio from allowing the FCC to go in and set some kind of quotas on how often, how they need to state their opinions, and the guidelines for that. It creates a license for us to go in and determine what opinions, how many opinions, and basically it is the fairness doctrine through the back door.

I will restate that this Broadcasters Freedom Act protects the constitutional rights of freedom of speech and freedom of the press. It does nothing to dislodge or change the requirement that public stations—radio or whatever communications—meet the current law requirements to act in the public good. But it does keep us, as a government, from setting quotas and guidelines of what opinions can be expressed and how often they can be expressed.

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

Mr. DEMINT. Yes.

Mr. LIEBERMAN. On that last point, am I correct in reaching the conclusion—and that second clause is prohibiting any similar requirement that broadcasters meet programming quotas or guidelines for issues of public importance—that you do not intend to affect or dislodge in any way existing FCC laws or guidelines with regard to, for instance, decency standards, language, or sexually loaded content, or violent content that currently prevails?

Mr. DEMINT. The Senator is right. We have legal opinions on that, and it doesn't overrule any existing commission regulations. We asked the broadcasters' legal counsel, and this is intended to narrow this fairness doctrine backdoor approach of controlling what people say by establishing quotas and guidelines about how that is done. I thank the Senator for that question.

We have probably talked enough about this subject. I reserve the remainder of my time. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DEMINT. Madam President, I ask unanimous consent that the time during the quorum call be equally divided.

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

Mr. DEMINT. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 587

Mr. VOINOVICH. Madam President, today I speak as a Member of the Senate, but also as a former chairman and now ranking member of the Oversight of Government Management, the Federal Workforce, and the District of Columbia Subcommittee. I have had a relationship with the District for quite some period of time and have been very interested in the District and also in the District's reaching out in terms of providing a quality education for the boys and girls who live in the District, understanding that this is the Nation's Capital and it should be the shining city on a hill where people can come from all over America and see the very best we have in our country in terms of educational opportunities and, I also feel, the opportunity of people to have the right to vote.

As a result of my concerns about the ways to rectify the lack of voting representation for the District, I have approached this bill with the belief that citizens who pay taxes and serve in the military should have House representation so long as such representation conforms to the Constitution.

Although a constitutional amendment would provide the clearest constitutional means to ensure District residents are provided House representation, after studying the legal arguments, I have concluded that there are sufficient indicia and precedent that the Constitution's District clause grants Congress the constitutional authority to give the District a House Member. As for any argument that the bill is unconstitutional, I need only to say that I believe any ambiguity and disagreement will be resolved quickly by the courts.

After weighing the constitutional arguments and equities, I have decided to support this legislation—in fact, I am a cosponsor of this legislation—on one condition: We must also continue to give the families of the District a vote on how their children are educated.

Accordingly, I am proud to join Senator ENSIGN in offering an amendment to reauthorize the District of Columbia Scholarship Program for an additional year. Perhaps one may wonder why am I so concerned about this issue. It is because of the fact that when I was Governor of Ohio, we started a scholarship program in Ohio for children who were not members of the public schools. That experiment has worked to the benefit of thousands of children, particularly in the Cleveland district, who have gone through the system and are now in college. I meet with them, and they tell me: Were it not for the Cleveland Scholarship Program where I had a choice to go to another school, I don't believe I would be in college today and be as successful as I have been.

When I instituted that program, it was said it was unconstitutional. I am pleased to say that several years ago, the U.S. Supreme Court said that providing scholarships to nonpublic school systems fit in with the Constitution of our country.

When we had an opportunity to help the District, we provided $14 million for public schools, $14 million for charters, and $14 million for the scholarship program. It is a critical component of a three-sector education strategy to provide a quality education to every child in the District, regardless of income or neighborhood.

The program provides up to $7,500 per student per year to fund tuition, fees, and transportation expenses for K–12 for low-income DC families.

To qualify, students must live in the District and have a household income of no more than 185 percent of the Federal poverty level. In 2008, that was

about $39,000 per family of four. In fact, the average income for families using scholarships in 2008 was just over $24,000.

Since its inception, the program has served over 2,600 students. They have about 7,500 who would like to get in the program, but they do not have a place for them. Entering students had average math and reading test scores in the bottom third.

A recent evaluation of the Department of Education reaffirms academic gains among participants less than 2 years after receiving a scholarship. They are benefiting from it. We need more time to see how it works out. I wish to underscore that I think this is part of this whole package we put together.

Many Members of this body are unaware of the fact that today the people who live in the District can go to any public college in the United States and we provide up to $10,000 for out-of-State tuition. They are not aware of the fact that Don Graham over at the Washington Post got the business community together and set up the Washington scholarship program, the CAP program, and $2,500 is available for youngsters. Or that the Gates Foundation thinks so much of what is happening in the District that they provided another $120 million to keep kids in school in the two worst dropout districts in the District of Columbia.

There are some wonderful things happening in the District, and yet—and yet—there are some people here, because of special interest groups, who want to do away with the scholarship program. They want to deny these children an opportunity to have this educational opportunity, this smorgasbord we have available to them.

What this amendment does is it extends for 1 year that program as we look at it and see how it goes through its metamorphosis.

I have to say to my colleagues on the other side of the aisle and this side of the aisle, if you want to do something that is disastrous to the kids in the District in terms of public relations and the interest of all these people in the District, go ahead and make it impossible for this program to keep going.

Think about this: the Gates Foundation, the College Assistance Program—great things are happening in the District today. What a terrible message it would send to the rest of the country and those who care about education in the District if we were denied this opportunity, this experiment to continue in the District.

I ask unanimous consent to have printed in the RECORD two editorials, one on January 26 titled ''School Vouchers, District parents know why the program should continue.'' The demand for it is tremendous. They want it. And a recent editorial, ''Hoping no one notices, congressional Democrats step between 1,800 DC children and a good education.''

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

[From the Washington Post, Jan. 26, 2009]

SCHOOL VOUCHERS—DISTRICT PARENTS KNOW WHY THE PROGRAM SHOULD CONTINUE.

Early surveys of D.C. parents of children receiving federal school vouchers showed many of them liked the program because they believed their children were in safe schools. Over time, a new study shows, their satisfaction has deepened to include an appreciation for small class sizes, rich curricula and positive change in their sons and daughters. Above all, what parents most value is the freedom to choose where their children go to school.

Here, for example, is what one parent told University of Arkansas researchers studying the District's Opportunity Scholarship Program: ''I know for a fact they would never have received this kind of education at a public school. . . . I listen to them when they talk, and what they are saying, and they articulate better than I do, and I know it's because of the school, and I like that about them, and I'm proud of them.'' Overall, researchers found that choice boosts parents' involvement in their children's education.

Whether they continue to have such a choice could be determined soon. The program that provides scholarships of up to $7,500 per year for low-income students to attend private schools is funded only through the 2009–10 school year. Unusually restrictive language being drafted for the omnibus budget bill would forbid any new funding unless Congress reauthorizes the program and the District passes legislation in agreement. Yet results of the Education Department's scientific study of the program are not expected until June.

We hope that, despite his stated reservations about vouchers, President Obama includes money in his upcoming budget to safeguard the interests of children in this important local program and to preserve an unusually rigorous research study. Mr. Obama and his education secretary, Arne Duncan, say they eschew ideology in favor of what serves the interests of children. Here's a chance to help 1,716 of them.

[From the Washington Post, Feb. 25, 2009]

VOUCHER SUBTERFUGE—HOPING NO ONE NOTICES, CONGRESSIONAL DEMOCRATS STEP BETWEEN 1,800 D.C. CHILDREN AND A GOOD EDUCATION

Congressional Democrats want to mandate that the District's unique school voucher program be reauthorized before more federal money can be allocated for it. It is a seemingly innocuous requirement. In truth it is an ill-disguised bid to kill a program that gives some poor parents a choice regarding where their children go to school. Many of the Democrats have never liked vouchers, and it seems they won't let fairness or the interests of low-income, minority children stand in the way of their politics. But it also seems they're too ashamed—and with good reason—to admit to what they're doing.

At issue is a provision in the 2009 omnibus spending bill making its way through Congress. The $410 billion package provides funds for the 2009–10 school year to the D.C. Opportunity Scholarship Program, a pioneering effort that awards scholarships of up to $7,500 a year for low-income students to attend private schools. But language inserted by Democrats into the bill stipulates that any future appropriations will require the reauthorization of the program by Congress and approval from the D.C. Council.

We have no problem with Congress taking a careful look at this initiative and weighing its benefits. After all, it was approved in 2004 as a pilot program, subject to study. In fact, this is the rare experimental program that has been carefully designed to produce comparative results. But the proposed Democratic provision would short-circuit this study. Results are not due until June, and an additional year of testing is planned. Operators of the program need to accept applications this fall for the 2010–11 school year, and reauthorizations are complicated, time-consuming affairs. Indeed, staff members on various House and Senate committees scoffed yesterday when we asked about the chances of getting such a program reauthorized in less than a year. Legislation seeking reauthorization has not even been introduced.

If the Democratic leadership is so worried about process, it might want to review a recent report from the Congressional Budget Office listing the hundreds of millions of dollars that have been appropriated to programs whose authorizations have expired. Many of these programs get far more than the $14 million allocated to the Opportunity Scholarships. House Minority Leader John A. Boehner (R-Ohio) was right to call out the Democrats for this back-door attempt to kill the voucher program. The attention should embarrass congressional Democrats into doing the right thing. If not, city leaders, including D.C. Mayor Adrian M. Fenty (D), need to let President Obama know that some 1,800 poor children are likely to have their educations disrupted.

Mr. VOINOVICH. Madam President, do you know why? It is because of the National Education Association. They do not want it to happen. They fought it in my State. The Ohio school boards fought it. I will never forget going up for an endorsement in 2004 when I ran last time. When I ran in 1998, I got support from the Ohio Education Society. They said: No Governor has done more for education than GEORGE VOINOVICH. So I came to Washington. They kind of forgave me for the scholarship program in Cleveland. They kind of let that go.

Madam President, 2004 came along, and I went through the whole endorsement procedure. I did everything. After it was over, many people came up to me and said: George, you absolutely did a fabulous job with your presentation, what you are trying to do with education on the national level and you are concerned about it. But we got the word from Washington that you are not going to be endorsed because you have broken the rule in supporting scholarships, supporting an opportunity for kids to have another opportunity to go to school and try something new.

I want to say this. In this country of ours, we cannot survive with half the kids in our urban districts dropping out of school. I am glad the President spoke about it in his State of the Union. I am glad the President talked about charter schools. But the real question is, Is he going to stand up and are the Democrats on the other side of the aisle and some Republicans going to stand up to the National Education Association, the National School Boards Association and some of these groups that want to keep things as they are?

I am going to tell you something, Madam President. We will never make

it. I want everybody to understand that I am for this bill, voting rights, but I am not going to support this bill unless I am convinced we are going to have an opportunity to debate this issue in the Senate and keep this program going for the boys and girls who are benefiting from it, the same kind of program that benefited so many thousands of people in the State of Ohio.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I thank my friend from Ohio. He speaks with such admirable passion about the needs of children who obviously are not his. He has a record on this issue. He knows, as I do, though, that some groups may disapprove, oppose this DC low-income student scholarship program. One group that doesn't oppose it—in fact, enthusiastically supports it—is the parents of low-income children in the District who have oversubscribed by multiples for this program every year.

We are going to have conversations during this discussion. I support this program, as my friend from Ohio knows. Hopefully, we can get to a point where we can have an agreement that will get some floor time for this discussion. As I said earlier, since the Homeland Security and Governmental Affairs Committee has tucked within it jurisdiction over matters related to the District of Columbia, we would, I believe, be the authorizing committee.

I am certainly committed to holding a hearing on the reauthorization bill. The Senator from Ohio rightly wants to guarantee by one means or another that there will be floor debate on this issue in a timely way; that is, so that we can consider it in plenty of time for the DC school system to act.

Most of all, I tell him I admire the strength of his position because it is a position that cares for children. It is not against anything. It is for a good education for all our children. I thank him. I admire him.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 591

Mr. DURBIN. Mr. President, I ask unanimous consent that the pending amendment be set aside and that the clerk report the amendment which I have pending at the desk.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 591.

Mr. DURBIN. I ask unanimous consent that the amendment be considered as read.

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

The amendment is as follows:

(Purpose: To encourage and promote diversity in communication media ownership, and to ensure that the public airwaves are used in the public interest)

At the end of the bill add the following:

SEC. 9. FCC AUTHORITIES.

(a) CLARIFICATION OF GENERAL POWERS.—Title III of the Communications Act of 1934 is amended by inserting after section 303 (47 U.S.C. 303) the following new section:

''SEC. 303B. CLARIFICATION OF GENERAL POWERS.

''(a) CERTAIN AFFIRMATIVE ACTIONS REQUIRED.—The Commission shall take actions to encourage and promote diversity in communication media ownership and to ensure that broadcast station licenses are used in the public interest.

''(b) CONSTRUCTION.—Nothing in section 303A shall be construed to limit the authority of the Commission regarding matters unrelated to a requirement that broadcasters present or ascertain opposing viewpoints on issues of public importance.''.

(b) SEVERABILITY.—Notwithstanding section 7(a), if any provision of section 2(a)(1), 2(b)(1), or 3 or any amendment made by those sections is declared or held invalid or unenforceable by a court of competent jurisdiction, the amendment made by subsection (a) and the application of such amendment to any other person or circumstance shall not be affected by such holding.

Mr. DURBIN. Mr. President, 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.

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

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

Mrs. LINCOLN. Mr. President, I ask unanimous consent to speak as in morning business.

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

(The remarks of Mrs. LINCOLN and Mr. CHAMBLISS are printed in today's RECORD under ''Morning Business.'')

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

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

BUY AMERICA

Mr. BROWN. Mr. President, we are in the worst recession since the Great Depression. We have been in a recession in my State longer than the official 13 months that economists have noted. With the economic recovery package signed into law last week, we took a major step toward getting our economy on the path for success and toward rebuilding and strengthening the Nation's middle class. The economic recovery package means billions of dollars to help shore up State budgets and help States pay for essential programs such as Medicaid and unemployment insurance. The economic recovery package means money for job-creating efforts from shovel-ready projects to long-term investment in new technology.

In this economic crisis, we have seen demand for manufactured goods slow to a crawl. Coupled with the unavailability of credit, many manufacturers have ceased or idled operations. American manufacturing shed 800,000 jobs last year, nearly one-third of all job losses. Last week many people probably missed the bad news on manufacturing released by the Federal Reserve. The Fed reported that output in manufacturing fell 2.5 percent in January. That means manufacturing lost 207,000 jobs in January alone. That is on top of manufacturing falling nearly 3 percent in December. This puts manufacturing's decline over the last 3 months at a shocking 26.7 percent.

That is why this recovery package is so important. The recovery package has two key objectives: stimulate the economy and create jobs. The Government is investing billions of tax dollars in infrastructure, in safety net programs and alternative energy development. It is common sense to ensure that Federal funds for this recovery are used to buy American products and to help promote manufacturing and job creation.

Studies across the board say more jobs are created when we have strong domestic sourcing requirements. One recent study estimates 33 percent more manufacturing jobs will be created with ''Buy America''. When we utilize domestically manufactured goods, the more jobs we will create and the greater the stimulus will be to our economy, an economy that has been the engine of growth for the world. The American people clearly have spoken out that they want this ''Buy America'' provision. ''Buy America'' is common sense. The majority of Americans know that. Some 84 percent favored strong ''Buy America'' provisions in the stimulus.

Last week in Cleveland I visited ArcelorMittal Steel, a steel manufacturer that employs lots of people but is a foreign-owned company. I met with the plant manager and his staff. I met with union workers, including some who were recently laid off. This company, similar to all steel companies, is down 45 percent of its capacity. They are forced to lay off workers because the demand for steel has declined—steel for autos, steel for household appliances, steel for infrastructure projects. We talked about ''Buy America'' provisions and how that can help the plant get up and running again. It is important to note that ArcelorMittal is an international company. Its headquarters is not located in the United States. Yet that company believes ''Buy America'' provisions make sense, a foreign-based company that supports ''Buy America'' provisions in the recovery package. There

are more foreign-based companies with American factories such as ArcelorMittal that can benefit from the stimulus. I hope ''Buy America,'' if properly implemented and properly enforced, will help manufacturers such as ArcelorMittal and even attract new foreign investment in the United States. We need to make sure these provisions are properly implemented. We need to make sure that when a State or local government requests a waiver on ''Buy America'' provisions, the agency makes the request known. We need transparency so that, at the very least, the taxpayers know if dollars are going to domestic or foreign manufacturers.

There are good reasons on occasion to have waivers. Sometimes domestic steel or iron or cement might be too costly for a project to make sense. Sometimes the right product in the right quantity may not be available at the right time. Waivers are fine if implemented correctly, fairly, and with transparency. But that has not always been the case. Since 2001, the Federal Highway Administration has granted 54 ''Buy America'' waivers. The Federal Transit Administration has granted more than 40 waivers. Most were granted based on the product not being available in the United States. When the waiver request is not known by anyone except the Federal agency that receives it, how do we know the products are not made in America? Waivers can be fine but not if they are granted without transparency. We have a responsibility to the taxpayer to ensure that these dollars are creating American jobs.

Americans, whether they are in Denver or Columbus, have supported ''Buy America'' in large numbers. We know that, when the President spoke down the hall in the House about this stimulus package and about our efforts. We also know, if we are going to ask Americans to reach into their pockets and spend tens of millions of dollars on infrastructure projects, as Americans have said they would, we also need to know this will create the jobs we promised.

The American people want three things: Accountability, which we give in this package; they want to know that this infrastructure is done by American workers; and they want to know their tax dollars are used to buy materials made in America for these projects that American workers are building.

We have a responsibility to give American manufacturers the opportunity to bid on the steel and iron and cement and the concrete that will be in demand for these massive investments. ''Buy America'' is significant because it helps ensure we have a diverse and strong manufacturing base.

Textbook trade theory says that making companies more and more specialized in one sector is an unquestionable good, but that is not always true. We have seen countries such as Great Britain overspecialize in finance while neglecting manufacturing. Some might say that has happened here. The people screaming bloody murder about ''Buy America'' are the same people who oversold the benefits of free trade. These are entrenched interests, companies that, for instance, outsource their manufacturing, move their manufacturing plants abroad. They import products back into the United States, and they use cheap labor. That is so much of the story. In opposing ''Buy America,'' companies would say: We want to be able to sell our products overseas. That is not the real story. The real story is these companies want to outsource their production to China, use very inexpensive labor, take advantage of no worker safety rules in China, take advantage of very weak environmental rules in China, make those products there and then import them back into the United States, outsource the jobs to China, make the products there, and bring the products back to the United States. We know what that does to American employment. We also know what it does for food safety, toy safety, vitamins, all the things we have seen, contaminants in the food and toys. We cannot afford this any longer. We cannot be a healthy economy without strong manufacturing. A healthy economy is a balanced one, not overly dependent on one sector.

Let me be clear. ''Buy America'' is not about slowing international trade. The editorial boards and pundits may scream trade war when the Congress considers how it will spend taxpayer dollars, but there is no danger of a trade war. There is no danger of protectionism. We are a country with the most open markets in the world. We are a country with an $800 billion trade deficit, $2 billion a day going out of the country rather than money coming into the country. How can we be called protectionist when we have that policy?

The United States will continue to have the most open market in the world, and we should. The United States is a signatory to the World Trade Organization and other trade deals that actually limit policies that countries can use on things such as ''Buy America'' or on climate change or on food and product safety. That, in itself, is a subject matter for further debate.

This is about using tax dollars in the best way to create jobs in Illinois, Colorado, and in Ohio. Now that the provisions are in the bill, Congress will work with the Obama administration in implementing them with transparency and accountability. It is the right thing to do. It will put Americans back to work. Americans demand that their tax dollars be spent on American workers using American products to build this infrastructure to make a better economy.

I thank the Chair.

Mr. FEINGOLD. Mr. President, the fairness doctrine was repealed by the FCC over 20 years ago. I do not support its reinstatement because I don't like the idea of the government micromanaging speech. I also have serious questions about whether it would be constitutional to reinstate the fairness doctrine, given the wide variety of media outlets available for the expression of different points of view. That is why I voted for the amendment offered by Senator DEMINT banning the fairness doctrine.

Unfortunately, that amendment was drafted so broadly that it could have also restricted the FCC from encouraging localism and ensuring that broadcasters are living up to their public interest responsibilities. These are responsibilities that broadcasters agree to when they are provided a segment of spectrum—a valuable piece of public property—and they should not be undone. I supported the Durbin amendment to clarify that public interest obligations remain, while ensuring that the fairness doctrine does not return.

Mr. DORGAN. My vote on the DeMint amendment, No. 573, should not be construed as a vote in favor of restoring the fairness doctrine. I do not favor restoring the fairness doctrine.

However, the DeMint amendment went much further than legislating on the fairness doctrine. His amendment would have prohibited the FCC from establishing any program guidelines at all no matter how reasonable. For example, his amendment would have prohibited the FCC from establishing guidelines for children's programs or guidelines to prohibit violent programming during a family viewing hour in the evening. These are just two examples that the DeMint amendment would have prohibited.

To be clear, I support the provision in the DeMint amendment that would have precluded the restoration of the fairness doctrine. My view is that the fairness doctrine is not appropriate for today's market. I do support the creation of reasonable public interest standards that attach to a broadcast license dealing with localism issues and community responsibility. But, I could not vote for such a broad amendment that would have stripped from FCC reasonable and appropriate regulation of the type described above.

AMENDMENT NO. 591

The PRESIDING OFFICER (Mr. BENNET). The Senator from Illinois.

Mr. DURBIN. It is my understanding the vote is scheduled for 2 o'clock.

The PRESIDING OFFICER. The Senator is correct.

Mr. DURBIN. I ask unanimous consent that it be moved until 2 minutes after 2 and I be allowed to speak and there be response.

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

Mr. DURBIN. Mr. President, before us is a debate on the fairness doctrine. Sixty years ago, the Federal Communications Commission said radio and TV stations had to tell Americans both sides of the story. In those days, television was just starting. In the 1950s,

three networks emerged and the fairness doctrine applied for decades. Then, in 1987, the FCC canceled the fairness doctrine, and there has been a debate ever since whether we should return to it.

Well, if you want to argue whether Americans should hear both sides of every story to make up their minds, I think it is a pretty basic concept. But while we were debating whether to return to the fairness doctrine, media and technology changed dramatically. It is no longer three networks, it is 200 channels, cable channels, and all sorts of opportunities for information.

So the fairness doctrine in its day was the right thing for the right reason. Today it is not. Senator DEMINT wants to eliminate it—make sure no one brings it back. No one is planning on bringing it back. There is no problem with that. But he included some language in his amendment that goes too far. It takes away the authority of the Federal Communications Commission to basically determine that radio and TV stations use their Federal licenses in the public interest. What does that mean?

It means the FCC can tell a television station it cannot put on a violent movie early on Saturday morning when kids are tuning in to cartoons. It cannot put on something with sexual tones to it at a time when children and family are watching. There are limitations because it is using America's airwaves to make money. Use them responsibly in the public interest. I think it was inadvertent, but, in fact, he removed that. He removed that authority of the FCC.

My amendment says two things. It is the first amendment we will vote on. First, the existing statutory requirement for diversity in media ownership is going to be encouraged so we have more and more different people applying for licenses for radio and TV stations. There is nothing wrong with that, as I see it. It is already in the law. Secondly, do not take away the FCC's power to say to public licensees of television and radio: Operate in the public interest. Make sure you have local news and weather. Make sure you do not have sexual content and violence on children's shows—basic things that are common sense.

I do not think the Senator from South Carolina wanted to change that. He did inadvertently. My amendment cleans it up. If the Durbin amendment is adopted, I encourage people to support both the Durbin amendment and the DeMint amendment. If my amendment is not adopted, I hope they will reconsider their support for Senator DEMINT's amendment.

The PRESIDING OFFICER. The Senator's time has expired.

The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I am going to proceed for a few moments on leader time.

The PRESIDING OFFICER. The Senator may proceed.

Mr. MCCONNELL. Mr. President, in recent months, a number of our colleagues on the other side of the aisle have expressed support for reinstating the so-called fairness doctrine. But let's be honest. The fairness doctrine was anything but fair. It amounted to Government control over political speech, and in the end it actually resulted in less, not more, political discourse over the airwaves because broadcasters did not want to deal with all of its redtape. That is precisely why the Federal Communications Commission repealed it back in 1987, and why we must keep it from being reinstated now.

The reality behind this so-called fairness doctrine is that some of my friends on the other side do not like what they are hearing on the radio these days. So instead of addressing the criticisms head on, they want to silence them.

Americans will not stand for that, and we will not let it happen. Government is not the speech police, and I will not support—and I am confident the American people do not support—efforts to restrict free speech.

The Founding Fathers enshrined the right to free speech in the very first amendment to the Constitution because they knew it was fundamental—that it was the one right without which the others would lose their force. They also knew future generations would have to continue to defend that right from those who viewed it as an obstacle to their goals.

We should adopt the DeMint amendment to kill the so-called fairness doctrine once and for all.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 591 offered by the Senator from Illinois.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

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

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 70 Leg.]

YEAS—57

Akaka	Carper	Johnson
Baucus	Casey	Kaufman
Bayh	Conrad	Kerry
Begich	Dodd	Klobuchar
Bennet	Dorgan	Kohl
Bingaman	Durbin	Landrieu
Boxer	Feingold	Lautenberg
Brown	Feinstein	Leahy
Burris	Gillibrand	Levin
Byrd	Hagan	Lieberman
Cantwell	Harkin	Lincoln
Cardin	Inouye	McCaskill
Menendez	Reed	Tester
Merkley	Reid	Udall (CO)
Mikulski	Rockefeller	Udall (NM)
Murray	Sanders	Warner
Nelson (FL)	Schumer	Webb
Nelson (NE)	Shaheen	Whitehouse
Pryor	Stabenow	Wyden

NAYS—41

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bennett	Enzi	Murkowski
Bond	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Specter
Cochran	Isakson	Thune
Collins	Johanns	Vitter
Corker	Kyl	Voinovich
Cornyn	Lugar	Wicker
Crapo	Martinez	

NOT VOTING—1

Kennedy

The amendment (No. 591) was agreed to.

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

Mr. NELSON of Nebraska. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 573

The PRESIDING OFFICER. There will now be 2 minutes of debate, equally divided, before a vote in relation to amendment No. 573 offered by the Senator from South Carolina. Who yields time?

The Senator from South Carolina.

Mr. DEMINT. Mr. President, if I could have my colleagues' attention for just a moment, I think this should be an easy vote for all of us. President Obama has expressed his opposition to the fairness doctrine. Senator DURBIN has expressed his opposition to the fairness doctrine. This amendment, the Broadcasters Freedom Act, prohibits the Federal Communications Commission from implementing all or part of the fairness doctrine, which has been repealed.

I wish to clear up one misunderstanding that has been stated on the other side. This amendment does not affect the public interest requirements of broadcast radio. It does not change children's programming or opposition to indecency. What it does is, it prohibits quotas and guidelines on programming, which is another way to prohibit the implementation of the fairness doctrine.

While the fairness doctrine is a direct and obvious method to burden and chill broadcaster speech, there are also several indirect ways that are not as well-known, but no less available to proponents of limiting the freedom of our national media.

Last year's FCC Localism Notice of Proposed Rulemaking—MB Docket No. 04–233, released January 24, 2008, ''Localism Notice''—contained a number of ''tentative conclusions'' that, if adopted, would result in greater regulation of broadcaster speech.

First, the FCC proposed to reintroduce license renewal processing ''guidelines'' that would measure specific categories of speech aired by broadcasters.

The guidelines would pressure broadcasters to air Commission-specified amounts of programming in Commission-defined program categories. Although the Localism Notice does not specify which categories broadcasters would be measured by, political programming, public affairs programming, and local news are mentioned as possible types of programming to be regulated. Broadcasters that do not meet the thresholds to the Commission's satisfaction would risk losing their license to broadcast.

While ostensibly the renewal processing guidelines are meant to increase the total amount of local programming, the adjective ''local'' is ill-defined in this proceeding. It could be expanded to include an almost limitless array of speech and could shift with the political winds.

My amendment, DeMint No. 573, would not eliminate the FCC's power to develop license renewal processing guidelines completely, but only its authority to develop processing guidelines that mimic its past authority under the fairness doctrine, hence the language which limits it to quotas or guidelines for issues of public importance.

The second way in which the Commission has proposed to indirectly regulate broadcaster speech is by return of ascertainment requirements, which would mandate that every broadcaster develop and meet with an ''advisory board'' made up of community groups and local officials that would ''inform the stations' programming decisions.'' This proposal would make broadcasters very vulnerable to pressure or even harassment by groups that do not approve of their programming.

A similar ascertainment requirement was eliminated in the early 1980s after the Commission determined that the rule did more to create bureaucratic burdens than it did to improve broadcasting.

Like the processing guidelines, the ascertainment requirement could become a factor for broadcasters at license renewal. Groups that feel a local broadcaster did not listen to their suggestions through the advisory board—suggestions to, for example, air more programming that addresses whatever social or political issue is of concern to these groups—could challenge the broadcasters' license and argue that the broadcaster ignored the ''needs and interests'' of their local community. Talk radio would be particularly vulnerable to this type of harassment, as would religious broadcasters.

Again, my amendment, DeMint No. 573, would not eliminate the Commission's authority to mandate ascertainment completely, but only its authority to mandate that broadcasters seek out opposing viewpoints on ''issues of public importance.''

I encourage all of my colleagues to support this amendment.

The PRESIDING OFFICER. Who yields time in opposition?

Mr. LIEBERMAN. Mr. President, I yield back the time on our side.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

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

The result was announced—yeas 87, nays 11, as follows:

[Rollcall Vote No. 71 Leg.]

YEAS—87

Akaka	Durbin	McConnell
Alexander	Ensign	Menendez
Barrasso	Enzi	Merkley
Baucus	Feingold	Mikulski
Bayh	Gillibrand	Murkowski
Begich	Graham	Murray
Bennet	Grassley	Nelson (FL)
Bennett	Gregg	Nelson (NE)
Bond	Hagan	Pryor
Boxer	Hatch	Reid
Brown	Hutchison	Risch
Brownback	Inhofe	Roberts
Bunning	Inouye	Schumer
Burr	Isakson	Sessions
Burris	Johanns	Shaheen
Byrd	Kaufman	Shelby
Cantwell	Klobuchar	Snowe
Cardin	Kohl	Specter
Carper	Kyl	Stabenow
Casey	Landrieu	Tester
Chambliss	Lautenberg	Thune
Coburn	Leahy	Udall (CO)
Cochran	Levin	Udall (NM)
Collins	Lieberman	Vitter
Corker	Lincoln	Voinovich
Cornyn	Lugar	Warner
Crapo	Martinez	Webb
DeMint	McCain	Wicker
Dodd	McCaskill	Wyden

NAYS—11

Bingaman	Harkin	Rockefeller
Conrad	Johnson	Sanders
Dorgan	Kerry	Whitehouse
Feinstein	Reed	

NOT VOTING—1

Kennedy

The amendment (No. 573) was agreed to.

Mr. LIEBERMAN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LIEBERMAN. Mr. President, I have a unanimous consent request that has been agreed to on both sides. It is as follows: I ask unanimous consent that amendments Nos. 579 and 587 be withdrawn and that when the Senate resumes consideration of the Ensign amendment No. 575, the second-degree amendment No. 576 be withdrawn; that there then be 30 minutes of debate prior to a vote in relation to the Ensign amendment, with no amendment in order to the amendment prior to a vote, with the time equally divided and controlled between Senators ENSIGN and FEINSTEIN or their designees; and further, that Senator FEINSTEIN's 15 minutes begin at 3:30 p.m.; that at 3:45 p.m., the Senate proceed to vote in relation to amendment No. 575; that upon disposition of amendment No. 575, no further amendments be in order; that the substitute amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Senate proceed to vote on passage of the bill; that passage of the bill be subject to a 60-vote threshold; that if the bill achieves that threshold, then the motion to reconsider be laid upon the table; provided further that the cloture motion be withdrawn, with this addendum: that 2 minutes of Senator ENSIGN's time be reserved to occur at 3:45 p.m., with the vote occurring with respect to Ensign amendment No. 575 following Senator ENSIGN's 2 minutes.

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

The Senator from South Dakota.

AMENDMENT NO. 579 WITHDRAWN

Mr. THUNE. Mr. President, I had filed an amendment and have pending at the desk amendment No. 579, which is a concealed carry amendment. I talked about it yesterday on the floor of the Senate. I would like to have had a vote on it and certainly believe it is something the Senate ought to consider. It is worth voting on.

My State of South Dakota is one of many States around the country that has concealed carry laws. What my amendment simply would have done is allowed those who have concealed carry permits in a particular State to have reciprocity with other States that have concealed carry laws, respectful of the laws of those other States, but it would have allowed people of this country under the second amendment to exercise the individual right to carry firearms insofar as they are adhering and following the laws of the State not only in which they reside but the State in which they would be carrying that firearm. That is something for which I think there is a lot of support.

I introduced a bill in the Senate. It has 19 cosponsors. As I said, I offered the amendment to this particular piece of legislation. My understanding is the other side does not want to vote on it. What I have tried to ascertain is whether the chairman of the Judiciary Committee, the Senator from Vermont, Mr. LEAHY, would be willing to hold a hearing. He informs me he will do that. I will have a hearing on the bill itself.

With that understanding, Mr. President, my intention is to withdraw amendment No. 579 and hope that we will have an opportunity to consider it at some point at a future date.

The PRESIDING OFFICER. The amendment has been withdrawn.

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend from South Dakota. I just want to say as a manager of the bill, I was present at the conversation with Senator LEAHY, the chairman of the Judiciary Committee, and Senator THUNE. The conversation was exactly as reported.

Senator LEAHY could not be here because he had other pressing business,

but he asked me to represent to our colleagues that the Judiciary Committee will hold a hearing on the amendment offered by Senator THUNE and now withdrawn.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, the last amendment is going to be debated soon. Senator ENSIGN is here to begin that debate.

Both Senator MCCONNELL and I would like to make some brief remarks.

(The remarks of Mr. KYL and Mr. MCCONNELL are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 575

Mr. ENSIGN. Mr. President, I wish to take a little bit of time to refute some of the inaccuracies about my amendment dealing with the repeal of the gun ban in the District of Columbia. This really is about restoring second amendment rights to residents who live here in the District of Columbia. We have a constitutional right and duty to deal with matters dealing with the District of Columbia.

Last year, the Supreme Court ruled that the laws that had been passed by the city council in the District of Columbia were in fact unconstitutional because the District of Columbia did not recognize there was a constitutional right to the individual—not just a militia but to the individual—to keep and bear arms. Since then, the District of Columbia has attempted to subvert what the Supreme Court said by putting very burdensome types of laws to make it more and more difficult for District residents to own a gun in order to protect themselves in their own homes.

It is interesting. If you go back to what the Founders talked about, as far as the second amendment, look at James Madison. He wrote in Federalist No. 46:

> . . . the advantage of being armed, which the Americans possess over the people of almost every other nation . . . forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of.

Washington, DC, has blatantly violated this right for more than 30 years, and it has led to catastrophic results. This chart reflects the murder rates in Washington, DC, relative to 48 other of the largest cities, excluding Chicago, from the top 50 list. And this is all weighted by population. You can see here, and especially as we go forward, when other crime rates in the country were actually going down and murder rates in the country were going down, as Washington, DC, was enacting more and more gun ban laws and stricter gun ban laws, the murder rate in Washington, DC, continued to rise.

It has been characterized that this bill would allow a 10-year-old to carry shotguns in the streets of Washington, DC. That is completely ridiculous. That is a scare tactic. Our amendment basically ensures the individual's second amendment right. It removes the tremendous barriers and burdens on law-abiding citizens to be able to have the protection they want, to protect themselves in their own homes.

Right now, we know that if a criminal in Washington, DC, wants to get a gun, they will get a gun. We are making it difficult for the people who actually abide by the law to get a gun. We want law-abiding citizens to have the arms, not just the criminals. That is what this amendment is really all about.

You are probably going to hear some people say that Washington, DC, is just trying, within the Supreme Court decision, to enact laws that will put reasonable restrictions on guns. I would say that is not the case, and the reason it is not the case is they are actually trying to make technical changes in the law which they think will restrict people's rights to keep and bear arms. It is going against the intent of what the Supreme Court has enacted.

People across the United States have recognized for a long time how important it is for individuals to be able to keep and bear arms.

Around the world, we often hear asked: Well, why does Great Britain have a lower murder rate than the United States? Well, first of all, there are a lot of cultural differences between the United States and Great Britain. But also, since Great Britain enacted some of its strictest gun control laws, murder rates have actually gone up in London.

In case after case where you look to find out whether gun control laws actually are effective in reducing crime, the statistics are pretty overwhelming against it. Criminals will get the guns. They get them on the black market or they go someplace, but they get their guns. The question is, Are law-abiding citizens going to be able to protect themselves in their own homes?

That is what this amendment is attempting to do, to say to citizens who live in the District of Columbia: We are going to protect your second amendment rights. The laws the District of Columbia has enacted to own a gun are stricter than what we require in Nevada to get a concealed weapons permit.

Mr. President, I believe it is high time this body give the citizens who live in the District of Columbia that second amendment right to keep and bear arms in order to protect themselves in their own homes, so I urge my colleagues to support this amendment.

Mr. President, I will save a couple of minutes right before the vote to be able to conclude my remarks, but how much time remains on my side?

The PRESIDING OFFICER. There is 9 minutes remaining.

Mr. ENSIGN. Mr. President, I reserve the remainder of my time, and 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. SCHUMER. 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. SCHUMER. Mr. President, I rise now for the second time in strong opposition to Senator ENSIGN's amendment. This is a dangerous amendment that goes far beyond anything the Supreme Court contemplated in the Heller decision. If you have been committed to a mental institution, if you can't pass a vision test, this forces the District of Columbia to still allow you to have a gun. That doesn't make any sense.

Americans basically believe in the Heller decision, which says there is a right to bear arms in the Constitution. But Americans have the good sense to know that no amendment is absolute. We put limitations on the first amendment—libel laws, pornography; you can't falsely scream ''fire'' in a crowded theater. We put limits on every other amendment. Why is it that some in the gun lobby say there should be no limitation on the second amendment? They support limitations on the first amendment. I am sure most of them feel antipornography laws are justified.

Just as those on the left, I believe, are wrong to say the first amendment should be broad, the fourth amendment should be broad, the fifth amendment should be broad, but the second amendment should be seen through the pinhole of only militias, those on the other side are equally wrong when they do the converse and say the first amendment should be narrow, the fourth amendment should be narrow, the fifth amendment should be narrow, but the second amendment should have almost no limitation.

Isn't it reasonable to say that someone who has been in a mental institution shouldn't automatically get a gun? Isn't it reasonable to say that if someone fails a vision test, they should not automatically get a gun? Of course it is. But because we get into sort of a macho game here of, hey, we are going to show there should be no limitations on the second amendment, we end up hearing about fundamentally absurd propositions that those who fail vision tests should be allowed a gun. It defies common sense to say that someone who is voluntarily committed to a mental institution should be allowed to get a gun. In fact, limitations on access to guns by the mentally ill was one of the few things Justice Scalia, a strong second amendment supporter, specifically said would be okay after Heller.

Let me just say to my colleagues, we are only a few years after Virginia Tech and the pain and tragedy for the parents who anguish every day for their lost sons and daughters. They came to us and lobbied us and said: Please just pass minimal laws to prevent those who are mentally ill from getting a gun. Now we are saying that in the District of Columbia that will be OK.

As for the vision, there cannot be a more reasonable restriction than the requirement that someone see before they are allowed on the streets with a gun. We wouldn't want that in our communities where we live. Why would we impose it on the District of Columbia? The District of Columbia has the highest per capita homicide rate in the United States. I understand, if you are from, say, Wyoming—there are broad, open spaces, very low crime rate—that the rules on guns should be different than the rules in Washington, DC and New York City. I understand that. I accept it, as someone who has been an advocate of gun control.

But why are we imposing those laws that may work in Wyoming on the people of the District of Columbia? Firearms cause more needless damage in Washington, DC than anywhere else. The Heller decision made it clear that Washington, DC could impose reasonable restrictions on the right to bear arms and that was perfectly consonant with the Constitution. Every Justice of the Supreme Court, including those who are the most conservative, such as Justice Scalia, such as Justice Thomas, believe there can be some limitation imposed. Because the NRA does not, too many in this country, and in this Chamber, jump when they say so.

It is wrong. It makes people's lives less safe. It is unfortunate. I hope this body will have the courage to reject the Ensign amendment while still affirming the right to bear arms as certified in the Heller case.

I yield the floor.

Mr. HATCH. Mr. President, I rise to support final passage of S. 160, the District of Columbia House Voting Rights Act.

I have spoken and written many times about my conclusion that the Constitution allows Congress to provide a House seat for the people of the District of Columbia.

And I have said for more than 30 years that Americans living in the District should have all the rights of citizenship, including voting rights.

The bill would also give an additional seat temporarily to the State next qualifying for one under the 2000 census.

I believe the bill before us is a constitutional and balanced way to achieve these important goals.

Article I, section 2, states that the House shall be composed of Members elected by the ''People of the several States.''

The District did not yet exist when those words were drafted.

The observation that this provision does not itself provide a House seat for the people of the District begs rather than answers the constitutional question.

That question is whether the House Composition Clause prohibits Congress from providing for the people of the District what the Constitution provides for the people of the States.

The Constitution uses the word ''States'' in various provisions.

Opponents of this bill have argued that some of those cannot include the District.

Once again, that observation begs rather than answers the constitutional question.

For more than two centuries, the Supreme Court has held that other provisions framed in terms of ''States'' can indeed apply to the District.

Or, even more relevant to the bill before us today, the Supreme Court has ruled that Congress can legislatively do for the District what the Constitution does for States.

I believe the House Composition Clause falls in this category.

The Supreme Court has held, for example, that Congress could apply to the District the direct taxes that the original Constitution apportioned among the several States.

Opponents of the bill before us have not even attempted to explain why the phrase ''the several States'' can apply to the District, which is obviously not a State, but the phrase ''the People of the several States'' cannot apply to the District, which obviously has population.

The Supreme Court has held that Congress can extend to the District Federal court jurisdiction over lawsuits by citizens of different States.

The great Chief Justice John Marshall wrote in 1805 that while the Constitution does itself extend such diversity jurisdiction to the District, ''this is a subject for legislative . . . consideration.''

He added that the contrary conclusion, which I take to be the position of those opposing the bill before us today, would be simply extraordinary.

Those opponents have not even attempted to explain why extending diversity jurisdiction to the District is a subject for legislative consideration but extending House representation to the people of the District is not.

The Supreme Court has held that Congress can extend to the District the restrictions the fourteenth amendment imposes upon the States.

Once again, the Court suggested that Congress's plenary authority over the District would be a sufficient basis for such legislation.

Opponents of S. 160 have cited the decision in Adams v. Clinton for the proposition that the Constitution does not provide a right to congressional representation for the District.

I agree.

That decision did not say, however, that Congress was precluded from doing so.

In fact, the court said the opposite.

The court in Adams said that while it lacked authority to grant such representation in the name of the Constitution, the plaintiffs could ''plead their case in other venues,'' including ''the political process.''

That is precisely what the bill before us represents and opponents of S. 160 have not even attempted to explain otherwise.

Let me repeat, the constitutional question is not whether the Constitution itself grants House representation to the people of the District. It does not.

The constitutional question is whether Congress may, under its explicit and plenary authority over the District, legislatively provide for the people of the District what the Constitution provides for the people of the States.

Those who say that the word ''States'' necessarily excludes the District must at least try to show that the many judicial precedents saying otherwise either were wrongly decided or are somehow irrelevant to this bill. They have not even attempted to do either.

I believe that the foundational principle of representation and suffrage, the legislative actions by America's Founders, two centuries of judicial precedent, and Congress's explicit legislative authority over the District in all cases whatsoever combine to allow Congress to enact the bill before us today.

One of my predecessors as a Senator from Utah, George Sutherland, was later appointed to the Supreme Court.

He wrote for the Court in 1933 what I believe is relevant to this debate today:

> The District [of Columbia] was made up of portions of two states of the original states of the Union, and was not taken out of the Union by the cession. Prior thereto its inhabitants were entitled to all the rights, guarantees, and immunities of the Constitution. . . . We think it is not reasonable to assume that the cession stripped them of those rights.

More than 30 years ago, I made the same argument on this floor and later argued that one way to achieve this goal was by giving the people of the District representation in the House.

The defeat of the retrocession amendment offered by the Senator from Arizona showed that the underlying bill is the only legislative vehicle for providing this representation.

I voted for that amendment as a vote on the idea of retrocession, which I find has some general merit.

Even with my vote, however, the Senate resoundingly defeated it.

So I urge the Senate to pass this bill.

It constitutionally gives one House seat to the people of the District.

It fairly gives another seat to the State qualifying for one under the last census.

It explicitly and implicitly disclaims Senate representation for the District.

It provides for expedited judicial review.

In short, I believe this is a sound and fair way to strengthen our system of self-government so that Americans can exercise the most precious right available in a free country, the right to participate in electing those who govern us.

Mr. FEINGOLD. Mr. President, I am pleased to support this bill, and congratulate the Senator from Connecticut and the Senator from Utah for their tireless efforts. Senator LIEBERMAN and Senator HATCH have

put forward innovative, bipartisan legislation that will strengthen our democracy. I also want to recognize the contribution of the majority leader, who, by championing this issue, renews and fulfills our country's commitment to equality, democracy, and justice.

When I watch my colleagues on the floor today, I see the spirit of Paul Douglas, Hubert Humphrey, and Everett Dirksen. This legislation is part of the struggle to fulfill the promise of America that led to the landmark civil rights bills of 1957, 1964, and 1965. Today, we follow in the footsteps of some of our greatest predecessors. We are here to right a historic wrong, to enfranchise hundreds of thousands of our fellow Americans by giving them a vote in Congress.

The struggle to give Washington, DC, a vote in the House of Representatives has already been historic. I was disappointed that the Senate was the graveyard for this bill in 2007. By using a filibuster to prevent the bill from even reaching the floor at that time, opponents of this bill recalled history, too—an unfortunate history we should not revisit. I am sure that I do not need to remind anyone here that for decades the Senate was an implacable bulwark that no civil rights bill could breach. Unfortunately, when this great institution was faced a year and a half ago with a new kind of voting rights bill, it did not rise to the challenge.

Now we have a chance to correct this breach of American principles and pass the District of Columbia House Voting Rights Act of 2009. And so now is the time to remedy the injustice being done to Americans residing in the District of Columbia, and stop this violation of their fundamental rights. Now is the time to take action on this legislation and to finally give the disenfranchised District at least a partial say in the decisions of the Congress, to make the ''People's House'' a body that truly represents all of the people of this Nation.

In 1964, the Supreme Court stated that ''[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.'' It is time for Congress to live up to those words. At a time when Americans whose families wait for them at home in the District are fighting for our country overseas, it is a cruel and bitter irony that their own country denies them the right to representation in the House.

With all of the difficult issues and momentous decisions facing this Congress, the people of DC deserve a voice in it, now more than ever. As of February 14, 29 DC residents have been killed or wounded in Iraq or Afghanistan, wars that their elected representative had no say in commencing or funding. Approximately 1,500 homes are in foreclosure or pre-foreclosure, unemployment has gone up over 3 percent in the last year, to 8.8 percent. Just like all other Americans, the residents of the District want to participate in the crucial and difficult debates this Congress is having over foreign and economic policy. They want to set a new course for this country. Their voices should count just as much as their fellow citizens'.

Opponents of this bill have asserted that it is unconstitutional. I chaired a Judiciary Committee hearing in May 2007 to examine whether the Constitution, perhaps the greatest testament to democracy and freedom in human history, prevents the elected legislature of the people of this country from granting the most basic right of citizenship to the people of the District of Columbia. The hearing confirmed that while this is not an easy question of constitutional interpretation, there are strong arguments for the bill's constitutionality. Our conclusions were strengthened by the finding of the Committee on Homeland Security and Governmental Affairs that Congress's authority to legislatively extend House representation is supported by two centuries of judicial precedent.

In light of the historic wrong that this bill will correct, the case for its constitutionality is certainly strong enough to justify enacting it and letting the Supreme Court make the final decision. The Constitution grants Congress the power of ''exclusive legislation, in all cases whatsoever,'' over the District; I believe that we can use that authority to ensure that this Government's just powers are derived from the consent of the governed. Moreover, the basic sweep of the Constitution, its very essence, is to protect the fundamental rights of the citizens of this country, including the right to be represented in Congress.

The other fundamental document of our founding, the Declaration of Independence, laid out a list of grievances against the King of Great Britain, including the following:

He has refused to pass other Laws for the Accommodation of large Districts of People, unless those People would relinquish the Right of Representation in the Legislature, a Right inestimable to them, and formidable to Tyrants only.

That inestimable right has been denied to the residents of the District of Columbia for far too long.

We in Congress have a duty to fulfill the promise of democracy for DC residents. Those who rely on constitutional arguments to oppose this bill should ask themselves what the Framers would think today, if they were faced with the question of whether their handiwork should be used to prevent Congress from granting over a half million people the most basic right in a democracy—the right of representation in the legislature. It is simply inconceivable to me that those great and brave patriots would be comfortable with such a blatant injustice.

I hope that we finally have the votes to right this historic wrong. I urge my colleagues to support the District of Columbia House Voting Rights Act of 2009, and grant the most basic of democratic rights to the people of the District.

Mr. CORNYN. Mr. President, I ask unanimous consent a Washington Times article by George Smith on February 13, 2009; testimony by John P. Elwood, Deputy Assistant Attorney General before the Subcommittee on the Constitution, Civil Rights, and Property Rights, Senate Committee on the Judiciary on May 23, 2007; and a Statement of Administration Policy from September 18, 2007, be printed in the RECORD.

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

[From the Washington Times, Feb. 13, 2009]

NOT ON CONSTITUTION AVENUE

(By George C. Smith)

As the Obama administration commences its reign of one-party government, attention has understandably focused on the president's economic stimulus program and his new approach to the foreign terrorist threat.

But preoccupation with these topics should not divert attention from what may be the most ominous, and radical, collaboration between the new president and the Democratic-controlled Congress: the enactment of blatantly unconstitutional legislation to bypass the constitutional amendment process and give the District of Columbia a seat in the House of Representatives in a crass triumph of raw political power over the rule of law.

With relentless clarity, in provision after provision, the Constitution specifies that representation in both Houses of Congress is limited to the states—and the District of Columbia is not a state. The very first sentence of the Constitution says, ''All legislative powers herein granted shall be vested in a Congress of the United States''—not a Congress of the United Entities, Districts, Territories or Enclaves. The second sentence then specifies that the House of Representatives is to be composed of members ''chosen by the people of the several States.'' All told, no fewer than 11 constitutional provisions make it clear that congressional representation is linked inextricably to statehood.

If there were any plausible doubt that congressional representation was intentionally limited to the states when the Constitution was drafted in 1787, it would have been conclusively removed when the 39th Congress reiterated that ''Representatives shall be apportioned among the several States'' when it revisited the question of congressional apportionment in drafting the 14th Amendment in 1866. (In 1866 as well as in 1787, there was no ambiguity and no mistake in the express linkage of congressional representation to statehood.)

This does not mean, however, that the District of Columbia cannot obtain congressional representation. It only means it must do so by means of a constitutional amendment, as plainly provided in Article V of the Constitution.

For more than 200 years, this understanding of the Constitution (intelligible to any literate 12-year-old who reads its text) was accepted even by ardent advocates of D.C. representation. On repeated occasions in the 1960s and 197os, for example, the Democratic-controlled House Judiciary Committee ruefully acknowledged that a constitutional amendment was ''essential'' if D.C. were to receive such representation. They expressly recognized that the Constitution did not allow Congress to grant D.C. representation by simple legislation, and

proceeded to propose the constitutional amendment that was necessary. The amendment failed to achieve ratification, but the rule of law was honored.

The constitutional text limiting congressional representation to the states has not changed during the past several years. Nor have judicial interpretations of that text, which have consistently acknowledged that limitation. What has changed, however, is the willingness of D.C. representation advocates to run roughshod over the Constitution because they now have the raw political power to pass a statute awarding the District a seat in the House by main force.

As a fig leaf to cover up their brute power play, they invoke the risible theory that a constitutional provision authorizing Congress to exercise legislative jurisdiction over federal enclaves—including the District, but also including military reservations, park lands and similar enclaves—enables Congress to override express constitutional requirements, including the limitation of congressional representation to states, as long as they are doing so on behalf of the District. Oddly, this interpretation of the Enclave Clause somehow escaped the grasp of the Framers, the courts, and Congress for more than two centuries.

Apart from the fact that the Supreme Court has flatly held that Congress' power under the Enclave Clause is indeed limited by other constitutional requirements, the absurdity of the theory is demonstrated by considering its logical consequences. It would enable Congress to undercut the entire structure of state-based congressional representation—in the Senate as well as in the House—by extending representation to an unlimited variety of enclaves and territories by simply passing statutes reflecting evanescent political majorities. A more radical subversion of constitutional government would be difficult to imagine.

During the 110th Congress, it was only President Bush's veto threat, and a razor-thin sufficiency of Republican Senate votes to sustain a filibuster, that prevented enactment of the D.C. House seat legislation—what liberal legal scholar Jonathan Turley referred to as the most ''premeditated'' unconstitutional act in decades. But with Barack Obama's election and solid Democrat majorities in both Houses, there is no longer a finger in the dike. D.C. Delegate Eleanor Holmes Norton has asserted that Mr. Obama has committed to signing such legislation.

Significantly, the Justice Department carefully and forcefully opined and testified during the last Congress that the D.C. House legislation is patently unconstitutional. Given the current president's apparent commitment to sign the bill, however, it is difficult to envisage the new political appointees of the Obama Justice Department raising any constitutional objections to this grotesque power play. Interestingly, however, former Clinton-era Solicitor General Walter Dellinger recently observed that the persons named by the president-elect to advise him on such constitutional issues at the Justice Department ''bring a stature to the job that will allow them to say no to the president when no is the correct answer.'' ''No'' obviously remains the correct answer to the question of whether the president should sign D.C. House seat legislation that repudiates the Constitution's text, more than 200 years of unwavering historical practice and repeated pronouncements of the federal judiciary. But only the delusional would expect that the new president's men and women at Justice would stand with the Constitution against the menacing force of raw political power.

CONSTITUTIONALITY OF D.C. VOTING RIGHTS ACT OF 2007

S. 1257, a bill to grant the District of Columbia representation in the House of Representatives as well as to provide an additional House seat for Utah, violates the Constitution's provisions governing the composition and election of the United States Congress.

TESTIMONY BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND PROPERTY RIGHTS, SENATE COMMITTEE ON THE JUDICIARY

Thank you for the opportunity to discuss the Department's views on S. 1257, a bill to grant the District of Columbia representation in the House of Representatives as well as to provide an additional House seat for Utah. For the same reasons stated in the Statement of Administration Policy on the House version of this legislation, the Administration concludes that S. 1257 violates the Constitution's provisions governing the composition and election of the United States Congress. Accordingly, if S. 1257 were presented to the President, his senior advisors would recommend that he veto the bill. I will confine my testimony to the constitutional issues posed by the legislation.

The Department's constitutional position on the legislation is straightforward and is dictated by the unambiguous text of the Constitution as understood and applied for over 200 years. Article I, section 2 of the Constitution provides:

''The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous branch of the State Legislature.''

This language, together with the language of eleven other explicit constitutional provisions, including the Twenty-Third Amendment ratified in 1961,[1] ''makes clear just how deeply Congressional representation is tied to the structure of statehood.'' [2] The District of Columbia is not a State. In the absence of a constitutional amendment, therefore, the explicit provisions of the Constitution do not permit Congress to grant congressional representation to the District through legislation.

Shortly after the Constitution was ratified, the District of Columbia was established as the Seat of Government of the United States in accordance with Article I, §8, cl. 17 of the Constitution. The Framers deliberately placed the capital in a federal enclave that was not itself a State to ensure that the federal Government had the ability to protect itself from potentially hostile state forces. The Framers also gave Congress ''exclusive'' authority to enact legislation for the internal governance of the enclave to be chosen as the Seat of Government—the same authority Congress wields over the many other federal enclaves ceded by the States.

Beginning even before the District of Columbia was established as the Seat of Government, and continuing to today, there have been determined efforts to obtain congressional representation for the District. Apart from the various unsuccessful attempts to secure such representation through litigation, such efforts have consistently recognized that, because the District is not a State, a constitutional amendment is necessary for it to obtain congressional representation. S. 1257 represents a departure from that settled constitutional and historical understanding, which has long been recognized and accepted by even ardent proponents of District representation.

One of the earliest attempts to secure congressional representation for the Seat of Government was made by no less a constitutional authority than Alexander Hamilton at the pivotal New York ratifying convention. Recognizing that the proposed Constitution did not provide congressional representation for those who would reside in the Seat of Government, Hamilton offered an amendment to the Enclave Clause that would have provided:

''That When the Number of Persons in the District of Territory to be laid out for the Seat of the Government of the United States, shall according to the Rule for the Apportionment of Representatives and Direct Taxes Amount to [left blank] such District shall cease to be parcel of the State granting the Same, *and Provision shall be made by Congress for their having a District Representation in that Body*.'' [3]

Hamilton's proposed amendment was rejected. Other historical materials further confirm the contemporary understanding that the Constitution did not contemplate congressional representation for the District and that a constitutional amendment would be necessary to make such provision.[4] These historical facts refute the contention by proponents of S. 1257 that the Framers simply did not consider the lack of congressional representation and, if they had considered it, that they would have provided such representation. In fact, Framers and ratifiers did consider the question and rejected a proposal for such representation.

In more recent years, major efforts to provide congressional representation for the District were pursued in Congress in the 1960s and 1970s, but on each occasion Congress expressly recognized that obtaining such representation would require either Statehood or a constitutional amendment. For example, when the House Judiciary Committee favorably recommended a constitutional amendment for District representation in 1967, it stated as follows:

''*If the citizens of the District are to have voting representation in the Congress, a constitutional amendment is essential; statutory action alone will not suffice*. This is the case because provisions for elections of Senators and Representatives in the Constitution are stated in terms of the States, and the District of Columbia is not a State.'' [5]

Congress again considered the District representation issue in 1975, and the House Judiciary Committee again expressly acknowledged that, ''[i]f the citizens of the District are to have voting representation in Congress, a constitutional amendment is essential; statutory action will not suffice.'' [6]

Of course, the courts have not directly reviewed the constitutionality of a statute purporting to grant the District representation because, for the reasons so forcefully reiterated by the House Judiciary Committee, Congress has not previously considered such legislation constitutionally permissible. But numerous federal courts have emphatically concluded that the existing Constitution does not permit the provision of congressional representation for the District. In *Adams* v. *Clinton*, a three-judge court stated, in a decision affirmed by the Supreme Court, that ''the Constitution does not contemplate that the District may serve as a state for purposes of the apportionment of congressional representation'' and stressed that Article I ''makes clear just how deeply Congressional representation is tied to the structure of statehood.'' 90 F. Supp. 2d 35, 46–47 (D.D.C.), *aff'd*, 531 U.S. 941 (2000); *see generally S. Ry. Co.* v. *Seaboard Allied Milling Corp.*, 442 U.S. 444, 462 (1979) (stating that summary affirmance is a precedential ruling on the merits). In *Banner* v. *United States*, 428 F.3d 303 (D.C. Cir. 2005) (per curiam), a panel of the D.C. Circuit that included Chief Justice John Roberts flatly concluded: ''[t]he

Constitution denies District residents voting representation in Congress. . . . Congress is the District's Government, see U.S. Const. art. I, §8, cl. 17, and the fact that District residents do not have congressional representation does not alter that constitutional reality.'' Id. at 309.[7] The court added: ''[i]t is beyond question that the Constitution grants Congress exclusive authority to govern the District, but does not provide for District representation in Congress.'' Id. at 312. And in explaining why the Constitution does not permit the District's delegate in Congress to have the voting power of a Representative in *Michel* v. *Anderson*, 817 F. Supp. 126 (D.D.C. 1993), the court stressed that the legislative power ''is constitutionally limited to 'Members chosen . . . by the People of the several States.' U.S. Const. Art. I, §[2], cl. 1.'' Id. at 140.

The numerous explicit provisions of the constitutional text; the consistent construction of those provisions throughout the course of American history by courts, Congress, and the Executive;[8] and the historical evidence of the Framers' and ratifiers' intent in adopting the Constitution conclusively demonstrate that the Constitution does not permit the granting of congressional representation to the District by simple legislation.

We are aware of, and not persuaded by, the recent and novel claim that this legislation should be viewed as a constitutional exercise of Congress's authority under the Enclave Clause, U.S. Const. art. I, §8, cl. 17, to ''exercise exclusive legislation'' over the Seat of Government and other federal enclaves. That theory is insupportable. First, it is incompatible with the plain language of the many provisions of the Constitution that, unlike the Enclave Clause, are directly and specifically concerned with the composition, election, and very nature of the House of Representatives and the Congress. Those provisions were the very linchpin of the Constitution, because it was only by reconciling the conflicting wishes of the large and small States as to representation in Congress that the Great Compromise that enabled the Constitution's ratification was made possible. Consequently, every word of Article I's provisions concerning the composition and election of the House and the Senate—and particularly the words repeatedly linking congressional representation to ''each State'' or ''the People of the several States''—was carefully chosen. In contrast, the Enclave Clause has nothing to do with the composition, qualifications, or election of Members of Congress. Its provision for ''exclusive legislation'' concerns legislation respecting the internal operation of ''such District'' and other enclaves. The Enclave Clause gives Congress extensive legislative authority ''over such District,'' but that authority plainly does not extend to legislation affecting the entire Nation. S. 1257 would alter the very nature of the House of Representatives. By no reasonable construction can the narrowly focused provisions of the Enclave Clause be construed to give Congress such sweeping authority.

Second, whatever power Congress has under the Enclave Clause is limited by the other provisions of the Constitution. As stated by the Supreme Court in *Binns* v. *United States*, 194

U.S. 486 (1904), the Enclave Clause gives Congress plenary power over the District ''save as controlled by the provisions of the Constitution.'' Id. at 491. As the Supreme Court has further explained, the Clause gives Congress legislative authority over the District and other enclaves ''in all cases where legislation is possible.''[9] The composition, election, and qualifications of Members of the House are expressly and specifically governed by other provisions of the Constitution that tie congressional representation to Statehood. The Enclave Clause gives Congress no authority to deviate from those core constitutional provisions.

Third, the notion that the Enclave Clause authorized legislation establishing congressional representation for the Seat of Government is contrary to the contemporary understanding of the Framers and the consistent historical practice of Congress. As I mentioned earlier, the amendment unsuccessfully offered by Alexander Hamilton at the New York ratifying convention to authorize such representation when the Seat of Government's population reached a certain level persuasively demonstrates that the Framers did not read the Enclave Clause to authorize or contemplate such representation. Other contemporaneous historical evidence reinforces that understanding. *See supra* n. 4. Moreover, Congress's consistent recognition in practice that constitutional amendments were necessary not only to provide congressional representation for the District, but also to grant it electoral votes for President and Vice President under the 23rd Amendment, belies the notion that the Enclave Clause has all along authorized the achievement of such measures through simple legislation. Given the enthusiastic support for such measures by their congressional proponents, it is simply implausible that Congress would not previously have discovered and utilized that authority as a means of avoiding the enormous difficulties of constitutional amendment.

Fourth, the proponents' interpretation of the Enclave Clause proves far too much; the consequences that would necessarily flow from acceptance of that theory demonstrate its implausibility. As the Supreme Court has recognized, ''[t]he power of Congress over the federal enclaves that come within the scope of Art. I, 8, cl. 17, is obviously the same as the power of Congress over the District of Columbia.''[10] It follows that if Congress has constitutional authority to provide congressional representation for the District under the Enclave Clause, it has the same authority for the other numerous federal enclaves (such as various military bases and assorted federal lands ceded by the States). But that is not all. The Supreme Court has also recognized that Congress's authority to legislate respecting the U.S. territories under the Territories Clause, U.S. Const. art. IV, 3, cl. 2, is equivalent to its ''exclusive legislation'' authority under the Enclave Clause. *See, e.g.*, *Binns*, 194 U.S. at 488. If the general language of the Enclave Clause provides authority to depart from the congressional representational provisions of Article I, it is not apparent why similar authority does not reside in the Territories Clause, which would enable Congress to enact legislation authorizing congressional representation for Puerto Rico, the Virgin Islands, and other territories. These unavoidable corollaries of the theory underlying S. 1257 demonstrate its invalidity. Given the great care with which the Framers provided for State-based congressional representation in the Composition Clause and related provisions, it is implausible to suggest that they would have simultaneously provided for the subversion of those very provisions by giving Congress carte blanche to create an indefinite number of additional seats under the Enclave Clause.

Finally, we note that the bill's proponents conspicuously fail to address another logical consequence that flows from the Enclave Clause theory: If Congress may grant the District representation in the House by virtue of its purportedly expansive authority to legislate to further the District's general welfare, it follows logically that it could use the same authority to grant the District (and other enclaves and territories) two Senators as well.

At bottom, the theory that underlies S. 1257 rests on the premise that the Framers drafted a Constitution that left the door open for the creation of an indefinite number of congressional seats that would have fatally undermined the carefully crafted representation provisions that were the linchpin of the Constitution. Such a premise is contradicted by the historical and constitutional record.

The clear and carefully phrased provisions for State-based congressional representation constitute the very bedrock of our Constitution. Those provisions have stood the test of time in providing a strong and stable basis for the preservation of constitutional democracy and the rule of law. If enacted, S. 1257 would undermine the integrity of those critical provisions and open the door to further deviations from the successful framework that is our constitutional heritage. If the District is to be accorded congressional representation without Statehood, it must be accomplished through a process that is consistent with our constitutional scheme, such as amendment as provided by Article V of the Constitution.

JOHN P. ELWOOD,
Deputy Assistant Attorney General.

ENDNOTES

[1] E.g., U.S. Const. art. I, §§2–4; art. II, §1, cl. 2; amend. XIV, §2; amend. XVII; amend. XXIII, §1.

[2] *Adams* v. *Clinton*, 90 F. Supp. 2d 35, 46–47 (D.D.C.), aff'd, 531 U.S. 940, 941 (2000).

[3] The Papers of Alexander Hamilton 189–90 (Harold C. Syrett ed., 1962) (emphasis added).

[4] See 10 Annals of Congress 991, 998–99 (1801) (remarks of Rep. John Dennis of Maryland) (stating that because of District residents' ''contiguity to, and residence among the members of [Congress],'' that ''though they might not be represented in the national body, their voice would be heard. But if it should be necessary [that they be represented], the Constitution might be so altered as to give them a delegate to the General Legislature when their numbers should become sufficient''); see also 5 The Documentary History of the Ratification of the Constitution 621 (Merrill Jensen, John P. Kaminski & Gaspare J. Saladino eds., 1976) (statement by Samuel Osgood, a delegate to the Massachusetts ratifying convention, that he could accept the Seat of Government provision only if it were amended to provide that the District be ''represented in the lower House,'' though no such amendment was ultimately included in the amendments recommended by the Massachusetts convention).

[5] Providing Representation of the District of Columbia in Congress, H.R. Rep. No. 90–819, at 4 (1967) (emphasis added).

[6] Providing Representation of the District of Columbia in Congress, H.R. Rep. No. 94–714, at 4 (1975).

[7] Judge Roberts was a member of the D.C. Circuit when *Banner* was briefed and argued, but was serving as Chief Justice when the opinion issued. *See Banner*, 428 F.3d at 304–05 n.l.

[8] See, e.g., Letter for Mr. Benjamin Zelenko, Committee on the Judiciary, House of Representatives, from Martin F. Richman, Acting Assistant Attorney General, Office of Legal Counsel (Aug. 11, 1967) (expressing the view that ''a constitutional amendment is essential'' for the District to obtain voting representation in Congress in the recommendations for the Committee Report on a proposed constitutional amendment); District of Columbia Representation in Congress: Hearings on S.J. Res. 65 Before the Subcomm. on the Constitution of the Comm. on the Judiciary, 95th Cong. 16–29 (1978) (statement of John M. Harmon, Assistant Attorney General, Office of Legal Counsel). In endorsing a constitutional amendment as the means of obtaining congressional representation for the District, Mr. Harmon discussed the alternative ways of obtaining such representation, particularly the option of statehood legislation. Conspicuous by its absence was any suggestion that such representation could be provided through legislation granting the District a seat.

[9] *O'Donoghue* v. *United States*, 289 U.S. 516, 539 (1993) (citation omitted).

[10] *Paul* v. *United States*, 371 U.S. 245, 263–64 (1963).

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC, SEPTEMBER 18, 2007.

STATEMENT OF ADMINISTRATION POLICY

S. 1257—DISTRICT OF COLUMBIA HOUSE VOTING RIGHTS ACT OF 2007

The Administration strongly opposes passage of S. 1257. The bill violates the Constitution's provisions governing the composition and election of the United States Congress. Accordingly, if S. 1257 were presented to the President, his senior advisors would recommend that he veto the bill.

The Constitution limits representation in the House to Representatives of States. Article I, Section 2 provides: ''The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State legislature.'' The Constitution also contains 11 other provisions expressly linking congressional representation to Statehood.

The District of Columbia is not a State. Accordingly, congressional representation for the District of Columbia would require a constitutional amendment. Advocates of congressional representation for the District have long acknowledged this. As the House Judiciary Committee stated in recommending passage of such a constitutional amendment in 1975:

''If the citizens of the District are to have voting representation in the Congress, a constitutional amendment is essential; statutory action alone will not suffice. This is the case because provisions for elections of Senators and Representatives in the Constitution are stated in terms of the States, and the District of Columbia is not a State.''

Courts have reached the same conclusion. In 2000, for example, a three-judge panel concluded ''that the Constitution does not contemplate that the District may serve as a state for purposes of the apportionment of congressional representatives.'' Adams v. Clinton, 90 F. Supp. 2d 35, 46–47 (D.D.C. 2000). The Supreme Court affirmed that decision. Furthermore, Congress's own Research Service found that, without a constitutional amendment, it is ''likely that the Congress does not have authority to grant voting representation in the House of Representatives to the District of Columbia.''

Claims that S. 1257 should be viewed as an exercise of Congress's ''exclusive'' legislative authority over the District of Columbia as the seat of the Federal government are not persuasive. Congress's exercise of legislative authority over the District of Columbia is qualified by other provisions of the Constitution, including the Article I requirement that representation in the House of Representatives is limited to the ''several States.'' Congress cannot vary that constitutional requirement under the guise of the ''exclusive legislation'' clause, a clause that provides the same legislative authority over Federal enclaves like military bases as it does over the District.

For all the foregoing reasons, enacting S. 1257's extension of congressional representation to the District would be unconstitutional. It would also call into question (by subjecting to constitutional challenge in the courts) the validity of all legislation passed by the reconstituted House of Representatives.

Mr. KYL. Mr. President, I ask unanimous consent the testimony by Professor Jonathan Turley before the House Judiciary Committee September 14, 2006, be printed in the RECORD.

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

DISTRICT OF COLUMBIA VOTING RIGHTS

STATEMENT OF JONATHAN TURLEY, COMMITTEE ON HOUSE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION

It is an honor to be asked to testify on the important question of the representational status of the District of Columbia in Congress. Due to the short period for the preparation of written testimony and a family emergency, the committee staff has permitted me to submit this summary of the testimony that I will offer on September 14, 2006. A full written statement is being completed and will be available at the hearing.

General Comments

There should be general agreement that the current non-voting status of the District is fundamentally at odds with the principles and traditions of our constitutional system. As Justice Black stated in Wesberry v. Sanders: ''No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.''

Yet, unlike many issues before Congress, there has always been a disagreement about the means rather than the ends of full representation for the District residents. Regrettably, I believe that H.R. 5388 is the wrong means. Despite the best of motivations, the bill is fundamentally flawed on a constitutional level and would only serve to needlessly delay true reform for District residents. Indeed, there would be an inevitable and likely successful legal challenge to a bill. Even if successful, this bill would ultimately achieve only partial representational status. Frankly, giving the District only a vote in the House is the equivalent of allowing Rosa Parks to move halfway to the front of the bus in the name of progress. District residents deserve full representation and, while this bill would not offer such reform, there are alternatives, including a three-phased proposal that I have advocated in the past.

The Original Purpose and Diminishing Necessity of the Federal Enclave

The creation of the federal enclave was the direct result of the failure of state officials to protect Congress during a period of unrest. On January 1, 1783, Congress was meeting in Philadelphia when they were surprised by a mob of Revolutionary War veterans demanding their long-overdue back pay. It was a period of great discontentment with Congress and the public of Pennsylvania was more likely to help the mob than to help suppress it. Indeed, when Congress called on state officials to call out the militia, they refused. Congress was forced to flee, first to Princeton, N.J., then to Annapolis and ultimately to New York City.

When the framers gathered again in Philadelphia in the summer of 1787 to draft a new constitution, the flight from that city five years before was still prominent in their minds. Madison and others called for the creation of a federal enclave or district as the seat of the federal government—independent of any state and protected by federal authority. Only then, Madison noted could they avoid ''public authority [being] insulted and its proceedings . . . interrupted, with impunity.''

In addition to the desire to be free of the transient support of an individual state, the framers advanced a number of other reasons for creating this special enclave. There was a fear that a state (and its representatives in Congress) would have too much influence over Congress, by creating ''a dependence of the members of the general government.'' There was also a fear that the symbolic honor given to one state would create in ''the national councils an imputation of awe and influence, equally dishonorable to the Government and dissatisfactory to the other members of the confederacy.'' There was also a view that the host state would benefit too much from ''[t]he gradual accumulation of public improvements at the stationary residence of the Government.

The District, therefore, was created for the specific purpose of being a non-State without direct representatives in Congress. The security and operations of the federal enclave would remain the collective responsibilities of the entire Congress—of all of the various states. While I believe that this purpose is abundantly clear, I do not believe that most of these concerns have continued relevance for legislators. Since the Constitutional Convention, courts have recognized that federal, not state, jurisdiction governs federal lands. Moreover, the federal government now has a large security force and is not dependent on the states for security. Finally, the position of the federal government vis-a-vis the states has flipped with the federal government now the dominant party in this relationship. The real motivating purposes of the creation of the federal enclave, therefore, no longer exist. What remains is the symbolic question of whether the seat of the federal government should be on neutral ground. It is a question that should not be dismissed as insignificant. To the contrary, I personally believe that the seat of the federal government should remain completely federal territory as an important symbol of the equality of all states in the governance of the nation. The actual seat of government, however, is a tiny fraction of the existing federal district.

The Unconstitutionality of H.R. 5388

I believe that the Dinh/Starr analysis is fundamentally flawed and that H.R. 5388 would violate the clear language and meaning of Article I. To evaluate the constitutionality of the legislation, it is useful to follow a classic constitutional interpretation that begins with the text, explores the original meaning of the language, and then considers the implications of the rivaling interpretations for the constitutional system. I believe that this analysis clearly shows that the creation of a vote in the House of Representatives for the District would do great violence to our constitutional traditions and process. To succeed, it would require the abandonment of traditional interpretative doctrines and would allow for future manipulation of one of the most essential and stabilizing components of the Madisonian democracy: the voting rules for the legislative branch.

1. Textual Analysis

Any constitutional analysis necessarily begins with the text of the relevant provision or provisions. In this case, there are two central provisions. The most important textual statement relevant to this debate is found in Article I, Section 2 that states unambiguously that the House of Representatives shall be composed of members chosen ''by the people of the several states.'' As with the Seventeenth Amendment election of the composition of the Senate, the text clearly limits the House to the membership of representatives of the several states. The second provision is the District Clause found in Article I, Section 8 which gives Congress the power to ''exercise exclusive Legislation in all Cases whatsoever, over such District.''

On its face, the reference to ''the people of the several states'' is a clear restriction of the voting membership to actual states. This is evidenced in a long line of cases that exclude District residents from benefits or

rights given to citizens of states under the Constitution.

It has been argued by both Dinh and Starr that the textual clarity in referring to states is immaterial because other provisions with such references have been interpreted as nevertheless encompassing District residents. This argument is illusory in my view. The major cases extending the meaning of states to the District involve an irreconcilable conflict between a literal interpretation of the term ''state'' and the expressed inherent rights of all American citizens under the equal protection clause and other provisions. District citizens remain U.S. citizens, even though they are not state citizens. The creation of the federal district removed one right of citizens—voting in Congress—in exchange for the status conferred by resident in the Capitol City. It was never intended to turn residents into noncitizens with no constitutional rights.

The upshot of these opinions is that a literal interpretation of the word ''states'' would produce facially illogical and unintended consequences. Since residents remain U.S. citizens, they must continue to enjoy those protections accorded to citizens. Otherwise, they could all be enslaved or impaled at the whim of Congress.

2. Original and Historical Meaning

Despite some suggestions to the contrary, the absence of a vote in Congress was clearly understood as a defining element of a federal district. During ratification, various leaders objected to the disenfranchisement of the citizens in the district and even suggested amendments that would have addressed the problem. One such amendment was offered by Alexander Hamilton, who wanted the District residents to be able to secure representation in Congress once they grew to a reasonable size. Neither this nor other such amendments offered in states like North Carolina and Pennsylvania were adopted.

Whatever ambiguity existed over continuing authority of Maryland or Virginia, the disenfranchisement of citizens from votes in Congress was clearly understood. Indeed, not long after the cessation, a retrocession movement began. Members questioned the need to ''keep the people in this degraded situation'' and objected to the subjection of American citizens to ''laws not made with their own consent.'' At the time of the ratification, leaders knew and openly discussed the non-voting status of the District in the clearest and strongest possible language.

This debate in 1804 leaves no question as to the early understanding of the status of the District as a non-state without representational status. Much of this debate followed the same lines of argument that we hear today. While acknowledging that ''citizens may not possess full political rights,'' leaders like John Bacon of Massachusetts noted that they had special status and influence as residents of the Capitol City. Yet, retrocession bills were introduced within a few years of the actual cessation—again prominently citing the lack of any congressional representation as a motivating factor. Indeed, the retrocession of Virginia highlights the original understanding of the status of the District. Virginians contrasted their situation with those residents of Washington. Washingtonians, however, were viewed as compensated for their loss of political representation. As a committee noted in 1835, ''[o]ur situation is essentially different, and far worse, than that of our neighbors on the northern side of the Potomac. They are citizens of the Metropolis, of a great, and noble Republic, and wherever they go, there clusters about them all those glorious associations, connected with the progress and fame of their country. They are in some measure compensated in the loss of their political rights.''

Much is made of the ten-year period during which District residents voted with their original states—before the federal government formally took over control of the District. This, however, was simply a transition period before the District became the federal enclave.

3. Policy Implications

There are considerable risks and problems with this approach to securing a vote in Congress for the District. First, by adopting a liberal interpretation of the meaning of states in Article I, the Congress would be undermining the very bedrock of our constitutional system. The membership and division of Congress was carefully defined by the Framers. The legislative branch is the engine of the Madisonian democracy. It is in these two houses that disparate factional disputes are converted into majoritarian compromises—the defining principle of the Madisonian system. By allowing majorities to manipulate the membership rolls would add a dangerous instability and uncertainty to the system.

Second, if successful, this legislation would allow any majority in Congress to manipulate the voting membership of the House. This is not the only federal enclave and there is great potential for abuse and mischief in the exercise of such authority. Third, while the issue of Senate representation is left largely untouched in the Dinh/Starr analysis, there is no obvious principle that would prevent a majority from expanding its ranks with two new Senate seats for the District. Two Senators and a member of the House would be a considerable level of representation for a non-state with a small population. Yet, this analysis would suggest that such a change could take place without a constitutional amendment.

Finally, H.R. 5388 would only serve to delay true representational status for district residents. On a practical level, this bill would likely extinguish efforts at full representation in both houses. During the pendency of the litigation, it is highly unlikely that additional measures would be considered—delaying reforms by many years. Ultimately, if the legislation is struck down, it would leave the campaign for full representation in shambles.

The Problematic Basis for Awarding an At-Large Seat to Utah

The proposal of awarding an at-large seat to Utah is an admittedly novel question that would raise issues of first impression for the courts. However, I am highly skeptical of the legality of this approach, particularly under the ''one-man, one-vote'' doctrine established in Wesberry v. Sanders, 376 U.S. 1 (1964). This is a question that leads to some fairly metaphysical notions of overlapping representation and citizens with 1.4 representational status. On one level, the addition of an at-large seat would seem to benefit all Utah citizens equally since they would vote for two members. Given the deference to Congress under the ''necessary and proper'' clause, an obvious argument could be made that it does not contravene the ''one man, one vote'' standard.

However, there are various reasons why a federal court would be on good ground to strike down this portion of H.R. 5388. First, while the Supreme Court has not clearly addressed the interstate implications of ''one man, one vote,'' this bill would likely force it to do so. Awarding two representatives to each resident of Utah creates an obvious imbalance vis-a-vis other states. House members are expected to be advocates for this insular constituency. Here, residents of one state could look to two representatives to do their bidding while other citizens would limited to one. Given racial and cultural demographic differences between Utah and other states, this could be challenged as diluting the power of minority groups in Congress.

Second, while interstate groups challenge the increased representation for Utah citizens, the at-large seat could also be challenged by some intrastate groups as diluting their specific voting power. If Utah simply added an additional congressional district, the ratio of citizens to members would be reduced. The additional member would represent a defined group of people who have unique geographical and potentially racial or political characteristics. However, by making the seat at large, these citizens would now have to share two members with a much larger and more diffuse group—particularly in the constituency of the at-large member. It is likely that the member who is elected at large would be different from one who would have to run in a particular district such as a more liberal or diverse section of the Salt Lake City population.

Third, this approach would be used by a future majority of Congress to manipulate voting in Congress and to reduce representation for insular groups. Rather than creating a new district that may lean toward one party or have increased representation of one racial or religious group, Congress could use at-large seats under the theory of this legislation. Moreover, Congress could create new forms of represented districts for overseas Americans or for federal enclaves. The result would be to place Congress on a slippery slope where transient majorities tweak representational divisions for their own advantage.

Finally, while it would be difficult to predict how this plan would fare under a legal challenge, it is certain to be challenged. This creates the likelihood of Congress having at least one member (or two members if you count the District representative) who would continue to vote under a considerable cloud of questioned legitimacy. In close votes, this could produce great uncertainty as to the finality or legitimacy of federal legislation. This is entirely unnecessary. If a new representative is required, it is better to establish a fourth district not just a fourth at-large representative for legal and policy reasons.

A Modified Retrocession Proposal

One hundred and sixty years ago, Congress retroceded land back to Virginia under its Article I authority. Retrocession has always been the most direct way of securing a resumption of voting rights for District residents. Most of the District can be simply returned from whence it came: state of Maryland. The greatest barrier to retrocession has always been more symbolic rather than legal. Replacing Washington, DC with Washington, MD is a conceptual leap that many are simply not willing to make. However, it is the most logical resolution of this problem.

For a number of years, I have advocated the reduction of the District of Columbia to the small area that runs from the Capitol to the Lincoln Memorial. The only residents in this space would be the First Family. The remainder of the current District would then be retroceded to Maryland. However, I have also proposed a three-phase process for retrocession. In the first phase, a political transfer would occur immediately with the District securing a house seat as a Maryland district and residents voting in Maryland statewide elections. In the second phase, incorporation of public services from education to prisons to law enforcement would occur. In the third phase, any tax and revenue incorporation would occur.

These phases would occur over many years with only the first phase occurring immediately upon retrocession. Indeed, I recommend the creation of a three-commissioner body like the one that worked with George Washington in the establishment of the original federal district. These commissioners would recommend and oversee the incorporation process. Moreover, Maryland can agree to continue to treat the District as a special tax or governing zone until incorporation is completed. Indeed, Maryland may chose to allow the District to continue in a special status due to this unique position. The fact is that any incorporation is made easier, not more difficult, by the District's historic independence. Like most cities, it would continue to have its own law enforcement and local governing authority. However, it would also benefit from incorporation into Maryland educational system and other statewide programs related to prisons and other public needs.

In my view, this approach would be unassailable on a legal level and highly efficient on a practical level. I realize that there remains a fixation with the special status of the city, but much of this status would remain. While the city would not technically be the seat of government, it would obviously remain for all practical purposes our Capitol City.

Regardless of what proposal is adopted, I strongly encourage you not to move forward with H.R. 5388. It is an approach that achieves less representation than is deserved for the District by means that asserts more power than is held by the Congress. It is certainly time to right this historical wrong, but, in our constitutional system, it is often more important how we do something than what we do. This is the wrong means to a worthy end. However, it is not the only means and I encourage the members to direct these considerable energies toward a more lasting and complete resolution of the status of the District of Columbia in Congress.

JONATHAN TURLEY,
Shapiro Professor,
George Washington University Law School.

Mr. MCCONNELL. Mr. President, I commend to my fellow Senators the April 3, 1987 U.S. Justice Department Office of Legal Policy Report to the Attorney General entitled ''The Question of Statehood for the District of Columbia.'' I ask unanimous consent that the Executive Summary and section titled ''Proposals for Giving Representation in Congress to the District of Columbia, Voting Member in the House of Representatives'' be printed in the RECORD.

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

EXECUTIVE SUMMARY

Efforts to admit the District of Columbia to the Union as a state should be vigorously opposed. Granting the national capital statehood through statutory means raises numerous troubling constitutional questions. After careful consideration of these issues, we have concluded that an amendment to the Constitution would be required before the District of Columbia may be admitted to the Union as a state. Statehood for the Nation's capital is inconsistent with the language of the Constitution, as well as the intent of its Framers, and would work a basic change in the federal system as it has existed for the past two hundred years. Under our Constitution, power was divided between the states and the federal government in the hope, as Madison wrote, that ''[t]he different governments will control each other,'' thus securing self-government, individual liberty, and the rights of minorities. In order to serve its function in the federal structure a state must be independent of the federal government. However, the District of Columbia is not independent; it is a political and economic dependency of the national government.

At the same time, it is essential that the federal government maintain its independence of the states. If the District of Columbia were now admitted to statehood, it would not be one state among many. Because it is the national capital, the District would be primus inter pares, first among equals. The ''State of Columbia . . . could come perilously close to being the state whose sole business is to govern, to control all the other states. It would be the imperial state; it would be 'Rome on the Potomac.''' It was this very dilemma that prompted the Founders to establish the federal capital in a district located outside of the borders of any one of the states, under the exclusive jurisdiction of Congress. Their reasons for creating the District are still valid and militate against granting it statehood.

Many have recognized the fundamental flaws in plans to grant the District of Columbia statehood. For instance, while testifying in support of the proposed 1978 District amendment, which would have treated the District of Columbia ''as if it were a State'' for purposes of national elections, Senator Edward Kennedy dismissed what he called ''the statehood fallacy,'' and stated that, ''[t]he District is neither a city nor a State. In fact, statehood may well be an impossible alternative, given the practical and constitutional questions involved in changing the historical status of the Nation's Capital.'' A pamphlet entitled ''Democracy Denied'' circulated in support of the 1978 amendment, and fully endorsed by District Delegate Walter E. Fauntroy, plainly acknowledged that granting statehood to the District of Columbia ''would defeat the purpose of having a federal city, i.e., the creation of a district over which the Congress would have exclusive control.'' That pamphlet also recognized that statehood ''presents a troublesome problem with the 23rd Amendment if the federal district were to be wiped out by legislation.'' Indeed, Delegate Fauntroy has opposed statehood for the District in the past, correctly pointing out that ''this would be in direct defiance of the prescriptions of the Founding Fathers.'' As former Senator Mathias of Maryland stated, ''[i]t is not a State . . . it should not be a State.''

These points are well taken. The factors that mitigated against statehood for the District of Columbia in 1978 have not changed. The rejection of the District voting rights constitutional amendment by the states does not make statehood any more desirable, or any less constitutionally suspect, today than it was a decade ago. Granting statehood to the District of Columbia would defeat the purpose of having a federal city, would be in direct defiance of the intent of the Founders, and would require an amendment to the Constitution.

I. NEED FOR AN AMENDMENT TO THE CONSTITUTION BEFORE THE DISTRICT OF COLUMBIA MAY BE ADMITTED TO THE UNION AS A STATE

Even if statehood for the District of Columbia represented sound policy, we do not believe that it can be accomplished merely by a statute admitting the District to the Union. The Constitution contemplates a federal district as the seat of the general government, and would have to be amended. The Department of Justice has long taken this position. In 1978, Assistant Attorney General John M. Hannon concluded on behalf of the Carter Administration that, ''it was the intent of the Framers that the actual seat of the Federal Government, as opposed to its other installations, be outside any State and independent of the cooperation and consent of the State authorities . . . . If these reasons have lost validity, the appropriate response would be to provide statehood for the District by constitutional amendment rather than to ignore the Framers' intentions.''

The retention of federal authority over a truncated, federal service area would not answer this constitutional objection. The language of the Constitution grants Congress exclusive authority over the district that became the seat of government, not merely over the seat of the government. The district that became the seat of government is the District of Columbia. It does not appear that Congress may, consistent with the language of the Constitution, abandon its exclusive authority over any part of the District.

Further, the Twenty-third Amendment requires that ''[t]he District constituting the seat of Government of the United States'' appoint electors to participate in the Electoral College. The amendment was proposed, drafted and ratified with reference to the District of Columbia. When the states adopted this amendment, they confirmed the understanding that the District is a unique juridical entity with permanent status under the Constitution. Another amendment would be necessary to remake this entity.

Finally, we believe that Congress' ability to admit the District of Columbia into the Union as a new state would depend upon the consent of the legislature of the original ceding state. Article IV, section 3 of the Constitution provides that: ''no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the legislatures of the States concerned as well as of the Congress.'' Accordingly, the consent of Maryland would be necessary before the District of Columbia could be admitted to the Union. Should Maryland refuse to consent, the area that is now the District of Columbia could not be made a state without amendment of Article IV, section 3.

Thus, before the District of Columbia may be admitted to the Union as a state, the Constitution would have to be amended. Such an amendment, however, would be unwise.

II. THE SOUND HISTORICAL REASONS FOR A FEDERAL DISTRICT STILL OPERATE TODAY

In the Founders' view, a federal enclave where Congress could exercise complete authority, insulating itself from insult and securing its deliberations from interruption, was an ''indispensible necessity.'' They settled upon the device of a federal district as the means by which the federal government might remain independent of the influence of any single state, to avoid, in the words of Virginia's George Mason, ''a provincial tincture to ye Natl. deliberations.''

The passing years have, if anything, increased the need for ultimate congressional control of the federal city. The District is an integral part of the operations of the nation's government, which depends upon a much more complex array of services, utilities, transportation facilities, and communication networks than it did at the Founding. If the District were to become a state, its financial problems, labor troubles, and other concerns would still affect the federal government's operations. Congress, however, would be deprived of a direct, controlling voice in the resolution of such problems. In a very real sense, the federal government would be dependent upon the State of Columbia for its day to day existence.

The retention of congressional authority over a much reduced federal enclave would not solve this problem. The Founder's contemplated more than a cluster of buildings, however grand, and their surrounding parks and gardens as the national capital. The creation of a new ''federal town'' was intended, in large part so that Congress could independently control the basic services necessary to the operation of the federal government. As former Senator Birch Bayh pointed out in 1978, ''when our Founding Fathers established this as a capital city . . . they did not just establish a place that should be the Federal city and say this is where the Federal buildings are. But they envisioned this as a viable city, a capital city with people who work, have businesses, and have transportation lines, and homes. The essential establishment of the Nation's Capital was not an establishment of the Nation's Federal buildings but the Nation's city.''

Further, there remain virtually insurmountable practical problems with District statehood. The operations of the federal government sprawl over the District. As a result, the new ''state'' would be honeycombed with federal installations, its territory fragmented by competing jurisdictions. As Assistant Attorney General Patricia Wald asked while testifying on behalf of the Carter Administration, regarding the proposed 1978 District amendment, ''[w]ould the remaining non-Federal. area constitute in any real sense a geographically homogeneous entity that justifies statehood?'' It was for these very reasons that former Mayor Washington expressed doubts about statehood for the District. In 1975 he commented that the city of Washington is ''so physically, and economically and socially bound together that I would have problems with statehood in terms of exacting from it some enclaves, or little enclaves all around the city. Ultimately, it seems to me, that would erode the very fabric of the city itself, and the viability of the city.''

Finally, in a very real sense the District belongs not only to those who reside within its borders, but to the Nation as a whole. In opposing statehood for the District in 1978, Senator Bayh, an otherwise ardent proponent of direct District participation in congressional elections, eloquently summed up the objection: ''I guess as a Senator from Indiana I hate to see us taking the Nation's Capital from [5,000,000] Hoosiers. It is part ours. I do not see why the District should be a State because it is, indeed, the Nation's Capital.''

III. THE DISTRICT OF COLUMBIA IS NOT INDEPENDENT OF THE FEDERAL GOVERNMENT

A. Dependence on the Federal Establishment

The states of the American Union are more than merely geographic entities: Each is what has been termed ''a proper Madisonian society''—a society composed of a ''diversity of interests and financial independence.'' It is this diversity which guards the liberty of the individual and the rights of minorities. As Madison wrote, ''the security for civil rights . . . consists in the multiplicity of interests . . . The degree of security . . . will depend on the number of interests . . . and this may be presumed to depend on the extent of country and number of people comprehended under the same government.''

The District of Columbia lacks this essential political requisite for statehood. It has only one significant ''industry,'' government. As a result, the District has one monolithic interest group, those who work for, provide services to, or otherwise deal with, the federal government. The national government was, historically, the city's only reason for being. Close to two-thirds of the District's workforce is employed either directly or indirectly in the business of the federal government. Indeed, in 1982 the District government maintained that, in the Washington Metropolitan area, for every federal worker laid off as a result of government reductions in force, one person would be thrown out of work in the private sector.

The implications of this monolithic interest are far reaching. For instance, the Supreme Court, in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), has recently decided that the delicate balance between federal and state power is to be guarded primarily by the intrinsic role the states play in the structure of the national government and the political process. The congressional delegation from the District of Columbia, however, would have little interest in preserving the balance between federal and state authority entrusted to it by Garcia. The continued centralization of power in the hands of the national government would, in fact, be to the direct benefit of ''Columbia'' and its residents. Hence; the system of competing sovereignties-designed to preserve our fundamental liberties would be compromised.

B. Economic Dependence

In addition to political independence and diversity, a state must have ''sufficient population and resources to support a state government and to provide its share of the cost of the Federal Government.'' The District of Columbia simply lacks the resources both to support a state government and to provide its fair share of the cost of the federal government. The District is a federal dependency. Annually, in addition to all other federal aid programs, it receives a direct payment from the federal treasury of a half billion dollars; some $522 million was budgeted for the District in Fiscal 1987, $445 million to be paid directly to the District's local government. All in all, District residents outstrip the residents of the states in per capita federal aid by a wide margin. For instance, in 1983 the District received $2,177 per capita in federal aid, some five and one-half times the national average of $384.

Not surprisingly, Washington Mayor Marion Barry has plainly stated that the District would still ''require the support of the Federal Government'' if statehood were granted. The continuation of federal support is ordinarily justified because of the percentage of federal land in the District of Columbia that cannot be taxed by the local government. However, the federal government owns a greater percentage of the land area of 10 states, each of which bears the full burdens of statehood without the sort of massive federal support annually received by the District of Columbia. If the District aspires to statehood, it must be prepared to stand as an equal with the other states in its fiscal affairs.

CONCLUSION

The District of Columbia should not be granted statehood. In our considered opinion, an amendment to the Constitution would be needed before the District could be admitted as a state, and in any case, the reasons that led the Founder's to establish the national capital in a district outside the borders of any state are still valid. The District's special status is an integral part of our system of federalism, which itself was a compromise between pure democracy and the need to secure individual liberties and minority rights. The residents of the District enjoy all of the rights of other citizens, save the right to vote in congressional elections. They exchanged this right, as Mr. Justice Story wrote, for the benefits of living in the ''metropolis of a great and noble republic.'' Instead, ''their rights [are] under the immediate protection of the representatives of the whole Union.'' This was the price of the national capital, and District residents have enjoyed the fruits of this bargain for almost two centuries.

III. PROPOSALS FOR GIVING REPRESENTATION IN CONGRESS TO THE DISTRICT OF COLUMBIA

The numerous schemes proposed over the last two hundred years to give the residents of the federal district some sort of direct voting representation in Congress may be distilled into five basic proposals: (1) legislation to allow the District a voting member in the House of Representatives alone; (2) retrocession of the District of Columbia to Maryland, retaining a truncated federal district; (3) allowing District residents to vote as residents of Maryland in national elections; (4) an amendment to the Constitution to give the District full representation in both House and Senate as if it were a state; and (5) full statehood. None of these proposals offers a sound policy solution, and several appear to be fatally flawed when exposed to constitutional scrutiny.

A. Voting Member in the House of Representatives

From time to time it has'' been suggested that the District be granted, by simple legislation, a voting member in the House of Representatives. This proposal, however, runs into significant constitutional difficulties.

Those sections of the Constitution which define the political structure of the federal government speak uniformly in terms of the states and their citizens. Article I, section 2 provides that, ''[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States . . . . No person shall be a Representative . . . who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.'' Article I, section 3 provides that, ''[t]he Senate of the United States shall be composed of two Senators from each State . . . . No Person shall be a Senator. . . . who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.'' With respect to the election of the President, Article II, section 1 provides that, ''[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.'' The Seventeenth Amendment directs that ''[t]he Senate of the United States shall be composed of two Senators from each State, elected by the people thereof.'' In short, ''[d]irect representation in the Congress by a voting member has never been a right of United States citizenship. Instead, the right to be so represented has been a right of the citizens of the States.''

The word ''state'' as used in Article I may not be interpreted to include the District of Columbia, even though as a ''distinct political society'' it might qualify under a more general definition of that term. Consistent with the intent of the Framers, such arguments were properly dismissed long ago by Chief Justice Marshall in Hepburn v. Ellzey. In that case, plaintiffs, residents of the District, claimed that they were citizens of a state for purposes of diversity jurisdiction in the federal courts. The Court rejected this position. Marshall reasoned that Congress had adopted the definition of ''state'' as found in the Constitution in the act providing for diversity jurisdiction, and that the capital could not be considered such a ''state''. Citing Article I, sections 2 and 3, and Article II, section 1, he concluded that ''the members of the American confederacy only are the states contemplated.'' ''These clauses show that the word state is used in the constitution as designating a member of

the union, and excludes from the term the significance attached to it by writers on the law of nations.'' Congress, to be sure, has often treated the District of Columbia as a state for purposes of statutory benefit programs. It is customarily included in the major federal grant programs by the well-worn phrase ''for purposes of this legislation, the term 'State' shall include the District of Columbia.'' The courts, also, have occasionally interpreted the word ''state'' to include the District of Columbia. However, the District has never been automatically included under the term ''state'' even in federal statutes. In District of Columbia v. Carter, the Supreme Court held that it was not a ''State or Territory'' under 42 U.S.C. §1983, which creates a federal cause of action for civil rights violations under color of state law. Under the test articulated by Justice Brennan in that case, ''[w]hether the District of Columbia constitutes a ''State or Territory'' within the meaning of any particular statutory or constitutional provision depends upon the character and aim of the specific provision involved.'' In any event, allowing the District to participate on an equal footing with the states in federal statutory programs is different in kind from reading the language of the Constitution itself in such a way as to allow alteration of the very composition of the Congress by legislative fiat.

The Constitutional mandate is clear. Only United States citizens who are also citizens of a state are entitled to elect members of Congress. This is hardly a novel proposition. There are many different levels of rights recognized in our system. Aliens, for instance, enjoy certain basic rights, including the benefit of the Equal Protection Clause but are not citizens of the United States and have no vote. The residents of United States possessions overseas also enjoy the protection of the Constitution, but may not vote in federal elections. Many of them are United States citizens—the residents of Puerto Rico and Guam, for instance, fit this category. Like the residents of the District of Columbia, American citizens who are not also citizens of a state do not participate in congressional elections, and they never have enjoyed such participation. The residents of the District of Columbia may not participate directly in congressional elections without becoming citizens of a state, or without an amendment to the Constitution.

Mr. MCCONNELL. Mr. President, a few weeks ago, I had the honor of raising my right hand and reciting a solemn oath required by the Constitution itself. According to that oath, the first and last duty of a U.S. Senator is to support and defend the U.S. Constitution. By opposing the legislation before us, I believe I am doing both.

The Constitution is short because its authors wanted to be clear, and on the issue of congressional representation they could not have been more so. According to Article I, Section II, only States elect Members of Congress. And, according to the same article, the seat of the Federal Government is not to be considered a State. So the question before us is not whether the Framers meant for the seat of Government to have representation in Congress. They clearly did not. Rather, the question before us is why they didn't want the seat of Government to have representation. And, as a follow-up: What recourse did they leave those who might want to revise what they had written.

In answer to the first question, the Framers opposed statehood for a number of good reasons. First, they didn't want the Federal Government to be beholden to a single State, a situation that would of course unfairly benefit the residents of that State, either materially or through added prestige, at the expense of all the other States. Second, they wanted the Federal Government to have the freedom to relocate if the need arose.

This was not an easy issue for the Framers. But the plain text of the Constitution leaves no doubt as to how they came down on the question: In the end, they decided the interests of the whole were best served by carving out a Federal district that stood apart from the States. This way Federal officials would be able to protect the interests of the whole and give the Federal Government the freedom it would need to operate with complete independence and freedom of movement.

Clearly, not everyone is satisfied with the result. But there should be no doubt about what the words of the Constitution says—not just on the day it was ratified, but throughout our history.

The 23rd amendment, for instance, gave Washington, DC the same number of electoral votes that it would receive as ''if it were a state.'' What this means, of course, is that at the time this amendment was ratified in 1961, no one was under the illusion that DC was a State—or that it should be treated as one, short of a constitutional amendment.

Clearly, the Framers recognized the deficiencies of the final product. In creating a Federal district, they knew permanent residents of that district would lack representation in Congress. And this is why they left us a remedy within the Constitution itself. If and when the ''People of the United States'' wished to revise the U.S. Constitution, they could do so by amending it, just as they did in 1961.

The process of amendment is clearly outlined in article V, and it has served the American people well for more than two centuries. Over the years, we have amended our founding document 27 times. From eradicating slavery, to securing the right to vote for women, to putting a limit on the years a President can serve in office, the people of the United States have used the amendment process as the way to secure or expand rights.

So the surest way to honor the aspirations of DC residents is to pursue a remedy which respects the Constitution. One way is through a constitutional amendment that uses the same language as the bill before us. Another would be to allow the residents of the District to vote as if they were residents of a bordering State, or even to declare them residents of a bordering State.

As the Senate's greatest student and fiercest living guardian of the Constitution, the senior Senator from West Virginia, said just last year on the Senate floor:

If we wish to grant representatives of the citizens of the District of Columbia full voting rights, ''let us do so, once again, the proper way, by passing a resolution to amend the Constitution consistent with its own terms.''

The bottom line is this: Any proposal to secure the right to vote must honor the Constitution, which Lincoln called the ''only safeguard of our liberties.'' Anything less would violate the oath we have sworn to uphold, and would guarantee a challenge in the courts that would only further prolong this debate.

The better way is the surer way—and that's the constitutional way.

I will oppose this proposal. I urge my colleagues to do the same.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, in a few moments the Senator from California, Senator FEINSTEIN, is scheduled to be here to speak on the Ensign amendment and I will yield to her to vote at 3:45. But I say we are coming to a pivotal moment in a march that has gone on for years and years now. In some sense it goes back more than two centuries when—for reasons that are hard for historians let alone Senators to fathom, the District was established as a National Capital, separated from the State to which it had been attached before—an omission was made that was grave and inconsistent with the founding principles of this country. The residents of this National Capital of the greatest democracy of the world were left without a Representative here in Congress who could vote. In a government premised on the consent of the governed, the 600,000 residents of the District today do not have a voting Representative here in Congress.

If you step back, it is actually unbelievable. No one has argued that this is somehow a just result. The fact is that it is patently unjust and un-American, in the sense of a violation of the best principles of this country, of freedom, of democracy, of the Republic based on the votes of the people. So the argument against the proposal that has come out of the committee that I am privileged to chair, that enjoys bipartisan support, is nonetheless that this is not quite the right way to do it.

I understand those who have argued against our proposal have said that the Constitution does not allow us to do it quite this way; that it requires a constitutional amendment. The effect of this I think is to say to the residents of the District: Wait a little while longer. It has only been a couple of hundred years that you have been denied a voting Representative.

That is not fair. In fact, the preponderance of constitutional opinion is that the so-called District clause occupies the field and gives us the opportunity to right this historic wrong. Over and over again, notwithstanding the clause my colleagues rely on which says that the House shall be composed of Members chosen by the people of the

several States—they emphasize States—yet in decision after decision the Supreme Court of the United States has said that the District should be considered as a State or else its citizens will be denied equal protection; due process as a State for purposes of the interstate commerce clause; as I stated, for the purposes of diversity of jurisdiction, the opportunity for people to gain access to Federal courts for the right of trial by jury. So the Supreme Court of the United States has made very clear that the District, even when the Constitution refers to States, should be considered as a State. There may be a constitutional argument on the other side; I do not think it is a compelling argument. But if you accept the injustice of the status quo for the residents of the District, an unacceptable injustice that is an embarrassment to this great democracy of ours, then even if you think what S. 160 does is not constitutional, vote to end the injustice because the proposal, S. 160 itself, provides for expedited appeal to the court to determine the constitutionality.

After all, there is always debate. No one knowingly votes for something they think is unconstitutional. Yet there are so many times when we have to acknowledge, as powerful as this great deliberative body is, we are not the ultimate arbiter of constitutionality. That privilege, that power, was given by the Constitution to the judicial branch of our Government.

So I hope, my friends, as we draw close to the hour of decision, that my colleagues, whatever their conclusion about the constitutionality is, will vote to end the injustice imposed on residents of the District. I have always believed America is many things, but in this sense, is a journey. It is a journey historically to realize the extraordinary revolutionary principles adopted in our Declaration of Independence and Constitution that have been followed by so many other countries since the great statement in the Declaration of Independence, those self-evident truths, that all of us are created equal; we are endowed by our creator with these inalienable rights to life and liberty and the pursuit of happiness.

The Constitution enshrines a system of representative government, a great republic, government by the consent of the governed. But we must acknowledge that at the outset of our history, as lofty as the principles were embraced and expressed in the Deceleration and the Constitution, they were not fully realized at the outset of our history. People of color, African Americans, were not only denied the rights of citizenship but were only counted three-fifths the equal of Whites. Women did not have the right to vote. Many men did not have the right to vote because the vote in most States was limited to those who owned land.

So over our history, we have been on this extraordinary journey to realize, generation after generation, the ideals stated by our Founders. Of course, in many cases it took too long, but here we are in a country where voting, at least, has been extended fully to most people in our country—the right to vote, the right to have voting representation in Congress. Yet there is this growth remaining; 600,000 of our fellow Americans get taxed, get called to war, get regulated and supervised and everything else, and yet have no say here with a vote by a Representative in the House of Representatives. That is what this bill would do.

It is not a small step, it is a significant, historic step forward on the journey to realize the best principles of this great Republic. When the time comes, I hope and believe our colleagues in both parties will finally right this wrong and extend voting representation in the House to residents of the District.

I am pleased to see the Senator from California on the Senate floor, and I would yield to her at this time.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the manager of the bill. I rise today to speak in strong opposition to amendment No. 575 offered by Senator ENSIGN.

I believe the amendment is reckless. I believe it is irresponsible. I believe it will lead to more weapons and more violence on the streets of our Nation's Capital. It will endanger the citizens of the District, the Government employees who work here, our elected officials, and those who visit this great American Capitol. And, of course, if successful, it will be the first new step in a march to remove all commonsense gun regulations all over this land.

The Ensign amendment repeals gun laws promoting public safety, including DC laws that the U.S. Supreme Court indicated were permissible under the second amendment in the Heller decision. I strongly disagree with the Supreme Court decision in Heller that the second amendment gives individuals a right to possess weapons for private purposes not related to State militias, and that the Constitution does not permit a general ban on handguns in the home. But that is the law. It has been adjudicated. It has gone up to the highest Court, and I am one who believes if we do not like the law, we should try to make changes through the proper legal channels.

However, it is important to note that Heller also stands for the proposition that reasonable, commonsense gun regulations are entirely permissible. As the author of the original assault weapons ban that was enacted in 1994, I know commonsense gun regulations do make our communities safer, while at the same time respecting the rights of sportsmen and others to keep and bear arms.

Justice Scalia wrote in the majority opinion on the Heller case that a wide variety of gun laws are ''presumptively lawful,'' including the laws ''forbidding the carrying of firearms in sensitive places'' and regulations governing ''the conditions and qualifications of the commercial sale of arms.''

I cannot think of any place more sensitive than the District of Columbia. Even bans on ''dangerous and unusual weapons'' are completely appropriate under the Heller decision. So it is interesting to me that you have this decision, and then you have the Senate moving even to obliterate what is allowable under the decision.

Senator ENSIGN's amendment completely ignores Heller's language and takes the approach that all guns for all people at all times is called for by Heller. It is not.

We have all seen the tragic consequences of gun violence: the massacre of students at Virginia Tech University in 2007, the murders at Columbine High School in Colorado, the North Hollywood shootout where bank robbers carrying automatic weapons and shooting armor-piercing bullets shot 10 Los Angeles Police Department SWAT officers and seven civilians before being stopped.

We have seen criminal street gangs able to buy weapons at gun shows and out of the back seats or the trunks of automobiles. We have seen their bullets kill hundreds, if not thousands of people across this great land, men, women, and children.

As Senator SCHUMER said, if this amendment becomes law, even if you cannot see, even if you cannot pass a sight test, you can have access to firearms. That is not what this Nation should encourage. Those incidents and the gun violence that occurs every day across this country show us that we should be doing more, not less, to keep guns out of the hands of criminals and the mentally ill and not give them unfettered access to firearms.

It is worth noting just how far this amendment goes in repealing DC law and just how unsafe it will make the streets of this capital. Here is what it would do: It would repeal DC's ban on semiautomatic weapons, including assault weapons.

If this amendment becomes law, military-style assault weapons with high-capacity magazines will be allowed to be stockpiled in homes and businesses in the District, even near Federal buildings such as the White House and the Capitol. Even the .50 caliber sniper rifle, with a range of over 1 mile, will be allowed in DC under this amendment. This is a weapon capable of firing rounds that can penetrate concrete and armor plating. And at least one model of the .50 caliber sniper rifle is easily concealed and transported. One gun manufacturer describes this model as a ''lightweight and tactical'' weapon and capable of being collapsed and carried in ''a very small inconspicuous package.''

Is this what we want to do? There is simply no good reason anyone needs semiautomatic, military-style assault weapons in an urban community. It is

unfathomable to me that the same high-powered sniper rifle used by our Armed Forces will be permitted in the Nation's Capitol. Yet this is exactly what the amendment would allow if passed by the Senate.

Next, the amendment would repeal existing Federal antigun trafficking laws. For years, Federal law has banned gun dealers from selling handguns directly to out-of-State buyers who are not licensed firearms dealers. This has helped substantially in the fight against illegal interstate gun trafficking, and it has prevented criminals from traveling to other States to buy guns.

Senator ENSIGN's amendment repeals this longstanding Federal law and allows DC residents to cross State lines to buy handguns in neighboring States. Illegal gun traffickers will be able to easily obtain large quantities of firearms outside of DC and then distribute those guns to criminals in DC and in surrounding States.

And no one should be so naive as to say that this amendment will not do this. It will. The amendment repeals DC law restricting the ability of dangerous and unqualified people to obtain guns. The amendment also repeals many of the gun regulations that the Supreme Court said were completely appropriate after Heller.

So all of those who will vote for this amendment should not do so thinking they are just complying with the Heller decision. This is part of a march forward by gun lobby interests in this country to begin to remove all commonsense regulations, and no one should think it is anything else.

This would repeal the DC prohibition on persons under the age of 21 from possessing firearms, and it repeals all age limits for the possession of long guns, including assault weapons.

Do we really want that? I think of the story of an 11-year-old who had a reduced barreled shotgun and just recently killed somebody with it. Is this what we want to see all over this country, the ability of virtually anyone to obtain a firearm regardless of their age? I don't think so.

The amendment even repeals the DC law prohibiting gun possession by people who have poor vision. I heard Senator SCHUMER speak about this yesterday afternoon. Unbelievably, under this amendment, the District would be barred from having any vision requirement for gun use, even if someone is blind. Is this the kind of public policy we want to make for our Nation? Is this how co-opted this body is to the National Rifle Association and others? I hope not.

The amendment before the Senate repeals all firearm registration requirements in the District, making it even more difficult for law enforcement to trace guns used in crimes and track down the registered owner. The amendment repeals all existing safe-storage laws and prohibits the District from enacting any additional safe-storage laws.

After the Heller decision, the District passed emergency legislation to allow guns to be unlocked for self-defense, but requiring that they otherwise be kept locked to keep guns out of the hands of children and criminals. We all ought to want that.

The Ensign amendment repeals even this modest limitation and prevents the District of Columbia City Council from enacting any law that discourages, whatever that means, gun ownership or requiring the safe storage of firearms. How can we, in the Capitol of the United States where we have had so many tragic events, possibly do this? This is simply ridiculous and goes well beyond the Supreme Court's ruling in Heller.

Think about what this means. Consider that every major gun manufacturer recommends that guns be kept unloaded, locked, and kept in a safe place. Under this amendment, the District could not enact any legislation requiring that guns be stored in a safe place, even in homes with children. How can anyone believe this broad-brush amendment is the right thing to do? How can any of us believe it provides protection for the people we represent?

Let me make one other point. The American people clearly do not agree with this amendment. Last fall, when a virtually identical bill was being considered in the House of Representatives, a national poll found that 69 percent of Americans opposed Congress passing a law to eliminate the District's gun laws, 69 percent. That is about as good as we get on any controversial issue. Additionally, 60 percent of Americans believe Washington will become less safe if Congress takes this step.

Is this what we want? Do we want the Capitol of the United States to become less safe? I don't think so. Today, if this amendment passes in the Senate, it will be directly against the wishes of the American people. It will not pass because it is good public policy, it will only be passed to placate the National Rifle Association. I say for shame.

As a former mayor who saw firsthand what happens when guns fall into the hands of criminals, juveniles, and the mentally ill, I believe this amendment places the families of the District of Columbia in great jeopardy. The amendment puts innocent lives at stake. It is an affront to the public safety of the District. It is an affront to local home rule. This isn't just a bad amendment; it is a very dangerous one. I very strongly urge Senators to join me in opposing it.

Mr. President, when this bill was tried in the House a year ago, a poll was done nationally in which 69 percent of the people were against it. I have to believe a dominant majority would still be against it. I urge a no vote on the amendment.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 2 minutes.

Mr. ENSIGN. Mr. President, I wish to clear up a couple of misstatements made by the other side. First, they said that somebody who is mentally ill could get a gun under this provision. That is not the case. We basically take the Federal definition which does not allow people who are mentally ill to get guns because reasonable background checks can be required and should be required so that somebody who is mentally ill won't get a gun. We don't want to see a Virginia Tech type of a situation happen again. This amendment does not allow it.

The bottom line is, the District of Columbia has the highest murder rate. It has had the highest murder rate, and that rate has gone up as the District has enacted stricter and stricter gun control laws. As the Senator from California said, we want to protect citizens. Shouldn't we do what other places have done and allow law-abiding citizens to actually own guns? That is what the amendment provides. It says: Let's protect the second amendment rights for law-abiding District of Columbia residents so they can protect themselves against intruders coming into their homes.

Criminals are going to get their guns. We know that. Criminals get their guns in DC and around the country. They do it through the black market. In DC, they can go right across the border and get a gun pretty easily. We want to make sure that law-abiding citizens are able to get guns and to protect themselves. That is the basis for this amendment, to say: Let's uphold the Supreme Court. Let's make sure we protect the second amendment rights of citizens in the District of Columbia. We are exercising our constitutional duty both with oversight over the District of Columbia and by protecting the second amendment rights of our citizens.

I urge a yea vote on the amendment.

The PRESIDING OFFICER. All time has expired.

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, Senator REID wishes to speak for 2 minutes before the vote. Therefore, 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. ENSIGN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ENSIGN. I ask for the yeas and nays on amendment No. 575.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The majority leader.

Mr. REID. 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.

Mr. REID. Mr. President, I ask unanimous consent that the vote commence upon completion of my statement.

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

Mr. REID. Mr. President, we have had a good debate on this bill. It has gone on all week. I thank my colleagues on both sides of the aisle for a very productive, intelligent conversation. The Senate today is moving to right a century's-old wrong. It is inexcusable and indefensible that nearly 600,000 people who live in the District of Columbia don't enjoy a voice in Congress as do other American citizens. We are the only democracy in the world that denies citizens of its capital—our capital, Washington, DC—the right to vote in a national legislature in any way. Residents of Washington, DC pay taxes. They sit on juries. They serve bravely in the armed services. Yet they are provided only a delegate in Congress who is not permitted to vote. This injustice has stood for far too long. Shadow representation is shadow citizenship and is offensive to our democracy.

I hope the bill will pass today. It is a bill that is fair, bipartisan, and long overdue. If we can send American soldiers to fight for democracy around the world and ensure citizens of other nations that they have a right to vote, the least we can do is give the same opportunity to fellow Americans in the shadow of this great Capitol. We will shortly vote on a bill that honors the residents of the District who responsibly meet every single expectation of American citizenship but are denied one of the most basic civil rights in return.

I commend Chairman LIEBERMAN, who has taken leadership on this issue for no reason or agenda other than he believes it is right to do this.

I urge all Senators to vote for this measure.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 575, offered by the Senator from Nevada, Mr. ENSIGN. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

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

The result was announced—yeas 62, nays 36, as follows:

[Rollcall Vote No. 72 Leg.]

YEAS—62

Alexander	DeMint	McConnell
Barrasso	Dorgan	Murkowski
Baucus	Ensign	Nelson (NE)
Bayh	Enzi	Pryor
Begich	Feingold	Reid
Bennet	Graham	Risch
Bennett	Grassley	Roberts
Bond	Gregg	Sessions
Brownback	Hagan	Shelby
Bunning	Hatch	Snowe
Burr	Hutchison	Specter
Byrd	Inhofe	Tester
Casey	Isakson	Thune
Chambliss	Johanns	Udall (CO)
Coburn	Johnson	Udall (NM)
Cochran	Kyl	Vitter
Collins	Landrieu	Voinovich
Conrad	Lincoln	Warner
Corker	Martinez	Webb
Cornyn	McCain	Wicker
Crapo	McCaskill	

NAYS—36

Akaka	Harkin	Merkley
Bingaman	Inouye	Mikulski
Boxer	Kaufman	Murray
Brown	Kerry	Nelson (FL)
Burris	Klobuchar	Reed
Cantwell	Kohl	Rockefeller
Cardin	Lautenberg	Sanders
Carper	Leahy	Schumer
Dodd	Levin	Shaheen
Durbin	Lieberman	Stabenow
Feinstein	Lugar	Whitehouse
Gillibrand	Menendez	Wyden

NOT VOTING—1

Kennedy

The amendment (No. 575) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, this will be the last vote this week. We hope to be able to get to the omnibus on Monday. We are going to be on the omnibus one way or the other on Monday. I will file cloture on the matter if I have to, but I think we are going to move to that Monday. We have a lot of work to do. The CR expires on Friday. I have had conversations today with the Republican leader. We both understand the urgency of trying to get this done. We are going to try to have as many amendments as time will allow. People should be here ready to move on this bill as soon as we are able to get to it. I have already heard from a couple of Senators who have amendments ready to go. What we will try to do is alternate sides on amendments and hopefully finish it on Thursday. Next Friday is supposed to be a nonvoting day. We hope we can keep it that way, but this is an important piece of legislation we must complete.

This is the last vote for the day.

The PRESIDING OFFICER. The substitute amendment, as amended, is agreed to.

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

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

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

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

The result was announced—yeas 61, nays 37, as follows:

[Rollcall Vote No. 73 Leg.]

YEAS—61

Akaka	Harkin	Nelson (NE)
Bayh	Hatch	Pryor
Begich	Inouye	Reed
Bennet	Johnson	Reid
Bingaman	Kaufman	Rockefeller
Boxer	Kerry	Sanders
Brown	Klobuchar	Schumer
Burris	Kohl	Shaheen
Cantwell	Landrieu	Snowe
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Dodd	Lugar	Voinovich
Dorgan	McCaskill	Warner
Durbin	Menendez	Webb
Feingold	Merkley	Whitehouse
Feinstein	Mikulski	Wyden
Gillibrand	Murray	
Hagan	Nelson (FL)	

NAYS—37

Alexander	Cornyn	Martinez
Barrasso	Crapo	McCain
Baucus	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Risch
Brownback	Graham	Roberts
Bunning	Grassley	Sessions
Burr	Gregg	Shelby
Byrd	Hutchison	Thune
Chambliss	Inhofe	Vitter
Coburn	Isakson	Wicker
Cochran	Johanns	
Corker	Kyl	

NOT VOTING—1

Kennedy

The bill (S. 160), as amended, was passed, as follows:

S. 160

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

TITLE I—DISTRICT OF COLUMBIA HOUSE VOTING RIGHTS ACT OF 2009

SECTION 1. SHORT TITLE.

This Act may be cited as the ''District of Columbia House Voting Rights Act of 2009''.

SEC. 2. TREATMENT OF DISTRICT OF COLUMBIA AS CONGRESSIONAL DISTRICT.

(a) CONGRESSIONAL DISTRICT AND NO SENATE REPRESENTATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the District of Columbia shall be considered a congressional district for purposes of representation in the House of Representatives.

(2) NO REPRESENTATION PROVIDED IN SENATE.—The District of Columbia shall not be considered a State for purposes of representation in the United States Senate.

(b) CONFORMING AMENDMENTS RELATING TO APPORTIONMENT OF MEMBERS OF HOUSE OF REPRESENTATIVES.—

(1) INCLUSION OF SINGLE DISTRICT OF COLUMBIA MEMBER IN REAPPORTIONMENT OF MEMBERS AMONG STATES.—Section 22 of the Act entitled ''An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress'', approved June 28, 1929 (2 U.S.C. 2a), is

amended by adding at the end the following new subsection:

''(d) This section shall apply with respect to the District of Columbia in the same manner as this section applies to a State, except that the District of Columbia may not receive more than one Member under any reapportionment of Members.''.

(2) CLARIFICATION OF DETERMINATION OF NUMBER OF PRESIDENTIAL ELECTORS ON BASIS OF 23RD AMENDMENT.—Section 3 of title 3, United States Code, is amended by striking ''come into office;'' and inserting ''come into office (subject to the twenty-third article of amendment to the Constitution of the United States in the case of the District of Columbia);''.

SEC. 3. INCREASE IN MEMBERSHIP OF HOUSE OF REPRESENTATIVES.

(a) PERMANENT INCREASE IN NUMBER OF MEMBERS.—Effective with respect to the 112th Congress, or the first Congress sworn in after the implementation of this Act, and each succeeding Congress, the House of Representatives shall be composed of 437 Members, including the Member representing the District of Columbia pursuant to section 2(a).

(b) REAPPORTIONMENT OF MEMBERS RESULTING FROM INCREASE.—

(1) IN GENERAL.—Section 22(a) of the Act entitled ''An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress'', approved June 28, 1929 (2 U.S.C. 2a(a)), is amended by striking ''the then existing number of Representatives'' and inserting ''the number of Representatives established with respect to the 112th Congress, or the first Congress sworn in after implementation of the District of Columbia House Voting Rights Act of 2009''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to the regular decennial census conducted for 2010 and each subsequent regular decennial census.

(c) TRANSMITTAL OF REVISED APPORTIONMENT INFORMATION BY PRESIDENT.—

(1) STATEMENT OF APPORTIONMENT BY PRESIDENT.—Not later than 30 days after the date of the enactment of this Act, the President shall transmit to Congress a revised version of the most recent statement of apportionment submitted under section 22 of the Act entitled ''An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress'', approved June 28, 1929 (2 U.S.C. 2a), to take into account this Act and the amendments made by this Act. The statement shall reflect that the District of Columbia is entitled to one Representative and shall identify the other State entitled to one representative under this section. Pursuant to section 22 of the Act entitled ''An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress'', approved June 28, 1929 (2 U.S.C. 2a), as amended by this Act, and the regular decennial census conducted for 2000, the State entitled to the one additional representative is Utah.

(2) REPORT BY CLERK.—Not later than 15 calendar days after receiving the revised version of the statement of apportionment under paragraph (1), the Clerk of the House of Representatives shall submit a report to the Speaker of the House of Representatives indicating that the District of Columbia is entitled to one Representative and identifying the State which is entitled to one additional Representative pursuant to this section. Pursuant to section 22 of the Act entitled ''An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress'', approved June 28, 1929 (2 U.S.C. 2a), as amended by this Act, and the regular decennial census conducted for 2000, the State entitled to the one additional representative is Utah.

(3) ADDITIONAL STATEMENTS AND REPORTS.—

(A) IN GENERAL.—Subject to subparagraph (B) and following the revised statement of apportionment and subsequent report under paragraphs (1) and (2), the Statement of Apportionment by the President and subsequent reports by the Clerk of the House of Representatives shall continue to be issued at the intervals and pursuant to the methodology specified under section 22 of the Act entitled ''An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress'', approved June 28, 1929 (2 U.S.C. 2a), as amended by this Act.

(B) FAILURE TO COMPLETE.—In the event that the revised statement of apportionment and subsequent report under paragraphs (1) and (2) can not be completed prior to the issuance of the regular statement of apportionment and subsequent report under section 22 of the Act entitled ''An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress'', approved June 28, 1929 (2 U.S.C. 2a), as amended by this Act, the President and Clerk may disregard paragraphs (1) and (2).

SEC. 4. UTAH REDISTRICTING PLAN.

The general election for the additional Representative to which the State of Utah is entitled for the 112th Congress, pursuant to section 3(c), shall be elected pursuant to a redistricting plan enacted by the State, such as the plan the State of Utah signed into law on December 5, 2006, which—

(1) revises the boundaries of congressional districts in the State to take into account the additional Representative to which the State is entitled under section 3; and

(2) remains in effect until the taking effect of the first reapportionment occurring after the regular decennial census conducted for 2010.

SEC. 5. EFFECTIVE DATE.

The additional Representative other than the Representative from the District of Columbia, pursuant to section 3(c), and the Representative from the District of Columbia shall be sworn in and seated as Members of the House of Representatives on the same date as other Members of the 112th Congress or the first Congress sworn in after implementation of this Act.

SEC. 6. CONFORMING AMENDMENTS.

(a) REPEAL OF OFFICE OF DISTRICT OF COLUMBIA DELEGATE.—

(1) REPEAL OF OFFICE.—

(A) IN GENERAL.—Sections 202 and 204 of the District of Columbia Delegate Act (Public Law 91–405; sections 1–401 and 1–402, D.C. Official Code) are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

(B) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date on which a Representative from the District of Columbia takes office.

(2) CONFORMING AMENDMENTS TO DISTRICT OF COLUMBIA ELECTIONS CODE OF 1955.—The District of Columbia Elections Code of 1955 is amended as follows:

(A) In section 1 (sec. 1–1001.01, D.C. Official Code), by striking ''the Delegate to the House of Representatives,'' and inserting ''the Representative in Congress,''.

(B) In section 2 (sec. 1–1001.02, D.C. Official Code)—

(i) by striking paragraph (6); and

(ii) in paragraph (13), by striking ''the Delegate to Congress for the District of Columbia,'' and inserting ''the Representative in Congress,''.

(C) In section 8 (sec. 1–1001.08, D.C. Official Code)—

(i) in the heading, by striking ''Delegate'' and inserting ''Representative''; and

(ii) by striking ''Delegate,'' each place it appears in subsections (h)(1)(A), (i)(1), and (j)(1) and inserting ''Representative in Congress,''.

(D) In section 10 (sec. 1–1001.10, D.C. Official Code)—

(i) in subsection (a)(3)(A)—

(I) by striking ''or section 206(a) of the District of Columbia Delegate Act''; and

(II) by striking ''the office of Delegate to the House of Representatives'' and inserting ''the office of Representative in Congress'';

(ii) in subsection (d)(1), by striking ''Delegate,'' each place it appears; and

(iii) in subsection (d)(2)—

(I) by striking ''(A) In the event'' and all that follows through ''term of office,'' and inserting ''In the event that a vacancy occurs in the office of Representative in Congress before May 1 of the last year of the Representative's term of office,''; and

(II) by striking subparagraph (B).

(E) In section 11(a)(2) (sec. 1–1001.11(a)(2), D.C. Official Code), by striking ''Delegate to the House of Representatives,'' and inserting ''Representative in Congress,''.

(F) In section 15(b) (sec. 1–1001.15(b), D.C. Official Code), by striking ''Delegate,'' and inserting ''Representative in Congress,''.

(G) In section 17(a) (sec. 1–1001.17(a), D.C. Official Code), by striking ''the Delegate to Congress from the District of Columbia'' and inserting ''the Representative in Congress''.

(b) REPEAL OF OFFICE OF STATEHOOD REPRESENTATIVE.—

(1) IN GENERAL.—Section 4 of the District of Columbia Statehood Constitutional Convention Initiative of 1979 (sec. 1–123, D.C. Official Code) is amended as follows:

(A) By striking ''offices of Senator and Representative'' each place it appears in subsection (d) and inserting ''office of Senator''.

(B) In subsection (d)(2)—

(i) by striking ''a Representative or'';

(ii) by striking ''the Representative or''; and

(iii) by striking ''Representative shall be elected for a 2-year term and each''.

(C) In subsection (d)(3)(A), by striking ''and 1 United States Representative''.

(D) By striking ''Representative or'' each place it appears in subsections (e), (f), (g), and (h).

(E) By striking ''Representative's or'' each place it appears in subsections (g) and (h).

(2) CONFORMING AMENDMENTS.—

(A) STATEHOOD COMMISSION.—Section 6 of such Initiative (sec. 1–125, D.C. Official Code) is amended—

(i) in subsection (a)—

(I) by striking ''27 voting members'' and inserting ''26 voting members'';

(II) by adding ''and'' at the end of paragraph (5); and

(III) by striking paragraph (6) and redesignating paragraph (7) as paragraph (6); and

(ii) in subsection (a–1)(1), by striking subparagraph (H).

(B) AUTHORIZATION OF APPROPRIATIONS.—Section 8 of such Initiative (sec. 1–127, D.C. Official Code) is amended by striking ''and House''.

(C) APPLICATION OF HONORARIA LIMITATIONS.—Section 4 of D.C. Law 8–135 (sec. 1–131, D.C. Official Code) is amended by striking ''or Representative'' each place it appears.

(D) APPLICATION OF CAMPAIGN FINANCE LAWS.—Section 3 of the Statehood Convention Procedural Amendments Act of 1982 (sec. 1–135, D.C. Official Code) is amended by

striking ''and United States Representative''.

(E) DISTRICT OF COLUMBIA ELECTIONS CODE OF 1955.—The District of Columbia Elections Code of 1955 is amended—

(i) in section 2(13) (sec. 1–1001.02(13), D.C. Official Code), by striking ''United States Senator and Representative,'' and inserting ''United States Senator,''; and

(ii) in section 10(d) (sec. 1–1001.10(d)(3), D.C. Official Code), by striking ''United States Representative or''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date on which a Representative from the District of Columbia takes office.

(c) CONFORMING AMENDMENTS REGARDING APPOINTMENTS TO SERVICE ACADEMIES.—

(1) UNITED STATES MILITARY ACADEMY.—Section 4342 of title 10, United States Code, is amended—

(A) in subsection (a), by striking paragraph (5); and

(B) in subsection (f), by striking ''the District of Columbia,''.

(2) UNITED STATES NAVAL ACADEMY.—Such title is amended—

(A) in section 6954(a), by striking paragraph (5); and

(B) in section 6958(b), by striking ''the District of Columbia,''.

(3) UNITED STATES AIR FORCE ACADEMY.—Section 9342 of title 10, United States Code, is amended—

(A) in subsection (a), by striking paragraph (5); and

(B) in subsection (f), by striking ''the District of Columbia,''.

(4) EFFECTIVE DATE.—This subsection and the amendments made by this subsection shall take effect on the date on which a Representative from the District of Columbia takes office.

SEC. 7. NONSEVERABILITY OF PROVISIONS AND NONAPPLICABILITY.

(a) NONSEVERABILITY.—If any provision of section 2(a)(1), 2(b)(1), or 3 or any amendment made by those sections is declared or held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Act or any amendment made by this Act shall be treated and deemed invalid and shall have no force or effect of law.

(b) NONAPPLICABILITY.—Nothing in the Act shall be construed to affect the first reapportionment occurring after the regular decennial census conducted for 2010 if this Act has not taken effect.

SEC. 8. JUDICIAL REVIEW.

(a) SPECIAL RULES FOR ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.—If any action is brought to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

(3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

(4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(b) INTERVENTION BY MEMBERS OF CONGRESS.—

(1) IN GENERAL.—In any action in which the constitutionality of any provision of this Act or any amendment made by this Act is challenged (including an action described in subsection (a)), any member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or the Senate shall have the right to intervene or file legal pleadings or briefs either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment.

(2) COURT EFFICIENCY.—To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any action described in paragraph (1) may make such orders as it considers necessary, including orders to require intervenors taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

(c) CHALLENGE BY MEMBERS OF CONGRESS.—Any Member of Congress may bring an action, subject to the special rules described in subsection (a), to challenge the constitutionality of any provision of this Act or any amendment made by this Act.

SEC. 9. FCC AUTHORITIES.

(a) CLARIFICATION OF GENERAL POWERS.—Title III of the Communications Act of 1934 is amended by inserting after section 303 (47 U.S.C. 303) the following new section:

''SEC. 303B. CLARIFICATION OF GENERAL POWERS.

''(a) CERTAIN AFFIRMATIVE ACTIONS REQUIRED.—The Commission shall take actions to encourage and promote diversity in communication media ownership and to ensure that broadcast station licenses are used in the public interest.

''(b) CONSTRUCTION.—Nothing in section 303A shall be construed to limit the authority of the Commission regarding matters unrelated to a requirement that broadcasters present or ascertain opposing viewpoints on issues of public importance.''.

(b) SEVERABILITY.—Notwithstanding section 7(a), if any provision of section 2(a)(1), 2(b)(1), or 3 or any amendment made by those sections is declared or held invalid or unenforceable by a court of competent jurisdiction, the amendment made by subsection (a) and the application of such amendment to any other person or circumstance shall not be affected by such holding.

SEC. 10. FAIRNESS DOCTRINE PROHIBITED.

(a) LIMITATION ON GENERAL POWERS: FAIRNESS DOCTRINE.—Title III of the Communications Act of 1934 is amended by inserting after section 303 (47 U.S.C. 303) the following new section:

''SEC. 303A. LIMITATION ON GENERAL POWERS: FAIRNESS DOCTRINE.

''Notwithstanding section 303 or any other provision of this Act or any other Act authorizing the Commission to prescribe rules, regulations, policies, doctrines, standards, guidelines, or other requirements, the Commission shall not have the authority to prescribe any rule, regulation, policy, doctrine, standard, guideline, or other requirement that has the purpose or effect of reinstating or repromulgating (in whole or in part)—

''(1) the requirement that broadcasters present or ascertain opposing viewpoints on issues of public importance, commonly referred to as the 'Fairness Doctrine', as repealed in In re Complaint of Syracuse Peace Council against Television Station WTVH, Syracuse New York, 2 FCC Rcd. 5043 (1987); or

''(2) any similar requirement that broadcasters meet programming quotas or guidelines for issues of public importance.''.

(b) SEVERABILITY.—Notwithstanding section 7(a), if any provision of section 2(a)(1), 2(b)(1), or 3 or any amendment made by those sections is declared or held invalid or unenforceable by a court of competent jurisdiction, the amendment made by subsection (a) and the application of such amendment to any other person or circumstance shall not be affected by such holding.

TITLE II—SECOND AMENDMENT ENFORCEMENT ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Second Amendment Enforcement Act''.

SEC. 202. CONGRESSIONAL FINDINGS.

Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) As the Congress and the Supreme Court of the United States have recognized, the Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) The law-abiding citizens of the District of Columbia are deprived by local laws of handguns, rifles, and shotguns that are commonly kept by law-abiding persons throughout the United States for sporting use and for lawful defense of their persons, homes, businesses, and families.

(4) The District of Columbia has the highest per capita murder rate in the Nation, which may be attributed in part to local laws prohibiting possession of firearms by law-abiding persons who would otherwise be able to defend themselves and their loved ones in their own homes and businesses.

(5) The Federal Gun Control Act of 1968, as amended by the Firearms Owners' Protection Act of 1986, and the Brady Handgun Violence Prevention Act of 1993, provide comprehensive Federal regulations applicable in the District of Columbia as elsewhere. In addition, existing District of Columbia criminal laws punish possession and illegal use of firearms by violent criminals and felons. Consequently, there is no need for local laws which only affect and disarm law-abiding citizens.

(6) Officials of the District of Columbia have indicated their intention to continue to unduly restrict lawful firearm possession and use by citizens of the District.

(7) Legislation is required to correct the District of Columbia's law in order to restore the fundamental rights of its citizens under the Second Amendment to the United States Constitution and thereby enhance public safety.

SEC. 203. REFORM D.C. COUNCIL'S AUTHORITY TO RESTRICT FIREARMS.

Section 4 of the Act entitled ''An Act to prohibit the killing of wild birds and wild animals in the District of Columbia'', approved June 30, 1906 (34 Stat. 809; sec. 1–303.43, D.C. Official Code) is amended by adding at the end the following: ''Nothing in this section or any other provision of law shall authorize, or shall be construed to permit, the Council, the Mayor, or any governmental or regulatory authority of the District of Columbia to prohibit, constructively prohibit, or unduly burden the ability of persons not prohibited from possessing firearms under Federal law from acquiring, possessing in their homes or businesses, or using for sporting, self-protection or other lawful purposes, any firearm neither prohibited by Federal law nor subject to the National Firearms Act. The District of Columbia shall not have authority to enact laws or regulations that discourage or eliminate the private ownership or use of firearms. Nothing in the previous two sentences shall be construed to prohibit the District of Columbia from regulating or prohibiting the carrying of firearms

by a person, either concealed or openly, other than at the person's dwelling place, place of business, or on other land possessed by the person.''.

SEC. 204. REPEAL D.C. SEMIAUTOMATIC BAN.

(a) IN GENERAL.—Section 101(10) of the Firearms Control Regulations Act of 1975 (sec. 7–2501.01(10), D.C. Official Code) is amended to read as follows:

''(10) 'Machine gun' means any firearm which shoots, is designed to shoot, or may be readily restored to shoot automatically, more than 1 shot without manual reloading by a single function of the trigger, and includes the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.''.

(b) CONFORMING AMENDMENT TO PROVISIONS SETTING FORTH CRIMINAL PENALTIES.—Section 1(c) of the Act of July 8, 1932 (47 Stat. 651; sec. 22–4501(c), D.C. Official Code) is amended to read as follows:

''(c) 'Machine gun', as used in this Act, has the meaning given such term in section 101(10) of the Firearms Control Regulations Act of 1975.''.

SEC. 205. REPEAL REGISTRATION REQUIREMENT.

(a) REPEAL OF REQUIREMENT.—

(1) IN GENERAL.—Section 201(a) of the Firearms Control Regulations Act of 1975 (sec. 7–2502.01(a), D.C. Official Code) is amended by striking ''any firearm, unless'' and all that follows through paragraph (3) and inserting the following: ''any firearm described in subsection (c).''.

(2) DESCRIPTION OF FIREARMS REMAINING ILLEGAL.—Section 201 of such Act (sec. 7–2502.01, D.C. Official Code) is amended by adding at the end the following new subsection:

''(c) A firearm described in this subsection is any of the following:

''(1) A sawed-off shotgun.

''(2) A machine gun.

''(3) A short-barreled rifle.''.

(3) CONFORMING AMENDMENT.—The heading of section 201 of such Act (sec. 7–2502.01, D.C. Official Code) is amended by striking ''Registration requirements'' and inserting ''Firearm Possession''.

(b) CONFORMING AMENDMENTS TO FIREARMS CONTROL REGULATIONS ACT.—The Firearms Control Regulations Act of 1975 is amended as follows:

(1) Sections 202 through 211 (secs. 7–2502.02 through 7–2502.11, D.C. Official Code) are repealed.

(2) Section 101 (sec. 7–2501.01, D.C. Official Code) is amended by striking paragraph (13).

(3) Section 401 (sec. 7–2504.01, D.C. Official Code) is amended—

(A) in subsection (a), by striking ''the District;'' and all that follows and inserting the following: ''the District, except that a person may engage in hand loading, reloading, or custom loading of ammunition for firearms lawfully possessed under this Act.''; and

(B) in subsection (b), by striking ''which are unregisterable under section 202'' and inserting ''which are prohibited under section 201''.

(4) Section 402 (sec. 7–2504.02, D.C. Official Code) is amended—

(A) in subsection (a), by striking ''Any person eligible to register a firearm'' and all that follows through ''such business,'' and inserting the following: ''Any person not otherwise prohibited from possessing or receiving a firearm under Federal or District law, or from being licensed under section 923 of title 18, United States Code,''; and

(B) in subsection (b), by amending paragraph (1) to read as follows:

''(1) The applicant's name;''.

(5) Section 403(b) (sec. 7–2504.03(b), D.C. Official Code) is amended by striking ''registration certificate'' and inserting ''dealer's license''.

(6) Section 404(a)(3) (sec. 7–2504.04(a)(3)), D.C. Official Code) is amended—

(A) in subparagraph (B)(i), by striking ''registration certificate number (if any) of the firearm,'';

(B) in subparagraph (B)(iv), by striking ''holding the registration certificate'' and inserting ''from whom it was received for repair'';

(C) in subparagraph (C)(i), by striking ''and registration certificate number (if any) of the firearm'';

(D) in subparagraph (C)(ii), by striking ''registration certificate number or''; and

(E) by striking subparagraphs (D) and (E).

(7) Section 406(c) (sec. 7–2504.06(c), D.C. Official Code) is amended to read as follows:

''(c) Within 45 days of a decision becoming effective which is unfavorable to a licensee or to an applicant for a dealer's license, the licensee or application shall—

''(1) lawfully remove from the District all destructive devices in his inventory, or peaceably surrender to the Chief all destructive devices in his inventory in the manner provided in section 705; and

''(2) lawfully dispose, to himself or to another, any firearms and ammunition in his inventory.''.

(8) Section 407(b) (sec. 7–2504.07(b), D.C. Official Code) is amended by striking ''would not be eligible'' and all that follows and inserting ''is prohibited from possessing or receiving a firearm under Federal or District law.''.

(9) Section 502 (sec. 7–2505.02, D.C. Official Code) is amended—

(A) by amending subsection (a) to read as follows:

''(a) Any person or organization not prohibited from possessing or receiving a firearm under Federal or District law may sell or otherwise transfer ammunition or any firearm, except those which are prohibited under section 201, to a licensed dealer.'';

(B) by amending subsection (c) to read as follows:

''(c) Any licensed dealer may sell or otherwise transfer a firearm to any person or organization not otherwise prohibited from possessing or receiving such firearm under Federal or District law.'';

(C) in subsection (d), by striking paragraphs (2) and (3); and

(D) by striking subsection (e).

(10) Section 704 (sec. 7–2507.04, D.C. Official Code) is amended—

(A) in subsection (a), by striking ''any registration certificate or'' and inserting ''a''; and

(B) in subsection (b), by striking ''registration certificate,''.

(c) OTHER CONFORMING AMENDMENTS.—Section 2(4) of the Illegal Firearm Sale and Distribution Strict Liability Act of 1992 (sec. 7–2531.01(4), D.C. Official Code) is amended—

(1) in subparagraph (A), by striking ''or ignoring proof of the purchaser's residence in the District of Columbia''; and

(2) in subparagraph (B), by striking ''registration and''.

SEC. 206. REPEAL HANDGUN AMMUNITION BAN.

Section 601(3) of the Firearms Control Regulations Act of 1975 (sec. 7–2506.01(3), D.C. Official Code) is amended by striking ''is the holder of the valid registration certificate for'' and inserting ''owns''.

SEC. 207. RESTORE RIGHT OF SELF DEFENSE IN THE HOME.

Section 702 of the Firearms Control Regulations Act of 1975 (sec. 7–2507.02, D.C. Official Code) is repealed.

SEC. 208. REMOVE CRIMINAL PENALTIES FOR POSSESSION OF UNREGISTERED FIREARMS.

(a) IN GENERAL.—Section 706 of the Firearms Control Regulations Act of 1975 (sec. 7–2507.06, D.C. Official Code) is amended—

(1) by striking ''that:'' and all that follows through ''(1) A'' and inserting ''that a''; and

(2) by striking paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to violations occurring after the 60-day period which begins on the date of the enactment of this Act.

SEC. 209. REMOVE CRIMINAL PENALTIES FOR CARRYING A FIREARM IN ONE'S DWELLING OR OTHER PREMISES.

(a) IN GENERAL.—Section 4(a) of the Act of July 8, 1932 (47 Stat. 651; sec. 22–4504(a), D.C. Official Code) is amended—

(1) in the matter before paragraph (1), by striking ''a pistol,'' and inserting the following: ''except in his dwelling house or place of business or on other land possessed by that person, whether loaded or unloaded, a firearm,''; and

(2) by striking ''except that:'' and all that follows through ''(2) If the violation'' and inserting ''except that if the violation''.

(b) CONFORMING AMENDMENT.—Section 5 of such Act (47 Stat. 651; sec. 22–4505, D.C. Official Code) is amended—

(1) by striking ''pistol'' each place it appears and inserting ''firearm''; and

(2) by striking ''pistols'' each place it appears and inserting ''firearms''.

SEC. 210. AUTHORIZING PURCHASES OF FIREARMS BY DISTRICT RESIDENTS.

Section 922 of title 18, United States Code, is amended in paragraph (b)(3) by inserting after ''other than a State in which the licensee's place of business is located'' the following: '', or to the sale or delivery of a handgun to a resident of the District of Columbia by a licensee whose place of business is located in Maryland or Virginia,''.

SEC. 211. REPEALS OF DISTRICT OF COLUMBIA ACTS.

The Firearms Registration Amendment Act of 2008 and the Firearms Registration Emergency Amendment Act of 2008, as passed by the District of Columbia, are repealed.

SEC. 212. SEVERABILITY.

Notwithstanding any other provision of this Act, if any provision of this Act, or any amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, this title and amendments made by this title, and the application of such provision or amendment to other persons or circumstances shall not be affected thereby.

Mr. LIEBERMAN. Madam President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LIEBERMAN. Madam President, I rise today to thank my colleagues for voting to pass the historic District of Columbia House Voting Rights Act of 2009 and giving the citizens who live in the capital of the free world the right to exercise that most basic of freedoms—the right to choose who governs them.

Passage of this act is another step on our long march to make our democracy ever more inclusive.

Thomas Jefferson once wrote:

It is by their votes the people exercise their sovereignty.

But when Jefferson wrote those words only a small pool of white landowners got to choose who governed them.

Since then, through acts of state legislatures, the Congress and the courts the right to vote has been extended to men over 21—regardless of property ownership—to newly freed black men who, along with their families, had previously counted as just three fifths of a person, and then to women and to 18 year olds.

And after extending those rights we further decided that each of these votes should count equally—''one man, one vote,'' and that no one legally entitled to vote could be denied the franchise by a poll tax or voting test.

The men and women of the District—a city of nearly 600,000—fight in our wars and pay Federal taxes; yet, they have no say on issues of war and peace or how their money is spent.

Perhaps the ultimate slight of denying the right to vote to District residents was that if an American were to move abroad, their right to vote in their home State was guaranteed, regardless of how long they remained out of the country. The only way they could lose that right was if they were to either renounce their citizenship or return to the United States and live in Washington, DC.

Today we fixed this situation and we can all be proud of our work.

I want to thank Senator REID for bringing this to the floor and thank his outstanding floor staff—as well as other Democratic and Republican Senate staffers—for their hard work.

And finally, I would like to take a moment to thank Michael Alexander, Kevin Landy, Holly Idelson Deborah Parkinson, Leslie Phillips, Scott Campbell, David Rosenbaum and the rest of the staff of the Homeland Security and Governmental Affairs Committee staff for their hard work in bringing this bill successfully to the floor of the Senate.

I am proud to share this historic moment with them.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

CAPTIVE PRIMATE SAFETY ACT

Mrs. BOXER. Madam President, I rise to speak about a terrible thing that happened in his home State. I am going to be asking unanimous consent at the appropriate time to move a bill, H.R. 80, the Captive Primate Safety Act. I will preface it first by saying to my friend, Senator LIEBERMAN, that in his State there was a horrific attack.

Mr. LIEBERMAN. In my hometown.

Mrs. BOXER. Yes. It was an attack by a nonhuman primate—a chimpanzee in this case—that was a household pet, against a woman. Without going into the terrible details, I think the whole country was shocked at what occurred there.

Many of us have been saying for a long time that we need to fix this problem. In 1978, importing nonhuman primates to the U.S. for pet trade was banned by the CDC in regulations. But now you can still trade these primates in the pet trade and sell them for use as pets. We say it is time to end that.

I know Senator COBURN is going to object to our moving this bill which was passed by the House quickly and in a bipartisan way with just a handful of ''no'' votes. Can't we come together on this? The fact is, our bill says we are going to ban pet trading of these nonhuman primates, and we are going to get this done one way or another. We will not get it done today because Senator COBURN will object for his reasons. I believe it is important to state that our bill—and this is a Boxer-Vitter bill—has no impact on trade or transportation of animals for zoos or scientific research facilities or other federally licensed and regulated entities. All we are saying is that it is dangerous to keep as a pet a nonhuman primate. We saw this in Connecticut, but that was not the only time. There have been many examples. When we get this done, we will list those. We have been trying to get this passed for a long time. Senator COBURN objected. We will get around it at some point in time.

Primates can harbor many infectious diseases that can readily jump from species to humans. As a result, the CDC, back in 1975, said: No, no importation of those nonhuman primates unless it is for medical reasons or a zoo or to a Federal body that is going to oversee it. Listen to how many people have been injured. More than 150 people. How about children? Do you care about children? Forty children were injured by these nonhuman primates between 1995 and 2009. Nineteen States, including my own, have prohibited these animals as pets. Fourteen States restrict or partially ban their use as pets because many of these animals move in interstate commerce.

Federal legislation is needed. You would think this is a no-brainer—you would think. Who supports this legislation? Well, the House of Representatives just passed it overwhelmingly on suspension of the rules. It wasn't even a problem over there. The Humane Society of the United States supports it. The American Veterinary Medical Association supports it. The Association of Zoos and Aquariums supports it. The Jane Goodall Institute supports it. The Wildlife Conservation Society supports it. That is a very small portion. I cannot believe I actually had to come out here today.

With all due respect to my friend, he will have his reasons, but, honestly, I hoped that once in a while we could work together on a bill that is so obvious in its need.

We know these nonhuman primates have not been bred and domesticated over thousands of years like dogs or cats. It is a whole different world there. That is why the veterinarians support us. Nobody loves pets more than the Humane Society. Nobody loves pets more, but they know what can happen. A woman got her face ripped off.

So I am not going to go into the details of the attack at this time, but if I have to I will to get the votes of colleagues.

I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 80, the Captive Primate Safety Act, which was received from the House; and, further, that the bill be read the third time and passed and the motion to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection? The Senator from Oklahoma is recognized.

Mr. COBURN. Reserving the right to object, and I do, I ask unanimous consent to be recognized for 5 minutes to make comments regarding what has just been said.

Mrs. BOXER. Madam President, I ask unanimous consent to have 5 minutes following my friend from Oklahoma, and then I ask unanimous consent that Senator SANDERS have 15 minutes on his subject.

The PRESIDING OFFICER. Objection is heard to proceeding to the measure.

Is there objection? Without objection, it is so ordered.

Mr. COBURN. Madam President, on February 16, 2009, a pet non-human primate, NHP, attacked Ms. Nash, a friend of the pet's owner—almost killing her. My thoughts and prayers are with Ms. Nash and I am sure I join all of my colleagues in wishing her a speedy and full recovery.

This unfortunate event has rushed consideration of the Captive Primate Safety Act, H.R. 80. H.R. 80 would make it illegal to import, export, transport, sell, receive, acquire, or purchase non-human primates, such as monkeys and apes, by amending the over 100-year old Lacey Act to include ''any nonhuman primate.''

H.R. 80 does not affect laboratory animals, zoos, and some veterinarian cases.

This bill does not address a national priority and should not be considered by Congress.

Last Congress, I held the similar Senate version of the Captive Primate Safety Act, S. 1498, because of concerns with its fiscal impact and because I did not believe it was appropriate for the Federal Government to be regulating pets.

Today the Senate is trying to pass the similar House version that still seeks to increase Federal regulation of pets in a fiscally irresponsible manner without amendments or debate.

Supporters of this bill hope that somehow creating a new Federal law to prohibit transporting pet primates across State lines, on top of the Federal laws and regulations that already make it illegal to import them and the dozens of State laws that outlaw owning non-human primates as pets, and