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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. SIMPSON).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

HOUSE OF REPRESENTATIVES,
Washington, DC, May 18, 2005.

I hereby appoint the Honorable MICHAEL K. SIMPSON to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

Dr. Johnny Hunt, Pastor, First Baptist Church, Woodstock, Georgia, offered the following prayer:

Our Heavenly Father, we are grateful for the life that You have so blessed us with and for health and strength to enjoy it. Lord, thank You for the privilege to pray for President Bush, Vice President CHENEY, their Cabinet, and their families. Lord, I pray for this Congress that You would grant them wisdom.

Lord, thank You for this great country and for the freedom we enjoy. Please bless, protect, strengthen, and encourage our troops in Iraq, Afghanistan, and other places of service around the world. And please bless their precious families and protect them.

We join the Puritans of old and ask, ''Deliver us from the natural darkness of our minds, from the corruption of our hearts, from the temptation to which we are exposed, from the daily snares that tempt us. I realize that we are in constant danger while in this life. Let Your watchful eye ever be upon us for our defense.

Lord, we love You and need You. Help us to lead others in the way You have led us. We make our prayer in the name above every name, the name of Jesus Christ our Lord.

Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from North Carolina (Mr. MCHENRY) come forward and lead the House in the Pledge of Allegiance.

Mr. MCHENRY 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.

RECOGNIZING GUEST CHAPLAIN DR. JOHNNY HUNT

(Mr. LINDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LINDER. Mr. Speaker, it is my pleasure today to rise to recognize our guest chaplain, Dr. Johnny Hunt, the pastor of the First Baptist Church of Woodstock, Georgia.

It is a remarkable life story. He spent time many years ago in jail, and on a snowy night in January of 1973, he met his Lord and he spent much of the last 32 years on his knees. He travels the country speaking on behalf of his beliefs and his faith. He has built a remarkable church in Woodstock, Georgia, with 14,000 members.

Since his life has changed, he has changed the lives of thousands of other people at First Baptist and has made it his goal to tell as many people as possible about the new life that can be experienced through faith and spiritual guidance.

Today, the First Baptist Church of Woodstock serves the community in a number of ways, conducting Sunday services, providing mission training for trips abroad, providing daily child care, conducting English-as-second-language classes, and allowing individuals the chance to discuss a variety of issues affecting daily life.

His inspiring prayer will remain with us, and his dedication to the ministry will always be appreciated. I am very proud to have Dr. Johnny Hunt serve as our chaplain to the House today.

TRIBUTE TO THE LATE PFC TRAVIS ANDERSON

(Mr. SALAZAR asked and was given permission to address the House for 1 minute.)

Mr. SALAZAR. Mr. Speaker, I rise today to recognize and honor Army Private First Class Travis Anderson, who was killed in the line of duty while serving his country honorably in Iraq.

He was extremely proud to wear his Nation's uniform, and we should all pay tribute to this brave and courageous young man.

Each day our men and women willingly face unknown dangers as part of the effort to promote peace and democracy throughout the world. Their individual stories of honor and courage must not be forgotten.

Travis Anderson was from the San Luis Valley in Colorado, and he loved hunting and fishing. He was an excellent marksman and was one of the best known coyote hunters around. Travis knew from an early age that he wanted to use his talent to serve his country. His passion for serving his country and marksmanship earned him a place in the elite Special Forces.

On May 13, 2005, Pfc Travis Anderson was killed when a car bomb detonated

near his convoy in Iraq. He made the ultimate sacrifice for his country. He was 28 years old.

My heart goes out to Travis's family: his grandmother, Violet; his mother, Barbara; and his siblings, Toscha, Amanda, Bissy, and Buddy. They too have sacrificed for our Nation. I am humbled by their strength and perseverance in the face of such hardship.

Pfc Anderson died performing the most noble of deeds serving and protecting his Nation and fellow countrymen. Travis and his family have exhibited a rare form of selflessness and courage.

I submit this recognition to the United States House of Representatives in honor of their sacrifice so that Travis Anderson may live on in memory.

BIPARTISANSHIP IN THE HOUSE

(Mr. SHIMKUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHIMKUS. Mr. Speaker, yesterday we passed the first of 10 appropriation bills by a large bipartisan majority. It was nice to see and has become somewhat of a common practice this year.

The energy bill was passed by this House by a vote of 249 to 183 with 41 Democrats supporting. The highway bill passed with a vote of 417 to 9 with 198 Democrats supporting. The class action reform passed this House with a vote of 279 to 149 with 50 Democrats supporting. The death tax repeal passed, 272 to 162 with 42 Democrats supporting. Bankruptcy reform passed this House by a vote of 302 to 146 with 73 Democrats supporting. And the continuation of government passed by a vote of 329 to 68 with 122 Democrats supporting.

The public needs to know that this is a very impassioned body, and we should really appreciate that; but the true test of how we work together is when we count the votes.

ASTRONOMICAL ARROGANCE

(Mr. KUCINICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KUCINICH. Mr. Speaker, the administration is considering putting weapons in outerspace to give the United States the power to control the world. This astronomical arrogance pushes not simply aggression to new heights but may well preclude our Nation from spending money for anything other than weapons which will cost hundreds of billions of dollars.

The National Aeronautics and Space Act of 1958 states that it is ''the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind.'' Space was envisioned as a place of cooperation, of confirming human unity, a place where we could aspire to build a new platform of peace, fulfilling the prophecy of the poet Browning, who wrote: ''But a man's reach should exceed his grasp, or what's a heaven for?''

What has happened to our country? Why are we projecting fear and paranoia to such heights? Have we so lost our way and our faith that we are prepared to transform the heavens into hell? If the kingdom and the will of God is to be done on Earth as it is in heaven, what is to happen when the United States takes nuclear fire up to the gates of heaven? Such an offense against humanity could bring the wrath of God upon this Nation.

JUSTICE JANICE ROGERS BROWN DESERVES A FAIR VOTE

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, for over 200 years, judges have been confirmed by a simple majority vote.

When President Clinton was in office, his nominees required only 51 votes to be confirmed by the Senate. Unfortunately, Democrats have changed the rules and require today's nominees to receive an unprecedented 60-vote standard.

Justice Janice Rogers Brown of California is one of the many highly qualified nominees who are being denied a fair up-and-down vote. Justice Brown is the first African American to serve on California's highest court and was retained with 76 percent of the vote statewide in her last election. However, Democrats are denying her the opportunity of a fair vote simply because she was nominated by President Bush.

On Monday, Majority Leader FRIST explained in USA Today why the Democratic obstructionism is harmful to the American people and the constitutional process. When our courthouses sit empty, Democrats should not be focused on partisan games.

In conclusion, God bless our troops and we will never forget September 11.

BRITISH ASSOCIATION OF UNIVERSITY TEACHERS' BOYCOTT OF ISRAEL

(Mr. WEINER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEINER. Mr. Speaker, sometimes events happen one after another and no one calls attention to a pattern. Today, alarm bells should be going off about the rising threat of anti-Semitism. When Arab countries practiced anti-Semitism, when textbooks made Jews out to be devils, commentators here said, Well, that is just the Israeli conflict; do not worry. When some countries voted against Israel in the United Nations as a matter of routine, the pundits said it is just to win favor with oil-rich nations: Do not worry.

When synagogues are desecrated in France and Jews attacked in that country, the calm observers said: It is just peculiar to France, do not worry.

On April 22, the British Association of University Teachers representing nearly 49,000 higher education professionals decided to boycott all relationship and exchanges with Bar-Ilan and Haifa University in Israel. Now what do the ''do not worry about anti-Semitism'' crowd say? The very citadels of civilization are experiencing a rising tide of anti-Semitism. Not only Britain but the academics and intellectuals of Britain. We must call it out, confront it.

We have learned this lesson: the answer to anti-Semitism is not silence; it is not acquiescence. It is to call it by its name and fight. I call on the Bush administration to join me.

HARRY REID AND FBI FILES

(Mrs. MILLER of Michigan asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MILLER of Michigan. Mr. Speaker, I rise today to voice my concerns about a character assassination. This is a 21st-century form of McCarthyism being perpetrated by the Democratic leadership in the United States Senate.

I was deeply troubled by the Senate minority leader's statement on the floor of the Senate on Thursday about His Honor Judge Henry Saad of my home State of Michigan. Judge Saad, whose nomination to the Sixth Circuit Court of the United States Court of Appeals has been obstructed by the Democrats in the Senate, was unfairly and unjustly targeted by the Senator during the debate about filibustering.

The minority leader publicly alluded to Judge Saad's confidential FBI file. He intimated there was something troubling or at the least disconcerting in the file. These FBI files are raw. They have not been fully vetted, and every judicial nominee has one. What is most troubling to me is that the Senate minority leader either knew, or should have known, that this was a low blow. He either knew, or should have known, that Judge Saad cannot even see his own file. He cannot even defend himself. The Senator is smearing a man who is not allowed to respond by the Senate's own rules. That, of course, is hitting below the belt.

Mr. Speaker, the Senator is instituting a modern-day version of McCarthyism. I ask him to stop smearing and to start leading.

ANTONIO VILLARAIGOSA, MAYOR OF LOS ANGELES

(Ms. SOLIS asked and was given permission to address the House for 1 minute.)

Ms. SOLIS. Mr. Speaker, today I rise very proudly to congratulate Antonio Villaraigosa as the newly elected

mayor of the City of Los Angeles. Believe it or not, the last Latino mayor elected in the City of Los Angeles, which is overwhelmingly Latino and African American and Asian, was back in 1872. Can we imagine what a whirlwind of change has occurred?

Antonio Villaraigosa is one of the Nation's most promising leaders of our country. I served with him in the State assembly and he served as the assembly speaker for the great State of California, where he helped to expand the Healthy Families program, which we know here as at the Federal level as the S–CHIP program, and helped to pass one of largest park bonds in the State of California which helped to identify areas in low-income communities to establish urban conservancies. And my district was a proud recipient of one of the largest urban conservancies in California.

Antonio is one of those individuals who will bridge the gap in our communities. He is about empowering people, empowering our communities, putting public safety and education first, and helping to fight crime.

I look very much toward his leadership and know that the country is looking at our great State of California, and especially Los Angeles; and I am proud to say that a portion of my district, he and I have similar jurisdiction in the community of El Serreno. So he is a champion, someone I continue to work with, and I extend the best wishes to him and his family.

THE ECONOMY AND JOBS

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, last year's trade deficit reached $670 billion. Our Federal deficit was over $300 billion. Top-rate jobs have gone overseas. How did we get in this situation? How did we get in this position?

Mr. Speaker, over the last generation Congress has passed laws with good intent, but with terrible consequences. Our government has created barriers to creating jobs, and the results have not been good.

Other nations are rising to the challenge of tomorrow's economy. China is graduating 350,000 engineers every year. India graduated 80,000 software engineers last year. While we are reducing the number of visas for creative talent in America, other countries are developing their talent.

Mr. Speaker, we have to change the environment in America and remove the barriers created by Congress. If we are going to avoid becoming a third-rate economy in the future, we have to pass legislation like the Central America Free Trade Agreement so we can create jobs, strengthen our economy, balance the trade deficit, balance the Federal budget right here in America. We can do it by passing this legislation along with others, Mr. Speaker; and as we lead the challenge for competitiveness in America, we hope that our colleagues will join with us from the other side of the aisle.

□ 1015

SENATE AS THE NEW WHITE HOUSE RUBBER STAMP

(Ms. LEE asked and was given permission to address the House for 1 minute.)

Ms. LEE. Mr. Speaker, Senate Republicans, at the prodding of the White House, will soon attempt to abolish the use of the filibuster when it comes to judicial appointments. It is clear that the White House is encouraging this action so it can have more control over the United States Senate. For over 200 years the right to filibuster, or the right to unlimited debate, has been a Senate tool that encourages compromise and moderation. Compromise and moderation, not two words that you equate with either this House or the White House unfortunately.

President Bush does not like to compromise. That is why he is unhappy with having 95 percent of his judicial appointees approved by the Senate. Despite the fact that he has had more judges approved than any President since Reagan, Bush encouraged Senate Republicans to take the nuclear option by reappointing judges that could not receive bipartisan consensus during his first term.

The President is also not a moderate. He said that conservative judges Scalia and Thomas are his favorites on the Supreme Court.

The President is encouraging this extreme action so that he can eventually have Senate Republicans rubber stamp conservative justices to the Supreme Court, without any attempt to find common ground. This democracy should not tolerate this abuse of power.

SOCIAL SECURITY DEMOCRAT PLAN

(Mr. MCHENRY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCHENRY. Mr. Speaker, goodness gracious. The day has finally come. The Democrats, after 5 months, have proposed a way to fix Social Security, and they will fix it all right, by raising our taxes. That is right. The new Democrat plan would increase taxes to fix Social Security.

The proposal would hike taxes by 6 percent on middle class families and small business owners. What more can we expect from the tax and spend party, Mr. Speaker? Instead of transforming the program, by modernizing retirement security, the Democrats want to use an old method, by raising taxes.

But there is a new, better solution, Mr. Speaker: personal savings accounts, personal retirement accounts. By allowing younger workers to put a portion of their Social Security taxes into personal retirement accounts, we lessen the liability on the program and we fix Social Security in a lasting and sincere way.

When folks have personal retirement accounts, there is no Social Security surplus for politicians to raid, and we do not have to worry about Democrats raising taxes to do it.

Personal retirement accounts, Mr. Speaker, a new solution to update and strengthen an old program.

LOOKING AHEAD TO THE SUPREME COURT

(Mr. CROWLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CROWLEY. Mr. Speaker, the extreme action Senate Republicans want to take later this week has nothing to do with seven judges who have yet to be approved by the Senate. No, the Senate has approved more of President Bush's nominees than any President since President Reagan. In fact, he has had so much success that he is now presiding over the lowest court vacancy rate in 15 years.

The Republican power grab is about clearing the way for a Supreme Court nominee who only needs 51 votes instead of 60 votes.

Conservative Senate Republicans do not want a David Souter or a Stephen Breyer, judges who were confirmed with nearly unanimous bipartisan support. Instead, they want a Clarence Thomas, who was confirmed with only 52 votes and has since been proven to be an extremist on the Court.

Mr. Speaker, Senate Republicans are preparing to blow up 200 years of tradition in the U.S. Senate, abusing their power now, so they can have greater control over the judiciary later on. That is not how our Founding Fathers envisioned the checks and balances that exist between the branches of our government. The sad fact is, I do not think my colleagues on the other side of the aisle care.

EMBRYONIC STEM CELL RESEARCH

(Mr. PENCE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, in the coming days Congress will consider legislation to make taxpayer dollars available for what is known as embryonic stem cell research, setting the case for an imminent Presidential veto.

In 2001, President Bush made the moral dimensions of scientific testing on human embryos clear. These are the principles.

It is morally wrong to create human life to destroy it for research. Also, it is morally wrong to take the tax dollars of millions of pro-life Americans

and use them to finance research that they find morally objectionable.

The choice of our time was described millennia ago: See I set before you blessings and curses, life and death. Now choose life that you and your children may live.

I urge my colleagues to stand for the sanctity of life at every level. Stand with President George W. Bush. Reject taxpayer funding of human embryo research.

FRIST'S PAST ACTIONS DO NOT SUPPORT TODAY'S WORDS

(Ms. KAPTUR asked and was given permission to address the House for 1 minute.)

Ms. KAPTUR. Mr. Speaker, it is not in the American people's interest to change Senate rules that assure that all points of view are heard and which have been in place for over 200 years.

Mr. Speaker, today Senator FRIST is prepared to take the extreme action of upending historic Senate rules under the guise that he says all judicial nominees are entitled to an up or down vote.

That is what he is saying today, but he was singing a different tune back when President Clinton was in the White House. Back in 2000, Republican Senators attempted to filibuster two of that administration's appointments to the 9th Circuit. Senator FRIST joined some of his Republican colleagues back then in continuing a filibuster of nominee Richard Paez.

There are also other ways to prevent up or down votes on the floor. They can stall them in committee, and that is what happened to President Clinton's nominees. More than one-third of Clinton's appeals court nominees during the last 4 years of his presidency were never given an up or down vote on the Senate floor.

We did not hear Senator FRIST demanding an up or down vote then, and while Democrats and President Clinton complained about the treatment of Clinton's nominees from Republicans at that time, they never came close to subverting 200 years of historic rules that have been in place to assure majority and minority opinions in that Chamber are heard.

Sometimes, with one party rule, the majority becomes abusive in its use of power. This is just such an instance. The Senate as an institution belongs to the American people, to those who agree with the majorty and those who hold minority opinions all have a right to be heard. Under our Constitution and time-tested institutional procedures, let all our people's voices be heard.

FEDERAL BUDGET

(Mr. GINGREY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY. Mr. Speaker, I rise today to remind my colleagues that we have a responsibility to use restraint in our budget process.

This week, we begin debate on a series of appropriations bills that will fund America's priorities and necessities. We should use this moment to redouble our efforts to ensure Federal money is not wasted on pet projects and underperforming programs.

As President Bush reminded us in his State of the Union address this year, ''Taxpayer dollars must be spent wisely, or not at all.''

Mr. Speaker, we have two courses of action. First, we must keep nonmilitary discretionary spending in check. Second, we must attack our bloated and often inefficient bureaucracies by eliminating waste, fraud and abuse.

Much of the money in our Federal budget is well spent, but our goal should be for all of the money to be spent wisely.

We have a responsibility to the people of this Nation to use their tax dollars with care. The American family pays too high a price in taxes for our burgeoning Federal Government, and spending restraint will help lower taxes on those who need it most, hard-working Americans.

THE SENATE FILIBUSTER

(Ms. WATSON asked and was given permission to address the House for 1 minute.)

Ms. WATSON. Mr. Speaker, today, we may find out whether President Bush and his Congressional colleagues want to turn the Senate into a second House of Representatives, a rubber stamp for a right wing agenda and radical judges.

President Bush wants to pack the Federal courts with the extreme right fringe of this country, putting at risk the rights and liberties this country has fought for and protected for centuries. He wants to create a Supreme Court that will not act as an independent branch but instead wag its tail at every beck and call.

Mr. Speaker, Republican leaders are out of control. Instead of governing and tending to the Nation's business, they are on a quest for absolute power. They are on a mission to trash our Founding Fathers' commitment to the separation of powers and the abhorrence of simple majority rule.

While the Republicans continue their odyssey for absolute power, Democrats are fighting to protect our constitutional checks and balances and to ensure that we remain a Nation ruled by laws and not by men.

SENATE LEADERSHIP WANTS AN UP OR DOWN VOTE ON COURT NOMINEES

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, as my colleagues know, the United States Senate leadership wants to have an up or down vote on Supreme Court nominees. Why? Because that is what the Senate should be doing: voting yes, voting no.

We have heard that the President is promoting extreme fringe members of the judiciary for appointments on his court. That being the case, why do the Democrats not have the guts to just go ahead and debate it in public, instead of hiding behind the cloak of committee? It is incumbent protection. Let us bring the votes to the floor.

I want to introduce to my colleagues one of these nominees, Justice Janice Rogers Brown. She was elected with 76 percent of the State-wide vote in California, hardly an extremist if one gets 76 percent of the vote in California. She was born the daughter of a sharecropper in Alabama in 1948 and grew up under Jim Crow laws in the South. She is a self-made woman. She is a fighter. She is a mainstreamer. She deserves an up or down vote.

That is all the Senate majority leader is asking for, asking these very cowardly Democrats to say you know what, if you believe that somebody elected with 76 percent of the vote in California is an extremist, have the guts to put it on the board and vote yes and vote no, but let us see where you stand.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). Members are cautioned to refrain from engaging in personalities with regard to Senators.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.J. RES. 23

Mr. CARNAHAN. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.J. Res. 23.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 1817, DEPARTMENT OF HOMELAND SECURITY AUTHORIZATION ACT FOR FISCAL YEAR 2006

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 283 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 283

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1817) to authorize appropriations for fiscal year 2006 for the Department of Homeland Security, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are

waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Homeland Security. After general debate the bill shall be considered for amendment under the five-minute rule. In lieu of the amendments recommended by the Committees on Homeland Security, Energy and Commerce, and the Judiciary now printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute printed in part A of the report of the Committee on Rules accompanying this resolution. That amendment in the nature of a substitute shall be considered as read. All points of order against that amendment in the nature of a substitute are waived. Notwithstanding clause 11 of rule XVIII, no amendment to that amendment in the nature of a substitute shall be in order except those printed in part B of the report of the Committee on Rules. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), my friend, pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, the rule before us today is a fair, structured rule that provides for 1 hour of general debate, equally divided and controlled by the chairman and ranking minority member of the Committee on Homeland Security.

It provides that in lieu of the amendments recommended by the Committee on Homeland Security, the Committee on Energy and Commerce, and the Committee on the Judiciary now printed in the bill, the amendment in the nature of a substitute printed in part A of the Committee on Rules report shall be considered as the original bill for the purpose of amendment and shall be considered as read.

It waives all points of order against the amendment in the nature of a substitute printed in part A of the Committee on Rules report and makes in order only those amendments printed in part B of the Committee on Rules report.

□ 1030

These amendments may only be offered in the order printed in the report and only by the Member designated in the report. They shall be considered as read, debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment or a demand for the division of the question in the House or in the Committee of the Whole.

Finally, this rule waives all points of order against the amendments printed in part B of the Committee on Rules report and provides for one motion to recommit with or without instructions.

Mr. Speaker, I rise today in strong support of this rule and its underlying legislation, the first ever Homeland Security authorization legislation. The rule before us today is a fair rule that will allow for consideration of 25 amendments to the legislation, 13 of which are sponsored by a Member of the minority party, 10 by Members of the majority party, and two which enjoy bipartisan sponsorship.

This bill, brought to the floor today by the leadership of my friend, the gentleman from California (Mr. COX), and the ranking member, the gentleman from Mississippi (Mr. THOMPSON), empowers the core mission of the Department of Homeland Security, which is, first, to prevent terrorist attacks within the United States; second, reducing America's vulnerability to terrorism; and, third, responding to and recovering from terrorist attacks if some tragedy does occur.

It accomplishes this necessary and singularly important goal by ensuring that the Department has the resources and the authority it needs to prevent and prepare for terrorist attack, and to respond to and recover from an attack if one does occur.

Through the authorization of over $34 billion in homeland security spending in 2006, this legislation will ensure that our Nation's highest funding priorities are met. It also includes a number of other legislative and oversight measures to strengthen and improve the safety of Americans here at home, including:

Deploying counterterrorism technologies within 90 days so that Federal, State, local, and private sector officials can prevent domestic terror;

Funding 2,000 additional border patrol agents;

Assessing the effectiveness of operations at the Departments of Customs and Border Protection and Immigration and Customs Enforcement so that spending on these programs is efficient and effective;

Consolidating the current background check system, so that individuals can be prescreened by checking their names and biometric identifiers against terrorist watch lists and other criminal databases;

Adopting risk-based cargo screening, and expanding the number of foreign ports where Customs and Border Patrol agents screen incoming containers from 36 to approximately 50 ports;

Improving information analysis and infrastructure protection recruiting;

Improving nuclear and biological intelligence;

Establishing a one-stop shop within the Department of Homeland Security for reliable, comprehensive, and accessible open-source intelligence information and analysis;

Providing better information to local leaders by requiring that any threats be communicated in a manner that limits confusion and operational conflicts;

Clarifying the color-based threat system so that specific information is given directly to regions, States, localities, and private sector industries;

Creating a National Terrorism Exercise program to coordinate and establish minimum standards for all Federal, State, and local terrorism drills; and

Providing for greater Federal, State, and local homeland operations collaboration that needs to take place.

By providing leadership and guidance on these issues and many others, Chairman COX and his committee have provided this House with a product that I believe is effective in providing for the security of our homeland, which deserves the support of every single Member of this body. I urge my colleagues to support this rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman from Texas for yielding me the customary 30 minutes, and I yield myself such time as I may consume.

Mr. Speaker, famed writer and political commentator George Orwell once wrote that ''people sleep peaceably in their beds at night only because rough men stand ready to do violence on their behalf.'' That statement should have a special resonance for Americans in today's world.

We are fighting a new kind of war every day here in America. Our struggle against terror is one that requires us to focus our resources inward like no time in our history, because today the battlefields are the streets and sidewalks of this country and not some faraway land.

We have to ensure that our government is prepared to responsibly address any threat that imperils the peace and prosperity of this Nation. Only then will the American people truly sleep peaceably through the night. That is why this Homeland Security authorization bill is critically important, because it represents the blueprint of our homeland defense and our collective peace of mind for many years to come.

With such a weighty mandate, I would like to congratulate the Committee on Homeland Security in putting together their first committee authorization. But I would have wished

today for an open rule, and we are still faced with serious issues of accountability and trust in the management of the Department of Homeland Security. This is in no small part as a result of the Bush administration's unwillingness to fill critical job vacancies at the senior levels of the agency.

In fact, the Department of Homeland Security has had two Secretaries and three Deputy Secretaries in 2 years. Today, 42 percent of the high-level political positions inside the agency are vacant or staffed by people who have already announced their departures. This lack of stability at the Department has impacted the agency's ability to meet its mandate effectively.

For example, in my district, the Peace Bridge, which connects Buffalo to Canada, continues to face obstacles in moving to alleviate traffic congestion. Last December, the United States and Canadian governments agreed to move forward with a shared border management initiative which would remedy the situation. But it has been stalled by endless bureaucracy and lack of accountability at the Department of Homeland Security.

But it is not just a lack of accountability that has plagued the agency. Our country's epic struggle against terror is also a struggle against fear. We recently discovered that the infamous homeland security terror alerts, which were raised so often in the months leading up to the Presidential election, and rarely since, if ever, were repeatedly elevated over the objections of the Homeland Security Secretary and his staff. The terror alerts were raised on what Secretary Ridge himself called ''flimsy evidence'' by individuals in the administration who were really aggressive about raising it, which shows that they were used for political purposes.

I know I am not the only one who questions why in the 5½ months since election day there has not been a single terror alert. Perhaps Mr. Ridge's comments put the answer in the proper perspective. That constitutes a violation of trust with the American people, and we cannot afford that in this war on terror. We ought not to employ the tactics of fear as a means of control in our pursuit to keep the homeland secure. Such draconian measures are not in keeping with the spirit of America.

It is beneath us as a Nation to have partisan politics injected into our national security apparatus in an ugly and manipulative way. We dare not trade in a currency of fear, but rather should strive to liberate ourselves from fear through awareness of our world and an honest understanding of the challenges which lay before us.

I know many of my colleagues on both sides of the aisle agree on this principle, and I am pleased that the committee has seen fit to include more specific criteria for how the terror alert is and is not to be utilized. Likewise, the appropriation bill passed yesterday by a nearly unanimous vote also included measures that promise to provide a higher degree of accountability at the agency, accountability that I am sure we all agree is sorely needed.

Despite the serious problems at DHS, which still must be addressed, there is much in this authorization bill that I believe every Member of Congress will support. As a representative from a border State, I am pleased to see that the legislation authorizes $1.9 billion, enough money to hire 2,000 additional border agents this year, agents sorely needed. This funding would mark a welcome change in the administration's approach to handling border security issues away from an economically disastrous agenda of imposing passport requirements on our citizens who want to cross our northern border and towards a more sensible policy of effective border enforcement, one which maximizes security resources and safeguards the freedoms and options our citizens and our trading partners deserve.

But that would require that the majority had the will to actually spend the border security dollars and not just authorize them. It is, after all, easy to talk tough about securing borders, but we need action. We need a true commitment from this Congress to put more agents in the field. We seem to have an ongoing problem here with leadership when it comes to this issue where reality does not measure up to rhetoric. It is my hope that this time will be different.

The House leadership's decision to include in this rule two amendments of mine suggests there may be room for common ground on the critical border issue after all. Clearly, the most effective tool we have to protect our borders is knowledge. Those of us who represent border economies understand how important the unencumbered flow of commerce across the northern border is to continued economic growth and to prosperity. The NEXUS program, we hope, will reduce the long waits at the border and allow an unprecedented level of security. It will be smart management, and I look forward to the upcoming debate on the amendment.

But there are many others, I know, we would all like to debate here on the floor today; but of 89, only 25 were ruled in order, which is less than 30 percent. And as I have said previously, I do wish this had been an open rule because we need to spend the extra time and we need to allow our colleagues to consider more ideas on how to improve the homeland security. Is that not what democracy is about, debate and deliberation? Our framers thought so, and I think so, and I think most of my colleagues and most Americans think so.

One amendment we will not consider today, which I regret, would have established a much-needed railroad security plan for America, which we do not have. And, incredibly, an amendment which would have required all cargo transported on commercial and passenger airplanes be inspected for explosives was not allowed. How could we not allow a debate on a critical homeland security issue such as this?

My colleagues, the gentleman from Georgia (Mr. BARROW) and the gentleman from Massachusetts (Mr. MARKEY), offered an amendment which would have upgraded security requirements associated with transporting extremely hazardous materials. But, inexplicably, it too was blocked from consideration.

But just as we cannot afford to live in fear in this age of terrorism, we also cannot fear engaging in genuine debate in consideration of those matters which may be controversial for some, but which are clearly important for the safety of all Americans. The free flow of debate and democracy are a hallmark of our American values, which this House was designed to embody. They are the core values which separate us from those who seek to destroy us and our way of life. And here in the cradle of democracy, we diminish those most American of values at our own peril.

Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume to say that it makes me so proud to hear the gentlewoman from New York talk with glowing admiration not only about how important this Homeland Security bill is but about the hard work that went into it and how it became a part of a better product.

Yesterday, the Committee on Rules had an opportunity, virtually all day, to hear testimony from Members across the aisle talk about ideas and thoughts and suggestions that they had that would make this a better bill. The chairman, the gentleman from California, not only listened to them but he worked with the chairman of the Committee on Homeland Security, the gentleman from California (Mr. COX), on perfecting this bill by adding in amendments.

As I mentioned earlier, Mr. Speaker, there are a large number of amendments that were added to this, perfecting the bill, perfecting the process, but more importantly giving an opportunity for Members of this body to make sure, from their own perspective, that Homeland Security became more effective by providing the information that was needed to address their local communities.

Mr. Speaker, I am pleased to yield 5 minutes to the gentleman from California (Mr. DREIER), the chairman of the Committee on Rules.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding me this time, and I rise in strong support of this rule and the underlying legislation.

We are about to embark on a very new experience for us. We all know that September 11 of 2001 changed our lives forever. We obviously have had to focus for the first time on our homeland security. We know that shortly

after September 11 the President of the United States stepped up to the plate and put into place this now Cabinet-level Department of Homeland Security, but it obviously took a period of time for us as an institution to put together the structure that would allow for adequate oversight.

At the beginning of this Congress, we established a new permanent standing Committee on Homeland Security, and we selected my extraordinarily able colleague, the gentleman from California (Mr. COX), to serve as chairman of the Committee on Homeland Security dealing with jurisdictions that fell within a wide range of other committees.

□ 1045

We had our committee chairmen and ranking members agree to come together on establishing this new Committee on Homeland Security. Obviously the jurisdiction is very far-reaching. It is jurisdiction which focuses on a lot of new things for us. The fact that when we refer to men and women in uniform on the front line, they are no longer just the men and women in our Armed Forces, they are now men and women who wear the uniforms of firefighters and law enforcement officers. We now have, because of the threat, a greater focus on border security. We have focused on ensuring that people who pose a terrorist threat to us are not able to get documents that have been easily fabricated in the past.

Frankly, I will say that we are continuing to work on that, and I urge my colleagues to join in cosponsoring H.R. 98, which will help us produce a counterfeit-proof Social Security card so we can diminish the flow of illegal immigration with the magnet of jobs that draws people across our southern border and instead allow our Border Patrol, which is increased in this authorizing legislation, to focus their attention on criminals and those who pose a terrorist threat to the United States of America.

Now what is it that we have done with this rule and the legislation? With the rule, I am very proud of having had, as the gentleman from Texas (Mr. SESSIONS) so ably said a fair rule, and I am proud of the work he has done. He was a member of the Select Committee on Homeland Security. He was unable to serve on the committee in this Congress because of the exclusivity of the Committee on Rules, but as the gentleman from California (Mr. COX) pointed out, he is serving as the Committee on Rules liaison focusing on these very important new homeland security issues.

One of the things that we can do, as we increase the Border Patrol, if we can pass H.R. 98, which will decrease by 98 percent the flow of illegal immigrants across our southern border, is letting the Border Patrol put their time and energy into trying to diminish the flow of criminals and those who pose a terrorist threat to us. I urge my colleagues to support that effort.

But I would note that the rule which has been put together allows for the consideration of 25 different amendments. We will be having a full 5 hours of debate on this issue, and I am pleased we made in order a Democratic substitute which is 221 pages long, a full substitute which frankly includes many of the amendments that have been proposed by both Republicans and Democrats. A number of those are included in the substitute.

I am also very proud of the fact that we were with the daughter, son-in-law and grandson of our distinguished ranking minority member, the gentlewoman from Rochester, New York (Ms. SLAUGHTER), and we were able to make in order two amendments which the gentlewoman has proposed to the committee.

I will say that of those 25 amendments, 13 of them have been offered by Democrats, made in order, 10 by Republicans, and two are bipartisan amendments with Democrats and Republicans coming together to deal with this issue.

So I will say, I believe we are moving into an extremely important area. We are going to address a wide range of concerns. Yes, there are other concerns that we hope can be addressed. But the mere passage of this legislation, the mere passage of this legislation and moving it to the President's desk will, I believe, help us address a lot of the concerns that some whose amendments were not made in order have been trying to address. I appreciate my colleagues' support in this effort.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. MCGOVERN).

Mr. MCGOVERN. Mr. Speaker, the Republican leadership in the Committee on Rules have done it again. Once again, they have bent over backwards for big business while putting the safety of the American public at risk.

Last night, on a party-line vote, the Republicans in the Committee on Rules refused to allow the House to consider two important amendments which would have improved safety on airplanes and would have notified the flying public about the safety of the airplanes they fly on. Currently, cargo that is transported on commercial airplanes is not inspected. Even though our passenger luggage is inspected by TSA, the cargo that is transported on those same planes is not inspected. The TSA has not implemented regulations as the law requires them to do to inspect the cargo on these planes, and now the Republican leadership has taken direct action to prevent these inspections.

Yesterday, the gentleman from Massachusetts (Mr. MARKEY) asked that the Committee on Rules make in order an amendment that would have required all cargo to be screened within 3 years. We all go through these metal detectors. We all have to take off our shoes and empty out our pockets. We do that because we want to be safe. Certainly we should screen all cargo.

Additionally, the gentleman from Connecticut (Mr. SHAYS) offered an amendment that would require TSA to notify passengers flying on a plane carrying uninspected cargo, the rationale being if we are not going to inspect the cargo the flying public should at least have the right to know that they are flying on a plane with uninspected cargo.

Mr. Speaker, I do not think that is too much to ask for, but the Republican leadership in the Committee on Rules decided not to make these amendments in order. They decided not to allow a debate. They decided not to allow a vote. I asked the distinguished chairman of the Committee on Rules why these amendments were not made in order, and all he could say is they decided not to. That is not an answer.

These amendments would make our skies safer. They are no-brainers, and yet the Republicans refuse to even allow us to debate and vote on these amendments. Instead of taking action to protect the American public, the Committee on Rules decided to protect the interest of the airlines and the cargo shippers.

Mr. Speaker, legislation on homeland security should result in a safer public. Unfortunately, the leadership is going in exactly the wrong direction when they denied these two amendments from being made in order.

Mr. SESSIONS. Mr. Speaker, I yield 4 minutes to the gentleman from Indiana (Mr. SOUDER), chairman of the Subcommittee on Criminal Justice, Drug Policy and Human Resources.

(Mr. SOUDER asked and was given permission to revise and extend his remarks.)

Mr. SOUDER. Mr. Speaker, I thank the gentleman from California (Chairman DREIER), the gentleman from Texas (Mr. SESSIONS), and the leadership for bringing forth what I believe is a fair rule. One way we are going to tell it is a fair rule is because people who do not like certain amendments being made in order from certain committees will object. This has been a very difficult process, and as the Committee on Rules along with the gentleman from California (Mr. COX), the chairman of our Permanent Select Committee on Homeland Security on which I also serve, this has been an incredibly difficult process from the time this committee has been organized.

The American people want to see action on homeland security. They do not want to hear about Congress' jurisdictional fights, how we believe we have this in this committee and this in this committee, and therefore we are immobilized in Congress. Yet at the same time there are practical reasons, and let me illustrate a few of my own concerns and how I approach this amendment process.

Mr. Speaker, I had four amendments. Two were made in order, and arguably the two most important were not. I

withdrew them in front of the Committee on Rules after talking with the gentleman from California (Mr. COX) and the other relevant committees. It shows the dilemma we face. One of them is to merge the Border Protection Agency and ICE inside Homeland Security. It is a system that is not working. This is not a commentary on the gentleman from Ohio (Mr. BOEHNER), who is doing the best he can with an organizational nightmare as we blend these things together.

But in fact, the challenge here of inland immigration is somewhat a different problem, as is deportation, from the border question as it relates to homeland security. So obviously the gentleman from Wisconsin (Mr. SENSENBRENNER) has deep concerns, and we have to figure out what is going to be under the Committee on Homeland Security and what is under the Committee on the Judiciary.

Similarly, a second amendment I had on intelligence that is trying to coordinate this proliferation of intelligence agencies, and we seem to create a new one every 6 months, both in Congress and in the administration, one or the other of us, and we are getting all this stovepiping and no coordination which is exactly opposite of what the 9/11 Commission proposed.

I had an amendment to propose consolidating inside Homeland Security. But guess what, the funding for that comes from several different committees. We could have probably worked this out. I want to continue to work on this. It has passed the House, but the question is what falls under the Committee on Homeland Security and what falls under defense and intelligence committees. These things are not easy to work out.

I believe this rule, by allowing 25 amendments, is clearly identifying the direction of the House. This is the primary Committee on Homeland Security. Where it clearly falls under Homeland Security, these amendments need to be in order and this committee needs the authority to address it.

I thank the gentleman from California (Mr. DREIER) and the leadership for letting this expand. Today is a skinny bill. There are other things we could have done, but it is important to set the precedent. Every year we are going to have an authorization bill on Homeland Security, like the other committees, and I am sure that will be spoken to multiple times today. This rule illustrates the difficulty.

Many Members are very frustrated that they did not get their amendments in order. I am frustrated that I did not get two of mine in order, but this is a complicated process. Today is the first step and the Committee on Rules has made an important first step in allowing 25 amendments, many over the objections of people who are objecting to jurisdiction, and keeping enough out that we can keep a coalition together to show the American people we want to move homeland security bills and this House will not be held up by jurisdictional fights over homeland security. Our goal is to protect the American people and not fight over our committee jurisdictions.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Mississippi (Mr. THOMPSON), the ranking member on the Committee on Homeland Security.

Mr. THOMPSON of Mississippi. Mr. Speaker, I rise in opposition to this rule. As a ranking member of the Committee on Homeland Security, I strongly believe this base bill is deficient in a number of significant areas.

This 79-page bill fails to address a number of critical aspects of homeland security and does not deliver on the homeland security commitments made in the 9/11 Act. That is why I, like many of my colleagues in the House, felt compelled to submit amendments to the Committee on Rules for this bill. All told, there were 85 amendments offered, many of them from my colleagues on the Committee on Homeland Security.

The rule before us today will allow 24 amendments to be considered by the full House. That is simply wrong. The rule blocks a meaningful debate on important amendments like the one the gentlewoman from New York (Mrs. LOWEY) offered to close a major aviation security gap. It would have required airport workers to be physically screened before accessing planes in restricted areas of airports. The rule also denies consideration of an amendment offered by the gentlewoman from California, (Ms. LORETTA SANCHEZ), the ranking member of the Subcommittee on Economic Security and Infrastructure Protection. It would have closed a major port security gap by requiring validation inspectors for shippers.

This rule also prevents the gentlewoman from the District of Columbia (Ms. NORTON) from presenting her amendment to close gaps in the public transit and rail system. It also denies the House the opportunity to consider amendments offered by the gentleman from Massachusetts (Mr. MARKEY) to improve chemical plant security, develop policies for rerouting hazardous material, and grant DHS whistleblower protections.

Mr. Speaker, I could go on and on listing good amendments that were done so wrong by this rule. But instead, I will close by urging a no vote on this rule.

Mr. SESSIONS. Mr. Speaker, I yield 4 minutes to the gentleman from Florida (Mr. MICA), the chairman of the Subcommittee on Aviation.

Mr. MICA. Mr. Speaker, I thank the gentleman for yielding me this time. I am pleased to speak before the House and also for the record on the rule.

Mr. Speaker, I intend to support the rule, but I think it is very important that at this juncture in proceeding with this important Homeland Security authorization that some things are said and also some items for the record are noted.

The gentleman from New York (Mr. ISRAEL), who I have had the pleasure to work with from the other side of the aisle, crafted legislation which was incorporated into the intelligence reform bills. One of the titles of that bill that the President signed, dealing with the threat and the direction of Congress towards trying to deal with the problem of MANPADS, and that is shoulder-launch missiles, and the threat that they posed.

One of the things that we did was to try to move that project forward. Sometimes in homeland security we spend a lot of money and we do not get a great deal of results. I view, as chairman of the House Subcommittee on Aviation, one of the greatest threats that we face other than a suicide bomber or several of them getting on planes, which they can easily do in our flawed system today, I view the second greatest threat as shoulder-launch missiles.

□ 1100

With the conflict in the world, particularly in the Middle East, thousands of these shoulder-launched missiles have gone on the market. So we worked to, one, curtail the number of shoulder-launched missiles; two, encourage international treaties, develop ground-based systems, and this bill does something towards that.

We started a program several years ago when we saw this threat and we tried to do our best to move forward development of a commercial shoulder-launched missile. This bill unfortunately limits the amount of money that can be spent on moving that program forward. The gentleman from New York (Mr. ISRAEL) had an amendment that was not included here that would relieve that restriction. Yesterday we were wise in appropriating what the administration requested for funding the program, but this authorization is lacking. I would have preferred to have his amendment in here.

My purpose for being here on May 18, 2005 is to remind us that they missed in Kenya an Israeli plane in November 2002 with many passengers. They missed in Iraq in 2003 a DHL plane that also could have been taken down by shoulder-launched missiles.

Ladies and gentlemen of the House, we have been very fortunate so far and we cannot be remiss in making available the best technology to protect the traveling public. Not that we have to hang one of these on every commercial aircraft, but we will be remiss if we do not carry this program that has already started forward. If we miss a lick here, it will be much to our regret. I regret that the gentleman from New York's amendment was not included in this.

I will support this. I look forward to working with the gentleman from California (Mr. COX) and others as they take on the responsibility of protecting not only the homeland but the flying public.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Speaker, I thank my friend from New York for yielding me the time. I also thank the Committee on Rules for making in order an amendment by myself and the gentleman from Florida (Mr. MICA) that will help perfect the Federal flight deck officer program. Many, many pilots are willing to volunteer to undergo rigorous training to certify themselves as Federal flight deck officers to become the last line of defense on our planes. There cannot be an air marshal on every plane. We still do not have secondary barriers in the planes. There are times when the flight deck door is open. There are ongoing threats. It is essential to improve that program and I am hopeful Members will look favorably upon that amendment later today.

With that said, I wish that the rule was more inclusive. My colleague, the ranking Democrat on the Subcommittee on Aviation, wanted to offer an amendment to mandate that the taxes we are collecting from the traveling public to pay for enhanced security at the airports; that is, to put in-line explosives detection systems at airports that do not have it across America to find explosives in checked bags, and possibly that same equipment could be used for cargo on those planes, was not allowed. It is unfortunate.

Most Americans are under the impression that all of their baggage is being screened. It is not being effectively screened. Some of it is being hand searched. Some of it is being trace searched. Some of it is being looked at. Some of it is being loaded on the plane. And some of it is going through very sophisticated in-line explosives detection systems, and we have the numbers. Where those systems exist, we can find threat objects, explosives a very, very high percentage of the time. Where those systems do not exist, there is a very disturbing lack of detection of test objects, threat objects, explosives.

We also have a huge and gaping hole at the passenger checkpoint. The last wakeup call we are probably ever going to get before the day when planes start falling out of the sky was in Russia where two terrorists, women, boarded planes with explosives, we do not know exactly whether they were in their carry-on bags or whether they were wearing suicide belts, but here in the United States of America we are doing nothing to find suicide belts or explosives in bags. We are still using 1980s technology at the checkpoints, technology that was thrown out of the United States Capitol more than a decade ago as inadequate to the threat, thrown out of the White House and other places. Yet aviation was attacked and aviation in Russia was attacked by what I think, as does the chairman of the committee, is the most likely future threat, which is explosives. We need to move ahead with more robust acquisition of that equipment in the near future and this bill does not mandate that.

I would congratulate the gentleman from California (Mr. COX) for the first ever authorization. It is a good first start. Remember, the Homeland Security Department started out of chaos. The President refused to create a homeland security Cabinet-level position or department until one day when an FBI agent was spilling her guts here in Washington, D.C., to a committee and Karl Rove wrote out the plan on the back of a napkin. Congress is just starting to make sense of what the Department of Homeland Security will be in the future.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

We have had a number of our colleagues make observations, just as the gentleman from Oregon did, about the importance of not only the debate that takes place here in the House but also about our desire to make homeland security even better, more robust, more dynamic, aiming at the threat. We heard the gentleman from California (Mr. DREIER) talk very eloquently about the need for border control, for us to make sure that those people who might be terrorists or may be criminals entering this country.

I am sure we will hear a debate about cargo, cargo ships, thousands of containers that come to this country every day, the commerce of this country that is affected. We know that we talked yesterday in the Committee on Rules about the Canadian border and how the Canadian border needs the attention that they not only deserve but also with the flow of goods and services with the economies that are affected and products and services that are denied when the backlogs occur. Each of these has been a part of the arguments, the debates, the discussions that the gentleman from California (Mr. COX) has taken into account, has made sure that he has taken them to the Homeland Security Department, has spoken with the administration.

It just makes me very proud today to see our Members who are able to cogently come up with not only good answers and better decision-making processes but an abiding faith in what we are doing here today. I am proud that this debate, some 5 hours of debate that will take place today about this very important subject where Members of Congress are able to come down and really identify their specific suggestions that they have. I think this process works. I think the Committee on Rules was wise in what it did. I think the gentleman from California knew when he put together this rule with our leadership what it would look like. It is working today.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Georgia (Mr. BARROW).

Mr. BARROW. Mr. Speaker, I have every intention of supporting today's homeland security authorization bill, but I think this bill could be dramatically improved, especially regarding the rail safety standards that apply to the shipment of extremely hazardous materials in local communities all across our Nation.

Three days after I took office this year, an early morning train carrying three rail cars filled with chlorine gas slammed into a parked rail car in the town of Graniteville, South Carolina. This produced a toxic cloud of chlorine and sodium hydroxide that forced 5,400 local residents to flee for their lives. In all, over 240 people were sickened by the gas and 10 people died because of the accident. The long-term effects of the leak are still unknown and the cleanup process continues to this day.

Mr. Speaker, what happened in Graniteville was not an isolated incident. Train accidents occur frequently in the United States. Rail cars carrying hazardous, flammable or explosive materials not only pose a major health risk to the communities they travel through, they are vulnerable security threats to our Nation's homeland security efforts. These are wouldbe terrorist targets begging for attention.

Since the Graniteville incident, I have met with a number of safety experts, and I guarantee that if any Members of this Congress were to sit down with these representatives they would be shocked to learn how many commonsense safeguards are out there that have not been implemented to address rail safety in this country. It is time to do more to improve rail security measures.

The current safeguards for the transportation of hazardous materials are nowhere near what they need to be. That is not just a health concern for our local communities, it is a security concern for our entire Nation.

The amendment that the gentleman from Massachusetts (Mr. MARKEY) and I offered yesterday helps close this gap in rail security measures. It provides hazardous material training for local first responders. It implements coordination and communication plans in the event of an accident or an attack, it develops new technology to make rail cars more resistant to punctures and, most importantly, it requires prenotification for local law enforcement whenever hazardous materials are being shipped through their communities.

These safety standards are long overdue and they deserve a vote on the House floor. Local leaders and the American people should not have to beg for sound safety measures and they should not have to wait for a debate on the issue.

Mr. SESSIONS. Mr. Speaker, we spoke earlier about how Members provided information back and forth not only to the gentleman from California (Mr. COX) and the Homeland Security Department but also about how we were able to have a Committee on Rules meeting yesterday with thoughtful ideas that were presented yesterday. Our next speaker was a part of

those thoughtful ideas. He not only sat through hours of testimony, quizzing Members about their questions and comments, things that would make things better, but also a few ideas himself.

Mr. Speaker, I am very pleased to yield 3 minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank the gentleman from Texas for yielding me this time.

Mr. Speaker, one of the most important responsibilities of this Congress is to defend and protect our Nation from external and internal terrorist threats. Some of the vital features of H.R. 1817, the Homeland Security Authorization Act, include funding to train and prepare first responders, improvements in cyber security, improvements in container security and enhanced border security. The Homeland Security Authorization Act will authorize funding for 2,000 new Border Patrol agents and it requires the Secretary of the Department of Homeland Security to develop a plan to coordinate and address duplication problems between the Customs and Border Protection agency and the Immigration Customs Enforcement agency.

Most importantly, I am pleased the rule we passed last night allows the gentleman from Georgia (Mr. NORWOOD) to have his amendment made in order. The Norwood amendment, among other provisions, clarifies that State and local law enforcement agencies have the right and the authority to enforce our immigration laws. Illegal immigration has become a threat to the security of many of our communities, even those not along our borders. The problem of illegal immigration has grown in part because local and State authorities have been uncertain of the jurisdiction regarding the apprehension, detention and deportation of illegal aliens. Sheriffs departments throughout my congressional district have been burdened with unnecessary expenses in detaining and housing illegal alien criminals prior to ICE involvement. The gentleman from Georgia (Mr. NORWOOD) has introduced his amendment to clarify the boundaries of jurisdiction regarding the enforcement of Federal immigration laws and provides for a training manual to aid in this effort. I believe that when an officer or deputy swears an oath to enforce the law, they should enforce all the laws, both State and Federal.

Mr. Speaker, immigration enforcement is critical for securing our Nation from terrorists. A porous border that allows terrorists and the enemies of this Nation to pass through undetected is unacceptable.

Mr. Speaker, I encourage passage of this rule, passage of the Norwood amendment, and passage of the underlying bill to strengthen our borders and protect our homeland from another attack.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, under cover of darkness and hidden from public view, the Republican-controlled Committee on Rules cooked up an unwise, unfair and ill-considered rule that shuts out dozens of Democratic amendments designed to close dangerous homeland security loopholes that put the American public at risk. For example, one of the amendments would have been one made by the gentleman from Connecticut (Mr. SHAYS) and myself which would have ensured that all cargo which is placed upon passenger planes in the United States was screened, so when the people in this gallery and people around the country step on planes they have to take off their shoes, their bags go through, they are screened, their bags are put in the belly of the plane, they are screened, but the cargo, the cargo, which is placed on the very same plane, is not screened.

The people on the plane are accompanying their bags. The people who are sending cargo are not on the plane. Al Qaeda is like water. It looks for the least resistance. That on a plane is where the least resistance is, in the cargo bay. We should not put Americans on planes where the cargo has not been screened knowing that al Qaeda continues to place civilian aircraft at the top of their terrorist target list.

It is wrong for the Republicans not to have a debate about this incredible, glaring vulnerability in passenger aircraft as hundreds of millions of Americans put their families on planes, especially as we are nearing the fourth anniversary of 9/11.

□ 1115

Another amendment, one dealing with the hundreds of thousands of shipments of extremely hazardous materials which go through the cities and towns of the United States every single year. This is a photograph of one of those hazardous material shipments within a couple of blocks of the Capitol. The Republicans would not put in order an amendment that would ensure that a rule-making by the Federal Government would be put in place in order to make sure that we would increase the security for the shipment of these hazardous materials through the cities and towns of the United States of America.

The gentleman from Georgia (Mr. BARROW) and I made a request to the Committee on Rules, let us debate it out here on the House floor, let us debate if we want to put any additional security protections on something, which, for all intents and purposes, has no security around it as it goes through the cities and towns of the United States. What a target for al Qaeda this would be.

But the Republicans say no debate on that. No debate on putting cargo into the bay of passenger planes that people fly every single day across America after they have taken off their shoes.

Mr. Speaker, this is wrong. The Republican Party is putting a gag on debate on the most important issues that face the security of America and attacks by al Qaeda on our country. And this issue, especially the issue of cargo on planes, is an absolute reprehensible neglect of the responsibility that Congress has for the flying American public.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the gentleman has noted, there will be 5 hours of debate today. There will be a Democrat substitute that will be included, some 200-plus pages that will allow not only full debate under these 5 hours but an opportunity for Members to come down, just as the gentleman from Massachusetts has done, to provide each Member with information about how important this bill is. And I am really proud of the time that we have. The Committee on Rules did a great job.

Mr. Speaker, I yield 3 minutes to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Speaker, I thank the gentleman for yielding me this time.

I know we all have strong feelings about a lot of things, and sometimes someone could say we may not be right but we are never in doubt.

I want to say I am not in doubt on this issue, and I think I am right. I think it is an outrage that we do not inspect the cargo that is in the belly of a passenger aircraft. And I think it is an outrage, frankly, that the gentleman from Massachusetts' (Mr. MARKEY) amendment was not made in order so we could at least debate this. If one disagrees with the issue, that is one thing. But not to even allow for a debate and have the American people begin to understand the evolution that has taken place is unfortunate.

First, we started to inspect the carry-on luggage, and Americans thought we must be checking baggage on the belly of an aircraft. I did, until the gentleman from Washington (Mr. INSLEE) came to me and said we are not, do I want to sponsor an amendment. And we worked on an amendment, and we put and got in the bill a few years ago that there had to be deadlines for eventually inspecting all baggage that went in the belly of an aircraft. We had a deadline and we finally did it. So then I was thinking, well, we have done our job.

And the gentleman from Massachusetts (Mr. MARKEY) informs me, and I did not know it, that 22 percent of what is in the belly of an aircraft is cargo uninspected. Uninspected, and yet we are not willing to have a debate about this.

I think it is amazing, and I think it is wrong; and I think if the public knew it, they would be outraged. If the argument is that we do not have the technology, which we do, or we do not have enough of the technology, which is right, we allowed under the gentleman from Massachusetts' (Mr. MARKEY) amendment for a 3-year phase-in: 35 percent the first year, 65 in the second,

and then 100 percent in the third year. But if one still did not want to vote for that bill, we asked for another amendment to be made in order. The amendment was quite simple. It simply said to tell the passenger that the cargo on this plane has not been inspected. Even that amendment was not made in order.

Vote against it if one does not like it. But to not even allow a debate on the floor of the House about this issue?

I had a constituent who was on Pan Am 103. I got the call at 11 in the morning that said she thinks her daughter was on this aircraft but 30 kids were not, 30 people were not; and she hoped and prayed her daughter was one who could not get on it. I was at her home that evening about 11:30 that night when she got the call that said her daughter was on that plane. Admittedly, that was baggage. But if we now inspect the carry-on baggage and we inspect the baggage that is given at the ticket counter, what are terrorists going to do? They are just going to link it up with cargo and blow up a plane, a passenger plane, because the cargo has not been inspected.

I really believe we need this amendment. I salute both sides of the aisle for this bill. I salute the Committee on Rules for allowing for 25 amendments. But this is an amendment that should have been allowed.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Rhode Island (Mr. LANGEVIN).

(Mr. LANGEVIN asked and was given permission to revise and extend his remarks.)

Mr. LANGEVIN. Mr. Speaker, I rise in opposition to this restrictive rule which does not make in order several key amendments that could go a long way to enhancing our security efforts and addressing serious vulnerabilities. Case in point: the cargo security amendment offered by the gentleman from Massachusetts (Mr. MARKEY) and just spoken of by the gentleman from Connecticut (Mr. SHAYS).

That being said, today we will consider H.R. 1817, the first ever authorization measure for the Department of Homeland Security. I want to congratulate the gentleman from California (Mr. COX) and the gentleman from Mississippi (Mr. THOMPSON), ranking member, for bringing this important bill on the floor. I am proud to serve with them on the Committee on Homeland Security.

While it is not as far reaching as many of us had hoped, H.R. 1817 takes several critical steps in improving our Nation's security and preparedness. It authorizes sufficient funding to hire an additional 2,000 border patrol agents, which will help us meet the goal of 10,000 new agents over 5 years set forth in last year's intelligence reform bill. The measure also streamlines the background check system for those working in sensitive positions, creates an Assistant Secretary for Cybersecurity, and requires reform of the homeland security alert system so that more specific and targeted information can be provided to those who need it.

Finally, this bill will improve our intelligence and information capabilities by allowing new recruiting tools to attract the best-qualified analysts and mandating increased coordination in the dissemination of threat information to State, local, and private sector officials.

But this bill could have gone further. While I understand the jurisdictional constraints facing the gentleman from California (Chairman COX), I firmly believe that a DHS authorization bill should include critical components like port security, nuclear and chemical facility security, bioterrorism preparedness, communications interoperability, and rail and transit security. That is why I will be supporting a substitute amendment offered later today by the gentleman from Mississippi (Mr. THOMPSON), ranking member. This comprehensive amendment takes the right approach to homeland security needs that still face our country.

In closing, Mr. Speaker, let me again thank the gentleman from California (Chairman COX) and the gentleman from Mississippi (Mr. THOMPSON), ranking member, for their hard work on this legislation. It is not a perfect bill, but it is indeed an important and significant first step.

Mr. SESSIONS. Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, I very much thank the gentlewoman from New York for yielding me this time.

I must say I am grateful for small favors. This is, after all, the first authorization bill, almost 4 years after 9/11. But for that, the credit is due to the gentleman from California (Chairman COX) and the gentleman from Mississippi (Mr. THOMPSON), ranking member, for working collaboratively and, in doing so, establishing the jurisdiction of our committee and their jurisdiction over the Department. These are not small matters.

I am grateful as well that an amendment of mine on rail safety is in the bill. It is so basic that it does tell us a lot about my disappointment that this bill simply does not address rail safety even though that is where the people are. I do have report language in the bill, and the gentleman from California (Chairman COX) worked hard to make sure that he got as much in the bill as he could. However, he was under powerful constraints. We were noticed that no amendment that, in fact, called for authorization of a single dollar extra would be allowed in the bill. We have just heard about the problem four blocks from the Capitol with hazardous substances going by and the embarrassment that I think the Congress should feel that there has been no administrative action to do anything about it, and so there was a lawsuit actually won at the first level because of the danger posed when Congress does not act and local jurisdictions stepped forward.

We do have to get to work, and if Members do not believe me, remember last Wednesday in the rush from the Capitol. It was not a comedy of errors. Indeed, it was not very funny because these were not mistakes. What we had were huge questions opened up. Not everything was done that should have been done, but we do know what should have been done in the first place. Do we know why the plane came so close, why the President was not informed, why the District of Columbia was not informed even though there was a sergeant sitting right there in the Department of Homeland Security? Above all, why were we not in the basement of the Capitol rather than out on the streets when there was such a small plane involved and we were probably in greater danger on evacuation.

Lots of work. Let us begin to do it today.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. ISRAEL).

Mr. ISRAEL. Mr. Speaker, I thank my distinguished friend from New York for yielding me this time.

Mr. Speaker, I rise against this rule. I am very disappointed that my bipartisan amendment to restore funding for shoulder-fired missile protections was not permitted by this rule. The President of the United States requested $110 million for shoulder-fired missile research and development. The bill that we are going to vote on later today reduces it to $10 million.

Over the past several years, the gentleman from Florida (Mr. MICA), Republican chairman of the Aviation Subcommittee, and I have been working on this issue. But it is not just the gentleman from Florida (Mr. MICA) and I. It is the State Department which released a report saying that shoulder-fired missiles are the leading cause of loss of life in commercial aviation around the world.

They were used in December of 2003 against an Israeli jetliner in Kenya. They were used a year later against a DHL carrier. We now know that the Internet is teaching terrorists how to buy shoulder-fired missiles, set them up, and fire them. There are hundreds of thousands of these systems available around the world in the hands of 27 separate terrorist groups including al Qaeda. Everyone who has studied this issue, the President, the Department of Homeland Security, the State Department, the FBI, the CIA, the Aviation Subcommittee, the Committee on Appropriations, agrees that this threat needs to be addressed. And what does this bill do? Ignores the threat.

If a single shoulder-fired missile is fired at an American aircraft, Mr. Speaker, we are not going to be worried about $115 million in this bill. We

are going to be worried about the end of the aviation industry as we know it and devastating consequences to our economy and the American people will look at what we did on this floor today and ask why we turned our backs on the President's request, the State Department's urgency, the Committee on Appropriations, the Aviation Subcommittee, Republicans and Democrats, and, most importantly, the flying public.

Mr. Speaker, I oppose this rule. This was a commonsense bipartisan amendment. I will vote for the bill, but I am hopeful that we can work together on the basis of common sense and proceed to protect the American flying public.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes and 15 seconds to the gentleman from Texas (Mr. REYES).

Mr. REYES. Mr. Speaker, I thank the gentlewoman for yielding me this time this morning.

Mr. Speaker, each Member of this House knows that when we go on vacation, one of the first things that we want to do is get a map so that we know where we are going and know the stops we are going to make and have a general idea of what is facing us on this vacation.

Mr. Speaker, several members of the Law Enforcement Caucus were discussing the issues of border security because we know we have been talking a lot about securing our borders.

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Well, yesterday, my colleagues, the gentleman from Michigan (Mr. STUPAK), the gentleman from Texas (Mr. ORTIZ), and myself offered an amendment at the Committee on Rules that would have required the Department of Homeland Security to develop and begin to carry out a comprehensive, long-term border strategy to secure this Nation's borders. The amendment would have expanded what is already in place, called the ''American Shield Initiative,'' to ensure that every inch of the borders is monitored at all times, either through technology or resources. Unfortunately, the Committee on Rules voted against making this amendment in order on a straight party-line vote.

So when we talk about common sense, I stand here this morning wondering what in the world are we thinking when we do not want to have an amendment like this that gives us a long-term strategy for knowing what this Congress needs to do to reinforce and secure this Nation's border.

We all know that since 9/11, we have acknowledged that we need to increase the number of Border Patrol agents and immigration inspectors and, but Congress literally has been picking figures seemingly out of thin air as we go through wanting to secure the border. Instead, we should require a staffing assessment so we go through to determine what personnel resources we need to get the job done right. Our amendment would have required such an assessment for personnel, for technology, and for infrastructure needs.

Balancing this Nation's border security has to go hand-in-hand with having a strategy. We do not have that kind of strategy. This amendment would have given us this strategy. Regrettably, it was not made in order.

Mr. Speaker, I often wonder if common sense and Congress have anything in common.

Ms. SLAUGHTER. Mr. Speaker, I yield myself the remaining time.

Mr. Speaker, I will be asking Members to oppose the previous question and, if it is defeated, I will amend the rules so that we can consider the amendment offered by the gentleman from Georgia (Mr. BARROW) and the gentleman from Massachusetts (Mr. MARKEY) rejected by the Committee on Rules last night.

Mr. Speaker, the Barrow-Markey amendment would direct the Department of Homeland Security to promulgate regulations upgrading the security associated with transporting extremely hazardous materials such as chlorine, which is toxic by inhalation, and those materials that are flammable or explosive.

Mr. Speaker, extremely hazardous materials are transported through virtually every community in the Nation. Several serious incidents have taken place that have clearly demonstrated the threat that exists whenever they are involved. I am disappointed that the Republican leadership failed to include this important amendment, an issue that needs to be addressed sooner rather than later. But, unfortunately, under the rule, unless we defeat the previous question, we will not be able to.

As always, I want to emphasize that a no vote on the previous question will not prevent us from considering the Homeland Security bill, but will allow Members to vote on the Barrow-Markey amendment. However, a yes vote will prevent us from doing so.

At this point, Mr. Speaker, I ask unanimous consent to insert the text of the amendment immediately prior to the vote, and request a no vote on the previous question.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentlewoman from New York?

There was no objection.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we have had a great debate. A few people showed up and expressed some concern about what they had, and I would like to address that so that the Members are aware. The gentleman from Massachusetts (Mr. MARKEY) and the gentleman from Georgia (Mr. BARROW) did come before the Committee on Rules. The Committee on Rules did not put it in the bill, but it is not in the Democrat substitute either, so the Democrat leadership chose not to include that in their substitute.

We also had some discussion about air cargo. For those Members who are interested, air cargo will be in the substitute; it will be in section 519. Republicans addressed the issue. We have doubled the number of air cargo inspectors that would be at the airports to make sure that we are looking at the cargo.

Today has been a good debate, an opportunity for Members to come forth and speak about the important things about this bill. The gentleman from California (Mr. COX) has our admiration. He has done a great job. The Committee on Rules I believe did a fair job. I would also at this time like to thank the White House and the liaisons that the White House provided to us, Brian Conklin for his great leadership, Chris Frech for his hard work with us, and certainly their superstar at the White House, Elan Elinjg, who took time to make sure that Members were updated, not only about the position of the administration, but about how they could work closely with Members of Congress.

So I think today has been another successful opportunity for us to begin the 5 hours of debate that will take place today where every Member will have an opportunity to come down and express themselves and where we will have a Democrat substitute that will be over 200 pages where they are able to express the things which they believe are best. Members of Congress will be able to vote and a decision can be made today. Mr. Speaker, I am proud of this process.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in opposition to the structured rule only insofar as it restricts both the number of amendments made in order and the time allowed for debate of such a grave piece of legislation. The restrictive nature of H. Res. 283 will deprive the American people of debate over the aspects of the proposed legislation that affects them the most.

H.R. 1817 is the first authorization measure since the passage of the Homeland Security Act of 2003. Ruling only a quarter of the 80 amendments offered at the Committee on Rules meeting does not measure well with the action that the appropriators have taken to hold the Department of Homeland Security (DHS) accountable for its unfulfilled reporting requirements. The appropriators withheld over $700 million from DHS due to these requirements; therefore, our passage of the most comprehensive and representative measure possible would equate to having conducted ''due diligence'' on our part.

Just yesterday, we in the House passed the Appropriations Act for FY 2006, H.R. 2360, by a margin of 424–1. An open rule for debate on the authorization measure would have continued the spirit of true bi-partisanship. I joined my committee colleagues in considering this bill from its incipiency as it passed in both the Committees on Homeland Security on April 28, 2005 and Judiciary on May 12, 2005 unanimously by voice vote. Today, the Committee of the Whole will make history by passing its first Homeland Security Authorization

measure, and I support an expedient but prudent completion of this endeavor.

During the 13-hour Homeland Security Committee markup session that ended at 11:15 p.m., I was able to secure sincere commitments from the Majority Leadership to work with me for inclusion of some of my major initiatives: funding and more clearly defining the Citizen Corps and the Citizen Corps Councils—which will include consideration of a stand-alone bill that I will introduce shortly; and increasing capacity for Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Institutions in Homeland Security procurement and in employment with the Department of Homeland Security. In addition, I was fortunate to have had my amendment, co-sponsored by the Gentlelady from California, Ms. LOFGREN, that seeks to authorize the funding of programs for the education of minorities in the areas of cyberscience, research, and development to close the gap in achievement in those areas and to make America better equipped to fight terrorism overall. Furthermore, I achieved an agreement from the Majority Committee Leadership to collaborate on addressing the issue of border violence, an initiative that the distinguished Chairman of the Appropriations Subcommittee on Homeland Security showed his commitment to addressing, as evidenced by his support for an amendment that I offered yesterday during the House's consideration of the appropriations measure, H.R. 2360. Not only do I hope to see this language survive the deliberations of the Conferees, but I hope to see follow-through by the Homeland Security Committee with the bi-partisan letter and with consideration of the amendment that I plan to offer during our consideration of H.R. 1817.

Mr. Speaker, what the House has done this week and will do today will establish the breadth and efficacy of the entire Department of Homeland Security. I hope that my colleagues will keep that in mind as we work to debate the amendments that have been made in order.

Mrs. MALONEY. Mr. Speaker, I rise to ask my colleagues to defeat the previous question so we can change this restrictive rule.

Yesterday I appeared before the Rules Committee to offer three amendments. All were blocked by the Rules Committee from even the opportunity to be debated on the floor. The Rules Committee also blocked an amendment by Congressmen MARKEY and SHAYS that would have required 100 percent check of cargo on commercial airlines. This restrictive rule also blocked 60 other amendments, forty-seven of which were Democratic amendments.

It is amazing to me that the majority would deny us even the opportunity to debate what we feel is important to the American people. What the rules committee did last night was deny us the opportunity to address the health needs of the heroes of 9/11.

One of my amendments was modeled after the Remember 9/11 Health Act. This is a bill that would provide medical monitoring and treatment for individuals who are sick or injured as a direct result of the attacks of 9/11.

Right now we have a 6,000-person waiting list just to be a part of this medical screening. For the 12,000 who have been screened, about 50 percent of them are still sick as a direct result of 9/11. Despite clear evidence that we have thousands sick, we have yet to provide a single dollar for treatment. This is unethical.

These are men and women who were there for us on 9/11 and now we have turned a cold shoulder to them in their time of need. We have precedent for caring for volunteers who get sick. When a volunteer firefighter becomes sick or injured while fighting a forest fire, he or she immediately receives all the Federal health monitoring and treatment he or she needs. If we can do it for volunteers for one disaster, we need to do it for volunteers from 9/11.

Unfortunately the Rules Committee did not see it this way, because they would not even give us the opportunity to debate this on the floor today.

The next amendment I wanted to offer was written by a Republican, Senator VOINOVICH of Ohio, and passed the Senate by unanimous consent. It is modeled after the Disaster Area Health and Environmental Monitoring Act, H.R. 5329 in the 108th Congress.

The amendment realizes that there are times when the health of first responders is at risk, such as during the response to 9/11, and with a Presidential declaration, would establish environmental and health monitoring. This amendment would send a message to future responders that if you risk your life in responding to a disaster, we will be there for you if you get sick. This amendment would not have cost us anything. It would just be good planning.

The final amendment I wanted to offer would give teeth to the Civil Liberty Board established by the Intelligence Reform Act. This amendment is modeled after H.R. 1310, the Protection of Civil Liberties Act. This Amendment would create the board as an independent entity and provide it with subpoena power, among other things.

The only way we will have a robust protection of our civil liberties is to have a robust civil liberties board. All we have right now is a weak board that does not even have a single member appointed.

By not allowing these and many other amendments, we are restricting the ability of this House to do the business of the American people. We have thousands who are sick from 9/11 who need our help, but this Rule will not let their needs be heard.

Mr. MORAN of Virginia. Mr. Speaker, I congratulate the Chairman of the Homeland Security Committee for his success last week on legislation to improve the first responder grant program and again today for bringing bipartisan consensus legislation to the House floor.

He has crafted a good bill that deserves our support. As good as the bill is, however, I must rise in opposition to the rule. I am troubled that my colleagues Mr. BARROW and Mr. MARKEY and Mr. OBERSTAR were blocked from offering their amendments concerning rail safety to this important legislation.

If there is one lesson we should learn from the events of 9/11, it is that our enemies are fighting an unconventional war against us.

With a few zealots and even fewer resources, terrorists can manipulate our own resources and use them against us. On 9/11 aviation fuel and four commercial aircraft were turned into missiles carrying incendiary explosives.

Hardening the cockpit door, establishing new protocols to screen passengers, and a number of other measures are a prudent response to deny terrorists the use of commercial aircraft as a weapon.

I am afraid, however, that we are not being as proactive as we could or should be at preventing other commercial resources from being used as weapons that could be turned against us.

Representatives BARROW, MARKEY, and OBERSTAR have crafted thoughtful responses to a threat that has not been fully addressed: Rail security and the transportation of hazardous cargo on our rail system. It would be a national tragedy if we had to wait until another attack similar to Madrid to occur in the United States in order to commit the resources necessary to properly secure our rail and transit systems.

The measures needed to address transit security differ from aviation, but this should not be used as a justification for not providing an infusion of additional funds to address already identified high priority needs. The focus with aviation is strictly on deterrence: stopping an event from happening.

For transit and rail, deterrence is only one part of the strategy, additional resources are also needed to mitigate the impact of a potential terrorist attack and hasten the recovery after an attack. Allocating additional resources towards improving response and recovery times can save lives and lessen the economic consequences of an attack.

With the Madrid bombing, the bombs went off on multiple trains over a 10-15 minute period. Enhanced detection capabilities, communications equipment and redundancy in critical operating control functions could allow for a quicker shutdown and evacuation of a passenger rail transit system exposed to multiple attacks thereby significantly reducing the causality rate.

Transit and rail systems cannot afford to be shut down for months or even weeks following a biological attack. The economic consequences to a major metropolitan region would be devastating, not to mention the impact on the Federal Government if an attack occurred in Washington, DC. Yet, no funds have been allocated to perform a comprehensive decontamination demonstration project in a transit or rail environment.

Mr. Chairman, a 30-ton chlorine tank rail car, if ruptured, could kill thousands of people unfortunate enough to be within a few miles downwind of the attack. The railroad industry has a good safety record, but that ignores the fact that those safeguards do not assume someone is purposely trying to rupture these rail cars.

Local emergency responders in urban areas with potential targets of key infrastructure and national icons understand this threat, but are limited on what they can do to prevent an attack. Should they patrol hundreds of miles of track and rail yards or take some measures under some circumstances to reroute hazardous traffic around what we know are high probability targets?

Today, there still is no clear understanding of what hazardous material security plans have been developed. If they exist, they are not being shared or discussed with the very people, local officials and emergency response planners, who have the best information on the local geography, vulnerabilities and potential set of targets. Today, local officials are being told by the railroads and the Department of Homeland Security to ''trust us.'' I get

nervous when someone I don't know tells me to "trust" them.

The laws on the books today did not envision hazardous cargo as a weapon of mass destruction, and under current law interstate commerce trumps local ordinances to suspend or redirect hazardous cargo.

This presumption is now being tested in the courts. Congress should not defer to the courts on this important and weighty issue. I think we can craft a responsible resolution, but denying an important floor debate on this issue is wrong.

I urge my colleagues to defeat this rule.

Mr. COSTELLO. Mr. Chairman, I rise today in opposition to the rule on H.R. 1817, the Homeland Security Authorization Act for FY2006. Republicans on the Rules Committee blocked the consideration of several amendments offered by me and my colleagues to this bill. This body should have the right to discuss and to consider each amendment.

One of the amendments blocked was the amendment I offered which would put passenger security fees into two funds that will guarantee that TSA will spend the authorized amounts of $650 million a year and $250 million for the installation of inline baggage screening systems and passenger checkpoint explosive detection, respectively.

We are currently collecting over $1.5 billion a year from the passenger security fee for aviation security services. Given that these security investments are financed by the existing passenger security fee, the Congressional Budget Office has determined that the increased investment does not increase the size of the deficit.

In April, the Department of Homeland Security Inspector General (DHSIG) and the Government Accountability Office (GAO) both released reports that indicate that our airport screening system still needs improvement. While the traveling public is more secure today than before September 11th, 2001, airport screeners are not detecting prohibited items at the level we need. Without a significant investment and commitment by Congress and this Administration to upgrade our technology, our screening system will continue to fail. We must and can do better.

Last year, the 9/11 Commission specifically recommended that the TSA and the Congress improve the ability of screenings checkpoints to detect explosives on passengers. The Intelligence Reform and Terrorism Prevention Act (P.L. 108–458) authorized $250 million for the research and deployment of advanced passenger screening technologies, such as trace portals and backscatter x-ray systems.

To date, only about $30 million has been appropriated specifically for the passenger screener technologies. The recent DHS IG report clearly stated that the "lack of improvements since our last audit indicates that significant improvement in performance may not be possible without greater use of technology." Further, the TSA concurred with the 9/11 Commission recommendation that we must "expedite the installation of advanced (in-line) baggage screening equipment."

In addition, in-line baggage screening systems have a much higher throughput than stand-alone systems. If we install in-line systems, more bags will be screened by explosive detection systems instead of less reliable, alternative methods.

The TSA and airport operators rely on commitments in letters of intent (LOIs) as their principal method for funding the modification of airport facilities to incorporate in-line baggage screening systems. The TSA has issued eight LOIs to cover the costs of installing systems at 9 airports for a total cost to the Federal Government of $957.1 million over 4 years. The GAO reports that TSA has estimated that in-line baggage screening systems at the 9 airports that received LOI funding could save the Federal Government $1.3 billion over 7 years.

TSA further estimated that it could recover its initial investment in the in-line systems at these airports in a little over one year. In total, the GAO reports that 86 of 130 airports surveyed are planning or are considering installing in-line baggage screening systems throughout or at a portion of their airports.

Yet, the TSA has stated that it currently does not have sufficient resources in its budget to fund any additional LOIs. While $650 million is authorized for the installation of in-line baggage screening systems, annual appropriations have not allowed for any new LOIs to be signed.

We know what needs to be done to improve screener performance, and we must take action now. We must demonstrate leadership and deploy technologies that will keep the American public secure. Mr. Chairman, I ask my colleagues to vote no on the rule so we can work to deploy technologies that will help our screeners do their jobs and keep the American traveling public safe.

The amendment previously referred to by Ms. SLAUGHTER is as follows:

PREVIOUS QUESTION STATEMENT ON H. RES. 283—RULE FOR H.R. 1817, DEPARTMENT OF HOMELAND SECURITY AUTHORIZATION ACT OF FISCAL YEAR 2006

At the end of the resolution, add the following new sections:

SEC. 2. Notwithstanding any other provision of this resolution the amendment specified in section 3 shall be in order as though printed after the amendment numbered 1 in the report of the Committee on Rules if offered by Representative Barrow of Georgia or Representative Markey of Massachusetts or a designee. That amendment shall be debatable for 30 minutes equally divided and controlled by the proponent and an opponent.

SEC. 3. The amendment referred to in section 2 is as follows:

AMENDMENT TO H.R. 1817 OFFERED BY MR. BARROW OF GEORGIA AND MR. MARKEY OF MASSACHUSETTS

At the end of title V of the bill, insert the following (and conform the table of contents of the bill accordingly):

SEC. 509. EXTREMELY HAZARDOUS MATERIALS TRANSPORTATION SECURITY.

(a) RULEMAKING.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal, State, and local government entities, security experts, representatives of the hazardous materials shipping industry and labor unions representing persons who work in the hazardous materials shipping industry, and other interested persons, shall issue, after notice and opportunity for public comment, regulations concerning the shipping of extremely hazardous materials.

(2) PURPOSES OF REGULATIONS.—The regulations shall be consistent, to the extent the Secretary determines appropriate, with and not duplicative of other Federal regulations and international agreements relating to the shipping of extremely hazardous materials and shall require—

(A) physical security measures for such shipments, such as the use of passive secondary containment of tanker valves and other technologies to ensure the physical integrity of pressurized tank cars used to transport extremely hazardous materials, additional security force personnel, and surveillance technologies and barriers;

(B) concerned Federal, State, and local law enforcement authorities (including, if applicable, transit, railroad, or port authority police agencies) to be informed before an extremely hazardous material is transported within, through, or near an area of concern;

(C) the creation of terrorism response plans for shipments of extremely hazardous materials;

(D) the use of currently available technologies and systems to ensure effective and immediate communication between transporters of extremely hazardous materials and all entities charged with responding to acts of terrorism involving shipments of extremely hazardous materials;

(E) comprehensive and appropriate training in the area of extremely hazardous materials transportation security for all individuals who transport, load, unload, or are otherwise involved in the shipping of extremely hazardous materials or who would respond to an accident or incident involving a shipment of extremely hazardous material or would have to repair transportation equipment and facilities in the event of such an accident or incident; and

(F) for the transportation of extremely hazardous materials through or near an area of concern, the Secretary to determine whether or not the transportation could be made by one or more alternate routes at lower security risk and, if the Secretary determines the transportation could be made by an alternate route, the use of such alternate route, except when the origination or destination of the shipment is located within the area of concern.

(3) JUDICIAL RELIEF.—A person (other than an individual) who transports, loads, unloads, or is otherwise involved in the shipping of hazardous materials and violates or fails to comply with a regulation issued by the Secretary under this subsection may be subject, in a civil action brought in United States district court, for each shipment with respect to which the violation occurs—

(A) to an order for injunctive relief; or

(B) to a civil penalty of not more than $100,000.

(4) ADMINISTRATIVE PENALTIES.—

(A) PENALTY ORDERS.—The Secretary may issue an order imposing an administrative penalty of not more than $1,000,000 for failure by a person (other than an individual) who transports, loads, unloads, or is otherwise involved in the shipping of hazardous materials to comply with a regulation issued by the Secretary under this subsection.

(B) NOTICE AND HEARING.—Before issuing an order described in subparagraph (A), the Secretary shall provide to the person against whom the penalty is to be assessed—

(i) written notice of the proposed order; and

(ii) the opportunity to request, not later than 30 days after the date on which the person receives the notice, a hearing on the proposed order.

(C) PROCEDURES.—The Secretary may issue regulations establishing procedures for administrative hearings and appropriate review of penalties issued under this paragraph, including necessary deadlines.

(b) WHISTLEBLOWER PROTECTION.—

(1) IN GENERAL.—No person involved in the shipping of extremely hazardous materials may be discharged, demoted, suspended, threatened, harassed, or in any other manner

discriminated against because of any lawful act done by the person—

(A) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the person reasonably believes constitutes a violation of any law, rule or regulation related to the security of shipments of extremely hazardous materials, or any other threat to the security of shipments of extremely hazardous materials, when the information or assistance is provided to or the investigation is conducted by—

(i) a Federal regulatory or law enforcement agency;

(ii) any Member of Congress or any committee of Congress; or

(iii) a person with supervisory authority over the person (or such other person who has the authority to investigate, discover, or terminate misconduct);

(B) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding or action filed or about to be filed relating to a violation of any law, rule or regulation related to the security of shipments of extremely hazardous materials or any other threat to the security of shipments of extremely hazardous materials; or

(C) to refuse to violate or assist in the violation of any law, rule, or regulation related to the security of shipments of extremely hazardous materials.

(2) ENFORCEMENT ACTION.—

(A) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of paragraph (1) may seek relief under paragraph (3) by—

(i) filing a complaint with the Secretary of Labor; or

(ii) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(B) PROCEDURE.—

(i) IN GENERAL.—An action under subparagraph (A)(i) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(ii) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the person's employer.

(iii) BURDENS OF PROOF.—An action brought under subparagraph (A)(ii) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

(iv) STATUTE OF LIMITATIONS.—An action under subparagraph (A) shall be commenced not later than 90 days after the date on which the violation occurs.

(3) REMEDIES.—

(A) IN GENERAL.—A person prevailing in any action under paragraph (2)(A) shall be entitled to all relief necessary to make the person whole.

(B) COMPENSATORY DAMAGES.—Relief for any action under subparagraph (A) shall include—

(i) reinstatement with the same seniority status that the person would have had, but for the discrimination;

(ii) the amount of any back pay, with interest; and

(iii) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(4) RIGHTS RETAINED BY PERSON.—Nothing in this subsection shall be deemed to diminish the rights, privileges, or remedies of any person under any Federal or State law, or under any collective bargaining agreement.

(c) REPORT ON EXTREMELY HAZARDOUS MATERIALS TRANSPORTATION SECURITY.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall transmit to Congress a report on the security of, and risk of a terrorist attack on, shipments of extremely hazardous materials.

(2) CONTENT.—The report under paragraph (1) shall include—

(A) information specifying—

(i) the Federal and State agencies that are responsible for the regulation of the transportation of extremely hazardous materials; and

(ii) the particular authorities and responsibilities of the heads of each such agency; and

(B) an assessment of the vulnerability of the infrastructure associated with the transportation of extremely hazardous materials.

(3) FORM.—The report under paragraph (1) shall be in unclassified form but may contain a classified annex.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) EXTREMELY HAZARDOUS MATERIAL.—The term ''extremely hazardous material'' means—

(A) a material that is toxic by inhalation;

(B) a material that is extremely flammable;

(C) a material that is highly explosive; and

(D) any other material designated by the Secretary to be extremely hazardous.

(2) AREA OF CONCERN.—The term ''area of concern'' means an area that the Secretary determines could pose a particular interest to terrorists.

Mr. SESSIONS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 226, nays 199, not voting 8, as follows:

[Roll No. 181]

YEAS—226

Aderholt	Bishop (UT)	Brown (SC)
Akin	Blackburn	Brown-Waite, Ginny
Alexander	Blunt	Burgess
Bachus	Boehlert	Burton (IN)
Baker	Boehner	Buyer
Barrett (SC)	Bonilla	Calvert
Bartlett (MD)	Bonner	Camp
Barton (TX)	Bono	Cannon
Bass	Boozman	Cantor
Beauprez	Boustany	Capito
Biggert	Bradley (NH)	Carter
Bilirakis	Brady (TX)	Castle
Chabot	Inglis (SC)	Pitts
Chocola	Issa	Platts
Coble	Istook	Poe
Cole (OK)	Jenkins	Pombo
Conaway	Jindal	Porter
Cox	Johnson (CT)	Price (GA)
Crenshaw	Johnson (IL)	Pryce (OH)
Cubin	Johnson, Sam	Putnam
Culberson	Jones (NC)	Radanovich
Cunningham	Keller	Ramstad
Davis (KY)	Kelly	Regula
Davis, Jo Ann	Kennedy (MN)	Rehberg
Davis, Tom	King (IA)	Reichert
Deal (GA)	King (NY)	Renzi
DeLay	Kingston	Reynolds
Dent	Kirk	Rogers (AL)
Diaz-Balart, L.	Kline	Rogers (KY)
Diaz-Balart, M.	Knollenberg	Rogers (MI)
Doolittle	Kolbe	Rohrabacher
Drake	Kuhl (NY)	Ros-Lehtinen
Dreier	LaHood	Royce
Duncan	Latham	Ryan (WI)
Ehlers	LaTourette	Ryun (KS)
Emerson	Leach	Saxton
English (PA)	Lewis (CA)	Schwarz (MI)
Everett	Lewis (KY)	Sensenbrenner
Feeney	Linder	Sessions
Ferguson	LoBiondo	Shadegg
Flake	Lucas	Shaw
Forbes	Lungren, Daniel E.	Shays
Fortenberry	Mack	Sherwood
Fossella	Manzullo	Shimkus
Foxx	Marchant	Shuster
Franks (AZ)	McCaul (TX)	Simmons
Frelinghuysen	McCotter	Simpson
Gallegly	McCrery	Smith (NJ)
Garrett (NJ)	McHenry	Smith (TX)
Gerlach	McHugh	Sodrel
Gibbons	McKeon	Souder
Gilchrest	McMorris	Stearns
Gillmor	Mica	Sullivan
Gingrey	Miller (FL)	Sweeney
Gohmert	Miller (MI)	Taylor (NC)
Goode	Miller, Gary	Terry
Goodlatte	Moran (KS)	Thomas
Granger	Murphy	Thornberry
Graves	Musgrave	Tiahrt
Green (WI)	Myrick	Tiberi
Gutknecht	Neugebauer	Turner
Hall	Ney	Upton
Harris	Northup	Walden (OR)
Hart	Norwood	Walsh
Hastings (WA)	Nunes	Wamp
Hayes	Nussle	Weldon (FL)
Hayworth	Osborne	Weldon (PA)
Hefley	Otter	Weller
Hensarling	Oxley	Westmoreland
Herger	Paul	Whitfield
Hobson	Pearce	Wicker
Hoekstra	Pence	Wilson (NM)
Hostettler	Peterson (PA)	Wilson (SC)
Hulshof	Petri	Wolf
Hunter	Pickering	Young (AK)
		Young (FL)

NAYS—199

Abercrombie	Cleaver	Frank (MA)
Ackerman	Clyburn	Gonzalez
Allen	Conyers	Gordon
Andrews	Cooper	Green, Al
Baca	Costa	Green, Gene
Baird	Costello	Grijalva
Baldwin	Cramer	Gutierrez
Barrow	Crowley	Harman
Bean	Cuellar	Hastings (FL)
Becerra	Cummings	Herseth
Berkley	Davis (AL)	Higgins
Berman	Davis (CA)	Hinchey
Berry	Davis (FL)	Hinojosa
Bishop (GA)	Davis (IL)	Holden
Bishop (NY)	Davis (TN)	Holt
Blumenauer	DeFazio	Honda
Boren	DeGette	Hooley
Boswell	Delahunt	Hoyer
Boucher	DeLauro	Inslee
Boyd	Dicks	Israel
Brady (PA)	Dingell	Jackson (IL)
Brown (OH)	Doggett	Jackson-Lee (TX)
Brown, Corrine	Doyle	Jefferson
Butterfield	Edwards	Johnson, E. B.
Capps	Emanuel	Jones (OH)
Capuano	Engel	Kanjorski
Cardin	Eshoo	Kaptur
Cardoza	Etheridge	Kennedy (RI)
Carnahan	Evans	Kildee
Carson	Farr	Kilpatrick (MI)
Case	Fattah	Kind
Chandler	Filner	Kucinich
Clay	Ford	

Langevin
Lantos
Larsen (WA)
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—8

Fitzpatrick (PA)
Foley
Hyde
Larson (CT)
Lewis (GA)
Markey
Millender-McDonald
Tancredo

□ 1156

Messrs. MCNULTY, BOUCHER, CHANDLER, FATTAH, and Ms. DEGETTE changed their vote from ''yea'' to ''nay.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. THORNBERRY). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HASTINGS of Washington. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 284, noes 124, not voting 25, as follows:

[Roll No. 182]

AYES—284

Abercrombie
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Berry
Biggert
Bilirakis
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Calvert
Camp
Cannon
Cantor
Capito
Capuano
Cardin
Carnahan
Carter
Castle
Chabot
Chandler
Chocola
Coble
Cole (OK)
Conaway
Costa
Cox
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cunningham
Davis (FL)
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Doyle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Evans
Everett
Fattah
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Hooley
Hostettler
Hulshof
Hunter
Inglis (SC)
Issa
Istook
Jackson (IL)
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Kolbe
Kuhl (NY)
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marshall
Matheson
McCarthy
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McMorris
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Murtha
Musgrave
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Ortiz
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sánchez, Linda T.
Saxton
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Sodrel
Souder
Spratt
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tanner
Tauscher
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (AK)
Young (FL)

NOES—124

Ackerman
Andrews
Baird
Baldwin
Barrow
Bean
Berkley
Bishop (GA)
Boswell
Brown, Corrine
Butterfield
Capps
Carson
Clay
Cleaver
Clyburn
Conyers
Cooper
Costello
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Edwards
Emanuel
Engel
Etheridge
Farr
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Herseth
Higgins
Honda
Hoyer
Inslee
Israel
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kucinich
Langevin
Lantos
Lee
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Matsui
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Miller (NC)
Moore (KS)
Moore (WI)
Moran (VA)
Nadler
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rangel
Rothman
Roybal-Allard
Rush
Sabo
Salazar
Sanchez, Loretta
Schakowsky
Schiff
Sherman
Slaughter
Smith (WA)
Snyder
Solis
Taylor (MS)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Woolsey
Wynn

NOT VOTING—25

Becerra
Berman
Boucher
Buyer
Cardoza
Case
Eshoo
Foley
Hyde
Jefferson
Knollenberg
Larson (CT)
Lewis (GA)
Marchant
McCollum (MN)
McKeon
Millender-McDonald
Miller, George
Myrick
Napolitano
Pascrell
Sanders
Stark
Tancredo
Turner

□ 1228

Mrs. MALONEY and Mr. CUMMINGS changed their vote from ''aye'' to ''no.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. PASCRELL. Mr. Speaker, on rollcall No. 182, had I been present, I would have voted "no."

APPOINTMENT OF MEMBERS TO HOUSE DEMOCRACY ASSISTANCE COMMISSION

The SPEAKER pro tempore (Mr. THORNBERRY). Pursuant to section 4(a) of the Democracy Assistance Commission Resolution (House Resolution 135, 109th Congress), and the order of the House of January 4, 2005, the Chair announces the Speaker's appointment of the following Members of the House to the House Democracy Assistance Commission:

Mr. DREIER, California, Chairman;
Mr. KOLBE, Arizona;
Mr. GILLMOR, Ohio;
Mr. KIRK, Illinois;
Mr. BOOZMAN, Arkansas;
Mr. WILSON, South Carolina;
Mr. COLE, Oklahoma;
Mrs. MILLER, Michigan;
Mr. FORTENBERRY, Nebraska.

COMMUNICATION FROM THE HONORABLE NANCY PELOSI, DEMOCRATIC LEADER

The SPEAKER pro tempore laid before the House the following communication from the Honorable NANCY PELOSI, Democratic Leader:

HOUSE OF REPRESENTATIVES
Washington, DC, May 17, 2005.

Hon. J. DENNIS HASTERT,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to section 4(a) of the House Democracy Assistance Commission Resolution (House Resolution 135, 109th Congress), I hereby appoint the following members to serve on the House Democracy Assistance Commission.

Mr. David Price, NC (Ranking Member).
Mr. Silvestre Reyes, TX.
Ms. Lois Capps, CA.
Mr. Rush Holt, NJ.
Mr. Adam Schiff, CA.
Mr. Artur Davis, AL.
Ms. Allyson Schwartz, PA.

Best regards,

NANCY PELOSI,
Democratic Leader.

GENERAL LEAVE

Mr. COX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1817.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

DEPARTMENT OF HOMELAND SECURITY AUTHORIZATION ACT FOR FISCAL YEAR 2006

The SPEAKER pro tempore (Mr. THORNBERRY). Pursuant to House Resolution 283 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1817.

□ 1231

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1817) to authorize appropriations for fiscal year 2006 for the Department of Homeland Security, and for other purposes, with Mr. SIMPSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from California (Mr. COX) and the gentleman from Mississippi (Mr. THOMPSON) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. COX).

Mr. COX. Mr. Chairman, I yield myself 7 minutes.

Mr. Chairman, we begin today a historic debate on the floor of this House that commences the annual authorization process for the Department of Homeland Security. This annual process is designed to recognize that the function of the Department of Homeland Security is the essence of our government's national security mission, protecting the American people and our territory.

This is the same national security mission ultimately that is performed in different ways by the Pentagon and by the intelligence community. Both the Pentagon and the intelligence community for this same reason undergo an annual authorization process in the Congress. That is a collaboration between the executive and the legislative branches that is necessary to ensure that we fulfill this most vital function.

We must remember that the Department of Homeland Security in the executive branch and the Committees on Homeland Security in this House and in the other body were formed because the congressional leadership and the President recognized that neither branch of government as then constituted was properly organized to deal with the 21st century threat of terrorism directed against Americans on our own territory. On an ongoing basis, the Congress and the executive need to focus together on this vital process and the annual authorization is the means for doing so.

The Department of Homeland Security authorization bill that is before the House today reflects an impressive bipartisan effort. That is due, in large part, to the strong and able leadership of the gentleman from Mississippi (Mr. THOMPSON). The Members on both sides of the aisle have never forgotten for a single day since September 11, 2001, that the security of the American people must be placed above politics.

So as we meet today to consider the Department of Homeland Security authorization bill for fiscal year 2006, we find that we have forged agreement on many important challenges facing our country and the Department, and on ways to begin to address them. In establishing the procedures for bringing this annual authorization bill to the floor, we have been guided by the longstanding practices of the Committee on Armed Services and the Permanent Select Committee on Intelligence. Those committees have always brought to the floor bills that live within the spending boundaries established in the House-passed budget. H.R. 1817, the Department of Homeland Security authorization bill also does exactly that.

To have credibility, a national security authorization bill must set the executive's priorities within the framework of its actual budgetary resources. It does little good for us to pretend that the Department of Homeland Security has infinite budget resources, and then give it mandates that it cannot carry out. So this bill funds priorities within the overall DHS budget, not on top of it.

Within that constraint, we have been able to accomplish a great deal more for the security of the American people and for this country. We fully fund the 2,000 new Border Patrol agents called for in the Intelligence Reform Act passed last year, and we increase the Department of Homeland Security's funding by nearly one-quarter of a billion dollars for this purpose.

The bill authorizes $40 million so that immigration and customs enforcement can expedite illegal alien removal. It provides $5 million in new funding to implement the Safety Act so we can more quickly deploy antiterrorism technologies to protect the American people from terrorism. It adds $20 million for interoperable communications and technical assistance for our first responders. It increases funding for cybersecurity research and development and for cybersecurity education and training.

Within the Department of Homeland Security budget that this House has already approved, we have authorized $40 million in additional funds to support the training of State and local law enforcement personnel so they can help enforce Federal immigration laws. This provision is contained in a separate amendment that I will offer today with the gentleman from Wisconsin (Mr. SENSENBRENNER) of the Committee on the Judiciary.

On these and all other funding decisions in the bill, we have had to make hard choices and set priorities. That is our responsibility. As a result, we have not funded every initiative to protect against every conceivable means by which terrorists might mount an attack. But what we have done is based our funding decisions on the best intelligence available, on terrorist capabilities and intentions, and on the actual risk of terrorist attack. The bill also advances our prime objective of preventing terrorism by improving our intelligence capability within the Department of Homeland Security.

Prevention of terrorism requires that information sharing about terrorist threats be seamless, that it be timely, and that that communication be secure. That is exactly what this bill accomplishes, both within the Department of Homeland Security and across the Federal Government and with our State, local and private sector partners. It provides the Department of Homeland Security with new tools to build a robust intelligence capability. It strengthens the partnership with these other stakeholders.

Those partnerships are essential in sustaining the counterterrorism mission into the foreseeable future, and the bill will help the Department of Homeland Security to streamline and integrate the multitude of different background checks and security screenings that are conducted for travelers, workers and other critical personnel who are required to undergo security checks by the Department.

The bill revises the color-coded homeland security advisory system to make sure that threat warnings are specific and informative, and wherever possible, that these warnings be targeted. By targeting these warnings to the areas of the country or sectors of the economy that are threatened, we can be sure that we are warning the right people and not needlessly scaring the wrong people. We also need to make sure that the Federal Government gives clear guidance and speaks with one voice when it issues such warnings. This bill will ensure this happens.

This authorization bill is shorter this year than it will ever be in future years. That is because, first, the Department itself is only 2 years old, and Congress has just recently written the entire legislative charter for the Department.

Second, we have a new homeland security Secretary who is just concluding his top to bottom 90-day review of the entire department. We want to give Secretary Chertoff the opportunity to draw his own road map, both organizationally and programatically, of where this Department should go.

We will proceed on additional authorizing legislation later this year once we have had the opportunity through hearings and oversight to evaluate the Secretary's proposals.

Mr. Chairman, I conclude by thanking the Members on both sides of the aisle and the House leadership on both sides of the aisle for their foresight in creating the Committee on Homeland Security within the House of Representatives and for allowing us to initiate this annual authorization process on the floor. This is a significant milestone on our long journey toward keeping America safe from terrorism.

Mr. Chairman, I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I commend the gentleman from California (Mr. COX) for his tireless efforts to see that this day came to be. He worked continuously to create a permanent Committee on Homeland Security and put in the right track to producing the bill.

It took 13 hours to mark up this bill in committee, and I have to say that he never lost his patience or his good character, nor his sense of humor; but clearly, it was a bipartisan effort, and for that I want to thank the gentleman from California (Mr. COX).

This bill has many good provisions in it. It rejects the section of the President's shortsighted budget that sought to hire only 210 new Border Patrol agents this year. Instead, it provided for the 2,000 border agents that everybody else agreed that we needed.

It also, by creating an Assistant Secretary of Cybersecurity at DHS, finally recognizes the threat posed by cyber attacks. The gentlewoman from California (Ms. ZOE LOFGREN) and other Democrats on this committee have sought the creation of this position for a very long time.

The evaluation of the color-coded terrorist system is also welcomed. The system has provided more material for late-night comedians than effective information on threats on the public.

Also, I am glad that this bill requires the Department to explain how it is working to protect agriculture and the Nation's food supply from terrorist attacks.

That said, I wish this bill would have been more comprehensive. I am glad that, as the chairman mentioned, it is small only because we are a new committee, but there are some things that we overlooked. We did not mention airports or chemical plants in this legislation. I just hold up for the chairman's view and the view of the public the defense authorization bill which is sizable, and I look forward to, in the next authorization effort next year, to having a bill that is comprehensive.

The present authorization bill is very, very short on content, but nonetheless it is a start. There is no comparison between the two, so I am convinced that at the end of the day Members will recognize we have a long way to go and there can be no effort or wasting time. We must do what it takes to make America secure. I hope that we work closely to close the security gaps left by this bill.

Mr. Chairman, I reserve the balance of my time.

Mr. COX. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN).

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I would like to first of all add my thanks to both the chairman and the ranking member of this committee for the bipartisan way in which they have approached this issue.

I was not a member of this House of Representatives on 9/11. I saw, as did many Americans, an attack that many of us had never anticipated. It only brought memories of what my parents' generation must have felt on the day that we had the attack at Pearl Harbor.

The question before us really now is what is the proper response and what will that response be by our legislative branch. There has been established a Department of Homeland Security. It is an amalgamation of many departments and agencies that previously existed. It has been an effort to try and bring a single focus to a major issue, our response to terrorism. It was a well-done job under the circumstances.

Yet now we are here some 3-plus years after 9/11, and we recognize that everything we did was not exactly perfect. We recognize there are changes that must be made. This authorization bill is the first chance that our committee has to present to the House our effort to try and get our arms around not only this problem but the response to this problem, and that is the Department of Homeland Security.

While there are other elements of the executive branch which deal with this, the primary responsibility is with the Department of Homeland Security, and we have attempted on a bipartisan basis to look at the issues, to do the proper oversight, to try and make some recommendations, but none should be deluded to the fact that we somehow believe this is the total response to the problem.

□ 1245

This is our first effort. This is the beginning of a job that is going to be ongoing. Much like the Defense Department was organized in the late 1940s, early 1950s, and while it took time for Congress to properly get its arms around that, we similarly must do that now.

Time is not on our side. The terrorists are not waiting until we get organized, so we must make sure that we do this in the best fashion possible, in a timely fashion.

I would say that I am very proud of the fact that the bill that has been brought to floor is a bill that got the unanimous support of the members of this committee, both Democrat and Republican. It is a worthy bill. It is a worthy effort at our direction to the Department of Homeland Security.

There will be things that we will do in the future. One of the things mentioned by the ranking member that I believe is a real step forward is establishing the position of Assistant Secretary for cybersecurity. There is a need to have a concentration on that issue. There is a need to have that at a heightened level. There is a need for us to understand the embedded nature of cyberoperations in our society, both public and private. I believe that we have on a bipartisan basis reached that conclusion.

I thank both the ranking member and the chairman for the work they have done. I would ask that the Members support this bill as presented by this committee.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. LORETTA SANCHEZ), the ranking Democrat on the Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity.

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I thank the gentleman from Mississippi for yielding me this time.

I rise today in strong support of H.R. 1817, the Department of Homeland Security Authorization Act for Fiscal Year 2006. This is our first authorizing bill for the now 2-year-old Department of Homeland Security, and it represents hard work by all the members of the Committee on Homeland Security. I would like to congratulate the gentleman from California (Mr. COX), the gentleman from Mississippi (Mr. THOMPSON), and all the members of the committee for their hard work in crafting this bill and bringing it to the floor today.

While I would have liked to have seen a more comprehensive bill such as the substitute that will be offered by the gentleman from Mississippi which would have addressed aviation security, port security, interoperability for our first responders and a host of other important areas not addressed in H.R. 1817, I recognize that this bill marks significant progress for the Congress, and I urge its adoption.

H.R. 1817 will authorize specific amounts for certain programs within the Committee on Homeland Security's jurisdiction, such as fully funding the 2,000 additional border patrol agents recommended by the 9/11 Commission and authorized under the Intelligence Reform and Terrorism Prevention Act of 2004.

I was gratified that during the markup of the bill in the Committee on

Homeland Security that important amendments I offered concerning the national infrastructure protection plan and cargo container security were adopted, but I am also disappointed that an amendment that I intended to offer on the floor today was not accepted by the Committee on Rules. It is the Customs-Trade Partnership Against Terrorism amendment. C-TPAT, as it is known, is a program that offers companies reduced inspections of their cargo, and in return the companies must submit and adhere to a security plan.

There are currently 5,000 companies participating in this program that receive the benefit of reduced inspections, yet only 600 of these have had an on-site validation to ensure compliance with the security requirements. C-TPAT in its current form represents a dangerous security gap that must be closed, and I hope that Congress and DHS will address this problem before it is too late.

I urge my colleagues to support the bill.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I yield 5 minutes to the gentleman from Georgia (Mr. LINDER), a member of the committee.

Mr. LINDER. Mr. Chairman, I thank my friend for yielding me this time. I congratulate the gentleman from California (Mr. COX) and the gentleman from Mississippi (Mr. THOMPSON) for working so well together in the interest of national security to bring this measure to the floor.

Mr. Chairman, I rise in strong support of H.R. 1817. History has provided us with many examples of leaders who have taken the steps to ensure the safety and security of the American people. Today this House takes its place in that historical record through consideration of an unprecedented measure that authorizes the activities of the new Department of Homeland Security.

In addition to authorizing over $34 billion in funding for DHS operations in fiscal year 2006, this legislation calls for DHS to accelerate its efforts to identify and deploy homeland security technologies and creates mechanisms by which State and local leaders can effectively communicate with Federal homeland security officials.

As the chairman of the Subcommittee on the Prevention of Nuclear and Biological Attack, I have been tasked with overseeing the Department's efforts to prevent terrorist attacks on the United States using nuclear and biological weapons. I cannot think of a more devastating event both in terms of loss of life and economic fallout than an attack on this country involving a weapon of mass destruction.

H.R. 1817 refocuses the mission of DHS to follow a similar path. First, this legislation authorizes full funding of 2,000 new border agents. It is no secret that much of our Nation's 7,000 miles of border with both Canada and Mexico are vulnerable to illegal crossings. The addition of these agents will strengthen our Nation's ability to protect those borders and to prevent terrorists from smuggling nuclear or biological material into our country.

Prevention, however, should not be limited to our borders, and H.R. 1817 authorizes approximately $200 million in funding for a new nuclear detection office which will play a substantial role in coordinating the overseas nonproliferation efforts of the Federal Government. Moreover, H.R. 1817 provides nearly $140 million in funding for the Container Security Initiative and requires DHS to conduct a risk assessment of each foreign seaport that is designated as a CSI port. While we should do everything possible to ensure that the free flow of commerce between countries is not inhibited, we cannot ignore the possibility that terrorists may use foreign seaports to transport weapons of mass destruction into our country.

We cannot simply wait at home for terrorists to come to us. These efforts must be conducted in areas of the world that have, or can obtain, weapons of mass destruction but lack the responsibility of ensuring that such weapons do not fall into malevolent hands.

Mr. Chairman, government has no greater responsibility than that of protecting the rights and freedoms of its citizens. I urge my colleagues to join me in taking an additional step forward in this effort by supporting H.R. 1817.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York (Mrs. LOWEY).

Mrs. LOWEY. Mr. Chairman, I rise in support of this bill. I want to commend the gentleman from California (Mr. COX) and the gentleman from Mississippi (Mr. THOMPSON) for their very hard work. This bill includes provisions to improve our homeland security a great deal, but I regret that it is not complete.

Communication barriers faced by emergency personnel in Oklahoma City 10 years ago still plagued our first responders on September 11; 3½ years later, the very same first responders are waiting for further guidance and funding for communications interoperability. Section 308 reinforces Congress's intent for DHS, the Department of Commerce, and the FCC to work together to issue voluntary standards and a schedule to reach those standards.

I applaud this provision, but we could have done better. I am frustrated that two amendments I submitted to the Committee on Rules were not allowed under the rule. One of the amendments would have authorized grant funding for interoperability. Standards are a first step, but we must follow with resources. The U.S. Conference of Mayors June 2004 interoperability report noted that 75 percent of the cities surveyed have not received Federal funds for interoperable communications. This is unacceptable. First responders need, and quite frankly deserve, a commitment from this Congress that roadblocks to an interoperable communications system, particularly a lack of consistent and sustained Federal funding, will be eliminated.

My second amendment would have required that all airport employees go through some form of physical screening when entering sterile and secure areas. This happens at the busiest airport in the world, Heathrow, and in Canada; but it does not happen in the U.S. 9/11 Commission Chairman Kean told the Committee on Homeland Security that everybody should go through metal detectors without exception. We have spent tens of billions of dollars on passenger screening, but have nevertheless left gaping holes in the security of our airports.

These two fundamentals of homeland security, grant funding for first responder communications system and screening of airport workers, are long overdue. I support the bill, but it could have been improved with these commonsense measures.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I yield 3 minutes to the gentlewoman from Florida (Ms. GINNY BROWN-WAITE).

Ms. GINNY BROWN-WAITE of Florida. Mr. Chairman, I rise today in support of H.R. 1817, the Homeland Security Authorization Act for Fiscal Year 2006. I applaud the gentleman from California (Mr. COX) for his leadership and commitment to securing our Nation's borders. Congress has not been idle when it comes to our Nation's security, recently passing the REAL ID Act in the emergency wartime supplemental. I applaud all of these changes. They provide identification checks that will keep our vital infrastructure facilities like chemical and nuclear power plants safe from terrorists.

I know firsthand the value of security, as my hometown recently experienced the unfortunate confluence of illegal immigration, Social Security fraud, and potential terrorist threats. I live in Crystal River where there is a nuclear power plant, and it was found to have contracted with a businessman who, unbeknownst to them, had actually been using illegal immigrant day laborers who provided false or stolen Social Security numbers to obtain government-issued driver's licenses.

This issue brought home the vital importance of not only upgrading our identity verification processes but also of securing our borders. These people actually had been deported but sneaked back into the country and got a little too close to a critical infrastructure site for this Member of Congress to be able to tolerate.

We worked to strengthen our ID laws, but we also must work to strengthen our borders. Today our borders are overwhelmed. To anyone watching today, it is clear that America needs

border patrol agents. Just last week in the Committee on Government Reform, my colleagues and I heard testimony that the Department of Homeland Security does not have enough agents and that it desperately needs more. Last year's intelligence reform bill authorized 2,000 new agents. These new border patrol agents will deter illegals from entering the United States and will enhance response capabilities by almost 20 percent. However, funding was only proposed for 210 of these agents. This is unacceptable. 210 agents cannot adequately protect our borders.

Accordingly, I join my colleagues on the Immigration Reform Caucus to call for the full 2,000 new border patrol agents. I thank the gentleman from California again for placing this as a priority of securing our borders and authorizing the additional agents that America needs. Mr. Chairman, I strongly urge my colleagues to protect our borders and to vote in favor of the Homeland Security Authorization Act which does better protect nuclear power plants and chemical facilities.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 2½ minutes to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Chairman, today represents a very important step to ensure that Congress truly begins to exercise a robust, judicious, and intense oversight of the Department of Homeland Security. Our committee has been called on to defend our ports, our infrastructure, our neighborhoods, indeed our families. We have risen to the challenge. Indeed, this first-ever authorization bill, H.R. 1817, will begin an annual ritual to critically examine the Department of Homeland Security and its effectiveness in securing our Nation.

Oversight is germane to our mission. It is an austere and sober undertaking, to be sure; and it should be. This Department was formed because of the disastrous terrorist attacks of September 11, and its mission is to help prevent and respond to any potential future assault.

I commend the gentleman from California (Mr. COX) and the gentleman from Mississippi (Mr. THOMPSON) for their leadership in undertaking this process. I understand the pressures that were faced in trying to complete this inaugural authorization, and our chairman has had to navigate a difficult course.

Make no mistake, there are provisions within this bill that will make very good public policy. The creation of an Assistant Secretary for cybersecurity within the Department is a wise measure to help combat a very real vulnerability. Likewise, allowing the Department of Homeland Security Secretary to provide additional incentives to recruit highly sought after intelligence analysts is a great step to combat one of our biggest national security problems.

However, while I applaud the work and the spirit that went into this legislation, I would have preferred to see a more comprehensive bill that addressed a greater assortment of security gaps that we have uncovered.

□ 1300

I will proudly support the substitute that the gentleman from Mississippi (Mr. THOMPSON), ranking member, will offer later today. The gentleman from Mississippi will improve this authorization by better funding our border security in aviation research. His substitute will provide the tools necessary to secure our chemical plants and ports, just to name but a few.

This is indeed a big day for homeland security and the Committee on Homeland Security and for Congress as a whole. I thank the chairman and the ranking member for all of their hard work.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from New York (Mr. BOEHLERT), chairman of the Committee on Science, someone who worked closely with our committee.

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Chairman, I rise in strong support of this bill, which will help us better guide the Department of Homeland Security in its most important responsibilities. I want to thank the gentleman from California (Chairman COX) and the staff for working so closely with us on areas of the bill that were under the jurisdiction of the Committee on Science, which I am privileged to chair.

The Committee on Science created the Science and Technology Directorate, and we want to do everything we can to ensure that it succeeds in this mission. As I have said before many times, the war against terrorism, like the Cold War, will be won in the laboratory as much as on the battlefield.

The Committee on Science also played a key role in the establishment of the Information Assurance and Infrastructure Protection Directorate, where our interests have focused on cybersecurity, a grave and underappreciated threat, and one on which DHS unfortunately has focused too little attention and too few resources. We hope that is going to change.

This bill will strengthen research and development activities at the Department and will place new and added emphasis on cybersecurity. Specifically, the bill includes language to enhance technology transfer, to improve cybersecurity training, and to create an Assistant Secretary for cybersecurity and to authorize explicitly a cybersecurity research and development program. All of this language either originated in our committee or was worked out in collaboration between the Committee on Science and the Committee on Homeland Security.

I am especially pleased that the bill recognizes the need to focus more on cybersecurity. We all recognize it. We want to make sure that the agency follows through and responds accordingly. We need to act both immediately and in the long term. Immediately, we need to shore up existing networks and develop a system to detect, report, and respond to attacks. Over the long term, we need to figure out how to make computers harder to attack.

DHS needs to be working with the National Science Foundation, the National Institute of Standards and Technology, the Defense Advanced Research Projects Agency, and the National Security Agency on cybersecurity. But its own contributions are critical.

Let me close by thanking the gentleman from California (Chairman COX) and the gentleman from Mississippi (Mr. THOMPSON), ranking member, working together, their staffs, and especially Tom DiLenge, and the entire Committee on Homeland Security by working cooperatively to come up with an excellent bill which has earned our support.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 2½ minutes to the gentlewoman from New York (Mrs. MCCARTHY).

Mrs. MCCARTHY. Mr. Chairman, I want to congratulate certainly the Committee on Homeland Security. I mean it was very difficult, I am sure, for them to try to work everything out that needed to be in starting and looking at a new territory. I happen to think that it is a bill that certainly has been put together and hopefully it is going to be everything that we need to keep this land safe.

With that being said, last night in the Committee on Rules, I tried to offer five different amendments. A lot of them had to do with gun safety. Mr. Chairman, as far as I am concerned, part of this legislation is incomplete when we talk about homeland security. It totally ignores threats posed by terrorists aiming themselves at our country. And according to a GAO report published earlier this year, they are finding exactly that. Why? Because of our pre-9/11 gun laws.

Common sense would dictate if we do not trust one to board a plane, we should not trust them to buy a gun. And that is exactly what we are seeing. We are seeing that certain people are on the no fly list, they are not allowed to get on a plane; yet those same people, a lot of them who certainly have backgrounds as terrorists, can go into any store, they can go to a gun show anywhere to be able to buy a gun.

That does not make sense to me. We are supposed to be protecting the American people. We are supposed to be protecting our law enforcement people and certainly our Federal employees. Anybody on a Federal terrorist watch list can buy assault weapons with the large capacity clips. We tried to have that addressed, especially the large capacity clips. We saw what all these people can do with only box cutters and boarding passes. What makes

it so easy for them to buy guns? Why is Congress ignoring this serious homeland security threat that we are facing? Why do we allow our enemies on the war on terror to arm themselves within our borders and make it so easy for them?

Almost all of the legislation that I have been proposing certainly would not stop one citizen from buying a gun. Until we address our pre-9/11 gun laws, our Nation's homeland security will be at risk.

As I said, we will certainly, hopefully before this Congress is over, be able to address these issues. Safety for the American people is paramount for all of us. Both sides agree on that, and I hope that we can have a new dialogue on how we talk about gun safety in this country, and part of it has to be homeland security.

Mr. DENT. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, I rise to speak in support of H.R. 1817, the Department of Homeland Security Authorization Act for Fiscal Year 2006.

Mr. Chairman, I come to Congress in an era when rancor between the parties seems to dominate the headlines. This bill, however, is a testament to the idea, uniquely American, that congressional politics will always be placed on the back burner when it comes to the job of protecting the homeland.

This legislation has come to the floor of the House in no small part because of the bipartisan efforts of both the chairman and the ranking member of the Committee on Homeland Security, of which I am a member.

This is not to say that both sides did not state their positions forcefully. In this regard, there were spirited exchanges while this bill was being marked up in committee. There were over 30 amendments offered, and all were extensively and vigorously debated. Yet throughout all of this, the dialogue was cordial, and I believe this is because everyone involved possessed the same goal: pass a bill that would give this country the protection it deserves at a cost that we can all afford to pay.

The bill indeed puts resources where those resources are needed. It authorizes some $34 billion to fund programs designed to combat a host of homeland security issues. It allocates $1.84 billion so that the government can afford to hire and train some 2,000 new border patrol agents. These newly minted law enforcement officers will not only serve as a deterrent to would-be terrorists but also as an important element in the fight to curb illegal immigration in general.

Improving intelligence capabilities is also an important part of this legislation. The bill provides moneys so that the Department of Homeland Security can hire the best intelligence analysts available. It promotes the development of an open-source intelligence strategy, and it increases the capabilities of the Department of Homeland Security to detect and preempt the most serious kind of terrorism imaginable: a nuclear or biological attack.

Some have wondered whether or not this bill is comprehensive enough to deal with all the security threats the Nation must confront. There is no doubt in my mind that it is. There is money authorized here to make sure that containers coming from foreign ports receive risk-based cargo screening. Funding for this important project will also increase from $126 million in 2005 to $133 million in 2006. Further, the bill provides funding for such varied security issues as the protection of civilian passenger and cargo aircraft, $10 million; chemical countermeasure development, $76 million; the detection of weapons of mass destruction, $100 million; and critical infrastructure protection, $465 million.

The idea that homeland security funding should be based on security rather than on political concerns is one that resonates on both sides of the aisle of this great Chamber. The Members of this body recognize that the security challenges we face are unique in our history. The Homeland Security Authorization Act for Fiscal Year 2006 gives us the tools to meet these challenges. For that reason, I vigorously and strongly support this legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. ETHERIDGE), an excellent member on the committee.

(Mr. ETHERIDGE asked and was given permission to revise and extend his remarks.)

Mr. ETHERIDGE. Mr. Chairman, I would like to thank the gentleman from California (Chairman COX) and the gentleman from Mississippi (Mr. THOMPSON), ranking member, for conducting what I think is a thoroughly balanced markup of this bill, the first House authorization of the Department of Homeland Security. This bill is a bipartisan product of our committee, and I am pleased that the committee included my amendment addressing the importance of agriculture security in the bill.

Too often folks take the safety of our food for granted. It is critical that the Department of Homeland Security work in close cooperation with other agencies of the Federal Government, especially the U.S. Department of Agriculture, to ensure the safety of the food in this country.

Although the authorization bill addresses many important issues, it is far from perfect. It fails to address a number of the important and wide-ranging security gaps, including the need for communication and interoperability between first responders. We also need more investment not only in the research and development of security technologies but also in the training of scientists, researchers, and analysts to support and protect our Nation.

This bill is a good first step, and I look forward to working on a bipartisan basis to address the remaining security gaps, and hopefully we will get a chance to vote on them today.

I thank the gentleman from Mississippi for his hard work and for yielding me this time, and I am proud to support this legislation.

Mr. DENT. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana (Mr. JINDAL).

Mr. JINDAL. Mr. Chairman, I rise in strong support of H.R. 1817. This bill funds Homeland Security and helps to further protect our country from those who would intend to do us harm.

This bill creates a department-wide terrorism prevention plan, uniting the actions of 22 different Federal organizations that were combined into the Department. This bill expedites the deployment of the antiterrorism technology. It requires the Department to create and establish a technology clearinghouse within 90 days to expedite the deployment of antiterrorism technology for use by Federal, State, local, and private sector officials.

This bill increases border enforcement. It requires the Secretary to study the division of border security between Customs and Border Patrol and the Immigration and Customs Enforcement and to look at the merits of consolidation. This bill also gives the Secretary the ability to provide incentives to recruit highly-sought-after intelligence analysts.

As many speakers have already said, I certainly commend the chairman, I commend the ranking member for working together in a bipartisan fashion on such an important bill.

I would also like this Chamber to recognize that so much of this bill is focused on streamlining homeland security efforts, from better coordinating the various agencies to facilitating communication with local officials. I strongly rise in support of the creation of regional offices, which are called for in the committee report, because I believe that would aid these efforts. These regional offices would create a stronger platform to lead national efforts to set priorities, identify critical vulnerabilities, and to coordinate State, local, and private sector entities in order to protect our homeland from terrorist attacks.

Louisiana has got a lot to protect. We are home to more than 190 sites identified as national critical infrastructure. New Orleans is one of the largest port systems in the world. Baton Rouge, my hometown, is the Nation's furthest inland port, the only port in the country capable of handling superships. My State is the third largest producer of petroleum, the third leading State in petroleum refining, all of which requires critical infrastructure. Twenty-five percent of the Nation's exports are already shipped through Louisiana.

For those reasons, I strongly rise in support of these provisions that shift

our funding to one based on the risk and threat of actual attack as opposed to just politics. Louisiana is already home to a Coast Guard and border patrol regional office. We certainly hope that when the Department does come and decide where to locate these regional offices, we will be considered.

I rise in strong support of the bill.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 2 minutes to the gentlewoman from Houston, Texas (Ms. JACKSON-LEE), also a member of the committee.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, first I want to offer my great appreciation of the gentleman from Mississippi (Mr. THOMPSON), the ranking member of this committee, and of course for his collaborative efforts with the gentleman from California (Mr. COX), chairman of this committee.

□ 1315

I think that we can go on record as one of the more collaborative committees on something that requires an American response.

I rise today to say that we have made a good first step. As all of America's eyes were looking at a little Cessna, the Committee on Homeland Security now recognizes or has recognized that we are and have to be a proactive committee. We must give an answer to the American people that they will appreciate and find comfort that we are securing the homeland, the rural hamlets, the urban areas, the suburban areas, the counties, the cities, and Homeland Security Should be in our neighborhoods.

So I am somewhat disappointed that my community preparedness amendment was not included, but I look forward to working with the gentleman from California (Mr. COX) and the gentleman from Mississippi (Mr. THOMPSON) so that we can emphasize an enhanced citizen corps. I am glad that we will study the question of whether or not border violence requires volunteer efforts and whether or not we are doing all that we can as a governmental entity to protect our borders. That is the role and the responsibility of America.

Then I am delighted that we have done a few things in this bill, but, Mr. Chairman, I raise a question that there is no emphasis, no work done on the aviation security issues that are still growing and still there; no further work done on port security that really is important in America with the need for new technology and the inspection of cargo, which is not done in all of America's ports; and certainly, coming from Texas, I think it is important that we understand industry such as the energy industry, but we must demand safety and, as well, there is a great need for protecting, or at least providing those kinds of requirements and oversight.

We could do more. I look forward to supporting the substitute offered by the gentleman from Mississippi (Mr. THOMPSON), and I ask my colleagues to support my amendments regarding border violence as well as studies dealing with temporary protective status. I ask my colleagues that we work together to secure the homeland.

Mr. Chairman, I rise in support of the overall measure we consider today, the Department of Homeland Security Authorization Act for FY 2006, H.R. 1817. While there remain areas that have not been adequately addressed in its provisions, I recognize the importance of a bi-partisan effort to secure our homeland. We have waited three years for the crafting and consideration of an authorization measure, and now we have the chance to show America that we are responsible, prudent, and expedient.

H.R. 1817 is the first authorization measure since the passage of the Homeland Security Act of 2003. The appropriators withheld over $700 million from DHS due to incomplete fulfillment of specific reporting requirements; therefore, our passage of the most comprehensive and representative measure possible would equate to having conducted ''due diligence'' on our part.

Just yesterday, we in the House passed the Appropriations Act for FY 2006, H.R. 2360, by a margin of 424–1. I joined my committee colleagues in considering this bill from its incipiency as it passed in both the Committees on Homeland Security on April 28, 2005 and Judiciary on May 12, 2005 unanimously by voice vote. Today, the Committee of the Whole will make history by passing its first Homeland Security Authorization measure, and I support an expedient but prudent completion of this endeavor.

In the markup hearing of the Committee on the Judiciary held on May 12, 2005, I offered an amendment on behalf of and in conjunction with my colleague from California, who serves on the Democratic Caucus Task Force on Homeland Security, Vice Chair of the Democratic Caucus Task Force on Immigration, and First Vice Chair of the Congressional Hispanic Caucus. As I serve as the Ranking Member of this Committee's Subcommittee on Immigration, Border Security, and Claims, this important amendment that would require the collection of data on immigration consultants and ''notarios'' who conduct fraudulent immigration services for compensation, I was happy to offer this amendment. I thank the gentleman from Wisconsin, the Chairman of the Committee on Judiciary and the Ranking Member from Michigan for their collaborative support of this amendment as it was accepted and incorporated as Section 506 of the Amendment in Nature of a Substitute that we consider today.

During the 13-hour Homeland Security Committee markup session that ended at 11:15 p.m. I was able to secure sincere commitments from the Majority Leadership to work with me for inclusion of some of my major initiatives: funding and more clearly defining the Citizen Corps and the Citizen Corps Councils—which will include consideration of a stand-alone bill that I will introduce shortly; and increasing capacity for Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Institutions in Homeland Security procurement and in employment with the Department of Homeland Security. In addition, I was fortunate to have had my amendment, co-sponsored by the Gentlelady from California, Ms. LOFGREN, that seeks to authorize the funding of programs for the education of minorities in the areas of cyberscience, research, and development to close the gap in achievement in those areas and to make America better equipped to fight terrorism overall. Furthermore, I achieved an agreement from the Majority Committee Leadership to collaborate on addressing the issue of border violence, an initiative that the distinguished Chairman of the Appropriations Subcommittee on Homeland Security showed his commitment to addressing, as evidenced by his support for an amendment that I offered yesterday during the House's consideration of the appropriations measure, H.R. 2360. Not only do I hope to see this language survive the deliberations of the Conferees, but I hope to see follow-through by the Homeland Security Committee with the bi-partisan letter and with consideration of the amendment that I plan to offer during our consideration of H.R. 1817.

Mr. Speaker, what the House has done this week and will do today will establish the breadth and efficacy of the entire Department of Homeland Security. I hope that my colleagues will keep that in mind as we work to debate the amendments that have been made in order.

Mr. DENT. Mr. Chairman, I would like to inquire as to how much time remains.

The Acting CHAIRMAN (Mr. COLE of Oklahoma). The gentleman from Pennsylvania (Mr. DENT) has 5½ minutes remaining; the gentleman from Mississippi (Mr. THOMPSON) has 14½ minutes remaining.

Mr. DENT. Mr. Chairman, I yield myself 2 minutes.

As I stated in my previous remarks, this legislation is important for a number of reasons, not the least of which is it will help us in our fight against nuclear and biological terrorism. I think we all can agree that that is the one issue that, as Americans, we can agree to as our greatest threat. This committee has spent a great deal of time discussing that issue recently, and I believe, for one, that this bill adequately addresses that issue and many, many others.

So with that, again, I rise in strong support of this authorization legislation. I am proud of the bipartisan spirit that we have embraced in this committee led the chairman and the ranking member.

Mr. Chairman, I yield the balance of the time to the gentleman from California (Mr. COX).

Mr. COX. Mr. Chairman, we have no more speakers on our side, and I reserve the balance of the time for closing.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 4 minutes to the gentleman from Massachusetts (Mr. MARKEY), a member of the committee.

Mr. MARKEY. Mr. Chairman, I thank the gentleman for yielding me this time.

The Republican leadership has denied a debate on the House floor on the very important issue that passengers who

fly on commercial flights across America, tens of millions of Americans a year who put their families on commercial flights, are put in the situation where they take off their shoes, they have their computers checked, they have their bags which are inspected on those passenger flights, because we know that al Qaeda is trying to infiltrate commercial flights in America.

But the cargo, the cargo which goes on that very same plane, of somebody who did not buy a ticket on that flight but placed the cargo on that plane, is going to fly without being screened at all. Almost none of the cargo on American planes that carry passengers across our country is screened, although that cargo is almost the same size as your bags, which are on the same plane. So you have your bags screened, you have your family screened, but the cargo on that plane is not screened.

How much sense does that make, that your shoes are screened but that the cargo on the very same plane is not screened?

And do my colleagues want to hear something else even more absurd? If it is a package 16 ounces or less, they do not even look at the paperwork for it. It goes on that passenger plane automatically.

Mr. Chairman, this is wrong. In the past week, we have had two planes diverted that were coming from overseas because the no-fly terrorist list had not been completely checked before the plane was in midair, and it caused diversions both times. How can we allow the back door of planes to have cargo placed upon it that is not screened? It is absolutely wrong.

And the fact that the technology exists, that the Israelis screen the cargo, that other countries screen the cargo, how can we place tens of millions of Americans who place their families on planes, going to vacation, going back to school, on planes where the cargo is not inspected, and then have the Republicans say, we are not going to have a debate on that on the House floor.

My amendment with the gentleman from Connecticut (Mr. SHAYS) would have guaranteed that over the next 3 years technology would have been put in place that would have guaranteed that every single bit of cargo that goes on passenger planes is screened. And all we asked from the Republicans was that if you are not going to allow us to even make that amendment on the House floor, at least let us have a warning, a warning to all American families at the airports that you are placing your children on planes to go back to school or go to vacation when the cargo on that plane has not been screened.

Every American parent has the right to know that their children are being placed on planes to go to vacation or go to school without it being screened. Every American family has the right to know that when they put their children on passenger planes in America that almost none of the cargo has been screened, and then they can make the decision for themselves. I think that parents would not put their children on planes if the cargo has not been screened. They themselves, they might get on the plane.

But for the Republicans to not allow us to have a debate on the House floor on this issue, as we know that al Qaeda continues to target commercial aircraft as their number one terrorist target, is absolutely wrong.

So I ask opposition to this bill. It just is not dealing with the real issues that threaten the American public.

RAPISCAN SYSTEMS,
Hawthorne, CA, May 9, 2005.

Hon. EDWARD J. MARKEY,
House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE MARKEY: We applaud your efforts to focus more attention on the glaring hole in the United States' aviation security—lack of air cargo inspection. Rapiscan Systems develops, manufactures, installs and services the world's widest array of non-intrusive inspection systems for airports, seaports, border crossings, military installation. Currently Rapiscan Systems provides nearly half of the checkpoint security systems at U.S. airports.

Included in our portfolio of systems is an air cargo inspection system that can inspect fully-loaded cargo containers. This system is being installed at George H.W. Bush Intercontinental Airport in Houston, Texas and Ted Stevens Anchorage International Airport in Alaska.

CONTAINERIZED AIR CARGO INSPECTION TECHNOLOGY EXISTS AND IS BEING INSTALLED AT U.S. AIRPORTS

In the late 1980's in response to the Pan Am 103 bombing, the United States Department of Defense began development of a material-specific bomb detection technology for aviation. As a result of this effort, the Ancore Corporation (now Rapiscan Systems Neutronics and Advanced Technologies Division) developed Pulsed-Fast Neutron Analysis (PFNA) technology. PFNA can automatically detect all explosives, chemical weapons, radioactive materials, narcotics and even hazardous aviation cargo. This technology was most recently deployed to the Ysleta border crossing in El Paso, TX.

Rapiscan Systems is currently deploying two PFNA air cargo inspection systems at U.S. airports: George H.W. Bush Intercontinental Airport in Houston and Ted Stevens Anchorage International Airport. Both of these installations are part of Transportation Security Administration programs. Similar neutron-based systems have been installed internationally, including an air cargo inspection facility at Taipei airport in Taiwan.

CONTAINERIZED CARGO INSPECTION MAINTAINS CURRENT AIR CARGO FLOW OF COMMERCE

While TSA and other government agencies have evaluated break-bulk cargo x-ray inspection systems (Rapiscan also manufacturers these systems), only PFNA can inspect containerized cargo. The difficulty with break-bulk systems is that they require containerized or palletized cargo to be unpacked to inspect. This adds hours to inspection time and makes some technologies unfeasible for fast delivery air cargo.

PFNA systems inspect fully loaded cargo containers and pallets for aviation-quantity threats (established by TSA). This allows for fast inspection without unpacking. PFNA systems meet the time constraints of the air cargo environment.

AIR CARGO INSPECTION CAN BE PROVIDED WITH CURRENT SCREENER CORPS

Another common argument against air cargo inspection is that they technologies will require hundreds of new TSA screeners to operate and inspect. Because PFNA provides automatic, material specific inspection each system only requires a single operator. And since, PFNA systems can inspect 6–10 containers per hour, most airports will only require one to two systems.

As congress debates the policy surrounding air cargo inspection, Rapiscan Systems offers to help Members and staff investigate the current availability and state of cargo inspection technologies. While cost and level of risk should factor into this debate, the question of the availability of technology to inspect air cargo has already been answered. Thank you again for your efforts to call attention to and rectify this important homeland security issue. Please let me know if Rapiscan Systems can be helpful in your continued efforts.

Sincerely,

PETER KANT,
Vice President, Government Affairs.

AMERICAN SCIENCE AND ENGINEERING, INC.,
Billerica, MA, May 17, 2005.

DEAR CONGRESSMAN MARKEY: American Science and Engineering Inc. (AS&E) would like to extend its support for the Bill being introduced by you and Congressman Shay which addresses the need to improve Air Cargo Security. As you know, potential threats in current Air Cargo could go undetected due the lack of a comprehensive inspection requirement or strategy.

Finding a broad range of potential explosive threats in Air Cargo is a challenge to today's technology. Although existing systems may not be able to find all threats under all conditions, it is still imperative to address the issue of Air Cargo security. Finding the theoretical small amount of explosive that could bring down an aircraft is not the only way to provide a higher sense of security. Many organizations around the World provide Air Cargo security by approaching the problem differently. In some cases they use X-ray technology to inspect cargo prior to loading a container or pallet. Others use current technology to inspect the entire container to find anomalies in the cargo such as bulk explosives, radioactive materials and stowaways. They can also determine if the cargo looks different from what the manifest stipulates, if there are false bulkheads or floors or there are extra or unusual containers present. Any of these anomalies can indicate the presence of a potential threat.

Most available systems today, including AS&E's product line of X-ray Transmission, Backscatter Imaging and Radioactive Threat Detection systems, can provide a significant step toward insuring that Air Cargo has not been tampered with or poses a threat.

If properly implemented into an airport flow of cargo, security can be improved with minimal impact to the flow of commerce. Many users of current Air Cargo inspection systems throughout the World have done this successfully. What is required in the USA is a mandate to move forward with Air Cargo security as a priority and a willingness to think about the problem differently.

We support your efforts and trust that our Government will do the responsible things to make our citizens safer in these troubled times. If we can be of further help, please feel free to contact us.

Best Regards,

RICH MASTRONARDI,
VP Strategic Marketing & Sales.

CARGO SECURITY SOLUTIONS, INC.,
Lewisville, TX, May 4, 2005.

Hon. EDWARD MARKEY,
Rayburn House Office Building,
Washington, DC.

Hon. CHRISTOPHER SHAYS,
Longworth Building,
Washington, DC.

DEAR CONGRESSMAN: We are aware that Congressman Markey and Congressman Shays are proposing a new Air Cargo Security Act (H.R. 2044). We feel that this is a comprehensive step forward for the entire security of the nation and that it should be enacted without hindrance. This nation needs a mandate similar to what was enacted in the days after 9/11 to screen passengers and we implore Congress to pass a similar measure for air cargo.

Air Cargo Security in this country poses a great risk and danger to the well being of every American.

The air cargo security solution is one that requires more than just technology. It will require coordination, resources, and a valid security infrastructure to apply a comprehensive effort. Cargo security must yield at least the results of the passenger screening initiatives without jeopardizing next day competitiveness of our businesses. Those, like Cargo Security Solutions, Inc. who are in the business of securing air cargo, recognize this fact and have integrated these concerns in their security models. At CSSI the speed of the supply chain is kept intact by the specific interaction of trained personal, stringent oversight, and ''out of the box'' solutions. These include the use next generation ''tickets'' for every piece of freight.

As industry and air cargo specialists we are very aware of the dangers threatening a vital part of the nation's economy. Cargo Security Solutions Inc., was established in the days after September 11th to ensure that a tragedy of equal magnitude never originates within the air cargo system.

Since 9/11 CSSI has developed and refined a security program that is centered around and focuses on 100% inspection. The program that has been developed implements inspections at various strategic points during the events of a shipment through the supply chain thus creating little negative impact on the chain itself. 100% inspection is feasible and CSSI is ready to implement a full solution and infrastructure, with the leadership of TSA and contributions from the air cargo industry.

There are other similar enterprises that are ready to contribute to this effort. These businesses run the gamut of industries, from technological to human resources. These are all specialized firms who are ready willing and able to tackle this issue.

Congressional leaders have received an abundant amount of information regarding the critical nature and threat posed by the air cargo security situation in this country. Countless, OIG, GAO, and other reports show how dire the situation really is. CSSI has joined in this effort and sent information regarding air cargo security to several congressional leaders. Included in some of these documents, have been clear plans as to how and why 100% inspection is feasible and the very ''clear and present danger'' that is posed by air cargo.

Most recently ''diamonds for arms'' shipments were discovered on Soviet made Antonov aircraft operated by designated arms dealer Viktor Bout. HIS company has been in business and operating within The United States since the early 1990s and has brought unknown shipments from all over the world including former soviet states with nuclear arms. Proliferation does exist, has existed and its results have made it on American soil. This should be a wakeup call for all American policy leaders. 100 percent inspection of all cargo is not only needed but necessary.

Regards,

CAPT. ROBERT C. DAVIS,
Cargo Security Solutions, Inc. CEO.

Mr. COX. Mr. Chairman, I yield to the gentleman from Mississippi for purposes of closing debate.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield myself such time as I may consume.

We have heard a number of statements about this bill. It is an initial step in the right direction. It is not comprehensive. There are some glaring overlooks in the bill. We do not address any aviation security, we do not address chemical security. There are a number of things that we could do better in this bill.

However, I have to join my chairman in recognizing the fact that this is our first attempt to do an authorization bill. It is by no means complete, but given his leadership and willingness to work in a bipartisan spirit, I am looking forward to moving this legislation and making sure that we do the right thing for this country. We have to secure this Nation.

I will be offering a substitute later in the debate which obviously will cover far more areas than what this authorization bill covers that we are debating here today.

Clearly, if we support the substitute, we can move closer to making America secure.

Mr. Chairman, I yield back the balance of my time.

Mr. COX. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to begin by thanking the gentleman from Mississippi (Mr. THOMPSON), both for his generous remarks but, more importantly, for his hard work on this piece of legislation over a period of several months and, as he pointed out, through ultimately a very long, arduous markup in the committee where members on both sides had an unlimited opportunity to offer amendments and consider a variety of topics.

As we conclude general debate and prepare to move into debate on the specific amendments on this bill, I think we can recognize one important fact, and that is that we are all agreed on the essence of the underlying bill. We have some things, each of us, that we might like to add to this bill, and I predict that in due course, over the rest of this year, we will have an opportunity again on this House floor to take up issues, including aviation security, chemical security, port security, and so on.

But the entirety of what we do accomplish in this bill is bipartisan in nature and agreed upon by the members on both sides of the aisle, at least in the Committee on Homeland Security, and we will soon see about the House as a whole. That is because we have allocated the $32 billion, for what is now the third largest Cabinet department, in a way that demonstrably advances our number one goal of preventing terrorism in the future on American soil, directed against American citizens, protecting America's most critical infrastructure against terrorist attack, and being prepared to respond and recover should, against all our best preparations, that ever occur in the future.

In order to bring us to this point, we have had to have a great deal of bipartisan assistance, all motivated by the best interests of the country from Members on both sides.

I specifically want to mention the vice chairman of the full committee, the gentleman from Pennsylvania (Mr. WELDON); the chairmen and ranking members of our five subcommittees, and the Staff Directors on both sides, Ben Cohen on the Majority side and Calvin Humphreys on the minority side. The staffs have done extraordinary professional work, and their staffs are drawn from, in many cases, the executive branch, with experience about precisely the work and the programs that we are overseeing in this legislation. Many of them have come from the intelligence community, others come from the Coast Guard and other branches of the armed services.

We can be very proud in this House about the institutionalization of the role of homeland security oversight and authorization that has been set in motion as a result of a decision of leadership on both sides, and I want to conclude by taking this opportunity, once again, to thank the House leadership for its very wise decision to create permanent authorizing and oversight responsibility in this Congress on an institutionalized basis, and then, today, taking the next important step of institutionalizing an annual authorization process so that together the legislative branch and the executive branch will closely collaborate on what is the essence of our national security responsibility to all Americans: making sure that we are safe and secure on American territory for the American citizens.

So, Mr. Chairman, with that, I will draw this general debate to a conclusion, and I look forward to working with the body on the several amendments that have been made in order under the rule.

Mr. Chairman, I will at this time introduce into the RECORD a series of letters exchanged between the Committee on Homeland Security and other standing committees, including the Permanent Select Committee on Intelligence of the House of Representatives, concerning jurisdictional issues raised by this legislation.

COMMITTEE ON GOVERNMENT REFORM,
Washington, DC, May 18, 2005.

Hon. CHRISTOPHER COX,
Chairman, House of Representatives,
Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your willingness to consult and work with me as you guided H.R. 1817, ''the Department of Homeland Security Authorization Act for Fiscal Year 2006'' from introduction, through

the Homeland Security Committee, and to the floor. As you know, the Committee on Government Reform has been interested in a number of provisions within H.R. 1817. The Committee has been concerned that the expansion of the Department's responsibilities for information sharing in Title II, Subtitle B, Homeland Security Information Sharing and Analysis Enhancement, not lessen the Department's responsibility to follow government-wide policies and procedures for the sharing of information. In addition to the information sharing provisions of Subtitle B, the Committee has specific jurisdictional interests in the following provisions of your substitute: §201—Consolidated Background Check Process; §216—Coordination of homeland security threat analysis provided to non-Federal officials; §217—9/11 Homeland Security Fellows Program; §221—IAIP Personnel Recruitment; §302—Technology Development and Transfer; §303—Review of Antiterrorism Activities; Title III, Subtitle B—Department of Homeland Security Cybersecurity Enhancement; §334—Protection of Information; and §502—GAO Report to Congress.

I would like to confirm our mutual understanding with respect to the consideration of H.R. 1817. As you know, H.R. 1817 was sequentially referred to the Committee on Government Reform. Because of your willingness to work with us to resolve issues of concern to the Committee and to include those improvements to the bill in your amendment in the nature of a substitute on the floor, the Committee on Government Reform did not consider H.R. 1817. However, the Committee has done so only with the understanding that this procedural route would not prejudice the Committee on Government Reform's jurisdictional interest and prerogatives on this bill or similar legislation.

I respectfully request your support for the appointment of outside conferees from the Committee on Government Reform should this bill or a similar Senate bill be considered in conference with the Senate. Finally, I would ask that you include a copy of our exchange of letters on this matter in the Congressional Record during the House debate of this bill. If you have questions regarding this matter, please do not hesitate to call me. Thank you for your attention to this matter.

Sincerely,

TOM DAVIS,
Chairman.

COMMITTEE ON HOMELAND SECURITY,
Washington, DC, May 18, 2005.

Hon. TOM DAVIS,
Chairman, Committee on Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your recent letter regarding the Committee on Government Reform's jurisdictional interest in H.R. 1817, ''the Department of Homeland Security Authorization Act for Fiscal Year 2006'', and your willingness to forego consideration of H.R. 1817 by the Committee.

I agree that the Committee on Government Reform has a valid jurisdictional interest in particular sections of H.R. 1817, and that the committee's jurisdiction with respect to those provisions will not be adversely affected by the Committee's decision to not consider H.R. 1817. In addition, I agree that for provisions of the bill that are determined to be within the jurisdiction of the Committee on Government Reform, I will support representation for your Committee during conference with the Senate on this or similar legislation, should such a conference be convened.

As you have requested, I will include a copy of your letter and this response in the Congressional Record during consideration of the legislation on the House floor. Thank you for your assistance as we work towards the enactment of H.R. 1817.

Sincerely,

CHRISTOPHER COX,
Chairman.

COMMITTEE ON AGRICULTURE,
Washington, DC, May 2, 2005.

Hon. CHRISTOPHER COX,
Chairman, Committee on Homeland Security, House of Representatives, Washington, DC.

DEAR CHAIRMAN COX: On April 27, 2005, the Committee on Homeland Security ordered reported a committee print titled the, ''Department of Homeland Security Authorization Act for Fiscal Year 2006.'' Section 309 of the bill, which provides for a report to Congress on protecting agriculture from terrorist attack, falls within the jurisdiction of the Committee on Agriculture. Recognizing your interest in bringing this legislation before the House quickly, the Committee on Agriculture agrees not to seek a sequential referral of the bill. By agreeing not to seek a sequential referral, the Committee does not waive its jurisdiction over this provision or any other provisions of the bill that may fall within its jurisdiction. The Committee also reserves its right to seek conferees on any provisions within its jurisdiction considered in the House-Senate conference, and asks for your support in being accorded such conferees.

Please include this letter as part of the report on the Department of Homeland Security Act for Fiscal Year 2006, or as part of the Congressional Record during consideration of this bill by the House.

Sincerely,

BOB GOODLATTE,
Chairman.

COMMITTEE ON HOMELAND SECURITY,
Washington, DC, May 16, 2005.

Hon. BOB GOODLATTE,
Chairman, Committee on Agriculture, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your recent letter expressing the Agriculture Committee's jurisdictional interest in section 309 of the ''Department of Homeland Security Authorization Act for Fiscal Year 2006.'' I appreciate your willingness not to seek a sequential referral in order to expedite proceedings on this legislation. I agree that, by not exercising your right to request a referral, the Agriculture Committee does not waive any jurisdiction it may have over section 309. In addition, I agree to support representation for your Committee during the House-Senate conference on provisions determined to be within your Committee's jurisdiction.

As you have requested, I will include a copy of your letter and this response as part of the Committee on Homeland Security's report or the Congressional Record during consideration of the legislation on the House floor. Thank you for your cooperation as we work towards the enactment of the ''Department of Homeland Security Authorization Act for Fiscal Year 2006.''

Sincerely,

CHRISTOPHER COX,
Chairman.

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Washington, DC, May 13, 2005.

Hon. CHRISTOPHER COX,
Chairman, Committee on Homeland Security, Adams Building Washington, DC.

DEAR CHAIRMAN COX: I am writing concerning H.R. 1817, the ''Department of Homeland Security Authorization Act for Fiscal Year 2006,'' which the Committee on Homeland Security reported on May 3, 2005. Subsequently, the Committee on Ways and Means received a joint, sequential referral on the bill for a period not ending later than May 13, 2005.

As you know, the Committee on Ways and Means has jurisdiction over trade and customs revenue functions. A range of provisions in H.R. 1817 affects the Committee's jurisdiction, including: authorization language for the Department of Homeland Security, a required review of trade documents that accompany crossborder shipments, a required plan to reduce disparities in customs processing at major airports, a requirement that certain recommendations of a commercial advisory committee representing the trade community be embodied in new regulations, a requirement of a study of the potential merger of the Department of Homeland Security bureau implementing most customs revenue functions with the bureau charged with immigration enforcement, and authorization of a program that would merge security and customs revenue inspection equipment and requirements.

I am pleased to acknowledge the agreement, outlined in the attached chart, between our Committees to address various issues, including changes you will include in the Manager's Amendment to the bill. Thus, in order to expedite this legislation for floor consideration, the Ways and Means Committee agrees to forgo action on this bill based on the agreement reached by our Committees and that no other provisions affecting the jurisdiction of the Ways and Means Committee are included in the Manager's Amendment. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation. In addition, I would appreciate if you would share with my staff copies of the amendments when they are made available to the Homeland Security Committee staff.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 1817, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during floor consideration.

Best regards,

BILL THOMAS,
Chairman.

Attachment.

WAYS AND MEANS AMENDMENTS AND LEGISLATIVE HISTORY RELATED TO HOMELAND SECURITY AUTHORIZATION BILL

Issue	
Sec. 103—CBP Authorization (includes amount in Customs Reauthorization bill passed by the House in 2004, along with additions identified by W&M and HSC).	Insert CBP Authorization number—$6,926,424,722 in the Manager's Amendment. Number may be adjusted, but any change would be fully cleared between HSC and Ways and Means.
Sec. 201(b)—Annual cross-cutting analysis of proposed funding for DHS programs.	Delete 201 (b)(1)(D) and replace with ''(1)(D) To facilitate trade and commerce;'' Add 201 (b)(1)(E)—''To carry out other important functions of the agencies and subdivisions within the Department not specifically noted above.''

WAYS AND MEANS AMENDMENTS AND LEGISLATIVE HISTORY RELATED TO HOMELAND SECURITY AUTHORIZATION BILL—Continued

	Issue
	Under 201 (b)(2)—Delete the following language: ''for functions that are both related directly and not related directly to homeland security'' and add: ''for functions that would address more than one of the mission areas listed in (b)(1)(A) through (E) of this subsection.''
	Rewrite 201(b)(3)(F) to state ''(F) Screening cargo to identify and segregate shipments at high risk for compromise by terrorists or terrorist weapons,'' rather than ''screening cargo to identify and segregate high-risk shipments.''
Sec. 306—Security of Maritime Cargo Containers (Sanchez Amendment)	Amend Sec. 306(a) to read: ''(a) STANDARDS AND REGULATIONS—
	(1) STANDARDS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall establish standards and procedures for securing maritime cargo containers relating to obligation to seal, recording of seal changes, modal changes, seal placement, ocean carrier seal verification, and addressing seal anomalies. These standards shall include the standards for seals and locks as required under paragraph (3) of subsection (b) of section 70116 of Title 46 U.S.C.
	(2) REGULATIONS.—No later than 90 days after completion of the requirements in subsection (a), the Secretary of Homeland Security shall issue regulations for the security of maritime cargo containers consistent with the standards developed in subsection (a).''
	Amend Sec. 306(b) to read: ''(b) INTERNATIONAL AGREEMENTS.—The Secretary, in consultation with the Department of State, Department of Commerce, Department of the Treasury, Office of the United States Trade Representative, and other appropriate Federal agencies, shall seek to enter into agreements with foreign countries and international organizations to establish standards for the security of maritime cargo containers moving within the intermodal transportation system that, to the maximum extent practicable, meet the requirements of subsection (a).''
	Amend Sec. 306(c) to read ''(c) CONTAINER TARGETING STRATEGY.—STRATEGY.—The Secretary shall develop a strategy to improve the ability of the Department of Homeland Security to use advance cargo information to identify anomalies in such information to determine whether such cargo poses a security risk. The strategy shall include a method of contacting shippers to verify or explain any anomalies discovered in such information.''
	Will include acknowledgement in legislative history that ''It is intended that the advance cargo information referred to in Section 306(c) should be provided to the government by the party that has the most direct knowledge of that information consistent with Public Law 107–210 Section 343(a)(3)(B).''
	Amend Sec. 306(d) to read: ''(d) CONTAINER SECURITY DEMONSTRATION PROGRAM.—(1) PROGRAM.—The Secretary is authorized to establish and carry out a demonstration program that integrates radiation detection equipment with other types of non-intrusive inspection equipment at an appropriate United States seaport, as determined by the Secretary.
	(2) REQUIREMENT.—The demonstration program shall also evaluate ways to strengthen the capability of Department of Homeland Security personnel to analyze cargo inspection data and ways to improve the transmission of inspection data between appropriate entities within the Department of Homeland Security.''
	Amend Section 306(e) to read: ''(e) COORDINATION AND CONSOLIDATION OF CONTAINER SECURITY PROGRAMS.—The Secretary shall coordinate all programs that enhance the security of maritime cargo, and, to the extent practicable, consolidate Operation Safe Commerce, the Smart Box Initiative, and similar programs that evaluate security enhancements for maritime cargo containers, to achieve enhanced coordination and efficiency. The Secretary shall report to the appropriate Congressional committees before consolidating any program mentioned in this subsection.''
	Add new Sec. New Section 306(f): ''DEFINITION.—In this section, the tenn 'appropriate congressional committees' means appropriate Congressional Committees as defined in the Homeland Security Act of 2002.''
Sec. 401—Study by Sec. of DHS on Organization of DHS	Section 401(b)(l)—delete ''to the Committee on Homeland Security of the House of DHS on Organization of Representatives and the Committee on Homeland Security and Government Affairs of the Senate'' and replace with ''to the appropriate Congressional Committees as defined in the Homeland Security Act of 2002.''
Section 402—GAO Report on DHS Organization	Insert at the end of this section: ''The report shall be submitted to the appropriate Congressional committees as defined in the Homeland Security Act of 2002.''
See. 403—Plan for Establishing Consolidated and Colocated Regional Offices	If Sec. 403, or a similar provision is included in the bill, amend that section by adding at the end of the section: ''In developing the plan, the Secretary shall ensure that the plan does not compromise the uniform and consistent implementation and application of laws, policies and procedures related to customs processing operations.''
Sec. 404—Plan to Reduce Wait Times	Amend Sec. 404(2) to include ''passenger'' following ''customs''.
Ways and Means Customs Bill	In addition to the authorization for CBP, include all other Customs sections of HR 4418 as passed by the House that were not already enacted as part of other laws—Secs. 102, 104, 124, and 125.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, May 13, 2005.

Hon. WILLIAM THOMAS,
Chairman, Committee on Ways and Means, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your recent letter expressing the Ways and Means Committee's jurisdictional interest in H.R. 1817, the ''The Department of Homeland Security Authorization Act for Fiscal Year 2006.'' I appreciate your willingness to forgo action on this bill, in order to expedite this legislation for floor consideration. I agree that, by forgoing further action on the bill, the Committee on Ways and Means does not waive any jurisdiction it has over provisions within H.R. 1817 and the Manager's amendment. This is being done with the understanding that it does not in any way prejudice the Ways and Means Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation. We will also share with you copies of any amendments as they are made available to us.

As you have requested, I will include a copy of your letter and this response as part of the Congressional Record during consideration of the legislation on the House floor. Thank you for your cooperation as we work towards the enactment of H.R. 1817.

Sincerely,

CHRISTOPHER COX,
Chairman.

COMMITTEE ON ARMED SERVICES,
HOUSE OF REPRESENTATIVES,
Washington, DC, May 2, 2005.

Hon. CHRISTOPHER COX,
Chairman, Committee on Homeland Security, House of Representatives, Adams Building, Library of Congress, Washington, DC.

DEAR MR. CHAIRMAN: On April 27, 2005, the Committee on Homeland Security ordered reported a committee print, the ''Department of Homeland Security Authorization Act for Fiscal Year 2006.'' This bill contains provisions that fall within the jurisdiction of the Committee on Armed Services, including: section 222 (relating to information collection requirements and priorities) and section 302(b) (establishing a working group relating to military technology). Recognizing your interest in bringing this legislation before the House quickly, the Committee on Armed Services agrees not to seek a sequential referral of the bill. By agreeing not to seek a sequential referral, the Committee does not waive its jurisdiction over these provisions or any other provisions of the bill that may fall within its jurisdiction. The Committee also reserves its right to seek conferees on any provisions within its jurisdiction considered in the House-Senate conference, and asks for your support in being accorded such conferees.

Please include this letter as part of the report, if any, on the Department of Homeland Security Act for Fiscal Year 2006 or as part of the Congressional Record during consideration of this bill by the House.

Sincerely,

DUNCAN HUNTER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, May 2, 2005.

Hon. Duncan Hunter,
Chairman, Committee on Armed Services, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your recent letter expressing the Armed Services Committee's jurisdictional interest in Section 222 and the working group on transfer of military technologies established under Section 302(b) of the ''Department of Homeland Security Authorization Act for Fiscal Year 2006.'' I appreciate your willingness not to seek a sequential referral in order to expedite proceedings on this legislation. I agree that, by not exercising your right to request a referral, the Armed Services Committee does not waive any jurisdiction it may have over the relevant provisions of Sections 222 and 302(b). In addition, I agree to support representation for your Committee during the House-Senate conference on any provisions determined to be within your Committee's jurisdiction.

As you have requested, I will include a copy of your letter and this response as part of the Committee on Homeland Security's report and the Congressional Record during consideration of the legislation on the House floor. Thank you for your cooperation as we work towards the enactment of the ''Department of Homeland Security Authorization Act for Fiscal Year 2006.''

Sincerely,

CHRISTOPHER COX,
Chairman.

HOUSE OF REPRESENTATIVES, PERMANENT SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, May 16, 2005.

Hon. CHRISTOPHER COX,
Chairman, Committee on Homeland Security, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In recognition of the importance of expediting the passage of H.R. 1817, the ''Department of Homeland Security Authorization Act for Fiscal Year 2006,'' the Permanent Select Committee on Intelligence hereby waives further consideration of the bill. The Committee has jurisdictional interests in H.R. 1817, including but not limited to intelligence activities within the Department of Homeland Security authorized within the National Intelligence Program.

The Committee takes this action only with the understanding that this procedural route should not be construed to prejudice the House Permanent Select Committee on Intelligence's jurisdictional interest over this bill or any similar bill and will not be considered as precedent for consideration of matters of jurisdictional interest to the Committee in the future. In addition, the Permanent Select Committee on Intelligence reserves the possibility of seeking conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation.

Finally, I would ask that you include a copy of our exchange of letters on this matter in the Congressional Record during the House debate on H.R. 1817. I appreciate the constructive work between our committees on this matter and thank you for your consideration.

Sincerely,

PETER HOEKSTRA,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, May 16, 2005.

The Hon. PETER HOEKSTRA,
Chairman, Permanent Select Committee on Intelligence, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your recent letter expressing the Intelligence Committee's jurisdictional interest in H.R. 1817, the ''The Department of Homeland Security Authorization Act for Fiscal Year 2006.'' I appreciate your willingness to waive further consideration of the bill in order to expedite this legislation for floor consideration: I agree that by waiving further consideration, the Intelligence Committee does not waive any jurisdiction it may have over provisions of the bill, including those relating to intelligence activities of the Department of Homeland Security authorized within the National Intelligence Program.

As you have requested, I will include a copy of your letter and this response as part of the Congressional Record during consideration of the legislation on the House floor. Thank you for your cooperation as we work towards the enactment of H.R. 1817.

Sincerely,

CHRISTOPHER COX,
Chairman

Mr. UDALL of Colorado. Mr. Chairman, I support passage of this important bill—the first-ever authorization bill for the new Department of Homeland Security (DHS).

The bill includes many provisions that will improve Americans' security. These include authority for recruitment and training of 2,000 new border agents, better screening of incoming cargo, and improved background checks for people taking part in programs regulated by the DHS.

The bill also will help the government speak more clearly to Americans regarding threats to their security and will improve the way the federal government works with the States and local agencies to respond to those threats.

And it includes provisions to improve research on and implementation of anti-terror technology.

Of course, the bill could be better in a number of respects, which is why I voted for the substitute offered by Representative THOMPSON of Mississippi.

That substitute would have authorized $6.46 billion for homeland security grants to state and local governments, $2.29 billion more than the President's budget. It also would have authorized $400 million to restore funding to the Law Enforcement Terrorism Prevention program, which the President's budget would eliminate. And It would have authorized an additional $150 million in funding for the FIRE Act grants program, which provides fire departments across the nation with the equipment they need to respond to a terrorist attack.

The substitute also included a number of provisions to ensure that the commitments made in the 9/11 Reforms bill (PL 108–458) are fulfilled. Unfortunately, the President's budget left many of these commitments unmet. Among others, these included authorization for an additional $160 million to meet the 9/11 Act's commitment to securing air cargo, an additional $92 million to install radiation portal monitors at all ports of entry.

The substitute also would have authorized an additional $61 million to hire 600 additional immigration investigators, in order to reach the 800 investigators called for in the 9/11 Act. This would have gone a long way to increase the ability of the federal government to address immigration violations.

Of course, even without the additions that would have been made by the substitute, the bill does include a number of provisions related to immigration.

In that connection I want to note my vote on the Norwood amendment. Though the intentions of Mr. NORWOOD's amendment are laudable, I could not support the amendment because of the expansion of authority it gives to states to deport illegal immigrants.

Other parts of this bill will provide states with resources to train officers to enforce immigration law, without a mandate, by letting state and local government decide if they want to participate in this training. I believe Mr. Norwood's amendment also intended to provide resources to states without creating a mandate of enforcement.

However, it stated that local governments have the authority to ''apprehend, detain, or remove'' illegal immigrants. I do not believe it is the role of the states to make decisions on the deportation of individuals. Currently, states who are detaining illegal immigrants turn them over to the Department of Homeland Security, and I believe this is the proper process.

So, though I was supportive of the intent of that amendment, I could not support the expansion of authority to state and local governments.

As I mentioned, I believe this bill could be improved. Yet, our homeland security is an important priority and I am pleased to support this authorization bill.

Mr. COX. Mr. Chairman, I yield back the balance of my time.

□ 1330

The Acting CHAIRMAN (Mr. COLE of Oklahoma). All time for general debate has expired.

In lieu of the amendments recommended by the committees on Homeland Security, Energy and Commerce, and the Judiciary now printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule an amendment in the nature of a substitute printed in part A of House Report 109–84. That amendment in the nature of a substitute shall be considered read.

The text of the amendment in the nature of a substitute is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of Homeland Security Authorization Act for Fiscal Year 2006''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—AUTHORIZATION OF APPROPRIATIONS

SEC. 101. DEPARTMENT OF HOMELAND SECURITY.

There is authorized to be appropriated to the Secretary of Homeland Security for the necessary expenses of the Department of Homeland Security for fiscal year 2006, $34,152,143,000.

SEC. 102. CUSTOMS AND BORDER PROTECTION; BORDER PATROL AGENTS.

Of the amount authorized under section 101, there is authorized to be appropriated for U.S. Customs and Border Protection for fiscal year 2006, $6,926,424,722, of which $1,839,075,277 is authorized for border security and control between ports of entry, including for the hiring of 2,000 full-time active-duty border patrol agents above the number of such positions for which funds were allotted for fiscal year 2005 (excluding any supplemental appropriations).

SEC. 103. DEPARTMENTAL MANAGEMENT AND OPERATIONS.

Of the amount authorized under section 101, there is authorized to be appropriated for fiscal year 2006 for departmental management and operations, $649,672,000, of which—

(1) $44,895,000 is authorized for the Department of Homeland Security Regions Initiative;

(2) $4,459,000 is authorized for Operation Integration Staff; and

(3) $56,278,000 is authorized for Office of Security initiatives.

SEC. 104. CRITICAL INFRASTRUCTURE GRANTS.

Of the amount authorized under section 101, there is authorized to be appropriated for fiscal year 2006 for grants and other assistance to improve critical infrastructure protection, $465,000,000.

SEC. 105. RESEARCH AND DEVELOPMENT.

Of the amount authorized under section 101, there are authorized to be appropriated for fiscal year 2006—

(1) $76,573,000 to support chemical countermeasure development activities of the Directorate of Science and Technology;

(2) $195,014,000 to support a nuclear detection office and related activities;

(3) $19,000,000 for cybersecurity-related research and development activities;

(4) $10,000,000 for research and development of technologies capable of countering threats posed by man-portable air defense systems, including location-based technologies and noncommercial aircraft-based technologies; and

(5) $10,600,000 for the activities of such directorate conducted pursuant to subtitle G of title VIII of the Homeland Security Act of 2002 (6 U.S.C. 441 et seq.).

SEC. 106. BORDER AND TRANSPORTATION SECURITY.

Of the amount authorized under section 101, there are authorized to be appropriated for fiscal year 2006—

(1) $826,913,000 for expenses related to Screening Coordination and Operations of the Directorate of Border and Transportation Security;

(2) $100,000,000 for weapons of mass destruction detection technology of such directorate; and

(3) $133,800,000 for the Container Security Initiative of such directorate.

SEC. 107. STATE AND LOCAL TERRORISM PREPAREDNESS.

Of the amount authorized under section 101, there are authorized to be appropriated for fiscal year 2006—

(1) $40,500,000 for the activities of the Office for Interoperability and Compatibility within the Directorate of Science and Technology pursuant to section 7303 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C 194); and

(2) $2,000,000,000 for grants to State and local governments for terrorism preparedness awarded by the Office of State and Local Government Coordination and Preparedness.

SEC. 108. IMMIGRATION RESOURCES.

Of the amount authorized under section 101, there is authorized to be appropriated for fiscal year 2006 the following:

(1) For the Immigration and Customs Enforcement Legal Program, $159,514,000, including for the hiring of an additional 300 attorneys above the number of such positions for which funds were allotted for fiscal year 2005, and related training and support costs.

(2) Sufficient sums for the hiring of an additional 300 adjudicators above the number of such positions for which funds were allotted for fiscal year 2005 to carry out the functions stated in section 451(b) of the Homeland Security Act of 2002 (6 U.S.C. 271(b)), and related training and support costs. The fees provided for in section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) shall be adjusted in order to provide sufficient sums for the hiring of the additional adjudicators and for the related training and support costs provided for in this paragraph.

TITLE II—TERRORISM PREVENTION, INFORMATION SHARING, AND RISK ASSESSMENT

Subtitle A—Terrorism Prevention

SEC. 201. CONSOLIDATED BACKGROUND CHECK PROCESS.

(a) REQUIREMENT.—The Secretary of Homeland Security, in consultation with the Attorney General, shall establish a single process for conducting the security screening and background checks on individuals participating in any of the programs identified under subsection (b).

(b) INCLUDED PROGRAMS.—The process established under subsection (a) shall apply to the following programs:

(1) The Transportation Worker Identification Credential.

(2) The security risk determination and related background checks under section 5103a of title 49, United States Code, performed by the Transportation Security Administration as part of the Department of Transportation Hazardous Materials Endorsement credentialing program.

(3) The Free and Secure Trade program.

(4) The NEXUS and SENTRI border crossing programs.

(5) The Registered Traveler program of the Transportation Security Administration.

(c) FEATURES OF PROCESS.—The process established under subsection (a) shall include the following:

(1) A single submission of security screening information, including personal data and biometric information as appropriate, necessary to meet the security requirements of all applicable departmental programs.

(2) An ability to submit such security screening information at any location or through any process approved by the Secretary with respect to any of the applicable departmental programs.

(3) Acceptance by the Department of a security clearance or other credential issued by a Federal agency, to the extent that the security clearance process of the agency satisfies requirements that are at least as stringent as those of the applicable departmental programs under subsection (b).

(4) Appropriate standards and procedures for protecting individual privacy, confidentiality, record retention, and addressing other concerns relating to information security.

(d) DEADLINES.—The Secretary of Homeland Security shall—

(1) submit a description of the process developed under subsection (a) to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) by not later than 6 months after the date of the enactment of this Act; and

(2) begin implementing such process by not later than 12 months after the date of the enactment of this Act.

(e) INCLUSION OF OTHER PROGRAMS.—The Secretary of Homeland Security shall review other existing or developing Department of Homeland Security programs that include security screening or background checks for participating individuals, and report to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) any recommendations for inclusion of such additional programs in the consolidated screening process established under this section.

(f) RELATIONSHIP TO OTHER LAWS.—(1) Nothing in this section affects any statutory or regulatory requirement relating to the operation or standards of the programs described in subsection (b).

(2) Nothing in this section affects any statutory requirement relating to title III of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 435b et seq.).

Subtitle B—Homeland Security Information Sharing and Analysis Enhancement

SEC. 211. SHORT TITLE.

This subtitle may be cited as the ''Homeland Security Information Sharing and Analysis Enhancement Act of 2005''.

SEC. 212. PROVISION OF TERRORISM-RELATED INFORMATION TO PRIVATE SECTOR OFFICIALS.

Section 201(d) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)) is amended by adding at the end the following:

''(20) To require, in consultation with the Assistant Secretary for Infrastructure Protection, the creation and routine dissemination of analytic reports and products designed to provide timely and accurate information that has specific relevance to each of the Nation's private critical infrastructure

sectors (as identified in the national infrastructure protection plan issued under paragraph (5)), to private sector officials in each such sector who are responsible for protecting institutions within that sector from potential acts of terrorism and for mitigating the potential consequences of any such act.''.

SEC. 213. ANALYTIC EXPERTISE ON THE THREATS FROM BIOLOGICAL AGENTS AND NUCLEAR WEAPONS.

Section 201(d) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)) is further amended by adding at the end the following:

''(21) To ensure sufficient analytic expertise within the Office of Information Analysis to create, on an ongoing basis, products based on the analysis of homeland security information, as defined in section 892(f)(1), with specific reference to the threat of terrorism involving the use of nuclear weapons and biological agents to inflict mass casualties or other catastrophic consequences on the population or territory of the United States.''.

SEC. 214. ALTERNATIVE ANALYSIS OF HOMELAND SECURITY INFORMATION.

(a) REQUIREMENT.—Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) is amended by adding at the end the following:

''SEC. 203. ALTERNATIVE ANALYSIS OF HOMELAND SECURITY INFORMATION.

''The Secretary shall establish within the Department a process and assign an individual or entity the responsibility to ensure that, as appropriate, elements of the Department conduct alternative analysis (commonly referred to as 'red-team analysis') of homeland security information, as that term is defined in section 892(f)(1), that relates to potential acts of terrorism involving the use of nuclear weapons or biological agents to inflict mass casualties or other catastrophic consequences on the population or territory of the United States.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 202 the following:

''Sec. 203. Alternative analysis of homeland security information.''.

SEC. 215. ASSIGNMENT OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION FUNCTIONS.

Section 201(b) of the Homeland Security Act of 2002 (6 U.S.C. 121(b)) is amended by adding at the end the following:

''(4) ASSIGNMENT OF SPECIFIC FUNCTIONS.—The Under Secretary for Information Analysis and Infrastructure Protection—

''(A) shall assign to the Assistant Secretary for Information Analysis the responsibility for performing the functions described in paragraphs (1), (4), (7) through (14), (16), and (18) of subsection (d);

''(B) shall assign to the Assistant Secretary for Infrastructure Protection the responsibility for performing the functions described in paragraphs (2), (5), and (6) of subsection (d);

''(C) shall assign to the Assistant Secretary for Cybersecurity the primary authority within the Department over the National Cyber Security Division and the National Communications System, and, in coordination with other relevant Federal agencies, the cybersecurity-related aspects of paragraphs (2), (3), (5), (6), (15), and (17) of subsection (d);

''(D) shall ensure that the Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection both perform the functions described in paragraphs (3), (15), and (17) of subsection (d); and

''(E) may assign to each such Assistant Secretary such other duties relating to such responsibilities as the Under Secretary may provide.''.

SEC. 216. COORDINATION OF HOMELAND SECURITY THREAT ANALYSIS PROVIDED TO NON-FEDERAL OFFICIALS.

(a) IN GENERAL.—Title I of the Homeland Security Act of 2002 (6 U.S.C. 111 et seq.) is amended by adding at the end the following:

''SEC. 104. COORDINATION OF HOMELAND SECURITY THREAT ANALYSIS PROVIDED TO NON-FEDERAL OFFICIALS.

''(a) PRIMARY AUTHORITY.—Except as provided in subsection (b), the Secretary shall be responsible for coordinating all homeland security threat analysis to be provided to State and local government and tribal officials and the private sector.

''(b) COORDINATION REQUIRED.—No Federal official may disseminate any homeland security threat analysis to State, local, tribal, or private sector officials without the coordination of the Secretary or the Secretary's designee except—

''(1) in exigent circumstances under which it is essential that the homeland security threat analysis be communicated immediately; or

''(2) when such homeland security threat analysis is issued to State, local, or tribal law enforcement officials for the purpose of assisting them in any aspect of the administration of criminal justice.

''(c) DEFINITION.—(1) As used in this section, the term 'homeland security threat analysis' means any informational product that is the result of evaluating information, regardless of its source, in order to—

''(A) identify and assess the nature and scope of terrorist threats to the homeland;

''(B) detect and identify threats of terrorism against the United States; and

''(C) understand such threats in light of actual and potential vulnerabilities of the territory of the United States.

''(2) As defined in paragraph (1), the term 'homeland security threat analysis' does not include—

''(A) any information that has not been processed, evaluated, or analyzed;

''(B) any information that is evaluated to create any finished analytic product;

''(C) facts or summaries of facts;

''(D) reports of interviews; or

''(E) reports or other documents that merely aggregate or summarize information derived from multiple sources on the same or related topics.''.

(b) CLERICAL AMMENDMENT.—The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 103 the following:

''Sec. 104. Coordination of homeland security threat analysis provided to non-Federal officials.''.

SEC. 217. 9/11 MEMORIAL HOMELAND SECURITY FELLOWS PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) is further amended by adding at the end the following:

''SEC. 204. 9/11 MEMORIAL HOMELAND SECURITY FELLOWS PROGRAM.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary shall establish a fellowship program in accordance with this section for the purpose of bringing State, local, tribal, and private sector officials to participate in the work of the Homeland Security Operations Center in order to become familiar with—

''(A) the mission and capabilities of that Center; and

''(B) the role, programs, products, and personnel of the Office of Information Analysis, the Office of Infrastructure Protection, and other elements of the Department responsible for the integration, analysis, and dissemination of homeland security information, as defined in section 892(f)(1).

''(2) PROGRAM NAME.—The program under this section shall be known as the 9/11 Memorial Homeland Security Fellows Program.

''(b) ELIGIBILITY.—In order to be eligible for selection as a fellow under the program, an individual must—

''(1) have homeland security-related responsibilities; and

''(2) possess an appropriate national security clearance.

''(c) LIMITATIONS.—The Secretary—

''(1) may conduct up to 4 iterations of the program each year, each of which shall be 90 days in duration; and

''(2) shall ensure that the number of fellows selected for each iteration does not impede the activities of the Center.

''(d) CONDITION.—As a condition of selecting an individual as a fellow under the program, the Secretary shall require that the individual's employer agree to continue to pay the individual's salary and benefits during the period of the fellowship.

''(e) STIPEND.—During the period of the fellowship of an individual under the program, the Secretary shall, subject to the availability of appropriations, provide to the individual a stipend to cover the individual's reasonable living expenses during the period of the fellowship.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is further amended by adding at the end of the items relating to such subtitle the following:

''Sec. 204. 9/11 Memorial Homeland Security Fellows Program.''.

SEC. 218. ACCESS TO NUCLEAR TERRORISM-RELATED INFORMATION.

Section 201(d) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)) is further amended by adding at the end the following:

''(22) To ensure that—

''(A) the Assistant Secretary for Information Analysis receives promptly and without request all information obtained by any component of the Department if that information relates, directly or indirectly, to a threat of terrorism involving the potential use of nuclear weapons;

''(B) such information is—

''(i) integrated and analyzed comprehensively; and

''(ii) disseminated in a timely manner, including to appropriately cleared Federal, State, local, tribal, and private sector officials; and

''(C) such information is used to determine what requests the Department should submit for collection of additional information relating to that threat.''.

SEC. 219. ACCESS OF ASSISTANT SECRETARY FOR INFORMATION ANALYSIS TO TERRORISM INFORMATION.

Section 201(d) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)) is further amended by adding at the end the following:

''(23) To ensure that the Assistant Secretary for Information Analysis—

''(A) is routinely and without request given prompt access to all terrorism-related information collected by or otherwise in the possession of any component of the Department, including all homeland security information (as that term is defined in section 892(f)(1)); and

''(B) to the extent technologically feasible has direct access to all databases of any component of the Department that may contain such information.''.

SEC. 220. ADMINISTRATION OF THE HOMELAND SECURITY INFORMATION NETWORK.

Section 201(d) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)) is further amended by adding at the end the following:

''(24) To administer the homeland security information network, including—

''(A) exercising primary responsibility for establishing a secure nationwide real-time homeland security information sharing network for Federal, State, and local government agencies and authorities, tribal officials, the private sector, and other governmental and private entities involved in receiving, analyzing, and distributing information related to threats to homeland security;

''(B) ensuring that the information sharing systems, developed in connection with the network established under subparagraph (A), are utilized and are compatible with, to the greatest extent practicable, Federal, State, and local government, tribal, and private sector antiterrorism systems and protocols that have been or are being developed; and

''(C) ensuring, to the greatest extent possible, that the homeland security information network and information systems are integrated and interoperable with existing private sector technologies.''.

SEC. 221. IAIP PERSONNEL RECRUITMENT.

(a) IN GENERAL.—Chapter 97 of title 5, United States Code, is amended by adding after section 9701 the following:

''§ 9702. Recruitment bonuses

''(a) IN GENERAL.—Notwithstanding any provision of chapter 57, the Secretary of Homeland Security, acting through the Under Secretary for Information Analysis and Infrastructure Protection, may pay a bonus to an individual in order to recruit such individual for a position that is primarily responsible for discharging the analytic responsibilities specified in section 201(d) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)) and that—

''(1) is within the Directorate for Information Analysis and Infrastructure Protection; and

''(2) would be difficult to fill in the absence of such a bonus.

In determining which individuals are to receive bonuses under this section, appropriate consideration shall be given to the Directorate's critical need for linguists.

''(b) BONUS AMOUNT, FORM, ETC.—

''(1) IN GENERAL.—The amount of a bonus under this section shall be determined under regulations issued by the Secretary of Homeland Security, with the concurrence of the Director of National Intelligence, but may not exceed 50 percent of the annual rate of basic pay of the position involved. The Director of National Intelligence shall concur in such regulations only if the amount of the bonus is not disproportionate to recruitment bonuses offered to intelligence analysts in other intelligence community agencies.

''(2) FORM OF PAYMENT.—A bonus under this section shall be paid in the form of a lump-sum payment and shall not be considered to be part of basic pay.

''(3) COMPUTATION RULE.—For purposes of paragraph (1), the annual rate of basic pay of a position does not include any comparability payment under section 5304 or any similar authority.

''(c) SERVICE AGREEMENTS.—Payment of a bonus under this section shall be contingent upon the employee entering into a written service agreement with the Department of Homeland Security. The agreement shall include—

''(1) the period of service the individual shall be required to complete in return for the bonus; and

''(2) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of any such termination.

''(d) ELIGIBILITY.—A bonus under this section may not be paid to recruit an individual for—

''(1) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

''(2) a position in the Senior Executive Service as a noncareer appointee (as defined under section 3132(a)); or

''(3) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

''(e) TERMINATION.—The authority to pay bonuses under this section shall terminate on September 30, 2008.

''§ 9703. Reemployed annuitants

''(a) IN GENERAL.—If an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Directorate for Information Analysis and Infrastructure Protection of the Department of Homeland Security, the annuitant's annuity shall continue. An annuitant so reemployed shall not be considered an employee for the purposes of chapter 83 or 84.

''(b) TERMINATION.—The exclusion pursuant to this section of the Directorate for Information Analysis and Infrastructure Protection from the reemployed annuitant provisions of chapters 83 and 84 shall terminate 3 years after the date of the enactment of this section, unless extended by the Secretary of Homeland Security. Any such extension shall be for a period of 1 year and shall be renewable.

''(c) ANNUITANT DEFINED.—For purposes of this section, the term 'annuitant' has the meaning given such term under section 8331 or 8401, whichever is appropriate.

''§ 9704. Regulations

''The Secretary of Homeland Security, in consultation with the Director of the Office of Personnel Management, may prescribe any regulations necessary to carry out section 9702 or 9703.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 97 of title 5, United States Code, is amended by adding after the item relating to section 9701 the following:

''9702. Recruitment bonuses.
''9703. Reemployed annuitants.
''9704. Regulations.''.

SEC. 222. HOMELAND SECURITY INFORMATION REQUIREMENTS.

(a) HOMELAND SECURITY INFORMATION REQUIREMENTS.—The Joint Intelligence Community Council shall advise the Director of National Intelligence with respect to homeland security intelligence requirements.

(b) DESIGNATION OF MEMBERS.—The President may designate officers of the United States Government in addition to the members named in or designated under section 101A(b) of the National Security Act to serve on the Joint Intelligence Community Council in a capacity limited to consideration of homeland security intelligence requirements.

(c) PARTICIPATION IN NATIONAL INTELLIGENCE COLLECTION REQUIREMENTS AND MANAGEMENT PROCESSES.—The Secretary shall be a member of any Director of National Intelligence-established interagency collection and requirements management board that develops and reviews national intelligence collection requirements in response to Presidential intelligence guidelines.

SEC. 223. HOMELAND SECURITY ADVISORY SYSTEM.

(a) IN GENERAL.—Subtitle A of title II of the Homeland Security Act of 2002 is further amended—

(1) in section 201(d)(7) (6 U.S.C. 121(d)(7)) by inserting ''under section 205'' after ''System''; and

(2) by adding at the end the following:

''SEC. 205. HOMELAND SECURITY ADVISORY SYSTEM.

''(a) REQUIREMENT.—The Under Secretary for Information Analysis and Infrastructure Protection shall implement a Homeland Security Advisory System in accordance with this section to provide public advisories and alerts regarding threats to homeland security, including national, regional, local, and economic sector advisories and alerts, as appropriate.

''(b) REQUIRED ELEMENTS.—The Under Secretary, under the System—

''(1) shall include, in each advisory and alert regarding a threat, information on appropriate protective measures and countermeasures that may be taken in response to the threat;

''(2) shall, whenever possible, limit the scope of each advisory and alert to a specific region, locality, or economic sector believed to be at risk; and

''(3) shall not, in issuing any advisory or alert, use color designations as the exclusive means of specifying the homeland security threat conditions that are the subject of the advisory or alert.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is further amended by adding at the end of the items relating to subtitle A of title II the following:

''Sec. 205. Homeland Security Advisory System.''.

SEC. 224. USE OF OPEN-SOURCE INFORMATION.

Section 201(d) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)) is further amended by adding at the end the following:

''(25) To ensure that, whenever possible—

''(A) the Assistant Secretary for Information Analysis utilizes open-source information and produces reports and analytic products based on such information that do not require a national security classification under applicable law; and

''(B) such unclassified open-source reports are produced, to the extent consistent with the protection of intelligence sources and methods from unauthorized disclosure, contemporaneously with reports or analytic products concerning the same or similar information that the Assistant Secretary for Information Analysis produces in a classified format.''.

SEC. 225. FULL AND EFFICIENT USE OF OPEN-SOURCE INFORMATION.

(a) REQUIREMENT.—Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) is further amended by adding at the end the following:

''SEC. 206. FULL AND EFFICIENT USE OF OPEN-SOURCE INFORMATION.

''The Under Secretary shall ensure that, in meeting their analytic responsibilities under section 201(d) and in formulating requirements for collection of additional information, the Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection make full and efficient use of open-source information wherever possible.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is further amended by inserting after the item relating to section 205 the following:

''Sec. 206. Full and efficient use of open-source information.''.

SEC. 226. COORDINATION WITH THE INTELLIGENCE COMMUNITY.

Section 201 of the Homeland Security Act of 2002 (6 U.S.C. 121) is amended by adding at the end the following:

''(h) COORDINATION WITH THE INTELLIGENCE COMMUNITY.—The Under Secretary shall ensure that, as to the responsibilities specified in subsection (d), the Assistant Secretary for Information Analysis serves as the official responsible for coordinating, as appropriate, with elements of the intelligence community.''.

SEC. 227. CONSISTENCY WITH APPLICABLE FEDERAL LAWS.

Unless otherwise expressly stated in this subtitle, the Secretary of Homeland Security shall ensure that all activities carried out under this subtitle are consistent with any applicable Federal laws relating to information policy of Federal agencies.

TITLE III—DOMESTIC PREPAREDNESS AND PROTECTION

Subtitle A—Preparedness and Protection

SEC. 301. NATIONAL TERRORISM EXERCISE PROGRAM.

(a) IN GENERAL.—Section 430(c) of the Homeland Security Act of 2002 (6 U.S.C. 238) is amended by striking ''and'' after the semicolon at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting ''; and'', and by adding at the end the following:

''(10) designing, developing, performing, and evaluating exercises at the national, State, territorial, regional, local, and tribal levels of government that incorporate government officials, emergency response providers, public safety agencies, the private sector, international governments and organizations, and other appropriate entities to test the Nation's capability to prevent, prepare for, respond to, and recover from threatened or actual acts of terrorism.''.

(b) NATIONAL TERRORISM EXERCISE PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Title VIII of the Homeland Security Act of 2002 (Public Law 107–296) is amended by adding at the end the following new subtitle:

''Subtitle J—Terrorism Preparedness Exercises

''SEC. 899a. NATIONAL TERRORISM EXERCISE PROGRAM.

''(a) IN GENERAL.—The Secretary, through the Office for Domestic Preparedness, shall establish a National Terrorism Exercise Program for the purpose of testing and evaluating the Nation's capabilities to prevent, prepare for, respond to, and recover from threatened or actual acts of terrorism that—

''(1) enhances coordination for terrorism preparedness between all levels of government, emergency response providers, international governments and organizations, and the private sector;

''(2) is—

''(A) multidisciplinary in nature, including, as appropriate, information analysis and cybersecurity components;

''(B) as realistic as practicable and based on current risk assessments, including credible threats, vulnerabilities, and consequences;

''(C) carried out with the minimum degree of notice to involved parties regarding the timing and details of such exercises, consistent with safety considerations;

''(D) evaluated against performance measures and followed by corrective action to solve identified deficiencies; and

''(E) assessed to learn best practices, which shall be shared with appropriate Federal, State, territorial, regional, local, and tribal personnel, authorities, and training institutions for emergency response providers; and

''(3) assists State, territorial, local, and tribal governments with the design, implementation, and evaluation of exercises that—

''(A) conform to the requirements of paragraph (2); and

''(B) are consistent with any applicable State homeland security strategy or plan.

''(b) NATIONAL LEVEL EXERCISES.—The Secretary, through the National Terrorism Exercise Program, shall perform on a periodic basis national terrorism preparedness exercises for the purposes of—

''(1) involving top officials from Federal, State, territorial, local, tribal, and international governments, as the Secretary considers appropriate;

''(2) testing and evaluating, in coordination with the Attorney General, the Nation's capability to detect, disrupt, and prevent threatened or actual catastrophic acts of terrorism, especially those involving weapons of mass destruction; and

''(3) testing and evaluating the Nation's readiness to respond to and recover from catastrophic acts of terrorism, especially those involving weapons of mass destruction.

''(c) CONSULTATION WITH FIRST RESPONDERS.—In implementing the responsibilities described in subsections (a) and (b), the Secretary shall consult with a geographic (including urban and rural) and substantive cross section of governmental and nongovernmental first responder disciplines, including as appropriate—

''(1) Federal, State, and local first responder training institutions;

''(2) representatives of emergency response providers; and

''(3) State and local officials with an expertise in terrorism preparedness.''.

(2) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end of the items relating to title VIII the following:

''Subtitle J—Terrorism Preparedness Exercises

''Sec. 899a. National terrorism exercise program.''.

(c) TOPOFF PREVENTION EXERCISE.—No later than one year after the date of enactment of this Act, the Secretary of Homeland Security shall design and carry out a national terrorism prevention exercise for the purposes of—

(1) involving top officials from Federal, State, territorial, local, tribal, and international governments as the Secretary considers appropriate; and

(2) testing and evaluating, in coordination with the Attorney General, the Nation's capability to detect, disrupt, and prevent threatened or actual catastrophic acts of terrorism, especially those involving weapons of mass destruction.

SEC. 302. TECHNOLOGY DEVELOPMENT AND TRANSFER.

(a) ESTABLISHMENT OF TECHNOLOGY CLEARINGHOUSE.—Not later than 90 days after the date of enactment of this Act, the Secretary shall complete the establishment of the Technology Clearinghouse under section 313 of the Homeland Security Act of 2002.

(b) TRANSFER PROGRAM.—Section 313 of the Homeland Security Act of 2002 (6 U.S.C. 193) is amended—

(1) by adding at the end of subsection (b) the following new paragraph:

''(6) The establishment of a homeland security technology transfer program to facilitate the identification, modification, and commercialization of technology and equipment for use by Federal, State, and local governmental agencies, emergency response providers, and the private sector to prevent, prepare for, or respond to acts of terrorism.'';

(2) by redesignating subsection (c) as subsection (e); and

(3) by inserting after subsection (b) the following new subsections:

''(c) ELEMENTS OF THE TECHNOLOGY TRANSFER PROGRAM.—The activities of the program described in subsection (b)(6) shall include—

''(1) identifying available technologies that have been, or are in the process of being, developed, tested, evaluated, or demonstrated by the Department, other Federal agencies, the private sector, or foreign governments and international organizations, and reviewing whether such technologies may be useful in assisting Federal, State, and local governmental agencies, emergency response providers, or the private sector to prevent, prepare for, or respond to acts of terrorism; and

''(2) communicating to Federal, State, and local governmental agencies, emergency response providers, or the private sector the availability of such technologies for antiterrorism use, as well as the technology's specifications, satisfaction of appropriate standards, and the appropriate grants available from the Department to purchase such technologies;

''(d) RESPONSIBILTIES OF UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.—In support of the activities described in subsection (c), the Under Secretary for Science and Technology shall—

''(1) conduct or support, based on the Department's current risk assessments of terrorist threats, research, development, demonstrations, tests, and evaluations, as appropriate, of technologies identified under subparagraph (c)(1), including of any necessary modifications to such technologies for antiterrorism use;

''(2) ensure that the technology transfer activities throughout the Directorate of Science and Technology are coordinated, including the technology transfer aspects of projects and grants awarded to the private sector and academia;

''(3) consult with the other Under Secretaries of the Department and the Director of the Office for Domestic Preparedness, on an ongoing basis;

''(4) consult with Federal, State, and local emergency response providers;

''(5) consult with government agencies and standards development organizations as appropriate;

''(6) enter into agreements and coordinate with other Federal agencies, foreign governments, and national and international organizations as the Secretary determines appropriate, in order to maximize the effectiveness of such technologies or to facilitate commercialization of such technologies;

''(7) consult with existing technology transfer programs and Federal and State training centers that research, develop, test, evaluate, and transfer military and other technologies for use by emergency response providers; and

''(8) establish a working group in coordination with the Secretary of Defense to advise and assist the technology clearinghouse in the identification of military technologies that are in the process of being developed, or are developed, by the Department of Defense or the private sector, which may include—

''(A) representatives from the Department of Defense or retired military officers;

''(B) nongovernmental organizations or private companies that are engaged in the research, development, testing, or evaluation of related technologies or that have demonstrated prior experience and success in searching for and identifying technologies for Federal agencies;

''(C) Federal, State, and local emergency response providers; and

''(D) to the extent the Secretary considers appropriate, other organizations, other interested Federal, State, and local agencies, and other interested persons.''.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Under Secretary for Science and Technology shall transmit to the Congress a description of the progress the Department has made in implementing the provisions of section 313 of the Homeland Security Act of 2002, as amended by this Act, including a description of the process used to review unsolicited proposals received as described in subsection (b)(3) of such section.

(d) SAVINGS CLAUSE.—Nothing in this section (including the amendments made by this section) shall be construed to alter or diminish the effect of the limitation on the authority of the Secretary of Homeland Security under section 302(4) of the Homeland Security Act of 2002 (6 U.S.C. 182(4)) with respect to human health-related research and development activities.

SEC. 303. REVIEW OF ANTITERRORISM ACQUISITIONS.

(a) STUDY.—The Secretary of Homeland Security shall conduct a study of all Department of Homeland Security procurements, including ongoing procurements and anticipated procurements, to—

(1) identify those that involve any product, equipment, service (including support services), device, or technology (including information technology) that is being designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause; and

(2) assess whether such product, equipment, service (including support services), device, or technology is an appropriate candidate for the litigation and risk management protections of subtitle G of title VIII of the Homeland Security Act of 2002.

(b) SUMMARY AND CLASSIFICATION REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit to the Congress a report—

(1) describing each product, equipment, service (including support services), device, and technology identified under subsection (a) that the Secretary believes would be an appropriate candidate for the litigation and risk management protections of subtitle G of title VIII of the Homeland Security Act of 2002;

(2) listing each such product, equipment, service (including support services), device, and technology in order of priority for deployment in accordance with current terrorism risk assessment information; and

(3) setting forth specific actions taken, or to be taken, to encourage or require persons or entities that sell or otherwise provide such products, equipment, services (including support services), devices, and technologies to apply for the litigation and risk management protections of subtitle G of title VIII of the Homeland Security Act of 2002, and to ensure prioritization of the Department's review of such products, equipment, services, devices, and technologies under such Act in accordance with the prioritization set forth in paragraph (2) of this subsection.

SEC. 304. CENTER OF EXCELLENCE FOR BORDER SECURITY.

The Secretary of Homeland Security shall establish a university-based Center of Excellence for Border Security following the merit-review processes and procedures and other limitations that have been established for selecting and supporting University Programs Centers of Excellence. The Center shall prioritize its activities on the basis of risk to address the most significant threats, vulnerabilities, and consequences posed by the Nation's borders and border control systems. The activities should include the conduct of research, the examination of existing and emerging border security technology and systems, and the provision of education, technical, and analytical assistance for the Department of Homeland Security to effectively secure the Nation's borders.

SEC. 305. REQUIREMENTS RELATING TO THE CONTAINER SECURITY INITIATIVE (CSI).

(a) DESIGNATION OF NEW FOREIGN SEAPORTS.—The Secretary of Homeland Security may designate a foreign seaport as a participating seaport in the Container Security Initiative program on or after the date of the enactment of this Act if the Secretary—

(1) determines, based on a foreign port assessment carried out under section 70108(a) of title 46, United States Code, or such other risk assessment that the Secretary may perform, and a cost-benefit analysis, that the benefits of designating such seaport as a participating seaport outweigh the cost of expanding the program to such seaport; and

(2) enters into an agreement with the foreign government of such seaport, in consultation with the Department of State and other appropriate Federal agencies to—

(A) establish security criteria to identify the potential compromise by terrorists or terrorist weapons of maritime cargo containers bound for the United States based on advance information; and

(B) screen or inspect such maritime cargo containers for potential compromise by terrorists or terrorist weapons prior to shipment to the United States.

(b) DEPLOYMENT OF INSPECTION EQUIPMENT TO NEW CSI PARTICIPATING SEAPORTS.—

(1) DEPLOYMENT.—The Secretary may—

(A) loan or otherwise provide nonintrusive inspection equipment for maritime cargo containers, on a nonreimbursable basis, at a seaport designated under subsection(a); and

(B) provide training for personnel at a seaport designated under subsection (a) to operate the nonintrusive inspection equipment.

(2) ADDITIONAL REQUIREMENTS.—

(A) CAPABILITY REQUIREMENTS AND OPERATING PROCEDURES.—The Secretary shall establish technical capability requirements and standard operating procedures for nonintrusive inspection equipment described in paragraph (1), consistent with any standards established by the Secretary under section 70116 of title 46 United States Code.

(B) AGREEMENT REQUIRED.—The Secretary shall require each CSI port to agree to operate such equipment in accordance with requirements and procedures established under subparagraph (A) as a condition for receiving the equipment and training under paragraph (1).

(c) DEPLOYMENT OF PERSONNEL TO NEW CSI PORTS; REEVALUATION OF PERSONNEL AT ALL CSI PORTS.—

(1) DEPLOYMENT.—The Secretary shall deploy United States Customs and Border Protection personnel to each seaport designated under subsection (a) with respect to which the Secretary determines that the deployment is necessary to successfully implement the requirements of CSI at the port.

(2) REEVALUATION.—The Secretary shall periodically review relevant risk assessment information with respect to each seaport at which personnel are deployed under paragraph (1) to assess whether or not continued deployment of such personnel, in whole or in part, is necessary to success fully implement the requirements of CSI at the port.

(d) INSPECTION AND SCREENING AT UNITED STATES PORTS OF ENTRY.—Cargo containers arriving at a United States port of entry from a CSI port shall undergo the same level of inspection and screening for potential compromise by terrorists or terrorist weapons as cargo containers arriving at a United States port of entry from a foreign seaport that is not participating in CSI unless the containers were initially inspected at the CSI port at the request of personnel deployed under subsection (c) and such personnel verify and electronically record that the inspection indicates that the containers have not been compromised by terrorists or terrorist weapons.

SEC. 306. SECURITY OF MARITIME CARGO CONTAINERS.

(a) STANDARDS AND REGULATIONS.—

(1) STANDARDS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall establish standards and procedures for securing maritime cargo containers relating to obligation to seal, recording of seal changes, modal changes, seal placement, ocean carrier seal verification, and addressing seal anomalies. These standards shall include the standards for seals and locks as required under paragraph (3) of subsection (b) of section 70116 of title 46, United States Code.

(2) REGULATIONS.—No later than 90 days after completion of the requirements in subsection (a), the Secretary of Homeland Security shall issue regulations for the security of maritime cargo containers consistent with the standards developed in subsection (a).

(b) INTERNATIONAL AGREEMENTS.—The Secretary, in consultation with the Department of State, Department of Commerce, Department of Treasury, Office of the United States Trade Representative, and other appropriate Federal agencies, shall seek to enter into agreements with foreign countries and international organizations to establish standards for the security of maritime cargo containers moving within the intermodal transportation system that, to the maximum extent practicable, meet the requirements of subsection (a).

(c) CONTAINER TARGETING STRATEGY.—The Secretary shall develop a strategy to improve the ability of the Department of Homeland Security to use advance cargo information to identify anomalies in such information to determine whether such cargo poses a security risk. The strategy shall include a method of contacting shippers to verify or explain any anomalies discovered in such information.

(d) CONTAINER SECURITY DEMONSTRATION PROGRAM.—

(1) PROGRAM.—The Secretary is authorized to establish and carry out a demonstration program that integrates radiation detection equipment with other types of nonintrusive inspection equipment at an appropriate United States seaport, as determined by the Secretary.

(2) REQUIREMENT.—The demonstration program shall also evaluate ways to strengthen the capability of Department of Homeland Security personnel to analyze cargo inspection data and ways to improve the transmission of inspection data between appropriate entities within the Department of Homeland Security.

(e) COORDINATION AND CONSOLIDATION OF CONTAINER SECURITY PROGRAMS.—The Secretary shall coordinate all programs that enhance the security of maritime cargo, and, to the extent practicable, consolidate Operation Safe Commerce, the Smart Box Initiative, and similar programs that evaluate security enhancements for maritime cargo containers, to achieve enhanced coordination and efficiency. The Secretary shall report to the appropriate congressional committees (as that term is defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101) before consolidating any program mentioned in this subsection.

SEC. 307. SECURITY PLAN FOR GENERAL AVIATION AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT.

Not later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security shall implement section 823(a) of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 41718 note; 117 Stat. 2595).

SEC. 308. INTEROPERABLE COMMUNICATIONS ASSISTANCE.

(a) FINDINGS.—The Congress finds the following:

(1) The 9/11 Commission determined that the inability of first responders to communicate effectively on September 11, 2001 was

a critical obstacle to an effective multi-jurisdictional response.

(2) Many jurisdictions across the country still experience difficulties communicating that may contribute to confusion, delays, or added risks when responding to an emergency.

(3) During fiscal year 2004, the Office for Domestic Preparedness awarded over $834,000,000 for 2,912 projects through Department of Homeland Security grant programs for the purposes of improving communications interoperability.

(4) Interoperable communications systems are most effective when designed to comprehensively address, on a regional basis, the communications of all types of public safety agencies, first responder disciplines, and State and local government facilities.

(5) Achieving communications interoperability is complex due to the extensive training, system modifications, and agreements among the different jurisdictions that are necessary to implement effective communications systems.

(6) The Congress authorized the Department of Homeland Security to create an Office for Interoperability and Compatibility in the Intelligence Reform and Terrorism Prevention Act of 2004 to, among other things, establish a comprehensive national approach, coordinate federal activities, accelerate the adoption of standards, and encourage research and development to achieve interoperable communications for first responders.

(7) The Office for Interoperability and Compatibility includes the SAFECOM Program that serves as the umbrella program within the Federal government to improve public safety communications interoperability, and has developed the RAPIDCOM program, the Statewide Communications Interoperability Planning Methodology, and a Statement of Requirements to provide technical, planning, and purchasing assistance for Federal departments and agencies, State and local governments, and first responders.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the Department of Homeland Security should implement as expeditiously as possible the initiatives assigned to the Office for Interoperability and Compatibility under section 7303 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194), including specifically the following:

(1) Establishing a comprehensive national approach to achieving public safety interoperable communications.

(2) Issuing letters of intent to commit future funds for jurisdictions through existing homeland security grant programs to applicants as appropriate to encourage long-term investments that may significantly improve communications interoperability.

(3) Providing technical assistance to additional urban and other high-risk areas to support the establishment of consistent, secure, and effective interoperable communications capabilities.

(4) Completing the report to the Congress on the Department's plans for accelerating the development of national voluntary consensus standards for public safety interoperable communications, a schedule of milestones for such development, and achievements of such development, by no later than 30 days after the date of enactment of this Act.

SEC. 309. REPORT TO CONGRESS ON IMPLEMENTATION OF RECOMMENDATIONS REGARDING PROTECTION OF AGRICULTURE.

The Secretary of Homeland Security shall report to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) by no later than 120 days after the date of the enactment of this Act regarding how the Department of Homeland Security will implement the applicable recommendations from the Government Accountability Office report entitled ''Homeland Security: Much is Being Done to Protect Agriculture from a Terrorist Attack, but Important Challenges Remain'' (GAO–05–214).

Subtitle B—Department of Homeland Security Cybersecurity Enhancement

SEC. 311. SHORT TITLE.

This subtitle may be cited as the ''Department of Homeland Security Cybersecurity Enhancement Act of 2005''.

SEC. 312. ASSISTANT SECRETARY FOR CYBERSECURITY.

Section 201(b) of the Homeland Security Act of 2002 (6 U.S.C. 121(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

''(3) ASSISTANT SECRETARY FOR CYBERSECURITY.—There shall be in the Department an Assistant Secretary for Cybersecurity, who shall be appointed by the President.''; and

(3) in paragraph (4), as redesignated by subparagraph (A) of this paragraph—

(A) by striking ''Analysis and the'' and inserting ''Analysis, the''; and

(B) by striking ''Protection shall'' and inserting ''Protection, and the Assistant Secretary for Cybersecurity shall''.

SEC. 313. CYBERSECURITY TRAINING PROGRAMS AND EQUIPMENT.

(a) IN GENERAL.—The Secretary of Homeland Security, acting through the Assistant Secretary for Cybersecurity, may establish, in conjunction with the National Science Foundation, a program to award grants to institutions of higher education (and consortia thereof) for—

(1) the establishment or expansion of cybersecurity professional development programs;

(2) the establishment or expansion of associate degree programs in cybersecurity; and

(3) the purchase of equipment to provide training in cybersecurity for either professional development programs or degree programs.

(b) ROLES.—

(1) DEPARTMENT OF HOMELAND SECURITY.—The Secretary, acting through the Assistant Secretary for Cybersecurity and in consultation with the Director of the National Science Foundation, shall establish the goals for the program established under this section and the criteria for awarding grants under the program.

(2) NATIONAL SCIENCE FOUNDATION.—The Director of the National Science Foundation shall operate the program established under this section consistent with the goals and criteria established under paragraph (1), including soliciting applicants, reviewing applications, and making and administering grant awards. The Director may consult with the Assistant Secretary for Cybersecurity in selecting awardees.

(3) FUNDING.—The Secretary shall transfer to the National Science Foundation the funds necessary to carry out this section.

(c) GRANT AWARDS.—

(1) PEER REVIEW.—All grant awards under this section shall be made on a competitive, merit-reviewed basis.

(2) FOCUS.—In making grant awards under this section, the Director shall, to the extent practicable, ensure geographic diversity and the participation of women and underrepresented minorities.

(3) PREFERENCE.—In making grant awards under this section, the Director shall give preference to applications submitted by consortia of institutions to encourage as many students and professionals as possible to benefit from this program.

(d) AUTHORIZATION OF APPROPRIATIONS.—Of the amount authorized under section 101, there is authorized to be appropriated to the Secretary for carrying out this section $3,700,000 for fiscal year 2006.

(e) DEFINITIONS.—In this section, the term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

SEC. 314. CYBERSECURITY RESEARCH AND DEVELOPMENT.

Title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et. seq.) is amended by adding at the end the following new section:

''SEC. 314. CYBERSECURITY RESEARCH AND DEVELOPMENT.

''(a) IN GENERAL.—The Under Secretary for Science and Technology shall support research and development, including fundamental, long-term research, in cybersecurity to improve the ability of the United States to prevent, protect against, detect, respond to, and recover from cyber attacks, with emphasis on research and development relevant to large-scale, high-impact attacks.

''(b) ACTIVITIES.—The research and development supported under subsection (a), shall include work to—

''(1) advance the development and accelerate the deployment of more secure versions of fundamental Internet protocols and architectures, including for the domain name system and routing protocols;

''(2) improve and create technologies for detecting attacks or intrusions, including monitoring technologies;

''(3) improve and create mitigation and recovery methodologies, including techniques for containment of attacks and development of resilient networks and systems that degrade gracefully; and

''(4) develop and support infrastructure and tools to support cybersecurity research and development efforts, including modeling, testbeds, and data sets for assessment of new cybersecurity technologies.

''(c) COORDINATION.—In carrying out this section, the Under Secretary for Science and Technology shall coordinate activities with—

''(1) the Assistant Secretary for Cybersecurity; and

''(2) other Federal agencies, including the National Science Foundation, the Defense Advanced Research Projects Agency, and the National Institute of Standards and Technology, to identify unmet needs and cooperatively support activities, as appropriate.

''(d) NATURE OF RESEARCH.—Activities under this section shall be carried out in accordance with section 306(a) of this Act.''.

Subtitle C—Security of Public Transportation Systems

SEC. 321. SECURITY BEST PRACTICES.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security, in coordination with the Secretary of Transportation, shall issue a report containing best practices for the security of public transportation systems related to the threats from terrorism. Such report shall be developed in consultation with providers of public transportation, industry associations, public transportation employee representatives, first responders, and appropriate Federal, State, and local officials. The Secretary of Transportation shall disseminate the report to providers of public transportation, industry associations, public transportation employee representatives, and appropriate Federal, State, and local officials, the Committee on Homeland Security and the Committee on Transportation

and Infrastructure of the House of Representatives, and any other appropriate entities.

SEC. 322. PUBLIC AWARENESS.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation, after consultation with the Secretary of Homeland Security, shall develop a national plan to increase awareness of measures that the general public, public transportation passengers, and public transportation employees can take to increase public transportation security related to the threat of terrorism. Such plan shall also provide outreach to providers and employees of public transportation systems on available transportation security technologies, ongoing research and development efforts, employee training, and available Federal funding sources to improve public transportation security. Not later than 9 months after the date of the enactment of this Act, the Secretary of Transportation shall disseminate the plan to providers of public transportation, industry associations, public transportation employee representatives, appropriate Federal, State, and local officials, and other appropriate entities.

Subtitle D—Critical Infrastructure Prioritization

SEC. 331. CRITICAL INFRASTRUCTURE.

(a) COMPLETION OF PRIORITIZATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall complete the prioritization of the Nation's critical infrastructure according to all of the following criteria:

(1) The threat of terrorist attack, based on threat information received and analyzed by the Office of Information Analysis of the Department regarding the intentions and capabilities of terrorist groups and other potential threats to the Nation's critical infrastructure.

(2) The likelihood that an attack would cause the destruction or significant disruption of such infrastructure.

(3) The likelihood that an attack would result in substantial numbers of deaths and serious bodily injuries, a substantial adverse impact on the national economy, or a substantial adverse impact on national security.

(b) COOPERATION.—Such prioritization shall be developed in cooperation with other relevant Federal agencies, State, local, and tribal governments, and the private sector, as appropriate.

SEC. 332. SECURITY REVIEW.

(a) REQUIREMENT.—Not later than 9 months after the date of the enactment of this Act, the Secretary of Homeland Security, in coordination with other relevant Federal agencies, State, local, and tribal governments, and the private sector, as appropriate, shall—

(1) review existing Federal, State, local, tribal, and private sector plans for securing the critical infrastructure included in the prioritization developed under section 331;

(2) recommend changes to existing plans for securing such infrastructure, as the Secretary determines necessary; and

(3) coordinate and contribute to protective efforts of other Federal, State, local, and tribal agencies and the private sector, as appropriate.

(b) CONTENTS OF PLANS.—The recommendations made under subsection (a)(2) shall include—

(1) protective measures to secure such infrastructure, including milestones and timeframes for implementation; and

(2) to the extent practicable, performance metrics to evaluate the benefits to both national security and the Nation's economy from the implementation of such protective measures.

SEC. 333. IMPLEMENTATION REPORT.

(a) IN GENERAL.—Not later than 15 months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit a report to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) on the implementation of section 332. Such report shall detail—

(1) the Secretary's review and coordination of security plans under section 332; and

(2) the Secretary's oversight of the execution and effectiveness of such plans.

(b) UPDATE.—Not later than 1 year after the submission of the report under subsection (a), the Secretary shall provide an update of such report to the congressional committees described in subsection (a).

SEC. 334. PROTECTION OF INFORMATION.

(a) PROTECTION OF INFORMATION.—The information set forth in subsection (b) that is generated, compiled, or disseminated by the Department of Homeland Security in carrying out this subtitle—

(1) is exempt from disclosure under section 552 of title 5, United States Code; and

(2) shall not, if provided by the Department to a State or local government or government agency—

(A) be made available pursuant to any State or local law requiring disclosure of information or records;

(B) otherwise be disclosed or distributed to any person by such State or local government or government agency without the written consent of the Secretary; or

(C) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act.

(b) INFORMATION COVERED.—Information referred to in subsection (a) is the following:

(1) The Secretary's prioritization of critical infrastructure pursuant to section 331, including any information upon which such prioritization was based;

(2) the Secretary's review of existing security plans for such infrastructure pursuant to section 332(a)(1).

(3) The Secretary's recommendations for changes to existing plans for securing such infrastructure pursuant to section 332(a)(2).

(4) The nature and scope of protective efforts with respect to such infrastructure under section 332(a)(3).

(5) The report and update prepared by the Secretary pursuant to section 333, including any information upon which such report and update are based.

TITLE IV—U.S. CUSTOMS AND BORDER PROTECTION AND U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

SEC. 401. ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS.

Section 334 of the Customs and Border Security Act of 2002 (19 U.S.C. 2082 note) is amended to read as follows:

"SEC. 334. ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS.

''(a) ESTABLISHMENT AND IMPLEMENTATION; CUSTOMS AND BORDER PROTECTION.—

''(1) IN GENERAL.—Not later than September 30, 2006, the Commissioner of U.S. Customs and Border Protection shall, in accordance with the audit of the Customs Service's fiscal years 2000 and 1999 financial statements (as contained in the report of the Office of Inspector General of the Department of the Treasury issued on February 23, 2001), establish and implement a cost accounting system—

''(A) for expenses incurred in both commercial and noncommercial operations of U.S. Customs and Border Protection of the Department of Homeland Security, which system should specifically identify and distinguish expenses incurred in commercial operations and expenses incurred in noncommercial operations; and

''(B) for expenses incurred both in administering and enforcing the customs laws of the United States and the Federal immigration laws, which system should specifically identify and distinguish expenses incurred in administering and enforcing the customs laws of the United States and the expenses incurred in administering and enforcing the Federal immigration laws.

''(2) ADDITIONAL REQUIREMENT.—The cost accounting system described in paragraph (1) shall provide for an identification of expenses based on the type of operation, the port at which the operation took place, the amount of time spent on the operation by personnel of U.S. Customs and Border Protection, and an identification of expenses based on any other appropriate classification necessary to provide for an accurate and complete accounting of expenses.

''(b) ESTABLISHMENT AND IMPLEMENTATION; IMMIGRATION AND CUSTOMS ENFORCEMENT.—

''(1) IN GENERAL.—Not later than September 30, 2006, the Assistant Secretary for U.S. Immigration and Customs Enforcement shall, in accordance with the audit of the Customs Service's fiscal years 2000 and 1999 financial statements (as contained in the report of the Office of Inspector General of the Department of the Treasury issued on February 23, 2001), establish and implement a cost accounting system—

''(A) for expenses incurred in both commercial and noncommercial operations of U.S. Immigration and Customs Enforcement of the Department of Homeland Security, which system should specifically identify and distinguish expenses incurred in commercial operations and expenses incurred in noncommercial operations;

''(B) for expenses incurred both in administering and enforcing the customs laws of the United States and the Federal immigration laws, which system should specifically identify and distinguish expenses incurred in administering and enforcing the customs laws of the United States and the expenses incurred in administering and enforcing the Federal immigration laws.

''(2) ADDITIONAL REQUIREMENT.—The cost accounting system described in paragraph (1) shall provide for an identification of expenses based on the type of operation, the amount of time spent on the operation by personnel of U.S. Immigration and Customs Enforcement, and an identification of expenses based on any other appropriate classification necessary to provide for an accurate and complete accounting of expenses.

''(c) REPORTS.—

''(1) DEVELOPMENT OF THE COST ACCOUNTING SYSTEMS.—Beginning on the date of the enactment of the Department of Homeland Security Authorization Act for Fiscal Year 2006 and ending on the date on which the cost accounting systems described in subsections (a) and (b) are fully implemented, the Commissioner of U.S. Customs and Border Protection and the Assistant Secretary for U.S. Immigration and Customs Enforcement, respectively, shall prepare and submit to Congress on a quarterly basis a report on the progress of implementing the cost accounting systems pursuant to subsections (a) and (b).

''(2) ANNUAL REPORTS.—Beginning one year after the date on which the cost accounting systems described in subsections (a) and (b) are fully implemented, the Commissioner of U.S. Customs and Border Protection and the Assistant Secretary for U.S. Immigration and Customs Enforcement, respectively, shall prepare and submit to Congress on an

annual basis a report itemizing the expenses identified in subsections (a) and (b).

''(3) OFFICE OF THE INSPECTOR GENERAL.—Not later than March 31, 2007, the Inspector General of the Department of Homeland Security shall prepare and submit to Congress a report analyzing the level of compliance with this section and detailing any additional steps that should be taken to improve compliance with this section.''.

SEC. 402. REPORT RELATING TO ONE FACE AT THE BORDER INITIATIVE.

Not later than September 30 of each of the calendar years 2006 and 2007, the Commissioner of U.S. Customs and Border Protection of the Department of Homeland Security shall prepare and submit to Congress a report—

(1) analyzing the effectiveness of the One Face at the Border Initiative at enhancing security and facilitating trade;

(2) providing a breakdown of the number of personnel of U.S. Customs and Border Protection that were personnel of the United States Customs Service prior to the establishment of the Department of Homeland Security, that were personnel of the Immigration and Naturalization Service prior to the establishment of the Department of Homeland Security, and that were hired after the establishment of the Department of Homeland Security;

(3) describing the training time provided to each employee on an annual basis for the various training components of the One Face at the Border Initiative; and

(4) outlining the steps taken by U.S. Customs and Border Protection to ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions under the One Face at the Border Initiative.

SEC. 403. CUSTOMS SERVICES.

Section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)) is amended—

(1) by striking ''(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)),'' and inserting:

''(1) IN GENERAL.—

''(A) SCHEDULED FLIGHTS.—Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than subparagraph (B) and paragraph (2)),''; and

(2) by adding at the end the following:

''(B) CHARTER FLIGHTS.—If a charter air carrier (as defined in section 40102(13) of title 49, United States Code) specifically requests that customs border patrol services for passengers and their baggage be provided for a charter flight arriving after normal operating hours at a customs border patrol serviced airport and overtime funds for those services are not available, the appropriate customs border patrol officer may assign sufficient customs employees (if available) to perform any such services, which could lawfully be performed during regular hours of operation, and any overtime fees incurred in connection with such service shall be paid by the charter air carrier.''.

SEC. 404. SENSE OF CONGRESS ON INTERPRETATION OF TEXTILE AND APPAREL PROVISIONS.

It is the sense of Congress that U.S. Customs and Border Protection of the Department of Homeland Security should interpret, implement, and enforce the provisions of section 112 of the African Growth and Opportunity Act (19 U.S.C. 3721), section 204 of the Andean Trade Preference Act (19 U.S.C. 3203), and section 213 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703), relating to preferential treatment of textile and apparel articles, broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible beneficiary countries.

TITLE V—MISCELLANEOUS

SEC. 501. BORDER SECURITY AND ENFORCEMENT COORDINATION AND OPERATIONS.

(a) FINDINGS.—The Congress makes the following findings:

(1) As part of the creation of the Department of Homeland Security, section 442 of the Homeland Security Act of 2002 (Public Law 107–273) established a Bureau of Border Security and transferred into it all of the functions, programs, personnel, assets, and liabilities pertaining to the following programs: the Border Patrol; alien detention and removal; immigration-related intelligence, investigations, and enforcement activities; and immigration inspections at ports of entry.

(2) Title IV of the Homeland Security Act of 2002 (Public Law 107–273) also transferred to the new Department the United States Customs Service, as a distinct entity within the new Department, to further the Department's border integrity mission.

(3) Utilizing its reorganization authority provided in the Homeland Security Act of 2002, the President submitted a reorganization plan for the Department on January 30, 2003.

(4) This plan merged the customs and immigration border inspection and patrol functions, along with agricultural inspections functions, into a new entity called United States Customs and Border Protection.

(5) The plan also combined the customs and immigration enforcement agents, as well as the Office of Detention and Removal Operations, the Office of Federal Protective Service, the Office of Federal Air Marshal Service, and the Office of Intelligence, into another new entity called United States Immigration and Customs Enforcement.

(6) The President's January 30, 2003, reorganization plan did not explain the reasons for separating immigration inspection and border patrol functions from other immigration-related enforcement functions, or to combine immigration-related enforcement functions with customs and other functions, contrary to the design of the Bureau of Border Security as prescribed by the Congress in section 442 of the Homeland Security Act of 2002.

(7) United States Immigration and Customs Enforcement has faced major budgetary challenges that are, in part, attributable to the inexact division of resources upon the separation of immigration functions. These budget shortfalls have forced United States Immigration and Customs Enforcement to impose hiring freezes and to release aliens that otherwise should be detained.

(b) REPORT.—

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Homeland Security shall review and evaluate the current organizational structure of the Department of Homeland Security established by the President's January 30, 2003, reorganization plan and submit a report of findings and recommendations to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)).

(2) CONTENTS OF REPORT.—The report shall include—

(A) a description of the rationale for, and any benefits of, the current organizational division of United States Immigration and Customs Enforcement and United States Customs and Border Protection, with respect to the Department's immigration and customs missions;

(B) a description of the organization, missions, operations, and policies of United States Customs and Border Protection and United States Immigration and Customs Enforcement, and areas of unnecessary overlap or operational gaps among and between these missions;

(C) a description of the rationale for, and any benefits of, the current organizational combination of immigration-related enforcement functions with customs and other functions;

(D) an analysis of alternative organizational structures that could provide a more effective way to deliver maximum efficiencies and mission success;

(E) a description of the current role of the Directorate of Border and Transportation Security with respect to providing adequate direction and oversight of the two agencies, and whether this management structure is still necessary;

(F) an analysis of whether the Federal Air Marshals and the Federal Protective Service are properly located within the Department within United States Immigration and Customs Enforcement;

(G) the proper placement and functions of a specialized investigative and patrol unit operating at the southwest border on the Tohono O'odham Nation, known as the Shadow Wolves;

(H) the potential costs of reorganization, including financial, programmatic, and other costs, to the Department; and

(I) recommendations for correcting the operational and administrative problems that have been caused by the division of United States Custom and Border Protection and United States Immigration and Customs Enforcement and by the combination of immigration-related enforcement functions with customs and other functions in both entities, including any appropriate reorganization plans.

SEC. 502. GAO REPORT TO CONGRESS.

(a) IN GENERAL.— Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) a report that sets forth—

(1) an assessment of the effectiveness of the organizational and management structure of the Department of Homeland Security in meeting the Department's missions as set forth in section 101(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 111(b)(1)); and

(2) recommendations to facilitate and improve the organization and management of the Department to best meet those missions.

(b) CYBERSECURITY ASSESSMENT.—Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit a report to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) that sets forth an assessment of the effectiveness of the efforts of the Assistant Secretary for Cybersecurity to fulfill the statutory responsibilities of that office.

SEC. 503. PLAN TO REDUCE WAIT TIMES.

Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall develop a plan—

(1) to improve the operational efficiency of security screening checkpoints at commercial service airports so that average peak waiting periods at such checkpoints do not exceed 20 minutes; and

(2) to ensure that there are no significant disparities in immigration and customs passenger processing times among airports that serve as international gateways.

SEC. 504. DENIAL OF TRANSPORTATION SECURITY CARD.

Section 70105(c) of title 46, United States Code, is amended—

(1) in paragraph (3) by inserting before the period ''before an administrative law judge''; and

(2) by adding at the end the following:

''(5) In making a determination under paragraph (1)(D) that an individual poses a terrorism security risk, the Secretary shall not solely consider a felony conviction if—

''(A) that felony occurred more than 7 years prior to the date of the Secretary's determination; and

''(B) the felony was not related to terrorism (as that term is defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)).''.

SEC. 505. TRANSFER OF EXISTING CUSTOMS PATROL OFFICERS UNIT AND ESTABLISHMENT OF NEW CPO UNITS IN THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT.

(a) TRANSFER OF EXISTING UNIT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall transfer to the Bureau of Immigration and Customs Enforcement all functions (including the personnel, assets, and obligations held by or available in connection with such functions) of the Customs Patrol Officers unit of the Bureau of Customs and Border Protection operating on the Tohono O'odham Indian reservation (commonly known as the ''Shadow Wolves'' unit).

(b) ESTABLISHMENT OF NEW UNITS.—The Secretary is authorized to establish within the Bureau of Immigration and Customs Enforcement additional units of Customs Patrol Officers in accordance with this section.

(c) DUTIES.—The Customs Patrol Officer unit transferred pursuant to subsection (a) and the additional units established pursuant to subsection (b) shall be responsible for the prevention of the smuggling of narcotics, weapons of mass destruction, and other contraband, and the illegal trafficking of persons, on Indian lands.

(d) BASIC PAY FOR JOURNEYMAN OFFICERS.—A Customs Patrol Officer in a unit described in this section shall receive equivalent pay as a special agent with similar competencies within the Bureau of Immigration and Customs Enforcement pursuant to the Department of Homeland Security's human resources management system established under section 841 of the Homeland Security Act (6 U.S.C. 411).

(e) SUPERVISORS.—Each unit described under this section shall be supervised by a Chief Customs Patrol Officer, who shall have the same rank as a resident agent-in-charge of the Office of Investigations.

SEC. 506. DATA COLLECTION ON USE OF IMMIGRATION CONSULTANTS.

The Secretary of Homeland Security shall establish procedures to record information on applications for an immigration benefit submitted by an alien with respect to which—

(1) the alien states that the alien used the services of an immigration consultant; or

(2) a Department employee or official investigating facts alleged in the application, or adjudicating the application, suspects that the alien used the services of an immigration consultant.

SEC. 507. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

The Homeland Security Act of 2002 is amended——

(1) in section 801—

(A) in the section heading, by striking ''**STATE AND LOCAL**'' and inserting ''**STATE, LOCAL, AND TRIBAL**'';

(B) in subsection (a), by striking ''State and Local'' and inserting ''State, Local, and Tribal''; and

(C) in subsection (b), by striking ''State and local'' each place it appears and inserting ''State, local, and tribal''; and

(2) in section 1(b) in the table of contents by striking the item relating to section 801 and inserting the following:

''Sec. 801. Office for State, Local, and Tribal Government Coordination.''.

SEC. 508. AUTHORITY OF OTHER FEDERAL AGENCIES UNAFFECTED.

Except to the extent explicitly provided in section 216, nothing in this Act shall affect the authority under statute, regulation, or Executive order of other Federal agencies than the Department of Homeland Security.

The Acting CHAIRMAN. No amendment to that amendment is in order except those printed in part B of the report. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in part B of House Report 109–84.

AMENDMENT NO. 1 OFFERED BY MR. MEEK OF FLORIDA

Mr. MEEK of Florida. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 1 offered by Mr. MEEK of Florida:

Page 7, after line 6, insert the following new section:

SEC. 109. AUTHORIZATION FOR OFFICE OF INSPECTOR GENERAL.

Of the amount authorized under section 101, there is authorized to be appropriated for the Office of the Inspector General of the Department of Homeland Security for fiscal year 2006, $200,000,000.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Florida (Mr. MEEK) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida (Mr. MEEK).

(Mr. MEEK of Florida asked and was given permission to revise and extend his remarks.)

Mr. MEEK of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is an amendment that will increase the amount of funding to the Department of Homeland Security Inspector General's office by $200 million.

Mr. Chairman, this is so very, very important due to the fact that the Department of Homeland Security is the largest agency in the world right now, not only the Federal Government. It has 22 legacy agencies that had problems before the Department of Homeland Security was created. If it were not for the fact that they are in charge, this Department is in charge of protecting the homeland and making sure that all of the 9/11 Commission recommendations are implemented properly and also making sure that they protect our borders and our airways.

The inspector general really needs the additional funding and staffing to be able to keep up with the growing Department of Homeland Security. The spending on contracts alone was $6.1 billion in 2004, and in 2005 it moved up to $10.9 billion. That is a 40 percent increase in 1 year. It is literally impossible for the Inspector General's office to keep up not only with the policing of the Department but to ensure that the mission's integrity is followed through on.

Mr. Chairman, I yield such time as he may consume to the gentleman from Mississippi (Mr. THOMPSON).

Mr. THOMPSON of Mississippi. Mr. Chairman, I now rise in strong support of the amendment offered by the gentleman from Florida (Mr. MEEK), my Homeland Security Committee colleague, the ranking member on the Management, Integration and Oversight Subcommittee.

Mr. Chairman, we have heard testimony time and time again on our committee about the underfunding of the office of Inspector General. We had committee testimony from three Inspector Generals indicating that the office was underfunded.

Just to show you what they found in recent reviews, we found that the Department spent $31,000 on rubber plants. We also found that they spent $500,000 on an awards ceremony. Clearly these expenditures are out of line and should not have been.

Testimony also revealed that had we had a more robust Office of Inspector General, we could do more oversight. So the gentleman from Florida's (Mr. MEEK) amendment is in order. It is something that we should do. If we look at other agencies, this Department is woefully underfunded. And for that reason I rise in support of the amendment.

Mr. COX. Mr. Chairman, I rise in opposition to the amendment, and I yield myself such time as I may consume.

Mr. Chairman, first I want to compliment the gentleman from Florida (Mr. MEEK), who is a very able and well-informed Member of the committee and serves as the ranking member on the committee on oversight, which has particular responsibilities in this area. I support his view of the importance of the Inspector General's function inside the Department of Homeland Security and of the mission of fighting waste, fraud, and abuse in the Federal Government, and specifically in the Department of Homeland Security, because it is a critical mission.

The reason, however, that I cannot support the amendment is different than what I have just said. I agree with the gentleman from Florida (Mr. MEEK) about the Inspector General's function and fighting waste, fraud, and abuse. First, I cannot support it because the authorization of $200 million, which is a tripling of the current budget, has no offset. It is therefore a budget buster.

As I stated in general debate, what has characterized our efforts on the underlying bill is that we are operating within the parameters of the House-passed budget, and specifically the allocation for the overall Department of Homeland Security of $32 billion.

When we make changes in the priorities in the bill by doing something else that is good, we have got to find somewhere to take the money from, and this amendment simply does not do it. It pulls the money from thin air.

Second, the new level of funding that this would establish, the enormous increase from $83 million at present to $200 million, would create an IG office and staff and administration virtually identical in size to that which exists in the largest Cabinet Department, the Department of Defense, even though DOD's budget and empire and responsibilities are 10 times larger than the Department of Homeland Security. So there is a problem of scale.

Third, not withstanding the testimony, correctly cited by my colleague, the gentleman from Mississippi (Mr. THOMPSON), of former IGs about their experience and their need for more staff, the current IG has more staff.

The staffing level of the Office of Inspector General already has grown significantly over the last 3 years from 475 full-time employees in fiscal year 2004, to 502 in fiscal 2005, to 540 in fiscal year 2006.

And for that reason, neither the administration nor the Inspector General himself has asked for this increase that is before us in this amendment.

For all of these reasons, I regretfully oppose the amendment offered by the gentleman from Florida (Mr. MEEK).

Mr. Chairman, I reserve the balance of my time.

Mr. MEEK of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am glad that the chairman pointed out the good points about this amendment and also maybe pointed out a few other issues as it relates to the budget issue.

This is the Homeland Security Authorization bill, not the appropriations bill. We are authorizing the Department, hopefully, to be able to move towards this $200 million to be able to take care of some of the issues that we hear about and read about in newspapers daily, about mismanagement, about contractors not following through on their obligation to the Federal Government.

I mean, it is not fine if it was just wasteful spending, but this is the protection of the homeland. And when we look at accountability and protection, I think it is important that we move in this direction.

I would also like to argue the fact that the Government Accountability Office, in report after report of issues and unmet mandates by the Department, reports by the Department to help this Congress make wise decisions are backlogged in the hundreds. And I think it is important that we as the oversight committee do as much as we can to bring about the kind of accountability that the American people deserve and that this Congress hopes to get.

Mr. Chairman, I reserve the balance of my time.

Mr. COX. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I simply want to commend the gentleman from Florida for his leadership on oversight and investigation. I will commit to continuing to work with him on the full committee and to make sure that the IG gets the resources that he needs.

Mr. Chairman, I yield back the balance of my time.

Mr. MEEK of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to just close by saying that this amendment is just a simple accountability amendment. Yes, I know it mirrors the Department of Defense. But the Department of Defense has the duty to protect not only Americans but also make sure that our men and women that are in harm's way are protected.

The Department of Homeland Security has a similar responsibility of making sure that we protect the homeland and make America safe and sound for future generations.

So, Mr. Chairman, I would urge the Members to vote in the affirmative for this amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. MEEK).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Mr. MEEK of Florida. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Florida (Mr. MEEK) will be postponed.

It is now in order to consider amendment No. 2 printed in part B of House Report 109–84.

AMENDMENT NO. 2 OFFERED BY MR. COX

Mr. COX. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 2 offered by Mr. COX:

Page 7, after line 6, insert the following (and amend the table of contents accordingly):

SEC. 109. AUTHORIZATION OF APPROPRIATIONS FOR TRAINING OF STATE AND LOCAL PERSONNEL PERFORMING IMMIGRATION FUNCTIONS.

(a) IN GENERAL.—To carry out subsection (b), from amounts authorized under section 101, there are authorized to be appropriated $40,000,000 for fiscal year 2006, to remain available until September 30, 2007.

(b) USE OF FUNDS.—From amounts made available under subsection (a), the Secretary of Homeland Security may reimburse a State or political subdivision for the expenses described in subsection (d).

(c) ELIGIBLE RECIPIENTS.—A State, or a political subdivision of a State, is eligible for reimbursement under subsection (b) if the State or political subdivision—

(1) has entered into a written agreement described in section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) under which certain officers or employees of the State or subdivision may be authorized to perform certain functions of an immigration officer; and

(2) desires such officers or employees to receive training from the Department of Homeland Security in relation to such functions.

(d) EXPENSES.—The expenses described in this subsection are actual and necessary expenses incurred by the State or political subdivision in order to permit the training described in subsection (c)(2) to take place, including expenses such as the following:

(1) Costs of travel and transportation to locations where training is provided, including mileage and related allowances for the use of a privately owned automobile.

(2) Subsistence consisting of lodging, meals, and other necessary expenses for the personal sustenance and comfort of a person required to travel away from the person's regular post of duty in order to participate in the training.

(3) A per diem allowance paid instead of actual expenses for subsistence and fees or tips to porters and stewards.

(4) Costs of securing temporary replacements for personnel traveling to, and participating in, the training.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from California (Mr. COX) and the gentleman from Mississippi (Mr. THOMPSON) each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. COX).

Mr. COX. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the amendment. I want to take this opportunity to thank the chairman of the Judiciary Committee, the gentleman from Wisconsin (Mr. SENSENBRENNER) with whom I am offering this amendment.

Our amendment will authorize funds to reimburse States for training costs that they incur if they voluntarily participate in the training of their law enforcement agents for the purposes of enforcing our Nation's immigration laws.

In 1996, I authored section 133 of the Illegal Immigration Reform and Immigrant Responsibility Act. That section is now codified as section 287(G) of the INA. It provided and continues to provide as a piece of our permanent legislation local and State law enforcement officers with the option of being trained and deputized by the Federal Government so that they can assist with the enforcement of our immigration laws in the pursuit of their normal duties of protecting citizens from crime.

Over the last 8 years, slowly but surely, we have learned how to use this facility so that the Department has entered into several memoranda of understanding, for example, with the State

of Florida in September 2002, the State of Alabama in September of 2003, and very recently the County of Los Angeles in pursuit of specific authorization by the elected officials of the County of Los Angeles in February of 2005.

So the reason that we are offering this amendment today is that inasmuch as this is a purely voluntary program, offering aid to State and local law enforcement that wants it that is asking for it and is volunteering for it, they should be reimbursed for their costs as first responders of helping us enforce Federal law and achieving the national mission of protecting our borders.

We need to capitalize on existing law enforcement resources by ensuring that State and local law enforcement have the opportunity to receive this training that will help them to protect their local communities.

In turn, those enforcement efforts will help protect the Nation from threats of terrorism. I want to emphasize just a few things. First, this amendment does not alter the fundamental voluntary nature of the participation of States and Federal Government. So no State and no subdivision of the State that does not wish in any way to be involved in the enforcement of our immigration laws will be required to do so, either under existing law or under this fund provision.

Second, the purpose of the law, of the training, and of the reimbursement is to focus on crime and on people who are not only unlawfully in this country but who are committing other crimes, in particular felonies.

Third, the training that is provided by the Federal Government specifically includes training in the areas of civil rights and the prevention of profiling.

□ 1345

I want to reiterate that this amendment does not change or alter any authority that already exists in law. It merely provides funding for States for their first responders who should be reimbursed for this training.

I fully support this program, and I urge my colleagues to support this important amendment.

Mr. Chairman, I reserve my time.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I encourage Members to vote ''no'' on the Cox-Sensenbrenner amendment authorizing $40 million to be appropriated from the fiscal year 2006 budget to reimburse States and locals for the costs associated with having State and local law enforcement trained and certified by DHS' Immigration and Customs Enforcement to enforce immigration laws.

Mr. Chairman, plain and simple, we are shirking our responsibility as a government by passing this mission on to local authority. If we have the responsibility for immigration and immigration enforcement, we should do our job. We should appropriate the money to the respective department, whatever the requirements are, rather than passing the buck to local law enforcement. Local law enforcement clearly will tell my colleagues we have enough on our plate now, do not give us further responsibility by giving us immigration.

So, Mr. Chairman, while I understand my colleague's reasoning behind the amendment, it is clearly something that allows us to put this responsibility on someone else.

I guarantee my colleagues, when we do this, it will come with another program in the not-too-distant future. We will give other responsibilities to the local level.

I am a former mayor and a former county supervisor. Knowing law enforcement at the personal level, I am convinced that we have more than enough to do at the local level. The Federal Government should do what it is required to do on immigration. Let us not pass the buck. Let us make sure that we take the immigration responsibility and retain it at the Federal level.

That is why I urge a ''no'' vote on this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. COX. Mr. Chairman, as my colleagues know, this amendment is offered jointly by myself as chairman of the Committee on Homeland Security and the gentleman from Wisconsin (Mr. SENSENBRENNER) as chairman of the Committee on the Judiciary. I yield 3 minutes to the gentleman from Iowa (Mr. KING), a member of the Committee on the Judiciary.

Mr. KING of Iowa. Mr. Chairman, I thank the gentleman, and particularly the gentleman from California (Chairman COX) for yielding me time and for working and participating on this amendment.

I rise today in support of the Cox-Sensenbrenner amendment which authorizes funding to train State and local law enforcement officers to perform immigration officer functions.

I submitted a nearly identical amendment to the Committee on Rules because I believe this amendment provides the help our local law enforcement needs to enforce our Nation's immigration laws and keep our citizens safe. I am proud to stand today with the gentleman from Wisconsin (Mr. SENSENBRENNER), my chairman, and the author of the underlying bill, the gentleman from California (Mr. COX), the Committee on Homeland Security chairman, to urge my colleagues to support this funding.

Under section 287(g) of the Immigration and Nationality Act, State and local governments can enter into cooperative agreements with the Department of Homeland Security to train on Federal immigration law and be reimbursed for that training. This amendment would authorize the funds needed for that reimbursement for States all across this Nation.

There are two reasons to encourage local police to assist in enforcing immigration laws. First, while there are an estimated 8 to 10 million illegal aliens in the United States, ICE currently has only about 2,000 special agents to identify and remove them. Second, local officers come into contact with many of those illegal aliens, especially criminal aliens, daily in performing their duties. So it is a practical marriage.

The House Committee on the Judiciary has promoted and supported local immigration enforcement since section 287(g) was added to the INA in 1996. In January of 2002, the Committee on the Judiciary pressed the Attorney General to accept local assistance in enforcing the immigration laws. As the then-Immigration Subcommittee chairman stated, ''In light of the tragic events of September 11, 2001, and the growing problem of illegal immigration into the United States, this is perhaps the most pressing time for the Department of Justice to consider utilizing the power'' conveyed under section 287(g).

The Federal Government subsequently authorized officers to perform immigration enforcement functions with Florida and Alabama.

The Committee on the Judiciary has revisited this issue in evaluating interior immigration enforcement, in examining sanctuary policies in a number of major cities, and in assessing the inherent authority of local police to enforce the immigration laws.

This amendment is an improvement over a narrow provision struck from H.R. 1817 during the markup of the legislation on May 12. That narrowly tailored provision applied only to States with a location 30 miles from a border or coastline. In order to truly protect our citizens from those who have entered our country illegally to do them harm, this policy must be applied nationwide.

As an April 2005 Subcommittee on Immigration, Border Security, and Claims hearing revealed, alien gang violence has followed immigration patterns from the ports and borders into the communities of the interior United States. Similarly, new reports indicate that local police far from the nearest national border confront alien criminals and smugglers on a daily basis.

So in summary, Mr. Chairman, I appreciate the opportunity to speak in support of this amendment that addresses the necessary cooperation between local law enforcement, both local and State, and the Federal educational support so that we can build that level of cooperation.

Mr. THOMPSON of Mississippi. Mr. Chairman, I reserve the balance of my time for closing.

Mr. COX. Mr. Chairman, may I inquire how much time remains on this side?

The Acting CHAIRMAN (Mr. COLE of Oklahoma). The gentleman from California (Mr. COX) has 3½ minutes remaining.

Mr. COX. Mr. Chairman, I yield 2 minutes to the gentleman from Alabama (Mr. ROGERS).

Mr. ROGERS of Alabama. Mr. Chairman, I rise in strong support of the Cox-Sensenbrenner amendment.

I would like to associate myself with the comments of the gentleman from California (Chairman COX) and agree this proposal would help local law enforcement better enforce our Nation's immigration laws.

Two years ago, 21 Alabama State troopers completed ICE's Federal 5-week training course. Since that time, these State troopers have detained 128 illegal aliens as a result of routine traffic stops. For example, this January of 2004, two individuals were stopped by an Alabama State trooper for a traffic violation. Because the trooper was trained on how to spot false immigration documents, the two were detained. In the course of the investigation, the men were found guilty of attempting to smuggle over $435,000 in U.S. currency out of the country.

Likewise, in March of this year, two other individuals were stopped by an Alabama State trooper for a traffic violation. The driver identified was in possession of a U.S. passport, and the passenger was identified as a citizen of Mexico illegally present in the United States. A consensual search of the vehicle found nine firearms and ammunition hidden under the bed liner of the truck. Both were taken into ICE's custody for prosecution.

It is important to note that all officers enrolled in this program received extensive training in cultural sensitivity and civil rights procedure.

Contrary to the fears of the program's opponents, ICE has received no complaints of intimidation, harassment or profiling. In fact, Alabama law enforcement officials have reached out to its immigrant community to help educate them on the law.

Overall, the program is an essential force multiplier and helps ICE officials better enforce our Nation's immigration laws.

I would also like to recognize the work of the gentleman from Texas (Mr. MCCAUL), a member of our committee, and all that he has done on this committee.

I thank the chairman for his leadership, and I ask for the House's support of this amendment.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 4½ minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), a member of the Committee on Homeland Security.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman from Mississippi for yielding me time.

I rise to acknowledge the good intentions of the effort offered by the proponent of this amendment, but I also raise a number of red flags that are not answered by this amendment. In fact, it creates a whole new obligation for the Federal Government that does not address the Federal Government's responsibility for immigration enforcement and reform.

Frankly, I wish we were debating $40 million plus and more to fully fund the first responders bill or the first responders efforts to ensure that fire persons and police persons are fully funded for the work that they have to do to secure the homeland.

I would prefer an amendment that would fully fund the 2,000 plus every year border security protection agents that the 9/11 Commission recommended.

I would prefer this amendment to support the 800 a year ICE agents, the Immigration and Customs Enforcement officers who are at a measly 123 per year and do not have full complement to do their work.

All this amendment does is to set up an incentive that will not last and to get local communities dependent upon resources and place them in the line of fire to be doing the enforcement of immigration laws that the Federal Government should actually be doing. This gives them the false hope of memorandums of understanding that year after year will not be fully funded.

I am delighted that we are having this debate. At least we separate from the other body that wants to shut down the democratic process of debate by eliminating the filibuster. I will not do that today, but I think that we have an opportunity here to put forward a homeland security legislative initiative that really responds to the needs of enforcing immigration.

Authorizing funding, as I indicated, would be a deceptive encouragement to States to enter into MOUs. The history of the State Criminal Alien Assistance Program, however, makes it clear that such funding is unlikely. That program was established by Congress to reimburse State and local governments for costs incurred when incarcerating undocumented aliens convicted of crimes.

According to the National Association of Counties, State and local governments receive just 40 cents for every dollar they spend housing and processing such inmates. Meaning, Mr. Chairman, it has not worked.

I see the very same pathway for this limited funding. Really, what we should be doing is giving the States $100 million plus that we have now burdened them with in the unfunded mandate of the REAL ID bill. That bill, that is not funded, is going to create the greatest amount of havoc for untrained individuals dealing with this. It is not the law enforcement officers' ground. It is the Department of Public Safety that is going to have to characterize and create something we call a national ID card.

It also creates a false sense of public safety and it harms public safety. The false promise of funding would encourage some agencies to enter into MOUs, but expanded State and local enforcement of Federal immigration laws would harm public safety.

When police become immigration agents, the trust and confidence of immigrants and their communities are shaken. Word spreads like wildfire, and those very same immigrants, legal and nonlegal, if you will, will stifle, cut out the work of helping local law enforcement solve crime. We know that immigrants, documented and undocumented, are preyed upon, are victims, and they are victims and they are fearful, and they are in the midst of crimes being perpetrated against them and their neighbors. They have the answers and they will not give the answers and we will not solve crime in many of our communities because they believe that the local law enforcement is there to harm them and not there to help them.

I believe one frustration they run into is the fact that the Department of Homeland Security does not always respond to the request for assistance when people are believed to be undocumented. That is really where our problem is.

The other problem I might say is that when they arrest these individuals, we do not have the adjudicators to process them. So there is an enormous backlog. I tried on the floor of the House to offer an appropriations increase to get us 300 adjudicators, an amendment of myself and the gentleman from Michigan (Mr. CONYERS). That did not prevail. So, in actuality, this is a false effort, giving $40 million with good intentions, but it really does nothing to help local law enforcement.

Let us fully fund them for the work they have to do, fully fund the immigration law enforcement for the work they have to do, and let us do our work as a Federal Government in securing the homeland and providing immigration enforcement.

Mr. Chairman, this amendment to the Department of Homeland Security Authorization bill would authorize Federal funding for State and local police agencies who enter into MOUs with ICe to enforce immigration laws.

Based on earlier versions of the amendment as it was proposed during committee consideration of the bill, it appears that only training costs would be reimbursed. Ongoing personnel and administrative costs incurred by law enforcement agencies that enter into MOUs would not.

This amendment is inadequate for a variety of reasons:

FALSE INCENTIVE

Authorizing funding would be a deceptive encouragement to States to enter into MOUs. The history of the State Criminal Alien Assistance Program (SCAAP), however, makes it clear that such funding is unlikely. SCAAP was established by Congress to reimburse State and local governments for costs incurred when incarcerating undocumented aliens convicted of crimes.

According to the National Association of Counties, State and local governments received just 40 cents for every dollar they spend housing and processing such inmates. Also, President Bush has consistently attempted to eliminate the program entirely in his annual budget requests.

If Congress and the White House do not support full funding to reimburse State and

local governments for costs incurred during criminal enforcement activities, it is highly unlikely that they will appropriate the monies needed to fund State and local agencies that engage in civil immigration law enforcement.

Not only is appropriation of this money less than certain, but the money covers a very small portion of the costs incurred by State and local agencies entering into MOUs. It does not fund ongoing salary and administrative costs for police as they take on new demands related to immigration enforcement. Indeed, if the drafters did want to appropriate this money, it would make more sense for them to fund hiring and training of additional Federal agents.

HARMS PUBLIC SAFETY

The false promise of funding would encourage some agencies to enter into MOUs. But expanded State and local enforcement of Federal immigration laws would harm public safety.

When police become immigration agents, the trust and confidence of immigrants and their communities are shaken. Word spreads like wildfire that any contact with police could mean deportation for themselves or their family members. Immigrants decline to report crimes or suspicious activity, and criminals see them as easy prey, making our streets less safe as a result.

Experience shows that this fear extends not only to contact with police, but also to the fire department, hospitals, and the public school system.

NOT THEIR ROLE

State and local law enforcement's priorities are and should be stopping, investigating, and punishing criminal activity. State and local police already have all the tools they need to work with Federal agencies, including ICE, on joint operations and investigations. They can also detain criminals who are also immigration law violators and contact ICE to come pick them up. They do this every day.

One frustration they run into is the fact that DHS doesn't always respond to their requests for assistance with people believed to be undocumented. DHS also has its priorities, and has focused first on terrorists and criminals. Undocumented workers fall further down the list. This amendment does nothing to ensure that agencies entering into MOUs will actually see responses from ICE as they come across people they think could be undocumented and attempt to sort it out.

Obviously the broken immigration system and lack of consistent enforcement cannot stand. But asking State and local police agencies to fill in where the Federal Government has failed is a cheap and false ''solution.''

NOT THE SOLUTION

The answer is not asking State and local governments to make up for the failures of the feds. The answer is modernizing the immigration system so that well-intentioned migrants can enter to work and reunite with their families legally. When the current undocumented population is brought out of the shadows for a proper vetting and gets on a path to legal status, our enforcement resources will be better trained on the smugglers and fake document rings, the drug runners and violent criminals, and the terrorists who might manipulate our system.

As President Bush said, once immigrants have legal papers, ''Law enforcement will face fewer problems with undocumented workers, and will be better able to focus on the true threats to our Nation from criminals and terrorists. . . . Temporary workers will be able to establish their identities by obtaining the legal documents we all take for granted. And they will be able to talk openly to authorities, to report crimes when they are harmed, without the fear of being deported'' (White House policy announcement, 01/07/2003).

These reforms are the real solution.

Mr. COX. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Texas (Mr. MCCAUL).

Mr. MCCAUL of Texas. Mr. Chairman, I thank the chairman for yielding me time and for his hard work on this amendment which is vital to assisting State and local law enforcement to participate in this very important program. I was proud to offer the base amendment at the committee level, along with my friend from Alabama.

An estimated 8- to 12 million undocumented aliens are here in the United States, and Border Patrol estimates that for every one that is apprehended at the border up to three others enter our Nation. In the post-9/11 world, these figures are no longer just an immigration problem but, rather, one of national security.

□ 1400

My experience on border security is that our Federal law enforcement officers are being stretched too thin and asked to do too much and need all the help available. With this amendment, State and local officers can be trained to be qualified to perform the essential functions of an immigration officer, including investigation, apprehension, and detention of not only undocumented aliens but potential criminals and terrorists.

The $40 million to States who qualify will serve as a needed force multiplier to our border patrol, border inspectors, and ICE investigators; and it is purely a voluntary program.

If we have learned anything from the tragedy of September 11, it is that we must work together. No longer can we afford the turf battles between State, Federal, and local law enforcement. As the head of the Joint Terrorism Task Force back in my State, the State of Texas, I can tell you that State and locals participate in the Joint Terrorism task forces. This will give them the tools and the training necessary to enforce not only our terrorist laws but the immigration laws that so often overlap into the Federal terrorist criminal penalties.

I urge my colleagues to support this amendment. It will bring law enforcement together in a unified front to protect our national security.

Mr. THOMPSON of Mississippi. Mr. Chairman, may I inquire as to how much time remains.

The Acting CHAIRMAN (Mr. COLE of Oklahoma). The gentleman from Mississippi has 3½ minutes left on his side.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 1½ minutes to the gentleman from Florida (Mr. MEEK), a member of the committee.

Mr. MEEK of Florida. Mr. Chairman, we argued this amendment in committee, and I have some concerns about it because I used to be a State trooper in Florida. I know exactly what happens when we feel that we are doing something, but we are really not doing anything.

With all due respect to my colleagues on the other side and their hard work, which I join them in the theory of making sure that we reimburse local law enforcement agencies that have invested time in doing what is a Federal agency responsibility, but the 9/11 report called for more ICE officers, it called for more Custom border protection officers, and it called for a Federal agency, like the Department of Homeland Security, to have what it needs to carry out its duties.

I must point out to the Members at line 10 on this particular amendment, on the front page, page 7 here of the overall bill, it says that the Secretary of Homeland Security ''may'' reimburse State and political subdivisions for the expenses that are carried out in this subsection.

Now, I am going to tell you right now this is the kind of language, and I want to make sure the law enforcement communities understand this, that this is not a guaranteed reimbursement. We are not guaranteeing them that they are going to be reimbursed. So I want to make sure the Members understand that wholeheartedly.

I understand the intent of this amendment, but I believe that if we are going to run, let us run. If we are going to walk, let us walk. But let us not jog on an issue such as this. I believe that that language should say ''shall'' if we are going to come to the floor and say we are going to reimburse local subdivisions and State law enforcement agencies.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield myself such time as I may consume in closing.

(Mr. THOMPSON of Mississippi asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON of Mississippi. Mr. Chairman, as I have already indicated from my opposition to this amendment, we are moving toward making States and localities assume a Federal responsibility. This is not in the best interest of homeland security. We have certain things as a Federal Government that we should do. Immigration protection is one of those items.

I understand from my chairman that he is interested in trying to help, but at some point we have to do our job. What we need to do is provide the resources to the Department to make sure that the Department can do its job, not pass the buck to another State.

You have heard from my colleague who used to be a State trooper who talks about the difficulties in crossing the lines. I ask my colleague to consider that, but I also ask opposition to the amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. BONNER). All time has expired.

The question is on the amendment offered by the gentleman from California (Mr. COX).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 3 printed in part B of House Report 109–84.

AMENDMENT NO. 3 OFFERED BY MR. KENNEDY OF RHODE ISLAND

Mr. KENNEDY of Rhode Island. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 3 offered by Mr. KENNEDY of Rhode Island:

At the end of the matter proposed to be added as section 205 of the Homeland Security Act of 2002 by section 223(a)(2) of the bill strike the closing quotation marks and the final period and insert the following:

''(c) CONSULTATION.—In carrying out this section, the Under Secretary shall consult with the Homeland Security Center of Excellence for Behavioral and Social Research on Terrorism and Counter-Terrorism and with such other academic research centers with expertise in risk communications as the Under Secretary considers appropriate.''.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Rhode Island (Mr. KENNEDY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Rhode Island (Mr. KENNEDY).

Mr. KENNEDY of Rhode Island. Mr. Chairman, I yield myself such time as I may consume.

Terrorism is a psychological warfare. Terrorists try to manipulate us and change our behavior by creating fear, uncertainty, and division in society. To succeed, the terrorists do not necessarily need to land an attack. Threats of an attack and failed attacks can still create fear, uncertainty, and division; and that is the terrorists' goal.

The key battleground in the war on terrorism, therefore, is in the minds of the American public. And how the government communicates about homeland security is central to how the public responds. I would argue that the communications record of the Department of Homeland Security has been an abysmal failure. The duct tape and plastic sheeting fiasco speaks for itself. The color-coded system does not work well and has undermined the Department's credibility.

The gentleman from California (Mr. COX), chairman of the Committee on Homeland Security, and I have talked about this issue over the last year, and I know he is very concerned about it. I am grateful that the committee has instructed the Department of Homeland Security in this bill to fix the problems with the color-coded terror alert system.

As the bill requires, any terror alert system must give people and organizations some indication about what steps they must take to improve their own security and assist in the Nation's security. It also requires that the alert be targeted at specific populations or regions, when possible.

What we have now is a system that tells us to be scared. That is it. We do not find out any information about the nature of the threat. We have no idea what we can do to make ourselves more secure. And this kind of vague warning inadvertently plays to the hands of the terrorists who want us to be afraid.

On the other hand, the American public possesses a great resilience and strength, and good risk communication strategies can tap into and even amplify those assets. In other words, risk communications is crucial to homeland security because it can be the difference between hardening the target and making it more vulnerable.

I have been working on these issues for several years now, and I can tell you that there is a wealth of knowledge out there about how the government should communicate in emergencies about threats. This amendment would simply require that in replacing the inadequate system we have now, that the Department draw on this expertise and research in order to help the government in its risk communications.

In particular, I think it is critical that the Department consult with the Center of Excellence in Behavioral and Social Research in Terrorism and Counterterrorism, which is already funded by the Department. We are already paying for this research, and we should make sure it is realized.

I want to thank the chairman of the Committee on Homeland Security and the ranking member, the gentleman from Mississippi (Mr. THOMPSON), for agreeing to this amendment and for their leadership. I also want to extend special thanks to Dr. Mike Barnett from my office, who has been indispensable to me in crafting this legislation.

Mr. Chairman, I will just close by saying that this amendment is not controversial, it has no cost, and it is very simple: When it comes to homeland security, communications have a lasting impact. So let us make sure we get it right by tapping the best experts.

Mr. COX. Mr. Chairman, will the gentleman yield?

Mr. KENNEDY of Rhode Island. I yield to the gentleman from California.

Mr. COX. Mr. Chairman, I thank the gentleman for yielding; and if I might, I would like to speak first to the amendment that the gentleman has offered, and then we could engage in a colloquy on a second amendment.

So, Mr. Chairman, I rise therefore in support of the amendment offered by the gentleman from Rhode Island. As the gentleman observes, we have established in the Federal Government, through the Department of Homeland Security, the Homeland Security Center of Excellence for Behavioral and Social Research on Terrorism and Counterterrorism. This center, which is located in Maryland, was established by a $12 million grant from the Department of Homeland Security in January of this year.

This is the fourth Homeland Security Center of Excellence to be established. Its expertise lies precisely in this area, and it makes a good deal of sense to rely on this newly available expertise as we redesign the homeland security advisory system.

As the gentleman from Rhode Island points out, section 205 of the underlying bill, which we are amending, will already require redesign of that system to move from vague and general warnings to specific warnings that wherever possible are sector specific, industry specific and threat specific; regional in nature wherever possible.

We have to stop issuing vague warnings that only serve to alarm the general public, and we have to provide useful information to the category of people who receive the warning. Using the expertise of this center will accomplish both of these important objectives. And I am very glad that the gentleman from Rhode Island has worked with the staff on the committee to address some concerns with the original draft of the amendment so that we are now completely in accord on both the language and the wisdom of the proposal.

For all of those reasons, I am pleased to accept the amendment and urge my colleagues to vote in its support.

Mr. KENNEDY of Rhode Island. Mr. Chairman, reclaiming my time, as my colleague and I have just spoken on the importance of communications and risk communications, as you know, research shows that the more the public is brought into the terrorism planning and response, particularly through social networks like churches, unions, professional organizations, and business groups, as well as neighborhood associations, the more effective we can be at limiting the impacts of terrorist acts and terrorist threats.

Not only is the inherent resilience and the strength of the American public enhanced by participating, but the American public has a critical commonsense knowledge that the government agencies and community organizations need in order to develop plans that will protect as many people as possible.

For this reason, it is a high priority of mine, as it is of my colleagues, to better integrate the public into the planning at State, local, and Federal levels. Preparedness and response efforts are likely to be far less successful than they should be if we do not have a plan and a substantial public involvement in the process.

The Acting CHAIRMAN. The gentleman's time has expired.

Mr. COX. Mr. Chairman, although I am in support of the amendment, I ask unanimous consent to claim the time in opposition.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. COX. Mr. Chairman, I yield 1 minute to the gentleman from Rhode Island (Mr. KENNEDY).

Mr. KENNEDY of Rhode Island. Mr. Chairman, in closing, when the sarin gas attack happened in Japan, 90 percent of the people who went to the hospital had no infection or exposure to the sarin gas whatsoever. People died at the hospital because the medical teams were not able to attend to them because they were overwrought with people coming in and clogging up the hospital.

If we had a terrorist attack, the way the people respond is going to determine whether that attack is just a tragedy or whether that attack becomes an all-out disaster. And that is why risk communications are so important. That is why the chairman and I are trying to work to make sure that the Department of Homeland Security does better than it has thus far and does better than the plastic sheeting and duct tape, which they once recommended in the wake of a terrorist threat, in addition to the color-coded system, which has not proven to be very successful.

So I thank the chairman for his assistance in this matter.

Mr. COX. I yield myself the balance of my time, Mr. Chairman, and I would like to commend the gentleman from Rhode Island for his comments on and his commitment to this vitally important issue. I too am committed to citizen terrorism preparedness.

I agree that the Department of Homeland Security should make it a priority to engage the American public as partners in homeland security. It simply makes sense to encourage continued dialogue between the Department and its constituency, the American people.

□ 1415

The Department of Homeland Security has taken many important steps to foster just this kind of dialogue. For example, the Department administers the Citizen Corps Program which is specifically designed to improve civilian terrorism preparedness. In addition, the Department Science and Technology Directorate plans to establish a Center of Excellence on Domestic Preparedness and Response Capabilities. When established later this year, this center will engage in mission-oriented research to enhance citizen preparedness and improve citizen input into local, State and Federal preparedness and response efforts.

As chairman of the Committee on Homeland Security, I believe it would be prudent for the committee to hold hearings on the purpose and effectiveness of the Department's citizen terrorism preparedness programs. I also agree with the gentleman from Rhode Island (Mr. KENNEDY) that our government's preparedness is contingent upon actively and substantively engaging the citizens, and that that question must be part of our inquiry.

I look forward to working with the gentleman from Rhode Island (Mr. KENNEDY) as well as Members on both sides of the aisle on the Committee on Homeland Security as we examine this topic more closely. I think we all agree that citizen preparedness is simply too important to ignore.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. BONNER). The question is on the amendment offered by the gentleman from Rhode Island (Mr. KENNEDY).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 4 printed in part B of House Report 109–84.

AMENDMENT NO. 4 OFFERED BY MR. COX

Mr. COX. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. COX:

In section 302(c), strike ''the Congress'' and insert ''the appropriate congressional committees''

In section 331, strike subsection (b) and insert the following:

(b) COORDINATION AND COOPERATION.—

(1) COORDINATION.—The Secretary shall coordinate the prioritization under this section with other relevant Federal agencies.

(2) COOPERATION.—Such prioritization shall be developed in cooperation with other relevant State, local, and tribal governments, and the private sector, as appropriate.

In section 332, strike subsection (a) and insert the following:

(a) REQUIREMENT.—Not later than 9 months after the date of the enactment of this Act, the Secretary of Homeland Security shall—

(1) review existing Federal, State, local, tribal, and private sector plans for securing the critical infrastructure included in the prioritization developed under section 331;

(2) recommend changes to existing plans for securing such infrastructure, as the Secretary determines necessary; and

(3) coordinate and contribute to protective efforts of other Federal, State, local, and tribal agencies and the private sector, as appropriate.

At the end of section 332, add the following new subsection:

(c) COORDINATION.—The Secretary shall coordinate the security review and recommendations required by subsection (a) with other relevant Federal agencies.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from California (Mr. COX) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. COX).

Mr. COX. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas (Mr. BARTON) to speak in support of the amendment which the gentleman offered to the Committee on Rules and was made in order under the rule.

Mr. BARTON of Texas. Mr. Chairman, I want to thank the distinguished chairman of the Committee on Homeland Security for offering my amendment when it would have been very easy for the gentleman to just let it go when I was not here, but being the gentleman he is, he did the honorable decent thing, and I appreciate that.

Mr. Chairman, let me say that the Dingell-Barton amendment that is before us right now makes a simple but important change to H.R. 1817, the Department of Homeland Security Authorization Act for Fiscal Year 2006. This bipartisan amendment enshrines a commitment made by the Committee on Homeland Security but which was inadvertently left out of the Cox manager's amendment.

There are two primary reasons that the Committee on Energy and Commerce, which I chair, decided to mark up H.R. 1817. First was the creation of Assistant Secretary for Cybersecurity at the Department of Homeland Security. The issue of cybersecurity is one that is core to the jurisdiction of the Committee on Energy and Commerce. Indeed, the committee has existing oversight on telecommunications, nuclear, energy and information networks, systems, facilities and equipment over which any cybersecurity attack would occur as well as the potential effects of cybersecurity incidents on our Nation's interstates and foreign commerce.

The other primary reason, and the one for which I am offering this amendment today, is to require, and I want to emphasize require, the Department of Homeland Security to coordinate with other relevant Federal agencies, especially as it pertains to the protection of critical infrastructure. Many of these Federal agencies are taking strong and innovative steps to protect the critical infrastructure they regulate, which is why it is so important for the Department of Homeland Security to closely coordinate with these agencies.

Unfortunately, the Committee on Homeland Security which had assured us that this particular language would be a part of the manager's amendment, did not get included, and I understand it was inadvertent. But because of that reason we have had to offer this as an amendment on the floor. It is my understanding that the gentleman from California (Mr. COX), the chairman of the committee, fully support this language, and I am not aware that anybody opposes it. I hope at the appropriate time we can pass this by voice vote and all Members voting aye.

Mr. COX. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to engage the chairman of the Committee on Energy and Commerce in a colloquy.

Mr. BARTON of Texas. Mr. Chairman, will the gentleman yield?

Mr. COX. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Chairman, there are a number of places in the manager's amendment to H.R. 11817

that refer to coordination efforts between the Department of Homeland Security with ''other relevant Federal agencies,'' specifically as it relates to protection of critical infrastructure and cybersecurity. I want to ask the distinguished chairman of the Committee on Homeland Security if those ''other relevant Federal agencies'' would include the departments and agencies under the jurisdiction of the Committee on Energy and Commerce, including the Department of Commerce, Department of Energy, Department of Health and Human Services, Federal Communications Commission, Federal Energy Regulatory Commission, Nuclear Regulatory Commission, Federal Trade Commission, National Information Agency, and the Environmental Protection Agency?

Mr. COX. Mr. Chairman, yes, I agree. Certainly in matters relating to cybersecurity and protection of critical infrastructure, the agencies the gentleman listed will be considered ''relevant Federal agencies.''

Mr. BARTON of Texas. I thank the gentleman for his explanation and look forward to working with him to ensure that all relevant Federal agencies have a role to play in homeland security. And although it is not a part of the colloquy, there may come a day when the gentleman from California is the chairman of the Committee on Energy and Commerce, and he will be very glad he answered yes to those questions.

Mr. THOMPSON of Mississippi. Mr. Chairman, I ask unanimous consent to claim the time in opposition to the amendment for purposes of debate, although I do not oppose the amendment.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield myself such time as I may consume. Mr. Chairman, for the record, I am in support of this amendment, as are the gentleman from Texas (Mr. BARTON) and the gentleman from Michigan (Mr. DINGELL).

This amendment highlights the important need for the Secretary of the Department of Homeland Security to coordinate the prioritization of the Nation's critical infrastructure with other relevant Federal agencies. By requiring the Secretary to enter such partnerships, the Department of Homeland Security can draw upon the institutional expertise of a variety of agencies.

This is critical for completing an accurate, comprehensive and thorough assessment of terrorist threats to our country's critical infrastructure. Having seen the national asset database lists for Mississippi, I believe the Department needs as much help as it can get. Our Nation can no longer wait for an accurate prioritization of our most valuable asset. This is why I join my other colleagues and encourage Members to vote yes on this amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from California (Mr. COX).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 5 printed in part B of House Report 109–84.

AMENDMENT NO. 5 OFFERED BY MS. EDDIE BERNICE JOHNSON OF TEXAS

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 5 offered by Ms. EDDIE BERNICE JOHNSON of Texas:

Page 50, after line 17, insert the following:

SEC. 310. NATIONAL MEDICAL PREPAREDNESS CONSORTIUM.

(a) IN GENERAL.—The Secretary of Homeland Security shall make grants for the National Medical Preparedness Consortium to train emergency medical professionals to prepare for the mass casualties that would be caused by a terrorist event involving weapons of mass destruction.

(b) DESCRIPTION OF CONSORTIUM.—The Consortium referred to in subsection (a) is a consortium of institutions that—

(1) have existing facilities and experience in emergency medical training;

(2) have worked together for over 10 years on disaster medical training and mass casualty management;

(3) in 2004, established a national standard, known as the National Disaster Life Support curricula, for the medical treatment of mass casualties from terrorist events involving weapons of mass destruction; and

(4) have worked to implement throughout the United States training programs for medical professionals that use such standard.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants under subsection (a), there is authorized to be appropriated $5,000,000 for fiscal year 2006.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) and the gentleman from Georgia (Mr. DEAL) each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I yield myself 5 minutes.

Mr. DEAL of Georgia. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I thank the ranking member as well as the chairman of the Committee on Homeland Security for coming forth with this legislation.

The objective of my amendment is very simple. This amendment attempts to promulgate a national standardization of emergency medical response training to events involving weapons of mass destruction.

The centerpiece of the National Medical Preparedness Consortium is its affiliation with the Center for Mass Destruction Defense, a CDC Center for Public Health Preparedness.

The Center For Mass Destruction Defense is the original developer of the National Disaster Life Support courses, Basic Disaster Life Support and Advanced Disaster Life Support, which provides an all-hazards approach to emergency medical services preparedness and are the only courses certified by the American Medical Association as national standards.

The Center for Mass Destruction Defense was also one of the founding members of the National Disaster Life Support Education Committee of the AMA, which oversees the development and current implementation of the basic and advanced disaster life support courses, as well as a cofounder of the National Medical Preparedness Consortium. The funding for the National Medical Disaster Consortium would come from the Office of Domestic Preparedness which would not exceed $5 million.

Since before the 9/11 attacks, great progress has been made in the level of training and preparedness for the first responders for terrorist attacks, including firefighters, police and other law enforcement personnel.

These first responders have been telling their trainers we really appreciate the training and preparedness, especially for large-scale attacks, but when are you going to start training the health care people? They are going to be real efficient about bringing these patients up to the emergency room, but what happens after they enter?

It is one of those strange disconnects. When we had 9/11, most of the people were killed and all we thought about was firemen and policemen. But we do not expect that everyone will be killed if we have another disaster. They will need emergency care, and that is where this comes in.

The physicians, nurses, hospitals, providers and other health care personnel have not been getting the widespread training in terrorist attacks that the firefighters, police and other first responders have gotten. There has been a variety of courses done here and there, but the vast majority of the health care personnel have not been trained and the ones that have received some training have received a real hodgepodge of courses of different course content, different quality, and even with strange disagreements between the courses.

As a trained, educated, degreed nurse myself, I can tell Members firsthand that in certain critical fields of medicine the professional community has come up with a national standard of training in order to get everybody on the same page because it is often important that nurses and physicians go from one end of the country to another when needed, just as firemen and policemen do, but they need to have a specific body of knowledge when they get there.

The two main examples were trauma care and cardiac care before we came up with a national standard for trauma care. Like car wrecks, people were getting different approaches in some places, and patients were dying from poor care.

□ 1430

The same was happening with cardiac care. Then we came up with advanced trauma life support, or ATLS, and advanced cardiac life support. These national standards revolutionized trauma and cardiac care around the Nation. I have taken both the ATLS and the ACLS myself and this is the way to go.

What we need now is a national standard for disaster care so that the medical community will be able to respond responsibly across the Nation. What we need is a national standard for advanced disaster life support. Well, there is an advanced disaster life support curriculum that has been developed by the CDC center known as the Center for Mass Destruction Defense, and this curriculum has been endorsed by the American Medical Association for a national standard for disaster medical care.

In addition to the AMA, a number of specialty medical organizations have also adopted the advanced disaster life support curriculum, such as the American College of Emergency Physicians. The advanced disaster life support and its sister courses, basic disaster life support and CDLS, have been presented in 35 States now which is a wider distribution for an all-hazards disaster medical curriculum than any other available.

I know that the opposition to this is that it did not come through the Committee on Energy and Commerce and there are some who think it has already been done. What I am attempting to do here is to put something in a standard for around the Nation so that all of the people involved will have a standard body of knowledge.

Mr. DEAL of Georgia. Mr. Chairman, I yield myself such time as I may consume.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, will the gentleman yield?

Mr. DEAL of Georgia. I yield to the gentlewoman from Texas.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I want to know if I can depend on my colleague to help to get this in the right order so that we can still standardize this training around the Nation.

Mr. DEAL of Georgia. Yes, I can give the gentlewoman that assurance. I am sympathetic to the issue that she is concerned with. Our committee is more than willing to work with my colleague and her staff to try to coordinate that. We simply do not think that we ought to have grants that are duplicative of other programs that are there. For example, the Noble Training Center in Alabama, which I am sure the gentleman from Mississippi may be familiar with, has a specialized hospital that is engaged in training health professionals for this specific purpose. We simply think that we should coordinate the grants and that the Department of Health and Human Services is the appropriate agency to coordinate these grant programs.

If the gentlewoman would be so kind as to withdraw her amendment, I can assure her that I and the members of our Subcommittee on Health will be glad to work with her to try to achieve the goals that she has in mind with this amendment.

Ms. EDDIE BERNICE JOHNSON of Texas. I thank the gentleman very much, and I will withdraw this amendment.

I would like to say, too, that the Bechtel, Nevada/National Nuclear Security Administration; the Dartmouth College Interactive Media Laboratory; Eastern Kentucky University; Hazard Community College of Kentucky; New Mexico Technical University; New York City Office of Chief Medical Examiner; Summerlin Medical Center, University Medical Center, Las Vegas; Tulane University Medical Center; University of Findlay, Ohio; University of Georgia/Medical College of Georgia; University of Louisville (Kentucky); University of Texas Southwest Medical School, which is in my district; Upper Iowa University; Vanderbilt University; and Western Michigan University along with about 30 emergency physicians that we have been collaborating with for the last 3 years.

Mr. Chairman, I withdraw the amendment.

The Acting CHAIRMAN (Mr. BONNER). Without objection, the amendment is withdrawn.

There was no objection.

The Acting CHAIRMAN. It is now in order to consider amendment No. 6 printed in part B of House Report 109–84.

AMENDMENT NO. 6 OFFERED BY MR. EHLERS

Mr. EHLERS. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 6 offered by Mr. EHLERS:

At the end of subtitle A of title III, add the following (and conform the table of contents accordingly):

SEC. 310. COMMERCIAL FLIGHTS TO AND FROM RONALD REAGAN WASHINGTON NATIONAL AIRPORT.

(a) PASSENGER SEATING REQUIREMENTS.—Passengers on commercial flights arriving at and departing from Ronald Reagan Washington National Airport shall remain seated for 15 minutes after takeoff from and before touchdown at that airport.

(b) VIOLATIONS.—If a passenger violates the requirements of subsection (a), the captain of the aircraft shall determine if the passenger's actions present a security threat to other passengers or the aircraft. Only if the captain determines that the passenger's actions present such a threat shall a flight be diverted to a destination other than Ronald Reagan Washington National Airport.

(c) REGULATIONS.—Notwithstanding subsection (a), the Secretary of Homeland Security may issue regulations to decrease the time limit set forth in subsection (a).

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Michigan (Mr. EHLERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan (Mr. EHLERS).

Mr. EHLERS. Mr. Chairman, I yield myself such time as I may consume.

This is a very simple amendment. It would change the 30-minute rule that requires passengers on commercial flights into and out of Washington Reagan National Airport to remain seated for the first or last 30 minutes of the flight and for passengers to remain tightly in their seats and not even use the restroom facilities. I believe every Member of this House has experienced the nuisance of this rule. It simply does not make sense. It is an inconvenience to the traveler and does nothing to enhance flight security, particularly because there are two marshals aboard every plane into and out of Washington Reagan National Airport. My amendment would reduce the time in seat to 15 minutes, which should certainly be adequate. It would also permit the Secretary of Homeland Security to decrease the time even more. The amendment would also prohibit the pilot from diverting a flight from DCA for a violation of the seating rule unless he or she determines the passenger's actions to be a threat to the security of the other passengers or the aircraft.

There are several reasons for offering this amendment. We have already dramatically enhanced airport and airplane security since the time the rule was imposed. We have done this through several measures. First, improved passenger screening. Secondly, we have increased the number of in-flight Federal air marshals. Third, we have reinforced the cockpit doors. And, fourth, have authorized armed pilots in the cockpit.

Mr. Chairman, requiring DCA passengers to remain seated for 30 minutes when similar restrictions are not placed on passengers traveling to and from Dulles and BWI or any other airport does not make sense. Planes leaving DCA go past Dulles Airport in approximately 10 minutes, so under a 30-minute rule for DCA, should Dulles passengers not be forced to remain seated for 20 minutes on westbound flights and 40 minutes on eastbound flights? This rule just does not make sense, particularly since the incidents that already have taken place with hijacked airplanes were not from DCA but one of them, in fact, was from Dulles Airport.

I understand that our Nation's capital faces significant terrorist threats and boasts many important terrorist targets, but it is important to note that none of these flights that were hijacked on September 11 originated at DCA. LaGuardia does not have this

rule. JFK does not have the same rule, even though the attack occurred on New York.

Mr. Chairman, I fly into and out of Reagan airport every week. Several times on these flights I have heard snickering and jokes about the 30-minute rule. People know that this rule makes no sense, and the government is the butt of jokes about it. It is nonsense to have rules that are nonsensical, causes the government to lose the respect of the people. I have also seen people, particularly children and elderly, desperate to use the bathroom but unable to do so. This inconvenience is pointless.

I urge my colleagues to support this commonsense amendment.

Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Does any Member seek recognition in opposition?

Mr. EHLERS. Mr. Chairman, I yield myself the balance of my time.

Silence in the Chamber represents approval in this particular case. I appreciate the incredible support I have received from my colleagues for this amendment since I offered it. I have instantly become popular for the first time in my congressional career. I appreciate the meaning of the silence that we have.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. EHLERS).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 7 printed in part B of House Report 109–84.

AMENDMENT NO. 7 OFFERED BY MR. DEFAZIO

Mr. DEFAZIO. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 7 offered by Mr. DEFAZIO:

At the end of subtitle A of title III, add the following (and conform the table of contents accordingly):

SEC. 310. FEDERAL FLIGHT DECK OFFICERS.

(a) TRAINING AND REQUALIFICATION TRAINING.—Section 44921(c) of title 49, United States Code, is amended by adding at the end the following:

''(3) LOCATION OF TRAINING.—

''(A) STUDY.—The Secretary shall conduct a study of the feasibility of conducting Federal flight deck officer initial training at facilities located throughout the United States, including an analysis of any associated programmatic impacts to the Federal flight deck officer program.

''(B) REPORT.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall transmit to Congress a report on the results of the study.

''(4) DATES OF TRAINING.—The Secretary shall ensure that a pilot who is eligible to receive Federal flight deck officer training is offered, to the maximum extent practicable, a choice of training dates and is provided at least 30 days advance notice of the dates.

''(5) TRAVEL TO TRAINING FACILITIES.—The Secretary shall establish a program to improve travel access to Federal flight deck officer training facilities through the use of charter flights or improved scheduled air carrier service.

''(6) REQUALIFICATION AND RECURRENT TRAINING.—

''(A) STANDARDS.—The Secretary shall establish qualification standards for facilities where Federal flight deck officers can receive requalification and recurrent training.

''(B) LOCATIONS.—The Secretary shall provide for requalification and recurrent training at geographically diverse facilities, including Federal, State, and local law enforcement and government facilities, and private training facilities that meet the qualification standards established under subparagraph (A).

''(7) COSTS OF TRAINING.—

''(A) IN GENERAL.—The Secretary shall provide Federal flight deck officer training, requalification training, and recurrent training to eligible pilots at no cost to the pilots or the air carriers that employ the pilots.

''(B) TRANSPORTATION AND EXPENSES.—The Secretary may provide travel expenses to a pilot receiving Federal flight deck officer training, requalification training, or recurrent training.

''(8) COMMUNICATIONS.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall establish a secure means for personnel of the Transportation Security Administration to communicate with Federal flight deck officers, and for Federal flight deck officers to communicate with each other, in support of the mission of such officers. Such means of communication may include a secure Internet website.

''(9) ISSUANCE OF BADGES.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue badges to Federal flight deck officers.''.

(b) REVOCATION OF DEPUTIZATION OF PILOT AS FEDERAL FLIGHT DECK OFFICER.—Section 44921(d)(4) of title 49, United States Code, is amended to read as follows:

''(4) REVOCATION.—

''(A) ORDERS.—The Assistant Secretary of Homeland Security (Transportation Security Administration) may issue, for good cause, an order revoking the deputization of a Federal flight deck officer under this section. The order shall include the specific reasons for the revocation.

''(B) HEARINGS.—An individual who is adversely affected by an order of the Assistant Secretary under subparagraph (A) is entitled to a hearing on the record. When conducting a hearing under this section, the administrative law judge shall not be bound by findings of fact or interpretations of laws and regulations of the Assistant Secretary.

''(C) APPEALS.—An appeal from a decision of an administrative law judge as a result of a hearing under subparagraph (B) shall be made to the Secretary or the Secretary's designee.

''(D) JUDICIAL REVIEW OF A FINAL ORDER.—The determination and order of the Secretary revoking the deputization of a Federal flight deck officer under this section shall be final and conclusive unless the individual against whom such an order is issued files an application for judicial review under subchapter II of chapter 5 of title 5 (popularly known as the Administrative Procedure Act) within 60 days of entry of such order in the appropriate United States court of appeals.''.

(c) FEDERAL FLIGHT DECK OFFICER FIREARM CARRIAGE PILOT PROGRAM.—Section 44921(f) of title 49, United States Code, is amended by adding at the end the following:

''(4) PILOT PROGRAM.—

''(A) IN GENERAL.—Not later than 90 days after the date of enactment of this paragraph, the Secretary shall implement a pilot program to allow pilots participating in the Federal flight deck officer program to transport their firearms on their persons. The Secretary may prescribe any training, equipment, or procedures that the Secretary determines necessary to ensure safety and maximize weapon retention.

''(B) REVIEW.—Not later than 1 year after the date of initiation of the pilot program, the Secretary shall conduct a review of the safety record of the pilot program and transmit a report on the results of the review to Congress.

''(C) OPTION.—If the Secretary as part of the review under subparagraph (B) determines that the safety level obtained under the pilot program is comparable to the safety level determined under existing methods of pilots carrying firearms on aircraft, the Secretary shall allow all pilots participating in the Federal flight deck officer program the option of carrying their firearm on their person subject to such requirements as the Secretary determines appropriate.''.

(d) FEDERAL FLIGHT DECK OFFICERS ON INTERNATIONAL FLIGHTS.—

(1) AGREEMENTS WITH FOREIGN GOVERNMENTS.—The President is encouraged to pursue aggressively agreements with foreign governments to allow maximum deployment of Federal flight deck officers on international flights.

(2) REPORT.—Not later than 180 days after the date of enactment of this Act, the President (or the President's designee) shall submit to Congress a report on the status of the President's efforts to allow maximum deployment of Federal flight deck officers on international flights.

(e) REFERENCES TO UNDER SECRETARY.—Section 44921 of title 49, United States Code, is amended—

(1) in subsection (a) by striking ''Under Secretary of Transportation for Security'' and inserting ''Secretary of Homeland Security'';

(2) by striking ''Under Secretary'' each place it appears and inserting ''Secretary''; and

(3) by striking ''Under Secretary's'' each place it appears and inserting ''Secretary's''.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Oregon (Mr. DEFAZIO) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Chairman, I yield myself such time as I may consume.

This amendment which I am offering with the gentleman from Florida (Mr. MICA) of the Subcommittee on Aviation would make a good program even better, the Federal flight deck officer program, the last line of defense on the plane. Arming the pilots on the flight deck makes a tremendous amount of sense. There cannot be an air marshal on every plane, planes lack secondary barriers, and on longer flights pilots have to frequently open the door to receive food or use the facilities. If a terrorist attack or attempt should occur, knowing that the pilots are armed could provide the critical thing to save the passengers on that flight.

This amendment has the strong support of the Airline Pilots Association—I have a letter here—the National Rifle Association and others. This would

make a number of changes. They would be issued badges which they do not currently have and they sometimes have a hard time convincing people they are authorized to have a gun and they are a Federal law enforcement officer for purposes of aviation. It would give them an appeals process for revocation of their certification. It would look toward making the training more accessible for people, particularly the recertification, although the facility we are using now is an excellent facility but we want to be certain that because of distance or time that more pilots are not precluded from becoming volunteers and providing this critical defense.

Mr. Chairman, I yield 2 minutes to the gentleman from Florida (Mr. MICA).

Mr. MICA. I thank the gentleman for yielding time. Hopefully that 2 minutes will be sufficient to deal with this amendment.

Mr. Chairman, this amendment does make a successful program even more successful. Sometimes that is hard to find in government agencies and activities and it is also sometimes hard to find in the incredible amount of dollars that we spend for homeland security. This takes a program that was opposed by the airlines, somewhat by the administration, by the other body, by some Members on both sides of the aisle and actually takes a program that gives us a last line of defense, an additional layer. This is in addition to the air marshals. This is in addition to secured cockpit doors and other improvements that we have put in place.

These individuals involved in this, the pilots, I have nothing but the greatest praise for their going forward in a long training program, it takes a full week, going practically to the end of the earth. I went out there with the gentleman from New Mexico (Mr. PEARCE), he represents Albuquerque, and then we went to Roswell, which is 2 or 3 hours to the south. I said, are we there yet? He said, no, tomorrow I'm taking you to the end of the earth which is where they have put this program.

I cannot tell you how many pilots have participated in this, both commercial passenger and cargo. It will exceed the number of air marshals that we have in this fine program. This does some things in helping them access recurrent training that is required, improves communications and gives them safe weapons carriage. It is a great program. They are great, dedicated Americans and pilots involved in this program and this enhances a very successful back line of defense for aviation security.

I commend the gentleman from Oregon, the former ranking member of our subcommittee, for his efforts.

Mr. DEFAZIO. Mr. Chairman, I yield the balance of my time to the gentleman from Mississippi (Mr. THOMPSON), the ranking member on the Committee on Homeland Security.

Mr. THOMPSON of Mississippi. Mr. Chairman, I rise in support of this amendment. It is a commonsense amendment. We have to do all we can to protect the flying public. As has already been said, our pilots are the last line of defense to protect the flying public. By training them with this program and providing all of the necessary background checks, there is no excuse for not making this program successful. I compliment the gentleman from Florida (Mr. MICA) and join the gentleman from Oregon (Mr. DEFAZIO) in support of this amendment, and I look forward to its passage.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon (Mr. DEFAZIO).

The amendment was agreed to.

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The Acting CHAIRMAN (Mr. BONNER). It is now in order to consider amendment No. 8 printed in part B of House Report 109–84.

AMENDMENT NO. 8 OFFERED BY MR. CARDIN

Mr. CARDIN. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 8 offered by Mr. CARDIN:

Page 55, line 15, after ''Research Projects Agency,'' insert the following: ''the Information Assurance Directorate of the National Security Agency,''.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Maryland (Mr. CARDIN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Maryland (Mr. CARDIN).

Mr. CARDIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, by way of brief background, this legislation creates an Assistant Secretary for Cybersecurity, a much-needed high-level position in the Department of Homeland Security. We need one person in our government to serve as the point person on cyber security issues.

The legislation also tasks the Under Secretary for Science and Technology with support, research, and development, including long-term research, into cybersecurity issues with a particular focus on preventing and responding to large-scale, high-impact attacks.

This bill would require the Under Secretary to coordinate their activities with the Assistant Secretary for Cybersecurity and three other named agencies: NSF, DARPA, and NIST. My amendment would bring to the table one agency in addition, which would be the National Security Agency, or NSA. NSA is most well known for its signals intelligence and interception of messages. However, NSA has a long and distinguished history of working in the field of information assistance. Indeed, NSA is responsible for safeguarding the privacy and security of military communications as well as many other civilian communications of our government.

Mr. Chairman, I want to thank the chairman and ranking member of the committee for working with me on this amendment, and I would urge my colleagues to accept the amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. CARDIN).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 9 printed in part B of House Report 109–84.

AMENDMENT NO. 9 OFFERED BY MS. SLAUGHTER

Ms. SLAUGHTER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 9 offered by Ms. SLAUGHTER:

Page 69, after line 13, insert the following (and amend the table of contents accordingly):

SEC. 405. IMPROVING SENTRI, FAST, AND NEXUS PRE-ENROLLMENT PROGRAMS.

(a) CREATION OF REMOTE ENROLLMENT CENTERS.—

(1) IN GENERAL.—The Secretary shall create a minimum of 4 remote enrollment centers for the programs described in paragraph (2). Such remote enrollment centers shall be established away from the borders of the United States and in population centers where there is a demand for such a service.

(2) PROGRAMS.—The programs described in paragraph (1) are the following:

(A) The Free and Secure Trade, or ''FAST'', program authorized under subpart B of title IV of the Tariff Act of 1930 (19 U.S.C 1411 et seq).

(B) The Secure Electronic Network for Travelers Rapid Inspection, or ''SENTRI'', program authorized under section 286(q) of the Immigration and Nationality Act (8 U.S.C. 1356(q)).

(C) The ''NEXUS'' program authorized under section 286(q) of the Immigration and Nationality Act (8 U.S.C. 1356(q)).

(b) CUSTOMER SERVICE PHONE NUMBER.—The Secretary shall create a customer service telephone number for the programs described in subsection (a)(2).

(c) MERGING REQUIREMENTS OF NEXUS LAND AND AIR CARDS.—The Secretary of Homeland Security shall merge the requirements of the land and air cards issued under the ''NEXUS'' program authorized under section 286(q) of the Immigration and Nationality Act (8 U.S.C. 1356(q)) into one uniform card that will work for land and air crossings.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentlewoman from New York (Ms. SLAUGHTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from New York (Ms. SLAUGHTER).

Ms. SLAUGHTER. Mr. Chairman, I yield myself such time as I may consume.

Tightening security along our vast northern border is one of the most important steps we have taken to defend

our homeland since September 11. New security measures have had unintended consequences of stifling trade and tourism with our Canadian neighbors. Traffic congestion at the border continues to be a longstanding problem for local Canadian and New York residents who rely upon it for their business and personal lives. It is not uncommon for travelers at the Peace Bridge in Buffalo to experience 3- to 4-hour delays trying to cross the border.

Beyond the local impact on our constituents, border-crossing delays cost the entire Nation dearly. According to a new report by the Ontario Chamber of Commerce, the U.S. economy absorbs 40 percent of the current cost of the border delays, and that means that the U.S. losses are $4.13 billion a year, or $471,000 an hour, due to the border congestion. If action is not taken, we stand to lose 17,000 jobs by 2020 and 91,000 by 2030.

And we want to alleviate that by expanding the pre-clearance programs like NEXUS, FAST, and SENTRI. These programs, which are joint ventures between the U.S., Canadian, and Mexican governments, are designed to simplify the border crossings for preapproved, low-risk travelers and businesses.

Right now constituents along the border complain that registration is overly burdensome and complex, and it is. It is unacceptable that American citizens must travel to Canada to enroll in the NEXUS program. So to expand and make pre-clearance easier to navigate, my amendment would authorize the creation of at least four enrollment centers in the United States and would establish a customer phone service number. As it stands now, there is no phone to reach NEXUS.

Finally, the amendment would create one consistent NEXUS card for land and air travelers. NEXUS cards currently require a retinal scan, while NEXUS land cards use fingerprints; and we would merge these two and use one security feature for both air and land crossings.

Mr. Chairman, this amendment has the support of the United States Chamber of Commerce and the border mayors in western New York. Losing nearly half a million dollars an hour from border delays, the cost of pre-clearance upgrades would easily pay for themselves.

I am most grateful to the chairman of the committee and the vice chairman of the committee and urge adoption of this amendment. And I thank them for working with me on this amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from New York (Ms. SLAUGHTER).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 10 printed in part B of House Report 109–84.

AMENDMENT NO. 10 OFFERED BY MR. SOUDER

Mr. SOUDER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 10 offered by Mr. SOUDER:

At the end of title IV of the amendment, add the following (and conform the table of contents of the bill accordingly):

SEC. 405. LEAD AGENCY FOR CERTAIN AIRSPACE SECURITY.

(a) LEAD AGENCY FOR NATIONAL CAPITAL REGION.—The Office of Air and Marine Operations of the Bureau of Customs and Border Protection of the Department of Homeland Security shall be the lead agency in the Department responsible for the planning and execution of the airspace security in the special use airspace that surrounds the National Capital region.

(b) LEAD AGENCY FOR SPECIAL EVENTS OF NATIONAL SIGNIFICANCE.—The Office of Air and Marine Operations shall be the lead agency in the Department responsible for the planning and execution of airspace security for those special events of national significance, as determined by the President, that require specialized security of the airspace surrounding the event.

(c) DUTIES OF LEAD AGENCY.—As the lead agency in the Department of Homeland Security for airspace security for any airspace under this section, the Office of Air and Marine Operations shall take such actions as may be necessary to facilitate the coordination, within the Department and between the Department and the Departments of Transportation, Justice, and Defense and appropriate State and local government agencies that have jurisdiction over an area that is within the boundaries of such airspace, of airspace security activities for such airspace and of law enforcement responses to violations of such airspace security.

(d) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall prepare and submit to Congress a report that identifies the facility, asset, and personnel requirements necessary to carry out the airspace security responsibilities of the Office of Air and Marine Operations under this section.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Indiana (Mr. SOUDER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Indiana (Mr. SOUDER).

(Mr. SOUDER asked and was given permission to revise and extend his remarks.)

Mr. SOUDER. Mr. Chairman, I yield myself 2 minutes.

After the first attacks on 9/11, the Secret Service was given responsibility for the airspace in the National Capital region. During the final 6 months of the Department of Defense working with the Secret Service, there were 182 intrusions into the 15-mile security ring. In December, 2000, DoD was tasked into finding a more optimal solution because one of the problems, which we saw just a couple weeks ago here at the Capitol building, is when we have a plane going 85 knots, 93 miles an hour, and all of a sudden an F–16 comes on going at 300 miles an hour, there is no escorting of the plane, there is no ability to talk to the plane. So the Air and Marine division, AMO, of the Customs and Border Protection agency inside DHS, has the smaller planes, the Citation, the Black Hawks with which to do this.

Just last week my staff and other staff in the Senate and the House learned on Friday that inside the Department of Homeland Security there is no designee who is the lead, and we have to work it out between DHS and the Department of Defense; but it is just appalling that inside the Department of Homeland Security we do not have a lead as to who is in charge in the air.

A couple of basic things that we need to understand here. That plane got within 2 minutes. It was a small plane that might have bounced off, but what we have seen throughout the world in a number of terrorist incidents now, planes exactly like that one loaded with C–4 blow up the place. We did not get our warning to get out of this building and clear the area. I got to 1st St. at approximately the time the plane was being landed. In other words, we could barely get out of the cloakroom before the plane would have hit.

So unless we can control that airspace, unless we have a lead designee like the Air and Marine division inside DHS, which is a start, and then to work with DoD, we are dead here. There is no way to stop a plane. Even if they had shot down the plane, it would have hit us coming on in unless it completely disintegrated, and at 93 miles an hour, it was a tough call.

So I believe this amendment addresses a great need.

Mr. Chairman, I reserve the balance of my time.

Mr. COX. Mr. Chairman, I rise to claim the time in opposition to the amendment.

The Acting CHAIRMAN. The gentleman from California (Mr. COX) is recognized for 5 minutes.

Mr. COX. Mr. Chairman, I yield myself such time as I may consume.

I want to engage in a colloquy, if I might, with my colleague from Indiana and begin by sharing with him my support for his objectives and also my shared concern with this issue, which he has clearly identified, of overlapping jurisdictions.

Before the Congress takes the next step of designating a single agency to be the lead on airspace security, it is my view that we need our full Committee on Homeland Security through hearings and oversight to take an in-depth look at the capabilities of each of the agencies involved. Additionally, Secretary Chertoff is just days away from presenting to us the results of his 90-day top-to-bottom review of the Department, and I expect that the results of that review will include issues of mission overlap and also areas needing improved coordination.

So I would be glad to work with the gentleman on this precise issue and to

move with alacrity if he would be willing to withdraw his amendment so that we can consider this in the committee. If that is agreeable to him, I would be happy to make that commitment at this time.

Mr. SOUDER. Mr. Chairman, will the gentleman yield?

Mr. COX. I yield to the gentleman from Indiana.

Mr. SOUDER. Mr. Chairman, my concern is that, as he knows, I had two other amendments that I withdrew because we had jurisdictional questions. Clearly, the Parliamentarian has ruled in this case that this amendment is germane to this bill, is in the jurisdiction of this committee, and is in the primary and actually sole jurisdiction of this committee or it would not be in this committee. This is only inside the Department of Homeland Security. It does not have anything to do with the Department of Defense.

So my question is that, if I withdraw my amendment, are we guaranteed that, in fact, it will come back through our committee and be in the sole jurisdiction of our committee?

Mr. COX. Mr. Chairman, reclaiming my time, I believe the gentleman has very clearly and accurately stated the jurisdictional question on this amendment. It has been determined that it falls within the jurisdiction of the Committee on Homeland Security. For that reason I would propose that the Committee on Homeland Security take up this issue and use its jurisdiction to help solve this problem.

Mr. SOUDER. Mr. Chairman, will the gentleman yield?

Mr. COX. I yield to the gentleman from Indiana.

Mr. SOUDER. Mr. Chairman, I agree that we have not had hearings. I believe that the urgency is great and that we fight so much over jurisdiction in this body that literally this Congress and this city could have been theoretically blown off the face of the Earth while we argue over jurisdiction.

So I hope this would be done with alacrity. I would hope that there will not be jurisdictional battles, that it has to go through three committees, so that we can get something back to this floor as soon as possible because it was demonstrated last week that our lives may depend on this.

Mr. MICA. Mr. Chairman, I rise in opposition to the amendment.

We are all aware of the aircraft incursion in the National Capital Region airspace last week. I believe that the response to that event demonstrates that coordination and communication between the various Federal agencies works well.

Each agency, including the Federal Aviation Administration (FAA), the Transportation Security Administration (TSA), the Department of Defense (DOD), and the Customs and Border Protection, Air and Marine Operations (AMO) had the same information, communication and coordination was excellent, and each agency fulfilled their role as expected.

It has been my understanding that each agency, including AMO, has a specific role to play.

The FAA is the lead and has sole authority over airspace management and control at all times.

The TSA handles airspace security policy within the Department of Homeland Security.

AMO handles tracking and intercepting aircraft in violation of FAA airspace rules and orders in the National Capital Region, and handles other law enforcement operations.

Finally, the DOD is in charge of airspace defense.

These rules have been long established and are not in question.

Therefore, I am unsure why there is a perceived need for a lead agency within the Department of Homeland Security in these situations even more, I am unsure if AMO is the proper entity to fulfill that role.

Nevertheless, I believe strongly that FAA must retain airspace management and control at all times . . . before, during and after an event, terrorist or otherwise.

Without a doubt, aviation safety is of paramount importance, even during an incursion event, and the FAA is the proper authority and lead in this regard.

I must remind my colleagues that the incursion last week turned out not to be a terrorist event and it is the FAA who is pursuing punitive action against the pilot in question.

Since this is most often the case, it seems strange to give AMO, a law enforcement agency within Customs and Border Protection, the lead in airspace security.

If one thing went right last week it was communication, coordination and each Federal agency understanding and fulfilling their role.

If it ain't broke, don't fix it!

Therefore, I urge my colleagues to vote "no" on the Souder amendment.

Mr. CUMMINGS. Mr. Chairman, I support the amendment (No. 10) offered by Mr. SOUDER, the chairman of the Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources, with whom I serve as Ranking Minority Member.

The amendment would extend through FY 2006 the authorization of the Office of Counternarcotics Enforcement within the Department of Homeland Security (DHS). The amendment would authorize the office at a level of $6 million annually—the same amount authorized by Congress, but not funded by the Administration, in FY 2005.

Our government's response to the attacks of 9/11 has been to take the fight to the terrorists militarily and to take steps to insulate our people and infrastructure from threats to our national security at home.

Congress created the Department of Homeland Security with the stark realization that gaps in security at our borders and ports of entry provide an open door not only to illegal immigration and dangerous illegal drugs, but also to terrorist threats.

Investigations into the 9/11 attacks also led to a greater understanding of the extent to which drug proceeds are the lifeblood of international criminal and terrorist organizations that threaten U.S. security.

Congress's recognition of the importance of stemming the flow of drugs into the United States is reflected in the mission statement of the Department of Homeland Security. Codified in the original authorizing statute, that statement directs the Secretary of DHS to explore links between terrorists and drug trafficking organizations and otherwise pursue drug interdiction.

The gentleman from Indiana and I share the view that we must not allow the threat of singular catastrophic events to detract from domestic efforts to stop the daily onslaught of illegal drugs that gradually turns American lives to waste and local communities into war zones.

Let us not forget, Mr. Chairman, that domestic consumption of illegal drugs claims roughly 20,000 thousand American lives each year—nearly seven times the number of Americans who perished in the 9/11 attacks.

Thousands more Americans go to jail or prison for drug-related crimes or become a victim of drug-related violence or property crime. An estimated $150 billion in economic productivity is lost annually due to drugs.

That is why I co-authored with Chairman SOUDER a provision in the Homeland Security Act of 2002 that created within the Department of Homeland Security the position of Counternarcotics Officer, or "CNO."

It was our purpose in proposing the CNO provision to create a high-level position within DHS that would maintain a high profile and priority for counternarcotics missions. The CNO was tasked with ensuring that DHS drug interdiction, investigation, and enforcement efforts would be coordinated internally and also meshed with the efforts of other Federal agencies to maximize the efficiency and effectiveness of anti-drug efforts throughout the government.

Three years later, the Homeland Security Department is up and running, but the record shows that the Administration has stood in the way of our efforts to support and improve coordination of counter-drug enforcement efforts.

Last year, in response to the Administration's failure to prioritize anti-drug efforts with DHS, we replaced the CNO position with the Office of Counternarcotics Enforcement, authorizing $6 million for the office in FY 2005. Unfortunately, President Bush ignored the will of Congress and chose not to fund the office. The Administration's budget request includes nothing for the office in FY 2006 and further seeks to undermine drug enforcement by proposing deep cuts in major anti-drug programs including HIDTA, Byrne Grants and the COPS program.

Mr. Chairman, the Office of Counternarcotics Enforcement deserves to be reauthorized and to be funded at a level adequate for it to fulfill its mission.

By extending the authorization of this office, we can help to ensure that the war on drugs and the war on terror both can be fought with maximum vigor, efficiency, and effectiveness.

We need to show a real commitment to our Nation's counternarcotics efforts—extend the reauthorization of the CNO and give the office permanent funding and personnel.

I thank the gentleman for offering his amendment, I urge the Committee to make the amendment in order, and I support the gentleman in his efforts to secure funding for the office as the DHS appropriations bill goes to conference.

Mr. SOUDER. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The Acting CHAIRMAN. It is now in order to consider amendment No. 11

printed in part B of House Report 109–84.

AMENDMENT NO. 11 OFFERED BY MR. WAMP

Mr. WAMP. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 11 offered by Mr. WAMP:

In title V, add at the end the following new section:

SEC. 509. CENTERS OF EXCELLENCE.

Section 308(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 188(b)(2)) is amended by adding at the end the following new subparagraph:

''(F) A center under this paragraph may include participation of a Department of Energy laboratory, including in the preparation of a proposal.''.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Tennessee (Mr. WAMP) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. WAMP).

Mr. WAMP. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman I would like to thank the gentleman from California (Chairman DREIER) and the Committee on Rules for making my amendment in order and the gentleman from California (Chairman COX) and the gentleman from Mississippi (Mr. THOMAS), ranking member, as well as their staffs, for their good work on this bill and for working with me on this important issue.

My amendment would permit the Department of Energy laboratories to team with a university or consortium of universities when competing for Department of Homeland Security's Centers of Excellence. Currently, the DHS Science and Technology Directorate prohibits DOE laboratories from contributing to university proposals for Centers of Excellence solicitations.

□ 1500

My amendment would allow DOE labs to participate as partners with universities in preparation of Centers of Excellence proposals. This is only if the university or universities want the DOE lab to participate. It is not my intention to take anything away from universities or have Centers of Excellence located anywhere but at the universities. Under my amendment, universities will remain the lead on the Centers of Excellence proposals.

As a member of the Subcommittee on Homeland Securities of the Committee on Appropriations, I want to state that I fully support the Centers of Excellence program and have advocated for increased funding every year.

My concern arises from a faulty policy decision by the Science and Technology Directorate to prohibit DOE labs from partnering with universities to bring their expertise to complement university proposals.

I have heard that the Department of Homeland Security opposes my amendment. That is unfortunate, but I know that we are on the right track for six reasons.

First, DOE labs, even the ones that are intramural, are not and have not been involved in strategic planning and program development of Centers of Excellence and university programs.

Second, these labs are only intramural to those DOE legacy programs under the Office of Research and Development mostly dealing with chemical, radiological, biological, and nuclear threats within the funding that comes to Office of Research and Development for those missions. This funding is all done at national laboratories where the classified nature of the research needs to happen at a secure Federal research facility.

Third, to say that an intramural DOE lab has insider information on the Centers of Excellence program is simply not accurate.

Fourth, why do DOE labs have the ability to be eligible to partner with universities post award if requested by the university? What is the difference between pre award versus post award? How do universities write a proposal? The Department accepts it, makes the award to the university, and then after it is awarded, the university changes the proposal to add a DOE national lab that was barred from contributing in the first place. That makes no sense.

Fifth, it is my understanding that these Centers of Excellence are eligible for renewal, so there is a question that is still not clear. If a university that wins the Center of Excellence picks the Oak Ridge National Laboratory, for instance, to partner post award, would that preclude Science and Technology from considering that university from competing again or getting a renewal contract?

Finally, what happens when a university has a contractor at a DOE national laboratory such as the University of Tennessee and Battelle, which manage the Oak Ridge National Laboratory, or the University of California that manages Lawrence Livermore, does that not preclude these universities from ever being considered for Centers of Excellence proposals?

When we created the Department of Homeland Security Science and Tech Directorate, this was not the intended result. The Federal Government should encourage our excellence in academia to partner with our excellence at our national labs.

The Science and Tech Directorate's use of the national labs is still unclear. Congress needs to work together on this and challenge these decisions by making DHS more accountable so their decisions are made with good, common sense. We need these changes in this authorization bill, and I urge the adoption of this amendment.

Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN (Mr. BONNER). Does any Member rise in opposition to the gentleman's amendment? There being no one, the Chair recognizes the gentleman from Tennessee (Mr. WAMP).

Mr. WAMP. Well, then, I appreciate that. Maybe we have worked these things out. That is great news, and I will just go ahead and yield back the balance of my time and move the adoption of the amendment.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Tennessee (Mr. WAMP).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider Amendment No. 12 printed in Part B of House report 109–84 offered by the gentleman from New Jersey (Mr. MENENDEZ).

AMENDMENT NO. 12 OFFERED BY MR. THOMPSON

Mr. THOMPSON of Mississippi. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. Is the gentleman from Mississippi the designee of the gentleman from New Jersey (Mr. MENENDEZ)?

Mr. THOMPSON of Mississippi. Yes, Mr. Chairman

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 12 offered by Mr. THOMPSON of Mississippi:

At the end of title V add the following:

SEC. ___. REPORT ON PROTECTING INFRASTRUCTURE IN THE AREA OF PORT ELIZABETH AND NEWARK INTERNATIONAL AIRPORT, NEW JERSEY.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit a report to the Congress describing the measures necessary to coordinate and protect the various infrastructure in the area comprised of Port Elizabeth and Newark International Airport, New Jersey, and the area located generally between such facilities. The report shall include—

(1) an identification of the resources required to fully implement homeland security efforts for this area;

(2) an assessment of the progress made in implementing homeland security efforts for this area; and

(3) recommendations of additional resources needed to fully implement homeland security efforts for this area.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Mississippi (Mr. THOMPSON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. THOMPSON).

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield myself such time as I may consume.

I rise in support of this amendment offered by the gentleman from New Jersey (Mr. MENENDEZ).

Terrorism experts have called the area between Port Elizabeth and Newark International Airport in New Jersey ''the most dangerous two miles in America,'' an area that includes dozens of vulnerable chemical plants, oil storage tanks, refineries, and other critical infrastructure systems within close proximity of Manhattan and the densely populated cities of northern New Jersey.

Experts estimate that a terrorist attack in this area could pose a potentially lethal threat to 12 million people living within a 14-mile radius. The Menendez amendment would require the Secretary of the Department of Homeland Security to report to Congress on how to coordinate and protect the people and infrastructure in this particularly vulnerable region.

Mr. Chairman, I rise in support of this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. COX. Mr. Chairman, I rise in opposition to the amendment, and I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield the balance of the time to the gentleman from New Jersey (Mr. MENENDEZ), the author of the amendment.

Mr. MENENDEZ. Mr. Chairman, I yield myself such time as I may consume.

First of all, I want to thank the distinguished ranking member for offering this, since I was at an event with our colleagues in the Senate and with the Democratic Caucus, so I appreciate him offering this on my behalf. It is my intention, based on a conversation with the gentleman from California (Chairman COX), and I believe the ranking member as well, to withdraw the amendment, with an understanding, and I will get to that in a moment.

My effort here is to basically take, not that I have said this, but that the FBI and law enforcement and a congressional study has said that the most dangerous two miles in America when it comes to terrorism, according to the FBI and others, which is that area between Port Elizabeth, the megaport of the East Coast, and Newark International Airport, and since we have a critical challenge with this dangerous two miles that I think would replicate many other areas of the country that have chemical facilities next to transportation infrastructure, next to airports, next to seaports, and a whole host of other critical infrastructure, that what can the Department of Homeland Security do to look at this most dangerous two miles and tell us what has been done, what needs to be done, what should be done so that we can achieve the success that we want in protecting not just a part of my congressional district or of the people of New Jersey, but as the New York Times recently wrote, the Nation's most enticing environment for terrorists, providing a convenient way to cripple the economy by disrupting major portions of the country's rail lines, oil storage and refineries, pipelines, air traffic, communicate networks, and highway systems.

Now, if you are one of the 12 million people who live in this 14-mile radius with more than 100 potential terrorist targets, you would understandably be concerned. But as the New York Times mentioned, this is more about more than the safety and security of my constituents; it is an attack of this area to cripple our Nation's economy.

Very simply, an attack within these two miles would be an attack felt around the world, since the largest seaport on the East Coast, one of the busiest airports in the country, Interstate 95, the main corridor along the Eastern Seaboard, are all located within this area.

For example, just by one example, in 2002, 15 percent of Nebraska's container exports were shipped through this port, and, like that, it is so true for so many points of the country. If you are wearing it, driving it, or eating it, it likely came through the megaport of the East Coast.

So while my amendment does not authorize any new funding or any additional resources, it does look in the context of limited environment, of limited resources, but unlimited risks. How do we become careful stewards not only of the taxpayers' money, but also of the security of our people?

Now, my understanding is that the gentleman from California (Mr. COX) will be willing, by me withdrawing this amendment and by working with the ranking member, to secure that the Department of Homeland Security would provide such a report, and I would like to yield to him to see if my understanding is correct.

Mr. COX. Mr. Chairman, the gentleman's understanding is correct. If the gentleman is willing to withdraw his amendment, the Committee on Homeland Security, through its chairman and ranking member, would formally request this information from the Department of Homeland Security.

As the gentleman knows, the Department of Homeland Security and its Infrastructure Protection Directorate is currently focusing heavily on this part of the country and, as a result, the identification of critical assets, high-risk facilities, the implementation of security measures, and the recommendation of additional mitigation strategies for this region is something that the committee should hear on and, as a result, I would propose, with the ranking member, that we seek the information in this way.

My only concern with the amendment as drafted is that it would set the precedent of establishing a national legislation requirement for IP mandates for specific regions within the States, rather than a national infrastructure strategy.

Mr. MENENDEZ. Mr. Chairman, reclaiming my time, I appreciate the chairman's offer, and I would hope, however, seeing that many reports that have been requested by the committee have not come forward, that in fact we would be vigorous in making sure that the report would actually be issued.

Mr. COX. The gentleman has my commitment on that subject.

Mr. THOMPSON of Mississippi. Mr. Chairman, I ask unanimous consent to extend the debate by 2 minutes on each side.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from Mississippi?

Mr. COX. Mr. Chairman, reserving the right to object, I would like to claim the time in opposition to the Menendez amendment.

The Acting CHAIRMAN. Under the pending proposal, the gentleman from California would have another 2 minutes and the gentleman from Mississippi would have another 2 minutes.

Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. COX. Mr. Chairman, I yield back 2 minutes of my time, and I yield the remaining 2 minutes to the gentleman from Mississippi (Mr. THOMPSON), and I withdraw my reservation of objection.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Chairman, there are approximately 70,000 different chemicals that have been defined. Fifteen to 20 of them could be lethal, are lethal, toxic, and in this two-mile stretch that the gentleman from New Jersey (Mr. MENENDEZ) has brought to our attention, these are the most dangerous two miles in America.

The chemical plants, the oil storage tanks, the refineries, and critical infrastructure systems are targets. In fact, if there is a terrorist attack in this area, it could pose a terribly lethal threat to 12 million people. That is within a 14-mile radius. This is serious business, and we on the Committee on Homeland Security look at this seriously on both sides of the aisle.

So through the ranking member and the chairman, we have their commitment that we will work this out, because I know that my colleagues understand the seriousness of this area. And since we are in the business of risk, the problem of risk and taking that into regard with our formula, then I think that this certainly reaches the top of the priority.

□ 1515

Mr. FOSSELLA. Mr. Chairman, I thank the gentleman from New Jersey (Mr. PASCRELL) for yielding me the time. And just let me add this is not just a New Jersey issue, but it is a New York City issue, as a Representative of Staten Island, just a couple of miles away.

I applaud the gentleman's efforts. And I thank the chairman for agreeing with that.

Mr. THOMPSON of Mississippi. Mr. Chairman, the gentleman from New Jersey (Mr. PASCRELL) and others have indicated the position that the minority supports.

Mr. Chairman, I yield back the balance of my time.

Mr. MENENDEZ. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The Acting CHAIRMAN (Mr. BONNER). Is there objection to the request of the gentleman from New Jersey that the amendment offered by the

gentleman from Mississippi (Mr. THOMPSON) be withdrawn?

There was no objection.

The Acting CHAIRMAN. It is now in order to consider amendment No. 13 printed in part B of House Report 109–84.

AMENDMENT NO. 13 OFFERED BY MS. HOOLEY

Ms. HOOLEY. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 13 offered by Ms. HOOLEY:

At the end of title V, insert the following:

SEC. 509. PROHIBITION AGAINST INCREASE IN SECURITY SERVICE FEES.

None of the funds authorized under this Act may be derived from an increase in security service fees established under section 44940 of title 49, United States Code.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentlewoman from Oregon (Ms. HOOLEY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Oregon (Ms. HOOLEY).

Ms. HOOLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the amendment I offer today is very simple. It would prevent any of the money in this bill from coming from increases in airline ticket taxes. This is an amendment to protect consumers, to protect our struggling aviation industry.

Earlier this year, the President's budget included a $1.5 billion increase in the aviation security passenger fee, using this to largely offset his $2.2 billion homeland security increase.

This increase, if enacted, would represent over a 50 percent increase in airline fees. Federal taxes and fees already account for as much as 40 percent of the price that consumers pay for their domestic ticket.

Given the current state of our aviation industry in this country, we should not further punish them with higher taxes. Our homeland security is our national security, and we should not foist the bill off on just a few people or single industry.

While the bill before us does not include language increasing the aviation security passenger fee, it does authorize the same level of funding as the President's budget, and there is no offset for the additional spending.

Mr. Chairman, I am concerned that increasing the aviation security passenger fee will negatively impact consumers and will saddle a struggling industry that is already in trouble with an additional $1.5 billion in taxes.

I encourage my colleagues to support my amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. MICA. Mr. Chairman, I rise in opposition to the amendment, and I yield myself such time as I may consume.

Mr. Chairman and my colleagues, this is not a good amendment. I am surprised that this amendment was even considered by the Rules Committee. The administration proposed a $3 increase in security fees.

Why did they propose that? They proposed that because yesterday we passed $4.6 billion just for passenger screening, of which the current fee of $2.50, a maximum of $5 per one way, even if you have more segments, security fee, which we imposed after September 11 to fund the TSA, falls $2 billion short.

So we are taking out of the general fund another $2 billion to fund this very expensive system that does not work very well. This is a report of the Inspector General, and it is a secret report, I cannot discuss this, but I tell you, the system fails.

Before the other body, Richard Skinner, acting Inspector General of the Homeland Security Department January 26, 2005 said; ''The ability of TSA screeners to stop prohibited items from being carried through the sterile areas of airports fared no better than the performance of screeners prior to September 11, 2001.''

Now, what is wrong? We do not have the technology. We do not have the technology. And I have proposed that we double the fee, and that we put it on technology that will do a better job. Not only will it do a better job, the GAO has said that we can decrease personnel by 78 percent for those that screen the baggage by hand now behind these counters, that use an army, almost half of the 45,000 personnel.

So we are paying more, getting less. This proposal would reduce $1 billion a year that cost to the taxpayers. This is a bad amendment. The airlines may like this amendment, but let me tell you what they will do.

If we do not correct and reform this system, we will have another 9/11 because this expensive structure that we have in place does not work. It needs to be changed out with technology. These reports say it. As chairman of the Aviation Subcommittee, I am telling you that we need it. And the only way to fund it, and do not tell me we have not helped the airlines. I stood up here and fought for $5 billion for them after 9/11. We gave them another $3 billion on top of that for security improvements. Then they got away with the absconding with 4 months of the revenue that they never passed on to the Federal Government and we never said anything.

We are right now financing 21 percent of FAA and the air traffic control system out of the general treasury. And some little guy from Oregon who is making $7 an hour, you are going to ask him to pay that security fee. He never gets on a plane, he is probably making minimum wage and is going to now pay to underwrite a failed system because the airlines will not step forward.

I even offered them a half a billion. They promised me that they would pay us a billion dollars when we assumed this responsibility. Last year they paid us $315 million, $700 hundred million short. Shame on them. Shame on them for even pushing this amendment.

This is a disgrace. We should be putting in place the best equipment to do away with the system that has failed. This says it failed. I challenge every Member to go and read those classified reports. We are not playing games here; we are dealing with the safety, security, and the economic future of this Nation.

So I urge the defeat of this amendment. I urge the reform of TSA that does not work, that costs us a lot of money; and those that use it should pay for it, not some poor guy from Oregon or Florida that is getting left holding the bag and paying the bill.

The user pays. That is what we do here. We are down now and we are subsidizing the expenses of FAA and air traffic control by half a billion dollars a year because the 7.5 cent excise tax on the tickets does not raise enough money. So it is coming out of the pockets of people who do not even fly.

This is a user-based system. Let us fix this system. Correct this bill.

Mr. Chairman, I yield back the balance of my time.

Ms. HOOLEY. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. COX).

Mr. COX. Mr. Chairman, with all respect to my colleague, the gentleman from Florida (Mr. MICA), I could not disagree more strongly.

The Constitution of the United States gives to our national government the responsibility to provide for the common defense. When al Qaeda turned airliners into missiles, hundreds of passengers aboard those aircraft were killed, but thousands of people in the World Trade Center Towers and in the Pentagon were also killed. And none of them was an airline passenger.

Neither were the millions of Americans who suffered the economic damage of billions of dollars inflicted by al Qaeda as a result of those attacks. Homeland security, in my view, is the essence of national security.

And this amendment puts that question to the test. Is homeland security merely the correlation of national security, or is it the core of what we are seeking to establish when we provide for the common defense and protecting the territory and the population of the United States?

If every time the Pentagon needed a new weapons system they had to find a user fee in order to pay for it, we would have a third-world national defense. But, in fact, Mr. Chairman, as Democrats and Republicans on the Homeland Security Committee have determined, homeland security is all about providing for the common defense, and funding it is a national responsibility.

For those reasons, I strongly support the amendment offered by gentlewoman from Oregon (Ms. HOOLEY).

Ms. HOOLEY. Mr. Chairman, I yield such time as he may consume to the gentleman from Mississippi (Mr. THOMPSON).

Mr. THOMPSON of Mississippi. Mr. Chairman, I rise and express strong support for the amendment of the gentlewoman from Oregon (Ms. HOOLEY). It sends a strong and simple message to Congress: do not raise aviation passenger fees.

I strongly believe that raising fees will place an additional burden on the flying public and could weaken the economic strength of domestic commercial aviation.

Mr. Chairman, I strongly support the Hooley amendment and urge my colleagues in the House to vote in favor of this important amendment.

Ms. HOOLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, just in closing let me say, homeland security, we all want to make sure that our country is as safe as possible. Homeland security is a responsibility of all of our citizens.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from Oregon (Ms. HOOLEY).

The question was taken; and the Acting Chairman announced that the ayes have it.

Ms. HOOLEY. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Oregon (Ms. HOOLEY) will be postponed.

The Acting CHAIRMAN. It is now in order to consider amendment No. 14 printed in part B of House Report 109–84.

AMENDMENT NO. 14 OFFERED BY MR. CARDIN

Mr. CARDIN. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 14 offered by Mr. CARDIN:

Page 78, insert after line 22 the following (and redesignate the succeeding provision and conform the table of contents accordingly):

SEC. 508. STUDY OF MODIFICATION OF AREA OF JURISDICTION OF OFFICE OF NATIONAL CAPITAL REGION COORDINATION.

(a) STUDY.—The Secretary of Homeland Security, acting through the Director of the Office of National Capital Region Coordination, shall conduct a study of the feasibility and desirability of modifying the definition of ''National Capital Region'' applicable under section 882 of the Homeland Security Act of 2002 to update the geographic area under the jurisdiction of the Office of National Capital Region Coordination.

(b) FACTORS.—In conducting the study under subsection (a), the Secretary shall analyze whether modifying the geographic area under the jurisdiction of the Office of National Region Coordination will—

(1) improve coordination among State and local governments within the Region, including regional governing bodies, and coordination of the efforts of first responders; and

(2) enhance the ability of such State and local governments and the Federal Government to prevent and respond to a terrorist attack within the Region.

(c) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under subsection (a), and shall include in the report such recommendations (including recommendations for legislation to amend section 882 of the Homeland Security Act of 2002) as the Secretary considers appropriate.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Maryland (Mr. CARDIN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Maryland (Mr. CARDIN.)

Mr. CARDIN. Mr. Chairman, I yield myself such time as I might consume.

Mr. Chairman, I would like to thank the chairman and ranking member for working with me on this amendment to improve it.

Today, I am offering an amendment to H.R. 1817, the Department of Homeland Security Authorization Bill for fiscal year 2006, that would require DHS to conduct a study of the feasibility and desirability of modifying and updating the existing boundaries of the National Capital Region of DHS.

My amendment would require DHS to issue a report within 6 months to Congress on whether modifying the National Capital Region would, one, improve coordination among State and local governments within the region, including regional governing bodies, and coordination of the efforts of first responders; and, two, enhance the ability of State and local governments and the Federal Government to prevent and respond to a terrorist attack within the National Capital Region.

We passed nearly an identical amendment in October 2004 when the House considered the 9/11 Commission recommendations bill. This amendment clarifies that DHS will ultimately make a recommendation on whether to make any changes in the NCR subject to the approval by Congress.

The National Capital Region was defined by Congress in a statute in 1952 as part of an effort to coordinate a comprehensive planning responsibility for the national capital and surrounding areas. The 1952 act, the National Capital Planning Act, created the National Capital Planning Commission and defined the NCR to include the District of Columbia; Montgomery and Prince Georges' counties in Maryland; Arlington, Fairfax, Loudon, and Prince William counties in Virginia.

The NCR also includes all cities within these counties. Unfortunately, when Congress created the new Department of Homeland Security in 2002, it simply referred to the 1952 definition of NCR. It is clear to me that in order to effectively prepare our capital region for first responders, for the terrorist threats of the 21 century, we need to have a 21-century definition of the National Capital Region, not a definition based on a post-World War II and early Cold War America.

Washington, D.C. remains the highest-profile target for terrorists who successfully attacked the Pentagon on September 11, 2001, and failed to complete their attack against the White House or the U.S. Capitol.

Therefore, we need to take extraordinary steps to improve the coordination between governments and first responders in Washington D.C., Virginia, and Maryland in order to prevent and respond to attacks in the National Capital Region.

In the event of a terrorist attack in Washington, D.C., for example, local and State and government officials in Maryland and Virginia would be expected to provide immediate resources to assist in the recovery.

Maryland and Virginia would be asked to help in the evacuation of thousands or even over a million people from the Washington, D.C. metro region in certain circumstances.

Such an event would place an extraordinary strain on our existing first responder community and may overwhelm the ability of local, regional, State, Federal, military, public health, and non-profit agencies and personnel.

So this amendment simply asks that we do the study to see what is the appropriate definition for the purposes of homeland security. I want to thank my colleague, the gentleman from Maryland (Mr. BARTLETT), for his leadership on this issue.

Again, I want to thank the chairman and ranking member for working with me on this amendment in order to make it an effective study for Congress.

□ 1530

I would urge my colleagues to accept this amendment.

Madam Chairman, I reserve the balance of my time.

The Acting CHAIRMAN (Mrs. CAPITO). Does any Member seek time in opposition to the gentleman's amendment? If not, the gentleman from Maryland (Mr. CARDIN) is recognized.

Mr. CARDIN. Madam Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. CARDIN).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 15 printed in Part B of House Report 109–84.

AMENDMENT NO. 15 OFFERED BY MS. SLAUGHTER

Ms. SLAUGHTER. Madam Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 15 offered by Ms. SLAUGHTER:

Page 79, after line 6, add the following:

SEC. 509. REPORT TO CONGRESS ON UNIFORM AND IDENTIFICATION SECURITY.

(a) DEFINITION.—For the purpose of this section, the term ''forms of Homeland Security identification'' means any uniform,

badge, identification card, or other apparel or insignia of the design prescribed by the Department of Homeland Security for use by any officer or employee of such Department.

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Homeland Security shall prepare and submit to Congress a report—

(1) describing the efforts taken by the Department of Homeland Security—

(A) to curtail the production of imitation forms of Homeland Security identification, including efforts to improve the design of the various forms of Homeland Security identification to prevent unauthorized replication; and

(B) to increase public awareness of the existence of imitation forms of Homeland Security identification, and educate the public about means by which to identify bona fide forms of Homeland Security identification;

(2) assessing the effectiveness of the efforts described in paragraph (1); and

(3) recommending any legislation or administrative actions necessary to achieve the objectives described in subparagraphs (A) and (B), respectively, of paragraph (1).

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentlewoman from New York (Ms. SLAUGHTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from New York (Ms. SLAUGHTER).

Ms. SLAUGHTER. Madam Chairman, I yield myself such time as I may consume.

My amendment would require the Secretary of Homeland Security to report to Congress on the agency's efforts to reduce the replication of its badges, uniforms and other insignia. In addition, the Secretary would be directed to report on the agency's efforts to increase public awareness of counterfeit badges and uniforms, and to teach Americans to identify authentic identification of a DHS official.

Two years ago, a man wearing an FBI jacket and carrying a badge attempted to rob the Xerox employee credit union in my district. The would-be robber killed one man and shot another, and that murderer is still at large.

Last week, the Department of Homeland Security arrested a man in New York City who was in the possession of over 1,300 fake badges and IDs from over 35 law enforcement agencies, along with two NYPD police uniforms. In addition, DHS agents found a Glock 9-millimeter handgun, a Beretta semiautomatic rifle, a Winchester shotgun and used casings from a shoulder-fired missile.

I think everyone would agree that this man posed a legitimate threat to his community based on his weapons stash alone, and knowing he had a gun and an FBI badge, or a CBP badge, or a police uniform, makes me even more frightened of the trouble he might have caused. The availability of counterfeit badges is an ongoing problem in this country, and it has gone unchecked for too long.

I am disturbed that the identification and clothing of our public officials is so easily reproduced. When I think about all the different efforts we have made and the technology we have employed to ensure that someone cannot counterfeit a $20 bill, I am shocked that ensuring the integrity of the badges and identification of public officials has not been made a similar priority.

DHS badges, uniforms and IDs are indicative of authority, and the bearers are granted access to restricted areas and to sensitive information. We trust that people who have those badges and wear those uniforms of the Department of Homeland Security are, in fact, officers of that agency, and we teach our children to trust people who show official badges and wear the official uniforms. How terrifying is it to think about someone's lost child walking up to someone wearing a DHS uniform only to have that person really be a criminal.

This amendment is an important first step in improving the integrity of the DHS badges, uniforms, and IDs. Next week, I plan on taking our efforts to protect the integrity of our public IDs one step further by introducing legislation that will expand the current Federal criminal ban on fake police badges and the misuse of authentic badges to include uniforms, identification, and all other insignia of public officials, because we must be able to trust those who said that they are public officials.

I appreciate very much being able to present this amendment and ask for its adoption.

Madam Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Does any Member rise in opposition to the gentlewoman's amendment? If not, the gentlewoman from New York (Ms. SLAUGHTER) is recognized.

Ms. SLAUGHTER. Madam Chairman, I thank very much the chairman of the committee and the ranking member of the committee, and I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from New York (Ms. SLAUGHTER).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 16 printed in Part B of House Report 109–84.

AMENDMENT NO. 16 OFFERED BY MR. KENNEDY OF MINNESOTA

Mr. KENNEDY of Minnesota. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 16 offered by Mr. KENNEDY of Minnesota:

Page 79, after line 6, insert the following (and amend the table of contents accordingly):

SEC. 509. BORDER SURVEILLANCE.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the President and the appropriate committees of Congress a comprehensive plan for the systematic surveillance of the northern border of the United States by remotely piloted aircraft.

(b) CONTENTS.—The plan submitted under subsection (a) shall include—

(1) recommendations for establishing command and control centers, operations sites, infrastructure, maintenance, and procurement;

(2) cost estimates for the implementation of the plan and ongoing operations;

(3) recommendations for the appropriate agent within the Department of Homeland Security to be the executive agency for remotely piloted aircraft operations;

(4) the number of remotely piloted aircraft required for the plan;

(5) the types of missions the plan would undertake, including—

(A) protecting the lives of people seeking illegal entry into the United States;

(B) interdicting illegal movement of people, weapons, and other contraband across the border;

(C) providing investigative support to assist in the dismantling of smuggling and criminal networks along the border;

(D) using remotely piloted aircraft to serve as platforms for the collection of intelligence against smugglers and criminal networks along the border; and

(E) further validating and testing of remotely piloted aircraft for airspace security missions;

(6) the equipment necessary to carry out the plan; and

(7) a recommendation regarding whether to expand the pilot program along the entire northern border.

(c) IMPLEMENTATION.—The Secretary of Homeland Security shall implement the plan submitted under subsection (a) as a pilot program as soon as sufficient funds are appropriated and available for this purpose.

SEC. 510. ADVANCED TECHNOLOGY NORTHER BORDER SECURITY PILOT PROGRAM.

Section 5101 of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1712 note) is amended by striking ''The Secretary of Homeland Security may carry out'' and inserting ''To the extent funds are provided in advance in appropriations Acts, the Secretary of Homeland Security shall carry out''.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Minnesota (Mr. KENNEDY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. KENNEDY).

Mr. KENNEDY of Minnesota. Madam Chairman, I rise today to offer an amendment because I am deeply concerned that the Department is not paying sufficient attention to the northern border of the United States.

My amendment today is very simple, and I want to take this opportunity to thank the gentleman from California and his staff for their great work in helping me to draft this amendment.

Mr. Chairman, the National Intelligence Reform Act of 2004 contained important provisions dealing with improving border surveillance on the northern border.

Congress intended for the Secretary of Homeland Security to carry out a pilot program to test advanced technologies for border security along the northern border. Yet, to date, DHS has not carried out this program.

The intelligence reform bill also provided that the Secretary of Homeland

Security must develop and submit to Congress and to the President a comprehensive plan for systematic surveillance of the southwest border by remotely piloted aircraft.

As I mentioned yesterday when I spoke on this subject, many Members may not realize that the U.S.-Canadian border is over 4,000 miles long, and it consists of more than 430 official and nonofficial points of entry. That is double the length of the U.S.-Mexico border, and even with recent staffing moves, DHS has only 1,000 Border Patrol agents along the northern border, compared to over 10,000 along the smaller southern border.

Some might think the southern border is more dangerous, but I would remind my colleagues that terrorists and drug traffickers trying to bring in poison like methamphetamines will try to get to us at the path of least resistance.

The lack of substantial resource and staffing along the northern border poses a real security threat. In fact, due to the shortage, DHS has looked for new ways to monitor the Canadian border, such as a new proposed requirement for passports to get back and forth over the border. But for a border as long as ours with Canada, so many unmanned access points, it is simply impractical to think having Border Patrol agents check passports will stop determined terrorists.

Do we expect al Qaeda or drug dealers to wait an hour at the border for someone to show up to check their passport? Or will they cross at some unknown spot along this vast border?

We need to adopt a more rigorous standard of protecting our northern border that makes wise use of our manpower and employs the same sophisticated technology as we use on our southern border.

By requiring the Department to comprehensively study the use of remotely piloted aircraft, AKA unmanned aerial vehicles, on the northern border and by requiring the Secretary to actually perform the pilot program created in the National Intelligence Reform Act, my amendment makes a significant step forward to securing this vast border.

Madam Chairman, the time has come to make our northern border just as safe and secure as the southern border. I urge all our Members to support this important amendment.

Madam Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Does anyone rise in opposition to the gentleman's amendment? The Chair recognizes the gentleman from Minnesota (Mr. KENNEDY).

Mr. KENNEDY of Minnesota. Madam Chairman, I would just ask the Members to vote in favor of this amendment, and I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. KENNEDY).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 17 printed in Part B of House Report 109–84.

AMENDMENT NO. 17 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 17 offered by Ms. JACKSON-LEE of Texas:

Page 79, after line 6, insert the following (and amend the table of contents accordingly):

SEC. 509. GAO STUDY OF PROPOSALS TO INCREASE TEMPORARY PROTECTED STATUS REGISTRATION FEE.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall complete a study of, and report to Congress on, the likely consequences of increasing the fee described in section 244(c)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1254(a)(c)(1)(B)).

(b) ELEMENTS OF STUDY.—The study described in subsection (a) shall—

(1) calculate the number of applicants for relief under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254(a)) who have sought a waiver, been granted a waiver, or been denied a waiver from such fees due to their inability to pay such fees, since the enactment of such section;

(2) project the cost at which such fee would be set if it were calculated consistent with the manner in which the Department of Homeland Security calculates fees under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m));

(3) taking into account the countries of nationality of the current population of beneficiaries of section 244 and the lack of work authorization that such beneficiaries have while awaiting the outcome of an adjudication, assess the ability of the current population of beneficiaries under section 244 to pay such fee if it were increased to the level projected pursuant to paragraph (2);

(4) estimate the number of requests for fee waivers that would likely have to be adjudicated per 1,000 applications should such fee be increased to the level projected pursuant to paragraph (2);

(5) estimate the cost and number of man hours that would be required to be expended in order to adjudicate the fee waiver requests described in such paragraph; and

(6) estimate the cost differential between the current cost of adjudicating applications and the statutory fee, on a per-application and an aggregate basis.

SEC. 510. GAO STUDY OF CONSEQUENCES OF EXPANDING USE OF PREMIUM SERVICE FOR IMMIGRATION BENEFIT APPLICATIONS AND PETITIONS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall complete a study of, and report to Congress on, the Department of Homeland Security's proposal to expand the use of premium fees for employment-based petitions and applications under section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)) to other applications and petitions.

(b) ELEMENTS OF STUDY.—In performing the study required under subsection (a), the Comptroller General—

(1) shall consider and assess—

(A) all factors that help quantify and assess the current impact of premium processing on immigration benefits adjudications of employment-based applications and petitions; and

(B) the degree to which the use of premium processing for employment-based applications and petitions has negatively or positively impacted the length of time that it takes to adjudicate employment-based applications and petitions that are eligible for treatment under section 286(u) of the Immigration and Nationality Act but for which no premium fee is paid; and

(2) shall assess—

(A) whether expansion of section 286(u) of the Immigration and Nationality Act to family-based immigration petitions and applications would increase or decrease the length of time it takes to adjudicate family-based petitions and applications in cases where the applicant cannot afford to make use of the premium service;

(B) all other likely future impacts of an expansion of premium processing to family-based immigration benefits applications and petitions;

(C) the number of additional adjudicators needed to process premium processing applications;

(D) the impact of premium processing on the number and assignment of adjudicators; and

(E) the number of individual applicants who would opt to use premium processing under this expanded program annually.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentlewoman from Texas (Ms. JACKSON-LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Madam Chairman, again I thank the chairman of the full committee and the ranking member of the full committee for working with all of us as we try to construct a real definitive homeland security policy. I am always reminded that we always seemingly receive wake-up calls, and certainly, last week a little Cessna gave America a wake-up call.

I have argued extensively that homeland security is beyond the Beltway, if you will, in the neighborhoods and suburbs and rural areas of America. At the same time, our responsibilities deals with the documentation of the individuals in this country.

I have always said that we need real immigration reform, and I have joined my colleagues in supporting efforts for enhanced border security, understanding the violence at the border, making sure we have more border security patrol agents, more ICE officers, more benefit funding to ensure that those who are in the legal line for citizenship are not delayed by years and months.

I come with this amendment, which is a simple proposition, to make immigration access fair, disregards the temporary protection status, and I am joined in this amendment by the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary. I would at this point submit in the RECORD a letter from the Homeland Security Department.

U.S. DEPARTMENT OF
HOMELAND SECURITY,
Washington, DC, April 19, 2005.

Hon. JOHN CONYERS, Jr.,
Ranking Member, Committee on Judiciary, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE CONYERS: I am pleased to provide these proposed legislative amendments that U.S. Citizenship and Immigration Services (USCIS) requests to modify fee collections for Temporary Protected Status (TPS) and Premium Processing Fee authority.

Section 244(c)(1)(B) of the Immigration and Nationality Act as amended, 8 U.S.C. 1254a(c)(1)(B) established the fee for adjudicating an application for TPS and capped this fee at $50 since 1990. This limitation is inconsistent with the fee structure for other immigration benefit applications which is based on the recovery of full processing costs. This amendment would permit appropriate adjustment of the TSP fee structure according to processing costs and inflation, per the regulatory process. The amendment removes the sentence ''The amount of such fee shall not exceed $50.''

Subsection 286(u) of the Immigration and Nationality Act (INA) authorizes a $1,000 premium processing fee to be charged for employment-based immigration petitions and applications. Under this authority as implemented by regulation (8 C.F.R. §103.2(f)), USCIS offers a premium processing service under which employers filing USCIS Forms I–129 seeking to sponsor aliens for certain immigrant or nonimmigrant classifications can obtain 15-day processing of their petitions by submitting the additional fee. The proposed amendment would authorize the Secretary of Homeland Security to establish premium processing fees for other applications or petitions, such as non-employment based immigration petitions and applications, employment authorization applications, or applications to change or extend nonimmigrant status. The determination whether to implement premium processing service for any specific adjudication, the terms of service, and the applicable premium fee, would be within the Secretary's discretion, but the fee could not exceed the $1,000 charged for employment-based premium processing. Premium processing fees would be deposited, as are other adjudication fees, into the Immigration Examinations Fee Account in order to enhance USCIS customer service as well as provide the premium service itself. In order to provide the Secretary with flexibility to adjust the fees as needed, the amendment clarifies that APA rulemaking and Federal Register publication requirements do not apply. Rather, availability and terms of premium processing would be publicized through the USCIS web site. The amendment also authorizes premium fees in excess of $1,000 for employment-based adjudications relating to the investor visa (EB–5) program for investors of at least $500,000 in job-creating enterprises, including regional centers, for which the current $1,000 cap does not justify the cost-effective provision of premium service.

Enclosed is detailed justification for each of the actions proposed in this notification.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 205–4412.

Sincerely,

PAMELA J. TURNER,
Assistant Secretary for Legislative Affairs.

This letter indicates that the Homeland Security is considering raising the fees on temporary protective status. Let me tell my colleagues what that means.

Temporary protective status is generally given to those who are fleeing persecution in their countries; women who are fleeing domestic violence who happen to be immigrants; immigrants such as those fleeing from Bosnia or Kosovo during the time of war; immigrants who may be fleeing or may have fled from Iraq at the time of persecution from Saddam Hussein; those who are fleeing from Liberia, suffering from persecution over the years; those who are fleeing from Sudan, where we know there is much brutality and mutilation of men and women in that area. But the Homeland Security Department is proposing to raise the fees twofold.

These are the most vulnerable that come to our country. Many of them come to our country as the Statue of Liberty has said, give us your poor, your helpless and your persecuted.

I would ask the question that we would prefer, and I think the most important aspect of temporary protective status, it gives those who are fleeing persecution a legal status to stay in this country until the crisis has passed in their particular country.

Many of those who receive temporary protective status actually leave, and so it is not a question that they are seeking, if you will, permanent immigration status. It is a temporary status.

For those who may ultimately seek a permanent status, we already have sizeable fees for securing legal permanent residence; sizeable fees for individuals who want to use certain visas, such as family reunification; sizeable fees for workforce visas and J–1 visas and nurses visas. Those individuals are able and working to provide or to pay those kinds of fees.

We also have sizeable fees for citizenship, and I think that is right. The citizenship of the United States pays for the services that are rendered, and likewise, in a bill that I am offering, the Save America Comprehensive Immigration Reform Act, those same fees will help protect American jobs and provide Americans with training.

But the temporary protective status is for the vulnerable, and I believe that this amendment will ask the GAO to study the negative impact that it will make on those seeking temporary protective status and give guidance to the Homeland Security Department so that they can reconsider the suggestion that is being made to double the fees on these most vulnerable that are here in this country.

I would ask my colleagues to consider the vulnerability of these individuals and to support an amendment that asks the question why we must put a premium fee on those who are barely here and surviving because they had to flee to survive and to save their lives. I know that we are a just country and that we can do better, and I would ask my colleagues to support this amendment.

Madam Chairman, I rise with the distinguished Ranking Member of the Judiciary Committee from Michigan to offer Amendment No. 82, the ''Jackson Lee/Conyers GAO Study Amendment.'' To summarize this amendment, it would instruct the General Accounting Office (GAO) to conduct a study examining the impact of an increase in Temporary Protected Status (TPS) application fees on the nationals of countries for which TPS is available and the differential in cost between the current statutory fee and the cost-based fee proposed by Customs and Immigration Services (CIS). In addition, this amendment instructs GAG to conduct a study on the premium processing fee system and its possible application to individuals and families.

To further simplify the operative provisions of this amendment, it has two prongs: Prong One relates to the United States Citizenship and Immigration Services bureau (USCIS) fee increase for processIng applications for Temporary Protected Status (TPS) relief. USCIS would like to remove the cap limiting the amount of fees that can be collected for processing an application for TPS. The application fee for TPS has been fixed by statute at $50 since 1990. USCIS would like to raise the fee according to processing costs and inflation, following the existing regulatory process. USCIS argues that the $50 limit is inconsistent with the fee structure for other immigration benefit applications that are based on recovery of full processing costs.

TPS is an immigration category that allows non-citizens of designated countries to remain in the U.S following political strife or natural disasters in their native countries. TPS applicants are eligible for work authorization while their applications are pending. USCIS says that many of them have been working here for years when a disaster strikes their home country and they become eligible for TPS—thus they are able to pay increased fees, or can they seek a waiver for economic hardship. However, many TPS beneficiaries come from impoverished countries and are often in the U.S. visiting relatives or are here for other brief stays. It may not be the best policy to raise fees for TPS beneficiaries when they have no practical alternative but to remain in the United States.

If the fees were raised to the ridiculously high levels that other fees have been raised to over the last several years, DHS would likely wind up fielding many more fee waiver requests than they currently have to field.

Prong two relates to the USCIS proposal to expand Premium Processing Fees to individuals. USCIS wants to expand the authority of the Secretary of Homeland Security to establish premium processing fees for non-employment based immigration petitions and applications. Currently, premium processing is only available to employers seeking to hire an immigrant: It allows employers to pay a $1,000 fee to expedite employer-based immigration. Under the new amendment, any immigrant would be able to expedite their immigration paperwork if they could provide the additional $1,000 fee. Funds collected from this fee would be deposited in the Immigration Examinations Fee Account, with other adjudication fees, to support USCIS customer service.

USCIS says that they expect 10 million expedited applications in the first year and they requested funds to hire additional adjudicators to assist with this work.

Many immigration experts report serious problems with the use of premium fees in the employment-based context. They claim that

other employment-based applications and petitions are slowed down because DHS places more of its resources into adjudicating the premium requests.

Even if the premium fee was working well in the employment-based arena, it may not apply well in the family-based arena. Businesses can pass their costs on to consumers (or even compensate for those fees in the salary and benefits that they pay the workers), and so they do not necessarily care so much about the increased costs. Family-based applicants often cannot pass on increased costs to another payer.

This amendment calls on the GAO to examine the use of the premium fee in the employment-based arena before the practice is extended into the family-based arena. The study will look at the efficacy of the practice in the employment-based arena and whether it has slowed down adjudications for those who do not pay the premium. It also will look at the differences between family-based applicants and employment-based applicants and how their differences might result in different experiences.

The GAO should also study the proposal to exempt DHS from the Administrative Procedures Act (APA) and examine the questionable suggestion of tying application fees.

Madam Chairman, I ask that my colleagues support Mr. CONYERS and me on this amendment.

Madam Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Does anyone rise in opposition to the gentlewoman's amendment? The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Madam Chairman, I ask my colleagues to support the amendment, and I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman, I rise in support of the Jackson Lee/Conyers amendment to H.R. 1817, which would direct the Government Accountability Office (GAO) to conduct a study of two Administration proposals to increase fees paid by applicants and petitioners for immigration services.

The administration's fiscal year 2006 budget submission proposed that Congress enact legislation to authorize the United States Citizenship and Immigration Services (USCIS) component of the Department of Homeland Security to increase the fee paid by applicants for Temporary Protected Status (TPS) above the statutory limit of $50.

The administration also has proposed that Congress enact legislation to extend a provision that permits USCIS to charge an extra fee for providing faster services to some employment-based immigration applicants and petitioners. The administration wants Congress to extend this program so that the extra fee can also be charged to family-based applicants and petitioners, as well.

The Jackson Lee/Conyers amendment would require that the Government Accountability Office conduct studies of each of these proposals so that Congress can have an opportunity to assess their consequences and impact before acting.

TPS Fee—When Congress enacted the TPS statute in 1990, it had the option of permitting the then-Immigration and Naturalization Service (INS) to set the fee at whatever level was necessary in order to pay for the cost of adjudicating an applicant's application. Instead, in recognition of the special circumstances faced by TPS beneficiaries, Congress opted to cap the TPS fee at $50.

By statutory definition, Mr. Chairman, TPS beneficiaries come from countries where there has been a natural disaster or an ongoing armed conflict and the foreign state is unable to handle their return. While it is certainly true that TPS applicants can get work authorization pending their requests, they would first have to pay the fee in order to be considered for work authorization and TPS status. Many TPS beneficiaries, Mr. Chairman, come from impoverished countries and are often in the U.S. visiting relatives or are here for other brief stays. It may not be the best policy to raising fees for TPS beneficiaries when they have no practical alternative but to remain in the United States.

If the fees for TPS are raised to the outrageous levels that other fees have been raised to in recent years, it could result in two unacceptable consequences. It could either drive would-be beneficiaries underground because they cannot afford to pay the fee. Or it could result in an exponential increase in requests for fee waivers, an outcome that would slow down adjudications for all other applications or immigration benefits. My amendment request that the GAO examine these potential consequences.

Premium Service Fee—Nearly five years ago, Congress enacted legislation giving the Administration the authority to charge a $1,000 premium fee for businesses that wish to expedite the adjudication of their employment-based immigration applications and petitions. The Administration has asked Congress to give it the authority to charge a similar fee to family-based applicants and petitions.

The accounts are mixed, Mr. Chairman, on how well the premium service fee for employment-based applications and petitions has worked. We have heard from some, for instance, that implementation of this diversion has resulted in a slowing down of adjudications for those businesses who decline to pay the extra $1,000. At a minimum, an impartial body should study how the premium service program is working in the business arena before extending it to family-based applications and petitions.

Moreover, Mr. Speaker, there are vast differences between the resources available to employment-based and family-based petitioners and applicants. Businesses often can pass on the costs of a premium fee to their customers or adjust the wages and benefits of the prospective employee to recover the extra cost. These options are not available to families, on the other hand.

If reports are true that implementation of the program in the employment arena has slowed down adjudications for those businesses that decline to pay the fee, expansion of the program to the family-based arena could have disastrous, unintended consequences for those families that cannot afford to pay an additional $1,000 for each application or petitions.

Conclusion—Mr. Chairman, the studies and reports that my amendment would mandate do not seek to prejudice the question of whether the administration should be given the new fee authorities that it has requested. Instead, my amendment would see the advice of impartial experts at the Government Accountability Office before Congress acts. I urge the adoption of this amendment.

□ 1545

The Acting CHAIRMAN (Mrs. CAPITO). The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 18 printed in part B of House Report 109–84.

AMENDMENT NO. 18 OFFERED BY MR. NORWOOD

Mr. NORWOOD. Madam Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 18 offered by Mr. NORWOOD:

Page 79, after line 6, insert the following (and amend the table of contents accordingly):

SEC. 509. FEDERAL AFFIRMATION OF ASSISTANCE IN IMMIGRATION LAW ENFORCEMENT BY STATES AND POLITICAL SUBDIVISIONS.

Notwithstanding any other provision of law and reaffirming the existing general authority, law enforcement personnel of a State or a political subdivision of a State are fully authorized to apprehend, detain, or remove aliens in the United States (including the transportation of such aliens across State lines to detention centers), for the purposes of assisting in the enforcement of the immigration laws of the United States in the course of carrying out routine duties. This State authority has never been displaced or preempted by the Congress.

SEC. 510. TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL IN ENFORCEMENT OF IMMIGRATION LAWS.

(a) TRAINING AND POCKET GUIDE.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall establish—

(A) a training manual for law enforcement personnel of a State or political subdivision of a State to train such personnel in the investigation, identification, apprehension, arrest, detention, and transfer to Federal custody of aliens in the United States (including the transportation of such aliens across State lines to detention centers and identification of fraudulent documents); and

(B) an immigration enforcement pocket guide for law enforcement personnel of a State or political subdivision of a State to provide a quick reference for such personnel in the course of duty.

(2) AVAILABILITY.—The training manual and pocket guide established in accordance with paragraph (1) shall be made available to all State and local law enforcement personnel.

(3) APPLICABILITY.—Nothing in this subsection shall be construed to require State or local law enforcement personnel to carry the training manual or pocket guide established in accordance with paragraph (1) with them while on duty.

(4) COSTS.—The Department of Homeland Security shall be responsible for any costs incurred in establishing the training manual and pocket guide under this subsection.

(b) TRAINING FLEXIBILITY.—

(1) IN GENERAL.—The Department of Homeland Security shall make training of State and local law enforcement officers available

through as many means as possible, including residential training at Federal facilities, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and videotape, or the digital video display (DVD) of a training course or courses.

(2) FEDERAL PERSONNEL TRAINING.—The training of State and local law enforcement personnel under this section shall not displace or otherwise adversely affect the training of Federal personnel.

(c) CLARIFICATION.—Nothing in this Act or any other provision of law shall be construed as making any immigration-related training a requirement for, or prerequisite to, any State or local law enforcement officer exercising that officer's inherent authority to assist in the apprehension, arrest, detention, or transfer to Federal custody illegal aliens during the normal course of carrying out their law enforcement duties.

(d) TRAINING LIMITATION.—Section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) is amended—

(1) by striking 'Attorney General' each place that term appears and inserting ''Secretary of Homeland Security''; and

(2) in paragraph (2), by adding at the end the following: ''Such training shall not exceed 14 days or 80 hours, whichever is longer.''.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Georgia (Mr. NORWOOD) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Georgia (Mr. NORWOOD).

REQUEST FOR MODIFICATION TO AMENDMENT NO. 18 OFFERED BY MR. NORWOOD

Mr. NORWOOD. Madam Chairman, I ask unanimous consent to modify my amendment.

The Acting CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification offered by Mr. NORWOOD to Amendment No. 18 printed in H. Rept. No. 109–84:

On page 1 of the amendment, strike out ''or remove'' in line 7.

The Acting CHAIRMAN. Is there objection to the modification offered by the gentleman from Georgia?

Mr. THOMPSON of Mississippi. Reserving the right to object, Madam Chairman, I would just say to my colleague that we have not been made aware of this amendment, and if for no other reason than we have not seen it.

Mr. NORWOOD. Madam Chairman, will the gentleman yield?

Mr. THOMPSON of Mississippi. I yield to the gentleman from Georgia.

Mr. NORWOOD. Madam Chairman, I actually did not know who to come to talk to because we did not know who would be leading against this amendment.

If I may, it is a very, very simple drafting error in the bill on line 7 where we are saying that law enforcement personnel of a State or political subdivision of a State are fully authorized to apprehend and detain. Then it goes on to say ''or remove.'' ''Or remove'' should not have been in there.

And so we are just asking unanimous consent at this point to take that out and it will help the bill, and we are going to get it out somewhere anyway.

Mr. THOMPSON of Mississippi. Reclaiming my time, Madam Chairman, I object to the change.

The Acting CHAIRMAN. Objection is heard.

Mr. NORWOOD. Madam Chairman, the Norwood amendment would definitely clarify the existing authority, existing authority of State and local law enforcement personnel in assisting in the apprehension, detention, and transport of illegal aliens in the routine course of their daily duties. This last phrase, ''in the routine course of duty,'' is critical because the language ensures that law enforcement has certainty when they come in contact with illegal aliens that are breaking our laws.

My amendment also would require DHS to establish a training manual and pocket guide for law enforcement and set forth simple guidelines for making training available.

Madam Chairman, I need to make this perfectly clear. This authority for State and local law enforcement already exists, though there is some confusion. But law enforcement officers and agencies need some assurance from us that they can take appropriate action with authority when the laws are broken. Any confusion about what to do when law enforcement meets with lawbreakers needs to end.

Some will argue law enforcement does not have adequate resources. That is clearly just not the case. We passed yesterday over $4.5 billion for homeland security, including $690 million for custody management, funds to dramatically increase detention bed space, $88 million for the Institutional Removal Program, there is $211 million for transportation and removal of undocumented aliens, and a good amendment today authorizes another $40 million to help willing States and local law enforcement. There is also $6 billion in the pipeline for first responders, and many of them are from law enforcement.

Imagine if a State or local law enforcement did not enforce Federal drug laws, or if a highway patrolman was confused about the speed limits on Federal interstates. Would Congress allow States and local law enforcement to not enforce Federal laws on bank robbers or kidnappings or fraud? In the wake of the 9/11 terror, porous borders are a major security concern.

Madam Chairman, I sponsored a bill with nearly identical language last Congress, so this is not just thought up today. It was endorsed by the National Sheriffs Association, the Law Enforcement Alliance of America, the Southern States Police Benevolent Association, and the 9/11 Families For a Secure America.

In addition, endorsements came from chiefs of police in Illinois, Iowa, Georgia, Indiana; and sheriffs from a slew of States endorsed similar language previously, including California, Michigan, Tennessee, North Carolina, Florida, Ohio, Texas, Washington, South Carolina, Oklahoma, Oregon, and in nearly a dozen more.

Colleagues, the only area of law that State and local law enforcement are not enforcing because they are unsure about what can be done is the immigration law. That should change. It must change. And this is the right time and the right bill to correct this critical matter.

Madam Chairman, I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Madam Chairman, I rise in opposition to this amendment, and I yield myself such time as I may consume.

Madam Chairman, I encourage Members to vote ''no'' on the Norwood amendment. The Norwood amendment seeks to clarify the inherent authority of State and local law enforcement to apprehend, detain, remove, and transport illegal aliens in the routine course of duty. That is not what it does.

State and local police already have authority to report criminals who are foreign nationals to the Department of Homeland Security and to assist the Federal Government in criminal investigations. But current law does not allow law enforcement to pick up immigrants and deport them unilaterally. That is essentially what this amendment allows.

Do you want to give a local law enforcement officer the authority to remove people who they may suspect are in this country illegally; or would you prefer to have the Department of Homeland Security do that? Section 287(g) of INA, which provides for local law enforcement to enter into agreements with ICE, does not allow local law enforcement to remove an alien.

This amendment is also frightening because it allows a local police officer who receives no training at all on immigration law to deport someone. How does this police officer know that it is someone who should be deported? What documents should he ask for? What law has he violated?

This is a terrible amendment, Madam Chairman. Countless State and local police agencies have expressed concern about undermining public safety when ordinary immigrants start seeing them as agents of the Federal immigration service. We have comments from the chief of police in Nashville; chief of police in Hamtramck, Michigan; the sheriff and assistant sheriff in Orange County; along with Chief William Finney of the St. Paul Police Department, who all have expressed real concern about the apprehension, detaining, and deportation of illegal immigrants.

Instead of focusing on training State and locals to do the job of our fellow law enforcement officers, we need to do more to train and provide Federal law enforcement with the resources it needs to fully carry out the responsibilities of the Department to enforce immigration and Customs violations.

DHS already faces challenges in cross-training its own personnel and

integrating the various components into a cohesive unit and, thus, would face challenges in developing a cross-training manual for State and local law enforcement personnel.

Madam Chairman, this is why I am requesting that Members vote ''no'' on this amendment.

Madam Chairman, I reserve the balance of my time.

Mr. NORWOOD. Madam Chairman, I yield myself 30 seconds and would point out there is no intention in this bill for local law enforcement to be able to deport anybody. In fact, if you had not objected to our amendment, that would have been clarified easily in this bill. And at the end of the day, that is simply not going to be the case.

Also, this bill is asking for training to help local law enforcement. I would simply say to my colleague that if he thinks local law enforcement ought not to help with this law because they do not know what they are doing, then maybe we ought to ask them not to help with any drug enforcement law because they do not know what they are doing. We are in that every day helping them.

Madam Chairman, I yield 1 minute to the gentleman from Georgia (Mr. WESTMORELAND).

Mr. WESTMORELAND. Madam Chairman, I thank my colleague from Georgia for yielding me this time to talk about an issue that is extremely pressing to the citizens of the 8th district, and I rise in support of the Norwood amendment.

Illegal immigration is a difficult issue, but it is one that Congress must address and address it now. We have seen the ineffectiveness of border security and how the addition of more eyes can make a difference. There are now more ropes in the net helping stop our porous borders.

During my most recent time in my district, nearly all the questions I received related to the issues of immigration. It is extremely important. Right now it does not make sense to prevent law enforcement officers from protecting the people of the United States. There are about 700,000 State and local police officers, compared with only about 2,000 Immigration and Customs enforcement officers.

Our ICE agents are wonderful, but simply do not have the physical ability to be in every place to work on enforcement all throughout the interior of our country. In contrast, our police officers encounter illegal immigrants every day, whether it be through a traffic stop or serving a warrant. It does not make sense to stop them from helping enforce our immigration laws.

This amendment takes a baby step toward the goal of better interior enforcement by clarifying the legal authority of local officers and giving them some real training on the issue. It simply does not make sense for us to ignore the eyes and ears of hundreds of thousands of local officers.

Madam Chairman, I urge the adoption of the Norwood amendment.

Mr. THOMPSON of Mississippi. Madam Chairman, I yield myself such time as I may consume.

As I indicated earlier, Madam Chairman, the gentleman sought to clarify his amendment without providing us with the opportunity to see it and, for that reason, we objected. But even with the clarification, it still would have been problematic for our side. So for that reason, Madam Chairman, I continue to object and to oppose the amendment.

Madam Chairman, I reserve the balance of my time.

Mr. NORWOOD. Madam Chairman, I yield myself 15 seconds just to remind the gentleman that if there are chiefs of police or State patrols in any particular State that do not want to be bothered by helping their Nation rid itself of terrorists, this is all voluntary. The gentleman can write them back and say we have passed a law, but you do not have to be involved.

Madam Chairman, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Madam Chairman, I thank the gentleman for yielding me this time. I rise in support of his amendment. I am a cosponsor of his legislation, and very proud to be. The gentleman has a commonsense solution to help us deal with the problem of illegal immigration.

In my area, as in other areas of the United States, we were built on immigration. We are not opposed to immigration. Our concern here is the enforcement of our laws. Today, many people arrive illegally and the Immigration and Naturalization Service estimated that in January of 2000 there were 7 million illegal aliens living in the United States, a number that is estimated to be growing by a half million a year.

Included in this total are more than 300,000 criminal aliens living in the United States. More importantly in that estimate, about 78,000 of them are from countries that are of special concern to us in the war on terror.

□ 1600

With only 2,000 interior immigration enforcement officers working in the United States, we need all of the help we can get to enforce our immigration and criminal laws. This problem became very clear in my district and a story that is common around the country. During a routine traffic stop, it was discovered there were a number of illegal aliens traveling across the State. When the local police called the local immigration office inquiring what they should do, they were told to release them. That is right, law enforcement, knowing these people were illegal aliens, were instructed to release them. That is common, unfortunately, because our local law enforcement has not gotten the assistance to help enforce immigration laws.

This incident builds upon a number of highly publicized cases where illegal immigrants were released from custody only to commit serious, heinous crimes such as rape and murder, further complicating the job of local law enforcement.

The Norwood amendment is a commonsense and carefully crafted solution to this problem. All we ask is when these types of incidents occur, we can address them and we will make a change and quit undermining our laws. This amendment restores sanity to our law, some sense in helping to address the shortfall of interior immigration enforcement by having cooperation of law enforcement at all levels.

Mr. THOMPSON of Mississippi. Madam Chairman, I yield 2½ minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Madam Chairman, let me attribute good intentions to the gentleman from Georgia (Mr. NORWOOD) because I think the gentleman's amendment is grounded in frustration, but it is the wrong way to go.

We cannot allowed our State officials to be burdened by Federal responsibilities and authority as it relates to immigration responsibilities. This amendment has constitutional failings and is weak, if you will, or is weakened by the 10th amendment which clearly says certain items are left to the States and by interpretation certain responsibilities are left to the Federal Government. This amendment includes a responsibility to deport aliens. That is almost impossible for local law enforcement to be responsible for.

Secondarily, the responsibilities of local law enforcement engaging and apprehending undocumented immigrants or others that they might perceive to be such puts on them the responsibilities of further housing these individuals without funding. The $40 million that was offered just a few amendments back is not sufficient for all of the potential detainees that will be in the Nation's local and State jails.

This is a good-intentioned amendment but it is bad law and it cannot be implemented. I ask my colleagues to recognize the fact that again this will damper public safety. I would much rather local law enforcement be looking for the kidnapped child or the child that may be subjected to child abuse or child violence because of some tragedy that has happened in a local community. We have seen a wave of child kidnappings and a number of lives lost because of child predators.

There are so many issues that local law enforcement must engage in, this puts an unfunded burden on their particular obligations.

In addition, Madam Chairman, beyond this question of irresponsibility, this ends or it puts a block, if you will, to local law enforcement solving problems and crimes in the community. In our communities, all of the folk that live there are the neighbors. The neighbors have information. They may not be documented or they may be documented, but crime is not a respecter of

citizenship status. Local law enforcement's responsibility is bringing down the crime where they live, and no one wants to hear ''I could not get information because I could not talk to the immigrant community.''

Unfortunately, this amendment is something that I believe is blocked by the Constitution and the 10th amendment, and should be defeated.

Madam Chairman, I rise in opposition to the amendment designated as No. 59, offered by the gentleman from Georgia. The gentleman, in 2003, introduced the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671), and a companion measure was introduced in the other body entitled ''the Homeland Security Enhancement Act (S. 1906).'' These bills require police to enforce Federal immigration laws, or lose certain Federal funds. If this amendment, based on these bills, is enacted, it would put a muzzle on immigrant crime victims and witnesses, trading their safety for fear, at the expense of everyone who lives near, works with, and is related to the individuals targeted under this legislation.

THE PROPOSAL WOULD JEOPARDIZE PUBLIC SAFETY

The Norwood amendment would strike a direct blow at the efforts of police to win the trust and confidence of the communities they serve. If police become immigration agents, word will spread like wildfire among newcomers that any contact with police could mean deportation for themselves or their family members. Immigrants will decline to report crimes or suspicious activity, and criminals will see them as easy prey, making our streets less safe as a result. Experience shows that this fear will extend not only to contact with police, but also to the fire department, hospitals, and the public school system.

THE PROPOSAL WOULD UNDERMINE NATIONAL SECURITY

Security experts and law enforcement agree that good intelligence and strong relationships are the keys to keeping our Nation and our streets safe. Under Amendment No. 59, foreign nationals who might otherwise be helpful to security investigations will be reluctant to come forward, for fear of immigration consequences. If immigrant communities are alienated rather than embraced, local law enforcement loses important relationships that can lead to information they might not otherwise have access to.

THE NORWOOD AMENDMENT WOULD WEAKEN AN IMPORTANT CRIMINAL DATABASE

Law enforcement agencies now rely upon the FBI's National Crime Information Center (NCIC) database to give them timely and accurate information on criminals and dangerous people. This legislation would undermine the usefulness of the NCIC by loading it with information about millions of people with minor immigration violations. Poor data management at the former Immigration and Naturalization Service (INS) has resulted in numerous inaccurate records, further complicating matters for police who rely on the integrity of the NCIC. Even if the data was correct upon entry, case statuses often change and would have to somehow be updated in the FBI's database. This misguided proposal would lead to many false ''hits'' and unlawful detentions and arrests, wasting precious law enforcement resources.

AMENDMENT NO. 59 PURPORTS BUT IN EFFECT WILL NOT OPERATE TO APPREHEND CRIMINALS

Proponents of this amendment would say that it is necessary to help police deal with the ''criminal alien crisis.'' They ignore the fact that police already have the authority to arrest criminals, both in enforcing State or local laws and assisting the Federal Government. It is absurd to suggest that foreign nationals are somehow immune from our criminal laws unless this legislation passes, or that police are unable to detain criminals who are also immigration law violators.

Police also help the Federal Government deport criminals who are removable because of their offenses. Those areas of the country that have policies ensuring the confidentiality of crime victims' and witnesses' immigration status are also those who call the Federal Government most often to check the immigration status of crime perpetrators. These are often areas with large immigrant populations, so they understand the most effective policing strategies for these communities. They distinguish between enforcing criminal laws and enforcing civil immigration laws—a mandate best left to the Federal agencies who do not also have local crime-fighting responsibilities.

THE NORWOOD AMENDMENT LEAVES POLICE UNEQUIPPED FOR THE JOB

Federal immigration law is even more complex than the U.S. tax code and is constantly changing. Immigration agents undergo 17 weeks of intensive training before they are allowed ''on the beat,'' and they have unfettered access to case history data maintained by the Federal Government that helps them do their jobs. This amendment requires no training of local law enforcement and does not cover the full cost of training for those responsible departments who insist on it.

I have an amendment, Jackson-Lee No. 75, that seeks to require studies by the General Accountability Office (GAO) as to the genesis and degree of border violence at our Nation's borders. Similar to the State and local law enforcement agencies subject to the Norwood amendment, the Minuteman Project volunteers who have patrolled the Arizona border were untrained and lacked official support. Comprehensive training—which costs money, and Federal Government accountability, are required in order to ensure that the job of enforcing immigration law is done properly and in accordance with U.S. Constitutional principles.

THE AMENDMENT WILL IMPOSE NEW BUREAUCRATIC REQUIREMENTS ON UNDER-STAFFED PUBLIC AGENCIES

This amendment will also impose significant new reporting requirements on critically understaffed and under-funded local law enforcement agencies. The responsibilities of State and local police have increased dramatically since the September 11th terrorist attacks, and police simply do not have extra time on their hands to take on what is rightly a Federal duty.

THE AMENDMENT WILL BECOME ANOTHER UNFUNDED MANDATE ON STATES

The amendment would shift what has always been a Federal duty, immigration law enforcement, onto the States. It purports to give some additional resources to police who enforce immigration laws, while imposing monetary penalties on those departments that decline. But if the yearly battles for just a portion of reimbursements owed under the State Criminal Alien Assistance Program (SCAAP) are any indication, very little of the new money will actually make it into the coffers of local police departments. Not only will local governments be stuck footing the bill once again, but they risk loss of critical Federal dollars already earmarked for criminal law enforcement if they refuse to take on these new duties.

The Senate bill on which the amendment is based goes further by removing many of the monetary incentives promised in the House bill and imposing national standards on driver's licenses issued to foreign nationals. Once again, implementing these complicated standards comes with no new money attached, but with the threat of losing Federal highway safety funds for those States who do not comply.

PROVISIONS IN CURRENT LAW EXIST FOR AGENCIES THAT WISH TO HELP ENFORCE IMMIGRATION LAW

For those few State or local police agencies who do want to assist the Federal Government in enforcing immigration laws, a mechanism is available for them to do so. Section 287(g) of the immigration code outlines a process whereby State and local governments can enter into agreements with the Federal Government (MOUs, or memorandums of understanding) that permit them to receive training and enforce Federal immigration laws. MOUs are currently in place in Florida and Alabama.

THE AMENDMENT SKEWS FEDERAL LAW ENFORCEMENT PRIORITIES

When police identify immigration violators, they will have to call the Federal Government to take over. Law enforcement resources at the Federal level are also limited, which is why the Bureau of Immigration and Customs Enforcement (ICE) prioritizes searches for criminals and terrorists over immigrants with civil status violations. Will ICE agents come to collect every undocumented immigrant identified by local police? Amendment No. 59 tries to force them by permitting States and localities to seek funds for every undocumented immigrant the Federal Government fails to pick up. This means ICE has to put the same amount of resources into picking up undocumented workers as suspected terrorists. With 8,000,000 undocumented workers in the United States and an infinitely smaller cohort of foreign-born criminals and terrorists, this is hardly the right prioritization of Department of Homeland Security resources.

MAKING EVERY IMMIGRATION VIOLATION A CRIME HAS ENORMOUS COSTS

Many Federal immigration law violations are currently civil in nature. This amendment would classify all immigration status violations as Federal crimes, dramatically increasing the number of people who could be prosecuted, receive court-appointed attorneys, and end up incarcerated through the Federal criminal justice system. The costs would be enormous, and flooding the criminal system with civil violators would further delay justice for victims of real crimes.

THE AMENDMENT FORGETS THAT YOU CAN'T TELL BY LOOKING WHETHER ONE IS LEGAL OR NOT

There are nearly 11,000,000 naturalized U.S. citizens, and more than 25,000,000 native-born Americans of Latin American and Asian descent. In this free Nation we are not required to carry ''papers'' to prove our citizenship, and few of us do. Because police are not equipped to determine who has violated an immigration law, some will inevitably stop and question people of certain ethnic backgrounds, who speak foreign languages, or who have

accents in English. This ill-conceived amendment essentially encourages race- and ethnicity-based profiling.

AMENDMENT NO. 59 THREATENS CIVIL RIGHTS

Anticipating the likelihood of civil rights lawsuits spawned by this legislation, the bills purport to grant immunity from civil suits for officers who enforce immigration laws. This sends the wrong message if we are serious about eradicating racial profiling from U.S. law enforcement. Ultimately, police departments and localities gambling on this Congressional gesture would find themselves in court anyway, when the anti-civil rights provisions are challenged.

Madam Chairman, clearly, there are far too many areas of contention with this amendment that, if passed, would prove potentially injurious to citizens and aliens alike. For the reasons stated above, I strongly oppose this amendment and urge my colleagues to join me.

Mr. NORWOOD. Madam Chairman, I yield myself 2 minutes.

In response to the last speaker, number one, had the gentlewoman been here earlier, the gentlewoman would have heard about why this is not an unfunded mandate.

Number two, if the gentlewoman believes local law enforcement should not help the Federal Government find terrorists in this Nation, which people who cross our borders illegally they are amongst, I ask the gentlewoman to drop a bill so that local law enforcement does not help the Federal Government in bank robberies and murders and drug enforcement and everything else that local law enforcement helps the Federal Government do.

It is ridiculous to say that the 750,000 local law enforcement people should not be involved in this Nation trying to find some of the people who, for example, committed terror in this country on 9/11.

Yesterday we passed over $4.5 billion for homeland security, including $690 million for custody management, funds to dramatically increase detention bed space, $88 million for an institutional removal program, $211 million for transportation and removal of undocumented aliens, and an earlier amendment today authorized another $40 million to help willing State and local law enforcement. There is also $6 billion in the pipeline for first responders. Many of them are local law enforcement. And this is voluntary. If the City of Houston does not want to play, they do not have to. But the rest of us need our law enforcement people to help us get these terrorists out of this country, and there are somewhere between 10 and 15 million that have come across our borders because we have failed to do anything about it for nonsensical reasons. It is time for this to come to an end.

If Members are for correcting immigration in this country, vote for this. If Members are against immigration corrections and do not think it needs reform and want an open border, vote against it.

Madam Chairman, I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Madam Chairman, I yield myself such time as I may consume.

I would like to say to my colleague every immigrant is not a terrorist. I would assume that was an error in the gentleman's comment. Clearly we have to be very careful. That is a Federal responsibility. What we are doing is passing that responsibility to State and local law enforcement and not funding the Department that ought to be having the responsibility for immigration.

Madam Chairman, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON–Lee).

Ms. JACKSON-LEE of Texas. Madam Chairman, I thank the ranking member, and I have to associate myself with the gentleman's argument.

More importantly the gentleman from Georgia (Mr. NORWOOD) has made, if you will, my very point. Although we disagree, the point is not ridiculous. What we are saying is that he is suggesting that law enforcement massively go to the border and begin to arrest and deport individuals they perceive to be illegal aliens. There lies my angst and opposition to this massively confusing amendment.

The gentleman has in his amendment that local law enforcement, constables and sheriffs, will be responsible for deporting aliens. They do not even have the Federal jurisdiction to do so. By the way, deportation requires Federal intervention because there are proceedings which you have to go before. Unfortunately, we have short changed that side of the formula.

This is an unworkable amendment. It violates the 10th amendment of the Constitution. It violates the idea of protecting our national security. I ask my colleagues to defeat this amendment and help us do real immigration reform through the Federal Government.

Mr. NORWOOD. Madam Chairman, I yield myself 15 seconds, and say just because you say something is so does not mean it is so. This is a voluntary bill in which nobody is massing anywhere, nor does it imply that anywhere in this bill. It is totally voluntary, and local law enforcement are asked to work in line of duty.

Madam Chairman, I yield the balance of my time to the gentleman from California (Mr. COX) to close the debate for this side.

Mr. COX. Madam Chairman, I think we need to return to the amendment that is before us. There has been a lot of heat and light generated in this debate, but the amendment itself is exceptionally simple.

It begins from the fact that current law provides for the training of State and local law enforcement officials to enforce Federal immigration laws. That is a voluntary program. There is no unfunded mandate in current law because there is no mandate. It is completely voluntary, and only those State and local law enforcement officials, those first responders who are seeking to partner with the Department of Homeland Security in obtaining this Federal training to enforce immigration laws, actually do so.

Second, in an amendment that was adopted earlier by voice vote, we provided $40 million in Federal funding to reimburse any costs incurred by State and local volunteers, that is State and local governments who volunteer for this training, in obtaining the training. So it is not unfunded either. It is a funded, voluntary program.

Lastly, what this amendment adds to existing law is simply to provide a training guide for this training that already exists and training flexibility to make sure that it meets the needs of State and local law enforcement officers.

The last thing it does is it corrects existing law, section 287(g) of the INA to substitute ''the Secretary of Homeland Security'' for the words ''Attorney General.'' This is something that we did in the technical corrections bill that was unanimously passed by the Select Committee on Homeland Security in the last Congress.

Mr. THOMPSON of Mississippi. Madam Chairman, I yield myself the balance of my time.

This amendment, although well intended, crosses the line from my standpoint because it moves us away from a Federal responsibility to a State responsibility. This amendment tries to clarify the existing authority of State and local law enforcement personnel to apprehend, detain, remove and transport illegal aliens in the routine course of duty.

Additionally, this amendment requires DHS to establish a training manual on this matter and set forth simple guidelines for making that training available. State and local police already authorize and train to notify Federal law enforcement officials, are already highly qualified, and are fully trained to identify foreign nationals in custody.

Additionally, training in immigration law is not a simple task. A manual is simply not sufficient to train officers in the complexity of immigration law.

For example, DHS already faces challenges in cross-training its personnel and integrating the various components into a cohesive unit; and, thus, would face challenges in developing a cross-training manual for State and local law enforcement personnel.

So for these reasons, I am in opposition to the amendment.

Mr. NORWOOD. Madam Chairman, will the gentleman yield?

Mr. THOMPSON of Mississippi. I yield to the gentleman from Georgia.

Mr. NORWOOD. Madam Chairman, I simply ask the gentleman to reconsider our unanimous consent to remove two words that would, I think, make an amendment that is going to pass better in your mind.

Mr. THOMPSON of Mississippi. I do not consent.

Mr. FARR. Madam Chairman, I rise today in opposition to this amendment offered by Mr.

NORWOOD. This amendment would essentially force local law enforcement agencies to enforce federal immigration laws.

The enactment of this amendment would strain already scarce state and local resources by creating an unfunded mandate, in addition to dividing communities around the country.

Coercing state and local police into becoming federal immigration agents does not benefit anyone involved. In addition to their other duties, local law enforcement officials and local and state administrators would be bogged down by determining criminal's immigration status. Community members will be hesitant to cooperate with local law enforcement for fear of ramifications against them and their family.

According to the Department of Justice statistics, violent and property crime rates have been falling steadily for at least the last 10 years. I have no doubt that this is largely due to community policing. This amendment would take away that idea. Our communities are better served by a police force that focuses on robbers, murderers and terrorists, as opposed to immigration status.

I do not support illegal immigration and believe that anyone who enters the U.S. in violation of U.S. immigration laws should be penalized. But that doesn't mean police who should be arresting drug dealers and breaking up gang activities should now be federally mandated to track down illegal aliens.

To me, this amendment is another example of the desperate need for an honest and comprehensive debate on immigration law in this country. Piecemeal ideas, such as this one, are detrimental to our communities at a microlevel. Our country is in need of an immigration policy that accounts for the fears 9/11 instilled, in addition to the hope that immigrants bring to our nation.

This amendment is ineffective and unnecessary policy and I urge my colleagues to cast a "no" vote.

Mr. THOMPSON of Mississippi. Madam Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mrs. CAPITO). The question is on the amendment offered by the gentleman from Georgia (Mr. NORWOOD).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. THOMPSON of Mississippi. Madam Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Georgia (Mr. NORWOOD) will be postponed.

It is now in order to consider amendment No. 19 printed in part B of House Report 109–84.

There is no designee for amendment No. 19.

It is now in order to consider amendment No. 20 printed in part B of House Report 109–84.

□ 1615

AMENDMENT NO. 20 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Madam Chairman, I offer an amendment.

The Acting CHAIRMAN (Mrs. CAPITO). The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 20 offered by Ms. JACKSON-LEE of Texas:

Page 82, after line 4, add the following:

SEC. 407. REPORT ON BORDER VIOLENCE.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit a report to the Congress on the number and type of border violence activities that have occurred in the 5-year period preceding such date.

(b) CONTENTS.—The report shall include the following:

(1) The number of such activities that have been documented.

(2) The types of activities involved.

(3) A description of the categories of victims.

(4) The risk of future activities.

(5) A description of the steps the Department is taking, and any plan the Department has formulated, to prevent such activities.

(c) DEFINITION.—For purposes of this section, the term ''border violence activity'' means any activity that—

(1) involves the unlawful use of, or the threat unlawfully to use, physical force with the intent to harm a person or property;

(2) occurs in the United States, not further than 25 miles from a United States border with Mexico or Canada; and

(3) occurs as part of an attempt to deter, retaliate against, or enable the entry of any person into the United States.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentlewoman from Texas (Ms. JACKSON-LEE) and the gentleman from Arizona (Mr. HAYWORTH) each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Madam Chairman, I yield myself such time as I may consume.

Let me describe the simplicity of my amendment. It is simply to ask the Secretary of Homeland Security not later than 6 months after the date of the enactment of this act, the Secretary of Homeland Security shall submit a report to Congress on the number and type of border violence activities that have occurred in the 5-year period preceding such date.

The report would include the number of such activities that have been documented; the types of activities involved; a description of the categories of victims; the risk of future activities; and a description of the steps the Department is taking, and any plan the Department has formulated to prevent such activities.

This is a straightforward amendment that clearly again reaffirms the ongoing theme of the homeland security authorization bill, that the responsibility of homeland security falls in the arms of the Federal Government, and we must not fail the American people.

We have seen citizens take up arms. They have first been in our neighboring State, in Arizona, a broad, desert-like area. There is now an intention for such citizen groups, unauthorized militia, to come into the States of Texas and California, New Mexico and who knows where else this amendment might be.

I am delighted to say that in the Committee on Homeland Security, we do have a consensus at least around the idea that we must understand the issues of border violence. I would like to thank the gentleman from California (Mr. COX) and the gentleman from Mississippi (Mr. THOMPSON) for working with me on the general issue.

I also raise for my colleagues our concern for the northern border and to remind them of the potential tragedy that was, if you will, inhibited or prohibited at the turn of the present century, 2000, when an individual was poised and walked across the northern border in order to do havoc, if you will, in Los Angeles. We know the borders are dangerous, and we want to have the kind of trained professional personnel to ensure the safety of the borders.

But we must also recognize the distinctiveness of the borders. I will use Texas as an example. It is heavily populated. It is a dense area. There is a lot of private land. Thereby, those who are in volunteer efforts may subject themselves to potential violence or incur violence. And so it is important that we have an understanding by the Department of Homeland Security to take charge of that, to understand the variety, if you will, the variety and the types of activities that could possibly happen.

I want to cite for my colleagues the incidences that may occur at the border and particularly from the individual who heads the Minuteman Project, indicated that the Texas border might be far more difficult than they might have expected. There may be a little danger going on. They might have to be a little careful. That is why this study and this report by the Department of Homeland Security is extremely important, the Secretary of Homeland Security. We must work in partnership to be able to protect the violence that may take place at the border.

Madam Chairman, I yield 1 minute to the distinguished gentleman from California (Mr. BERMAN), a senior member of the Committee on the Judiciary.

Mr. BERMAN. Madam Chairman, I thank the gentlewoman for yielding time. The point she raises now brings to mind a point I wanted to make about what is really an unbelievably reckless amendment offered by the gentleman from Georgia (Mr. NORWOOD) regarding empowering local police to detain and remove people based on illegal immigration status without checking or verifying that status with INS or the Federal agencies.

A group of people with no training in this particular effort will have the ability to pick up people, assume, or come to the conclusion that person is not here in legal status and, without checking with the Federal Government or the INS, to deport and remove that person from this country. That person may be an asylee, having a well-founded fear of persecution. The person may

not have the right documents on him but be a naturalized citizen or be here under some kind of temporary visa that he cannot show the police. It will all of a sudden give thousands and thousands of law enforcement officials an ability to do something.

Mr. HAYWORTH. Madam Chairman, I yield 15 seconds to the gentleman from Georgia (Mr. NORWOOD).

Mr. NORWOOD. Madam Chairman, I just want to point out to the ranking member that I started this debate off saying there was a drafting error and we wanted to remove two words: ''or remove.'' Your side would not allow that to be removed. That would have solved the problem. We are going to get it solved even if it is in conference. We are going to get it done despite you, but we gave you the opportunity to do something about it.

Mr. HAYWORTH. Madam Chairman, I yield myself 3¼ minutes.

I rise in strong opposition to the amendment offered by my colleague from Texas. As you heard in her opening remarks, sadly, this amendment is an attempt to discredit worthy, nonviolent volunteers who dedicated their time and their energy to protect our Nation's borders last month. The Minuteman Project, Madam Chairman, is simply an outgrowth of the public's frustration with the Federal Government's failure to secure our borders. Indeed, what the Minutemen did was follow a time-honored tradition of petitioning our government for legitimate redress of grievance.

It is true that in terms of the political landscape, the ACLU and the Government of Mexico protested the group even before the patrol began; but the Minutemen effectively shut down a 20-mile stretch of border without a single credible report of violence committed by those citizen volunteers.

With reference to the notion of a study, Madam Chairman, I would simply say this: the records are intact. I will make them a part of the record right now. Attacks on border patrol agents by alien and drug smugglers are on the rise. In the Tucson sector alone during the first 6 months of this fiscal year, there were reported 132 assaults on agents, 14 more than all of last year. That is in the first 6 months of the fiscal year. Border patrol agents in Arizona are attacked once every 2 days, 64 times in a recent 3-month period.

Six border patrol agents assigned to the Tucson sector have been killed in the line of duty, including a 27-year-old agent fatally shot in June of 1998 near Nogales as he sought to arrest four men hauling marijuana into the United States. When I had occasion to visit with border patrol agents in March, they told me how snipers from the Mexican side of the border will actually shoot border patrol vehicle windshields out if the Mexican snipers deem these vehicles are parked too close to the border.

In 2004, border patrol agents arrested over 650 suspected terrorists. Madam Chairman, let me repeat that. In 2004, border patrol agents arrested over 650 suspected terrorists from countries of national security interest trying to cross our southern border. They expect the number will rise this year. In January of this year, border patrol in the Tucson sector impounded 557 smuggling vehicles, almost 35,000 pounds of marijuana, and 35,704 illegal aliens.

This amendment fails to address the violent attacks on our border patrol agents. It implies that citizens of the United States seeking redress and putting an end to the influx of terrorists and the illegal invasion of this country are wrong. The committees on Homeland Security and the Judiciary oppose this amendment. I urge my colleagues to vote ''no'' on the Jackson-Lee amendment.

Madam Chairman, I yield 1¼ minutes to the gentleman from Virginia (Mr. GOODE).

Mr. GOODE. Madam Chairman, illegal immigration costs this Nation $68 billion per year. That is not million; that is billion. This study changes the focus of the Department of Homeland Security. The Department of Homeland Security needs to be focusing on keeping those illegally in the country out. Citizen groups such as the Minutemen who performed a tremendous neighborhood watch function on our southern borders need to be commended and not slapped by an amendment like this.

Mr. HAYWORTH. Madam Chairman, I yield myself the balance of my time to make this point to my colleagues. I am sure it is not the intent of my colleague from Texas to try and imply that citizens engaged in lawful protest are somehow attempting to inspire violent acts. I know that is not the intent of my colleague. However, that would be the perverse result if this House would support that amendment. This House would then be on record saying that the lawful rights of citizens should be abridged to accommodate illegal acts by noncitizens. That is something this House and this government and the citizens of this Nation will not countenance.

Therefore, because of that, I would ask all my colleagues to join me in opposition to the Jackson-Lee amendment. Vote ''no.''

Ms. JACKSON-LEE of Texas. Madam Chairman, I yield myself such time as I may consume.

The slap in the face is to the hard-working border patrol agents who now are subjected to more jeopardy because volunteers are there, unauthorized, untrained, and the very words of the Minutemen who said that they fear going to Texas because most of the land is privately owned and security becomes a serious issue, said by the leader of the Minutemen. But I am not concerned about the Minutemen. I am concerned about saving lives.

If you want to save lives, vote for the Jackson-Lee amendment that helps to save lives by giving money to the border patrol agents and protecting those volunteers by telling them that they cannot be at the border unsafe, unsecured, untrained. We need the Department of Homeland Security to take charge.

Vote for the Jackson-Lee amendment.

Madam Chairman, I rise to bring a very important issue before the Committee of the Whole by way of an amendment designated as ''Jackson Lee #75.'' I would like to once again thank the distinguished Chairman of the Appropriations Subcommittee on Homeland Security and the Ranking Member for showing their awareness of the issue of border violence as one that rises to a level that requires Federal oversight by agreeing to the amendment that I offered yesterday during House consideration of the appropriations measure, H.R. 2360. I also thank the Chairman of the Committee on Homeland Security for his showing of commitment to addressing this issue by agreeing to collaborate with the Ranking Member from Mississippi and me to craft a bipartisan letter to the Department of Homeland Security to request the collection of data on this matter.

''Jackson Lee #75'' is based on the same premise of that amendment, and given that the appropriations measure has placed spending limitations with respect to national border patrol, it would only be logical and prudent for the authorization measure to emphasize the legislative intent to clearly define, monitor, and control this issue before it becomes an expenditure.

The purpose of this amendment is to put the American people on notice that the ''Minuteman Project'' has proposed to enter multiple borders in order to monitor for illegal border crossings.

American Federation of Government Employees (AFGE) Local No. 3332 and the Association for Residency and Citizenship of America (ARCA) support this important amendment that will prevent impediment to DHS's border security functions as well as the development of negative issues if groups such as the Minutemen attempt to enforce immigration law.

The Minuteman Project has good intentions, but we object to the potential negative social, legal, and economic impact that it can have on the Texas borders. The problem of porousness of the borders is a Federal Government problem. It is a Department of Homeland Security (DHS) problem. DHS has legal jurisdiction over the borders; therefore, it is DHS that must address our border security needs.

An unofficial, untrained, and uncontrolled militia is the wrong answer for a problem that is within the Federal Government's responsibility. If the job is not being done sufficiently, we must look to Congress and the Executive Branch to exercise oversight and to improve performance.

The Minuteman Project is headed for the Texas borders, and its presence will be the recipe for danger, conflict, and increased legal enforcement costs for the Federal Government. The Houston Chronicle reported on May 12 that the controversial group that began as a month-long engagement along the Arizona border plans to enter Texas to operate its hunt for illegal border crossings.

Other media and eyewitnesses have suggested that many of the participants in the Minuteman Project have carried firearms, incited retaliatory measures by gang members,

incited more groups to organize in a similar fashion along other American borders, and created a situation that suggests potential constraints on the individual civil rights of undocumented persons.

The arrival of this group to Texas is an example of what we feared during its initial engagement during the month of April—propagation in other borders. Empowerment of unofficial, untrained militia to carry out the functions of the Federal Government instead of simply improving the staffing situation at the Customs and Border Patrol and the Immigration, Customs, and Enforcement Agencies is a dereliction of duty and a condoning of potential vigilantism.

Several differences between the United States-Mexico border of Arizona and Texas make it potentially injurious for the arrival of the Minutemen. The traffic growth in Texas would dramatically increase the probability of injury or death of aliens or other innocent civilians.

In 2001, U.S. Customs inspectors logged 3,133,619 cargo trucks as they entered Texas border towns from Brownsville to El Paso, up from 1,897,888 commercial vehicles in fiscal year 1995, the year NAFTA took effect. Furthermore, the topography at the Texas borders are more dense and provide more places for people involved in violent disputes to hide. In addition, even as the leader of the Minuteman Project stated to the Houston Chronicle, 'there are serious logistical problems for patrols in Texas. Most of the land along the Texas border is privately owned, and some of it is urbanized, unlike the open land the group monitored in Arizona.'

What we need instead of a situation of potential violence, violation of civil rights, and costs associated with restoring peace and security at the borders is a comprehensive immigration plan like I proposed with the introduction of my legislation, the 'Save America Comprehensive Immigration Act, H.R. 2092.'

Effective, efficient, and safe border security requires properly trained personnel. We need to improve our Customs and Border Patrol and Immigration and Customs Enforcement agencies rather than empower militias to do their job. The enforcement job requires accountability, training in the area of human rights, language skills, non-violent restraint techniques, and weapons handling.

The legal accountability principles such as respondeat superior and vicarious liability do not clearly apply to the Minutemen for injuries or damage that may be sustained by the private properties that abut the Texas borders; the heavy stream of commerce constantly traversing the border; or innocent bystanders who may be in the wrong place at the wrong time.

The Jackson-Lee amendment seeks to prevent liability ''powder kegs'' from propagating nationally.

Madam Chairman, I ask that my colleagues support this amendment.

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Ms. JACKSON-LEE of Texas. Madam Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) will be postponed.

It is now in order to consider amendment No. 21 printed in part B of House Report 109–84.

AMENDMENT NO. 21 OFFERED BY MR. MANZULLO

Mr. MANZULLO. Madam Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 21 offered by Mr. MANZULLO:

At the end of title V, add the following new section:

SEC. 509. BUY AMERICAN REQUIREMENT FOR PROCUREMENTS OF GOODS CONTAINING COMPONENTS.

(a) REQUIREMENT.—Notwithstanding any agreement described in subsection (b), more than 50 percent of the components in any end product procured by the Department of Homeland Security that contains components shall be mined, produced, or manufactured inside the United States.

(b) AGREEMENTS DESCRIBED.—An agreement referred to in subsection (a) is any of the following:

(1) Any reciprocal procurement memorandum of understanding between the United States and a foreign country pursuant to which the Secretary of Homeland Security has prospectively waived the Buy American Act (41 U.S.C. 10a et seq.) for certain products in that country.

(2) Any international agreement to which the United States is a party.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Illinois (Mr. MANZULLO) and the gentleman from Virginia (Mr. TOM DAVIS) each will control 5 minutes.

The Chair recognizes the gentleman from Illinois (Mr. MANZULLO).

Mr. MANZULLO. Madam Chairman, I yield myself such time as I may consume.

My amendment strengthens the Buy American Act and restores the original intent that more than 50 percent of the components in end products purchased by the Department of Homeland Security shall be mined, produced, or manufactured inside the U.S.

The Buy American Act originally passed Congress during the Great Depression. The intent of Congress was that to qualify under the Buy American Act, a company had to have substantially all of a product made, grown, or mined in the U.S. However, regulations implementing the Buy American Act have subsequently redefined ''substantially all'' to mean simply greater than 50 percent.

Yet even that regulation has been weakened even further over the years. The Pentagon has used the public interest exception to waive the Buy American Act to treat the purchase of some foreign goods as if they were made in America. The original intent of the Buy American Act has been undermined by procurement memoranda of understanding among the U.S. and various foreign countries that permit the substitution of foreign components for components mined, produced, or manufactured inside the United States. These are not treaties or trade agreements approved by Congress. These were executive branch agreements not subject to review by Congress.

Thus, the Buy American laws are basically worthless. There are so many holes in that law that it means nothing when a company says they comply with the Buy American Act. The exception, and it is a big one, is that the domestic content requirement does not have to be met if the items are procured from certain designated foreign countries.

The Pentagon has memoranda of understanding with 21 developed countries that waive the Buy American Act because the Defense Department has determined that for these countries complying with the Buy American Act is ''inconsistent with the public interest.''

□ 1630

Basically, a company getting an award from the Pentagon can claim compliance with the Buy American Act without having to actually make anything in the United States as long as the components come from one of those 21 countries. Because the Department of Homeland Security has a very similar mission to the Department of Defense, protecting the territory of the U.S. from every possible enemy attack, we should not allow the DHS to waive the Buy American Act like the Pentagon has done without an affirmative vote by Congress.

The intent of Congress is to maintain the vibrant industrial base so that we may remain the strongest Nation on Earth. Even the founder of modern-day capitalism and free trade, Adam Smith, recognized the need for a nation to be able to depend upon its own industrial and agricultural base and not rely on foreign sources for its defense needs. We cannot maintain our role as global leader on a pure services-based economy.

It is also important to remember that this amendment does not increase the share of the Buy American Act. It simply codifies the content percentage of what is an existing regulation.

Madam Chairman, I urge adoption of this amendment.

Madam Chairman, I reserve the balance of my time.

Mr. TOM DAVIS of Virginia. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, this amendment would radically change the current application of the Buy American Act, and it could place the United States in violation of most international trade agreements in which we are signatories, including the World Trade Organization's Government Procurement Agreement, something, by the way, we are working to get China to sign right now because of some of the restrictions they are putting on their procurement policy; the North American Free Trade Agreement; the U.S.-Israel Free Trade

Agreement; and the U.S.-Australia Free Trade agreement.

This restriction would have a devastating effect on the Department of Homeland Security's ability to buy the most high-tech and sophisticated products at a reasonable price to support our critical anti-terror efforts. We should be able to get the best high-technology goods at the lowest cost for the American taxpayer so that we can fight this war on terrorism in a cost-effective manner.

For instance, this amendment would sweep away the current $175,000 ceiling for the Buy American Act required for the application with the Trade Agreements Act of 1979. This is the basis for our participation in the Government Procurement Agreement.

The restriction would cause Customs and border protection problems in purchasing the best aircraft, the best camera equipment, the best surveillance equipment from the world market to protect our borders. Further, the amendment would interfere with critical research and development agreements we currently have with the United Kingdom. BlackBerrys, something that most Members use and are used widely throughout the government, are a Canadian product. Thirty, 40 percent of its components are made and manufactured in the United States, but they would be subject to restrictions put on by this amendment.

The United States is already challenged to compete in a global marketplace. We do not always have a competitive advantage. But dismantling the regime of free trade agreements that help create and support the vibrant world marketplace in the end only hurts American workers.

Besides violating our trade agreements, this provision will require the Department to pay an artificially high price for products it needs to protect us against terror. Homeland Security dollars are already scarce. We should not be wasting our Homeland Security dollars when U.S. citizens are volunteering their personal time to protect the southern border.

Under this amendment, businesses are required to certify compliance with the Buy American Act, potentially exposing American businesses to civil false claims and other sanctions even if they have made good-faith efforts to comply with the government-unique requirements. In a global marketplace where components are assembled throughout the world, it is often difficult to ascertain what that 50 percent margin is. This creates significant financial and legal burdens for industry, given that more and more information technology so critical for the fight against terror is being sourced in our global economy from around the world.

Some companies have responded to Buy American Act restrictions by establishing costly labor-intensive product-tracking systems that are not needed in their commercial business to ensure that products being sold to the government meet the government-unique requirements. But small businesses in particular often cannot afford to establish special systems for that kind of compliance. So this hurts small businesses trying to sell to the government in a global economy.

Some companies have simply stopped selling certain products in the Federal marketplace, denying us access to some of the latest, most cost-effective products. Further, this decrease in sales is disproportionately devastating to small businesses.

This radical, in my opinion, Buy American Act provision will impose financial and legal burdens on commercial companies that sell to our government. It may well prevent the Department of Homeland Security from obtaining the best technology to protect our Nation.

Again, BlackBerrys would be subject to this, something that most Members and most government workers use, because they are from a Canadian company. This increased restriction on the Department's ability to obtain needed technology from the world market is a Cold War anachronism. Given the Department of Homeland Security's growing reliance on information technology and other advanced products and the current global nature of the industry, the Department's ability to fulfill its critical anti-terror mission will be crippled by this restrictive provision.

I hope that Members have the sense to vote against this, and I urge that we defeat this amendment.

Madam Chairman, I reserve the balance of my time.

Mr. MANZULLO. Madam Chairman, I yield 1 minute to the gentleman from Michigan (Mr. STUPAK).

Mr. STUPAK. Madam Chairman, I thank the gentleman for yielding me this time.

I rise in support of his amendment.

As to the last speaker, let me tell the Members what is going on here. In the Department of Homeland Security, they are not allowed to buy civilian aircraft. What happened just recently was Eurocopter, which is subsidized by the French and German governments, that is a subsidy. That is in violation of the trade agreements, and no one is enforcing it. As a result, in my district Enstrom Helicopter lost a contract to build civilian helicopters for the Department of Homeland Security, and the cost for the French/German conglomerate was like $23 million more; so it is costing the taxpayers more money.

I think we have to make a decision in this Nation. Are we going to continue in these trade agreements that are not enforced? There are other countries that are subsidizing their workers, and we sit here and we develop contracts and say because of this treaty or this agreement, we cannot do it; but yet we do not enforce the provisions of it. And what we are really doing is telling the Department of Homeland Security, at least in the helicopter industry, that we will buy European helicopters as opposed to U.S. helicopters.

We can no longer continue this. Please support the Manzullo amendment.

Mr. TOM DAVIS of Virginia. Madam Chairman, I yield myself such time as I may consume.

Let me just say that what this amendment will require us to do with precious Homeland Security dollars is pay up to 50 percent more for goods that bear the American label and in many cases cost us access to the best high-technology surveillance equipment, lab equipment, equipment and cameras to protect our borders. I just do not think it makes any sense in this environment of a global economy, and I urge its defeat.

Madam Chairman, I yield back the balance of my time.

Mr. MANZULLO. Madam Chairman, I yield myself such time as I may consume.

The gentleman from Virginia (Mr. TOM DAVIS) argues that the best technology is outside the United States. The whole purpose of this amendment is to try to do something about the 3 million manufacturing jobs we have lost in the past several years. This simply says whenever anybody agrees to abide by the Buy American Act, at least buy 50 percent of the content from America. The existing Buy American Act says they have to buy zero. Congress passed a law that says buy everything from America. The Department of Defense and other agencies say that only means 50 percent. Now there is a memorandum of understanding from the White House that says, by the way, if they buy from the 21 countries, they do not even need to meet the 50 percent.

This is very simple. It says if we want to keep technology in the United States, then buy the technology that is here. If a particular item has to be purchased and it is not made in the United States, then the Buy American Act simply does not apply.

This is a commonsense amendment. I am going to be offering it to every single authorization bill that I can, and I would urge Members to vote ''aye'' on this.

The Acting CHAIRMAN (Mrs. CAPITO). All time for debate has expired.

The question is on the amendment offered by the gentleman from Illinois (Mr. MANZULLO).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 22 printed in part B of House Report 109–84.

AMENDMENT NO. 22 OFFERED BY MR. PUTNAM

Mr. PUTNAM. Madam Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 22 offered by Mr. PUTNAM:

At the end of title V, add the following (and conform the table of contents accordingly):

SEC. 509. DISASTER ASSISTANCE FOR FUNERAL EXPENSES.

Section 408(e)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174(e)(1)) is amended by adding at the end the following: ''The President may provide assistance for funeral expenses under this paragraph only if a medical examiner determines that the death was caused by the major disaster.''.

MODIFICATION TO AMENDMENT NO. 22 OFFERED BY MR. PUTNAM

Mr. PUTNAM. Madam Chairman, I ask unanimous consent that the amendment be modified in the form at the desk.

The Acting CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment No. 22 offered by Mr. PUTNAM:

In lieu of the matter proposed to be added by the amendment add the following:

At the end of title V, add the following (and conform the table of contents accordingly):

SEC. 509. DISASTER ASSISTANCE FOR FUNERAL EXPENSES.

Not later than 90 days after the enactment of this Act, the Director of the Federal Emergency Management Agency shall—

(1) develop criteria and guidelines for determining if a death is disaster-related; and

(2) require staff to provide for analysis of each request for funeral expense assistance in order to support approval or disapproval of such assistance.

The Acting CHAIRMAN. Is there objection to the modification offered by the gentleman from Florida?

There was no objection.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Florida (Mr. PUTNAM) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida (Mr. PUTNAM).

Mr. PUTNAM. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I am delighted to be here to talk about what is an important issue for the whole country, but it came to light in the aftermath of the hurricanes in Florida.

Immediately after Hurricanes Charley, Frances, Ivan, and Jeanne ravaged the Sunshine State, with the help of this Congress hurricane disaster relief assistance was provided to help our State recover from those devastating storms. And while many of those who suffered damage are still waiting for FEMA recovery payments, there were a number of questionable payments that have been made as it related to funeral expenses for hurricane-related deaths.

For example, the instance in Pensacola of a recovering alcoholic with cirrhosis of the liver, after Hurricane Ivan blew through town on September 16, the gentleman went on a binge ''due to misery,'' his widow told the Miami Herald. He never fully recovered and died of respiratory failure. His funeral expenses were paid by the American taxpayer.

A gentleman from Palm Bay, Florida, died of lung cancer 6 days before Hurricane Frances made landfall. The gentleman was buried before the hurricane made landfall. His widow said that FEMA damage inspectors came to her home and suggested she might qualify for funeral expenses. She said that she did not think her husband's death was related to Hurricane Frances. She had her husband's funeral paid for by the American taxpayers.

The Inspector General in the Department of Homeland Security with a report that came out today echoed these concerns and called for two specific changes: a change that the Department should develop specific criteria and guidelines for determining if a death is disaster related, and a specific requirement that staff of FEMA provide for an analysis of each request and document the rationale for approval or disapproval of funeral-related assistance. This is an issue that is hugely important to Florida as we try to eliminate waste, fraud, and abuse and allow FEMA's limited resources to go to those who are truly in need.

We had offered a different approach to this as it related to medical examiners. With the work of the gentleman from Pennsylvania (Chairman SHUSTER), we were able to come to a resolution on the appropriate legislative language that solves this issue, and I am grateful to him for his leadership.

Madam Chairman, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. SHUSTER).

Mr. SHUSTER. Madam Chairman, I appreciate the gentleman's working with us to modify language on his amendment. I think all of us know and I know specifically as I travel to Florida to review some of the damage and some of the problems that occurred during those hurricanes and with FEMA coming down there and things they did and did not do, I know firsthand that there are problems and we need to make these types of corrections.

I think the gentleman's amendment, by modifying it, has strengthened the language and put into law not just a process or a regulation by FEMA but these are going to be standards that FEMA is going to need to adhere to when they are determining whom to pay funeral expenses to, those who deserve and those who do not deserve. And we heard of cases, a couple of hundred of them in Florida where there was fraud, abuse, and they got funds to pay for funeral expenses; and I think this language is going to go a long way to making sure that that does not happen, not only in Florida but across this country.

□ 1645

On the subcommittee that I chair, the Subcommittee on Economic Development, Public Buildings and Emergency Management, we are committed to working with my friend, the gentleman from Florida (Mr. PUTNAM), to talking to the FEMA folks and making sure they are reviewing these cases in the past, but also going forward.

So the gentleman has my commitment, and we will sit down and, as I said, talk to the folks from FEMA to see that we clear up this matter.

I thank the gentleman, and I appreciate him working with us.

Mr. PUTNAM. Madam Chairman, I reserve the balance of my time.

The Acting CHAIRMAN (Mrs. CAPITO). Does any Member rise in opposition to this amendment?

Mr. PUTNAM. Madam Chairman, how much time remains?

The Acting CHAIRMAN. The gentleman has 30 seconds remaining.

Mr. PUTNAM. Madam Chairman, I want to just take that remaining time then to thank our delegation chairman, the gentleman from Fort Lauderdale (Mr. SHAW) for his efforts on this, and all of the other related FEMA issues; and thank the gentleman from Pennsylvania (Mr. SHUSTER). This is an important issue for the taxpayers, and it is important to make sure that people who are truly in need are assisted by FEMA and those who are not are not able to game the system. I appreciate the leadership of my colleagues.

Madam Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment, as modified, offered by the gentleman from Florida (Mr. PUTNAM).

The amendment, as modified, was agreed to.

The Acting CHAIRMAN. It is now in order to consider Amendment No. 23 printed in Part B of House report 109–84.

AMENDMENT NO. 23 OFFERED BY MR. SOUDER

Mr. SOUDER. Madam Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 23 offered by Mr. SOUDER:

At the appropriate place in the bill, insert the following:

SEC. _____. EXTENSION OF AUTHORIZATION OF APPROPRIATIONS FOR OFFICE OF COUNTERNARCOTICS ENFORCEMENT AT DEPARTMENT OF HOMELAND SECURITY.

Section 7407(c) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3853) is amended by striking ''2005, there is authorized up to $6,000,000'' and inserting ''2005 or 2006, there is authorized up to $6,000,000 for each such fiscal year''.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Indiana (Mr. SOUDER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Madam Chairman, I yield myself 3 minutes.

Madam Chairman, this is a very simple amendment. It merely extends the authorized appropriation for the Department of Homeland Security Office

of Counternarcotics Enforcement for one year for fiscal year 2006. In other words, it just inserts 2006 after 2005.

This office was created structurally as part of the Intelligence Reform and Terrorism Prevention Act in December of 2004. We realized that in narcotics, almost all the major interdiction agencies, Coast Guard, Border Patrol, and Legacy Customs, are inside Homeland Security. When you are pursuing international terrorists, you are going to pick up a share of narcotics as you control the border as much as we can, and as we move forward we have been picking up narcotics. But it cannot just be an afterthought.

Twenty-four thousand Americans die each year of drugs. We have had basically 3,300 roughly die of international terrorism since 2001 and, in that same time period, nearly 100,000 of narcotics deaths. So we need to stay focused. We need to do both things simultaneously. Furthermore, the terrorists are increasingly funded by narcotics.

The administration has been reluctant to adopt this. It is not a question of whether the individuals at the Department of Homeland Security are committed to counternarcotics; the question is, is there a structure in place that puts somebody at the table to make sure that they never forget that narcotics is part of the Department of Homeland Security's commission and what they are supposed to do. It is not just international terrorism, it is also home terrorism and the narcotics front.

So I appreciate the leadership of the gentleman from Illinois (Speaker HASTERT) and the cooperation of the Senate as we have created this office, and we have $6 million in authorized appropriations. If people followed the Homeland Security appropriations debate yesterday, they see the problem is that this office has all detailees in it. Even the head of this office is a detailee. We need full time, paid employees in this office.

Yesterday, when I withdrew my amendment to set aside this money, it was said that this comes out of the Office of the Secretary. That is the way the Department of Homeland Security would like to make it; but, in fact, our authorizing bill says that $6 million is to be assigned to the Office of Narcotics.

Now, many of us, including me, have detailees. Detailees are wonderful, but detailees come and go. They have multiple missions. The question is if you are really going to have a counternarcotics office, if this administration is going to stay focused on this, there has to be an office with some real staff, not people who come and go out of the office, and especially not a head who has to beg and borrow for detailees, and people who are assigned for short periods who may or may not know the issue, and a head of the office who is not even paid by the Department of Homeland Security.

It shows that this is a continual battle in multiple bills to make sure that narcotics is part of the structural part of the Department of Homeland Security, and that narcoterrorism is part of international terrorism. This amendment merely extends what we have already passed in this House for last year's authorization to the next year's authorization that says that up to $6 million can be spent in this office.

I am looking forward to the commitment from the gentleman from Kentucky (Chairman ROGERS) to make sure some of this money is, in fact, expended.

Madam Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Does any Member rise in opposition to this amendment?

Mr. SOUDER. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I believe this is a noncontroversial amendment. I know the gentleman from Maryland (Mr. CUMMINGS), the ranking member of my subcommittee, has been very supportive of this also. We have worked together in a bipartisan way to make sure that this office is a real office, it has a real voice, it has real money, and I look forward to working with the appropriators to help make this happen.

Madam Chairman, this amendment would simply extend the authorized appropriation for the Department of Homeland Security Office of Counternarcotics Enforcement (OCNE) for fiscal year 2006. The Office was created by Congress in December 2004, as part of the Intelligence Reform and Terrorism Prevention Act (P.L. 108–458). The Office is tasked with oversight of all of DHS' drug interdiction activities, with reporting to Congress on the adequacy and success of those activities, and with facilitating the coordination of those activities. Section 7407(c) of the Intelligence Reform Act authorized up to $6 million of the Department's appropriation for departmental management and operations for fiscal year 2005 to be expended for the Office.

Despite this clear statement of Congressional intent, the President's overall budget, ONDCP's Drug Strategy Report, and ONDCP's Drug Budget summary make no mention of the OCNE. This raises the question of whether the Administration and DHS intend to establish OCNE and drug control as a priority.

The mission of the office remains just as important this year as last year. My amendment would therefore extend the current authorization of appropriations for the Office (contained in Section 7407(c) of the Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108–458) through fiscal year 2006.

Madam Chairman, I believe that if we are going to reauthorize DHS for fiscal year 2006, we should reauthorize the appropriation for this vital DHS component as well. It is my understanding that Chairman COX agrees with me, and is supporting this amendment. I hope that the other members of the House will join me in supporting this amendment, and H.R. 1817.

BACKGROUND ON THE DEPARTMENT OF HOMELAND SECURITY (DHS) OFFICE OF COUNTERNARCOTICS ENFORCEMENT (OCNE)

To assist DHS in meeting its vital counterdrug responsibilities, Congress originally created the Counternarcotics Officer (CNO) position. Unfortunately, the original law did not clearly define how the CNO was to fulfill those duties, nor did it give the CNO adequate status or resources to fulfill them.

In order to correct these problems, Congress passed the 9/11 Commission recommendations legislation in 2004 that replaced the CNO with a new Office of Counternarcotics Enforcement (OCNE).

Responsibilities of the Office of Counternarcotics Enforcement:

The Director of the Office of Counternarcotics Enforcement shall have oversight responsibility for any programs administered by the DHS that coordinate anti-drug activities within the Department or between the Department and other agencies.

The Director of the Office of Counternarcotics Enforcement shall represent the Department on all interagency coordinating committees, task forces, or other bodies intended to foster coordination and cooperation on anti-drug issues.

The Director of the Office of Counternarcotics Enforcement shall send reports to Congress concerning the Department's counternarcotics responsibilities.

The legislation authorized up to $6 million of the Department's management funds to be used for the new Office's budget for fiscal year 2005.

WHY THE OFFICE OF COUNTERNARCOTICS ENFORCEMENT (OCNE) IS NEEDED

A. Connections Between Drugs and Terrorism

The huge profits created by drug trafficking have financed and will continue to finance terrorism throughout the world.

As President Bush noted in December 2001, just a few months after the 9/11 attacks, ''[T]he traffic in drugs finances the work of terror, sustaining terrorists . . . terrorists use drug profits to fund their cells to commit acts of murder.''

Furthermore, as the U.S. steps up its efforts against more legitimate sources of funding, terrorist organizations will increasingly turn to drugs and similar illegal sources. As the 9/11 Commission has noted, the federal government, including DHS, must be able to adapt to these shifting strategies of the terrorists.

B. DHS and Drug Interdiction

Strong DHS action against drug trafficking is vital to our overall efforts to stop the financing of terrorist activities. It was for this reason that Congress specifically provided that the primary mission of the Department included the responsibility to ''monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking'' (6 U.S.C. 111(b)(1)(G))

DHS combines all of our main drug interdiction agencies: the Coast Guard, legacy Customs Service, and the Border Patrol. No other department has so many of the nation's ''ground troops'' who patrol our borders for drugs.

While many divisions of DHS have a vital counternarcotics mission, none of them is exclusively focused on counternarcotics. In a department whose reason for creation is counterterrorism, there is a risk that the anti-drug mission will be neglected.

The Director of the Office of Counternarcotics Enforcement (OCNE) will help keep DHS subdivisions focused on counternarcotics. He is the only official at DHS whose primary duty is counternarcotics.

C. Office of National Drug Control Policy (ONDCP) and OCNE

Despite clear Congressional intent, the President's overall FY 2006 budget, ONDCP's FY 2006 Drug Strategy Report and ONDCP's FY 2005 Drug Budget summary make no mention of the OCNE.

This raises the question of whether the Administration and DHS intend to establish OCNE and drug control as a priority.

WHAT THE SOUDER ''OCNE'' AMMENDMENT DOES

My amendment would extend the current authorization of appropriations for the Officer (contained in Section 7407(c) of the Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108–458) through fiscal year 2006.

Madam Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. SOUDER).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider Amendment No. 24 printed in Part B of House report 109–84.

AMENDMENT NO. 24 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. THOMPSON OF MISSISSIPPI

Mr. THOMPSON of Mississippi. Madam Chairman, I offer an amendment in the nature of a substitute made in order under the rule.

The Acting CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Part B amendment No. 24 in the Nature of a Substitute offered by Mr. THOMPSON of Mississippi:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Complete Homeland Security Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—AUTHORIZATION OF APPROPRIATIONS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Department of Homeland Security $41,036,180,000 for fiscal year 2006.

SEC. 102. DEPARTMENTAL MANAGEMENT AND OPERATIONS.

Of the amount authorized under section 101, there is authorized for departmental management and operations, including management and operations of the Office for State and Local Government Coordination and Preparedness, $6,463,000,000.

SEC. 103. INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

Of the amount authorized under section 101, there is authorized for information analysis and infrastructure protection programs and activities $873,245,000.

SEC. 104. SCIENCE AND TECHNOLOGY.

Of the amount authorized under section 101, there is authorized for science and technology programs and activities $1,827,400,000, of which $418,000,000 shall be appropriated for aviation-security-related research and development, $115,000,000 shall be appropriated for the Man-Portable Air Defense Systems, and $35.4 million will be appropriated for biological countermeasures and agricultural defense.

SEC. 105. SECURITY ENFORCEMENT AND INVESTIGATIONS.

Of the amount authorized under section 101, there is authorized for expenses related to border and transportation security, immigration, and other security and related functions, $28,414,000,000, of which $380,000,000 shall be appropriated for the hiring of 2,000 new border patrol agents.

SEC. 106. EMERGENCY PREPAREDNESS AND RESPONSE.

Of the amount authorized under section 101, there is authorized for emergency preparedness and response programs and activities, $3,258,531,000.

SEC. 107. OFFICE OF THE INSPECTOR GENERAL.

Of the amount authorized under section 101, there is authorized for the Office of the Inspector General, $200,000,000.

TITLE II—9/11 REFORM BILL ACCOUNTABILITY

SEC. 201. REPORT ON BUDGET REQUEST FOR PROGRAMS AUTHORIZED BY PUBLIC LAW 108–458.

(a) EXPLANATION OF HOMELAND SECURITY FUNDING SHORTFALL.—

(1) INITIAL REPORT.—Not later than 30 days after the date of the enactment of this section, the President shall submit to Congress a report that explains each homeland security funding shortfall included in the budget submitted to Congress for fiscal year 2006 under section 1105(a) of title 31, United States Code, including the rationale for requesting less than the authorized level of funding for each such funding shortfall.

(2) ANNUAL REPORTS.—Not later than 15 days after the President submits to Congress the budget for a fiscal year under section 1105(a) of title 31, United States Code, the President shall submit to Congress a report that explains each homeland security funding shortfall included in the budget for the fiscal year, including the rationale for requesting less than the authorized level of funding for each such funding shortfall.

(b) DEFINITION OF HOMELAND SECURITY FUNDING SHORTFALL.—In this section, the term ''homeland security funding shortfall'' means a program authorized by Public Law 108–458 for which the amount of authorization of appropriation for a fiscal year—

(1) is specified under such Act, and the President does not request under such budget the maximum amount authorized by such Act for such fiscal year; or

(2) is not specified under such Act, and the President does not request under such budget an amount sufficient to operate the program as required by such Act.

TITLE III—SECURING OUR ENTIRE BORDER ALL THE TIME, EVERY DAY OF THE WEEK

Subtitle A—Securing Our Land Borders

SEC. 301. LAND BORDER SECURITY STRATEGY.

(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the heads of all other Federal agencies with border-related functions or with facilities or lands on or along the border, shall submit to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) unclassified and classified versions of a unified, comprehensive strategy to secure the land borders of the United States not later than 6 months after the date of the enactment of this Act. The submission should include a description of the actions already taken to implement the strategy.

(b) CONTENTS.—The report shall cover the following areas:

(1) Personnel.

(2) Infrastructure.

(3) Technology.

(4) Coordination of intelligence among agencies.

(5) Legal responsibilities and jurisdictional divisions.

(6) Apprehension.

(7) Budgetary impact.

(8) Flow of commerce and economic impact.

(c) CONSULTATION.—In creating the strategy described in subsection (a), the Federal agencies described in such subsection shall consult private sector organizations and nongovernmental organizations with national security, privacy, agriculture, immigration, customs, transportation, technology, legal, and business expertise.

(d) IMPLEMENTATION.—The Secretary shall implement the strategy not later than 12 months after the date of the enactment of this Act.

(e) EVALUATION.—The Comptroller General of the United States shall track, monitor, and evaluate such strategy to secure our borders to determine its efficacy.

(f) REPORT.—Not later than 15 months after the date of the enactment of this Act, and every year thereafter for the succeeding 5 years, the Comptroller General of the United States shall submit a report to the Congress on the results of the activities undertaken under subsection (a) during the previous year. Each such report shall include an analysis of the degree to which the border security strategy has been effective in securing our borders. Each such report shall include a collection and systematic analysis of data, including workload indicators, related to activities to improve and increase border security.

SEC. 302. DEPLOYMENT OF SURVEILLANCE SYSTEMS ALONG U.S.-MEXICO BORDER.

(a) INITIAL THREAT ASSESSMENT.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct an assessment of the threat of penetration of the land borders of the United States, between the ports of entry, by terrorists and criminals, and the threat to of such areas to terrorist attack. In carrying out the threat assessments under this paragraph, the Secretary shall categorize the vulnerability of each land border corridor as ''high'', ''medium'', or ''low'' and shall prioritize the vulnerability of each land border corridor within each such category. In conducting the threat assessment, the Secretary of Homeland Security shall consult with appropriate Federal, tribal, State, local, and private sector representatives.

(2) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall prepare and submit to the Committee on Homeland Security of the United States House of Representatives a report that contains—

(A) the results of the threat assessments conducted under paragraph (1);

(B) with respect to each land border corridor categorized under paragraph (1) as either a ''high'', ''medium'' or ''low'' land border corridor, descriptions of—

(i) infrastructure and technology improvement projects required for each land border corridor in order to reduce its vulnerability; and

(ii) the resources required to make such improvements; and

(C) a description of how the funds will be used to implement technology and infrastructure improvement projects.

(b) FOLLOW-UP THREAT ASSESSMENTS.—The Secretary of Homeland Security shall conduct follow-up threat assessments of the land border between the ports of entry every 2 years and shall submit such reports to the Committee on Homeland Security of the House of Representatives.

(c) PLAN.—Not later than December 31, 2005, the Secretary of Homeland Security shall develop a comprehensive plan to fully deploy technological surveillance systems along the United States land borders between the ports of entry. Surveillance systems included in the deployment plan must—

(1) ensure continuous monitoring of every mile of such borders; and

(2) to the extent practicable, be fully interoperable with existing surveillance systems and mission systems, such as the Integrated Surveillance Intelligence Systems already in use by the Department of Homeland Security.

SEC. 303. CREATION OF NORTHERN AND SOUTHERN BORDER COORDINATORS.

(a) IN GENERAL.—Title IV of the Homeland Security Act of 2002 (6 U.S.C. 201 seq.) is amended—

(1) in section 402, by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following:

''(8) Increasing the security of the United States at the ports of entry located along the northern and southern borders, and improving the coordination among the agencies responsible for maintaining that security.''; and

(2) in subtitle C, by adding at the end the following:

''SEC. 431. BORDER COORDINATORS.

''(a) IN GENERAL.—There shall be within the Directorate of Border and Transportation Security the positions of Northern Border Coordinator and Southern Border Coordinator, who shall be appointed by the Secretary and who shall report directly to the Under Secretary for Border and Transportation Security.

''(b) RESPONSIBILITIES.—The Northern Border Coordinator and the Southern Border Coordinator shall undertake the following responsibilities along the northern and southern borders, respectively—

''(1) serve as the primary official of the Department responsible for coordinating all Federal security activities along the border, especially at land border ports of entry;

''(2) provide enhanced communication and data-sharing between Federal, State, local, and tribal agencies on law enforcement, emergency response, or security-related responsibilities for areas on or adjacent to the borders of the United States with Canada or Mexico;

''(3) work to improve the communications systems within the Department to facilitate the integration of communications of matters relating to border security;

''(4) oversee the implementation of the pertinent bilateral agreement (the United States-Canada 'Smart Border' Declaration applicable to the northern border and the United States-Mexico Partnership Agreement applicable to the southern border) to improve border functions, ensure security, and promote trade and tourism;

''(5) consistent with section 5, assess all land border ports of entry along the appropriate border and develop a list of infrastructure and technology improvement projects for submission to the Secretary based on the ability of a project to fulfill immediate security requirements and facilitate trade across the borders of the United States; and

''(6) serve as a liaison to the foreign agencies with responsibility for their respective border with the United States.''.

(b) CLERICAL AMENDMENT.—Section 1(b) of such Act is amended in the table of contents by inserting after the item relating to section 430 the following:

''431. Border coordinators.''.

SEC. 304. SMART BORDER ACCORD IMPLEMENTATION.

The President shall submit to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) information about the ongoing progress on implementation of the Smart Border Accords through quarterly reports on meetings of the Smart Border Working Group.

SEC. 305. REQUIRING A VULNERABILITY ASSESSMENT OF LAND PORTS OF ENTRY.

(a) INITIAL ASSESSMENT.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct an assessment of the vulnerability of each United States land port of entry to penetration by terrorists and criminals or terrorist attack. In carrying out assessments under this paragraph, the Secretary shall categorize the vulnerability of each port of entry as ''high'', ''medium'', or ''low'' and shall prioritize the vulnerability of each port of entry within each such category. In conducting the assessment, the Secretary of Homeland Security shall consult with appropriate State, local, tribal, and private sector representatives.

(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall prepare and submit to the appropriate congressional committees (as that term is defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) a report that contains—

(A) the results of the assessment conducted under paragraph (1);

(B) with respect to each port of entry categorized under paragraph (1) as either a ''high'' or ''medium'' vulnerability port of entry, descriptions of—

(i) infrastructure and technology improvement projects required for the port of entry in order to reduce its vulnerability; and

(ii) the resources required to make such improvements; and

(C) a description of how the funds will be used to implement technology and infrastructure improvement projects.

(b) FOLLOW-UP ASSESSMENTS.—The Secretary of Homeland Security shall conduct follow-up assessments of land border ports of entry every 2 years and shall submit such reports to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)).

SEC. 306. STUDY TO DETERMINE APPROPRIATE LEVEL AND ALLOCATION OF PERSONNEL AT PORTS OF ENTRY AND BORDER PATROL SECTORS.

(a) STUDY.—The Commissioner of the Bureau of Customs and Border Protection of the Department of Homeland Security shall conduct a study to determine the necessary level and allocation of personnel of the Bureau (including support staff) at United States ports of entry and between ports of entry in order to fully carry out the functions of the Bureau at such ports and locations. The Commissioner shall update and revise the study on an annual basis as appropriate.

(b) REQUIREMENTS.—

(1) IN GENERAL.—In conducting the study pursuant to subsection (a), the Commissioner shall take into account the following:

(A) The most recent staffing assessment from each port director and the head of each border patrol sector, as required under paragraph (2).

(B) The most recent relevant information, analyses, and vulnerability assessments relating to ports of entry and areas between ports of entry, as described in paragraph (3) of section 201(d) of the Homeland Security Act of 2002, and made available to the Commissioner in accordance with paragraph (18) of such section.

(C) Any requests for additional personnel, if needed, from each port director and the head of each border patrol sector, including a description of whether the additional personnel should be assigned on a temporary or permanent basis.

(D) An analysis of the impact of new available technology on staffing requirements of the Bureau.

(E) An analysis of traffic volume and wait times at ports of entry.

(F) An analysis of the training regimen for new officers of the Bureau and inspectors from the former Customs Service and the former Immigration and Naturalization Service and the extent to which the creation of the Bureau's Officer position has changed the personnel needs of the Department.

(2) ADDITIONAL REQUIREMENT.—Each port director and the head of each border patrol sector shall complete and submit to the Commissioner on an annual basis an assessment of the level and allocation of personnel necessary to carry out the responsibilities of such port director or the head of such border patrol sector, as the case may be.

(c) REPORTS.—

(1) INITIAL REPORT.—Not later than 120 days after the date of the enactment of this Act, the Commissioner shall prepare and submit to the Comptroller General and Congress a report that contains the results of the study conducted pursuant to subsection (a).

(2) SUBSEQUENT REPORTS.—The Commissioner shall prepare and submit to the Comptroller General and Congress on not less than an annual basis a report that contains each updated or revised study.

SEC. 307. ASSESSMENT OF STUDY BY COMPTROLLER GENERAL.

(a) ASSESSMENT.—The Comptroller General shall conduct an assessment of the study conducted by the Bureau of Customs and

Border Protection under section 306 and shall conduct an assessment of each update or revision to the study. In conducting the assessment, the Comptroller General is authorized to solicit input from any personnel of the Bureau.

(b) REPORT.—The Comptroller General shall prepare and submit to Congress a report that contains the results of each assessment conducted pursuant to subsection (a), including any recommendations thereto that the Comptroller General determines to be appropriate.

SEC. 308. AUTHORIZATION OF APPROPRIATIONS FOR INCREASE IN FULL-TIME BORDER PATROL AGENTS.

(a) INCREASE.—There are authorized to be appropriated to the Secretary of Homeland Security $300,000,000 for fiscal year 2006 to increase by not less than 2,000 the number of positions for full-time active-duty Border Patrol agents within the Department of Homeland Security above the number of such positions for which funds were allotted for fiscal year 2005.

(b) ASSOCIATED COSTS.—There are authorized to be appropriated to the Secretary of Homeland Security $80,000,000 for fiscal year 2006 to pay the costs associated with the new hires described in subsection (a), including—

(1) costs to increase by 166 of the number of support staff positions;

(2) costs to increase by 1333 in the number of vehicles; and

(3) costs to train the new hires described in subsection (a) under an agreement with a Department training facility other than the Artesia Border Patrol Academy.

(c) FACILITIES IMPACT ASSESSMENT.—The Secretary of Homeland Security shall conduct a facilities impact assessment and report findings from such assessment, with detailed estimates and costs. to the Committee on Homeland Security of the United States House of Representatives.

SEC. 309. BORDER PATROL UNIT FOR VIRGIN ISLANDS.

Not later than September 30, 2006, the Secretary of Homeland Security shall establish at least one Border Patrol unit for the Virgin Islands of the United States.

SEC. 310. REQUIRING REPORT ON THE "ONE FACE AT THE BORDER INITIATIVE".

(a) IN GENERAL.—Not later than September 30 of each of the calendar years 2005, 2006, and 2007, the Secretary of Homeland Security shall prepare and submit to the Congress a report—

(1) describing and analyzing the goals, success, and shortfalls of the One Face at the Border Initiative at enhancing security and facilitating travel;

(2) providing a breakdown of the number of personnel of the Bureau of Customs and Border Protection that were personnel of the United States Customs Service prior to the establishment of the Department of Homeland Security, that were personnel of the Immigration and Naturalization Service prior to the establishment of the Department of Homeland Security, and that were hired after the establishment of the Department of Homeland Security;

(3) describing the training time provided to each employee on an annual basis for the various training components of the One Face at the Border Initiative;

(4) outlining the steps taken by the Bureau of Customs and Border Protection to ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions under the One Face at the Border Initiative; and

(5) reviewing whether the missions of customs, agriculture, and immigration are appropriately and adequately addressed.

(b) ASSESSMENT OF REPORT.—The Comptroller General of the United States shall the review the reports submitted under subsection (a) and shall provide an assessment to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) regarding the effectiveness of the One Face at the Border Initiative.

Subtitle B—CIS Workflow Study

SEC. 311. CIS WORKFLOW, TECHNOLOGY, AND STAFFING ASSESSMENT.

(a) IN GENERAL.—The Secretary of Homeland Security shall conduct a comprehensive assessment of the Bureau of Citizenship and Immigration Services (otherwise know as ''U.S. Citizenship and Immigration Services'') within the Department of Homeland Security. Such assessment shall include study of personnel, administrative and technical support positions, technology, training, and facilities.

(b) WORKFLOW.—As part of the study, the Secretary shall examine all elements of such entity's workflow, in order to determine the most efficient way to handle its work without compromising security. Any bottlenecks associated with security matters should be identified and recommendations should be made on ways to minimize such bottlenecks without compromising security. The Secretary should assess the division of work, adequacy of infrastructure (particularly information technology), as well as personnel needs.

(c) INTERACTIONS WITH OTHER ORGANIZATIONS.—As part of the study, the Secretary shall examine such entity's interactions with other government organizations. Specifically, the Secretary shall determine whether existing memoranda of understanding and divisions of responsibility, especially any which pre-date the establishment of the Department of Homeland Security, need to be revised in order to improve service delivery.

(d) BACKLOG COST.—As part of the study, the Secretary shall assess the current cost of maintaining the backlog (as defined in section 203 of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1572)).

(e) INFORMATION TECHNOLOGY.—Aspects of this study related to information technology should be coordinated with the Chief Information Officer for the Department of Homeland Security and should build on the findings of the task force established by section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–215).

(f) SUBMISSION.—The study should be completed not later than January 1, 2006, and shall be submitted to the Committee on Homeland Security of the United States House of Representatives. It shall include recommendations for resource allocation.

Subtitle C—Report on Border Violence

SEC. 321. STUDIES RELATED TO FEASIBILITY AND COST OF LOCATING AND REMOVING EIGHT MILLION UNDOCUMENTED ALIENS FROM UNITED STATES.

(a) FEASIBILITY STUDY.—Commencing not later than 30 days after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study to evaluate—

(1) the ability of the Department of Homeland Security to develop and implement a program to locate and initiate removal proceedings on the 8,000,000 undocumented immigrants who are presently residing in the United States;

(2) an estimate of the additional personnel and other additional resources such a project would require for the Department and the Executive Office for Immigration Review;

(3) the amount of time that such development and implementation would require;

(4) the total cost to develop and implement this program;

(5) the ability of State and local police departments to assist the Department in implementing this program;

(6) an estimate of the additional personnel and other additional resources the State and local police departments would need if they participate with the Department in implementing this program;

(7) the amount of time away from other State and local police work that would be required of State and local police departments to participate in this program; and

(8) the total cost to State and local governments of such participation.

(b) STUDY ON CONSEQUENCES OF LOCATING AND REMOVING EIGHT MILLION UNDOCUMENTED ALIENS.—Commencing not later than 30 days after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study on the adverse consequences that could result from locating and removing 8,000,000 undocumented aliens from the United States.

Subtitle D—Center of Excellence on Border Security

SEC. 331. CENTER OF EXCELLENCE ON BORDER SECURITY.

The Secretary shall establish a university-based Center for Border Security following the merit-review processes and procedures that have been established for selecting University Programs Centers of Excellence. The Center shall conduct research, examine existing and emerging border security technology and systems, and provide education, technical, and analytical assistance for the Department of Homeland Security to effectively secure the Nation's borders.

TITLE IV—SECURING CHEMICAL PLANTS AND OTHER CRITICAL INFRASTRUCTURE

Subtitle A—Chemical Security Improvement

SEC. 411. SHORT TITLE.

This subtitle may be cited as the ''Chemical Security Improvement Act of 2005''.

SEC. 412. DEFINITIONS.

In this subtitle:

(1) ALTERNATIVE APPROACHES.—The term ''alternative approach'' means an approach that significantly reduces or eliminates the threat or consequences of a terrorist release from a chemical source, including an approach that—

(A) uses smaller quantities, nonhazardous forms, or less hazardous forms of dangerous substances;

(B) replaces a dangerous substance with a nonhazardous or less hazardous substance; or

(C) uses nonhazardous or less hazardous conditions or processes.

(2) CHEMICAL SOURCE.—The term ''chemical source'' means a facility listed by the Secretary under section 413(e) as a chemical source; and—

(3) DANGEROUS SUBSTANCE.—The term ''dangerous substance'' means a substance present at a chemical source that—

(A) can cause death, injury, or serious adverse effects to human health or the environment; or

(B) could harm critical infrastructure or national security.

(4) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(5) ENVIRONMENT.—The term ''environment'' means—

(A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States; and

(B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the

United States or under the jurisdiction of the United States.

(6) OWNER OR OPERATOR.—The term ''owner or operator'' means any person who owns, leases, operates, controls, or supervises a chemical source.

(7) RELEASE.—The term ''release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes—

(A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons;

(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; or

(C) the normal application of fertilizer or pesticide.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SECURITY MEASURE.—

(A) IN GENERAL.—The term ''security measure'' means an action carried out to ensure or enhance the security of a chemical source.

(B) INCLUSIONS.—The term ''security measure'', with respect to a chemical source, includes measures such as—

(i) employee training and background checks;

(ii) the limitation and prevention of access to controls of the chemical source;

(iii) the protection of the perimeter of the chemical source, including the deployment of armed physical security personnel;

(iv) the installation and operation of intrusion detection sensors;

(v) the implementation of measures to increase computer or computer network security;

(vi) the installation of measures to protect against long-range weapons;

(vii) the installation of measures and controls to protect against or reduce the consequences of a terrorist attack; and

(viii) the implementation of any other security-related measures or the conduct of any similar security-related activity, as determined by the Secretary.

(10) TERRORISM.—The term ''terrorism'' has the meaning given to that term in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101).

(11) TERRORIST RELEASE.—The term ''terrorist release'' means—

(A) a release from a chemical source into the environment of a dangerous substance that is caused by an act of terrorism; and

(B) the theft of a dangerous substance by a person for off-site release in furtherance of an act of terrorism.

SEC. 413. VULNERABILITY ASSESSMENTS AND SITE SECURITY PLANS.

(a) REQUIREMENT.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this subtitle, the Secretary shall promulgate regulations that—

(A) require the owner or operator of each chemical source included on the list described in subsection (e)(1)—

(i) to conduct an assessment of the vulnerability of the chemical source to a terrorist release; and

(ii) to prepare and implement a site security plan that addresses the results of the vulnerability assessment; and

(B) establish procedures, protocols, and standards for vulnerability assessments and site security plans.

(2) CONTENTS OF VULNERABILITY ASSESSMENT.—A vulnerability assessment required under the regulations promulgated under paragraph (1) or any assessment determined substantially equivalent by the Secretary under subsection (c) shall include the identification and evaluation of—

(A) critical assets and infrastructures;

(B) hazards that may result from a terrorist release; and

(C) weaknesses in—

(i) physical security;

(ii) structural integrity of containment, processing, and other critical infrastructure;

(iii) protection systems;

(iv) procedural and employment policies;

(v) communication systems;

(vi) transportation infrastructure in the proximity of the chemical source;

(vii) utilities;

(viii) contingency response; and

(ix) other areas as determined by the Secretary.

(3) CONTENTS OF SITE SECURITY PLAN.—A site security plan required under the regulations promulgated under paragraph (1) or any plan submitted to the Secretary under subsection (c)—

(A) shall include security measures to significantly reduce the vulnerability of the chemical source covered by the plan to a terrorist release;

(B) shall describe, at a minimum, particular equipment, plans, and procedures that could be implemented or used by or at the chemical source in the event of a terrorist release;

(C) shall provide for the assessment and, as applicable, implementation of alternative approaches in accordance with section 415; and

(D) shall be developed in consultation with local law enforcement, first responders, employees, and local emergency planning committees, as established pursuant to section 301(c) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001(c)).

(4) SECURITY EXERCISES.—Not later than 1 year after the date of the enactment of this subtitle, the Secretary shall promulgate regulations establishing procedures, protocols, and standards for the conduct of security exercises, including—

(A) the performance of force-on-force exercises that—

(i) involve physical security personnel employed by the owner or operator of the chemical source to act as the force designated to defend the facility;

(ii) involve personnel designated by the Secretary to act as the force designated to simulate a terrorist attempt to attack the chemical source to cause a terrorist release;

(iii) are designed, overseen, and evaluated by the Department; and

(iv) are conducted at least once every 3 years; and

(B) the performance of all other such exercises at periodic intervals necessary to ensure the optimal performance of security measures.

(5) GUIDANCE TO SMALL BUSINESSES.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall publish guidance to assist small businesses in complying with paragraphs (2) and (3).

(6) THREAT INFORMATION.—To the maximum extent practicable under applicable authority and in the interests of national security, the Secretary shall provide to an owner or operator of a chemical source required to prepare a vulnerability assessment and site security plan threat information that is relevant to the chemical source.

(7) COORDINATED ASSESSMENTS AND PLANS.—The regulations promulgated under paragraph (1) shall permit the development and implementation of coordinated vulnerability assessments and site security plans in any case in which more than 1 chemical source is operating at a single location or at contiguous locations, including cases in which a chemical source is under the control of more than 1 owner or operator.

(b) CERTIFICATION AND SUBMISSION.—

(1) IN GENERAL.—Except as provided in subsection (c), each owner or operator of a chemical source shall certify in writing to the Secretary that the owner or operator has completed a vulnerability assessment and has developed and implemented (or is implementing) a site security plan in accordance with this subtitle, including—

(A) regulations promulgated under subsection (a)(1); and

(B) any existing vulnerability assessment or security plan endorsed by the Secretary under subsection (c)(1).

(2) SUBMISSION.—

(A) IN GENERAL.—Not later than 18 months after the date of the promulgation of regulations under subsection (a)(1), an owner or operator of a chemical source shall provide to the Secretary copies of the vulnerability assessment and site security plan of the chemical source for review.

(B) CERTIFICATION.—

(i) IN GENERAL.—Not later than 2 years after the date on which the Secretary receives copies of the vulnerability assessment and site security plan of a chemical source under subparagraph (A), the Secretary shall determine whether the chemical source is in compliance with the requirements of this Act, including—

(I) paragraph (1);

(II) regulations promulgated under subsections (a)(1) and (a)(3); and

(III) any existing vulnerability assessment or site security plan endorsed by the Secretary under subsection (c)(1).

(ii) CERTIFICATE.—If the Secretary determines that the chemical source is in compliance with the requirements of this Act, the Secretary shall provide to the chemical source and make available for public inspection a certificate of approval that contains the following statement (in which statement the bracketed space shall be the name of the chemical source): ''[_____] is in compliance with the Chemical Security Improvement Act of 2005.''

(iii) DETERMINATION OF NONCOMPLIANCE.—If the Secretary determines under clause (i) that a chemical source is not in compliance with the requirements of this Act, the Secretary shall exercise the authority provided in section 416.

(iv) REPORT TO CONGRESS.—Not later than 1 year after the promulgation of regulations in subsection (a)(1) and for every year afterwards, the Secretary shall submit to the Congress a report outlining the number of facilities that have provided vulnerability assessments and site security plans to the Secretary, what portion of these submissions have been reviewed by the Secretary, and what portion of these submissions are in compliance with clause (i).

(3) OVERSIGHT.—

(A) IN GENERAL.—The Secretary shall, at such times and places as the Secretary determines to be appropriate, conduct or require the conduct of vulnerability assessments and other activities (including qualified third-party audits) to ensure and evaluate compliance with this subtitle (including regulations promulgated under subsection (a)(1) and (c)(1)).

(B) RIGHT OF ENTRY.—In carrying out this subtitle, the Secretary (or a designee), on presentation of credentials, shall have a right of entry to, on, or through any premises of an owner or operator of a chemical source.

(C) REQUESTS FOR RECORDS.—In carrying out this subtitle, the Secretary (or a designee) may require the submission of, or, on

presentation of credentials, may at reasonable times seek access to and copy any documentation necessary for—

(i) review or analysis of a vulnerability assessment or site security plan; or

(ii) implementation of a site security plan.

(D) COMPLIANCE.—If the Secretary determines that an owner or operator of a chemical source is not maintaining, producing, or permitting access to the premises of a chemical source or records as required by this paragraph, the Secretary may issue an order requiring compliance with the relevant provisions of this section.

(E) QUALIFIED THIRD-PARTY AUDITS.—The Secretary shall establish standards as to the qualifications of third-party auditors. Such standards shall ensure the qualifications of the third-party auditor provide sufficient expertise in—

(i) chemical site security vulnerabilities;

(ii) chemical site security measures;

(iii) alternative approaches; and

(iv) such other areas as the Secretary determines to be appropriate and necessary.

(4) SUBMISSION OF CHANGES.—The owner or operator of a chemical source shall provide to the Secretary a description of any significant change that is made to the vulnerability assessment or site security plan required for the chemical source under this section, not later than 90 days after the date the change is made.

(c) EXISTING VULNERABILITY ASSESSMENTS AND SECURITY PLANS.—Upon submission of a petition by an owner or operator of a chemical source to the Secretary in conjunction with a submission under subsection (b)(2)(A), the Secretary—

(1) may endorse any vulnerability assessment or security plan—

(A) that was conducted, developed, or required by—

(i) industry;

(ii) State or local authorities; or

(iii) other applicable law; and

(B) that was conducted before, on, or after the date of enactment of this subtitle; and

(C) the contents of which the Secretary determines meet the standards established under the requirements of subsections (a)(1), (a)(2), and (a)(3);

(2) may make an endorsement of an existing vulnerability assessment or security plan under paragraph (1) contingent on modification of the vulnerability assessment or security plan to address—

(A) a particular threat or type of threat; or

(B) a requirement under (a)(2) or (a)(3).

(d) REGULATORY CRITERIA.—In exercising the authority under subsections (a), (b), (c), or (e) with respect to a chemical source, the Secretary shall consider—

(1) the likelihood that a chemical source will be the target of terrorism;

(2) the potential extent of death, injury, or serious adverse effects to human health or the environment that would result from a terrorist release;

(3) the potential harm to critical infrastructure and national security from a terrorist release; and

(4) such other security-related factors as the Secretary determines to be appropriate and necessary to protect the public health and welfare, critical infrastructure, and national security.

(e) LIST OF CHEMICAL SOURCES.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this subtitle, the Secretary shall develop a list of chemical sources in existence as of that date.

(2) CONSIDERATIONS.—In developing the list under paragraph (1), the Secretary shall take into consideration the criteria specified in subsection (d).

(3) PRIORITIZATION.—In developing the list under paragraph (1), the Secretary shall determine the potential extent of death, injury, or severe adverse effects to human health that would result from a terrorist release of dangerous substances from a chemical source.

(4) SCOPE.—In developing the list under paragraph (1), the Secretary shall include at least those facilities that pose a risk of potential death, injury, or severe adverse effects to not fewer than 15,000 individuals.

(5) FUTURE DETERMINATIONS.—Not later than 3 years after the date of the promulgation of regulations under subsection (a)(1), and every 3 years thereafter, the Secretary shall, after considering the criteria described in subsection (d)—

(A) determine whether additional facilities (including, as of the date of the determination, facilities that are operational and facilities that will become operational in the future) shall be considered to be a chemical source under this subtitle;

(B) determine whether any chemical source identified on the most recent list under paragraph (1) no longer presents a risk sufficient to justify retention of classification as a chemical source under this subtitle; and

(C) update the list as appropriate.

(f) 5-YEAR REVIEW.—Not later than 5 years after the date of the certification of a vulnerability assessment and a site security plan under subsection (b)(1), and not less often than every 5 years thereafter (or on such a schedule as the Secretary may establish by regulation), the owner or operator of the chemical source covered by the vulnerability assessment or site security plan shall—

(1) ensure the vulnerability assessment and site security plan meet the most recent regulatory standards issues under subsection (a)(1);

(2)(A) certify to the Secretary that the chemical source has completed the review and implemented any modifications to the site security plan; and

(B) submit to the Secretary a description of any changes to the vulnerability assessment or site security plan; and

(3) submit to the Secretary a new assessment of alternative approaches.

(g) PROTECTION OF INFORMATION.—

(1) CRITICAL INFRASTRUCTURE INFORMATION.—Except with respect to certifications specified in subsections (b)(1) and (f)(2)(A), vulnerability assessments and site security plans obtained in accordance with this subtitle, and all information derived from those vulnerability assessments and site security plans that could pose a risk to a particular chemical source, shall be deemed critical infrastructure information as defined in section 212 of the Homeland Security Act of 2002 (6 U.S.C. 131), and subject to all protections under sections 213 and 214 of that Act.

(2) EXCEPTIONS TO PENALTIES.—Section 214(f) of the Homeland Security Act of 2002 (6 U.S.C. 133(f)) shall not apply to a person described in that section that discloses information described in paragraph (1)—

(A) for use in any administrative or judicial proceeding to impose a penalty for failure to comply with a requirement of this subtitle; or

(B) for the purpose of making a disclosure evidencing government, owner or operator, or employee activities that threaten the security of a chemical source or are inconsistent with the requirements of this subtitle.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the withholding of information from members of Congress acting in their official capacity.

SEC. 414. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—No person employed at a chemical source may be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of any lawful act done by the person—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the person reasonably believes constitutes a violation of any law, rule or regulation related to the security of the chemical source, or any other threat to the security of the chemical source, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal regulatory or law enforcement agency;

(B) any member or committee of the Congress; or

(C) a person with supervisory authority over the person (or such other person who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding or action filed or about to be filed relating to a violation of any law, rule, or regulation related to the security of a chemical source or any other threat to the security of a chemical source; or

(3) to refuse to violate or assist in the violation of any law, rule, or regulation related to the security of chemical sources.

(b) ENFORCEMENT ACTION.—

(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(2) PROCEDURE.—

(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the person's employer.

(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

(c) REMEDIES.—

(1) IN GENERAL.—A person prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the person whole.

(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

(A) reinstatement with the same seniority status that the person would have had, but for the discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(d) RIGHTS RETAINED BY PERSON.—Nothing in this section shall be deemed to diminish

the rights, privileges, or remedies of any person under any Federal or State law, or under any collective bargaining agreement.

SEC. 415. ALTERNATIVE APPROACHES.

(a) ASSESSMENT.—

(1) IN GENERAL.—A site security plan under section 413(a)(1) shall provide for the conduct of an assessment of alternative approaches.

(2) INCLUSIONS.—An assessment under this subsection shall include information on—

(A) the nature of each alternative approach considered, such as—

(i) the quantity of each dangerous substance considered for reduction;

(ii) the form of any dangerous substance considered for replacement and the form of potential replacements considered;

(iii) any dangerous substance considered for replacement and a description of any potential replacements considered; and

(iv) any process or conditions considered for modification and a description of the potential modification;

(B) the degree to which each alternative approach considered could potentially reduce the threat or consequence of a terrorist release; and

(C) specific considerations that led to the implementation or rejection of each alternative approach, including—

(i) requirements under this subtitle;

(ii) cost;

(iii) cost savings;

(iv) availability of replacement or modification technology or technical expertise;

(v) the applicability of existing replacement or modification technology to the chemical source; and

(vi) any other factor that the owner of operator of the chemical source considered in judging the practicability of each alternative approach.

(b) IMPLEMENTATION.—

(1) IN GENERAL.—A chemical source described in paragraph (2) shall implement options to significantly reduce or eliminate the threat or consequences of a terrorist release through the use of alternative approaches that would not create an equal or greater risk to human health or the environment.

(2) APPLICABILITY.—This subsection applies to a chemical source if—

(A) the chemical source poses a potential of harm to more than 15,000 people, unless the owner or operator of the chemical source can demonstrate to the Secretary through an assessment of alternative approaches that available alternative approaches—

(i) would not significantly reduce the number of people at risk of death, injury, or serious adverse effects resulting from a terrorist release;

(ii) cannot feasibly be incorporated into the operation of the chemical source; or

(iii) would significantly and demonstrably impair the ability of the owner or operator of the chemical source to continue its business; or

(B)(i) the chemical source poses a potential of harm to fewer than 15,000 people; and

(ii) implementation of options to significantly reduce the threat or consequence of a terrorist release through the use of alternative approaches if practicable in the judgment of the owner or operator of the chemical source.

(c) ALTERNATIVE APPROACHES CLEARINGHOUSE.—

(1) AUTHORITY.—The Secretary shall establish a publicly available clearinghouse to compile and disseminate information on the use and availability of alternative approaches.

(2) INCLUSIONS.—The clearinghouse shall include information on—

(A) general and specific types of alternative approaches;

(B) combinations of chemical sources, substances of concern, and hazardous processes or conditions for which alternative approaches could be appropriate;

(C) the scope of current use and availability of specific alternative approaches;

(D) the costs and cost savings resulting from alternative approaches;

(E) technological transfer;

(F) the availability of technical assistance;

(G) current users of alternative approaches; and

(H) such other information as the Administrator deems appropriate.

(3) COLLECTION OF INFORMATION.—The Secretary shall collect information for the clearinghouse—

(A) from documents submitted by owners or operators pursuant to this Act;

(B) by surveying owners or operators who have registered their facilities pursuant to part 68 of title 40 Code of Federal Regulations (or successor regulations); or

(C) through such other methods as the Secretary deems appropriate.

(4) PUBLIC AVAILABILITY.—Information available publicly through the clearinghouse shall not allow the identification of any specific facility or violate the exemptions of section 552(b)(4) of title 5, United States Code.

(5) STUDY OF ALTERNATIVE AND INHERENTLY SAFER APPROACHES TO CHEMICAL SAFETY AND SECURITY.—

(A) STUDY.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall enter into an arrangement with the National Academy of Sciences to provide for a comprehensive study of—

(i) the currently available chemical technologies, practices, strategies, and other methods for improving the inherent safety and security of United States chemical manufacturing, transportation, and usage sites and infrastructure against the threat of terrorism;

(ii) methods for assessing the degree of inherent safety of chemical technologies, practices, strategies, and other means;

(iii) methods for integrating inherently safer chemical technologies, practices, strategies, and other means into risk management for critical infrastructure protection; and

(iv) progress and directions in research in chemical sciences and technology that may provide new chemical technologies, practices, strategies, and other means to improve inherent safety and security.

(B) REPORT.—

(i) IN GENERAL.—The arrangement entered into under subparagraph (A) shall provide that the National Academy of Sciences shall submit to the Secretary a final report on the study conducted under subparagraph (A) by no later than 18 months after a contract for the arrangement is signed.

(ii) RECOMMENDATIONS.—The report under this subparagraph shall include such recommendations regarding government and private sector practices to encourage the adoption of currently available inherently safer and more secure chemical technologies and strategies to reduce the vulnerabilities of existing and future chemical manufacturing, transportation, and usage sites and infrastructure, and regarding research directions in green chemistry and chemical engineering that would lead to inherently more secure, safer, and economically viable chemical products, processes, and procedures, as the Academy determines appropriate.

(C) TRANSMISSION TO CONGRESS.—The Secretary shall promptly transmit a copy of the report under this subparagraph to the Congress and make the report available to the public.

SEC. 416. ENFORCEMENT.

(a) FAILURE TO COMPLY.—If an owner or operator of a non-Federal chemical source fails to certify or submit a vulnerability assessment or site security plan in accordance with this subtitle, the Secretary may issue an order requiring the certification and submission of a vulnerability assessment or site security plan in accordance with section 413(b).

(b) DISAPPROVAL.—The Secretary may disapprove under subsection (a) a vulnerability assessment or site security plan submitted under section 413(b) or (c) if the Secretary determines that—

(1) the vulnerability assessment or site security plan does not comply with regulations promulgated under section 413(a)(1), or the procedure, protocol, or standard endorsed or recognized under section 413(c); or

(2) the site security plan, or the implementation of the site security plan, is insufficient to address—

(A) the results of a vulnerability assessment of a chemical source; or

(B) a threat of a terrorist release.

(c) COMPLIANCE.—If the Secretary disapproves a vulnerability assessment or site security plan of a chemical source under subsection (b), the Secretary shall—

(1) provide the owner or operator of the chemical source a written notification of the determination that includes a clear explanation of deficiencies in the vulnerability assessment, site security plan, or implementation of the assessment or plan;

(2) consult with the owner or operator of the chemical source to identify appropriate steps to achieve compliance; and

(3) if, following that consultation, the owner or operator of the chemical source does not achieve compliance by such date as the Secretary determines to be appropriate under the circumstances, issue an order requiring the owner or operator to correct specified deficiencies.

(d) PROTECTION OF INFORMATION.—Any determination of disapproval or order made or issued under this section shall be exempt from disclosure—

(1) under section 552 of title 5, United States Code;

(2) under any State or local law providing for public access to information; and

(3) except as provided in section 413(g)(2), in any Federal or State civil or administrative proceeding.

SEC. 417. INTERAGENCY TECHNICAL SUPPORT AND COOPERATION.

The Secretary—

(1) in addition to such consultation as is required in this subtitle, shall consult with Federal agencies with relevant expertise, and may request those Federal agencies to provide technical and analytical support, in implementing this subtitle; and

(2) may provide reimbursement for such technical and analytical support received as the Secretary determines to be appropriate.

SEC. 418. PENALTIES.

(a) JUDICIAL RELIEF.—In a civil action brought in United States district court, any owner or operator of a chemical source that violates or fails to comply with any order issued by the Secretary under this subtitle or a site security plan submitted to the Secretary under this subtitle or recognized by the Secretary, for each day on which the violation occurs or the failure to comply continues, may be subject to—

(1) an order for injunctive relief; and

(2) a civil penalty of not more than $50,000.

(b) ADMINISTRATIVE PENALTIES.—

(1) PENALTY ORDERS.—The Secretary may issue an administrative penalty of not more than $250,000 for failure to comply with an order issued by the Secretary under this subtitle.

(2) NOTICE AND HEARING.—Before issuing an order described in paragraph (1), the Secretary shall provide to the person against whom the penalty is to be assessed—

(A) written notice of the proposed order; and

(B) the opportunity to request, not later than 30 days after the date on which the person receives the notice, a hearing on the proposed order.

(3) PROCEDURES.—The Secretary may promulgate regulations outlining the procedures for administrative hearings and appropriate review under this subsection, including necessary deadlines.

SEC. 419. PROTECTION OF INFORMATION.

(a) DEFINITION OF PROTECTED INFORMATION.—

(1) IN GENERAL.—In this section, the term ''protected information'' means—

(A) a vulnerability assessment or site security plan required by subsection (a) or (b) of section 413;

(B) any study, analysis, or other document generated by the owner or operator of a chemical source primarily for the purpose of preparing a vulnerability assessment or site security plan (including any alternative approach analysis); or

(C) any other information provided to or obtained or obtainable by the Secretary solely for the purposes of this subtitle from the owner or operator of a chemical source that, if released, is reasonably likely to increase the probability or consequences of a terrorist release.

(2) OTHER OBLIGATIONS UNAFFECTED.—Nothing in this section affects—

(A) the handling, treatment, or disclosure of information obtained from a chemical source under any other law;

(B) any obligation of the owner or operator of a chemical source to submit or make available information to a Federal, State, or local government agency under, or otherwise to comply with, any other law; or

(C) the public disclosure of information derived from protected information, so long as the information disclosed—

(i) would not divulge methods or processes entitled to protection as trade secrets in accordance with the purposes of section 1905 of title 18, United States Code;

(ii) does not identify any particular chemical source; and

(iii) is not reasonably likely to increase the probability or consequences of a terrorist release, even if the same information is also contained in a document referred to in paragraph (1).

(b) DISCLOSURE EXEMPTION.—Protected information shall be exempt from disclosure under—

(1) section 552 of title 5, United States Code; and

(2) any State or local law providing for public access to information.

(c) RULE OF CONSTRUCTION.—Subsection (b) shall not be construed to apply to a certificate of compliance or a determination of noncompliance under clause (ii) or (iii), respectively, of section 413(b)(2)(B).

SEC. 420. NO EFFECT ON REQUIREMENTS UNDER OTHER LAW.

Nothing in this subtitle affects any duty or other requirement imposed under any other Federal or State law.

Subtitle B—Critical Infrastructure Prioritization

SEC. 421. CRITICAL INFRASTRUCTURE.

(a) COMPLETION OF PRIORITIZATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall complete the prioritization of the Nation's critical infrastructure according to all of the following criteria:

(1) The threat of terrorist attack, based on threat information received and analyzed by the Office of Information Analysis of the Department regarding the intentions and capabilities of terrorist groups and other potential threats to the Nation's critical infrastructure.

(2) The likelihood that an attack would cause the destruction or significant disruption of such infrastructure.

(3) The likelihood that an attack would result in substantial numbers of deaths and serious bodily injuries, a substantial adverse impact on the national economy, or a substantial adverse impact on national security.

(b) COOPERATION.—Such prioritization shall be developed in cooperation with other relevant Federal agencies, State, local, and tribal governments, and the private sector, as appropriate.

SEC. 422. SECURITY REVIEW.

(a) REQUIREMENT.—Not later than 9 months after the date of the enactment of this Act, the Secretary, in coordination with other relevant Federal agencies, State, local, and tribal governments, and the private sector, as appropriate, shall—

(1) review existing Federal, State, local, tribal, and private sector plans for securing the critical infrastructure included in the prioritization developed under section 421;

(2) recommend changes to existing plans for securing such infrastructure, as the Secretary determines necessary; and

(3) coordinate and contribute to protective efforts of other Federal, State, local, and tribal agencies and the private sector, as appropriate, as directed in Homeland Security Presidential Directive 7.

(b) CONTENTS OF PLANS.—The recommendations made under subsection (a)(2) shall include—

(1) necessary protective measures to secure such infrastructure, including milestones and timeframes for implementation; and

(2) to the extent practicable, performance metrics to evaluate the benefits to both national security and the Nation's economy from the implementation of such protective measures.

SEC. 423. IMPLEMENTATION REPORT.

(a) IN GENERAL.—Not later than 15 months after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate on the implementation of section 422. Such report shall detail—

(1) the Secretary's review and coordination of security plans under section 422; and

(2) the Secretary's oversight of the execution and effectiveness of such plans.

(b) UPDATE.—Not later than 1 year after the submission of the report under subsection (a), the Secretary shall provide an update of such report to the congressional committees described in subsection (a).

TITLE V—SECURING AIRPORTS, BAGGAGE, AND AIR CARGO

Subtitle A—Prohibition Against Increase in Security Service Fees

SEC. 501. PROHIBITION AGAINST INCREASE IN SECURITY SERVICE FEES.

None of the funds authorized under this Act may be derived from an increase in security service fees established under section 44940 of title 49, United States Code.

Subtitle B—Aviation Security

SEC. 511. FEDERAL FLIGHT DECK OFFICERS.

(a) TRAINING, SUPERVISION, AND EQUIPMENT.—Section 44921(c) of title 49, United States Code, is amended by adding at the end the following:

''(3) DATES OF TRAINING.—The Secretary shall ensure that a pilot who is eligible to receive Federal flight deck officer training is offered a choice of training dates and is provided at least 30 days advance notice of the dates.

''(4) TRAVEL TO TRAINING FACILITIES.—The Secretary shall establish a program to improve travel access to Federal flight deck officer training facilities through the use of charter flights or improved scheduled air carrier service.

''(5) REQUALIFICATION AND RECURRENT TRAINING.—

''(A) STANDARDS.—The Secretary shall establish qualification standards for facilities where Federal flight deck officers can receive requalification and recurrent training.

''(B) LOCATIONS.—The Secretary shall provide for requalification and recurrent training at geographically diverse facilities, including military facilities, Federal, State, and local law enforcement facilities, and private training facilities that meet the qualification standards established under subparagraph (A).

''(6) COSTS OF TRAINING.—

''(A) IN GENERAL.—The Secretary shall provide Federal flight deck officer training, requalification training, and recurrent training to eligible pilots at no cost to the pilots or the air carriers that employ the pilots.

''(B) TRANSPORTATION AND EXPENSES.—The Secretary may provide travel expenses to a pilot receiving Federal flight deck officer training, requalification training, or recurrent training.

''(7) ISSUANCE OF BADGES.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue badges to Federal flight deck officers.''.

(b) REVOCATION OF DEPUTIZATION OF PILOT AS FEDERAL FLIGHT DECK OFFICER.—Section 44921(d)(4) of title 49, United States Code, is amended to read as follows:

''(4) REVOCATION.—

''(A) ORDERS.—The Assistant Secretary of Homeland Security (Transportation Security Administration) may issue, for good cause, an order revoking the deputization of a Federal flight deck officer under this section. The order shall include the specific reasons for the revocation.

''(B) HEARINGS.—An individual who is adversely affected by an order of the Assistant Secretary under subparagraph (A) is entitled to a hearing on the record. When conducting a hearing under this section, the administrative law judge shall not be bound by findings of fact or interpretations of laws and regulations of the Assistant Secretary.

''(C) APPEALS.—An appeal from a decision of an administrative law judge as a result of a hearing under subparagraph (B) shall be made to the Secretary or the Secretary's designee.

''(D) JUDICIAL REVIEW OF A FINAL ORDER.—The determination and order of the Secretary revoking the deputization of a Federal flight deck officer under this section shall be final and conclusive unless the individual against whom such an order is issued files an application for judicial review, not later than 60 days following the date of entry of such order, in the appropriate United States court of appeals.''.

(c) FEDERAL FLIGHT DECK OFFICER FIREARM CARRIAGE PILOT PROGRAM.—Section 44921(f) of title 49, United States Code, is amended by adding at the end the following:

''(4) PILOT PROGRAM.—

''(A) IN GENERAL.—Not later than 90 days after the date of enactment of this paragraph, the Secretary shall implement a pilot program to allow pilots participating in the Federal flight deck officer program to transport their firearms on their persons. The Secretary may prescribe any training, equipment, or procedures that the Secretary determines necessary to ensure safety and maximize weapon retention.

''(B) REVIEW.—Not later than 1 year after the date of initiation of the pilot program, the Secretary shall conduct a review of the safety record of the pilot program and transmit a report on the results of the review to Congress.

''(C) OPTION.—If the Secretary as part of the review under subparagraph (B) determines that the safety level obtained under the pilot program is comparable to the safety level determined under existing methods of pilots carrying firearms on aircraft, the Secretary shall allow all pilots participating in the Federal flight deck officer program the option of carrying their firearm on their person subject to such requirements as the Secretary determines appropriate.''.

(d) REFERENCES TO UNDER SECRETARY.—Section 44921 of title 49, United States Code, is amended—

(1) in subsection (a) by striking ''Under Secretary of Transportation for Security'' and inserting ''Secretary of Homeland Security'';

(2) by striking ''Under Secretary'' each place it appears and inserting ''Secretary''; and

(3) by striking ''Under Secretary's'' each place it appears and inserting ''Secretary's''.

SEC. 512. LETTERS OF INTENT.

(a) INSTALLATION OF EDS SYSTEMS.—Section 44923(d) of title 49, United States Code, is amended by adding at the end the following:

''(7) INSTALLATION OF EDS SYSTEMS.—Upon the request of a sponsor for an airport, the Assistant Secretary for Homeland Security (Transportation Security Administration) shall revise a letter of intent issued under this subsection to provide for reimbursement of such additional costs as may be necessary to achieve complete in-line explosive detection system installation at the airport.''.

(b) FEDERAL SHARE.—Section 44923(e) of title 49, United States Code, is amended by adding at the end the following:

''(3) DEADLINE FOR REVISIONS.—The Assistant Secretary for Homeland Security (Transportation Security Administration) shall revise letters of intent referred to in paragraph (2) not later than 30 days after the date of enactment of this paragraph.

''(4) EXTENSION OF REIMBURSEMENT SCHEDULES.—If the Assistant Secretary considers it necessary and appropriate due to fiscal constraints in any fiscal year, the Assistant Secretary, for purposes of ensuring reimbursement of the Federal share as provided in paragraph (1), may revise a letter of intent issued under this section to extend the reimbursement schedule for one or more fiscal years.''.

SEC. 513. AVIATION SECURITY CAPITAL FUND.

(a) IN GENERAL.—Section 44923(h)(1) of title 49, United States Code, is amended—

(1) in the second sentence by striking ''in each of fiscal years 2004 through 2007'' and inserting ''in each of fiscal years 2004 and 2005, and $650,000,000 in each of fiscal years 2006 and 2007,''; and

(2) in the third sentence by striking ''at least $250,000,000 in each of such fiscal years'' and inserting ''at least $250,000,000 in each of fiscal years 2004 and 2005, and at least $650,000,000 in each of fiscal years 2006 and 2007,'' .

(b) DISCRETIONARY GRANTS.—Section 44923(h)(3) of such title is amended by striking ''for a fiscal year, $125,000,000'' and inserting '', $125,000,000 for each of fiscal years 2004 and 2005, and $525,000,000 for each of fiscal years 2006 and 2007,''.

SEC. 514. AIRPORT CHECKPOINT SCREENING EXPLOSIVE DETECTION.

Section 44940 of title 49, United States Code, is amended—

(1) in subsection (d)(4) by inserting '', other than subsection (i),'' before ''except to''; and

(2) by adding at the end the following:

''(i) CHECKPOINT SCREENING SECURITY FUND.—

''(1) ESTABLISHMENT.—There is established in the Department of Homeland Security a fund to be known as the 'Checkpoint Screening Security Fund'.

''(2) DEPOSITS.—In fiscal year 2006, after amounts are made available under section 44923(h), the next $250,000,000 derived from fees received under subsection (a)(1) shall be available to be deposited in the Fund.

''(3) FEES.—The Secretary of Homeland Security shall impose the fee authorized by subsection (a)(1) so as to collect at least $250,000,000 in fiscal year 2006 for deposit into the Fund.

''(4) AVAILABILITY OF AMOUNTS.—Amounts in the Fund shall be available until expended for the purchase, deployment, and installation of equipment to improve the ability of security screening personnel at screening checkpoints to detect explosives.''.

SEC. 515. FLIGHT COMMUNICATIONS.

Section 4021 of the Intelligence Reform and Terrorism Prevention Act of 2004 (118 Stat. 3723) is amended by adding at the end the following:

''(d) FLIGHT COMMUNICATION.—

''(1) STUDY.—To expand the purposes of the study under subsection (a), the Assistant Secretary shall conduct a study on the viability of devices to enable discreet, wireless communications between flight attendants, pilots, Federal air marshals, and ground-based personnel during a passenger commercial aircraft flight to improve coordination of planning and activities in the event of an act of terrorism.

''(2) REPORT.—Not later than 180 days after the date of enactment of this subsection, the Assistant Secretary shall transmit to Congress a report on the results of the study conducted under this subsection.''.

SEC. 516. AIRPORT SITE ACCESS AND PERIMETER SECURITY.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the security directives issued by the Acting Administrator of the Transportation Security Administration on July 6, 2004, regarding security measures concerning access to sensitive airport areas constitute an improvement over current practice but are not sufficient to provide adequate airport access controls.

(b) ACCESS TO STERILE AREAS.—Not later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security shall require airport personnel including individuals employed in positions such as aircraft maintenance, catering personnel, aircraft cargo handlers, aircraft workers with access to an aircraft ramp, aircraft support facilities personnel, and personnel of airport vendors, accessing airport sterile areas from unrestricted areas to undergo security screening equivalent to screening of passengers and carry-on baggage each time any of these airport personnel enter a sterile area from an unrestricted area. The Secretary may issue a waiver of this provision on an airport-by-airport basis, subject to the following requirements:

(1) The Secretary shall promptly notify Congress of any waivers granted under this section, the purpose for which such waivers were granted, and the duration of the waiver.

(2) Under no circumstances shall a waiver be granted for more than 7 days, although the Secretary may issue as many waivers to an airport as is deemed appropriate by the Secretary. In the event of multiple waivers, the Secretary shall provide to Congress an estimate of when the airport will be in compliance with this subsection.

(c) BACKGROUND CHECKS FOR WORKERS.—The Secretary shall ensure that all unescorted airport personnel accessing airport sterile and secured areas have successfully undergone a background check. The background checks required under this section shall include, at a minimum:

(1) A fingerprint-based criminal history records check, or, if such a check is not possible, a check of the National Criminal Information Center.

(2) A local criminal history check.

(3) Verification of previous employment.

(4) Verification of identity, to include, but not be limited to, social security number.

(5) A check of all terrorist watch lists operated by the Federal Government, or upon certification by the Secretary that it is suitably comprehensive, the terrorist watch list operated by the Terrorist Screening Center.

This subsection shall apply to all airport personnel hired more than 3 months after the date of enactment of this Act and for all airport personnel, regardless of the date on which they were hired, no more than one year after such date of enactment.

(d) REPORT.—The Administrator of the Transportation Security Administration shall submit to Congress, no later than January 31, 2005, a report that contains a description of ongoing efforts and projected timelines for—

(1) developing and implementing uniform screening standards for airport personnel with access to sterile areas;

(2) completing an assessment of available technologies that are applicable to securing airport perimeters and making this information available to airport operators; and

(3) developing and implementing a standardized approach to conducting airport vulnerability assessments and compliance inspections.

(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to provide passengers, airport workers, or other personnel not granted regular access to secure areas before the date of enactment of this Act authority to do so, regardless of whether such person has undergone security screening.

(f) DEFINITIONS.—In this section, the following definitions apply:

(1) STERILE AREA.—The term ''sterile area'' means any part of an airport that is regularly accessible to passengers after having cleared a passenger security screening checkpoint.

(2) SECURE AREA.—The term ''secure area'' means parts of an airport complex not typically accessible to passengers, including areas outside of terminal buildings, baggage handling and loading areas, parked aircraft, runways, air control towers, and similar areas.

(3) AIRPORT PERSONNEL.—The term ''airport personnel'' shall mean those persons, whether employed by the airport, air carriers, or by companies that conduct business in airports.

(g) AUTHORIZATION OF APPROPRIATIONS.—Of the amount authorized under section 901, there is authorized to be appropriated such sums as may be necessary to carry out this section. Except as provided in the preceding sentence, this section shall have no force or affect.

SEC. 517. MANPAD COUNTERMEASURE RESEARCH.

(a) IN GENERAL.—In addition to research on air-based MANPAD countermeasures, the Secretary of Homeland Security shall conduct research on alternate technologies, including ground-based countermeasures.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $115,000,000 for fiscal year 2006 to carry out this section.

SEC. 518. AIR CHARTER AND GENERAL AVIATION OPERATIONS AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT.

Notwithstanding any law, regulation, or agency policy or directive that has the effect of generally prohibiting general aviation aircraft from landing at Ronald Reagan Washington National Airport, not later than 60 days after the date of enactment of this Act, the Secretary of Transportation, acting through the Federal Aviation Administration, in consultation with the Secretary of Homeland Security, shall permit the resumption of nonscheduled, commercial air carrier air charter and general aviation operations at Ronald Reagan Washington National Airport. In complying with the requirements of this section, the Secretary of Transportation shall consult with the general aviation industry.

SEC. 519. INSPECTION OF CARGO CARRIED ABOARD COMMERCIAL AIRCRAFT.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Homeland Security shall implement a system that uses equipment, technology, personnel, and other means to inspect 35 percent of cargo transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate transportation. At a minimum, this system shall meet the same standards as those established by the Secretary for equipment, technology, and personnel used to screen passenger baggage. Within 2 years after the date of the enactment of this Act, the Secretary shall use this system to inspect at least 65 percent of cargo transported in passenger aircraft. Not later than three years after the date of enactment of this Act, the Secretary shall use this system to inspect at least 100 percent of cargo transported in passenger aircraft.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to the Congress a report describing the system established under subsection (a).

TITLE VI—SECURING TRAINS ACROSS AMERICA

Subtitle A—Public Transit Security

SEC. 601. SHORT TITLE.

This subtitle may be cited as the ''Safe Transit and Rail Awareness and Investments for National Security Act of 2005'' or the ''Safe TRAINS Act''.

SEC. 602. HOMELAND SECURITY PUBLIC TRANSPORTATION GRANTS.

(a) AUTHORIZATION.—The Secretary of Homeland Security is authorized to make grants for the purpose of improving the security of public transportation systems against acts of terrorism. The grant program shall be administered by the Director of the Office of Domestic Preparedness to ensure that the program is consistent with other Department of Homeland Security grant programs.

(b) CONSIDERATIONS.—Among the considerations on which grants shall be awarded under this section are the following:

(1) Risk of terrorism, including threat assessment, vulnerabilities of public transportation systems, potential effects of acts of terrorism against public transportation systems, and past acts of terrorism against modes of transportation.

(2) Merits of the proposed projects to increase national security, based on a consideration of—

(A) threats;

(B) vulnerabilities;

(C) consequences, including human casualties and economic impacts;

(D) consequence management;

(E) the likelihood that such projects would have been pursued in the normal course of business and in the absence of national security considerations; and

(F) feasibility, based on the technical and operational merits of the projects.

(c) ALLOWABLE USE OF FUNDS.—Grants made under this section shall be used for the purposes of—

(1) support for increased capital investments in cameras, close-circuit television, and other surveillance systems;

(2) increased capital investment in command, control, and communications systems, including investments for redundancy and interoperability and for improved situational awareness, such as emergency call boxes and vehicle locator systems;

(3) increased training, including for carrying out exercises under section 603, and technical support for public transportation employees, especially for security awareness, prevention, and emergency response, including evacuation and decontamination;

(4) expanded deployment of equipment and other measures, including canine detection teams, for the detection of explosives and chemical, biological, radiological, and nuclear agents;

(5) capital improvements and operating activities, including personnel expenditures, to increase the physical security of stations, vehicles, bridges, and tunnels;

(6) capital improvements and operating activities to improve passenger survivability in the event of an attack, including improvements in ventilation, drainage, fire safety technology, emergency communications systems, lighting systems, passenger egress, and accessibility by emergency response personnel;

(7) acquisition of emergency response and support equipment, including fire suppression and decontamination equipment; and

(8) expansion of employee education and public awareness campaigns regarding security on public transportation systems.

(d) ELIGIBLE RECIPIENTS.—Grants shall be made available under this section directly to owners, operators, and providers of public transportation systems. Owners, operators, and providers of infrastructure over which public transportation operates, but which is not primarily used for public transportation, may also be eligible for grants at the discretion of the Secretary.

(e) ACCOUNTABILITY.—The Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this subtitle and the priorities and other criteria developed by the Secretary. If the Secretary determines that a recipient has used any portion of the grant funds received under this section for a purpose other than the allowable uses specified for that grant under this section, the grantee shall return any amount so used to the Treasury of the United States.

(f) PROCEDURES FOR GRANT AWARD.—The Secretary shall prescribe procedures and schedules for the awarding of grants under this section, including application and qualification procedures, and a record of decision on applicant eligibility. The Secretary shall issue a final rule establishing the procedures not later than 90 days after the date of enactment of this Act.

(g) COST SHARE.—Grants made under this section shall account for no more than—

(1) 85 percent for fiscal year 2006;

(2) 80 percent for fiscal year 2007; and

(3) 75 percent for fiscal year 2008,

of the expense of the purposes for which the grants are used.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the purposes of this section—

(1) $1,200,000,000 for fiscal year 2006;

(2) $900,000,000 for fiscal year 2007; and

(3) $700,000,000 for fiscal year 2008.

Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 603. TRAINING EXERCISES.

(a) GUIDELINES.—Not later than 4 months after the date of enactment of this Act, the Secretary of Homeland Security shall publish guidelines for the conduct by recipients of grants under section 602 of appropriate exercises for emergency response and public transportation employee training purposes.

(b) PLANS.—Not later than 6 months after receipt of a grant under section 602, the recipient of such grant shall transmit to the Secretary its emergency response plan as well as a plan for conducting exercises for emergency response and public transportation employee training purposes pursuant to the guidelines published under subsection (a).

(c) EXERCISES.—

(1) REQUIREMENT.—Not later than 1 year after receipt of a grant under section 602, the recipient of such grant shall conduct an exercise pursuant to the plan for conducting exercises transmitted under subsection (b).

(2) EXEMPTIONS.—The Secretary may exempt a grant recipient from the requirement under paragraph (1) if the recipient has recently conducted an equivalent exercise.

(3) NOTICE AND REPORT.—Not later than 30 days after conducting an exercise under paragraph (1) or as described in paragraph (2), the recipient shall notify the Secretary that such exercise has been completed, including a description of the results of the exercise and findings and lessons learned from the exercise, and shall make recommendations for changes, if necessary, to existing emergency response plans. If the recipient revises an emergency response plan as a result of an exercise under this subsection, the recipient shall transmit the revised plan to the Secretary not later than 6 months after the date of the exercise.

(d) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance in the design, preparation for, and conduct of emergency response exercises.

(e) USE OF PLANS.—The Secretary shall ensure that information submitted to the Secretary under this section is protected from any form of disclosure that might compromise public transportation security or trade secrets. Notwithstanding the preceding sentence, the Secretary may use such information, on a nonattributed basis unless otherwise agreed to by the source of the information, to aid in developing recommendations, best practices, and materials for use by public transportation authorities to improve security practices and emergency response capabilities.

SEC. 604. SECURITY BEST PRACTICES.

Not later than 120 days after the date of enactment of this Act, the Secretary of Homeland Security shall develop, disseminate to appropriate owners, operators, and providers of public transportation systems, public transportation employees and employee representatives, and Federal, State, and local officials, and transmit to Congress, a report containing best practices for the security of public transportation systems. In developing best practices, the Secretary shall be responsible for consulting with and collecting input from owners, operators, and providers of public transportation systems, public transportation employee representatives, first responders, industry associations, private sector experts, academic experts, and appropriate Federal, State, and local officials.

SEC. 605. PUBLIC AWARENESS.

Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall develop a national plan

for public outreach and awareness. Such plan shall be designed to increase awareness of measures that the general public, public transportation passengers, and public transportation employees can take to increase public transportation system security. Such plan shall also provide outreach to owners, operators, providers, and employees of public transportation systems to improve their awareness of available technologies, ongoing research and development efforts, and available Federal funding sources to improve public transportation security. Not later than 9 months after the date of enactment of this Act, the Secretary shall implement the plan developed under this section.

SEC. 606. NATIONAL TRANSPORTATION SECURITY CENTERS.

(a) ESTABLISHMENT.—The Secretary of Homeland Security, working jointly with the Secretary of Transportation, shall establish more than 1 but not more than 4 National Transportation Security Centers at institutions of higher education to assist in carrying out this subtitle, to conduct research and education activities, and to develop or provide professional training, including the training of public transportation employees and public transportation-related professionals, with emphasis on utilization of intelligent transportation systems, technologies, and architectures.

(b) CRITERIA.—The Secretary shall designate the Centers according to the following selection criteria:

(1) The demonstrated commitment of the institution to transportation security issues.

(2) The use of and experience with partnerships with other institutions of higher education, Federal laboratories, or other nonprofit laboratories.

(3) Capability to conduct both practical and theoretical research and technical systems analysis.

(4) Utilization of intelligent transportation system technologies and architectures.

(5) Ability to develop professional training programs.

(6) Capability and willingness to conduct education of transportation security professionals.

(7) Such other criteria as the Secretary may designate.

(c) FUNDING.—The Secretary shall provide such funding as is necessary to the National Transportation Security Centers established under subsection (a) to carry out this section.

SEC. 607. WHISTLEBLOWER PROTECTIONS.

(a) IN GENERAL.—No covered individual may be discharged, demoted, suspended, threatened, harassed, reprimanded, investigated, or in any other manner discriminated against (including by a denial, suspension, or revocation of a security clearance or by any other security access determination) if such discrimination is due, in whole or in part, to any lawful act done, perceived to have been done, or intended to be done by the covered individual—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the covered individual reasonably believes constitutes a violation of any law, rule or regulation relating to national or homeland security, which the covered individual reasonably believes constitutes a threat to national or homeland security, or which the covered individual reasonably believes constitutes fraud, waste or mismanagement of Government funds intended to be used for national or homeland security, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal, State or local regulatory or law enforcement agency (including an office of Inspector General under the Inspector General Act of 1978);

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the covered individual (or such other person who has the authority to investigate, discover, or terminate misconduct);

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding or action filed or about to be filed relating to an alleged violation of any law, rule or regulation relating to national or homeland security; or

(3) to refuse to violate or assist in the violation of any law, rule, or regulation relating to national or homeland security.

(b) ENFORCEMENT ACTION.—

(1) IN GENERAL.—A covered individual who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c) by—

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days after the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(2) PROCEDURE.—

(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the person's employer.

(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 1 year after the date on which the violation occurs.

(c) REMEDIES.—

(1) IN GENERAL.—A covered individual prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the covered individual whole.

(2) DAMAGES.—Relief for any action under paragraph (1) shall include—

(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

(B) the amount of any back pay, with interest;

(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees; and

(D) punitive damages in an amount not to exceed the greater of 3 times the amount of any compensatory damages awarded under this section or $5,000,000.

(d) STATE SECRETS PRIVILEGE.—If, in any action brought under subsection (b)(1)(B), the Government asserts as a defense the privilege commonly referred to as the ''state secrets privilege'' and the assertion of such privilege prevents the plaintiff from establishing a prima facie case in support of the plaintiff's claim, the court shall enter judgment for the plaintiff and shall determine the relief to be granted.

(e) CRIMINAL PENALTIES.—

(1) IN GENERAL.—It shall be unlawful for any person employing a covered individual to commit an act prohibited by subsection (a). Any person violating this paragraph shall be fined under title 18 of the United States Code, imprisoned not more than 10 years, or both.

(2) REPORTING REQUIREMENT.—The Department of Justice shall submit to Congress an annual report on the enforcement of paragraph (1). Each such report shall (A) identify each case in which formal charges under paragraph (1) were brought, (B) describe the status or disposition of each such case, and (C) in any actions under subsection (b)(1)(B) in which the covered individual was the prevailing party or the substantially prevailing party, indicate whether or not any formal charges under paragraph (1) have been brought and, if not, the reasons therefor.

(f) RIGHTS RETAINED BY COVERED INDIVIDUAL.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law, or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(g) DEFINITIONS.—For purposes of this section—

(1) the term ''covered individual'' means an employee of—

(A) the Department of Homeland Security (which, for purposes of this section, includes the Transportation Security Administration);

(B) a Federal contractor or subcontractor; and

(C) an employer within the meaning of section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b));

(2) the term ''lawful'' means not specifically prohibited by law, except that, in the case of any information the disclosure of which is specifically prohibited by law or specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs, any disclosure of such information to any Member of Congress, committee of Congress, or other recipient authorized to receive such information, shall be deemed lawful;

(3) the term ''Federal contractor'' means a person who has entered into a contract with the Department of Homeland Security;

(4) the term ''employee'' means—

(A) with respect to an employer referred to in paragraph (1)(A), an employee as defined by section 2105 of title 5, United States Code; and

(B) with respect to an employer referred to in subparagraph (A) or (B) of paragraph (1), any officer, partner, employee, or agent;

(5) the term ''subcontractor''—

(A) means any person, other than the Federal contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a contract with the Department of Homeland Security or a subcontract entered into in connection with such a contract; and

(B) includes any person who offers to furnish or furnishes general supplies to the Federal contractor or a higher tier subcontractor; and

(6) the term ''person'' means a corporation, partnership, State entity, business association of any kind, trust, joint-stock company, or individual.

(h) TERMS AND CONDITIONS.—A grant under this subtitle shall be subject to terms and conditions of section 5333 of title 49, United States Code.

(i) AUTHORIZATION OF FUNDS.—Of the amounts authorized under section 101, there is authorized to be appropriated amounts necessary for carrying out this section. Except as provided in the preceding sentence, this section shall have no force or effect.

SEC. 608. DEFINITION.

In this subtitle, the following definitions apply:

(1) PUBLIC TRANSPORTATION EMPLOYEES.—The term ''public transportation employees'' means security personnel, dispatchers, vehicle and vessel operators, other onboard employees, maintenance and support personnel, and other appropriate employees of owners, operators, and providers of public transportation systems.

(2) PUBLIC TRANSPORTATION SYSTEMS.—The term ''public transportation systems'' means passenger, commuter, and light rail, including subways, buses, commuter ferries, and other modes of public transit.

SEC. 609. MEMORANDUM OF AGREEMENT.

(a) REQUIREMENT TO WORK JOINTLY.—The Secretary of Homeland Security shall work jointly with the Secretary of Transportation in carrying out this subtitle.

(b) MEMORANDUM.—Within 60 days after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Transportation shall execute a memorandum of agreement governing the roles and responsibilities of the Department of Homeland Security and the Department of Transportation, respectively in addressing public transportation security matters, including the process their department will follow to carry out this subtitle and promote communications, efficiency, and nonduplication of effort.

Subtitle B—Rail Security

SEC. 611. SHORT TITLE.

This subtitle may be cited as the ''Rail Security Act of 2005''.

CHAPTER 1—RAILROAD SECURITY

SEC. 621. RAILROAD TRANSPORTATION SECURITY.

(a) IN GENERAL.—

(1) REQUIREMENTS.—The Secretary shall develop, prepare, implement, and update—

(A) a railroad security assessment under subsection (b)(1);

(B) a railroad security plan under subsection (b)(2);

(C) prioritized recommendations for improving railroad security under subsection (d);

(D) guidance for the rail worker security training program as authorized by section 624; and

(E) a national plan for public outreach and awareness for improving railroad security as authorized by section 627.

(2) ROLE OF SECRETARY OF TRANSPORTATION.—The Secretary shall work jointly with the Secretary of Transportation, in developing, preparing, revising, implementing, and updating the documents required by paragraph (1).

(3) MEMORANDUM OF AGREEMENT.—Within 60 days after the date of enactment of this Act, the Secretary and the Secretary of Transportation shall execute a memorandum of agreement governing the roles and responsibilities of the Department of Homeland Security and the Department of Transportation, respectively, in addressing railroad transportation security matters, including the processes the departments will follow to carry out this chapter and promote communications, efficiency, and nonduplication of effort.

(b) SECURITY ASSESSMENT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall complete the security assessment of railroad transportation required under subsection (a)(1). The security assessment shall include—

(A) identification and evaluation of critical railroad assets and infrastructures;

(B) identification of threats to those assets and infrastructures;

(C) identification of vulnerabilities that are specific to the transportation of hazardous materials by railroad;

(D) identification of redundant and backup systems required to ensure the continued operation of critical elements of the railroad system in the event of an attack or other incident, including disruption of commercial electric power or communications networks; and

(E) identification of security weaknesses in passenger and cargo security, transportation infrastructure, protection systems (including passenger and cargo screening), procedural policies, communications systems, employee training, emergency response planning, and any other area identified by the assessment.

(2) SECURITY PLAN.—The Secretary shall use the security assessment completed under paragraph (1) to develop a transportation modal security plan under section 114(t)(1)(B) of title 49, United States Code, for the security of the Nation's railroads. The plan shall—

(A) establish a strategy for minimizing terrorist threats to railroad transportation systems;

(B) establish a strategy for maximizing the efforts of railroads to mitigate damage from terrorist attacks;

(C) require the Federal Government to provide increased security support at high or severe threat levels of alert;

(D) set forth procedures for establishing and maintaining permanent and comprehensive consultative relations among the parties described in subsection (c);

(E) include a contingency plan to ensure the continued movement of freight and passengers in the event of an attack affecting the railroad system, which shall contemplate—

(i) the possibility of rerouting traffic due to the loss of critical infrastructure, such as a bridge, tunnel, yard, or station; and

(ii) methods of continuing railroad service in the Northeast Corridor in the event of a commercial power loss, or catastrophe affecting a critical bridge, tunnel, yard, or station; and

(F) account for actions taken or planned by both public and private entities to address security issues identified under paragraph (1) and assess the effective integration of such actions.

(c) CONSULTATION.—In developing the plan under subsection (b)(2) and the recommendations under subsection (d), the Secretary and the Secretary of Transportation shall consult with the freight and passenger railroad carriers, nonprofit employee organizations representing rail workers, nonprofit employee organizations representing emergency responders, owners or lessors of rail cars used to transport hazardous materials, shippers of hazardous materials, manufacturers of rail tank cars, State Departments of Transportation, public safety officials, and other relevant parties.

(d) RECOMMENDATIONS.—The Secretary shall develop prioritized recommendations for improving railroad security, including recommendations for—

(1) improving the security of rail tunnels, rail bridges, rail switching and car storage areas, other rail infrastructure and facilities, information systems, and other areas identified as posing significant railroad-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of railroad service;

(2) deploying surveillance equipment;

(3) deploying equipment to detect explosives and hazardous chemical, biological, and radioactive substances, and any appropriate countermeasures;

(4) installing redundant and backup systems to ensure the continued operation of critical elements of the railroad system in the event of an attack or other incident, including disruption of commercial electric power or communications networks;

(5) conducting public outreach campaigns on passenger railroads; and

(6) identifying the immediate and long-term costs of measures that may be required to address those risks.

(e) REPORT.—

(1) CONTENTS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate a report containing the security assessment, plan, and prioritized recommendations required by this section, along with an estimate of the cost to implement such recommendations.

(2) FORMAT.—The report may be submitted in a classified format if the Secretary determines that such action is necessary.

(f) PERIODIC UPDATES.—The Secretary shall update the railroad security assessment, security plan, and prioritized recommendations for improving railroad security under subsection (a), and the guidance for a railroad worker security training program under section 105, every 2 years and submit a report, which may be submitted in both classified and redacted formats, to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate not less frequently than April 1 of each even-numbered year.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $10,000,000 for the purpose of carrying out this section.

SEC. 622. FREIGHT AND PASSENGER RAIL SECURITY UPGRADES.

(a) SECURITY IMPROVEMENT GRANTS.—The Secretary, in coordination with the Secretary of Transportation, is authorized to make grants to freight and passenger railroad carriers, nonprofit employee organizations that represent rail workers, shippers of hazardous materials by rail, owners of rail cars used in the transportation of hazardous materials, manufacturers of rail tank cars, and State and local governments, for costs incurred in the conduct of activities to prevent or respond to acts of terrorism or sabotage against railroads, or other railroad security threats, including—

(1) perimeter protection systems, including access control, installation of better lighting, fencing, and barricades at railroad facilities;

(2) structural modification or replacement of rail cars transporting hazardous materials to improve their resistance to acts of terrorism;

(3) technologies for reduction of tank car vulnerability;

(4) security improvements to passenger railroad stations, trains, and infrastructure;

(5) tunnel protection systems;

(6) evacuation improvements;

(7) inspection technologies, including verified visual inspection technologies using hand-held readers and discs;

(8) security and redundancy for critical communications, computer, and train control systems essential for secure railroad operations or to continue railroad operations after an attack impacting railroad operations;

(9) train tracking and interoperable communications systems;

(10) chemical, biological, radiological, or explosive detection systems and devices;

(11) surveillance equipment;

(12) additional police and security officers, including canine units;

(13) accommodation of cargo or passenger screening equipment;

(14) employee security awareness, preparedness, and response training (including compliance with section 625);

(15) public security awareness campaigns;

(16) emergency response equipment, including fire suppression and decontamination equipment; and

(17) other improvements recommended by the report required by section 621, including infrastructure, facilities, and equipment upgrades.

(b) CONDITIONS.—The Secretary shall require recipients of funds for construction under this section and section 623 of this Act to apply the standards of section 24312 of title 49, United States Code, as in effect on September 1, 2004, with respect to the construction in the same manner as Amtrak is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of such title 49.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $600,000,000 to carry out the purposes of this section, of which $100,000,000 shall be used by the Secretary for making grants to Amtrak, in accordance with this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 623. FIRE AND LIFE-SAFETY IMPROVEMENTS.

(a) LIFE-SAFETY NEEDS.—There are authorized to be appropriated to Amtrak for the purposes of carrying out this section the following amounts:

(1) For the 6 new york tunnels to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers—

(A) $100,000,000 for fiscal year 2006;

(B) $100,000,000 for fiscal year 2007;

(C) $100,000,000 for fiscal year 2008;

(D) $100,000,000 for fiscal year 2009; and

(E) $170,000,000 for fiscal year 2010.

(2) For the baltimore & potomac tunnel and the union tunnel, together, to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades—

(A) $10,000,000 for fiscal year 2006;

(B) $10,000,000 for fiscal year 2007;

(C) $10,000,000 for fiscal year 2008;

(D) $10,000,000 for fiscal year 2009; and

(E) $17,000,000 for fiscal year 2010.

(3) For the washington, district of columbia, union station tunnels to improve ventilation, communication, lighting, and passenger egress upgrades—

(A) $8,000,000 for fiscal year 2006;

(B) $8,000,000 for fiscal year 2007;

(C) $8,000,000 for fiscal year 2008;

(D) $8,000,000 for fiscal year 2009; and

(E) $8,000,000 for fiscal year 2010.

(b) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to this section shall remain available until expended.

SEC. 624. RAIL SECURITY RESEARCH AND DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.—The Secretary shall carry out a research and development program for the purpose of improving railroad security that may include research and development projects to—

(1) reduce the vulnerability of passenger trains, stations, and equipment to explosives and hazardous chemical, biological, and radioactive substances;

(2) test new emergency response techniques and technologies;

(3) develop improved freight technologies, including—

(A) technologies for sealing rail cars;

(B) automatic inspection of rail cars; and

(C) communication-based train controls;

(4) test wayside detectors that can detect tampering with railroad equipment;

(5) support enhanced security for the transportation of hazardous materials by rail, including—

(A) technologies to detect a breach in a tank car and transmit information about the integrity of tank cars to the train crew;

(B) research to improve tank car integrity; and

(C) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety; and

(6) other projects recommended in the report required by section 621.

(b) COORDINATION WITH OTHER RESEARCH INITIATIVES.—The Secretary shall ensure that the research and development program authorized by this section is coordinated with other research and development initiatives at the Department of Homeland Security, the Department of Transportation, and other Federal agencies.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $50,000,000 in each of fiscal years 2006 and 2007 to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 625. RAIL WORKER SECURITY TRAINING PROGRAM.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with appropriate law enforcement, security, and terrorism experts, representatives of railroad carriers, and nonprofit employee organizations that represent rail workers, shall develop and issue detailed guidance for a rail worker security training program to prepare rail workers for potential threat conditions.

(b) PROGRAM ELEMENTS.—The guidance developed under subsection (a) shall require such a program to include, at a minimum, elements that address the following:

(1) Determination of the seriousness of any occurrence.

(2) Crew and passenger communication and coordination.

(3) Appropriate responses to defend oneself.

(4) Use of protective devices.

(5) Evacuation procedures.

(6) Live situational training exercises regarding various threat conditions, including tunnel evacuation procedures.

(7) Any other subject the Secretary considers appropriate.

(c) RAILROAD CARRIER PROGRAMS.—Not later than 60 days after the Secretary issues guidance under subsection (a) in final form, each railroad carrier shall develop a rail worker security training program in accordance with that guidance and submit it to the Secretary for approval. Not later than 60 days after receiving a railroad carrier's program under this subsection, the Secretary shall review the program and approve it or require the railroad carrier to make any revisions the Secretary considers necessary for the program to meet the guidance requirements.

(d) TRAINING.—Not later than 1 year after the Secretary approves the training program developed by a railroad carrier under this section, the railroad carrier shall complete the training of all rail workers in accordance with that program.

(e) UPDATES.—The Secretary shall update the training guidance issued under subsection (a) from time to time to reflect new or different security threats, and require railroad carriers to revise their programs accordingly and provide additional training to their rail workers.

SEC. 626. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—Subchapter I of chapter 201 of title 49, is amended by inserting after section 20115 the following:

"§ 20116. Whistleblower protection for railroad security matters

''(a) DISCRIMINATION AGAINST EMPLOYEE.—No railroad carrier engaged in interstate or foreign commerce may discharge a railroad employee or otherwise discriminate against a railroad employee because the employee (or any person acting pursuant to a request of the employee)

''(1) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to a perceived threat to security;

''(2) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding a perceived threat to security;

''(3) has assisted or participated, or is about to assist or participate, in any manner in a proceeding or any other action to enhance railroad security; or

''(4) refused to violate or assist in the violation of any law, rule, or regulation related to railroad security.

''(b) ENFORCEMENT ACTION.—

''(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c) by

''(A) filing a complaint with the Secretary of Labor; or

''(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

''(2) PROCEDURE.—

''(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of this title.

''(B) EXCEPTION.—Notification made under section 42121(b)(1) of this title, shall be made to the person named in the complaint and to the employer.

''(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) this title.

''(D) STATUTE OF LIMITATIONS.—An action under paragraph (1)(A) shall be commenced not later than 90 days after the date on which the violation occurs.

''(c) REMEDIES.—

''(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

''(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include

''(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

''(B) the amount of back pay, with interest; and

''(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

''(d) RIGHTS RETAINED BY EMPLOYEE.—Except as provided in subsection (e), nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

''(e) ELECTION OF REMEDIES.—An employee of a railroad carrier may not seek protection

under both this section and another provision of law for the same allegedly unlawful act of the railroad carrier.

''(f) DISCLOSURE OF IDENTITY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), without the written consent of the employee, the Secretary of Labor may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.

''(2) EXCEPTION.—The Secretary of Labor shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 201 of title 49, is amended by inserting after the item relating to section 20115 the following:

''20116. Whistleblower protection for railroad security matters.''.''

SEC. 627. PUBLIC OUTREACH.

Not later than 180 days after the date of enactment of this Act, the Secretary shall develop a national plan for public outreach and awareness. Such plan shall be designed to increase awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security. Such plan shall also provide outreach to railroad carriers and their employees to improve their awareness of available technologies, ongoing research and development efforts, and available Federal funding sources to improve railroad security. Not later than 9 months after the date of enactment of this Act, the Secretary shall implement the plan developed under this section.

SEC. 628. PASSENGER, BAGGAGE, AND CARGO SCREENING.

The Secretary shall—

(1) analyze the cost and feasibility of requiring security screening for passengers, baggage, and cargo on passenger trains; and

(2) report the results of the study, together with any recommendations that the Secretary may have for implementing a rail security screening program to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate not later than 1 year after the date of enactment of this Act.

SEC. 629. EMERGENCY RESPONDER TRAINING STANDARDS.

Not later than 90 days after the date of enactment of this Act, the Secretary of Transportation shall issue training standards for persons responsible for responding to emergency situations occurring during transportation of hazardous materials by rail, in accordance with existing regulations, to ensure their ability to protect nearby persons, property, or the environment from the effects of accidents involving hazardous materials.

SEC. 630. INFORMATION FOR FIRST RESPONDERS.

(a) IN GENERAL.—The Secretary of Transportation shall provide grants to Operation Respond Institute for the purpose of

(1) deploying and expanding the Operation Respond Emergency Information System software;

(2) developing, implementing, and maintaining a railroad infrastructure mapping program that correlates railroad right-of-way information with highway grid maps and overhead imagery of traffic routes, hazardous materials routes, and commuter rail lines; and

(3) establishing an alert and messaging capability for use during emergencies involving freight and passenger railroads.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation to carry out this section $2,500,000 for each of fiscal years 2005, 2006, and 2007. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 631. TSA PERSONNEL LIMITATIONS.

Any statutory limitation on the number of employees in the Transportation Security Administration, before or after its transfer to the Department of Homeland Security, does not apply to the extent that any such employees are responsible for implementing the provisions of this title.

SEC. 632. RAIL SAFETY REGULATIONS.

Section 20103(a) of title 49, United States Code, is amended by striking ''safety'' the first place it appears, and inserting ''safety, including security''.

SEC. 633. RAIL POLICE OFFICERS.

Section 28101 of title 49, United States Code, is amended by striking ''the rail carrier'' each place it appears and inserting ''any rail carrier''.

SEC. 634. DEFINITIONS.

For purposes of this chapter—

(1) the terms ''railroad'' and ''railroad carrier'' have the meaning given those terms in section 20102 of title 49, United States Code; and

(2) the term ''Secretary'' means the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Border and Transportation Security.

CHAPTER 2—ASSISTANCE TO FAMILIES OF PASSENGERS

SEC. 641. ASSISTANCE BY NATIONAL TRANSPORTATION SAFETY BOARD TO FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

(a) IN GENERAL.—Subchapter III of chapter 11 of title 49, United States Code, is amended by adding at the end the following:

''§ 1138. Assistance to families of passengers involved in rail passenger accidents

''(a) IN GENERAL.—As soon as practicable after being notified of a rail passenger accident within the United States involving a rail passenger carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall

''(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the rail passenger carrier and the families; and

''(2) designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

''(b) RESPONSIBILITIES OF THE BOARD.—The Board shall have primary Federal responsibility for

''(1) facilitating the recovery and identification of fatally injured passengers involved in an accident described in subsection (a); and

''(2) COMMUNICATING WITH THE FAMILIES OF PASSENGERS INVOLVED IN THE ACCIDENT AS TO THE ROLES OF.—

''(A) the organization designated for an accident under subsection (a)(2);

''(B) Government agencies; and

''(C) the rail passenger carrier involved,

with respect to the accident and the post-accident activities.

''(c) RESPONSIBILITIES OF DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

''(1) To provide mental health and counseling services, in coordination with the disaster response team of the rail passenger carrier involved.

''(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

''(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

''(4) To arrange a suitable memorial service, in consultation with the families.

''(d) PASSENGER LISTS.—

''(1) REQUESTS FOR PASSENGER LISTS.—

''(A) REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the rail passenger carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the rail passenger carrier's train involved in the accident. A rail passenger carrier shall use reasonable efforts, with respect to its unreserved trains, and passengers not holding reservations on its other trains, to ascertain the names of passengers aboard a train involved in an accident.

''(B) REQUESTS BY DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) may request from the rail passenger carrier involved in the accident a list described in subparagraph (A).

''(2) USE OF INFORMATION.—The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

''(e) CONTINUING RESPONSIBILITIES OF THE BOARD.—In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident

''(1) are briefed, prior to any public briefing, about the accident and any other findings from the investigation; and

''(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

''(f) USE OF RAIL PASSENGER CARRIER RESOURCES.—To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the rail passenger carrier involved in the accident to facilitate the reasonable use of the resources of the carrier.

''(g) PROHIBITED ACTIONS.—

''(1) ACTIONS TO IMPEDE THE BOARD.—No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

''(2) UNSOLICITED COMMUNICATIONS.—No unsolicited communication concerning a potential action for personal injury or wrongful

death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual (other than an employee of the rail passenger carrier) injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

''(3) PROHIBITION ON ACTIONS TO PREVENT MENTAL HEALTH AND COUNSELING SERVICES.—No State or political subdivision may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

''(h) DEFINITIONS.—In this section, the following definitions apply:

''(1) RAIL PASSENGER ACCIDENT.—The term 'rail passenger accident' means any rail passenger disaster occurring in the provision of

''(A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

''(B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation,

regardless of its cause or suspected cause.

''(2) RAIL PASSENGER CARRIER.—The term 'rail passenger carrier' means a rail carrier providing

''(A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

''(B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation,

except that such term shall not include a tourist, historic, scenic, or excursion rail carrier.

''(3) PASSENGER.—The term 'passenger' includes

''(A) an employee of a rail passenger carrier aboard a train;

''(B) any other person aboard the train without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the rail transportation; and

''(C) any other person injured or killed in the accident.

''(i) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

''(i) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—

''(1) GENERAL RULE.—This section (other than subsection (g)) shall not apply to a railroad accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

''(2) BOARD ASSISTANCE.—If this section does not apply to a railroad accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.''.

(b) CONFORMING AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 1137 the following:

''1138. Assistance to families of passengers invoolved in rail passenger accidents.''.

SEC. 642. RAIL PASSENGER CARRIER PLANS TO ADDRESS NEEDS OF FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

(a) IN GENERAL.—Part C of subtitle V of title 49, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 251—FAMILY ASSISTANCE

''Sec.

''25101. Plans to address needs of families of passengers involved in rail passenger accidents.

''§ 25101. Plans to address needs of families of passengers involved in rail passenger accidents

''(a) SUBMISSION OF PLANS.—Not later than 180 days after the date of the enactment of this section, each rail passenger carrier shall submit to the Secretary of Transportation and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving a train of the rail passenger carrier and resulting in a major loss of life.

''(b) CONTENTS OF PLANS.—A plan to be submitted by a rail passenger carrier under subsection (a) shall include, at a minimum, the following:

''(1) A plan for publicizing a reliable, toll-free telephone number, and for providing staff, to handle calls from the families of the passengers.

''(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1138(a)(2) of this title or the services of other suitably trained individuals.

''(3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the rail passenger carrier has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.

''(4) An assurance that the rail passenger carrier will provide to the director of family support services designated for the accident under section 1138(a)(1) of this title, and to the organization designated for the accident under section 1138(a)(2) of this title, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for the rail passenger carrier to use reasonable efforts to ascertain the names of passengers aboard a train involved in an accident.

''(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the rail passenger carrier.

''(6) An assurance that if requested by the family of a passenger, any possession of the passenger within the control of the rail passenger carrier (regardless of its condition) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

''(7) An assurance that any unclaimed possession of a passenger within the control of the rail passenger carrier will be retained by the rail passenger carrier for at least 18 months.

''(8) An assurance that the family of each passenger or other person killed in the accident will be consulted about construction by the rail passenger carrier of any monument to the passengers, including any inscription on the monument.

''(9) An assurance that the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

''(10) An assurance that the rail passenger carrier will work with any organization designated under section 1138(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

''(11) An assurance that the rail passenger carrier will provide reasonable compensation to any organization designated under section 1138(a)(2) of this title for services provided by the organization.

''(12) An assurance that the rail passenger carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

''(13) An assurance that the rail passenger carrier will commit sufficient resources to carry out the plan.

''(14) An assurance that the rail passenger carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

''(15) An assurance that, upon request of the family of a passenger, the rail passenger carrier will inform the family of whether the passenger's name appeared on any preliminary passenger manifest for the train involved in the accident.

''(c) LIMITATION ON LIABILITY.—A rail passenger carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the rail passenger carrier in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by the rail passenger carrier under subsection (b), unless such liability was caused by conduct of the rail passenger carrier which was grossly negligent or which constituted intentional misconduct.

''(d) DEFINITIONS.—In this section—

''(1) the terms 'rail passenger accident' and 'rail passenger carrier' have the meanings such terms have in section 1138 of this title; and

''(2) the term 'passenger' means a person aboard a rail passenger carrier's train that is involved in a rail passenger accident.

''(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.''.

(b) CONFORMING AMENDMENT.—The table of chapters for subtitle V of title 49, United States Code, is amended by adding after the item relating to chapter 249 the following new item:

''251. FAMILY ASSISTANCE ..... 25101''.

SEC. 643. ESTABLISHMENT OF TASK FORCE.

(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation, in coordination with the National Transportation Safety Board, organizations potentially designated under section 1138(a)(2) of title 49, United States Code, rail passenger carriers,

and families which have been involved in rail accidents, shall establish a task force consisting of representatives of such entities and families, representatives of passenger rail carrier employees, and representatives of such other entities as the Secretary considers appropriate.

(b) MODEL PLAN AND RECOMMENDATIONS.—The task force established pursuant to subsection (a) shall develop—

(1) a model plan to assist passenger rail carriers in responding to passenger rail accidents;

(2) recommendations on methods to improve the timeliness of the notification provided by passenger rail carriers to the families of passengers involved in a passenger rail accident;

(3) recommendations on methods to ensure that the families of passengers involved in a passenger rail accident who are not citizens of the United States receive appropriate assistance; and

(4) recommendations on methods to ensure that emergency services personnel have as immediate and accurate a count of the number of passengers onboard the train as possible.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the model plan and recommendations developed by the task force under subsection (b).

TITLE VII—SECURING CRITICAL INFRASTRUCTURE

SEC. 701. CRITICAL INFRASTRUCTURE.

(a) COMPLETION OF PRIORITIZATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall complete the prioritization of the Nation's critical infrastructure according to all of the following criteria:

(1) The threat of terrorist attack, based on threat information received and analyzed by the Office of Information Analysis of the Department regarding the intentions and capabilities of terrorist groups and other potential threats to the Nation's critical infrastructure.

(2) The likelihood that an attack would cause the destruction or significant disruption of such infrastructure.

(3) The likelihood that an attack would result in substantial numbers of deaths and serious bodily injuries, a substantial adverse impact on the national economy, or a substantial adverse impact on national security.

(b) COOPERATION.—Such prioritization shall be developed in cooperation with other relevant Federal agencies, State, local, and tribal governments, and the private sector, as appropriate.

SEC. 702. SECURITY REVIEW.

(a) REQUIREMENT.—Not later than 9 months after the date of the enactment of this Act, the Secretary, in coordination with other relevant Federal agencies, State, local, and tribal governments, and the private sector, as appropriate, shall—

(1) review existing Federal, State, local, tribal, and private sector plans for securing the critical infrastructure included in the prioritization developed under section 701;

(2) recommend changes to existing plans for securing such infrastructure, as the Secretary determines necessary; and

(3) coordinate and contribute to protective efforts of other Federal, State, local, and tribal agencies and the private sector, as appropriate, as directed in Homeland Security Presidential Directive 7.

(b) CONTENTS OF PLANS.—The recommendations made under subsection (a)(2) shall include—

(1) necessary protective measures to secure such infrastructure, including milestones and timeframes for implementation; and

(2) to the extent practicable, performance metrics to evaluate the benefits to both national security and the Nation's economy from the implementation of such protective measures.

SEC. 703. IMPLEMENTATION REPORT.

(a) IN GENERAL.—Not later than 15 months after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate on the implementation of section 702. Such report shall detail—

(1) the Secretary's review and coordination of security plans under section 702; and

(2) the Secretary's oversight of the execution and effectiveness of such plans.

(b) UPDATE.—Not later than 1 year after the submission of the report under subsection (a), the Secretary shall provide an update of such report to the congressional committees described in subsection (a).

TITLE VIII—PREVENTING A BIOLOGICAL ATTACK

SEC. 801. GAO REPORT OF DEPARTMENT BIOLOGICAL TERRORISM PROGRAMS.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate assessing the full history of Department of Homeland Security activities with regard to biological terrorism and recommending which Department of the Government should administer such activities.

(b) INCLUDED CONTENTS.—The report shall consider and discuss—

(1) progress made in implementing the BioShield program;

(2) how effectively the Department of Health and Human Services is administering the BioShield program;

(3) whether the Department of Health and Human Services has the administrative capability necessary to fully implement the BioShield program; and

(4) the legislative history of the BioShield program, including the legislation that established the program as it was introduced in the Congress and considered and reported by the Select Committee on Homeland Security of the House of Representatives.

SEC. 802. REPORT ON BIO-COUNTERMEASURES.

Not later than 12 months after the date of enactment of this Act, the Secretary of Homeland Security in consultation with the Secretary of Health and Human Services shall transmit to the Congress a report with recommendations, on—

(1) the feasibility of supplying first responders, not limited to law enforcement, firefighters and emergency medical service personnel, with biological and chemical agent countermeasures or vaccinations when necessary;

(2) the appropriate levels and types of biological and chemical agents, industrial materials and other hazardous substances that first responders should be protected against; and

(3) the system and appropriate means of accessing, delivering, storing and dispersing countermeasures to first responder personnel.

TITLE IX—PROTECTION OF AGRICULTURE

SEC. 901. REPORT TO CONGRESS ON IMPLEMENTATION OF RECOMMENDATIONS REGARDING PROTECTION OF AGRICULTURE.

The Secretary of Homeland Security shall report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate by no later than 120 days after the date of the enactment of this Act regarding how the Department of Homeland Security will implement the applicable recommendations from the Government Accountability Office report entitled ''Homeland Security: Much is Being Done to Protect Agriculture from a Terrorist Attack, but Important Challenges Remain'' (GAO–05–214).

TITLE X—OPTIMIZING OUR SCREENING CAPABILITIES

Subtitle A—U.S. Visitor and Immigrant Status Indicator Technology Database

SEC. 1001. INTEROPERABILITY OF DATA FOR UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY.

(a) FINDINGS.—The Congress finds as follows:

(1) The Congress is troubled by the security gap on the Nation's borders caused by delays in linking fingerprint data in IDENT with criminal history data contained in IAFIS.

(2) The Congress expected that, by the end of 2004, such interoperability would be in place at airports, seaports, and the largest and busiest Border Patrol stations and land border ports of entry, but this will not be completed until December 31, 2005.

(3) With implementation of a new visa tracking system, and enrollment of millions of visitors in US-VISIT, it is essential that the Directorate of Border and Transportation Security collaborate with the Federal Bureau of Investigations to ensure that IDENT can retrieve, in real time, biometric information containing in IAFIS, and that IAFIS can retrieve, in real time, biometric information contained in IDENT.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall prepare, and submit to the Committee on Homeland Security of the United States House of Representatives, a report that details the status of the effort to achieve real-time interoperability of IAFIS and IDENT, including the following:

(1) The steps the Department will take to achieve this goal, the funds needed to achieve this goal, and a timetable to achieve this goal.

(2) A description of the effort being made to address the recommendations in the March, 2004, Department of Justice Inspector General report and subsequent December, 2004, report, which documented the need to integrate existing biometric databases; and

(3) The plan for maintaining the interoperability of IAFIS and IDENT, once achieved.

(c) DEFINITIONS.—For purposes of this section:

(1) The term ''IAFIS'' means the Integrated Automated Fingerprint Identification System maintained by the Federal Bureau of Investigation of the Department of Justice.

(2) The term ''IDENT'' means the Automated Biometrics Identification System maintained by the Bureau of Customs and Border Protection of the Department of Homeland Security.

(3) The term ''US-VISIT'' means the United States Visitor and Immigrant Status Indicator Technology maintained by the Bureau of Customs and Border Protection of the Department of Homeland Security.

Subtitle B—Studies to Improve Border Management and Immigration Security

SEC. 1011. STUDY ON BIOMETRICS.

(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Director of the National Institute of Standards and Technology, shall conduct a comprehensive study of all biometric identifiers that

might be collected for purposes of processing and adjudicating applications and petitions for immigration benefits, and shall determine which among these identifiers would be most appropriate for the purposes described in subsection (b). The Secretary shall provide the resources necessary to properly conduct the study.

(b) USES.—In carrying out subsection (a), the Secretary shall consider the use of a biometric identifier—

(1) to register or catalogue a petition or application for an immigration benefit upon submission to the appropriate Federal agency;

(2) to check the petitioner or applicant against watch lists;

(3) as part of the integrated entry and exit data system required under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a); and

(4) to conduct background checks with Federal intelligence agencies.

(c) FACTORS.—The Secretary shall consider the following factors in making the determination under subsection (a):

(1) Accuracy

(2) The technology available.

(3) Economic considerations.

(4) Storage.

(5) Efficiency.

(6) Feasibility.

(d) SUBMISSION.—The study should be completed not later than January 1, 2006, and shall be submitted to the Committee on Homeland Security of the United States House of Representatives.

SEC. 1012. STUDY ON DIGITIZING IMMIGRATION BENEFIT APPLICATIONS.

(a) IN GENERAL.—The Secretary of Homeland Security shall conduct a comprehensive study on digitizing all applications and petitions for an immigration benefit, including digital storage, cataloguing, and the ability to apply for all types of immigration benefits through digital means. The study should consider costs for both the Federal Government and the applicant or petitioner, as well as the feasibility for all types of persons to apply by digital means.

(b) SUBMISSION.—The study should be completed not later than January 1, 2006, and shall be submitted to the Committee on Homeland Security of the United States House of Representatives.

SEC. 1013. STUDY ON ELIMINATION OF ARRIVAL/DEPARTURE PAPER FORMS.

(a) IN GENERAL.—The Secretary of Homeland Security shall conduct a comprehensive study on replacing Department of Homeland Security paper Form Number I–94 (Arrival/Departure Record) and Form Number I–94W (NIV Waiver Arrival/Departure Record) with procedures that ensure that the functions served by such forms are being carried out by electronic or digitized means. The study should consider the costs and savings to the Federal Government of such replacement.

(b) SUBMISSION.—The study should be completed not later than January 1, 2006, and shall be submitted to the Committee on Homeland Security of the United States House of Representatives.

SEC. 1014. CATALOGUING IMMIGRATION APPLICATIONS BY BIOMETRIC.

(a) IN GENERAL.—The Secretary of Homeland Security shall conduct a comprehensive study on whether all applications and petitions for an immigration benefit shall be registered or catalogued by the receiving agency using a biometric identifier. The Secretary of Homeland Security shall study one or more alternative biometric identifiers to be used for such purposes.

(b) SUBMISSION.—The study should be completed not later than January 1, 2006, and shall be submitted to the Committee on Homeland Security of the United States House of Representatives. It shall include recommendations for resource allocation.

TITLE XI—SECURING CYBERSPACE AND HARNESSING TECHNOLOGY TO PREVENT DISASTER

Subtitle A—Department of Homeland Security Cybersecurity Enhancement

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the ''Department of Homeland Security Cybersecurity Enhancement Act of 2005''.

SEC. 1102. ASSISTANT SECRETARY FOR CYBERSECURITY.

Section 201(b) of the Homeland Security Act of 2002 (6 U.S.C. 121(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

''(3) ASSISTANT SECRETARY FOR CYBERSECURITY.—There shall be in the Department an Assistant Secretary for Cybersecurity, who shall be appointed by the President.''; and

(3) in paragraph (4), as redesignated by subparagraph (A) of this paragraph—

(A) by striking ''Analysis and the'' and inserting ''Analysis, the''; and

(B) by striking ''Protection shall'' and inserting ''Protection, and the Assistant Secretary for Cybersecurity shall''.

SEC. 1103. CYBERSECURITY TRAINING PROGRAMS AND EQUIPMENT.

(a) IN GENERAL.—The Secretary of Homeland Security, acting through the Assistant Secretary for Cybersecurity, may establish, in conjunction with the National Science Foundation, a program to award grants to institutions of higher education (and consortia thereof) for—

(1) the establishment or expansion of cybersecurity professional development programs;

(2) the establishment or expansion of associate degree programs in cybersecurity; and

(3) the purchase of equipment to provide training in cybersecurity for either professional development programs or degree programs.

(b) ROLES.—

(1) DEPARTMENT OF HOMELAND SECURITY.—The Secretary, acting through the Assistant Secretary for Cybersecurity and in consultation with the Director of the National Science Foundation, shall establish the goals for the program established under this section and the criteria for awarding grants under the program.

(2) NATIONAL SCIENCE FOUNDATION.—The Director of the National Science Foundation shall operate the program established under this section consistent with the goals and criteria established under paragraph (1), including soliciting applicants, reviewing applications, and making and administering grant awards. The Director may consult with the Assistant Secretary for Cybersecurity in selecting awardees.

(3) FUNDING.—The Secretary shall transfer to the National Science Foundation the funds necessary to carry out this section.

(c) GRANT AWARDS.—

(1) PEER REVIEW.—All grant awards under this section shall be made on a competitive, merit-reviewed basis.

(2) FOCUS.—In making grant awards under this section, the Director shall, to the extent practicable, ensure geographic diversity and the participation of women and underrepresented minorities.

(3) PREFERENCE.—In making grant awards under this section, the Director shall give preference to applications submitted by consortia of institutions to encourage as many students and professionals as possible to benefit from this program.

(d) AUTHORIZATION OF APPROPRIATIONS.—Of the amount authorized under section 101, there is authorized to be appropriated to the Secretary for carrying out this section $3,700,000 for fiscal year 2006.

(e) DEFINITIONS.—In this section, the term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

SEC. 1104. CYBERSECURITY RESEARCH AND DEVELOPMENT.

Title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et. seq.) is amended by adding at the end the following new section:

''SEC. 314. CYBERSECURITY RESEARCH AND DEVELOPMENT.

''(a) IN GENERAL.—The Under Secretary for Science and Technology shall support research and development, including fundamental, long-term research, in cybersecurity to improve the ability of the United States to prevent, protect against, detect, respond to, and recover from cyber attacks, with emphasis on research and development relevant to large-scale, high-impact attacks.

''(b) ACTIVITIES.—The research and development supported under subsection (a), shall include work to—

''(1) advance the development and accelerate the deployment of more secure versions of fundamental Internet protocols and architectures, including for the domain name system and routing protocols;

''(2) improve and create technologies for detecting attacks or intrusions, including monitoring technologies;

''(3) improve and create mitigation and recovery methodologies, including techniques for containment of attacks and development of resilient networks and systems that degrade gracefully; and

''(4) develop and support infrastructure and tools to support cybersecurity research and development efforts, including modeling, testbeds, and data sets for assessment of new cybersecurity technologies.

''(c) COORDINATION.—In carrying out this section, the Under Secretary for Science and Technology shall coordinate activities with—

''(1) the Assistant Secretary for Cybersecurity; and

''(2) other Federal agencies, including the National Science Foundation, the Defense Advanced Research Projects Agency, and the National Institute of Standards and Technology, to identify unmet needs and cooperatively support activities, as appropriate.

''(d) NATURE OF RESEARCH.—Activities under this section shall be carried out in accordance with section 306(a) of this Act.''.

Subtitle B—Coordination With National Intelligence Director

SEC. 1111. IDENTIFICATION AND IMPLEMENTATION OF TECHNOLOGIES THAT IMPROVE SHARING OF INFORMATION WITH THE NATIONAL INTELLIGENCE DIRECTOR.

Section 201(d)(8) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)) is amended by inserting '', including identifying and implementing technologies that improve sharing of information with the National Intelligence Director,'' after ''within the Federal Government''.

Subtitle C—Cybersecurity Research

SEC. 1121. SUPPORT OF BASIC CYBERSECURITY RESEARCH.

(a) IN GENERAL.—Title III of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 121 et seq.) is amended by adding the following:

''SEC. 314. SUPPORT OF BASIC CYBERSECURITY RESEARCH.

''The Secretary, through the Directorate of the Department of Science and Technology

and subject to the availability of appropriations, shall fund basic cybersecurity research, including the following:

''(1) Development of information technology design protocols, methodologies, and applications to improve the integration of security control and protocols into next-generation-networks, mobile and wireless networks, and computing devices and applications.

''(2) Development of network-based control mechanisms for improving the capability of operators and service providers to disable malicious action by hostile actors.

''(3) Development of mechanisms for improving international network responsiveness to cybersecurity threats, including predictive modeling, communication mechanisms and information sharing systems.

''(4) Modeling of the cyber vulnerabilities of the Nation's critical infrastructures, including Supervisory Control and Data Acquisition (SCADA) and Digital Control Systems (DCS).

''(5) Mapping of key interdependences, choke-points, and single points-of-failure within the Nation's cyber critical infrastructure and the development of remediation programs.

''(6) Development of technologies, methodologies, and applications to mitigate the most common cyber vulnerabilities affecting networks, including viruses, worms, and denial-of-service attacks.

''(7) Identification of emerging cybersecurity threats and vulnerabilities affecting next-generation networks and mobile and wireless networks.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end of the items relating to title III the following:

''Sec. 314. Support of basic cybersecurity research.''.

Subtitle D—Cybersecurity Training and Equipment

SEC. 1131. CYBERSECURITY TRAINING PROGRAMS AND EQUIPMENT.

(a) IN GENERAL.—The Secretary of Homeland Security, acting through the Assistant Secretary for Cybersecurity, may establish, in conjunction with the National Science Foundation, a program to award grants to institutions of higher education (and consortia thereof) for—

(1) the establishment or expansion of cybersecurity professional development programs;

(2) the establishment or expansion of associate degree programs in cybersecurity; and

(3) the purchase of equipment to provide training in cybersecurity for either professional development programs or degree programs.

(b) ROLES.—

(1) DEPARTMENT OF HOMELAND SECURITY.—The Secretary, acting through the Assistant Secretary for Cybersecurity and in consultation with the Director of the National Science Foundation, shall establish the goals for the program established under this section and the criteria for awarding grants under the program.

(2) NATIONAL SCIENCE FOUNDATION.—The Director of the National Science Foundation shall operate the program established under this section consistent with the goals and criteria established under paragraph (1), including soliciting applicants, reviewing applications, and making and administering grant awards. The Director may consult with the Assistant Secretary for Cybersecurity in selecting awardees.

(3) FUNDING.—The Secretary shall transfer to the National Science Foundation the funds necessary to carry out this section.

(c) GRANT AWARDS.—

(1) PEER REVIEW.—All grant awards under this section shall be made on a competitive, merit-reviewed basis.

(2) FOCUS.—In making grant awards under this section, the Director shall, to the extent practicable, ensure geographic diversity and the participation of women and underrepresented minorities.

(3) PREFERENCE.—In making grant awards under this section, the Director shall give preference to applications submitted by consortia of institutions to encourage as many students and professionals as possible to benefit from this program.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for carrying out this section $3,700,000 for fiscal year 2006.

(e) DEFINITIONS.—In this section, the term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

TITLE XII—HELPING FIRST RESPONDERS GET THEIR JOB DONE

Subtitle A—Communications Interoperability

SEC. 1201. INTEROPERABLE COMMUNICATIONS TECHNOLOGY GRANT PROGRAM.

Section 430 of the Homeland Security Act of 2002 (6 U.S.C. 238) is amended by adding at the end the following:

''(e) INTEROPERABLE COMMUNICATIONS GRANTS.—

''(1) DEFINITIONS.—In this subsection, the following definitions shall apply:

''(A) COMMUNICATIONS INTEROPERABILITY.—The term 'communications interoperability' means the ability of public safety service and support providers, including emergency response providers, to communicate with other responding agencies and Federal agencies if necessary, through information technology systems and radio communications systems, and to exchange voice, data, or video with one another on demand, in real time, as necessary.

''(B) ELIGIBLE STATE.—The term 'eligible State' means a State that—

''(i) has submitted a plan under paragraph (4); and

''(ii) the Secretary determines has not achieved adequate statewide communications interoperability.

''(C) PUBLIC SAFETY AGENCIES.—The term 'public safety agencies' includes emergency response providers and any other persons that the Secretary determines must communicate effectively with one another to respond to emergencies.

''(2) IN GENERAL.—The Secretary shall—

''(A) make grants on a competitive basis directly to local governments (including a consortium of local governments) and public safety agencies within eligible States, in consultation with the chief executives of the State or States, for the purpose of assisting in the development of interoperable communications systems at any stage, including—

''(i) planning, system design, and engineering;

''(ii) procurement and installation of equipment;

''(iii) operations and maintenance of equipment; and

''(iv) testing and technology development; and

''(B) make grants to eligible States for initiatives necessary to achieve communications interoperability within each State, including—

''(i) statewide communications planning;

''(ii) system design and engineering;

''(iii) procurement and installation of equipment;

''(iv) operations and maintenance of equipment; and

''(v) testing and technology development initiatives.

''(3) COORDINATION.—

''(A) IN GENERAL.—The Secretary shall ensure that grants administered under this subsection are coordinated with the activities of other entities of the Department and other Federal entities so that grants awarded under this subsection, and other grant programs related to homeland security, facilitate the achievement of the strategy developed under section 6 of the Faster and Smarter Funding for First Responders Act of 2005.

''(B) RELATIONSHIP TO EXISTING GRANT PROGRAMS.—Nothing in this Act shall provide for the combination of grant funds among the grant program established under this subsection and any other grant programs administered by the Department of Homeland Security, including the State Homeland Security Grant Program of the Department, or any successor to such grant program, and the Urban Area Security Initiative of the Department, or any successor to such grant program.

''(4) ELIGIBILITY.—

''(A) SUBMISSION OF PLAN.—To be eligible to receive a grant under this subsection, each eligible State, or local governments or public safety agencies within an eligible State or States, shall submit a communications interoperability plan to the Secretary that—

''(i) addresses any stage of the development of interoperable communications systems, including planning, system design and engineering, procurement and installation, operations and maintenance, and testing and technology development;

''(ii) if the applicant is not a State, includes a description of how the applicant addresses the goals specified in any applicable State plan or plans submitted under this section; and

''(iii) is approved by the Secretary.

''(B) INCORPORATION AND CONSISTENCY.—A plan submitted under subparagraph (A) may be part of, and shall be consistent with, any other homeland security plans required of the submitting party by the Department.

''(5) AWARD OF GRANTS.—

''(A) CONSIDERATIONS.—In approving plans and awarding grants under this subsection, the Secretary shall consider—

''(i) the nature of the threat to the eligible State or local jurisdiction;

''(ii) the location, risk, or vulnerability of critical infrastructure and key national assets;

''(iii) the number, as well as the density, of persons who will be served by interoperable communications systems;

''(iv) the extent of the partnerships, existing or planned, established between local jurisdictions and agencies participating in the development of interoperable communications systems, and their coordination with Federal and State agencies;

''(v) the level of communications interoperability already achieved by the jurisdictions;

''(vi) the extent to which the communications interoperability plan submitted under paragraph (4) adequately addresses steps necessary to implement short-term or long-term solutions to communications interoperability;

''(vii) the extent to which eligible States and local governments, in light of their financial capability, demonstrate their commitment to expeditiously achieving communications interoperability by supplementing Federal funds with non-Federal funds;

''(viii) the extent to which grants will expedite the achievement of interoperability in the relevant jurisdiction with Federal, State, and local agencies; and

''(ix) the extent to which grants will be utilized to implement advanced communications technologies to promote interoperability.

''(B) COST SHARING.—

''(i) IN GENERAL.—The Federal share of the costs of an activity carried out with a grant to an applicant awarded under this section shall not exceed 75 percent.

''(ii) IN-KIND MATCHING.—Each recipient of a covered grant may meet the matching requirement under clause (i) by making in-kind contributions of goods or services that are directly linked with the purpose for which the grant is made, including personnel overtime, contractor services, administrative costs, equipment fuel and maintenance, and rental space.

''(6) REIMBURSEMENT.—

''(A) IN GENERAL.—Unless otherwise requested by the recipient of a grant under this subsection, grants shall not be awarded to reimburse the recipient for prior expenditures related to achieving communications interoperability.

''(B) EXCEPTION.—The Secretary shall reimburse public safety agencies directly for costs incurred for expenditures related to achieving communications interoperability, if—

''(i) the public safety agency expended funds after September 11, 2001, and before the date of enactment of this subsection; and

''(ii) such expenditures are consistent with and supportive of the communications interoperability plan approved by the Secretary under paragraph (4)(A)(iii).

''(C) TERMINATION OF AUTHORITY.—The authority of the Secretary under subparagraph (B) shall terminate one year after the date on which the Department of Homeland Security first allocates grant funds for this program.

''(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $500,000,000 for fiscal year 2006, $750,000,000 for fiscal year 2007, $1,000,000,000 for fiscal year 2008, $1,250,000,000 for fiscal year 2009, $1,500,000,000 for fiscal year 2010, and such sums as are necessary each fiscal year thereafter, to carry out the purposes of this subsection.''.

SEC. 1202. STUDY REVIEWING COMMUNICATION EQUIPMENT INTEROPERABILITY.

(a) STUDY.—The Secretary of Homeland Security shall conduct a study reviewing communication equipment interoperability and the viability of an acquisition strategy that requires all agencies to purchase equipment made by manufacturers that have committed to allow their products to be reverse engineered, so that interoperability can be assured regardless of manufacturer.

(b) REPORT.—The Secretary shall submit to the Congress a report on the findings, conclusions, and recommendation of the study by not later than 6 months after the date of the enactment of this Act.

SEC. 1203. PREVENTION OF DELAY IN REASSIGNMENT OF DEDICATED SPECTRUM FOR PUBLIC SAFETY PURPOSES.

It is the sense of Congress that—

(1) communications interoperability is a critical problem faced by our Nation's first responders;

(2) permanently correcting this problem requires broadcast spectrum dedicated for use by first responders; and

(3) Congress supports prompt action to make certain dedicated spectrum is available for use by first responders.

Subtitle B—Homeland Security Terrorism Exercises

SEC. 1211. SHORT TITLE.

This subtitle may be cited as the ''Homeland Security Terrorism Exercises Act of 2005.''

SEC. 1212. NATIONAL TERRORISM EXERCISE PROGRAM.

(a) IN GENERAL.—Section 430 of the Homeland Security Act of 2002 (6 U.S.C. 238) is amended by striking ''and'' after the semicolon at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting ''; and'', and by adding at the end the following:

''(10) designing, developing, performing, and evaluating exercises at the National, State, territorial, regional, local, and tribal levels of government that incorporate government officials, emergency response providers, public safety agencies, the private sector, international governments and organizations, and other appropriate entities to test the Nation's capability to prevent, prepare for, respond to, and recover from threatened or actual acts of terrorism.''.

(b) NATIONAL TERRORISM EXERCISE PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Title VIII of the Homeland Security Act of 2002 (Public Law 107–296) is amended by adding at the end the following new subtitle:

''Subtitle J—Terrorism Preparedness Exercises

''SEC. 899a. NATIONAL TERRORISM EXERCISE PROGRAM.

''(a) IN GENERAL.—The Secretary, through the Office for Domestic Preparedness, shall establish a National Terrorism Exercise Program for the purpose of testing and evaluating the Nation's capabilities to prevent, prepare for, respond to, and recover from threatened or actual acts of terrorism that—

''(1) enhances coordination for terrorism preparedness between all levels of government, emergency response providers, international governments and organizations, and the private sector;

''(2) is—

''(A) multidisciplinary in nature, including, as appropriate, information analysis and cybersecurity components;

''(B) as realistic as practicable and based on current risk assessments, including credible threats, vulnerabilities, and consequences;

''(C) carried out with the minimum degree of notice to involved parties regarding the timing and details of such exercises, consistent with safety considerations;

''(D) evaluated against performance measures and followed by corrective action to solve identified deficiencies; and

''(E) assessed to learn best practices, which shall be shared with appropriate Federal, State, territorial, regional, local, and tribal personnel, authorities, and training institutions for emergency response providers; and

''(3) assists State, territorial, local, and tribal governments with the design, implementation, and evaluation of exercises that—

''(A) conform to the requirements of paragraph (2); and

''(B) are consistent with any applicable State homeland security strategy or plan.

''(b) NATIONAL LEVEL EXERCISES.—The Secretary, through the National Terrorism Exercise Program, shall perform on a periodic basis national terrorism preparedness exercises for the purposes of—

''(1) involving top officials from Federal, State, territorial, local, tribal, and international governments, as the Secretary considers appropriate;

''(2) testing and evaluating the Nation's capability to detect, disrupt, and prevent threatened or actual catastrophic acts of terrorism, especially those involving weapons of mass destruction; and

''(3) testing and evaluating the Nation's readiness to respond to and recover from catastrophic acts of terrorism, especially those involving weapons of mass destruction.''.

(2) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end of the items relating to title VIII the following:

''Subtitle J—Terrorism Preparedness Exercises

''Sec. 899a. National terrorism exercise program.''.

Subtitle C—Citizenship Preparedness

SEC. 1221. FINDINGS.

The Congress finds that individual citizens must be a significant part of our overall approach to the Nation's security because—

(1) September 11, 2001, confirmed that all Americans have responsibility for homeland security;

(2) the United States will not be secure until the hometown is secure and the ''publicity and the vigilance of ordinary Americans make a difference'' in their communities' abilities to prepare for, to train for, and to respond to disasters of all kinds; and

(3) emergency responders can become overwhelmed in a catastrophic event and citizens must be prepared and trained to take care of themselves and others.

SEC. 1222. PURPOSES.

The purpose of this title is to to provide an orderly and continuing means of assistance by the Federal Government to State, local, and tribal governments in carrying out their responsibilities to engage all Americans in homeland security to provide an orderly and continuing means of assistance by the Federal Government to State, local, and tribal governments in carrying out their responsibilities to engage all Americans in homeland security by—

(1) achieving greater coordination among citizens, the private sector, non-governmental organizations, and all emergency responder disciplines through Citizen Corps Councils;

(2) encouraging individuals and communities to prepare for all hazards and threats;

(3) providing Federal assistance to establish, to build, and to sustain Citizen Corps Councils, which foster a comprehensive partnership among all emergency responder disciplines, government officials, the private sector, community and faith-based organizations to develop a local, risk-based strategy plan to engage citizens in hometown security through accurate preparedness information through public education and outreach; timely event-based information, including alerts and warnings; training in preparedness, prevention, and emergency response skills; and opportunities for collaboration with local emergency responders through volunteer programs, exercises, community outreach, and other coordinated efforts to promote citizen preparedness;

(4) focusing on how both to include people with disabilities and special needs in emergency preparedness and response training and collaboration opportunities and to ensure that emergency responders are better preparedness to meet the needs of this segment of society; and

(5) endorsing homeland security plans and strategies that integrate citizen/volunteer resources and participation and task force/advisory council memberships that include advocates for increased citizen participation.

SEC. 1223. CITIZENS CORPS; PRIVATE SECTOR PREPAREDNESS.

Title I of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by adding at the end the following:

''SEC. 104. CITIZEN CORPS AUTHORIZATION.

''(a) ADMINISTRATION AND SUPERVISION.—Citizen Corps and other community preparedness programs in the Department of Homeland Security shall be administered by the Executive Director of the Office of State

and Local Government Coordination and Preparedness under the supervision and direction of the Secretary.

''(b) EXECUTIVE DIRECTOR.—The Executive Director—

''(1) shall serve as Chair of the National Citizen Corps Council;

''(2) shall convene meetings of the National Citizen Corps Council at his own discretion or at the direction of the Secretary;

''(3) shall coordinate with State, local, and tribal government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities to fulfill the mission of engaging citizens in homeland security; and

''(4) shall provide periodic reports on the status of Citizen Corps and citizen preparedness to the Homeland Security Council through the Secretary.

''(c) USES OF FUNDS.—Funds made available under this title shall be used for the following:

''(1) Activities related to the component programs of Citizen Corps, including but not limited to Community Emergency Response Teams, Fire Corps, Volunteers in Police Service, USA on Watch, and Medical Reserve Corps.

''(2) To provide funding to States in accordance with Public Law 107–296, except that States must pass through at least 80 percent of funds received under this title to local Citizen Corps Councils.

''(3) State and local Citizen Corps councils may purchase educational materials for use in elementary and secondary schools for emergency preparedness education programs.

''(d) COORDINATION WITH OTHER FEDERAL ENTITIES.—The Executive Director—

''(1) shall support the coordination among all Federal entities to develop and sustain Citizen Corps and citizen preparedness and participation, especially the Departments of Health and Human Services, Justice, Commerce, Education, the Environmental Protection Agency, and Corporation for National and Community Service; and

''(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Executive Director's responsibilities under this title or otherwise provided by law.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title—

''(1) for fiscal year 2006, $50 million;

''(2) for fiscal year 2007, $55 million;

''(3) for fiscal year 2008, $60 million;

''(4) for fiscal year 2009, $65 million; and

''(5) for fiscal year 2010, $70 million.

''SEC. 105. PRIVATE SECTOR EMERGENCY PREPAREDNESS PROGRAM.

''(a) PREPAREDNESS PROGRAM.—Not later than 90 days after the date of the enactment of this title, the Secretary shall develop and implement a program to enhance private sector preparedness for emergencies and disasters, including emergencies resulting from acts of terrorism.

''(b) PROGRAM ELEMENTS.—In carrying out the program, the Secretary shall develop guidance and identify best practices to assist or foster action by the private sector in—

''(1) identifying hazards and assessing risks and impacts;

''(2) mitigating the impacts of a wide variety of hazards, including weapons of mass destruction;

''(3) managing necessary emergency preparedness and response resources;

''(4) developing mutual aid agreements;

''(5) developing and maintaining emergency preparedness and response plans, as well as associated operational procedures;

''(6) developing and maintaining communications and warning systems;

''(7) developing and conducting training and exercises to support and evaluate emergency preparedness and response plans and operational procedures;

''(8) developing and conducting training programs for security guards to implement emergency preparedness and response plans and operations procedures; and

''(9) developing procedures to respond to external requests for information from the media and the public.

''(c) STANDARDS.—

''(1) IN GENERAL.— The Secretary shall support the development of, promulgate, and regularly update as necessary national voluntary consensus standards for private sector emergency preparedness that will enable private sector organizations to achieve optimal levels of emergency preparedness as soon as practicable. Such standards include the National Fire Protection Association 1600 Standard on Disaster/Emergency Management and Business Continuity Programs.

''(2) CONSULTATION.—The Secretary shall carry out paragraph (1) in consultation with the Under Secretary for Emergency Preparedness and Response, the Under Secretary for Science and Technology, the Under Secretary for Information Analysis and Infrastructure Protection, and the Special Assistant to the Secretary for the Private Sector.

''(d) COORDINATION.—The Secretary shall coordinate the program with, and utilize to the maximum extent practicable—

''(1) the voluntary standards for disaster and emergency management and business continuity programs developed by the American National Standards Institute and the National Fire Protection Association; and

''(2) any existing private sector emergency preparedness guidance or best practices developed by private sector industry associations or other organizations.''.

Subtitle D—Emergency Medical Services

SEC. 1231. EMERGENCY MEDICAL SERVICES ADMINISTRATION.

(a) ESTABLISHMENT.—Title V of the Homeland Security Act of 2002 (Public Law 107–296) is amended by adding at the end the following:

''SEC. 510. EMERGENCY MEDICAL SERVICES ADMINISTRATION.

''(a) ESTABLISHMENT.—There is established, within the Directorate of Emergency Preparedness and Response, an Emergency Medical Services Administration to oversee and coordinate government efforts related to emergency medical services response to incidents of terrorism, including governmental and nongovernmental emergency medical services.

''(b) RESPONSIBILITIES.—The head of the Emergency Medical Services Administration shall—

''(1) coordinate activities related to emergency medical services and homeland security;

''(2) serve as liaison to the emergency medical services community;

''(3) evaluate training programs and standards for emergency medical services personnel;

''(4) conduct periodic assessments into the needs and capabilities of emergency medical services providers, including governmental and nongovernmental providers;

''(5) conduct periodic research into the number of emergency medical services personnel, including governmental and nongovernmental emergency medical services, as well emergency medical services providers that are associated with fire departments or hospital-based.

''(c) NATIONWIDE NEEDS ASSESSMENT.—The head of the Emergency Medical Services Administration shall conduct nationwide needs assessment of emergency medical services capabilities and needs related to equipment, training, and personnel.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end of the items related to title V the following:

''Sec. 510. Emergency Medical Services Administration.''.

SEC. 1232. SENSE OF CONGRESS.

The Secretary of the Department of Homeland Security should review the current system for distributing Emergency Management Performance Grants and consider distributing grant funds to State emergency managers rather than to State homeland security directors.

Subtitle E—Lessons Learned Information Sharing System

SEC. 1241. LESSONS LEARNED, BEST PRACTICES, AND CORRECTIVE ACTION.

(a) IN GENERAL.—In conjunction with the National Memorial Institute for the Prevention of Terrorism (MIPT) in Oklahoma City, Oklahoma, the Secretary shall support the continued growth and operation of the Lessons Learned Information Sharing (LLIS.gov) system to promote the generation and dissemination of peer-validated lessons learned, best practices, and corrective actions across the entire range of emergency response and homeland security disciplines for all local, state, tribal, and national jurisdictions. Lessons Learned Information Sharing is the recognized national collaborative network to enhance preparedness and prevention capabilities throughout the country. In supporting Lessons Learned Information Sharing, the Secretary shall ensure the following:

(1) that the National Memorial Institute for the Prevention Terrorism (MIPT), in its unique role as an independent and honest broker of lessons learned, best practices, and corrective action, remain the Department's official steward of Lessons Learned Information Sharing;

(2) that the Lessons Learned Information Sharing system be expanded to include research and analysis on all primary, secondary, and tertiary emergency response and homeland security disciplines;

(3) that the successful model of the Lessons Learned Information Sharing system be applied to address the lessons learned and best practices needs of both the private sector and the American public at large;

(4) that the Lessons Learned Information Sharing system be expanded and made available to the emergency responders and domestic security officials of our international allies, as deemed appropriate by the Secretary, to include the collection and accommodation of international lessons learned and best practices;

(5) that the Lessons Learned Information Sharing system serve as the host platform and parent system for the Department's Corrective Action and Improvement Program that supports the Homeland Security National Exercise Program, Senior Officials Exercises, and Top Officials (TopOff) exercises, in accordance with the Department's Homeland Security Exercise and Evaluation Program (HSEEP);

(6) that the Lessons Learned Information Sharing system support the continued analysis and implementation of the National Preparedness Goal and National Preparedness Guidance as required by Homeland Security Presidential Decision Directive Eight;

(7) that the Lessons Learned Information Sharing System shall study the feasibility of developing a non-secure section for non-confidential and non-sensitive information;

(b) AUTHORIZATION OF APPROPRIATIONS.—The Secretary is authorized to be appropriated $17,000,000 for the fiscal year 2006 to carry out the above requirements.

Subtitle F—Technology Transfer Clearinghouse

SEC. 1251. SHORT TITLE.

This subtitle may be cited as the ''Department of Homeland Security Technology Development and Transfer Act of 2005''.

SEC. 1252. TECHNOLOGY DEVELOPMENT AND TRANSFER.

(a) ESTABLISHMENT OF TECHNOLOGY CLEARINGHOUSE.—Not later than 90 days after the date of enactment of this Act, the Secretary shall complete the establishment of the Technology Clearinghouse under Section 313 of the Homeland Security Act of 2002.

(b) TRANSFER PROGRAM.—Section 313 of the Homeland Security Act of 2002 (6 U.S.C. 193) is amended—

(1) by adding at the end of subsection (b) the following new paragraph:

''(6) The establishment of a homeland security technology transfer program to facilitate the identification, modification, and commercialization of technology and equipment for use by Federal, State, and local governmental agencies, emergency response providers, and the private sector to prevent, prepare for, or respond to acts of terrorism.'';

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection:

''(c) TECHNOLOGY TRANSFER PROGRAM.—In developing the program described in subsection (b)(6), the Secretary, acting through the Under Secretary for Science and Technology, shall—

''(1) in consultation with the other Undersecretaries of the Department and the Director of the Office for Domestic Preparedness, on an ongoing basis—

''(A) conduct surveys and reviews of available appropriate technologies that have been, or are in the process of being developed or demonstrated by the Department, other Federal agencies, or the private sector or foreign governments and international organizations and that may be useful in assisting Federal, State, and local governmental agencies, emergency response providers, or the private sector to prevent, prepare for, or respond to acts of terrorism;

''(B) conduct or support research and development as appropriate of technologies identified under subparagraph (A), including any necessary modifications to such technologies for anti-terrorism use;

''(C) communicate to Federal, State, and local governmental agencies, emergency response providers, or the private sector the availability of such technologies for anti-terrorism use, as well as the technology's specifications, satisfaction of appropriate standards, and the appropriate grants available from the Department to purchase such technologies;

''(D) coordinate the selection and administration of all technology transfer activities of the Science and Technology Directorate, including projects and grants awarded to the private sector and academia; and

''(E) identify priorities based on current risk assessments within the Department of Homeland Security for identifying, researching, developing, modifying, and fielding existing technologies for anti-terrorism purposes; and

''(2) in support of the activities described in paragraph (1)—

''(A) consult with Federal, State, and local emergency response providers;

''(B) consult with government and nationally recognized standards organizations as appropriate;

''(C) enter into agreements and coordinate with other Federal agencies and foreign governments and international organizations as the Secretary determines appropriate, in order to maximize the effectiveness of such technologies or to facilitate commercialization of such technologies; and

''(D) consult with existing technology transfer programs and Federal and State training centers that research, develop, and transfer military and other technologies for use by emergency response providers.''.

(c) REPORT.—Not later than one year after the date of enactment of this Act, the Under Secretary for Science and Technology shall transmit to the Congress a description of the progress the Department has made in implementing the provisions of section 313 of the Homeland Security Act of 2002, as amended by this Act, including a description of the process used to review unsolicited proposals received as described in subsection (b)(3) of such section.

(d) SAVINGS CLAUSE.—Nothing in this section (including the amendments made by this section) shall be construed to alter or diminish the effect of the limitation on the authority of the Secretary of Homeland Security under section 302(4) of the Homeland Security Act of 2002 (6 U.S.C. 182(4)) with respect to human health-related research and development activities.

Subtitle G—Metropolitan Medical Response System

SEC. 1261. METROPOLITAN MEDICAL RESPONSE SYSTEM; AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATIONS OF APPROPRIATIONS.—For the Metropolitan Medical Response System within the Department of Homeland Security, there is authorized to be appropriated $50,000,000 for each of the fiscal years 2006 through 2008.

(b) RESERVATION OF AMOUNTS FOR LOCAL RESPONSIBILITIES.—Of the amounts appropriated under subsection (a) for a fiscal year, the Secretary of Homeland Security shall reserve not less than 90 percent to provide funds to the appropriate local entities for carrying out local responsibilities with respect to the Metropolitan Medical Response System.

TITLE XIII—FIGHTING DOMESTIC TERRORISM

SEC. 1301. ADVISORY COMMITTEE ON DOMESTIC TERRORIST ORGANIZATIONS.

(a) REQUIREMENT TO ESTABLISH.—Title I of the Homeland Security Act of 2002 (Public Law 107–296) is amended by adding at the end the following:

''SEC. 104. ADVISORY COMMITTEE ON DOMESTIC TERRORIST ORGANIZATIONS.

''(a) ESTABLISHMENT.—To assist the Secretary in identifying the threat posed by domestic terrorist organizations, the Secretary shall establish an advisory body pursuant to section 871(a) by not later than 60 days after the date of the enactment of this section, which shall be known as the Advisory Committee on Domestic Terrorist Organizations.

''(b) REPORT.—The advisory committee shall submit to the Secretary, by not later than 6 months after its establishment by the Secretary under subsection (a) and not later than every 1 year thereafter, a report on the threat posed by domestic terrorist organizations. Each report shall—

''(1) include an assessment of the nature and scope of domestic terrorist organization threats to the homeland;

''(2) detect and identify threats of domestic terrorist organizations against the United States;

''(3) assess the Department's performance in detecting, identifying, and countering domestic terrorist organizations and their threat to the homeland; and

''(4) suggest improvements in the Department's efforts to detect, identify, and counter domestic terrorist organizations and their threat to the homeland.

''(c) ADVISE ON PARTICULAR THREATS.—At the Secretary's discretion, the Advisory Committee may also advise the Secretary on particular threats posed by domestic terrorist organizations.

''(d) MEMBERSHIP.—

''(1) IN GENERAL.—The Advisory Committee shall consist of representatives of 15 organizations that have long-standing experience in monitoring domestic terrorist organizations and assessing their danger, and shall include a representative of each of—

''(A) the Southern Poverty Law Center;

''(B) the Simon Wiesenthal Center;

''(C) the Anti-Defamation League;

''(D) the National Association for the Advancement of Colored People;

''(E) the Arab American Institute;

''(F) the American-Arab Anti-Discrimination Committee;

''(G) the National Coalition of Anti-Violence Programs; and

''(H) the National Abortion Federation.

''(2) EX OFFICIO MEMBERS.—The Secretary shall designate one or more officers of the Department to serve as ex officio members of the Advisory Committee. One of such ex officio members from the Department shall be the designated officer of the Federal Government for purposes of subsection (e) of section 10 of the Federal Advisory Committee Act (5 App. U.S.C.).

''(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding section 871(a), the Federal Advisory Committee Act (5 App. U.S.C.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552b(c) of title 5, Untied States Code, shall apply to the Task Force.

''(f) TERRORIST ORGANIZATION DEFINED.—In this section, the term 'domestic terrorist organization' means an organization that is based primarily in the United States and that engages in domestic terrorism (as that term is defined in section 2331 of title 18, United States Code) or that has the capability and intent to engage in domestic terrorism.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end of the items relating to title I the following:

''Sec. 104. Advisory Committee on Domestic Terrorist Organizations.''.

TITLE XIV—CREATING A DIVERSE AND MANAGEABLE DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Authorities of Privacy Officer

SEC. 1401. AUTHORITIES OF PRIVACY OFFICER.

Section 222 of the Homeland Security Act of 2002 (6 U.S.C. 142) is amended—

(1) by inserting before the first sentence the following: ''(a) APPOINTMENT AND RESPONSIBILITIES.—'';

(2) in subsection (a) (as designated by the amendment made by paragraph (1) of this section) by striking ''to assume'' and inserting ''as the Privacy Officer of the Department. The Privacy Officer shall have''; and

(3) by adding at the end the following:

''(b) AUTHORITY TO INVESTIGATE.—The Privacy Officer shall have the same authority as the Inspector General of the Department to require employees of the Department to produce documents and answer questions, with respect to any matter within the authority of the senior official under subsection (a).

''(c) TERM OF OFFICE.—The term of appointment of an individual as Privacy Officer shall be 5 years.

''(d) REPORTS TO CONGRESS.—The Privacy Officer shall submit reports directly to the

Congress regarding any matter within the authority of the Privacy Officer under this section, without any prior comment or amendment from the Secretary, Deputy Secretary, or any other officer or employee of the Department or the Office of Management and Budget.''.

Subtitle B—Ensuring Diversity in Department of Homeland Security Programs

SEC. 1411. ANNUAL REPORTS RELATING TO EMPLOYMENT OF COVERED PERSONS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''Secretary'' means the Secretary of Homeland Security;

(2) the term ''Department'' means the Department of Homeland Security;

(3) the term ''covered persons'' means—

(A) racial and ethnic minorities;

(B) women; and

(C) individuals with disabilities;

(4) the term ''category'', as used with respect to covered persons, refers to the categories of persons identified in subparagraphs (A), (B), and (C), respectively, of paragraph (3); and

(5) the term ''element'', as used with respect to the Department, means a directorate of the Department and the office of the Secretary.

(b) ANNUAL REPORTS.—Not later than February 1 of each year, the Secretary shall prepare and transmit to each House of Congress a report on the employment of covered persons by the Department during the preceding fiscal year. Each such report shall include, for each element of the Department, the following:

(1) The total number of individuals holding positions within such element as of the end of such fiscal year and, of that number, the percentage (in the aggregate and by category) that covered persons comprised.

(2) For each pay grade, pay band, or other pay classification of each pay schedule and for every other rate of pay—

(A) the total number of individuals holding positions within such element as of the end of such fiscal year who were subject to each such pay classification or rate; and

(B) of the respective numbers under subparagraph (A), the percentage (in the aggregate and by category) that covered persons comprised.

(3) The total number of individuals appointed to positions within such element during such fiscal year and, of that number, the percentage (in the aggregate and by category) that covered persons comprised.

(c) UNCLASSIFIED FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex if the Secretary considers one to be necessary.

SEC. 1412. PROCUREMENT.

(a) REPORT.—Not later than 360 days after the date of the enactment of this Act, the Chief Procurement Officer of the Department of Homeland Security shall submit to the Secretary of Homeland Security, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report that—

(1) identifies each program of the Department for which the aggregate value of contracts awarded in fiscal year 2005 under the program to persons that are small disadvantaged business, women-owned small businesses, or historically underutilized business zones (popularly known as ''HUBZones'') was less than 5 percent of the total value of all contracts awarded under the program in that fiscal year; and

(2) identifies and describes any barriers to achieving a goal of awarding to such persons each fiscal year contracts having an aggregate value of at least 5 percent of the total value of all contracts awarded under the program in the fiscal year.

(b) ACTION PLAN.—

(1) ACTION PLAN REQUIRED.—Not later than 90 days after the date of the submission of the report required under subsection (a), the Chief Procurement Officer, in consultation with Office of Small and Disadvantaged Businesses Utilization of the Department, shall develop , submit to the Committees referred to in subsection (a), and begin implementing for each program identified under subsection (a)(1) an action plan for achieving the goal described in subsection (a)(2).

(2) PERFORMANCE MEASURES AND TIMETABLE.—Each action plan shall include performance measures and a timetable for compliance and achievement of the goal described in subsection (a)(2).

SEC. 1413. CENTERS OF EXCELLENCE PROGRAM.

In selecting the first institution of higher education selected after the date of the enactment of this Act under the Department of Homeland Security Centers of Excellence program, the Secretary of Homeland Security shall select an otherwise eligible applicant that is an historically black college or university that receives assistance under part B of title III of the Higher Education Act of 1965 (20 U.S.C 106 et seq), an hispanic-serving institution (as that term is defined in section 502 of the Higher Education Act of 1965 (20 U.S.C. 1101a), or a tribally controlled college or university (as that term is defined in section 2 of the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801).

Subtitle C—Protection of Certain Employee Rights

SEC. 1421. PROVISIONS TO PROTECT CERTAIN EMPLOYEE RIGHTS.

(a) COLLECTIVE BARGAINING, APPEALS, ETC.—

(1) IN GENERAL.—Section 9701(c) of title 5, United States Code, is amended—

(A) in paragraph (1), by inserting ''(F),'' after ''(E),''; and

(B) in paragraph (2), by striking ''59, 72, 73, and 79,'' and inserting ''and 59,''.

(2) CONFORMING AMENDMENT.—Section 9701(f) of title 5, United States Code, is repealed.

(b) RATES OF PAY.—Section 9701(d) of title 5, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' after the semicolon;

(2) in paragraph (3), by striking the period and inserting ''; or''; and

(3) by inserting after paragraph (3) the following:

''(4) to fix the pay for any position at a rate that is less than—

''(A) in the case of a position that (if this chapter had not been enacted) would have been subject to the provisions of this title relating to the General Schedule, the rate determined under such provisions; or

''(B) in the case of any other position, the rate determined under such provisions for the position that is most similar in its duties and responsibilities to those of such other position (as determined under regulations) and that is subject to such provisions.''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall take effect as if included in the enactment of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 101 note).

(2) SUBSECTION (b).—The amendments made by subsection (b) shall take effect on the date of the enactment of this Act and shall apply with respect to pay for service performed in any pay period beginning on or after such date.

Subtitle D—Whistleblower Protections

SEC. 1431. WHISTLEBLOWER PROTECTIONS.

(a) IN GENERAL.—No covered individual may be discharged, demoted, suspended, threatened, harassed, reprimanded, investigated, or in any other manner discriminated against (including by a denial, suspension, or revocation of a security clearance or by any other security access determination) if such discrimination is due, in whole or in part, to any lawful act done, perceived to have been done, or intended to be done by the covered individual—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the covered individual reasonably believes constitutes a violation of any law, rule or regulation relating to national or homeland security, which the covered individual reasonably believes constitutes a threat to national or homeland security, or which the covered individual reasonably believes constitutes fraud, waste or mismanagement of Government funds intended to be used for national or homeland security, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal, State or local regulatory or law enforcement agency (including an office of Inspector General under the Inspector General Act of 1978);

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the covered individual (or such other person who has the authority to investigate, discover, or terminate misconduct);

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding or action filed or about to be filed relating to an alleged violation of any law, rule or regulation relating to national or homeland security; or

(3) to refuse to violate or assist in the violation of any law, rule, or regulation relating to national or homeland security.

(b) ENFORCEMENT ACTION.—

(1) IN GENERAL.—A covered individual who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c) by—

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days after the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(2) PROCEDURE.—

(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the person's employer.

(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 1 year after the date on which the violation occurs.

(c) REMEDIES.—

(1) IN GENERAL.—A covered individual prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the covered individual whole.

(2) DAMAGES.—Relief for any action under paragraph (1) shall include—

(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

(B) the amount of any back pay, with interest;

(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees; and

(D) punitive damages in an amount not to exceed the greater of 3 times the amount of any compensatory damages awarded under this section or $5,000,000.

(d) STATE SECRETS PRIVILEGE.—If, in any action brought under subsection (b)(1)(B), the Government asserts as a defense the privilege commonly referred to as the ''state secrets privilege'' and the assertion of such privilege prevents the plaintiff from establishing a prima facie case in support of the plaintiff's claim, the court shall enter judgment for the plaintiff and shall determine the relief to be granted.

(e) CRIMINAL PENALTIES.—

(1) IN GENERAL.—It shall be unlawful for any person employing a covered individual to commit an act prohibited by subsection (a). Any person violating this paragraph shall be fined under title 18 of the United States Code, imprisoned not more than 10 years, or both.

(2) REPORTING REQUIREMENT.—The Department of Justice shall submit to Congress an annual report on the enforcement of paragraph (1). Each such report shall (A) identify each case in which formal charges under paragraph (1) were brought, (B) describe the status or disposition of each such case, and (C) in any actions under subsection (b)(1)(B) in which the covered individual was the prevailing party or the substantially prevailing party, indicate whether or not any formal charges under paragraph (1) have been brought and, if not, the reasons therefor.

(f) RIGHTS RETAINED BY COVERED INDIVIDUAL.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law, or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(g) DEFINITIONS.—For purposes of this section—

(1) the term ''covered individual'' means an employee of—

(A) the Department of Homeland Security (which, for purposes of this section, includes the Transportation Security Administration);

(B) a Federal contractor or subcontractor; and

(C) an employer within the meaning of section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b));

(2) the term ''lawful'' means not specifically prohibited by law, except that, in the case of any information the disclosure of which is specifically prohibited by law or specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs, any disclosure of such information to any Member of Congress, committee of Congress, or other recipient authorized to receive such information, shall be deemed lawful;

(3) the term ''Federal contractor'' means a person who has entered into a contract with the Department of Homeland Security;

(4) the term ''employee'' means—

(A) with respect to an employer referred to in paragraph (1)(A), an employee as defined by section 2105 of title 5, United States Code; and

(B) with respect to an employer referred to in subparagraph (A) or (B) of paragraph (1), any officer, partner, employee, or agent;

(5) the term ''subcontractor''—

(A) means any person, other than the Federal contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a contract with the Department of Homeland Security or a subcontract entered into in connection with such a contract; and

(B) includes any person who offers to furnish or furnishes general supplies to the Federal contractor or a higher tier subcontractor; and

(6) the term ''person'' means a corporation, partnership, State entity, business association of any kind, trust, joint-stock company, or individual.

(h) AUTHORIZATION OF FUNDS.—Of the amounts authorized under section 101, there is authorized to be appropriated amounts necessary for carrying out this section. Except as provided in the preceding sentence, this section shall have no force or effect.

Subtitle E—Authority of Chief Information Officer

SEC. 1441. AUTHORITY OF CHIEF INFORMATION OFFICER.

Section 703 of the Department of Homeland Security Act of 2002 (6 U.S.C. 343) is amended by inserting ''(a) IN GENERAL.—'' before the first sentence, and by adding at the end the following:

''(b) LINE AUTHORITY.—The Secretary shall delegate to the Chief Information Officer direct line authority to oversee all chief information officers of the agencies of the Department, and other key information technology personnel of the Department, with respect to their responsibilities to oversee, integrate, and protect information technology systems of the Department. The Chief Information Officer shall report directly to the Secretary.''.

Subtitle F—Authorization for Office of Inspector General

SEC. 1451. AUTHORIZATION FOR OFFICE OF INSPECTOR GENERAL.

In lieu of any amount otherwise authorized for the Office of the Inspector General of the Department of Homeland Security, there is authorized to be appropriated for such office $200,000,000 for fiscal year 2006.

Subtitle G—Regional Office

SEC. 1461. COLOCATED REGIONAL OFFICES.

Not later than 45 days after the date of the enactment of this Act, the Secretary of Homeland Security shall develop and implement a plan for establishing consolidated and colocated regional offices for the Department of Homeland Security in accordance with section 706 of the Homeland Security Act of 2002 (6 U.S.C. 346), that will—

(1) enable a rapid, robust, and coordinated Federal response to threats and incidents;

(2) enhance all-hazards preparedness across the United States with respect to terrorism, natural disasters, other emergencies;

(3) provide integrated capabilities among the Department of Homeland Security, other Federal agencies, and Stated and local governments; and

(4) maximize cost savings and efficiencies through establishment of regional offices at current DHS agency regional structures with contiguous multi-State operations.

Subtitle H—DHS Terrorism Prevention Plan

SEC. 1471. SHORT TITLE.

This subtitle may be cited as the ''Department of Homeland Security Terrorism Prevention Plan Act of 2005''.

SEC. 1472. DEPARTMENT OF HOMELAND SECURITY TERRORISM PREVENTION PLAN.

(a) REQUIREMENTS.—Not later than one year after the date of enactment of the Act, and on a regular basis thereafter, the Secretary of Homeland Security shall prepare and submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a Department of Homeland Security Terrorism Prevention Plan. The Plan shall be a comprehensive and integrated plan that includes the goals, objectives, milestones, and key initiatives of the Department of Homeland Security to prevent acts of terrorism on the United States, including its territories and interests.

(b) CONTENTS.—The Secretary shall include in the Plan the following elements:

(1) Identification and prioritization of groups and subgroups that pose the most significant threat of committing acts of terrorism on the United States and its interests.

(2) Identification of the most significant current, evolving, and long term terrorist threats to the United States and its interests, including an evaluation of—

(A) the materials that may be used to carry out a potential attack;

(B) the methods that may be used to carry out a potential attack; and

(C) the outcome the perpetrators of acts of terrorism aim to achieve.

(3) A prioritization of the threats identified under paragraph (2), based on an assessment of probability and consequence of such attacks.

(4) A description of processes and procedures that the Secretary shall establish to institutionalize close coordination between the Department of Homeland Security and the National Counter Terrorism Center and other appropriate United States intelligence agencies.

(5) The policies and procedures the Secretary shall establish to ensure the Department gathers real time information from the National Counter Terrorism Center; disseminates this information throughout the Department, as appropriate; utilizes this information to support the Department's counter terrorism responsibilities; integrates the Departments information collection and analysis functions; and disseminates this information to its operational units, as appropriate.

(6) A description of the specific actions the Secretary shall take to identify threats of terrorism on the United States and its interests, and to coordinate activities within the Department to prevent acts of terrorism, with special emphasis on prevention of terrorist access to and use of weapons of mass destruction.

(7) A description of initiatives the Secretary shall take to share critical terrorism prevention information with, and provide terrorism prevention support to, State and local governments and the private sector.

(8) A timeline, with goals and milestones, for implementing the Homeland Security Information Network, the Homeland Security Secure Data Network, and other departmental information initiatives to prevent acts of terrorism on the United States and its interests, including integration of these initiatives in the operations of the Homeland Security Operations Center.

(9) Such other terrorism prevention-related elements as the Secretary considers appropriate.

(c) CONSULTATION.—In formulating the Plan the Secretary shall consult with—

(1) the Director of National Intelligence;

(2) the Director of the National Counter Terrorism Center;

(3) the Attorney General;

(4) the Director of the Federal Bureau of Investigation;

(5) the Secretary of Defense;

(6) the Secretary of State;

(7) the Secretary of Energy;
(8) the Secretary of the Treasury; and
(9) the heads of other Federal agencies and State, county, and local law enforcement agencies as the Secretary considers appropriate.

(d) CLASSIFICATION.—The Secretary shall prepare the Plan in both classified and nonclassified forms.

SEC. 1473. ANNUAL CROSSCUTTING ANALYSIS OF PROPOSED FUNDING FOR DEPARTMENT OF HOMELAND SECURITY PROGRAMS.

(a) REQUIREMENT TO SUBMIT ANALYSIS.—The Secretary of Homeland Security shall submit to the Congress, concurrently with the submission of the President's budget for each fiscal year, a detailed, crosscutting analysis of the budget proposed for the Department of Homeland Security, by budget function, by agency, and by initiative area, identifying the requested amounts of gross and net appropriations or obligational authority and outlays for programs and activities of the Department for each of the following mission areas:

(1) To prevent terrorist attacks within the United States.
(2) To reduce the vulnerability of the United States to terrorism.
(3) To minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States.
(4) To carry out all functions of the agencies and subdivisions within the Department that are not related directly to homeland security.

(b) FUNDING ANALYSIS OF MULTIPURPOSE FUNCTIONS.—The analysis required under subsection (a) for functions that are both related directly and not related directly to homeland security shall include a detailed allocation of funding for each specific mission area within those functions, including an allocation of funding among mission support functions, such as agency overhead, capital assets, and human capital.

(c) INCLUDED TERRORISM PREVENTION ACTIVITIES.—The analysis required under subsection (a)(1) shall include the following activities (among others) of the Department:

(1) Collection and effective use of intelligence and law enforcement operations that screen for and target individuals who plan or intend to carry out acts of terrorism.
(2) Investigative, intelligence, and law enforcement operations that identify and disrupt plans for acts of terrorism or reduce the ability of groups or individuals to commit acts of terrorism.
(3) Investigative activities and intelligence operations to detect and prevent the introduction of weapons of mass destruction into the United States.
(4) Initiatives to detect potential, or the early stages of actual, biological, chemical, radiological, or nuclear attacks.
(5) Screening passengers against terrorist watch lists.
(6) Screening cargo to identify and segregate high-risk shipments.
(7) Specific utilization of information sharing and intelligence, both horizontally (within the Federal Government) and vertically (among Federal, State, and local governments), to detect or prevent acts of terrorism.
(8) Initiatives, including law enforcement and intelligence operations, to preempt, disrupt, and deter acts of terrorism overseas intended to strike the United States.
(9) Investments in technology, research and development, training, and communications systems that are designed to improve the performance of the Department and its agencies with respect to each of the activities listed in paragraphs (1) through (8).

(d) SEPARATE DISPLAYS FOR MANDATORY AND DISCRETIONARY AMOUNTS.—Each analysis under subsection (a) shall include separate displays for proposed mandatory appropriations and proposed discretionary appropriations.

Subtitle I—Tribal Security

SEC. 1481. OFFICE OF TRIBAL SECURITY.

The Homeland Security Act of 2002 (Public Law 107–296) is amended—

(1) by inserting after section 801 the following new section:

"SEC. 802. OFFICE OF TRIBAL SECURITY.

''(a) SHORT TITLE.—This section may be cited as the 'Tribal Homeland Security Act'.

''(b) ESTABLISHMENT.—There is established within the Department of Homeland Security the Office of Tribal Security.

''(c) DIRECTOR.—The Office of Tribal Security shall be administered by a Director, who shall be appointed by the President and confirmed by the Senate. The Director shall report to the Secretary of Homeland Security.

''(d) DUTIES.—The Director shall be responsible for coordinating relations between the Federal Government and federally recognized Indian tribes on issues relating to homeland security, which shall include the following duties:

''(1) Providing a point of contact within Department of Homeland Security which shall be responsible for—

''(A) meeting the broad and complex Federal responsibilities owed to federally recognized Indian tribes by the Department of Homeland Security; and

''(B) soliciting and, where appropriate, addressing the homeland security concerns of federally recognized Indian tribes and other parties interested in Indian affairs.

''(2) Communicating relevant policies of the Department of Homeland Security to federally recognized Indian tribes and the public.

''(3) Promoting internal uniformity of Department of Homeland Security policies relating to Indian country (as defined in section 1151 of title 18, United States Code).

''(4) Coordinating with the Directorate of Border and Transportation Security and tribal governments to develop a comprehensive border security policy that addresses law enforcement, personnel, and funding issues in Indian country (as defined in section 1151 of title 18, United States Code) on the United States borders with Canada and with Mexico.

''(5) Coordinating with the Directorate for Information Analysis and Infrastructure Protection and tribal governments to develop appropriate policies for infrastructure protection on Indian lands, as well as information sharing mechanisms with tribal governments.

''(6) Coordinating with the Directorate of Emergency Preparedness and Response and the Office of State and Local Government Coordination and Preparedness to help ensure that tribal governments are fully informed of, have access to, and may apply for all Department of Homeland Security grant opportunities for emergency response providers, and to develop and achieve preparedness goals for tribal governments that are consistent with national goals for terrorism preparedness, as determined by the Department.

''(7) Coordinating with the Director of Science and Technology to identify opportunities to conduct research and development of homeland security technologies or scientific understanding for tribal universities or private sector entities.

''(8) Coordinating with the Office of Citizenship and Immigration Services and other relevant offices within the Department of Homeland Security with immigration service and enforcement related functions to develop policies on issues related to citizenship and the movement of members of federally recognized Indian tribes across the United States border, taking into consideration the unique characteristics of certain federally recognized Indian tribes with jurisdiction over lands adjacent to the Canadian and Mexican borders.

''(9) Coordinating with other offices within the Department of Homeland Security to develop and implement sound policies regarding Indian country (as defined in section 1151 of title 18, United States Code) and tribal governments.''; and

(2) in the table of sections, by inserting after the item relating to section 801 the following new item:

''Sec. 802. Office of Tribal Security.''.

TITLE XV—SECURING OUR PORTS AND COASTLINES FROM TERRORIST ATTACK

SEC. 1501. SECURITY OF MARITIME CARGO CONTAINERS.

(a) REGULATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall issue regulations for the security of maritime cargo containers moving within the intermodal transportation system in accordance with the requirements of paragraph (2).

(2) REQUIREMENTS.—The regulations issued pursuant to paragraph (1) shall be in accordance with recommendations of the Maritime Transportation Security Act Subcommittee of the Advisory Committee on Commercial Operations of the Department of Homeland Security, including recommendations relating to obligation to seal, recording of seal changes, modal changes, seal placement, ocean carrier seal verification, and addressing seal anomalies.

(b) INTERNATIONAL AGREEMENTS.—The Secretary shall seek to enter into agreements with foreign countries and international organizations to establish standards for the security of maritime cargo containers moving within the intermodal transportation system that, to the maximum extent practicable, meet the requirements of subsection (a)(2).

(c) CONTAINER TARGETING STRATEGY.—

(1) STRATEGY.—The Secretary shall develop a strategy to improve the ability of the Department of Homeland Security to use information contained in shipping bills of lading to identify and provide additional review of anomalies in such bills of lading. The strategy shall include a method of contacting shippers in a timely fashion to verify or explain any anomalies in shipping bills of lading.

(2) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees a report on the implementation of this subsection, including information on any data searching technologies that will be used to implement the strategy.

(d) CONTAINER SECURITY DEMONSTRATION PROGRAM.—

(1) PROGRAM.—The Secretary is authorized to establish and carry out a demonstration program that integrates non-intrusive inspection equipment, including radiation detection equipment and gamma ray inspection equipment, at an appropriate United States seaport, as determined by the Secretary.

(2) REQUIREMENT.—The demonstration program shall also evaluate automatic identification methods for containers and vehicles and a data sharing network capable of transmitting inspection data between ports and appropriate entities within the Department of Homeland Security.

(3) REPORT.—Upon completion of the demonstration program, the Secretary shall submit to the appropriate congressional committees a report on the implementation of this subsection.

(e) CONSOLIDATION OF CONTAINER SECURITY PROGRAMS.—The Secretary shall consolidate all programs of the Department of Homeland Security relating to the security of maritime cargo containers, including the demonstration program established pursuant to subsection (d), to achieve enhanced coordination and efficiency.

(f) PORT SECURITY GRANT FUNDING.—Section 70107(h) of title 46, United States Code, is amended to read as follows:

''(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out subsections (a) through (g) $400,000,000 for fiscal years 2006 through 2012.''.

(g) DEFINITION.—In this section, the term ''appropriate congressional committees'' means—

(1) the Committee on Homeland Security of the House of Representatives; and

(2) the Committee on Homeland Security and Governmental Affairs of the Senate.

SEC. 1502. STUDY ON PORT RISKS.

The Secretary of Homeland Security shall complete a study evaluating the terrorism risk factors associated with the port of Miami and ports along the Gulf of Mexico and in the Carribean, including the United States Virgin Islands. This study should include: whether these ports are more at risk of terrorist attack considering the larger trade volume with Central American countries than other coastal ports, whether these ports are currently receiving the grants that are needed to ensure their safety, considering the studied risks and what are the vulnerabilities of these Gulf ports.

TITLE XVI—AUTHORITY OF OTHER FEDERAL AGENCIES

SEC. 1601. AUTHORITY OF OTHER FEDERAL AGENCIES UNAFFECTED.

Nothing in this Act affects the authority under statute, regulation, or Executive order of other Federal agencies than the Department of Homeland Security.

The Acting CHAIRMAN. Pursuant to House Resolution 283, the gentleman from Mississippi (Mr. THOMPSON) and a Member opposed each will control 20 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. THOMPSON).

Mr. THOMPSON of Mississippi. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I appreciate the work of the gentleman from California (Mr. COX) to include many Democratic suggestions in this bill, and I want to say that most of the provisions in his bill are good ones.

But the truth is that this bill does not address a large number of dangerous security gaps. For example, this bill does not close serious security gaps in chemical plants, aviation, railroads, passenger trains and railroads, buses, border security, the ability of first responders to communicate in an emergency, the importance of protecting privacy, and a whole host of other areas where we must improve security. This bill does not even mention chemical plants or airports. How can we call this an authorization bill?

My substitute, Madam Chairman, addresses all of these areas, and more. First, the substitute makes funding for homeland security a priority. The President's budget and this bill does not fulfill the commitment we made in the 9/11 Act the President signed into law in December, but this substitute meets those challenges.

For example, for just a mere $92 million called for in the 9/11 Act, we could install radiation portal monitors in every port of entry in this country. My substitute offers solutions where the bill does not give the answers. For example, it protects our borders by requiring DHS to put technology in place to ensure that every mile of the border is monitored 24 hours a day, 7 days a week. It protects our ports by authorizing new port security grants. It protects airlines and prevents hijackings by installing new, in-line baggage screening systems that work better and faster. And, in an area where I strongly disagree with the chairman, we fully sponsor the development of research on how to counter shoulder-fired missiles that terrorists can use to shoot down a plane.

My substitute also strengthens security requirements for chemical plants, which the GAO recently found must have security standards.

Finally, my substitute also recognizes that DHS is a new agency and is not perfect. We provide new authority to protect privacy, sponsor diversity, and create a stronger Inspector General. In the end, if we are going to call something an authorization bill, let us use it to close genuine security gaps. My substitute will do that; this bill will not.

There can be no more wasted time. We must do what it takes now to make America secure.

Madam Chairman, I reserve the balance of my time.

Mr. COX. Madam Chairman, I rise to claim the time in opposition to the substitute amendment, and I yield myself such time as I may consume.

If my colleague from Mississippi would indulge me for a moment, I would like to yield the first portion of my time for purposes of a colloquy to the gentleman from Connecticut (Mr. SIMMONS), and I yield to him 1 minute.

Mr. SIMMONS. Madam Chairman, I thank the chairman and the gentleman from Mississippi for all the hard work that they have done to bring this authorization bill to the floor. I fully intend to support the bill as I did in committee, but I would like to take a moment at this time to discuss a concern that Members have, like myself, the gentleman from Connecticut (Mr. SHAYS) and the gentleman from New York (Mr. KING), and ask for the chairman's commitment that the committee will pursue these issues.

We have heard from the Department of Homeland Security employees and their representatives regarding their concerns with the final personnel regulations that the Department issued in February. Some of these provisions in the regulations are troubling. They limit collective bargaining rights, and they appear to reduce due process standards for employees of the Department. Both of these issues were specifically addressed in the Homeland Security Act that created the Department, and my concern is that the regulations promulgated following that act do not adhere to the requirements of the act to maintain collective bargaining rights.

I would ask that the committee provide its members with the opportunity to question appropriate administration officials about these regulations, as well as to provide employees and their representatives the opportunity to give us their views.

Mr. Chairman, I would also ask that if we find these regulations do not follow the mandate of the original law or do not promote fairness and efficiency, that the committee will review these regulations and consider making appropriate changes to the regulations.

Mr. COX. Mr. Chairman, reclaiming my time, the gentleman from Connecticut raises an important issue. I thank the gentleman for his leadership, not only on this issue, but across the board as an outstanding member and chairman of the Committee on homeland security.

The Acting CHAIRMAN (Mr. LAHOOD). The time of the gentleman from Connecticut (Mr. SIMMONS) has expired.

Mr. COX. Mr. Chairman, I yield myself such time as I may consume.

Section 841 of the Homeland Security Act of 2002 authorized the Department of Homeland Security to establish a 21st century human resources management system. That new system, referred to as MAX HR, is designed to allow the Department to respond quickly to homeland security threats, while supporting the Department's employees with modern human resources principles.

I will ensure that the committee conducts a review of the new personnel regulations with special attention, I say to the gentleman, to the concerns that he raised, and I commit to working with him on any appropriate changes to those regulations, in close coordination with the gentleman from Virginia (Chairman DAVIS) of the Committee on Government Reform, which developed the underlying legislation in this area.

Mr. Chairman, I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. ZOE LOFGREN).

(Ms. ZOE LOFGREN of California asked and was given permission to revise and extend her remarks.)

Ms. ZOE LOFGREN of California. Mr. Chairman, I want to commend the gentleman from Mississippi (Mr. THOMPSON) and the gentleman from California (Chairman COX) for their work and leadership on this bill, but I would also especially like to compliment the

ranking member for his work on this substitute. There is much in the bill that is good; the substitute is even better, for the reasons outlined by the gentleman from Mississippi (Mr. THOMPSON).

However, there is one provision that is the same in both the bill and the substitute and equally good in both cases, and that is the provisions regarding cyber security.

As Members know, in the 108th Congress there was a Subcommittee on Cyber Security within the Select Committee on Homeland Security. The gentleman from Texas (Mr. THORNBERRY) was the chairman and I was the ranking member, and we worked very hard together to craft the provision that is incorporated in the bill and in the substitute. We held over 17 hearings and further briefings, and we heard from the private sector.

I think that is why the following people support our provision: The Business Software Alliance, the Computer and Communications Industry Association, the Cyber Security Industrial Alliance, the Financial Services Roundtable, the Higher Education and Information Technology Alliance, the Information Technology Association of America, the Information Technology Industry Council, the National Association of State Chief Information Officers, the Software and Information Industry Association, Tech Net, and the Association of American Universities, the Association of Research Libraries, the National Association of College and University Business Officers, and the list goes on and on.

□ 1700

The bill does something, and the substitute does something that is very important, and that is, to elevate the attention paid to cybersecurity within the Department.

You know, several years ago when the strategy for cybersecurity was adopted, we had a cyberperson in the White House who drafted that plan and had the attention of the White House.

Since that time, this position has devolved to one that really does not have direct access to decision-makers. In fact, the last person to hold the job, Amit Yoran, from Silicon Valley, quit 1 year to the day after he took the job; and we do not have a permanent replacement for him to this day.

We have got contractors. In fact, the current contractor is not even on the payroll. It is a Carnegie Mellon employee. We need to have attention at the highest level for cybersecurity. Let me be clear. The job of securing cyberspace at DHS is just not getting done.

Recently, Berkley professor Shankar Sastry warned of the possibility of what he called a digital Pearl Harbor. He urged that the Nation act before it is too late. We in Congress must not stand by while our cyberinfrastructure remains vulnerable and so little is accomplished in the Department of Homeland Security.

Securing cyberspace must be a national priority. The substitute and the bill do it. And I thank the gentleman from Mississippi (Mr. THOMPSON) for including it.

Mr. COX. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Alabama (Mr. MIKE ROGERS).

Mr. ROGERS of Alabama. Mr. Chairman, I rise in opposition to the amendment. As chairman of the Management Integration Oversight Subcommittee, I have concerns about some of the management changes proposed today.

In my analysis, this amendment would create several conflicting changes. It would modify the roles and responsibilities of several key officials within the Department. It would also limit the Secretary's flexibility in making organizational decisions.

And, finally, it seems the amendment contains several duplicating and premature measures. For example, this amendment would require the chief information officer to report directly to the Secretary. In the process, it would also give the CIO direct line authority over other chief information officers in agencies throughout the Department.

Now, I agree with my colleague, the gentleman from Mississippi (Mr. THOMPSON), that it is important we address the reporting and line authority issues. In fact, just last month we held a hearing with these officials to explore ways to improve information sharing within the DHS.

However, we also found other improvements to consider. The chief financial officer, the chief procurement officer, and the chief human capital officer, for example, may also need additional authorities.

So in regards to this amendment, while I agree we need to reassess the internal management issues, I believe they should not be addressed in this type of piecemeal fashion.

Secretary Chertoff has begun a 90-day review of the Department's programs, policies and operations. Until we hear the results of the Secretary's review at the end of this month, I believe we should hold off on making these types of changes.

Mr. Chairman, I would also like to point out that the amendment adds $7 billion in unauthorized spending above the bill's proposed funding level. In contrast, the bipartisan Homeland Security Committee bill, as written, provides the Secretary the needed flexibility during this top-to-bottom review while ensuring our limited resources are spent wisely.

Therefore, I urge my colleagues to oppose the pending amendment.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 4½ minutes to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Chairman, James Carafano, who is a homeland security researcher, said recently that technology is not a substitute for strategy.

And we know, as has been earlier reported this month by Eric Lipton, and he wrote the following, ''After spending more than $4.5 billion on screening devices to monitor the Nation's ports and borders and airports and mail and air, the Federal Government is moving to replace or alter much of the antiterrorism equipment, concluding that it is ineffective, unreliable, or too expensive to operate.''

He went on to say: ''Each of those areas where we have missed the mark.'' That is why I think this substitute should be given great consideration by all of us, not only those that serve on the Homeland Security Committee.

We have a unity of effort here. Do not translate, do not interpret this substitute as breaking that commitment that we have made to that unity of purpose. And I want to commend my good friend, the gentleman from Mississippi (Mr. THOMPSON), who stood shoulder to shoulder with the gentleman from California (Chairman COX) through all of these hearings that we have been having.

But, the ranking member, the gentleman from Mississippi (Mr. THOMPSON), your steady leadership on our committee is going to go a long way beyond our vote today. I applaud you for offering a substitute.

The Department of Homeland Security was formed because of the catastrophic terrorist attack on September 11. Our joint mission now is to help prevent and respond to any potential future assault.

Nothing that we do here in Washington is more important. Nothing. The critical duty with which we are charged warrants legislative proposals that are as comprehensive and judicious as possible. The substitute succeeds in this regard. It makes America safer.

For example, the substitute requires a comprehensive border protection plan. We all agree on that. It puts technology in place to monitor the entire border all the time, not some of the time.

Secures the chemical plants. We have even had an amendment to that effect. Makes vital port and transit security improvements and creates necessary structural changes at the Department of Homeland Security. We all agree on that.

We know that the State and local governments need as much help as possible to meet their urgent security needs. We note that first responders require an array of assistance to help them achieve even a baseline level of readiness. The substitute addresses this. For example, we authorize $500 million in grants for interoperability communications equipment to our men and women on the frontlines.

As the 9/11 report states, again, we go back to what we consider to be the dictionary for us to look at: ''Compatible and adequate communications among public safety organizations at the local, State and Federal levels remains an important problem.''

Our legislation should reflect what is in the 9/11 report and nothing less and nothing more. Yet the Congress has done nothing to address this. Indeed, many provisions signed into law by last year's 9/11 Act, a bipartisan measure as you recall, have gone unfunded and forgotten by this administration. We voted on it. Where is the power of both bodies involved in our unity of purpose?

What is the use if we vote, both sides of the aisle, and the administration does not follow through? This substitute attempts to remedy this situation. We authorize additional border agents. We mandate risk assessment for chemical and nuclear plants, and we assure that port and rail are adequately secured. We all agree on these things.

We know that there can be no more wasted time. We must do what it takes now to make our country safe, stronger, and more secure. This substitute does that, Mr. Chairman. I implore my colleagues on both sides of the aisle to vote ''aye.''

Mr. COX. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Connecticut (Mr. SIMMONS).

Mr. SIMMONS. Mr. Chairman, I thank our ranking member, the gentleman from Mississippi (Mr. THOMPSON), for being such a great leader on this new committee, for being bipartisan, and for being an advocate for a safe and secure America.

Unfortunately, I rise in option to this amendment, the Thompson substitute, not so much because of what it does, but because of what it fails to do.

My reading of the amendment suggests that it does not incorporate many of the provisions of the Homeland Security Authorization Act that passed unamended and by voice vote in the Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment, of which I am the chairman.

For example, personnel flexibility, such as bonuses for the Information Analysis and Infrastructure Protection Directorate, so we can attract the best and brightest young people into this Department to engage in good productive intelligence activities, you cannot have good intelligence activities without good people. And those personnel flexibilities are lacking. I do not see any provision requiring that the office of information analysis receive all terrorist threat information from components within DHS, which goes to the heart of information sharing.

One of the great tragedies of 9/11 is that so many components of our government did not share information; and perhaps if they had, we could have avoided that tragedy.

I do not see any recommendations with regard to the color-coded homeland security advisory system, which so many of us feel is confusing to the American people, and which we recommended be more risk-based, regional, and focused so that people have a legitimate picture of what the risks may be on any particular day when there is an alert.

All of the work on open-source intelligence, which I believe is so critical to strengthening our intelligence capabilities nationally, I do not see them in there. And so it does not appear to me to address some very fundamental issues relative to the intelligence piece of the Department of Homeland Security which we are trying to build.

On this basis, Mr. Chairman, I would like to reluctantly urge my colleagues to vote against the substitute.

(Mr. DICKS asked and was given permission to revise and extend his remarks at this point in the RECORD.)

Mr. DICKS. Mr. Chairman, I rise today in support of this legislation and the Democratic Substitute being offered by the gentleman from Mississippi. I would like to commend the Chairman and Ranking Member of the Committee on Homeland Security for bringing this bill to the floor—the first authorizing bill for the Department of Homeland Security since the Department was created.

This bill does many good things. It authorizes additional funding to cover the full cost of hiring an additional two thousand border patrol agents in order to meet the first year target established in the Intelligence Reform bill last year. Regrettably, the appropriations bill that passed the House yesterday fell short of actually finding these critically needed personnel by 500. But that does not diminish this accomplishment in the bill. This bill contains several important provisions that will help to fix the Directorate for Intelligence Analysis and Infrastructure Protection, which, in my judgment, has struggled the most to find its direction in the new department. And the bill raises the level of our government's top cybersecurity official to an Assistant Secretary within IAIP, something that should have been done when the Department was created.

This bill makes progress in some key areas, and I intend to support it, but I regret that it falls short in a number of critical areas, leaving us terribly vulnerable on many fronts.

Cargo security, both in the air and on the sea, have not been adequately addressed in this legislation. Our Nation's plan to secure cargo containers, I believe, makes sense; but it relies entirely on knowing—and trusting—the people that are packing the containers overseas. Customs and Border Protection is way behind in certifying participants in the C–T PAT program, and this bill does not authorize adequate funding to accelerate the process of validating the applications of those who are already gaining the benefits. My friend from California, Ms. SANCHEZ, sought to propose an amendment to address this problem, but the rule did not allow for its consideration, a serious oversight.

And there is absolutely no excuse for permitting unscreened cargo onto passenger aircraft. This is a problem we have known about since Pan Am Flight 103 was destroyed by a terrorist's bomb over Lockerbie, Scotland killing over 270 people. My good friend from Massachusetts, Mr. MARKEY, wanted to offer an amendment to the bill that would require this cargo to be screened, and it is long overdue. A similar amendment had been approved previously by the House, but the leadership has refused to allow its consideration today.

This bill also fails to take sufficient steps to meet other critical needs that we have been talking about here in the House since 9/11. The installation of in-line explosive detection systems at all of our Nation's passenger airports is one of the top technological solutions to improving the performance of our TSA screener force. Given what terrorist were able to perpetrate in Madrid, providing funding for real rail and transit security must become a higher priority. And we must work harder to improve security at our Nation's chemical plants—especially those that are located in heavily populated areas. Some of my Democratic colleagues offered amendments to accomplish these goals, but each has been blocked from consideration by the Majority.

But we now have an opportunity to vote on these items en bloc. The Democratic substitute, proposed by Mr. THOMPSON, addresses all of these issues, and is a much more complete blueprint for combating terrorism than the underlying document. The House must move aggressively to fill the gaps that we see everyday in the operations of the Department of Homeland Security. We do our constituents a grave disservice if we do not.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 3 minutes to the gentleman from Rhode Island (Mr. LANGEVIN).

(Mr. LANGEVIN asked and was given permission to revise and extend his remarks.)

Mr. LANGEVIN. Mr. Chairman, I rise in strong support of Ranking Member THOMPSON's substitute amendment.

While H.R. 1817 takes important steps in improving our security and preparedness, it simply does not go far enough.

Now, the Thompson substitute contains the critical provisions that I believe must be in any comprehensive, effective DHS authorization. Now, all told this amendment would provide about $41 billion for our homeland security needs, nearly $7 billion more than requested by the President.

This substitute would provide additional grant funds for continuing needs, in port, rail, transit and bus security, communications interoperability and firefighter hiring and preparedness. It also enhances air security by requiring that 100 percent of air cargo be screened within 3 years, tightening restrictions on access to sensitive airport areas, and providing flight crews the training and communications tools to effectively respond in an emergency.

Furthermore, the Thompson amendment ensures that we fulfill commitments made in the intelligence reform bill to implement the 9/11 Commission's recommendations.

It authorizes funding for nearly 2,000 new border patrol agents and provides resources to install explosive detection systems to baggage screening at airports, which is a critical unmet need at T.F. Green Airport in Rhode Island.

Now, as ranking member of the Subcommittee on Prevention of Nuclear and Biological Threats, I am particularly pleased to note that the Democratic substitute would provide for the

installation of radiation portal monitors at all ports of entry. This is a key step in our efforts to keep dangerous materials out of our borders.

Finally, this substitute makes significant progress in addressing critical infrastructure protection. It provides funding for an assessment of risks to nuclear and chemical plants and requires that chemical plants capable of threatening a large number of people in the worst-case situation take steps to increase security, implement safer technologies when feasible.

Just as importantly, the amendment sets deadlines for completion of a list of high-priority critical infrastructure assets. Now, this list should be the very basis for our Nation's security plans and funding decisions, and there is no excuse for the continuing delays in its completion.

□ 1715

Mr. Chairman, while we are indeed safer today than we were on September 11, the truth is that there still remains a significant security gap that must be filled.

The Thompson substitute takes a comprehensive approach to addressing these vulnerabilities, and I urge my colleagues to support it.

Mr. COX. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Georgia (Mr. LINDER).

Mr. LINDER. Mr. Chairman, I thank the chairman for yielding me time, and I rise in opposition to the Thompson substitute.

As the chairman of the Subcommittee on the Prevention of Nuclear and Biological Attack, I want to point out that the minority's substitute proposal is not, contrary to its billing, complete, especially in the area of nuclear terrorism.

Mr. Chairman, while some consider the probability of nuclear attack to be low, I fear that this lax position could have devastating consequences on the United States. If a terrorist organization were to smuggle and detonate a 10-kiloton nuclear device, which is not unreasonable for a basic terrorist bomb, in downtown Manhattan, it would immediately kill more than half a million people. The consequences, however, would not stop with the tragic loss of life.

The New York Stock Exchange could lose trillions in business transactions alone and the world's financial markets would be immediately crippled. Cleaning up the radioactive mess could cost billions, if not trillions, of dollars and take years to complete. We could, in essence, witness a total economic meltdown in the United States.

The Thompson substitute does little to prevent such a catastrophe. H.R. 1817 does.

Section 105 of H.R. 1817, for example, authorizes funding for a Nuclear Detection Office within the Department to coordinate and advance weapons of mass destruction detection efforts domestically as well as abroad. The Thompson substitute does not.

In addition, section 213 of H.R. 1817 revises the 2002 Homeland Security Act to ensure that the appropriate analytical expertise is employed by the Directorate of Information Analysis and Infrastructure Protection in the Department to discern specific threats involving use of nuclear weapons or biological agents to inflict mass casualties. The Thompson substitute does not.

Furthermore, section 214 of H.R. 1817 establishes an entity within the Department that will be responsible for alternative analysis of threats to ensure that the government's efforts at our borders and at foreign ports to prevent the importation and subsequent use of nuclear weapons or biological agents are actually effective. The Thompson substitute does not.

Mr. Speaker, I cannot imagine a scenario whereby this government has to answer the question of how we failed to prevent an attack by terrorists using a weapon of mass destruction on the American people. Such an attack is much too important and too critical for our national security to simply include it as a footnote in a 220-page substitute. I can assure my colleagues that my subcommittee will, in the coming months, vigorously work to produce legislation that focuses on the Department's attention on preventing such catastrophic terrorist events.

H.R. 1817 is not the final word on this issue, but it is an important first step, and as such, I encourage my colleagues to join me in opposing the Thompson substitute and supporting H.R. 1817.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. HOYER), the Democratic whip.

Mr. HOYER. Mr. Chairman, I thank the gentleman from Mississippi (Mr. THOMPSON) for yielding me time.

Mr. Chairman, despite the expenditure of billions of dollars on homeland security since September 11, the reality is that America's ports, chemical facilities, transportation systems and critical infrastructure are still to this day vulnerable to attack.

Are we better off? Yes. Are we where we need to be? No.

As Stephen Flynn, the former U.S. Coast Guard Commander and a foremost expert on homeland security, stated a few months ago on Meet the Press, ''The measures we have been cobbling together are hardly fit to deter amateur thieves, vandals and hackers, never mind determined terrorists.''

This Congress can and must, Mr. Chairman, do more to protect our citizens from attack at home, even as we take the fight to our enemies abroad.

That is what the Thompson substitute does.

It provides $6.9 billion more than the Republican bill, including funding to fulfill our homeland security commitments in the Intelligence Reform Act.

It includes $1 billion for grants for port, rail, transit and bus security, critical priorities; $380 million to hire 2,000 new border agents; and $500 million to ensure that first responders can communicate with one another.

It requires a plan to ensure that all air cargo on passenger planes is screened, giving sufficient time to develop the requisite technologies, and it sets deadlines for establishing security plans for critical infrastructures.

Republicans will and are objecting to the funding level in our substitute, but let us put it in perspective, Mr. Chairman.

This additional funding is nearly $2 billion less than the funding the Bush administration has failed to account for, some $8.8 billion, in Iraq. Mr. Chairman, if the Bush administration can lose track of nearly $9 billion in Iraq, I submit that we ought to be able to find $6.9 billion to make this Nation, its people, its communities and its families safer and more secure.

I urge my colleagues to support the Thompson substitute.

Mr. COX. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), but before I yield, Mr. Chairman, can the Chair tell me how much time remains on our side?

The Acting CHAIRMAN (Mr. LAHOOD). The gentleman from California (Mr. COX) has 11 minutes remaining.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I thank the gentleman for yielding me time.

Once again, I want to thank both the gentleman from Mississippi (Mr. THOMPSON), the ranking member, and the chairman of our committee for the fine work they did in producing the bipartisan base bill, but I rise in opposition to the ranking member's substitute amendment.

This 221-page substitute amendment offered in the nature of a substitute to the 40-some page base bill that we have is obviously more extensive than what was presented on the floor, and the explanation has been presented on both sides as to why this is the case. However, I would like to refer specifically to the comments of the gentleman from Maryland about the additional cost involved in the substitute, nearly $7 billion.

The American people have told us they do want us to do what is necessary for homeland security, but they have also said they want us to spend our money wisely. Press reports, as well as our own examination, has shown that there is in the pipeline in homeland security approximately $7 billion that is unspent. The answer is not to come in here and, therefore, increase the base bill by $7 billion, which is $7 billion over the President's budget, $7 billion over the House-passed badge budget, which, therefore, somehow tries to make a statement that more money spent is obviously going to make us safer.

We need to make sure that the Department of Homeland Security is setting the priorities that are necessary,

is spending the money in the appropriate ways and answers the question why money is stuck in the pipeline.

I would suggest the way to do that is not to give them an additional $7 billion somehow as some sort of attraction for them to tell us how they have not spent that $7 billion, that extra $7 billion that is out there.

Let me just say that the provisions in this substitute constitute sweeping changes, sweeping comprehensive changes in the responsibility, mission and funding for the Department over and above what our bipartisan committee presented in the base bill. Such changes cannot be made, I would suggest, in this type of setting without full debate, certainly more than 40 minutes, and consideration of a possible alternatives and consequences.

There are important questions here. How do we provide security in the area of the chemical industry? The chemical security portion of this amendment requires broad and sweeping regulation of the chemical industry by the Department of Homeland Security. Maybe that is appropriate, maybe it is not. I do not think we have the basis to make a judgment on this. I would also suggest it is counterproductive to improving our chemical infrastructure security. It places unnecessary burdens on potentially thousands of sites that may or may not be the sites at risk that we should be focusing on. Again, it is a question of priority.

It ignores the concept of examining high risk to effectively target our security resources. One of the things I thought we had done as a bipartisan committee was come to the conclusion that we really have to be very careful and demand that we set proper priorities, that we cannot go out and try and protect everything; we have to protect those things that are most vulnerable, those things that have the greatest threat, those things that have the worst consequences. I would suggest that this substitute does not do that.

I thank the gentleman for the time that he extended to me.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Chairman, right now in the Republican bill there is no protection added for the single greatest problem that we know still exists, which is the protection of chemical facilities in the United States of America. Whether it be on land or in rail cars, both of these chemical-type storage areas are still wide open.

Secondly, whistleblowers, if they turn in a shareholder scandal at Enron, get more protection than a nuclear power plant guard or a TSA guard who, as a latter day homeland security Paul Revere comes forward to warn the public that there is danger, the Republicans do not protect these whistleblowers. The Democratic bill does.

Finally, the cargo which goes onto planes in America, passenger planes, is not screened. Something this size, not screened. Something this size, which is cargo, which goes on to passenger planes next to our bags, is not screened. The Republican bill says this to those people: Warning, cargo on this plane has not been screened for explosives for your children.

Vote for the substitute if my colleagues want to protect the children and families of this country.

Mr. COX. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. Mr. Chairman, as a member of the Subcommittee on Emergency Preparedness, Science, and Technology, I rise in opposition to the EPS&T provisions in the Thompson substitute.

The base bill presents well-thought-out solutions to real terrorist threats by prioritizing and maximizing how U.S. tax dollars are spent. The Thompson substitute does not prioritize spending. It does not recognize that not all threats are created equal. It does not exercise any fiscal restraint whatsoever. It just throws a lot of money at problems. Such an approach does not enhance our Nation's security or provide adequate support for our dedicated first responders.

The emergency preparedness, science, and technology, EPS&T, provisions in the Thompson substitute address important issues, but are ill-conceived and fraught with unintended consequences.

For example, subtitle A of title VII would establish a new, separate grant interoperability program. It is ill-advised. A new program will encourage inconsistencies in communication systems purchased with Federal grants and, unfortunately, dilute funding for other critical grant programs.

This program is also not needed. Indeed, in fiscal year 2004, grant recipients obligated over $925 million for interoperability projects through existing programs, the single largest use of grant funding with more than $6 billion in the pipeline, it is unspent and unobligated, to State and local government available for first responders.

Subtitle D of title VII would establish a parallel EMS bureaucracy within the Department's Emergency Preparedness and Response, EP&R, Directorate. Such a new bureaucracy will not enhance terrorism preparedness. EMS entities already exist within the Department of Transportation and the U.S. Fire Administration of the EP&R Directorate. This provision is also premature and will undercut the Department's efforts to implement organizational reform.

Subtitle G of title VII would authorize the Metropolitan Medical Response System. Yet, MMRS, which provides funding to U.S. cities to develop plans and capabilities for coping with the medical consequences of a terrorist attack involving weapons of mass destruction is nearly complete. Since its inception in 1997, the program has assisted 124 cities in establishing such plans and capabilities.

There is simply no need to maintain MMRS as a separate grant program. Indeed, the funds provided under other existing grant programs, such as the State Homeland Security Grant Program and the Urban Area Security Initiative, may be used for such purposes.

For these and other reasons, I urge my colleagues to vote against the Thompson substitute.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 1 minute to the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN).

(Mrs. CHRISTENSEN asked and was given permission to revise and extend her remarks.)

□ 1730

Mrs. CHRISTENSEN. Mr. Chairman, I rise in strong support of the Thompson substitute, and I commend him for his leadership and hard work in crafting this amendment, which fills many of the security gaps we were not able to do in the underlying bill.

I also congratulate our chairman, the gentleman from California (Mr. COX), for fulfilling his promise to establish an annual legislative review of the Department and for his leadership.

Mr. Chairman, included in the Thompson substitute is an amendment I sponsored during the markup to provide for a border patrol unit in the Virgin Islands, a number one priority of all law enforcement in my district, the single most important missing ingredient in the defense of the territory, and one more weak link in the protection of our Nation.

With over 175 miles of unprotected and open borders, the Virgin Islands is increasingly becoming a gateway of choice to the U.S. for human smugglers. Because of the lack of such a unit, the Immigration and Customs Enforcement, our local police, Fish and Wildlife, and the National Park Service have to utilize their stretched resources and personnel to respond and to assist.

I want to thank Chairman COX for including language in the report to have the Department station some of the additional border patrol units in the Virgin Islands and for also including tribal coordination in the Office of State and Local Coordination in recognition of the sovereign nature of the tribal nations.

Mr. Chairman, H.R. 1817 is a good bill; but, nonetheless, the substitute makes significant improvements in many areas, and I urge my colleagues to support the Thompson substitute.

Mr. Chairman, I rise in strong support of the Thompson Substitute and I urge my colleagues to support its adoption. I commend the gentleman from Mississippi for his hard work in crafting an amendment which seeks to fill many of the security gaps that were not able to be addressed in the underlying bill.

I want to begin though, Mr. Chairman, by congratulating the Chairman of the Home-

land Security, my friend CHRIS COX for fulfilling his promise to establish an annual legislative review of the Department of Homeland Security. It has been an honor and a distinct pleasure to serve with Chairman COX, first as a member of the Select Committee on Homeland Security in the last Congress and again in this Congress on the permanent Committee.

Over the past nearly two and a half years, our committee has traveled across the country meeting with the men and women on the front lines of defending our homeland. The bill before us today as well as the Faster and Smarter Funding for First Responders Act which we debated and passed last week are largely the product of those efforts.

Included in the Thompson substitute, Mr. Chairman, is an amendment I sponsored during the markup of H.R. 1817 in committee, to provide for a border patrol unit in the Virgin Islands—the number one priority of all of the law enforcement first responders in my district and the single most important missing ingredient in the defense of the Territory and yet another weak link in the protection of our Nation.

With over 175 miles of unprotected and open borders, the Virgin Islands is today the gateway to the U.S. and our Nation's southern most border. It is also increasingly becoming the gateway of choice to the U.S. for human smugglers.

Since 1998 hundreds of Chinese nationals have entered the U.S. Virgin Islands, but there are many more from other countries of the Caribbean and South America and the Middle East as well.

Those dropping the aliens ashore have identified the Virgin Islands as an area from which illegals can try to travel undetected to the U.S. mainland. In fact, the Coast Guard, this past February 29th, detained 72 illegal immigrants on St. Thomas.

Because of the lack of a Border Patrol Unit in the territory other federal agencies such as Immigration and Customs Enforcement (ICE) have to spend a significant amount of manhours apprehending, processing, detaining and watching aliens in custody.

ICE has to use between 6 and 8 agents in every landing of 12 to 15 aliens. At a rate of on average 3 to 4 landing per month more than 80 hours are spent processing these aliens. Time which could be used to investigate conspiracies, smuggling organizations and dismantling rings.

In addition, our local Police Department, Fish and Wildlife, and the National Park Service also have to utilize their stretched resources and personnel to respond and assist.

Mr. Chairman, having a Border Patrol Unit assigned to the Virgin Islands would also enable us to deal with the other serious problem we face which is drug smuggling. ICE has identified several trafficking organizations that use the USVI to conduct drug smuggling operations, with marihuana, cocaine and heroin being shipped to the territory on a weekly basis. And we know, Mr. Chairman, of the connection and relationship between drugs and terrorism.

Mr. Chairman, I want to thank Chairman COX for agreeing to include language in the report of H.R. 1817, to encourage DHS to station some of the additional 2000 Boarder Patrol agents called for in the bill in the Virgin Islands. I also want to thank him for amending the title of the Office of State and Local Coordination to the Office of State, Local and Tribal Coordination in response to another amendment I offered in committee in recognition of the sovereign nature of our Tribal Nations.

Mr. Chairman, H.R. 1817 is a good bill. I am proud to have been a part of its development as a member of the Homeland Security Committee. I would nonetheless urge my colleagues to support the substitute offered by Ranking Member BENNIE THOMPSON because it makes significant improvements in key areas including fulfilling our commitments in the Intelligence Reform and Terrorism prevention, as well as new security measures for rail and public transit biometrics and other screening measures.

I urge my colleagues to support the Thompson substitute.

Mr. COX. Mr. Chairman, may I inquire as to how much time remains on the other side.

The Acting CHAIRMAN (Mr. LAHOOD). The gentleman from California (Mr. COX) has 5 minutes remaining, and the gentleman from Mississippi (Mr. THOMPSON) has 2½ minutes remaining.

Mr. COX. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, I want to thank the ranking member and the other members of the committee right in the teeth of this debate about the differences between the base bill and the Democratic substitute simply to remind us what we agree about. We agree about the base bill. And what we are talking about doing in the Democratic substitute is, in some part, restating the base bill and, in some part, adding money to it to go further.

One of the principles that I hope we can establish in this annual authorization process is that when we bring a bipartisan DHS authorization bill to the floor, that that bill is within the House-passed budget; it bears a close connection to the appropriations process, and this year we have a unique circumstance where we are on the floor literally 1 day after the homeland security appropriation bill has passed, so we know exactly what kind of money we are dealing with so that when we impose national security priorities on the executive branch and we provide policy guidance to the Department of Homeland Security, we are doing so in the real world, not in a fantasy world with pretend numbers and budget resources that simply do not exist.

The only real objection that I have to the Democratic substitute, because I agree with a great deal of the policy, is that it takes $7 billion from thin air and adds it on top of, not in substitute for, the provisions of the base bill. As a result, it is not about setting priorities; it is merely a wish list without any sense of priority.

I would say that it abdicates the responsibility of the authorizing committee and places all the burden on the appropriators were it not for the fact that we just voted on the appropriation bill yesterday. So every single Member knows that this is not a real $7 billion we are playing with here.

Rather than being called the Complete Homeland Security Act, it might be called the Death By Report Act because it does not help the Department of Homeland Security to run down terrorists; it instead sends them off on a mission to fill out reports. This substitute, in one of its key differences from the base text, is very heavy on reports and on plans and on studies and on assessments. It includes no fewer than 61 new initial reports, annual reports, follow-up reports, plans, strategies, studies, and reviews. That is not congressional direction; it is congressional misdirection.

There has got to be a focus on preventing terrorism, on doing the job, this most important, fundamental national security mission that we have assigned to the Department to do, rather than filling out paperwork. The substitute itself is 221 pages long, and in some respects it is not ready for action by the full House because its provisions have not yet been vetted even in hearings in subcommittee or full committee before the Department.

I daresay that some of those things, such as port security, chemical plant security, and so on, are policies with which I would agree. They are things that we intend to do as a committee this year. I have stated over and over, as recently as yesterday before the Committee on Rules, that because this is the first authorization bill for a Department which itself has existed for only 2 years, and which was thoroughly authorized in a charter written from top to bottom by this Congress just a few years ago, this bill is smaller this year than it will ever be in future years.

Moreover, because the Secretary is in the midst of his 90-day review of the Department's operation top to bottom as he takes the helm of what for him is a brand-new responsibility, we are trying to give him a few days more, he is due to report to us in June, to give us his roadmap. And that means we will be back on this floor with more authorizing legislation on the very subjects covered by the substitute amendment.

For all those reasons, I respectfully, but strongly, oppose this amendment.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 1 minute to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Chairman, I thank the gentleman for yielding me this time.

The Thompson substitute is necessary. It fills great holes in our major bill. There is not one dollar in this bill for the transportation that America

uses to go to work: rail, light rail, buses, subways, ferries. Yet even after Madrid, we are not dealing with the al Qaeda favorite. One-third of all the attacks has been on public transportation.

Cargo within four blocks of the Capitol. Explosives. One car, 14 miles. If one attack occurred, 100,000 people dead in a half-hour. How can we reauthorize or authorize the first homeland security bill without having any section in that bill on rail security? I do not think we can.

The American people deserve better. The Thompson substitute is clearly superior.

Mr. COX. Mr. Chairman, I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I rise in support certainly of H.R. 1817, but it is not enough. It is not good enough.

This administration claims to make fighting terrorism its top priority, and that is why we set up the Department of Homeland Security. You are not supposed to tell us from homeland security what it is we cannot do, but what we can do.

I agree that maybe Secretary Ridge did not have enough information, did not have enough at his disposal, so he told us about the alerts; the yellow lights, the orange and the red and all of that; told us to go out and buy flashlights, duct tape, water, and plastic sheeting. But it is time to get serious.

Homeland security should not be a sound bite or a reelection strategy. We have got to do something about the border. This President promised us 2,000 border agents. We have citizens who have taken it upon themselves to protect our border, and here we are talking about we do not have enough money to fund 2,000 agents when we are giving a bonus to Halliburton. Give me a break.

We need money for first responders. We need money for our ports and our containers. This substitute will help to fill that gap. It is time we put our money where our mouths are.

The Acting CHAIRMAN. The gentleman from Mississippi (Mr. THOMPSON) has 30 seconds remaining.

Mr. COX. Mr. Chairman, I would be pleased to yield 30 seconds to the gentleman from Mississippi.

The Acting CHAIRMAN. The gentleman from Mississippi has 1 minute.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 30 seconds to the gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Mr. Chairman, immediate action should have been taken on chemical plant security after the wake-up call we got from the 9/11 attacks. I have introduced the Chemical Security Act in the past two Congresses, but the House has never considered my legislation.

Across the country, the EPA has identified 123 facilities where a toxic gas release due to a terrorist attack could injure or kill more than 1 million people. The Thompson substitute would give the problem of chemical security plants and their security the attention it needs, and I would urge the House to adopt the Thompson substitute for that provision and all the other reasons that have been given here today.

Mr. COX. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON of Mississippi. I yield to the gentleman from California.

Mr. COX. Mr. Chairman, I would simply say to the gentleman from New Jersey that the point he raises about chemical security is an extremely important one, and I wanted to make sure that all the Members knew that on June 14 the Committee on Homeland Security will be having a hearing on that very topic. We intend, in the balance of this year, to go very deeply into our responsibilities for chemical plant security.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this is a substitute that is complete. If you look at it, it addresses all the vulnerabilities of our country; and I ask the body to support it.

Mr. COX. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I spoke just a moment ago about some of the provisions in this bill that, in my view, do not belong there, most notably the $7 billion that has no offset and, therefore, breaks the House-passed budget and is completely out of sync with the homeland security appropriation bill for which we had a large, nearly unanimous bipartisan vote yesterday.

But I would like to talk in the remaining seconds available about what this bill, the Thompson substitute, does not do. It does not incorporate, inexplicably, many of the bipartisan provisions that we have already agreed upon in the base bill. I have to believe that that was a drafting oversight; but were we to substitute for the base bill, we would lose the provisions that give, for example, flexibilities to the Information Analysis Office in the Department of Homeland Security to hire more intelligence agencies, something that has been a big priority of our committee for 3 years now. We would lose the reforms of the color-coded Homeland Security Advisory System, which both Republicans and Democrats have agreed upon.

As a result, we would be far better off to stick with the bipartisan provisions that are in the bill, rather than in the partisan provisions that appear in the Thompson substitute. I urge Members to reject the substitute.

Mr. ORTIZ. Mr. Chairman, as so many of you know, I represent a border district and am a former law enforcement officer. For the last year, I have been talking to a number of you about my concerns about border security, based on things I am hearing from border law enforcement officers.

I rise in support of the gentleman from Mississippi's substitute, which contains the amendment the Rules Committee yesterday disallowed from consideration by the House. Mr. THOMPSON's substitute draws from some ideas included in a border security bill I introduced earlier this year.

So many of my constituents—and our colleagues here in Congress—are profoundly frustrated with the budget-driven nature of our border security. This amendment requires the Department of Homeland Security to develop and implement a Comprehensive Border Strategy to secure U.S. borders—one that focuses on the needs of our national and border security rather than on the cost.

This amendment seeks a comprehensive approach that considers: staffing, infrastructure, technology, coordination of intelligence among agencies, legal responsibilities, jurisdictional issues, apprehension statistics, budgetary consequences, and the impact on the flow of commerce and legitimate travelers. It also requires implementation of the "American Shield Initiative" to address vulnerabilities between the ports-of-entry, which remains largely unaddressed since 9–11.

I urge all of us to focus our attention on a comprehensive border security policy by both authorizing and appropriating the funds necessary to secure our borders. The men and women who protect our border do an extraordinary job.

We owe them full funding of the security initiatives we determine are necessary for the protection of the people and places that we hold dear in the United States. It is simply not enough to talk about border security, it is an urgent matter for us to put our money where our mouth is when it comes to protecting our borders and our Nation.

I urge my colleagues to support this amendment—and I thank Mr. THOMPSON, Mr. STUPAK and Mr. REYES for their leadership on this issue.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in strong support of the amendment in Nature of a Substitute as offered by the distinguished Ranking Member of the Homeland Security Committee, the gentleman from Mississippi. It provides for $6.9 billion more in funding than the base bill (or the President's budget), including the funding needed to fulfill the homeland security commitments in the Intelligence Reform and Terrorism Prevention Act of 2004 and to meet other priorities.

Of the priorities that it proposes to meet is $380 million to hire 2,000 new border agents. As the Ranking Democrat of the Judiciary Subcommittee on Immigration, Border Security, and Claims, I understand the gravity of this allocation and how irresponsible it would be to omit it from the base bill. First Responder communications is funded under the Amendment in the amount of $500 million. As a major proponent of the Citizen Corps Council model that was created by President Bush himself but not funded, I appreciate the value of this level of funding for better communications systems for our front line personnel.

In addition, the Thompson substitute would provide $1 billion in grants for port, rail, transit, and bus security. These aspects of our transportation system have been given inadequate attention by the underlying bill. Again, with respect to aiding our first responders, the Thompson substitute would allocate $150 million to restore funding for FIRE Act grants.

Amidst the contentious debate about aviation security and the question as to the adequacy of our screening processes, Ranking Member THOMPSON seeks to attack the root of the issue by providing $418 million for aviation security research.

In terms of overall policy provisions, the Amendment calls for a comprehensive border strategy and technology that would monitor the entire border 24/7; new authority to ensure chemical plants are secured; a 3-year plan to ensure all air cargo on passenger planes is screened maritime cargo container security standards; new security measures for rail and public transit deadlines for establishing security plans for all critical infrastructure improvements in biometrics and other screening technology a new DHS council to monitor domestic terrorism; creation of an Assistant Secretary of Cybersecurity; and changes to DHS to ensure its operations are diverse and manageable.

Mr. Chairman, the Thompson substitute is a prudent, comprehensive, and responsible alternative to that offered by the Chairman of the Homeland Security Committee. I support it fully and ask that my colleagues join me.

Mr. OBERSTAR. Mr. Chairman, I rise in strong support of the Thompson amendment in the nature of a substitute. This amendment sets forth a comprehensive, integrated policy to promote homeland security. This amendment is a true substitute amendment and covers important areas where Federal security plans are sorely needed—such as rail and transit transportation—that are omitted from the underlying bill. Frankly, the Thompson amendment demonstrates that the Democrats in this body have the better plan for securing our Nation.

I'd like to thank the Ranking Member of the Committee on Homeland Security, Congressman THOMPSON, for actively working with me to develop this comprehensive amendment. In particular, I'd like to thank him for recognizing the important role that the Department of Transportation (DOT) has in devising and implementing transportation security regulations. DOT has extensive experience in security and has the primary responsibility for the efficiency and safety of transportation. For transportation security to work well, it is imperative that the Department of Homeland Security (DHS) and DOT work on security plans in tandem. The transportation provisions in this amendment insure that the Department of Homeland Security and Department of Transportation will work together to ensure that this Nation has the strongest, smartest homeland security procedures, which do not unnecessarily undermine efficiency or compromise safety.

I'd like to highlight some of these provisions. Section 518 of the amendment is the language from H.R. 1496, a bipartisan bill which I cosponsored and which was reported by the Transportation and Infrastructure Committee in April, to allow general aviation to return to National Airport. Opening National Airport to general aviation is long overdue.

In Vision 100, reported by the Transportation Committee and passed by Congress in 2003, Congress mandated that National Airport be open to general aviation after a security plan is established. To date, this Administration has not taken action to comply with this directive. I am disappointed that the Administration has avoided reopening general aviation at National Airport for this long, and this legislation is necessary to fully restore our transportation system, and our economy.

Further, I strongly support Title VI of the Thompson amendment. This title provides for transit security and passenger and freight rail security. Again, rail and transit security are areas where DOT and DHS must work together. This amendment would provide for that.

Subtitle B is taken directly from H.R. 2351, the ''Rail Security Act of 2005,'' which I introduced earlier this month. It requires that within 180 days of enactment, the Secretary of Homeland Security and the Secretary of Transportation shall develop and implement a railroad security assessment, a railroad security plan, and prioritized recommendations for improving railroad security. The amendment also requires the Secretary of Homeland Security and the Secretary of Transportation to execute a memorandum of agreement governing the roles and responsibilities of their Departments in addressing railroad transportation security matters.

Moreover, the amendment focuses on an issue that security bills often ignore: the importance of ensuring that key workers have the support and training required to protect our rail system, whether those workers are railroad employees or emergency responders. Rail workers are truly the eyes and ears of the rail industry. They greet passengers, sell tickets, operate trains, maintain track and signal systems, dispatch trains, operate bridges, and repair cars. They are in the most direct position to spot security risks and potential threats. This bill requires rail carriers to provide security training to these workers to ensure that they are prepared to take appropriate action against threat conditions.

While I do support most of these provisions in the Thompson amendment, I have serious concerns about one particular section. Section 519 would mandate that 100 percent of air cargo on passenger planes be physically inspected. While ensuring the security of air cargo is a laudable goal, this mandate is not the best way to accomplish that goal. The effect of this amendment would be to force air carriers to remove all cargo from passenger aircraft, jeopardizing 27,000 direct jobs and $4 billion in annual revenue.

No available technology exists today to efficiently and effectively screen all air cargo for explosives. Most of the cargo screening technologies referenced by those in favor of this amendment are basic or high energy x-ray systems, which currently are not certified explosive detection systems (EDS) for cargo. U.S. airlines have implemented significant cargo inspection and screening measures mandated by Congress and enforced by TSA. First, only known shippers (shippers who are part of the Known Shipper database) may ship cargo on passenger aircraft. Second, all cargo is subject to random inspection. In addition, U.S. airlines have collaborated with TSA and the U.S. Postal Service to develop and implement a canine mail-screening program for mail carried on passenger airlines. The airlines continue to assist TSA in programs to evaluate the utility of explosive detection systems (EDS) and canines for cargo screening. These programs are the best methods available for ensuring cargo security.

However, Mr. Chairman, my concerns about the cargo security provision are outweighed by the many good security provisions in the amendment. I support the Thompson amendment. It is a comprehensive approach to providing the best security for our Nation. I urge its passage.

The Acting CHAIRMAN. All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentleman from Mississippi (Mr. THOMPSON).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Mr. THOMPSON of Mississippi. Mr. Chairman, I demand a recorded vote.

Pursuant to clause 6 of rule XVIII, further proceedings on the amendment in the nature of a substitute offered by the gentleman from Mississippi (Mr. THOMPSON) will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order:

Amendment No. 1 printed in part B offered by the gentleman from Florida (Mr. MEEK), amendment No. 13 printed in part B offered by the gentlewoman from Oregon (Ms. HOOLEY), amendment No. 18 printed in part B offered by the gentleman from Georgia (Mr. NORWOOD), amendment No. 20 printed in part B offered by the gentlewoman from Texas (Ms. JACKSON-LEE), and amendment No. 24 printed in part B offered by the gentleman from Mississippi (Mr. THOMPSON).

The Chair will reduce to 5 minutes the time for any electronic votes after the first vote in this series.

AMENDMENT NO. 1 OFFERED BY MR. MEEK OF FLORIDA

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on amendment No. 1 offered by the gentleman from Florida (Mr. MEEK) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 184, noes 244, not voting 5, as follows:

[Roll No. 183]

AYES—184

Abercrombie	Boswell	Cleaver
Ackerman	Boyd	Clyburn
Allen	Brady (PA)	Conyers
Andrews	Brown (OH)	Cooper
Baca	Brown, Corrine	Costello
Baldwin	Butterfield	Crowley
Barrow	Capps	Cuellar
Becerra	Capuano	Cummings
Berkley	Cardin	Davis (AL)
Berman	Cardoza	Davis (CA)
Berry	Carnahan	Davis (FL)
Bishop (GA)	Carson	Davis (IL)
Bishop (NY)	Chandler	Davis (TN)
Blumenauer	Clay	DeFazio

DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Miller (NC)
Miller, George
Moore (KS)
Moore (WI)
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (MS)
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—244

Aderholt
Akin
Alexander
Bachus
Baird
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boucher
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Case
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Costa
Cox
Cramer
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Evans
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pastor
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Tierney
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—5

Larson (CT)
Lewis (GA)
Lucas
Millender-McDonald
Tancredo

□ 1812

Messrs. MCHUGH, HEFLEY, COSTA, GOODE, Ms. BEAN, Ms. GRANGER, Mr. STEARNS and Mrs. MYRICK changed their vote from ''aye'' to ''no.''

Mr. DEFAZIO, Ms. HOOLEY, Mr. BOYD and Mr. DAVIS of Tennessee changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 13 OFFERED BY MS. HOOLEY

The Acting CHAIRMAN (Mr. LAHOOD). The pending business is the demand for a recorded vote on the amendment offered by the gentlewoman from Oregon (Ms. HOOLEY) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 363, noes 65, not voting 5, as follows:

[Roll No. 184]

AYES—363

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baker
Baldwin
Barrett (SC)
Barrow
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Boehlert
Boehner
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Calvert
Camp
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Conaway
Conyers
Costello
Cox
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Emanuel
Emerson
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (NY)
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Latham
Leach
Lee
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lynch
Mack
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Miller (FL)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Napolitano
Neal (MA)
Neugebauer
Northup
Norwood
Nunes
Nussle
Oberstar
Olver
Ortiz
Osborne
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Peterson (PA)
Pickering
Pitts
Poe
Pombo
Pomeroy
Porter
Price (NC)
Pryce (OH)
Putnam
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Serrano
Shadegg
Shaw
Sherman
Sherwood
Shimkus
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Sodrel
Solis
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tanner
Tauscher
Taylor (NC)
Terry

Thompson (CA)
Thompson (MS)
Tiahrt
Tiberi
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (PA)
Wexler
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (FL)

NOES—65

Baird
Bartlett (MD)
Berry
Blunt
Bonilla
Boustany
Buyer
Cannon
Cantor
Cole (OK)
Cooper
Costa
Davis (FL)
Ehlers
English (PA)
Everett
Ford
Frank (MA)
Franks (AZ)
Gillmor
Gutknecht
Harris
Hayes
Hensarling
Hoekstra
Istook
Johnson, Sam
King (IA)
Kingston
LaTourette
Lungren, Daniel E.
Marchant
Mica
Miller (MI)
Moran (KS)
Nadler
Ney
Obey
Otter
Pence
Peterson (MN)
Petri
Platts
Price (GA)
Radanovich
Rohrabacher
Ryan (WI)
Ryun (KS)
Sabo
Sensenbrenner
Sessions
Shays
Shuster
Smith (TX)
Souder
Taylor (MS)
Thomas
Thornberry
Tierney
Weldon (FL)
Weller
Westmoreland
Whitfield
Wicker
Young (AK)

NOT VOTING—5

Larson (CT)
Lewis (GA)
Lucas
Millender-McDonald
Tancredo

□ 1823

Mr. FORD changed his vote from ''aye'' to ''no.''

Mr. SHERMAN changed his vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 18 OFFERED BY MR. NORWOOD

The Acting CHAIRMAN (Mr. LAHOOD). The pending business is the demand for a recorded vote on amendment No. 18 offered by the gentleman from Georgia (Mr. NORWOOD) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 242, noes 185, not voting 6, as follows:

[Roll No. 185]

AYES—242

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cantor
Capito
Carter
Case
Castle
Chabot
Chandler
Chocola
Coble
Cole (OK)
Conaway
Cox
Cramer
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeLay
Dent
Doolittle
Drake
Dreier
Duncan
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Higgins
Hobson
Hoekstra
Holden
Hooley
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Israel
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCarthy
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sweeney
Tanner
Taylor (MS)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—185

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Blumenauer
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Cannon
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doyle
Edwards
Ehlers
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Flake
Ford
Frank (MA)
Frelinghuysen
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hinchey
Hinojosa
Holt
Honda
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kolbe
Kucinich
Langevin
Lantos
Larsen (WA)
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Matsui
McCollum (MN)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reichert
Reyes
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Taylor (NC)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOT VOTING—6

Larson (CT)
Lewis (GA)
Lucas
Millender-McDonald
Sullivan
Tancredo

□ 1831

Mr. PORTER changed his vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 20 OFFERED BY MS. JACKSON-LEE OF TEXAS

The Acting CHAIRMAN (Mr. LAHOOD). The pending business is the demand for a recorded vote on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 182, noes 245, not voting 6, as follows:

[Roll No. 186]

AYES—182

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costello
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah

Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Leach
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Miller (NC)
Miller, George
Moore (KS)
Moore (WI)
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Price (NC)
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Tauscher
Thompson (MS)
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—245

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Berry
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Costa
Cox
Cramer
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Strickland
Sullivan
Sweeney
Tanner
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Tierney
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—6

Larson (CT)
Lewis (GA)
Lucas
Millender-McDonald
Tancredo
Taylor (NC)

□ 1840

Ms. BEAN changed her vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 24 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. THOMPSON OF MISSISSIPPI

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment No. 24 in the nature of a substitute offered by the gentleman from Mississippi (Mr. THOMPSON) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment in the nature of a substitute.

The Clerk redesignated the amendment in the nature of a substitute.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 196, noes 230, not voting 7, as follows:

[Roll No. 187]

AYES—196

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—230

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Cox
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Green, Gene
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick

Neugebauer	Reichert	Sullivan
Ney	Renzi	Sweeney
Northup	Reynolds	Taylor (MS)
Norwood	Rogers (AL)	Taylor (NC)
Nunes	Rogers (KY)	Terry
Nussle	Rogers (MI)	Thomas
Osborne	Rohrabacher	Thornberry
Otter	Ros-Lehtinen	Tiahrt
Oxley	Royce	Tiberi
Paul	Ryan (WI)	Turner
Pearce	Ryun (KS)	Upton
Pence	Saxton	Walden (OR)
Peterson (PA)	Schwarz (MI)	Walsh
Petri	Sensenbrenner	Wamp
Pickering	Sessions	Weldon (FL)
Pitts	Shadegg	Weldon (PA)
Platts	Shaw	Weller
Poe	Sherwood	Westmoreland
Pombo	Shimkus	Whitfield
Porter	Shuster	Wicker
Price (GA)	Simmons	Wilson (NM)
Pryce (OH)	Simpson	Wilson (SC)
Putnam	Smith (NJ)	Wolf
Radanovich	Smith (TX)	Young (AK)
Ramstad	Sodrel	Young (FL)
Regula	Souder	
Rehberg	Stearns	

NOT VOTING—7

Kaptur	Lucas	Millender-McDonald
Larson (CT)	McDermott	Tancredo
Lewis (GA)		

□ 1847

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The Acting CHAIRMAN (Mr. LAHOOD). Are there further amendments to the bill?

There being no other amendments, the question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The Acting CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HASTINGS of Washington) having assumed the chair, Mr. LAHOOD, Acting Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1817) to authorize appropriations for fiscal year 2006 for the Department of Homeland Security, and for other purposes, pursuant to House Resolution 283, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

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

MOTION TO RECOMMIT OFFERED BY MR. THOMPSON OF MISSISSIPPI

Mr. THOMPSON of Mississippi. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. THOMPSON of Mississippi. I am, Mr. Speaker, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Thompson of Mississippi moves to recommit the bill H.R. 1817 to the Committee on Homeland Security with instructions to report the same back to the House forthwith with the following amendment:

At the end of the bill, add the following:

TITLE VI—ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS

SEC. 601. AVIATION SECURITY RESEARCH AND DEVELOPMENT.

To carry out section 4011(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (118 Stat. 3714), there is authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration $20,000,000 for fiscal year 2006 for research and development of advanced biometric technology applications to aviation security, including mass identification technology.

SEC. 602. BIOMETRIC CENTER OF EXCELLENCE.

To carry out section 4011(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 (118 Stat. 3714), there is authorized to be appropriated $1,000,000 for fiscal year 2006 for the establishment by the Secretary of Homeland Security of a competitive center of excellence that will develop and expedite the Federal Government's use of biometric identifiers.

SEC. 603. PORTAL DETECTION SYSTEMS.

To carry out section 44925 of title 49, United States Code, there is authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration $250,000,000 for fiscal year 2006 for research, development, and installation of detection systems and other devices for the detection of biological, chemical, radiological, and explosive materials.

SEC. 604. IN-LINE CHECKED BAGGAGE SCREENING.

To carry out section 4019 of the Intelligence Reform and Terrorism Prevention Act of 2004 (49 U.S.C. 44901 note; 118 Stat. 3721), there is authorized to be appropriated for fiscal year 2006 $400,000,000 to carry out the in-line checked baggage screening system installations required by section 44901 of title 49, United States Code.

SEC. 605. CHECKED BAGGAGE SCREENING AREA MONITORING.

To carry out section 4020 of the Intelligence Reform and Terrorism Prevention Act of 2004 (49 U.S.C. 44901 note; 118 Stat. 3722), there is authorized to be appropriated to the Secretary of Homeland Security for the use of the Under Secretary for Border and Transportation Security such sums as may be necessary for fiscal year 2006 to provide assistance to airports at which screening is required by section 44901 of title 49, United States Code, and that have checked baggage screening areas that are not open to public view, in the acquisition and installation of security monitoring cameras for surveillance of such areas in order to deter theft from checked baggage and to aid in the speedy resolution of liability claims against the Transportation Security Administration.

SEC. 606. IMPROVED EXPLOSIVE DETECTION SYSTEMS.

To carry out section 4024 of the Intelligence Reform and Terrorism Prevention Act of 2004 (49 U.S.C. 44913 note; 118 Stat. 3724), there is authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration $100,000,000 for fiscal year 2006 for the purpose of research and development of improved explosive detection systems for aviation security under section 44913 of title 49, United States Code.

SEC. 607. MAN-PORTABLE AIR DEFENSE SYSTEMS (MANPADS).

To carry out section 4026 of the Intelligence Reform and Terrorism Prevention Act of 2004 (22 U.S.C. 2751 note; 118 Stat. 3724), there is authorized to be appropriated such sums as may be necessary for fiscal year 2006.

SEC. 608. PILOT PROGRAM TO EVALUATE USE OF BLAST RESISTANT CARGO AND BAGGAGE CONTAINERS.

To carry out subsections (a) and (b) of section 4051 of the Intelligence Reform and Terrorism Prevention Act of 2004 (49 U.S.C. 44901 note; 118 Stat. 3728), there is authorized to be appropriated $2,000,000 for fiscal year 2006. Such sums shall remain available until expended.

SEC. 609. AIR CARGO SECURITY.

To carry out section 4052(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (49 U.S.C. 44901 note; 118 Stat. 3728), there is authorized to be appropriated to the Secretary $100,000,000 for fiscal year 2006 for research and development related to enhanced air cargo security technology, as well as for deployment and installation of enhanced air cargo security technology. Such sums shall remain available until expended.

SEC. 610. FEDERAL AIR MARSHALS.

To carry out section 4016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (49 U.S.C. 44917 note; 118 Stat. 3720), there is authorized to be appropriated to the Secretary of Homeland Security for the use of the Bureau of Immigration and Customs Enforcement $83,000,000 for fiscal year 2006 for the deployment of Federal air marshals under section 44917 of title 49, United States Code. Such sums shall remain available until expended.

SEC. 611. INCREASE IN FULL-TIME IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.

To carry out section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004 (118 stat. 3734), there is authorized to be appropriated such sums as may be necessary in fiscal year 2006 for the Secretary of Homeland Security to increase by not less than 800 the number of positions for full-time active duty investigators within the Department of Homeland Security investigating violations of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)) in fiscal year 2006 above the number of such positions for which funds were made available during the preceding fiscal year.

SEC. 612. INCREASE IN DETENTION IN DETENTION BED SPACE.

To carry out section 5204 of the Intelligence Reform and Terrorism Prevention Act of 2004 (118 Stat. 3734), there is authorized to be appropriated such sums as may be necessary in fiscal year 2006 for the Secretary of Homeland Security to increase by not less than 8,000 the number of beds available for immigration detention and removal operations of the Department of Homeland Security above the number for which funds were allotted for the preceding fiscal year.

SEC. 613. BORDER SECURITY TECHNOLOGIES FOR USE BETWEEN PORTS OF ENTRY.

To carry out subtitle A of title V of the Intelligence Reform and Terrorism Prevention Act (118 Stat. 3732), there is authorized to be appropriated $25,000,000 for fiscal year 2006 for the formulation of a research and development program to test various advanced technologies to improve border security between ports of entry as established in sections 5101, 5102, 5103, and 5104 of the Intelligence Reform and Terrorism Prevention Act of 2004.

SEC. 614. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

To carry out section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (118 Stat. 3734), there is authorized to be appropriated $380,000,000 for the Secretary of Homeland Security to increase by not less than 2,000 the number of positions for full-time, active-duty border patrol agents within the Department of Homeland Security, in fiscal year 2006, above the number of such positions for which funds were allotted for the preceding fiscal year.

SEC. 615. IMMIGRATION SECURITY INITIATIVE.

To carry out section 7206 of the Intelligence Reform and Terrorism Prevention Act (118 Stat. 3817), there are authorized to be appropriated to the Secretary of Homeland Security to carry out the amendments made by subsection (a) $40,000,000 for fiscal year 2006.

TITLE VII—CARGO INSPECTION

SEC. 701. INSPECTION OF CARGO CARRIED ABOARD COMMERCIAL AIRCRAFT.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Homeland Security shall implement a system that uses equipment, technology, personnel, and other means to inspect 35 percent of cargo transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate transportation. At a minimum, this system shall meet the same standards as those established by the Secretary for equipment, technology, and personnel used to screen passenger baggage. Within 2 years after the date of the enactment of this Act, the Secretary shall use this system to inspect at least 65 percent of cargo transported in passenger aircraft. Not later than three years after the date of enactment of this Act, the Secretary shall use this system to inspect at least 100 percent of cargo transported in passenger aircraft.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to the Congress a report describing the system established under subsection (a).

Mr. THOMPSON of Mississippi (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Mississippi (Mr. THOMPSON) is recognized for 5 minutes in support of his motion.

Mr. THOMPSON of Mississippi. Mr. Speaker, last year we passed the Intelligence Reform and Terrorism Prevention Act, which included significant funding boosts for homeland security programs.

When the President signed the 9/11 bill, he made a commitment to our law enforcement personnel. He said, ''We will continue to work with Congress to make sure they have got the resources necessary to do their jobs.''

However, when the President's budget came out in January, it failed to fully fund the programs in the 9/11 Act. Frontline officers tell us that they do not have the resources they need to get the job done. The Immigrations and Customs Enforcement Service has been in a hiring freeze since late last year. The border patrol simply does not have the manpower or the support staff to be able to effectively do its job.

Simply signing a bill is not enough. You have got to do what you promised to do. What we have been asking for today, in introducing this bill, is for the President to explain why it is not necessary to fully fund the 9/11 Act to better secure our Nation.

Accountability is the key to homeland security. If the President is not going to make sure that homeland security increases are identified as being needed and are in the budget, then the American people deserve to know why.

Additionally, this motion to recommit addresses a major threat in aviation security. The Rules Committee blocked consideration of this important measure, Mr. Speaker. Every day the TSA fails to inspect the millions of tons of cargo shipped in the belly of passenger planes is yet another day American lives are put at risk.

I urge my colleagues to join me and approve this motion to recommit.

Mr. Speaker, I now yield 1½ minutes to my colleague, the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, in this recommitment motion, you will get a chance, on the majority side, to vote on whether or not you want to screen cargo that is on passenger planes.

We take off our shoes. Americans take off their shoes, families putting their children on flights to head on vacation or go to school. They all take off their shoes.

But underneath, in the cargo bay of those passenger planes, almost none of the cargo which sits right next to those bags is screened. If something is this size, 16 ounces, no paperwork. Nothing.

If it is the same size as the bag your children and you have, it does not get screened. It is going on right next to your bags. And so what our amendment says is, you got a warning. The cargo on this plane has not been screened for explosives. That is the Republican bill.

The Democratic substitute says that 100 percent of all baggage, all cargo as well, on passenger planes is screened. If you care about your families, if you care about implementing one of the key recommendations in the 9/11 report, then vote for the Democratic recommittal motion. This is the only chance you are going to have to vote on this issue. Vote ''yes'' on the recommittal motion.

Mr. THOMPSON of Mississippi. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, the motion to recommit would authorize full funding for all of the homeland security measures called for in the Intelligence Reform Act adopted last year: aviation security research and development, full detection systems, biological, chemical, radiation and explosive materials, passenger baggage screening equipment, air cargo security, Federal air marshals and border security measures.

It also includes a requirement that within 3 years all air cargo on passenger planes be screened.

Mr. Speaker, I ask for a ''yes'' vote on this motion to recommit.

Mr. Speaker, I yield back the balance of my time.

Mr. COX. Mr. Speaker, I rise in opposition to the motion to recommit.

Mr. Speaker, I want to draw our attention to what is actually in the motion to recommit. It consists of 15 sequential sections that do nothing more than authorize monies, and a final section, which my colleague from Massachusetts just spoke about, concerning air cargo which contains no reference to money, whatsoever, but which, according to the Department of Homeland Security, would effectively double the budget of the TSA.

Let me read to you the dollar amounts in each of the sections, because I want to draw Members' attention to the fact that there are no offsets. There are no sources of funding for these provisions.

Section 601 adds $20 million without any funding source; section 602, $1 million; section 603, a quarter billion dollars; section 604, $400 million dollars and so on.

I mention this because we are here on the floor for the first time considering the Department of Homeland Security authorization bill in an annual process that is beginning now, but which will go on for the indefinite future. And we are seeking to establish a precedent.

And that precedent is that just as with other national security authorize legislation that we bring to the floor, in this bill, it is real money. In this bill, we are authorizing funding within the House-passed budget and consistent with amounts that we actually intend to appropriate.

Now, we have a unique opportunity this year because the order of consideration of the appropriations bill and the authorization bill was reversed. Just yesterday on the floor of this House, Members voted on the appropriations bill so we actually know real dollar numbers that Secretary Chertoff and the Department of Homeland Security will have to work with. And virtually every Member on this floor just voted for that bill yesterday.

□ 1900

So, if we are to come to the floor today and vote for funding figures which are different from what we know will actually happen, we will be placing priorities before the Department of Homeland Security and mandates on the Department of Homeland Security that we know it cannot meet.

There are some other anomalies with the funding provisions in the motion to recommit that I am certain must be drafting mistakes.

I do not doubt for a moment the passion of the gentleman from Massachusetts when it comes to the question of screening air cargo, but I have to draw Members' attention to the fact that

the dollar figure that is authorized for the Department of Homeland Security for air cargo in the motion to recommit is $100 million. That would be a $15 million cut from the actual number that we appropriated last year and a $28 million cut from what we just voted for air cargo screening in yesterday's appropriations bill. I do not know why we would do that.

The same thing is true for air marshals. This House is very interested in putting air marshals on airplanes to protect the flying public. The motion to recommit sets the authorized funding level for air marshals at $83 million. The appropriations bill that we just voted for yesterday would give the Department of Homeland Security $700 million, not $83 million for air marshals. Why would we cut air marshals, unless it is a drafting mistake in the motion to recommit?

As I said, this is an historic moment on the floor of this House, and I want to draw our attention to what we are about to do, as soon as we finish the motion to recommit. We are about to vote on what will be the first of an annual authorization for the Department of Homeland Security.

That bill is bipartisan. Both sides agree on everything that is in it. It fully funds 2,000 new Border Patrol agents. It establishes a top level new Assistant Secretary for Cyber Security within the Department of Homeland Security. It beefs up the intelligence capability at the Department of Homeland Security. It reforms the threat warning system. It establishes the Homeland Security Information Network that will link thousands of local agencies across the country in real-time to the Department. It does all of this and much more within the House-passed budget and within the confines of the appropriations bill that we just passed yesterday.

This is exactly the norm that is set for us in the authorizing legislation that comes from the Committee on Armed Services to fund the Pentagon and that comes to us from the House Permanent Select Committee on Intelligence to fund the intelligence community. Those authorization bills all live within the budget. So, too, must we in this homeland security authorization bill this year and every year hereafter.

To my colleagues on the Democratic side, I understand what they are doing in this motion, seeking to draw attention to critical issues such as cargo security and chemical plant security that are not yet the subject of authorizing language on the floor of this House. I commit to my colleagues that this bill on which we agree is a beginning and that our new committee will use its jurisdiction to develop bipartisan legislation on these subjects, just as we have on first responders, just as we did last week on the floor of this House, and just as we have on this historic $34 billion authorization for the Department of Homeland Security.

Mr. Speaker, if I may in conclusion say that I am thoroughly impressed with the effort and the work that has been put forth on both sides of the aisle on this bill, with the performance and the leadership of the gentleman from Mississippi (Mr. THOMPSON), my colleague. May I say that there has not been 1 day since September 11 when any Member of this House has forgotten the lesson of homeland security that we learned on that day, chief among which is that we must always put the security of this country ahead of partisan politics.

The bill that we will vote on in a moment, the homeland security authorization bill, does that, and I look forward to standing shoulder-to-shoulder with the gentleman from Mississippi (Mr. THOMPSON), with all the members of the committee, and with, I believe, all the Members of this House.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. THOMPSON of Mississippi. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 199, noes 228, not voting 6, as follows:

[Roll No. 188]

AYES—199

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—228

Aderholt
Akin
Alexander
Bachus
Baird
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Cox
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pastor
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson

Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—6

Feeney
Larson (CT)
Lewis (GA)
Lucas
Millender-McDonald
Tancredo

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HASTINGS of Washington) (during the vote). There are 2 minutes remaining in this vote.

□ 1920

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. COX. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 424, noes 4, not voting 5, as follows:

[Roll No. 189]

AYES—424

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cox
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Olver
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOES—4

Gutierrez
Markey
Obey
Paul

NOT VOTING—5

Larson (CT)
Lewis (GA)
Lucas
Millender-McDonald
Tancredo

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1927

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. LARSON of Connecticut. Mr. Speaker, I would like to submit this statement for the RECORD and regret that I could not be present today, Wednesday, May 18, 2005 to vote on rollcall vote Nos. 181, 182, 183, 184, 185, 186, 187, 188 and 189 due to a family medical emergency.

Had I been present, I would have voted: "No" on rollcall vote No. 181 on calling the previous question on H. Res. 283—the rule providing for consideration of H.R. 1817—Homeland Security Authorization Act for Fiscal Year 2006; "no" on rollcall vote No. 182 on passage of H. Res. 283—the rule providing for consideration of H.R. 1817—Homeland Security Authorization Act for Fiscal Year 2006; "yea" on rollcall vote No. 183 on an amendment to H.R. 1817 to increase funding for the Department of Homeland Security's Office of Inspector General to $200 million; "yea" on rollcall vote No. 184 on an amendment to H.R. 1817 to prohibit any of the money in the DHS authorization bill to come from an increase in airline ticket taxes; "no" on rollcall vote No. 185 on an amendment to H.R. 1817 to clarify the existing authority of State and local enforcement personnel to apprehend, detain, remove, and transport illegal aliens in the routine course of duty, and requires DHS to establish a training manual on this matter and set forth simple guidelines for making that training available; "yea" on rollcall vote No. 186 on an amendment to H.R. 1817 to call for the Secretary of Homeland Security to submit a report to Congress on: the number and types of border violence activities that have occurred; the types of activities involved; a description of the categories of victims that exists; and a description of the steps that DHS is taking and any plan that the Department had formulated to prevent these activities; "yea" on rollcall vote No. 187 on an amendment to H.R. 1817 in the nature of a substitute to authorize $6.9 billion over H.R. 1817 in homeland security funding and includes a number of policy proposals to close security gaps and to restructure the Department of Homeland Security; "yea" on rollcall vote No. 188 on the motion to recommit H.R. 1817 to the Committee on Homeland Security; and, "yea" on rollcall vote No. 189 on passage of H.R. 1817—the Homeland Security Authorization Act for FY 2006.

AUTHORIZING CLERK TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES IN ENGROSSMENT OF H.R. 1817, DEPARTMENT OF HOMELAND SECURITY AUTHORIZATION ACT FOR FISCAL YEAR 2006

Mr. COX. Mr. Speaker, I ask unanimous consent that the Clerk be authorized to make technical corrections and other conforming changes in the engrossment of H.R. 1817 to reflect the actions of the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1526

Mr. OTTER. Mr. Speaker, I ask unanimous consent to have the name of the gentleman from Louisiana (Mr. JINDAL) removed as cosponsor of H.R. 1526, the Security and Freedom Ensured Act of 2005.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Idaho?

There was no objection.

REPORT ON H.R. 2419, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2006

Mr. HOBSON, from the Committee on Appropriations, submitted a privileged report (Rept. No. 109–86) on the bill (H.R. 2419) making appropriations for energy and water development for the fiscal year ending September 30, 2006, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

The SPEAKER pro tempore. Pursuant to clause 1, rule XXI, all points of order are reserved on the bill.

SUPPORT 527 FAIRNESS ACT OF 2005

(Ms. ROS-LEHTINEN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ROS-LEHTINEN. Mr. Speaker, today I rise in support of the 527 Fairness Act of 2005. This is a bill that levels the playing field between political parties, PACs, Federal campaigns and 527s. The 527 Fairness Act lifts up other players by injecting more freedom into the campaign system.

The legislation is very simple. It removes the aggregate contribution limit. It allows State and local parties to spend non-Federal dollars for voter registration and sample ballots. What it does not do is it does not repeal the limits on individual contributions to national parties and committees. It does not allow soft money to go to national political parties.

The answer, Mr. Speaker, to problems and politics in a free society is more freedom, not less freedom. So I commend my colleagues, the gentleman from Indiana (Mr. PENCE) and the gentleman from Maryland (Mr. WYNN) for introducing this bipartisan vital piece of legislation. I urge my colleagues to support the 527 Fairness Act of 2005.

NO FILIBUSTER CHANGE

(Ms. WOOLSEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, I was recently playing a card game with my 5-year-old grandson, Teddy. And he knows it is wrong to change the rules in the middle of the game just to win. But the Republicans do not seem to play by any rules. If they sense vulnerability, they will rewrite historical laws to suit their needs. That is exactly what they did in the House Committee on Standards of Official Conduct, and that is exactly what they are trying to do by eliminating the filibuster in the judicial nomination process.

Americans do not want this Nation to be run by leaders willing to change the rules, to forgo the laws of the land, to cater to their special interests. They do not want judicial nominees that are bullied through Congress. They want qualified candidates that receive bipartisan approval like the other 200-plus Bush nominees approved by the Senate.

Changing the rules of the game to make an exception for 10 judges is not democratic. It is a blatant abuse of power. Mr. Speaker, this is something even a 5-year-old can understand.

REPUBLICAN QUEST FOR ABSOLUTE POWER

(Mr. BROWN of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Speaker, President Bush, Senator FRIST, and the majority leader, the gentleman from Texas (Mr. DELAY) are in a quest for absolute power in Washington, even if it means corrupting our government and the vision of our Founding Fathers.

The White House has manufactured a judicial crisis. Since the President took office, the Senate confirmed 208 of his judicial nominees and turned back only 10, a 95 percent confirmation rate. That rate is the highest approval rating for any President in modern times, higher than Reagan, Bush Senior and Clinton. The President presides over the lowest court vacancy rate in 25 years.

But 95 percent is not good enough for this White House. They want to have it all. That is simply not how it is supposed to work, and America sees this for what it is, an extreme power grab by the majority party. Our country knows that our country works best when no political party has absolute power.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. KUHL of New York). Under the Speaker's announced policy of January 4, 2005, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. GUTKNECHT) is recognized for 5 minutes.

(Mr. GUTKNECHT addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

Mr. DEFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

ORDER OF BUSINESS

Mr. MCDERMOTT. Mr. Speaker, I ask unanimous consent to take my Special Order time out of order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

THE RADICAL RIGHT

(Mr. MCDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, the word ''nuclear'' holds special meaning in our world. It is a word that has become synonymous with chaos, total destruction and annihilation. Nuclear is the word that for the last half century has struck fear in the hearts and minds of people across the United States.

For the last 2 months, Republicans in the Senate have threatened the nuclear option, like destroying the world was something you planned for and even boasted about. Over and over, the Republican-controlled Senate threatened to go nuclear, as if they were shouting ''lock and load'' at some local gun club.

For far too long, the Senate majority leader has been a trigger happy gun slinger who set aside a Colt 45 and ordered up a thermal nuclear warhead in its place. Just imagine the outcome if he had been President staring down Nikita Khrushchev during the Cuban missile crisis.

Today, Senate Republicans released the nuclear warhead and the blast zone extends east or west, north to south, incinerating the rights of every American. It will be the first strike launched on behalf of the radical right aimed at annihilating the safety, security and freedom of every American.

This is not about politics. The real Republican target is the U.S. Supreme Court and the judiciary. The Republican leaders said so in the House, and

the Senate leaders said so in the Senate. No fallout shelter will keep us safe from the nuclear winter they plunge America into.

The radical Republican right has an agenda and they intend to use every weapon at their disposal to enforce their will upon the American people. The radical Republican right wants to dictate what a woman can and cannot do with her body. The radical Republican right wants to abolish women's rights one court decision at a time. Republicans just gave the radical extremist the right to abolish Roe v. Wade. Republicans just handed the radical right the keys to our democracy. Women's rights will be nuked.

Republican extremists will replace a woman's right to choose with a requirement to be subservient. The Republican Party intends to stack the Court and stack the deck against women.

They intend to violate the environment, too. Republican extremists want to stack the courts so their corporate lobbyists and special interests are shielded from liability, protected from acting responsibly, and given the right to foul the air, pollute the water, dump toxins on the ground, and spew carcinogens in the atmosphere.

Greed is God to these radicals who are attempting to subvert democracy with religious idolatry. Run for your lives, America, the Republicans are coming. Right wing extremists in the Republican Party control the House, the Senate, and the White House, and they want the new trophy, and it is called the Supreme Court.

They want to send their militants into your homes, into your lives, next to your death bed, to force their will upon you. The Republicans in charge today want to replace the Constitution with the Bible. The Republicans in charge today would like nothing better than to enforce a literal interpretation of the Bible in every American home, every American school, and every American mind.

The Republican majority leader from Tennessee wants America to return to 1925 when the Butler Act in his State told people what to think and what to believe. But before the Republicans shout their Hosannas on high, let me recite a passage from the Bible. It was used by the defense in the Scopes monkey trial.

Dayton, Tennessee, science teacher, 25 years old, John T. Scopes was persecuted and prosecuted for teaching science and not religion in the classroom. The great attorney, Clarence Darrow, who defended Scopes, called upon the Bible. ''A holy book, a good book, but not the only book,'' Darrow said, in defense of a man who was convicted but later acquitted by the Supreme Court of the United States.

And I recall his words today to remind the Senate majority leader and every Republican intimidated into hypocrisy to remember the Bible. Clarence Darrow quoted Proverbs, chapter 11, verse 29, and here is what the Bible says: ''He that troubleth his own house shall inherit the wind.''

Tonight we begin the ice age because the wind is going to be cold coming out of that Senate. Remember, ''He that troubleth his own house shall inherit the wind.''

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

(Mr. JONES of North Carolina addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York (Mrs. MCCARTHY) is recognized for 5 minutes.

(Mrs. MCCARTHY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

ORDER OF BUSINESS

Ms. WOOLSEY. Mr. Speaker, I ask unanimous consent to speak out of order.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

SMART SECURITY

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, the time has come for a new national security strategy because our current path will only lead to future acts of terrorism and an increasingly insecure United States of America.

Most Americans understand that the best way to protect our country is through smarter policies right here at home, not through aggressive military combat abroad. In fact, a poll released today indicates that support for the war in Iraq is at its lowest level yet. Maybe that is because most Americans know that Iraq never possessed weapons of mass destruction, never had a connection to al Qaeda, and never played a role in the terrorist attacks of September 11.

Yet the Bush administration claimed each of these examples as fact in order to justify going to a war in Iraq and just over 2 years ago the U.S. invaded Iraq. Since then, more than 1,600 American soldiers, at least 24,000 noninsurgents Iraqi civilians, have paid for this false war with their lives, and over 12,000 American soldiers have been wounded forever.

Clearly the Presidential national security platform is not just immoral, it is incompetent. There has to be a better way, a better way than this. Fortunately, there is. Earlier tonight I reintroduced the SMART Security resolution for the 21st century. SMART security clearly has increasing support among Members of Congress because at the end of the 108th Congress we had 50 cosponsors to the SMART security bill. This year alone, SMART already has 49 original cosponsors, and myself, and it was just introduced today. SMART, which is Sensible Multilateral American Response to Terrorism, has five major components.

First, we must prevent future acts of terrorism by strengthening international institutions and the rule of law. For the past 4 years, the Bush administration has worked to discourage international cooperation. Most recently, his example of hostility toward diplomacy is the nomination of the hard-line unilateralist John Bolton to represent our country to the United Nations. Unilaterialism is not the answer because terrorism is not just America's problem.

We can reinvigorate our international relationships by encouraging our United Nations and NATO partners to help us root out terrorist networks and put a stop to financing international terrorist groups.

Second, we must stop the proliferation and spread of weapons of mass destruction. In the past, President Bush has indicated this is the greatest threat America faces. Yet he has both aggressively pursued new nuclear weapons like the bunker buster bomb, and he does not support international treaties that seek to end the spread of chemical and biological weapons.

□ 1945

Not only does SMART security promote compliance with America's commitments to existing treaties, it also calls for the United States to set an example for the rest of the world by renouncing the development and testing of new nuclear weapons.

Third, we must address the root causes of terrorism. The first front line in the war on terror has to be confronting the despair and deprivation that foster it. There is a demonstrated link between an educated citizenry and a decrease in support for terrorism which is why SMART security wholly encourages democracy-building; human rights education; sustainable development; and education, particularly for women and girls in these nations. These are the programs we need to pursue in Iraq, not continued military operations.

Fourth, we must shift America's budget priorities to more effectively meet our security needs. We need stronger investments in peacekeeping, in reconstruction, and humanitarian and developmental aid. We simply cannot afford to spend billions each year on outdated or unproven weapons systems like the missile defense shield which has yet to be proven successful.

Fifth, the U.S. must pursue to the fullest extent alternatives to war. War needs to be the very last resort, to be considered only after every single possible diplomatic solution has been exhausted.

Mr. Speaker, the security of the American people is perhaps the most important issue we must address in the post-September 11 world, but we must address it in a smart way. As the world's largest democracy, we have a responsibility to utilize all diplomatic possibilities before resorting to force.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 2361, DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006

Mr. BISHOP of Utah, from the Committee on Rules, submitted a privileged report (Rept. No. 109–87) on the resolution (H. Res. 287) providing for consideration of the bill (H.R. 2361) making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes, which was referred to the House Calendar and ordered to be printed.

The SPEAKER pro tempore (Mr. KUHL of New York). Under a previous order of the House, the gentleman from North Carolina (Mr. MCHENRY) is recognized for 5 minutes.

(Mr. MCHENRY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

(Mr. PALLONE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

EXCHANGE OF SPECIAL ORDER TIME

Ms. NORTON. Mr. Speaker, I ask permission to claim the time of the gentleman from New Jersey (Mr. PALLONE).

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from the District of Columbia?

There was no objection.

JUDICIAL APPOINTMENTS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

Ms. NORTON. Mr. Speaker, the Congressional Black Caucus has been in the forefront of the fight to preserve the filibuster, a much-used, indeed used more against African Americans than any others. We do not want to see and will not stand to see the rules changed when it could now be used to protect us from judges who would overturn our rights.

We have supported the idea of a compromise, if one could be found; but I come to the floor this evening to say that we are horrified to hear of a possible compromise involving two judges that would be most unacceptable to the 43 members of the Congressional Black Caucus who unanimously oppose elimination of the filibuster and unanimously oppose these two judges: Attorney General William Pryor, who would be nominated to the 11th Circuit; and Janice Rogers Brown, who would be nominated to the D.C. Court of Appeals.

Briefly, Attorney General Pryor in this year when we are starting the reauthorization of the 1965 Voting Rights Act would simply be totally unacceptable to us and we think to most Americans. This is a man who sought to repeal the critical section of the Voting Rights Act, who has indicated that some rights now protected by the Constitution should be regarded as social disputes and essentially has indicated that some of these rights now protected by the Constitution should indeed be left to the States. This is a man who belongs perhaps on the Supreme Court in the 19th century, not today.

We are particularly insulted that President Bush would resubmit the name of Janice Rogers Brown. Has he done so because she is African American and somehow he believes that for that reason people will go easy on her and not look at what in fact she has stood for? We regard her nomination as nothing short of insulting. When she was first nominated to the California Supreme Court, the signal from the California Association of Black Lawyers who opposed her nomination was that her appointment could be detrimental, as they put it, to black America with nothing short of, as they put it, far reaching circumstances for generations to come. How right they proved to be. When she was renominated to the California Supreme Court, 20 of the 23 members of the California bar found her to be not qualified because of the way she inserted her personal opinions, her personal views, into her judicial opinions.

Janice Rogers Brown and the rule of law are strangers. She has no regard for precedent. How else to explain a ruling of hers where she found that racially derogatory on-the-job speech was unconstitutional even though the Supreme Court long ago found that such speech is not protected by title VII of the Civil Rights Act. Why did she find herself in dissent reaching this conclusion?

I recite the cases because you hear that these judges are extreme. We mean to make you understand, hopefully, what we mean by extreme. Proposition 209 passed, an anti-affirmative action proposition, passed in California. The judge who was on her side of the case, the Chief Justice, Ronald George, also appointed by Governor Pete Wilson, said when he read her concurrence, remember, concurrence with him, that the concurrence raised ''a serious distortion of history,'' indicating that it would be widely and correctly viewed as presenting an unfair and inaccurate caricature of affirmative action programs. When a judge on your side appointed by the same Governor as you characterizes your agreement with him in this way, is he not telling the Senate something it must listen to?

Here is a woman who found that black women in a case involving a prosecution where the prosecution may have used racial preemptory challenges found that black women are not a cognizable group. Again, she has often found herself in dissent even from her own Republican colleagues.

We do not need this woman on the District of Columbia Court of Appeals where she would bring her views that ''the New Deal was the triumph of our own socialist revolution'' to Washington.

SERGEANT MIKE LANE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE. Mr. Speaker, I rise tonight to honor Sergeant Mike Lane, a lifelong Texan, member of the Beaumont Police Department for 33 years. Each day a person who wears the badge walks the thin blue line between life and death. Their spouses wonder when their police officer mate reports for duty if that person will return safely home. Last year, 156 of them did not return home to their families. Texas, along with California, each led the Nation last year with 14 police officers killed in the line of duty. Sergeant Mike Lane was one of them.

Mike Lane graduated from Beaumont High School in 1969 and received his pilot's license even prior to high school graduation at the young age of 17. He attended Lamar Tech, now Lamar University, until he decided to answer the call of law enforcement. In 1972, Sergeant Lane joined the Beaumont Police Department where his lengthy legacy began. He spent 32 years with the same police department in southeast Texas, fighting crime, helping people.

A son of a retired Air Force member, Mike Lane was raised in airplane hangars all over the world from Japan to the United States. He had the passion of the Wright brothers for flying. He had aviation in his Texas blood. In the mid-80s, the Beaumont Police Department seized a plane used to smuggle drugs from Belize to Texas. After acquiring the plane, they began using it for local missions. Sergeant Lane immediately jumped at the chance to get in the pilot's seat for the citizens of Jefferson County. He was one of the two designated pilots for the Beaumont Police Department.

Just as policemen are drawn together by common goals, pilots seem to congregate together as well. His partner in the sky was another pilot in the police department, Deputy Chief Weldon

Dunlap. Deputy Chief Dunlap recalls, ''Mike had an amazing wealth of knowledge about aircraft. He literally ate, drank, and slept airplanes.''

When the Army gave the Beaumont Police Department two helicopters, it was only natural that Lane would be heavily involved in the helicopter operations that would come up. Any time there was a mission or training, Lane was the first in line to take part in it.

On the evening of September 15, 2004, the neighboring Port Arthur Police Department reported a boat fire on Sabine Lake. Lane was one of two pilots who was called to duty for the search and rescue mission that took place that moonless night, a night that Deputy Chief Dunlap recalled was extra dark. During the flight, Lane was tasked with shining the spotlight on the large, murky, marshy Sabine Lake near the Texas-Louisiana border while the other officer maneuvered the helicopter through the intense, immense darkness that surrounded them.

Flying a mere 6 feet above the lake in an effort to get closer and look for people or debris in the water, Sergeant Lane was once again fulfilling his oath to protect and serve the people.

Sergeant Lane and crew made last contact shortly after 10:30 p.m. and after that, there was only silence, silence in the stillness of the damp, dark, dreary night. A helicopter search team spotted the wreckage almost 4 hours later at 2 o'clock in the morning. Jefferson County Sheriff's Deputy Jeremy Battenfield, who was piloting the helicopter, survived the crash with minor injuries; but in the line of duty, doing what he loved and what he did best at the age of 54, Sergeant Mike Lane lost his life in the stillness of that September night.

Hundreds of law enforcement members from across Texas and Louisiana traveled to South Park Baptist Church in Beaumont to pay their respects to a unique and talented officer and pilot that will never be replaced. He was laid to rest in the same church where he served as a deacon and a mentor to kids.

Mr. Speaker, this past weekend, I had the opportunity to participate in the Fraternal Order of Police's 24th annual National Peace Officers Memorial Service here on the Capitol grounds to remember those police officers killed last year. I was honored to join the multitude of officers and surviving family members who traveled to Washington to assure their comrades that they never walk alone. I spent time with Sergeant Lane's wife, Renee; his son Ben; and his two sisters; and I was moved by the memories they had of their husband, their father, and their brother.

Mr. Speaker, there are more than 800,000 members of the law enforcement community in this Nation. They wear the badge, and with that badge they become a cut above the rest of us. They do what most of us would not do. They watch out for our country, our kids, our family and our great land.

In 2004, 156 officers were killed in the line of duty. Last year, our military lost nearly 900 of its band of brothers during operations in Iraq and Afghanistan. And while we often pay daily tribute to our fallen military who have been combating outlaws across the sea, these warriors against domestic outlaws, our police officers, often remain nameless, statistical heroes.

When President Bush spoke this last weekend, he stated that every generation of Americans has produced men and women willing to stand in watch over the rest of us. They are peace officers. When Sergeant Lane lost his life on the Sabine Lake that night, he did not die alone. His conviction, courage, and character live on and his spirit watches over his friends and family and the citizens of Jefferson County, Texas, that he devoted his life in protecting.

Thank you, Sergeant Mike Lane.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maine (Mr. ALLEN) is recognized for 5 minutes.

(Mr. ALLEN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

CHICAGO LIGHTHOUSE INDUSTRIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. DAVIS) is recognized for 5 minutes.

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to talk about an industry in my congressional district that is being frustrated, squeezed, uncertain about its future as a result of our trade policy, globalization and the general tenor of the times. I rise to talk about the Chicago Lighthouse Industries, which has made clocks for the Federal Government for the last 28 years. They have been consistent and diligent in their performance. Since 1977, the Chicago Lighthouse has made 3.3 million clocks. In fact, last year they made 104,000 clocks for all branches of the military, Energy Department, the Postal Service, and the Justice Department.

The unique thing about the Chicago Lighthouse is that they employ more than 40 people who are blind or are visually impaired.

□ 2000

They employ their workers at a salary of $8.50 an hour and provide health benefits. On a recent visit to the Chicago Lighthouse, I was amazed at the level of detail and speed at which the workers developed the clocks. They have an assembly line that produces in packages 1,000 wall clocks daily.

In fact, Rita McCabe can assemble a 12-inch clock in less than 1 minute. Ms. McCabe, who is blind, found her job through the Chicago Lighthouse. When asked how she felt about her job, she stated the following: ''It gives me a chance to be with people, to make a living on my own, and to prove that I am competent enough to do this kind of work.''

Ms. McCabe has worked for the Chicago Lighthouse for 25 years. Rita McCabe's job is in jeopardy due to competition from foreign sources. In the past 4 years, U.S. imports of wall clocks, most of them from China, have increased by 24 percent, totaling $123 million in 2003.

The Chicago Lighthouse does not mind competition. They have suggested that they can compete with anyone as long as the rules are the same. Unfortunately, the playing field is not level when it comes to competing with China and other countries that do not have a minimum-wage requirement or pay health benefits to their workers. The Chicago Lighthouse pays its workers an average of $8.50 per hour plus health benefits. In China, it is not uncommon for workers to make $2 an hour and have no benefits. China is able to undercut clock manufacturers like the Chicago Lighthouse for the Blind because they do not play by the same rules. They are able to dump their products into the United States for a cheaper price. This adds to the trade deficit that currently exists.

More importantly, to allow foreign governments who do not pay minimum wage or a livable wage nor provide benefits to continue to undercut U.S. companies like the Chicago Lighthouse erodes the faith that citizens have in government and puts many jobs here at home at risk. The Chicago Lighthouse is not asking for preferential treatment. They are seeking fundamental fairness. The Lighthouse has been in existence now for 99 years, and they have done something right to be able to survive for so long.

The Federal Government, as a result of the Javitz-Wagner-O'Day Act, is required to show favor towards the Chicago Lighthouse and other organizations like it when purchasing clocks through the General Services Administration. However, this law has been eroded and many Federal purchases are going for the lower-priced clocks. Obviously, these are the clocks that are being produced through cheaper labor costs. The Federal Government must set the example and ensure that taxpayer money is not going to support foreign governments that do not have minimum wage or benefit standards comparable to those in the United States.

Everything comes at a price. The workers at Chicago Lighthouse are able to be productive tax-paying citizens because of their jobs. These jobs help to support them, their families, and the local economy. For example, Mr. Albert Harris has been with the Chicago Lighthouse since 1971, able to work, though blind.

Mr. Speaker, the Chicago Lighthouse and other entities that employ our people must be able to continue to do so. Let us make sure that our trade policies are fair and equitable and that

they can compete on an even keel, on an even playing field.

The SPEAKER pro tempore (Mr. KUHL of New York). Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

ORDER OF BUSINESS

Mr. KING of Iowa. Mr. Speaker, I ask unanimous consent to take my Special Order at this time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

STEM CELL RESEARCH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. KING) is recognized for 5 minutes.

Mr. KING of Iowa. Mr. Speaker, I appreciate the opportunity to speak to this Chamber and address the Speaker and the House.

I would like to speak about the embryonic stem cell research that is a matter of discussion around this Congress intensively in the last weeks and months as we have been here. I would like to join some of my colleagues in explaining the progress and promise of adult stem cell research, and I would like to also dispel many of the myths promoted by those urging more Federal funding for the destruction of human embryos required for embryonic stem cell research. I am for stem cell research, adult stem cell research. I am not for ending human life in the process of trying to find a cure for the lives of others.

Among the favorite myths of proponents of embryonic stem cell research is the legend that there are 400,000 embryos stored at IVF clinics that are simply going to be discarded. So we should derive some benefit from them, my opponents say. This figure has become so fixed in their rhetoric that it now seems to be a fact. Members of both Houses, in a letter to President Bush, even cited the number, the 400,000 number, in an effort to get President Bush to change his current policy on the funding of embryonic stem cell research. These proponents then use that number to create the assumption that an equally large number of therapeutic stem cells can be derived from them.

Here is why this argument is wrong, Mr. Speaker: IVF embryos will not just die anyway. Most IVF embryos are designated for implantation, and the rest can be adopted. In 1995 about 500,000 women were seeking to adopt a child. That would be 500,000 families, most of them husbands and wives. Seventy-five children are alive and well today who started life as frozen embryos.

All of the frozen embryos have the potential to become an independent, well-adjusted human being. Only a small fraction, 2.2 percent, are slated to be discarded. Only another 2.8 percent of embryos in IVF clinics, that is, roughly 11,000, have been designated by their parents for research. That is a total of 6 percent of all the embryos presently in IVF storage that are intended for disposal or research. Only 6 percent. Ninety percent are designated for a future.

More than 90 percent stored in clinics are saved for later use by parents or donated to other infertile couples for implantation. That means of the original 400,000 frozen embryos, only 11,000 are actually available to be destroyed for their stem cells. Of those available embryos, less than 275 stem cell lines would be created. That can be with private sector dollars. It does not have to be dollars extracted from the taxpayer.

When we are asking the taxpayer to contribute money to the Federal Government and diverting those dollars, Mr. Speaker, to go towards embryonic stem cell research, which of necessity must end a human life, and a human life like those 75 children that have come from frozen embryos to childhood and on their way to adulthood, that is an immoral choice, a choice that we are imposing upon tens of millions of people that understand in this country that life begins at the instance of conception; and we cannot declare an embryo, a fertilized egg, that has all of the chromosomes and all the components of an individual little blessing, we cannot declare them to be something of science to be discarded.

And if we roll ourselves back into history, back to the time of the Second World War, the Nazi regime, Dr. Josef Mengele, he did research on people, people who saw more than half of their world population extinguished by the Nazi regime. He did research on people because they were Jewish and put them in chambers and froze them to death and put them in heat chambers to see how much heat they could stand and put them through a whole series of scientific experiments to find out the limitations of the human body, how much suffering could they take, how much weather could they take, how much deprivation of food and water, how much torture could they take, and documented that. And civil societies have refused to use the information and the data that came from the Nazi regime because it resulted in the death of human beings.

This embryonic stem cell research also results in the death of human beings, Mr. Speaker. It is the same kind of philosophy done in the name of science. We can find and have found better and other ways to produce similar and better science. We need to follow that path. There is no legal prohibition against embryonic stem cell research in this country. The debate in this Congress is about will we impose a tax upon Americans and compel them to dig into their pockets and contribute to this diabolical science that ends the life of an innocent human being for the potential of improving the life of others when we have other alternatives.

Mr. Speaker, I rise this evening to join my colleagues in explaining the progress and promise of adult stem cell research and to dispel many of the myths promoted by those urging more federal funding for the destruction of human embryos, required for embryonic stem cell research.

Among the favorite myths of proponents of embryonic stem cell research is the legend that there are 400,000 embryos stored at IVF clinics that are simply going to be discarded, so we should derive some benefit from them. This figure has become so fixed in their rhetoric that it now seems to be a fact. Members of both Houses, in a letter to President Bush, even cited the number in an effort to get President Bush to change his current policy on the funding of embryonic stem cell research. These proponents then use that number to create the assumption that an equally large number of therapeutic stem cells can be derived from them.

Here is why this argument is wrong: IVF embryos will not just ''die anyway.'' Most IVF embryos are designated for implantation, and the rest can be adopted. In 1955, about 50,000 women were seeking to adopt a child. 75 children are alive and well today who started life as ''frozen embryos.''

Only a small fraction—2.2 percent—are slated to be discarded.

Only another 2.8 percent of embryos in IVF clinics, roughly 11,000, have been designated by their parents for research.

That is a total of 6 percent of all the embryos presently in IVF storage that are intended for disposal or research. More than 90 percent of embryos stored in IVF clinics are saved for later use by parents or donated to other infertile couples for implantation.

That means of the original 400,000 frozen embryos, only 11,000 are actually available to be destroyed for their stem cells.

Of those available embryos, less than 275 stem cell lines would be created. So, behind the seemingly impressive number of 400,000 frozen embryos, the reality is that the actual number of stem cell lines. likely to be produced from them is so small as to be clinically useless.

In order to treat diseases—which is, as I will explain, still a very distant prospect using human embryonic stem cells—hundreds of thousands more embryos beyond those currently frozen and available for research would be needed. This could only be achieved by a deliberate effort to create new embryos for the sole purpose of destroying them—an outcome that the use of the frozen embryos is supposed to avoid, but would most likely cause. Federal funding of this destructive embryonic stem cell research would, therefore, create an incentive to create and kill more human embryos for stem cells, which would lead to a US human embryo farm industry.

There is an ethical alternative to killing these embryos: Adult and cord blood stem cells are treating patients of over 58 diseases.

Even if these frozen embryos were going to be discarded anyway (which they are not), and even if there was no ethical alternative

(which there is), it would still be morally wrong to kill these human embryos for experimentation.

From the Nuremberg Code to the Belmont Commission, this utilitarian justification for harmful or fatal research has been soundly rejected in order to protect patients and the practice of medicine.

Civilized cultures have protections in place to make sure we do not allow research on, or use organs from, death row prisoners who are ''going to die anyway,'' and we do not do research on terminally ill patients unless such research has a chance to help the patient.

We take a great risk if we dehumanize human embryos and accept ''they are going to die anyway'' as how we judge what is acceptable treatment for our fellow human beings.

Examples of atrocities that would be justified by the statement that the victims are going to die anyway include: Harvesting organs from and experimenting on death row inmates (like China), harvesting organs from and experimenting on the terminally ill, and submerging 15 live human unborn children into salt solution to learn if they could absorb oxygen through their skin. One fetus survived for 22 hours in an actual U.S. case.

The second major myth is that the stem cells lines that could be derived from these frozen embryos have the potential to cure numerous diseases, but that such cures remain just around the corner and just out of reach because the administration refuses to fund research in which these embryos would be destroyed. This, too, is false.

Adult stem cells have treated over 58 diseases in human patients in published clinical studies. Embryonic stem cells have not treated even one patient, and have mixed results—at best—in animal trials.

Moreover, human embryonic stem cell research is completely legal. The debate is solely about federally funding research that requires the destruction of embryos, human beings in their earliest stages of life.

President Bush is the first president to federally fund human embryonic stem cell research. He determined that such research could be funded so long as the cells had been obtained from embryos destroyed on or before August 9, 2001.

Since then NIH determined that there are 78 derivations of embryonic stem cells that are eligible for Federal funding, and 22 cell lines are currently receiving Federal funds. According to the director of the National Institutes of Health, the Bush policy is sufficient for basic research.

There are 16 additional ''eligible'' embryonic stem cell lines in existence that have not been ''contaminated'' by mouse feeder cells.

NIH spent about $25 million on embryonic stem cell research in 2003, funding 118 research projects.

HHS reports that as of February 2004, embryonic stem cell providers had shipped more than 400 lines to researchers, and there are 3,500 vials of embryonic stem cells that are waiting to be shipped to researchers.

The ultimate goal of researchers is free and unfettered access to Federal dollars to create and destroy embryos for research purposes, and to employ human cloning as the method of choice.

Embryonic stem cell research will not, no matter what the claims of its proponents, become the cure-all it is touted as.

Of the fewer than 275 potential viable stem cell lines genetical diversity will still be lacking, since minorities are poorly represented among IVF clients.

Stem cells from IVF embryos will cause serious immune rejection problems if transplanted into patients. Researchers argue that to avoid immune rejection, we need to clone people to make stem cells that are genetically identical to the patient receiving the stem cell transplant.

Many of my colleagues, I'm sure, have been visited by members of disease organizations, desperate for cures for their loved ones. One of the myths promoted by some of these organizations—and I believe that the families, most of the time, do not know the falsity of their statements—is that somatic cell nuclear transfer is not cloning. This is absolutely false. Somatic cell nuclear transfer, or SCNT, is the process that created Dolly, the cloned Scottish sheep. This makes me irate, that some in the scientific community would mislead victims of disease and illness and their loved ones into fighting for research they would oppose were they told the truth, and making them believe that this sort of research will cure all that ails them if they were just provided the money.

Here are the facts: All medical advances (at least 58 therapies) from stem cells to date have been from ''adult'' stem cell research, which carries no ethical concerns. There have been none from embryonic cells, not even in animal studies.

The benefits of research that kills living human embryos is purely speculative and has been hyped by researchers who are after federal funding and by a media that doesn't understand or report the distinction between adult and embryonic stem cells.

Proponents continue to make the false claim that embryonic stem cells will cure Alzheimer's Disease. It almost certainly will not.

The Juvenile Diabetes Research Foundation has irresponsibly refused to promote or fund ethical adult stem cell research, despite the fact that is it shows far more promise in treating diabetes than does research on cells derived from human embryos.

This debate is purely about federal funding. Embryonic stem cell research is completely legal.

Americans do not support destructive embryonic stem cell research, especially when they are provided with the facts.

When respondents in a poll at the beginning of this month were told that scientists disagree on whether embryonic or adult stem cells will end up being most successful in treating diseases, 60 percent favored funding only the research avenues that raise no moral problem, while only 22 percent favored funding all stem cell research including the kind that involves destroying embryos.

Killing human embryos is morally wrong. A human embryo, a person in his or her earliest stages, must be destroyed to obtain embryonic stem cells. Destroying early human life shows a profound disrespect for human life.

The ends do not justify the means. Some pro-life members of Congress support funding of embryonic stem cell research on the basis that this research could save the lives of people with debilitating diseases. This obfuscation of the term ''pro-life'' is based on a utilitarian ethic. It is unethical to destroy some human lives for the betterment of the lives of others.

Even President Clinton's National Bioethics Advisory Commission concluded that embryos ''deserve respect as a form of human life.'' The Commission recommended funding of embryonic stem cell research, only if there were no alternatives. Adult stem cells are currently being used to successfully treat humans suffering from many diseases.

Taxpayers shouldn't spend their hard earned money on embryo destruction. Federal funding of the destruction of human embryos for research is unethical. The debate is over the use of taxpayers money, not whether it is legal. American taxpayers should not be forced to fund unethical research.

The fact is that patients and their loved ones need real hope, not hype. That hope resides in non-controversial, tried-and-true adult stem cell research. When this issue comes to the floor next week, please join me in returning our focus from destructive embryonic stem cell research to adult stem cell research, which has been proven to work, is not morally controversial, and holds true promise for disease victims.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. FILNER) is recognized for 5 minutes.

(Mr. FILNER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

EXCHANGE OF SPECIAL ORDER TIME

Mr. BROWN of Ohio. Mr. Speaker, I ask unanimous consent to take the Special Order time of the gentleman from California (Mr. FILNER).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

CAFTA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

Mr. BROWN of Ohio. Mr. Speaker, last year President Bush signed the Central American Free Trade Agreement, a one-sided plan to benefit the largest corporations in the world at the expense of American workers and farmers, and the expense of Central American workers, farmers, and small businesses.

Every trade agreement negotiated by this administration has been ratified by Congress within 65 days of the President's signing it. CAFTA has languished in Congress for nearly 1 year without a vote because this wrong-headed trade agreement offends both Republicans and Democrats.

Just look at what has happened with our trade policy in the last decade. In 1992, the year I was elected to Congress, we in this country had a $38 billion trade deficit. Today, 12 years later, our trade deficit is $618 billion. From $38 billion, a dozen years later to $618 billion. It is clear our trade policy simply is not working.

Opponents to CAFTA know that simply it is an extension of the North

American Free Trade Agreement, which clearly did not work for our country. It is the same old story. With every trade agreement, the President promises more jobs for Americans, growth in manufacturing, more exports, raising the standard of living in the developing world, better wages for workers in the developing world. Every time it comes out differently.

The definition of insanity is doing the same thing over and over and over again and then expecting a different outcome.

Why will this trade agreement not work? Look at the average wages in the CAFTA countries. In United States the average wage is $38,000. El Salvador is $4,800. Honduras is $2,600. Nicaragua is $2,300. The average Nicaraguan worker is not going to buy cars made in Ohio. The Guatemalan worker is not going to be able to buy steel from West Virginia. The Honduran worker is not going to be able to buy software from Seattle or prime cuts of beef from Nebraska or textiles or apparel from North Carolina or South Carolina or Georgia.

This trade agreement is about giving big business what it wants: access to cheap labor. They cannot buy our goods; but American business can move its production, its companies, outsource them to Central America, and it costs us jobs. That is why, Mr. Speaker, there is such strong bipartisan opposition to the Central American Free Trade Agreement.

The administration is pulling out all stops because they know they are going to lose this vote. The administration has attempted to link CAFTA with helping democracy in the developing world and fighting the war on terror. Ten years of NAFTA has done nothing to improve border security between Mexico and our country. So that argument does not sell. Then last week the U.S. Chamber of Commerce flew on a Chamber of Commerce junket the six presidents from the CAFTA countries around our Nation, hoping they might be able to sell Americans and the U.S. press and Members of Congress on the Central American Free Trade Agreement, but again they failed. In fact, the Costa Rican president, after traveling the United States, announced his country simply would not ratify CAFTA unless an independent commission could determine that agreement will not hurt the poor and working families in his country.

Mr. Speaker, the gentleman from Texas (Mr. DELAY), the most powerful Republican in the House, majority leader, said there would be a vote on CAFTA within a year of the President's signing, that is, by Memorial Day, coming next week. As we can see by this calendar, we are barely a week away from that deadline, but still no vote in sight because there is simply not enough support for CAFTA. It is dead on arrival in this House.

Last month, two dozen Democrats and Republicans in Congress joined 150 business and labor groups saying no on CAFTA. Last week more than 400 union workers and Members of Congress gathered in front of the Capitol again saying no on the Central American Free Trade Agreement, because Republicans and Democrats, business and labor groups know what the administration refuses to admit, and that is that CAFTA is about one thing: it is about access to cheap labor and exploiting workers in the six CAFTA countries.

Congress must throw out this dysfunctional cousin of NAFTA and negotiate a trade agreement that will lift up workers in Central America while promoting prosperity here at home.

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If we throw this agreement CAFTA out, and then negotiate a new central American Free Trade Agreement that really works for workers in both countries, we will know our trade policy is succeeding. Only when workers in the poor countries can afford to not just make American products, but also to buy American products, will we know that our trade policy has, in fact, succeeded.

The SPEAKER pro tempore (Mr. KUHL of New York). Under a previous order of the House, the gentleman from Georgia (Mr. GINGREY) is recognized for 5 minutes.

(Mr. GINGREY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. DUNCAN) is recognized for 5 minutes.

(Mr. DUNCAN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

THE EFFECTS OF SOCIAL SECURITY REFORM ON OUR YOUTH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. PRICE) is recognized for 5 minutes.

Mr. PRICE of Georgia. Mr. Speaker, I appreciate the opportunity to talk before the House tonight, and I want to talk about an issue that has been discussed for a number of weeks and months, something that is of vital importance, I think, to all Americans, and that is the issue of Social Security and what do we do about it.

Now, the problem with Social Security, as everybody knows, is that it is a pay-as-you-go-system, which means that today's workers pay for today's retirees. It worked relatively well for a period of time. In 1950, there were 16 workers for every retiree, now there are 3.3 workers for every retiree, and in just a few short years there will be 2 workers for every retiree. So the demographics, the aging of our society dictate that we do something.

A lot of the talk has been about how does it affect seniors in our Nation. But I suggest to my colleagues that regardless of when you believe the problem or the situation or the crisis begins, or who you believe it affects, we cannot dispute this one fact, and that is that those most affected by it, regardless of when it happens or what happens, are the young people of this Nation. So I believe it is important for us to discuss and debate Social Security reform and how it will affect all sectors of our society, but we must, we must make certain that we talk about how it will affect young folks.

Now, in my district, what I did to try to listen to the young people of our Nation was to get together what is called a Youth Summit, and I set up a meeting with about 95 or 100 high school juniors and seniors in my district from all different schools, including Woodstock High School, Harrison, Kell, Lassiter, Etowah, Marietta High School, North Cobb, Pope, Sprayberry, Walton, Blessed Trinity, Centennial, Milton, North Spring, Riverwood, Roswell, and The Cottage School and Alpharetta High School, about 100 high school students, and sent them a bunch of material beforehand so they knew what we were talking about. The funny thing was a lot of them had great information about it before.

We gathered together for about 4 hours one morning and we talked about Social Security, and I challenged them to come up with some solutions and answer some questions. But when I started, I brought out this Social Security statement. This is a real Social Security statement, it came from the Social Security Administration, and this is what all of us get when we open up our mail from the Social Security Administration. It says, ''Unless action is taken soon to strengthen Social Security, in just 14 years we will begin paying more in benefits than we collect in taxes.'' That was how we started as the premise.

I was extremely impressed by the knowledge and the intelligence of these young folks. We broke into different groups and assigned them questions. Now, they could take any question that they wanted, but we kind of prompted a few. We talked about discussing the benefits or the distractions or problems with personal accounts, and we asked them to answer the question: what is the best way to fix Social Security and, even the more fundamental question, do you believe that Social Security needs to be fixed, and asked them to talk about how personal retirement accounts, voluntary accounts have worked in other countries.

Then we got back together after they had worked for a period of time on those questions, and asked each of those groups to present their findings. It really was fascinating, but there was one common theme. There was a common theme to all of their conclusions, and that was that there is a major problem, every one of them believed

that. There was not a single soul who said that we ought not to anything, and that that problem ought to be addressed, and that it is the responsibility, obviously, of Congress to get it done. There were a couple of tongue in cheek suggestions about what we ought to do with folks over 65, but those were purely for humorous effect at the meeting.

There was the common theme that we needed to fix it, and all of their suggestions had merit, but some of them I would like to point out. They talked extensively about personal retirement accounts, talking about putting more money in personal retirement accounts when they are younger because they would have a greater opportunity to increase; some of them thought we ought to increase the age of retirement but, when they get closer to that, I suspect they will not believe that. They spoke about not increasing the 12.4 percent tax. There was an interesting conclusion or recommendation that education on retirement plans ought to be mandatory in high school. Education on retirement plans ought to be mandatory in order to graduate from high school, they said. I thought that was an interesting item; probably something that we ought to take up. Then one final point that they made, and that was that people ought not rely on just Social Security for their main source of income in their retirement years.

Now, Mr. Speaker, we tend to get distracted here. We talk about different ages, we talk about those over 55, and I think it is important for everybody to appreciate that those over 55 will not be affected at all. Those youngest individuals in our society will be those most affected.

I challenge our colleagues to follow the lead of the high school students in my district who said, get down to business, put politics aside, and do not wait. That is good advice from those individuals who are most affected by whatever changes we bring about.

STEM CELL RESEARCH: EMBRYONIC VERSUS ADULT

The SPEAKER pro tempore (Mr. FORTENBERRY). Under the Speaker's announced policy of January 4, 2005, the gentlewoman from North Carolina (Ms. FOXX) is recognized for 60 minutes as the designee of the majority leader.

Ms. FOXX. Mr. Speaker, I rise this evening because I fear that a number of good people will make a bad decision in the coming weeks. What is worse is I fear they will be making this decision based on a plethora of false information, and that is why I am here this evening.

There is an abundance of misinformation, exaggeration, and blatant lies being spread by interest groups regarding the prospects for embryonic stem cell research. The first misconception is that embryonic stem cell research is not legal. The fact is, embryonic stem cell research is completely legal. Research on embryonic stem cells has taken place for years.

But what has this research produced? Nothing. While adult stem cells have treated over 58 diseases in human patients, embryonic stem cells have not treated even one patient. Adult stem cells have had success in treating debilitating and fatal illnesses without compromising ethical standards. Embryonic stem cells have treated nothing while, at the same time, destroying human life.

So why in the world would anyone support the unethical, failed use of embryonic stem cells instead of the ethical, successful use of adult stem cells? Because they do not know the difference. That is why, Mr. Speaker, I want to share some very important information tonight. If and when the American public learns the scientific facts, and I want to stress ''scientific facts'' regarding stem cell research, the ethical questions will not matter as much.

Now, I had the good fortune today to hear a talk by Dr. Robert P. George, who is the McCormick Professor of Jurisprudence in the Department of Politics at Princeton University in Princeton, New Jersey. Not all of the information that I am sharing with you tonight came from Dr. George, but he gave an outstanding talk sponsored by the Wilberforce Forum as a part of the Majority Leader's lecture series, 2005. The title of his talk was ''Embryonic Stem Cells: Ethical Boundaries, and Possible Ways Forward.''

I want to use some material that I have also received related to the definition of stem cells, and some of the research that has been produced in this area by Dr. Tadeusz Pachotczyk who has done post doctoral work at Massachusetts General Hospital at Harvard Medical School after he earned his PhD in neuroscience from Yale University. What is a stem cell? I used to teach, and I always believed that you start with the basics when you are teaching. So let us start with the definition. What is a stem cell?

A stem cell is essentially a blank cell capable of becoming another, more differentiated cell-type in the body, such as a skin cell, a muscle cell or a nerve cell. Why are stem cells important? Stem cells can be used to replace or heal damaged tissues in cells in the body. There are two broad classes of stem cells. The two basic types of stem cells are embryonic type and adult type. Embryonic stem cells and embryonic germ cells make up the embryonic type. Umbilical cord stem cells, placental stem cells, and adult stem cells make up the adult type.

Now, where do embryonic-type stem cells come from? They come from embryos. Embryonic stem cells are obtained by harvesting living embryos which are generally five to seven days old. The removal of embryonic stem cells invariably results in the destruction of the embryo. Another type of stem cell called an embryonic germ cell can be obtained from either miscarriages or aborted fetuses.

Now, where do adult type stem cells come from? They come from umbilical chords, placentas, and amniotic fluid. Adult-type stem cells can be derived from various pregnancy-related tissues, or they come from adult tissues. In adults, stem cells are present within various tissues and organ systems. These include the bone marrow, liver, epidermis, retina, skeletal muscle, intestine, brain, dental pulp, and elsewhere. Even fat obtained from liposuction has been shown to contain significant numbers of adult-type stem cells, and I am going to refrain from making any jokes about that tonight. Cadavers. Neural stem cells have been removed from specific areas in postmortem, human brains as late as 20 hours following death.

Now, there are people who believe that embryonic stem cells have a great deal more to offer than adult stem cells. Let me say a little bit about what embryonic stem cells bring that adult stem cells do not. They do seem to be very flexible and to have the potential to make any cell. And, there is a lot of availability, so we are told, with embryonic stem cells from in vitro fertilization clinics, although there is some debate about exactly how many there are.

What are some of the disadvantages of embryonic stem cells? They are very difficult to differentiate uniformly and homogeneously into a target tissue. It is extremely difficult to get them to do exactly what we want them to do. Immunogenic. Embryonic stem cells from a random embryo donor are likely to be rejected after transplantation. They just do not work as well. They are capable of forming tumors or promoting tumor formation. This is one of the major drawbacks of embryonic stem cells.

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And, of course, the most important disadvantage of embryonic stem cells is that they result in the destruction of human life.

Now, let us talk a little bit about the advantages of adult stem cells. Special adult-type stem cells from bone marrow and from umbilical cords have been isolated recently which appear to be as flexible as the embryonic type. They are already somewhat specialized, so inducing them to go into a certain area may be much simpler.

They are not immunogenic; recipients who receive the products of their own stem cells will not experience immune reaction. This is extremely important. Relative ease of procurement. Some adult stem cells are easy to harvest: the skin, muscle, marrow, fat, while others may be more difficult to obtain, brain stem cells.

Umbilical and placental stem cells are likely to be readily available. More and more people are being encouraged now, when they have babies, to save the umbilical and placental cells and store them for possible later use.

Adult stem cells tend not to form tumors. And there is absolutely no harm done to the donor when we harvest adult stem cells. Now, what are the disadvantages? Let us be fair. There are some. There is a limited quantity of them. They can sometimes be difficult to obtain in large numbers.

They may not live as long as embryonic stem cells in a culture. And they may be a little bit less flexible, with the exception again of bone marrow and umbilical cord ones.

Now, why are adult stem cells preferable to embryonic stem cells? Adult stem cells are a natural solution. They naturally exist in our bodies, and they provide a natural repair mechanism for many tissues of our bodies. They belong in a microenvironment of an adult body, while embryonic stem cells belong in the microenvironment of the early embryo, not in an adult body where they tend to cause tumors and immune system reactions.

Most importantly, adult stem cells have already been successfully used in human therapies for many years. And let me just say, some of the therapies that adult stem cells have been used for, they have treated brain cancer. Embryonic stem cells have not.

Adult stem cells have treated breast cancer, they have treated ovarian cancer, adult stem cells have treated testicular cancer. Embryonic stem cells have not.

Adult stem cells have treated leukemia, Crone's disease, anemia, stroke, Parkinson's disease. Embryonic stem cells have not been able to treat any of these diseases, not any of them.

It is really important that people understand the difference in the two types of cells. I support the President's position on what to do with embryonic stem cells. I think the President has come up with a very carefully thought-out position on this issue. And this is where we need to stay.

The people who are pushing the use of embryonic stem cells say they want something to salvage from the cryo stage because they will be destroyed or kept in limbo. That does not have to happen. Once we begin to use embryonic stem cells for treatment, we are crossing the Rubicon in terms of ethical issues. We cross an ethical barrier when we do that because we are destroying one life for another.

Those embryos are human beings and should not be treated as research subjects. We would never kill to harvest body parts because of the principle of human dignity.

We do not even do this with our most heinous criminals. We do not treat them as things. We treat them with dignity until the time that they die.

We have a terrible situation with people promoting the destruction of embryos for stem cell research. And I thought it would be interesting tonight to remind us of what the Declaration of Independence says. This is the Declaration of Independence that unfortunately too few young people read or understand in our society anymore.

And I will just read the beginning of it: ''When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the Earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.''

And this is the part of the Declaration that if anybody knows the Declaration of Independence at all, this is the part that they know: ''We hold these truths to be self-evident, that all men are created equal. That they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.''

That to secure these rights governments are instituted among men, deriving their just powers from the consent of the government.

It is extremely important that we not lose sight of what founded this country, and the basic principle of life which is enunciated in the Declaration of Independence. We have to come down to understanding what is a human being. Scientists will say that an embryo is a human being. It is internally self-directed. And I want to say some more about that.

Because what happens with an embryo is nobody has to do anything to it from the outside. It is a human being at the embryonic stage. And it internally self-directs itself to grow and to develop into a person that then is born after the cells divide and divide and divide.

We are not talking about a religious issue only. For some people this is a fundamental religious issue, and it should be. But it is also a scientific issue. All human beings have profound human dignity. And, again, never, never in our society have we stooped so low as to sacrifice some human beings for others.

There is not a single therapeutic trial going on in the United States right now using embryonic cells, no clinical trial. There are lots and lots and lots of trials going on using adult cells.

There is private money going into this research, but the President has said we will not use government money; we will not tax the people of this country, many of whom are so opposed to this issue to do something which they find so abhorrent. Now, there is money going into research. Private money. Where is that money going?

It is going into the research for adult cells. That should tell us a lot. People think that that is where the payoff is going to be. People do not invest their money in things that they do not think is going to pay off.

And it is very, very important that we not be persuaded to use government money, our money, taxpayers' money to go into something that not only holds very, very little promise for any kind of results, but is so abhorrent again to so many of our people.

Now, I want to share with you some success stories about adult stem cell research. Laura Dominguez had a spinal cord injury. As a result of a car accident in 2001, she broke her neck and was paralyzed from the chest down. She was treated with a mix of adult stem cells and other cells obtained from olfactory tissues inside her own nose.

The cells were transplanted across the injury site and her damaged spinal cord; and several months after the surgery, she was able to move her foot. She now walks with braces. Her remarkable progress is continuing, and several other spinal cord injury patients like her are also showing benefits from the transplant surgery.

Patrizia Durante was diagnosed with acute leukemia 6 months into her pregnancy. Her daughter, Victoria Angel, was born healthy; but Durante was given only 6 months to live. The stem cells from the blood of her daughter's umbilical cord were used for a transplant. Several years later, Durante is in full remission.

Durante told reporters she saved her mommy. She is a little miracle. That is why we named her Victoria Angel. She is my little angel.

There are many, many examples of people who have been treated and treated extremely well with adult stem cells. Again, I want to say that we are stepping into dangerously uncharted territory when we begin the practice, or if we begin the practice of destroying one life to try to help another life.

It is an ethical Rubicon that we should not be crossing. And, again, I know that many people are doing this because they are concerned. They have members of their family who are diabetic, they have members of their family who have Parkinson's disease, or they know people who have diseases and they want to do something to help them.

I urge them to study this issue very, very carefully and make sure that they understand the differences between what is happening with adult stem cell research and embryonic stem cell research. And I feel certain that those people will make the right decision, and they will not vote to use money to destroy human embryos and go in that direction when we do not have to, because we have the means to save lives and improve the quality of life with adult stem cells.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. HARMAN (at the request of Ms. PELOSI) for today after 7:30 p.m. and the balance of the week on account of official travel.

Mr. LUCAS (at the request of Mr. DELAY) for today after 4:00 p.m. and

the balance of the week on account of family commitments.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. WOOLSEY) to revise and extend their remarks and include extraneous material:)

Mr. DEFAZIO, for 5 minutes, today.

Mrs. MCCARTHY, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Mr. ALLEN, for 5 minutes, today.

Mr. DAVIS of Illinois, for 5 minutes, today.

Mr. FILNER, for 5 minutes, today.

Mr. MCDERMOTT, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

(The following Members (at the request of Ms. ROS-LEHTINEN) to revise and extend their remarks and include extraneous material:)

Mr. GUTKNECHT, for 5 minutes, May 25.

Mr. POE, for 5 minutes, May 19.

Mr. OSBORNE, for 5 minutes, May 19.

Mr. GINGREY, for 5 minutes, today.

Mr. DUNCAN, for 5 minutes, today.

Mr. PRICE of Georgia, for 5 minutes, today.

Mr. JONES of North Carolina, for 5 minutes, May 19, 23, 24, and 25.

(The following Members (at their own request) to revise and extend their remarks and include extraneous material:)

Mr. KING of Iowa, for 5 minutes, today.

Mr. BROWN of Ohio, for 5 minutes, today.

ADJOURNMENT

Ms. FOXX. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 45 minutes p.m.), under its previous order, the House adjourned until tomorrow, Thursday, May 19, 2005, at 9:00 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

1985. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Pinene Polymers; Exemption from the Requirement of a Tolerance [OPP-2005-0110; FRL-7710-3] received May 11, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1986. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Red Cabbage Color; Exemption from the Requirement of a Tolerance [OPP-2004-0361; FRL-7711-7] received May 11, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1987. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Dimethyl Ether; Exemption from the Requirement of a Tolerance [OPP-2005-0109; FRL-7711-4] received May 11, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1988. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Alternaria destruens Strain 059; Exemption from the Requirement of a Tolerance [OPP-2005-048; FRL-7708-3] received May 16, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1989. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Fludioxonil; Pesticide Tolerance [OPP-2005-0095; FRL-7711-9] received May 16, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1990. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Dimethenamid; Pesticide Tolerance [OPP-2005-0118; FRL-7713-4] received May 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1991. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting authorization of Vice Admiral Henry G. Ulrich III, United States Navy, to wear the insignia of the grade of admiral in accordance with title 10,United States Code, section 777; to the Committee on Armed Services.

1992. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting authorization of Major General Robert D. Bishop, United States Navy, to wear the insignia of the grade of lieutenant general in accordance with title 10,United States Code, section 777; to the Committee on Armed Services.

1993. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting authorization of Major General Christopher A. Kelly, United States Navy, to wear the insignia of the grade of lieutenant general in accordance with title 10,United States Code, section 777; to the Committee on Armed Services.

1994. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting authorization of Rear Admiral John D. Stufflebeem, United States Navy, to wear the insignia of the grade of vice admiral in accordance with title 10,United States Code, section 777; to the Committee on Armed Services.

1995. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting authorization of Lieutenant General William R. Looney, United States Navy, to wear the insignia of the grade of general in accordance with title 10,United States Code, section 777; to the Committee on Armed Services.

1996. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting authorization of Major General Michael A. Hamel, United States Navy, to wear the insignia of the grade of lieutenant general in accordance with title 10,United States Code, section 777; to the Committee on Armed Services.

1997. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Emission Standards for Solvent Cleaning Operations Using Non-Halogenated Solvents [R03-OAR-2005-VA-0006; FRL-7913-5] received May 16, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1998. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Implementation Plans for Kentucky: Inspection and Maintenance Program Removal for Jefferson County, Kentucky; Source-Specific Nitrogen Oxides Emission Rate for Kosmos Cement Kiln [R04-OAR-2004-KY-0002-20051 ; FRL-7914-5] received May 16, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1999. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District and San Joaquin Valley Unified Air Pollution Control District [CA-309-0475a; FRL-7901-9] received May 16, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2000. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries [OAR-2002-0034; FRL-7911-8] received May 11, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2001. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing [OAR-2002-0035; FRL-7911-6] (RIN: 2060-AM10) received May 11, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2002. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing [OAR-2003-0178; FRL-7911-1] (RIN: 2060-AM72) received May 11, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2003. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—National Emission Standards for Pharmaceuticals Production [OAR-2004-0023; FRL-7911-3] (RIN: 2060-AM52) received May 11, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2004. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emissions Standards for AIM Coatings [VA151-5085; FRL-7910-1] received May 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2005. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of State Implementation Plans; State of Washington; Spokane Carbon Monoxide Attainment Plan [WA-01-003; FRL-7906-3] received May 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2006. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Air Quality Implementation Plans; Maryland; Metropolitan Washington D.C. 1-Hour Ozone Attainment Demonstration Plans [RME NO. R03-OAR-2004-DC-0010; FRL-7910-4] received May 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2007. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions from AIM Coatings [MD-166-3112; FRL-7910-2] received May 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2008. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Air Quality Implementation Plans; Maryland and Virginia; Non-Regulatory Voluntary Emission Reduction Program Measures [R03-OAR-2004-MD-0001; R03-OAR-2004-VA-0005; FRL-7909-9] received May 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2009. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the Georgia State Implementation Plan [R04-OAR-2004-GA-0002-200504(a); FRL-7909-3] received May 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2010. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; VOC Emission Standards for AIM Coatings [R03-OAR-2004-DC-0007; FRL-7909-8] received May 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2011. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; 1-Hour Ozone Attainment Plans, Rate-of-Progress Plans, Contigency Measures, Transportation Control Measures, VMT Offset, and 1990 Base Year Inventory [RME NO. R03-OAR-2004-DC-0009, R03-OAR-2004-DC-0010; FRL-7910-3] received May 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2012. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Transportation Conformity Rule Amendments for the New PM2.5 National Ambient Air Quality Standard: PM2.5 Precursors [Docket No. OAR-2003-0049; FRL-7908-3] (RIN: 2060-AN03) received May 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2013. A letter from the Supervisory Human Resources Specialist, Department of the Air Force, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

2014. A letter from the Deputy General Counsel for Equal Opportunity and Administrative Law, Department of Housing and Urban Development, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

2015. A letter from the Deputy General Counsel for Equal Opportunity and Administrative Law, Department of Housing and Urban Development, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

2016. A letter from the Attorney Advisor, Department of Transportation, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. LEWIS of California: Committee on Appropriations. Report on the Revised Suballocation of Budget Allocations for Fiscal Year 2006 (Rept. 109–85). Referred to the Committee of the Whole House on the State of the Union.

Mr. HOBSON: Committee on Appropriations. H.R. 2419. A bill making appropriations for energy and water development for the fiscal year ending September 30, 2006, and for other purposes (Rept. 109–86). Referred to the Committee of the Whole House on the State of the Union.

Mr. BISHOP of Utah: Committee on Rules. House Resolution 287. A resolution providing for consideration of the bill (H.R. 2361) making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes (Rept. 109–87). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. GORDON (for himself, Mr. SHIMKUS, and Ms. ESHOO):

H.R. 2418. A bill to promote and enhance public safety and to encourage the rapid deployment of IP-enabled voice services; to the Committee on Energy and Commerce.

By Mr. HOBSON:

H.R. 2419. A bill making appropriations for energy and water development for the fiscal year ending September 30, 2006, and for other purposes.

By Mr. KUCINICH (for himself, Mr. ABERCROMBIE, Mr. GEORGE MILLER of California, Mr. TIERNEY, Mr. HOLT, Mr. FATTAH, Ms. WOOLSEY, Mr. MICHAUD, Mr. RAHALL, Mr. SERRANO, Ms. LEE, Ms. MOORE of Wisconsin, Mr. CONYERS, Mr. HINCHEY, Ms. MCKINNEY, Mr. DAVIS of Illinois, Mr. STARK, Mr. OWENS, Mr. HONDA, Ms. WATERS, Mr. MCGOVERN, Mr. JACKSON of Illinois, Ms. WATSON, Mr. FILNER, Ms. BALDWIN, Mr. GRIJALVA, Mr. MEEKS of New York, and Mr. MCDERMOTT):

H.R. 2420. A bill to preserve the cooperative, peaceful uses of space for the benefit of all humankind by prohibiting the basing of weapons in space and the use of weapons to destroy or damage objects in space that are in orbit, and for other purposes; to the Committee on Science, and in addition to the Committees on Armed Services, and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. BONO (for herself and Ms. DEGETTE):

H.R. 2421. A bill to amend the Public Health Service Act to combat autism through research, screening, intervention and education; to the Committee on Energy and Commerce.

By Mr. CHABOT (for himself and Mr. DELAHUNT):

H.R. 2422. A bill to allow media coverage of court proceedings; to the Committee on the Judiciary.

By Mr. FOLEY (for himself, Mr. CRAMER, Mr. BLUNT, Mr. CANTOR, Mr. DAVIS of Florida, Ms. GINNY BROWN-WAITE of Florida, Mr. POE, Mr. SHIMKUS, Mr. GENE GREEN of Texas, Mr. KING of New York, Ms. MILLENDER-MCDONALD, Mr. BURTON of Indiana, Mr. BRADLEY of New Hampshire, Mr. ROYCE, Mr. MILLER of Florida, Mr. MEEKS of New York, Ms. HARRIS, Mr. FOSSELLA, Mr. CHANDLER, Mr. RAMSTAD, Mr. MCCAUL of Texas, Mr. SIMMONS, Mr. BISHOP of Georgia, Mr. KINGSTON, Mr. WILSON of South Carolina, Mr. BOSWELL, Mr. FORD, Mr. ROSS, Mr. MCKEON, Mrs. KELLY, Mr. ROGERS of Alabama, Mr. KENNEDY of Minnesota, Mr. BONNER, Mr. CARDOZA, Ms. GRANGER, Mr. EVERETT, Mr. DENT, Mr. BOUSTANY, Mr. PEARCE, Mr. BOYD, Mr. CASE, Mr. DAVIS of Alabama, Mr. SMITH of New Jersey, Mr. MOORE of Kansas, Mr. MCCOTTER, Mr. TIAHRT, Mr. POMEROY, Mr. BACHUS, and Mr. CANNON):

H.R. 2423. A bill to improve the national program to register and monitor individuals who commit crimes against children or sex offenses; to the Committee on the Judiciary.

By Mr. GERLACH:

H.R. 2424. A bill to extend the temporary suspension of duty on 11–Aminoundecanoic acid; to the Committee on Ways and Means.

By Mr. GIBBONS (for himself, Mr. PORTER, and Ms. BERKLEY):

H.R. 2425. A bill to direct the Secretary of the Interior to convey to the City of Henderson, Nevada, certain Federal land located in the City, and for other purposes; to the Committee on Resources.

By Mr. GREEN of Wisconsin (for himself, Mr. PETRI, Ms. HART, Mr. JINDAL, Mr. MILLER of Florida, Mr. HOSTETTLER, Mr. FEENEY, and Mr. SOUDER):

H.R. 2426. A bill to establish the Supportive Communities Helping Offer Opportunities for Learning Program and to allow an income tax credit for contributions to qualified scholarship granting organizations; to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. HERSETH:

H.R. 2427. A bill to postpone the 2005 round of defense base closure and realignment; to the Committee on Armed Services.

By Mr. HINCHEY (for himself and Mr. BASS):

H.R. 2428. A bill to provide for the protection of the last remaining herd of wild and genetically pure American Buffalo; to the Committee on Resources.

By Mr. GEORGE MILLER of California (for himself, Ms. PELOSI, Mr. HOYER, Mr. OWENS, Mr. BROWN of Ohio, Mr. NADLER, Mr. VAN HOLLEN, Mr. WAXMAN, Mr. GRIJALVA, Mr. BISHOP of New York, Mr. HOLT, Ms. KILPATRICK of Michigan, Mr. HINCHEY, Mr. PAYNE, Ms. CORRINE BROWN of Florida, Mr. MCGOVERN, Mr. INSLEE, Mr. CAPUANO, Ms. BERKLEY, Mr. DICKS, Mr. WYNN, Mr. RANGEL, Ms. SLAUGHTER, Ms. WOOLSEY, Ms. WATERS, Mr. SERRANO, Mr. KILDEE, Ms. WATSON, Mrs. JONES of Ohio, Ms. DELAURO, Mrs. MALONEY, Ms. SOLIS, Mr. KENNEDY of Rhode Island, Mr. PALLONE, Mr. WEINER, Mr. MCDERMOTT, Mr. ALLEN, Mr. ABERCROMBIE, Ms. MCCOLLUM of Minnesota, Mr. LANGEVIN, Ms. LINDA T. SÁNCHEZ of California, Mr. MARKEY, Mr. MICHAUD, Mr. BACA, Mr. BLUMENAUER, Mr. FRANK of Massachusetts, Mr. TIERNEY, Mr. OLVER, Mr. WEXLER, Mr. UDALL of New Mexico, Mr. DELAHUNT, Mr. CLAY, Mr. STARK, Mr. EVANS, Ms. KAPTUR, Mr. MENENDEZ, Mr. SABO, Mr. ROTHMAN, Mr. WU, Mr. LYNCH, Mr. SANDERS, Mr. CARNAHAN, Mr. WATT, Mr. HASTINGS of Florida, Mr. CONYERS, Mr. MORAN of Virginia, Mr. BOUCHER, Mr. BRADY of Pennsylvania, Mr. JACKSON of Illinois, Mr. HONDA, Mr. HIGGINS, Ms. SCHAKOWSKY, Mr. TOWNS, Mr. CUMMINGS, Mr. ACKERMAN, Mr. OBEY, Mr. LEVIN, Mr. AL GREEN of Texas, Mr. GONZALEZ, Mr. KUCINICH, Mr. DOGGETT, Ms. ESHOO, Mr. ENGEL, Ms. LEE, Mr. SHERMAN, Mr. GUTIERREZ, Mr. LANTOS, Mr. MCNULTY, Mr. ANDREWS, Mr. DAVIS of Illinois, Ms. MATSUI, Mr. PRICE of North Carolina, Mr. CARDIN, Mr. HINOJOSA, Mr. KANJORSKI, Ms. SCHWARTZ of Pennsylvania, Mr. MEEHAN, Mr. NEAL of Massachusetts, Mr. RYAN of Ohio, and Mr. SCOTT of Virginia):

H.R. 2429. A bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage;to the Committee on Education and the Workforce.

By Mr. MOLLOHAN:

H.R. 2430. A bill to extend the duty reduction on ethylene/tetrafluoroethylene copolymer (ETFE); to the Committee on Ways and Means.

By Mr. MOLLOHAN:

H.R. 2431. A bill to suspend temporarily the duty on 1,10 Diaminodecane; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2432. A bill to reduce temporarily the duty on Crelan (self-blocked cycloaliphatic polyuretdione); to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2433. A bill to suspend temporarily the duty on Aspirin; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2434. A bill to extend the suspension of duty on Baytron C-R; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2435. A bill to extend the suspension of duty on Baytron M; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2436. A bill to temporarily suspend the duty on Baytron and Baytron P; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2437. A bill to suspend temporarily the duty on Desmodur BL XP 2468; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2438. A bill to suspend temporarily the duty on Hydrazine Hydrate; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2439. A bill to suspend temporarily the duty on certain flame retardant plasticizers; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2440. A bill to suspend temporarily the duty on Baypure DS; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2441. A bill to extend the temporary suspension of duty on BOPA; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2442. A bill to extend the temporary suspension of duty on Thionyl Chloride; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2443. A bill to extend the temporary suspension of duty on Ammonium Bifluoride; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2444. A bill to suspend temporarily the duty on Bayowet C4; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2445. A bill to extend the temporary suspension of duty on PHBA; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2446. A bill to extend the temporary suspension of duty on Mondur P; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2447. A bill to extend the temporary suspension of duty on P-Phenylphenol; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2448. A bill to extend the temporary suspension of duty on DEMT; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2449. A bill to extend the temporary suspension of duty on Bayowet FT–248; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2450. A bill to extend the temporary suspension of duty on PNTOSA; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2451. A bill to extend the temporary suspension of duty on Baysilone Fluid; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2452. A bill to reduce temporarily the duty on Desmodur; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2453. A bill to suspend temporarily the duty on Desmodur HL; to the Committee on Ways and Means.

By Mr. MURPHY:

H.R. 2454. A bill to suspend temporarily the duty on D-Mannose; to the Committee on Ways and Means.

By Mr. PAUL:

H.R. 2455. A bill to repeal the Military Selective Service Act; to the Committee on Armed Services.

By Mr. RANGEL:

H.R. 2456. A bill to amend the Controlled Substances Act and the Controlled Substances Import and Export Act to eliminate certain mandatory minimum penalties relating to crack cocaine offenses; to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SANDERS (for himself, Mr. MANZULLO, Mrs. MALONEY, Mr. ROHRABACHER, and Ms. LEE):

H.R. 2457. A bill to amend the Community Reinvestment Act of 1977 to allow community reinvestment credit for investments and other financial support to enable employees to establish certain employee stock ownership plans or eligible worker owned cooperatives; to the Committee on Financial Services.

By Mr. SHADEGG (for himself, Mr. OTTER, Mr. HERGER, Mr. SAM JOHNSON of Texas, Mr. KOLBE, Mr. SOUDER, Ms. GINNY BROWN-WAITE of Florida, Mr. GARRETT of New Jersey, Mrs. JO ANN DAVIS of Virginia, Mr. BARTLETT of Maryland, Mr. KUHL of New York, Mr. PAUL, Mr. HOEKSTRA, Mr. DOOLITTLE, Mr. WELDON of Florida, Mr. BACHUS, Mr. TIAHRT, Mr. COX, Mr. MILLER of Florida, Mrs. MUSGRAVE, and Mr. GOODE):

H.R. 2458. A bill to require Congress to specify the source of authority under the United States Constitution for the enactment of laws, and for other purposes; to the Committee on the Judiciary.

By Mr. SIMMONS:

H.R. 2459. A bill to extend the temporary suspension of duty on yarn of combed Kashmir (cashmere) and yarn of camel hair; to the Committee on Ways and Means.

By Mr. SIMMONS:

H.R. 2460. A bill to extend the temporary suspension of duty on certain yarn of carded Kashmir (cashmere); to the Committee on Ways and Means.

By Mr. SIMMONS:

H.R. 2461. A bill to extend the temporary suspension of duty on certain Kashmir (cashmere) hair; to the Committee on Ways and Means.

By Mr. SIMMONS:

H.R. 2462. A bill to suspend temporarily the duty on certain camel hair; to the Committee on Ways and Means.

By Mr. SIMMONS:

H.R. 2463. A bill to suspend temporarily the duty on waste of camel hair; to the Committee on Ways and Means.

By Mr. SIMMONS:

H.R. 2464. A bill to suspend temporarily the duty on certain camel hair; to the Committee on Ways and Means.

By Mr. SIMMONS:

H.R. 2465. A bill to suspend temporarily the duty on woven fabric containing vicuna hair; to the Committee on Ways and Means.

By Mr. SIMMONS:

H.R. 2466. A bill to suspend temporarily the duty on certain camel hair; to the Committee on Ways and Means.

By Mr. SIMMONS:

H.R. 2467. A bill to extend the temporary suspension of duty on fine animal hair of Kashmir (cashmere) goats; to the Committee on Ways and Means.

By Mr. SIMMONS:

H.R. 2468. A bill to suspend temporarily the duty on noils of camel hair; to the Committee on Ways and Means.

By Mr. SIMPSON:

H.R. 2469. A bill to extend temporarily the duty suspension on certain semi-manufactured forms of gold; to the Committee on Ways and Means.

By Mr. TIAHRT:

H.R. 2470. A bill to establish a commission to conduct a comprehensive review of Federal agencies and programs and to recommend the elimination or realignment of duplicative, wasteful, or outdated functions, and for other purposes; to the Committee on Government Reform, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TIBERI (for himself, Mr. CHANDLER, Mr. LEWIS of Kentucky, Mr. WHITFIELD, Mr. DAVIS of Kentucky, Mr. ROGERS of Kentucky, Mr. JENKINS, Mr. CAMP, Mr. MCHUGH, Mr. NEY, Mr. WALSH, Mr. TURNER, Mrs. NORTHUP, Mr. BOYD, Mr. DAVIS of Tennessee, Mr. COOPER, Mr. MCINTYRE, Mr. TAYLOR of Mississippi, Mr. CASE, Ms. HERSETH, Mr. HOLDEN, Mr. MELANCON, Mrs. TAUSCHER, Mr. ROSS, Mr. TANNER, Mr. BOSWELL, Ms. HARMAN, Mr. BISHOP of Georgia, Mr. CARDOZA, Mr. SALAZAR, and Mr. DUNCAN):

H.R. 2471. A bill to authorize the States (and subdivisions thereof), the District of Columbia, territories, and possessions of the United States to provide certain tax incentives to any person for economic development purposes; to the Committee on the Judiciary.

By Mr. WEXLER:

H.R. 2472. A bill to amend the Internal Revenue Code of 1986 to impose a tax on the amount of wages in excess of the contribution and benefit base, to extend the pay-as-you-go requirement of the Balanced Budget and Emergency Deficit Control Act of 1985, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Rules, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. NEUGEBAUER:

H. Con. Res. 156. Concurrent resolution condemning irresponsible and inaccurate journalism, expressing condolences to the victims and families of the victims of the riots in the Islamic Republic of Pakistan and in the Islamic Republic of Afghanistan, and for other purposes; to the Committee on International Relations.

By Mr. SHAYS (for himself and Ms. SLAUGHTER):

H. Con. Res. 157. Concurrent resolution recognizing the artistic excellence and community value of America's 1800 orchestras; to the Committee on Education and the Workforce.

By Ms. WOOLSEY (for herself, Mr. HINCHEY, Mr. OWENS, Ms. LEE, Mr. HONDA, Mr. MCGOVERN, Mr. GRIJALVA, Ms. ESHOO, Mr. GEORGE MILLER of California, Mr. MCDERMOTT, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. THOMPSON of Mississippi, Mr. CONYERS, Mr. FARR, Ms. SOLIS, Ms. MCCOLLUM of Minnesota, Mr. ABERCROMBIE, Mr. HOLT, Ms. BALDWIN, Mr. EMANUEL, Mr. DEFAZIO, Mr. FILNER, Ms. JACKSON-LEE of Texas, Ms. KILPATRICK of Michigan, Ms. KAPTUR, Mr. KUCINICH, Mr. LEWIS of Georgia, Mr. OBERSTAR, Mr. OLVER, Mr. PAYNE, Mr. RANGEL, Ms. LINDA T. SÁNCHEZ of California, Ms. SCHAKOWSKY, Ms. WATERS, Mr. DAVIS of Illinois, Mrs. CHRISTENSEN, Mr. BLUMENAUER, Mr. CLAY, Mr. HASTINGS of Florida, Mr. MARKEY, Mr. MORAN of Virginia, Mrs. NAPOLITANO, Mr. SANDERS, Ms. MCKINNEY, Mr. BROWN of Ohio, Mr. TIERNEY, Ms. CARSON, Mr. NEAL of Massachusetts, Mrs. MALONEY, and Ms. NORTON):

H. Con. Res. 158. Concurrent resolution calling for the adoption of a Sensible, Multilateral American Response to Terrorism (SMART) security platform for the 21st century; to the Committee on International Relations.

By Mr. VISCLOSKY (for himself, Mr. KING of New York, and Ms. LEE):

H. Res. 286. A resolution expressing the sense of the House of Representatives on promoting initiatives to develop an HIV vaccine; to the Committee on International Relations.

ADDITIONAL SPONSORS TO PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 11: Mr. OSBORNE and Mr. SNYDER.

H.R. 22: Mr. GEORGE MILLER of California and Mr. BISHOP of Georgia.

H.R. 94: Mr. HOLDEN.

H.R. 111: Mrs. DAVIS of California and Mr. PRICE of North Carolina.

H.R. 136: Mr. HEFLEY.

H.R. 226: Mr. CUMMINGS.

H.R. 305: Mr. CALVERT.

H.R. 356: Mr. SODREL, Mr. MURPHY, Mr. MARCHANT, Mrs. MILLER of Michigan, and Mr. HERGER.

H.R. 371: Mr. ROSS.

H.R. 376: Mr. PASTOR, Mr. LARSEN of Washington, Ms. PELOSI, and Ms. MATSUI.

H.R. 421: Mr. CUMMINGS.

H.R. 535: Mr. CARDOZA.

H.R. 554: Mr. GOHMERT.

H.R. 558: Ms. HARRIS and Mr. GONZALEZ.

H.R. 583: Mr. YOUNG of Alaska.

H.R. 596: Mr. TANCREDO, Mr. AKIN, and Mr. WEXLER.

H.R. 602: Mr. CLEAVER, Mr. MORAN of Kansas, and Ms. MATSUI.

H.R. 625: Mr. MILLER of North Carolina.

H.R. 670: Mr. FOSSELLA.

H.R. 676: Mr. PASTOR, Mr. GUTIERREZ, and Mr. FRANK of Massachusetts.

H.R. 700: Ms. SCHAKOWSKY.

H.R. 745: Ms. GINNY BROWN-WAITE of Florida.

H.R. 759: Mr. BERMAN and Mr. LIPINSKI.

H.R. 764: Mr. SANDERS.

H.R. 800: Mr. SHERWOOD and Ms. HARRIS.

H.R. 810: Mr. MICHAUD.

H.R. 839: Ms. ESHOO and Ms. ROYBAL-ALLARD.

H.R. 887: Mr. VAN HOLLEN and Mr. LANGEVIN.

H.R. 925: Mr. MARCHANT and Mr. DEFAZIO.

H.R. 933: Mr. UDALL of New Mexico.

H.R. 944: Mr. SESSIONS and Mr. SANDERS.

H.R. 998: Mr. JENKINS and Mr. GERLACH.

H.R. 1002: Mr. TIERNEY, Mr. CRAMER, and Ms. KILPATRICK of Michigan.

H.R. 1043: Mr. OTTER.

H.R. 1063: Mr. ROGERS of Kentucky.

H.R. 1092: Ms. FOXX.

H.R. 1105: Mr. PLATTS.

H.R. 1124: Mr. WOLF.

H.R. 1126: Mr. UDALL of Colorado.

H.R. 1201: Mr. KILDEE.

H.R. 1204: Mr. AL GREEN of Texas and Mr. MICHAUD.

H.R. 1217: Ms. MATSUI.

H.R. 1229: Mr. FEENEY, Mr. BISHOP of Utah, and Mr. HOSTETTLER.

H.R. 1241: Mr. WILSON of South Carolina.

H.R. 1272: Mr. RAMSTAD and Mr. LEWIS of Kentucky.

H.R. 1295: Mr. HENSARLING.

H.R. 1299: Mr. BISHOP of Georgia.

H.R. 1310: Mr. THOMPSON of Mississippi.

H.R. 1329: Ms. WOOLSEY and Mr. KENNEDY of Rhode Island.

H.R. 1352: Mr. LAHOOD, Mr. DICKS, Mr. BISHOP of Georgia, Ms. MOORE of Wisconsin, Mr. ACKERMAN, Mr. WAMP, Mr. PETERSON of Pennsylvania, Ms. NORTON, Mr. KENNEDY of Rhode Island, Ms. JACKSON-LEE of Texas, Mr. MCINTYRE, Ms. VELÁZQUEZ, Ms. HERSETH, Ms. WOOLSEY, and Mrs. MALONEY.

H.R. 1373: Mr. RYAN of Ohio, Mr. MCDERMOTT, and Mr. BARTLETT of Maryland.

H.R. 1426: Mr. ISRAEL, Ms. HERSETH, and Mr. BAIRD.

H.R. 1499: Mr. BLUNT, Mr. PLATTS, Mr. MCHENRY, Mr. HERGER, Mr. GILCHREST, Mr. LEWIS of Kentucky, Mr. CULBERSON, Mr. MARIO DIAZ-BALART of Florida, and Mr. GIBBONS.

H.R. 1526: Mr. ROTHMAN, Mr. HINCHEY, and Mr. GRIJALVA.

H.R. 1547: Mr. HAYWORTH.

H.R. 1554: Mr. OLVER.

H.R. 1585: Ms. HARRIS.

H.R. 1591: Ms. SCHAKOWSKY and Mr. LIPINSKI.

H.R. 1592: Mr. FILNER and Ms. SCHAKOWSKY.

H.R. 1602: Mr. DENT and Mr. WELDON of Florida.

H.R. 1607: Mr. MORAN of Kansas and Mr. LEWIS of Kentucky.

H.R. 1637: Ms. MCCOLLUM of Minnesota.

H.R. 1642: Mr. KING of Iowa and Mr. FEENEY.

H.R. 1644: Mr. FALEOMAVAEGA.

H.R. 1652: Mr. KIND, Mr. LARSEN of Washington, Mr. AL GREEN of Texas, and Mr. ALLEN.

H.R. 1663: Mr. CALVERT and Mr. MENENDEZ.

H.R. 1671: Mr. ISRAEL, Mr. ROSS, Mr. WEXLER, and Ms. ROYBAL-ALLARD.

H.R. 1696: Mr. DAVIS of Tennessee and Mr. THOMPSON of California.

H.R. 1770: Mr. JONES of North Carolina.

H.R. 1774: Ms. CARSON, Mr. FORD, Mr. BRADY of Pennsylvania, Mr. CLEAVER, Mr. ENGEL, Mr. AL GREEN of Texas, and Mrs. KELLY.

H.R. 1792: Ms. SCHAKOWSKY and Mr. SANDERS.

H.R. 1798: Mr. MENENDEZ.

H.R. 1814: Mr. CONYERS, Mr. GORDON, Mr. CAPUANO, Ms. LEE, and Mr. KUCINICH.

H.R. 1898: Mr. BAKER, Mr. ALEXANDER, Mr. FORBES, and Mr. ROGERS of Alabama.

H.R. 1957: Mr. GILLMOR and Mr. BRADY of Texas.

H.R. 1973: Mr. KIND and Mr. WALSH.

H.R. 1986: Mr. BRADLEY of New Hampshire, Mr. BAKER, and Mr. GINGREY.

H.R. 1996: Ms. LEE, Mr. BLUMENAUER, Mr. WEXLER, and Mr. ALLEN.

H.R. 2046: Mr. FOLEY, Mr. SANDERS, Mr. GRIJALVA, and Mr. SCHIFF.

H.R. 2061: Mrs. BLACKBURN, Mr. JONES of North Carolina, Mr. LAHOOD, Mr. HOSTETTLER, Mr. MARCHANT, Mr. BEAUPREZ, Mr. THORNBERRY, Mr. MORAN of Kansas, Ms. HART, and Ms. GINNY BROWN-WAITE of Florida.

H.R. 2112: Mr. BOEHNER, Mr. GALLEGLY, Mr. THOMAS, Mr. ROGERS of Michigan, Mr. FERGUSON, Mr. DANIEL E. LUNGREN of California,

Mr. ROYCE, Mr. CUNNINGHAM, Mr. KIRK, and Mr. KING of Iowa.

H.R. 2131: Mr. DOYLE, Ms. MILLENDER-MCDONALD, and Mr. PASTOR.

H.R. 2233: Mr. EVANS.

H.R. 2237: Mr. MARKEY and Mr. HOLT.

H.R. 2238: Mr. DOYLE and Mr. BOYD.

H.R. 2291: Mr. DOGGETT.

H.R. 2306: Mr. REYES.

H.R. 2323: Mr. BROWN of Ohio, and Ms. LEE.

H.R. 2327: Mr. HYDE, Mr. TOWNS, Ms. CORRINE BROWN of Florida, Mr. NADLER, Mr. GRIJALVA, Mr. MORAN of Virginia, Mr. BISHOP of New York, Mr. BUTTERFIELD, Mr. FARR, Mr. GUTIERREZ, Mr. TIERNEY, Ms. LINDA T. SÁNCHEZ of California, Mr. HOLT, Ms. KILPATRICK of Michigan, Ms. ZOE LOFGREN of California, Mr. LARSEN of Washington, Mr. ABERCROMBIE, Mr. BAIRD, Ms. ROYBAL-ALLARD, Mr. FILNER, Mr. STARK, Mr. MICHAUD, and Mr. BRADY of Pennsylvania.

H.R. 2331: Ms. WATSON, Mr. DAVIS of Illinois, and Mr. OWENS.

H.R. 2332: Mr. MICHAUD.

H.R. 2350: Mr. GONZALEZ.

H.R. 2358: Mrs. DRAKE.

H.R. 2412: Mrs. DAVIS of California, Mr. TIERNEY, and Mr. ALLEN.

H.J. Res. 12: Mr. FATTAH, Mr. THOMPSON of California, Mr. GRIJALVA, Mr. WATT, Mr. PETERSON of Minnesota, and Mr. MEEK of Florida.

H. Con. Res. 70: Mr. CULBERSON.

H. Con. Res. 85: Mr. REYES, Mr. MARSHALL, and Mr. WATT.

H. Con. Res. 90: Mr. PASTOR and Mr. OLVER.

H. Con. Res. 149: Mr. MEEK of Florida, Mr. KING of New York, Mr. DAVIS of Alabama, Mr. GALLEGLY, Mr. LINDER, Mr. ETHERIDGE, Mrs. MALONEY, Ms. MATSUI, Mr. BEAUPREZ, Mr. GERLACH, Mr. HOLDEN, Mr. VAN HOLLEN, Mr. MCNULTY, Mr. ROTHMAN, Mr. MICHAUD, Mr. LOBIONDO, Mr. FORBES, Mr. FITZPATRICK of Pennsylvania, Mr. KENNEDY of Minnesota, Ms. WASSERMAN SCHULTZ, and Mr. SHERMAN.

H. Con. Res. 153: Mr. COX, Mr. SOUDER, Mr. ROTHMAN, and Mrs. MALONEY.

H. Res. 121: Mr. BISHOP of New York.

H. Res. 191: Mr. CARDOZA, Mr. SCHIFF, Ms. BERKLEY, Mr. CROWLEY, Mr. ENGEL, Mr. WEXLER, Mr. SHERMAN, Mr. FALEOMAVAEGA, Mr. MENENDEZ, Mr. ACKERMAN, Mr. BERMAN, Mr. PENCE, Mrs. JO ANN DAVIS of Virginia, Mr. SMITH of New Jersey, Mr. WOLF, Mr. WEINER, Mrs. MALONEY, Mr. VAN HOLLEN, and Ms. SCHAKOWSKY.

H. Res. 215: Mr. SOUDER and Mr. MCCRERY.

H. Res. 243: Mr. GILLMOR, Mr. DEAL of Georgia, Mr. TANNER, and Mr. SAXTON.

H. Res. 251: Mr. LIPINSKI and Mr. CALVERT.

H. Res. 259: Mr. OXLEY, Ms. WATSON, Mr. SERRANO, Mr. OWENS, Mr. DANIEL E. LUNGREN of California, Mrs. JONES of Ohio, Mr. KUCINICH, Mr. SCOTT of Georgia, Mr. LEACH, Mr. AL GREEN of Texas, Mr. FATTAH, Mr. TOWNS, Ms. EDDIE BERNICE JOHNSON of Texas, and Mr. RANGEL.

H. Res. 277: Mr. KING of New York, Mr. PRICE of Georgia, Mrs. JO ANN DAVIS of Virginia, and Mr. SULLIVAN.

H. Res. 279: Mr. TOWNS, Mr. BERMAN, Mrs. MALONEY, Mr. WAXMAN, Mrs. NORTHUP, and Mr. MCNULTY.

H. Res. 282: Mr. BERMAN, Mr. CHANDLER, and Mr. MENENDEZ.

H. Res. 284: Mr. ROHRABACHER.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1526: Mr. JINDAL.

H.J. Res. 23: Mr. CARNAHAN.

AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 2361

OFFERED BY: MR. STUPAK

AMENDMENT NO. 5: At the end of the bill (before the short title), insert the following:

SEC. ____. None of the funds made available in this Act may be used to finalize, issue, implement, or enforce the proposed policy of the Environmental Protection Agency entitled ''National Pollutant Discharge Elimination System (NPDES) Permit Requirements for Municipal Wastewater Treatment During Wet Weather Conditions'', dated November 3, 2003 (68 Fed. Reg. 63042).

H.R. 2361

OFFERED BY: MR. BEAUPREZ

AMENDMENT NO. 6: In title III of the bill under the heading ''WILDLAND FIRE MANAGEMENT (INCLUDING TRANSFER OF FUNDS)'', insert after the first dollar amount on Page 76 the following ''(increased by $27,500,000)''

Insert after the first dollar amount on page 77 ''(increased by $27,500,000)''

In title III of the bill in the item relating to ''NATIONAL ENDOWMENT FOR THE ARTS—GRANTS AND ADMINISTRATION'', insert after the first dollar amount on Page 106 the following ''(reduced by $30,000,000)''

H.R. 2361

OFFERED BY: MR. CHABOT

AMENDMENT NO. 7: At the end of the bill (before the short title), insert the following:

SEC. ____. (a) None of the funds made available in this Act may be used for the designing or construction of forest development roads in the Tongass National Forest for the purpose of harvesting timber by private entities or individuals.

(b) Subsection (a) shall not apply with respect to a forest development road for which construction is initiated before the date of the enactment of this Act.

H.R. 2361

OFFERED BY: MR. TIAHRT

AMENDMENT NO. 8: At the end of the bill (before the short title), insert the following:

SEC. _____. None of the funds made available in this Act may be used to promulgate regulations without outside auditing to determine the authenticity of the scientific methods used to develop such regulations.

H.R. 2361

OFFERED BY: MR. POMBO

AMENDMENT NO. 9: At the end of the bill (before the short title) add the following new section:

SEC. ____. The funds appropriated in this Act under the following headings are available only to the extent provided for in authorizing legislation enacted before the date of the enactment of this Act or on or after such date:

(1) ''Bureau of Land Management—Range Improvements''.

(2) ''United States Fish and Wildlife Service—Resource Management''.

(3) ''United States Fish and Wildlife Service—Cooperative Endangered Species Conservation Fund''.

(4) ''United States Fish and Wildlife Service—Neotropical Migratory Bird Conservation''.

(5) ''United States Fish and Wildlife Service—Multinational Species Conservation Fund''.

(6) ''National Park Service—Historic Preservation Fund''.

(7) ''United States Geological Survey—Surveys, Investigations, and Research''.

(8) ''Bureau of Indian Affairs—Indian Land and Water Claim Settlements and Miscellaneous Payments to Indians''.

(9) ''Indian Health Service—Indian Health Services''.

(10) ''Indian Health Service—Indian Health Facilities''.

(11) ''Executive Office of the President—Council on Environmental Quality and Office of Environmental Quality''.

H.R. 2361

OFFERED BY: MR. HEFLEY

AMENDMENT NO. 10: Page 45, line 16, after the first dollar amount, insert the following: ''(increased by $15,000,000)''.

Page 106, line 9, after the dollar amount, insert the following: ''(reduced by $15,000,000)''.

H.R. 2361

OFFERED BY: MR. HEFLEY

AMENDMENT NO. 11: At the end of the bill (before the short title), insert the following:

SEC. ____. Total appropriations made in this Act (other than appropriations required to be made by a provision of law) are hereby reduced by $261,591,250.

H.R. 2361

OFFERED BY: MR. FILNER

AMENDMENT NO. 12: In title I, in the item relating to ''UNITED STATES GEOLOGICAL SURVEY—SURVEYS, INVESTIGATIONS, AND RESEARCH'', insert after the first dollar amount the following: ''(decreased by $10,000,000)''.

In title II, in the item relating to ''STATE AND TRIBAL ASSISTANCE GRANTS'', insert after the first dollar amount the following: ''(increased by $10,000,000)''.

In title II, in the item relating to ''STATE AND TRIBAL ASSISTANCE GRANTS'', insert after the fifth dollar amount the following: ''(increased by $10,000,000)''.

H.R. 2361

OFFERED BY: MS. EDDIE BERNICE JOHNSON OF TEXAS

AMENDMENT NO. 13: Page 68, line 14, insert ''(increased by $2,000,000)'' after ''$95,500,000''.

Page 69, line 4, insert ''(reduced by $2,000,000)'' after ''$1,153,300,000''.

Page 69, line 14, insert ''(reduced by $2,000,000)'' after ''$52,000,000''.

H.R. 2361

OFFERED BY: MR. ISTOOK

AMENDMENT NO. 14: Page 53, line 24, after the period insert the following: ''This section shall not apply on and after any date on which the Energy Information Administration publishes data (as required by section 57 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790f)) demonstrating that net imports of crude oil account for more than two-thirds of oil consumption in the United States.''.

H.R. 2361

OFFERED BY: MR. ISTOOK

AMENDMENT NO. 15: At the appropriate place in the act, insert the following new section: Sec. XX ''None of the funds contained in this act may be used to enforce section 105 of this act if the Energy Information Agency publishes data (as required by section 57 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790f)) demonstrating that net imports of crude oil account for more than two-thirds of oil consumption in the United States.''.

H.R. 2361

OFFERED BY: MR. ISTOOK

AMENDMENT NO. 16: Page 53, beginning at line 18, strike section 105.

H.R. 2361

OFFERED BY: MR. GRIJALVA

AMENDMENT NO. 17: Page 64, line 17, after the dollar amount, insert the following: ''(increased by $1,903,000) (decreased by $1,903,000)''.

H.R. 2361

OFFERED BY: MR. MCGOVERN

AMENDMENT NO. 18: Page 63, after line 6, insert the following:

SEC. ____. The amounts otherwise provided by this Act are revised by reducing the amount made available for ''United States Fish and Wildlife Service—landowner incentive program'', and increasing the amount made available for ''National Park Service—land acquisition and State assistance'', by $20,000,000.

H.R. 2361

OFFERED BY: MR. KENNEDY OF MINNESOTA

AMENDMENT NO. 19: Page 2, line 15, after the dollar amount insert ''(reduced by $1,075,000)''.

Page 3, line 7, after the dollar amount insert ''(reduced by $1,075,000)''.

Page 10, line 25, after the dollar amount insert ''(increased by $1,075,000)''.

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PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151 WASHINGTON, WEDNESDAY, MAY 18, 2005 *No. 66*

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Spirit, the fountain of light and wisdom, without Whom nothing is holy and nothing prevails, You have challenged us to let our lights shine, so that people can see our good works and glorify Your Name.

Today, shine the light of Your presence through our Senators and illuminate our Nation and world. Permit this light to be a beacon of hope for emerging democracies and a gleam of encouragement for freedom fighters. Use this light to provide a model of patience and peace to a world searching for direction.

Lord, let this brightness bring hope where there is despair, unity where there is division, and joy where there is sadness. Remind each of us that it is better to light one candle than to curse the darkness. We pray in the Name of the One Who is the Light of the World. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK 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. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 18, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAM BROWNBACK, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BROWNBACK thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, today, we will begin debate on one of the judicial nominations pending on the Executive Calendar. In a moment, we will enter into a consent agreement to begin the consideration of Priscilla Owen to be United States Circuit Judge for the Fifth Circuit.

I have consulted with the Democratic leader, and we hope to have an orderly debate for Members to come to the floor to make their statements. To facilitate that process, we will rotate back and forth between the aisle every 60 minutes. I will have a short statement, the Democratic leader will have a statement following mine, and then we will begin the rotation back and forth. I look forward to this debate, and I hope all Members will take the opportunity to participate.

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to executive session to consider calendar No. 71, the nomination of Priscilla Owen to be United States Circuit Judge for the Fifth Circuit; provided further that the first hour of debate, from 9:45 to 10:45, be under the control of the majority leader or his designee; further that the next hour, from 10:45 to 11:45, be under the control of the Democratic leader or his designee; and the time for debate rotate in a similar manner every 60 minutes; provided further that the Senate recess from 3:45 to 4:45 to accommodate an all-Senators briefing; provided further that the time from 5:45 to 7:15 be under the control of the Democratic leader and the time from 7:15 to 7:45 be under the control of the majority leader or his designee.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. Mr. President, reserving the right to object, first of all, I would ask the distinguished majority leader to amend his unanimous consent request to have the time begin when we complete our statements today. We might not be at a quarter of the hour, but whenever that would be we would rotate on an hourly basis.

Mr. FRIST. Mr. President, I have no objection.

The ACTING PRESIDENT pro tempore. Is there objection to the modified request?

Mr. REID. Mr. President, I have another reservation.

The ACTING PRESIDENT pro tempore. The Democratic leader.

Mr. REID. Mr. President, I would ask the distinguished majority leader would we not be better off moving to

get rid of—I don't mean that in a pejorative sense—but clear the calendar of four, at this stage, noncontroversial judges? We could move to Thomas Griffith, who is on the calendar. We could move to discharge and consider the Michigan Circuit Court nominees, Griffin, McKeague, and Neilson. We could get time agreements on all those. We would have four circuit judges. They would be able to go to work within a few days—actually go to work. Otherwise, they are going to be waiting until we go through all of this. It would seem to me that would be the better thing to do. So I would ask the distinguished majority leader if he would agree that we could move to these, with reasonable time agreements, prior to moving to Priscilla Owen?

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, through the Chair, we have given careful consideration of which would be the most appropriate person to begin with. It is Priscilla Owen. So we will proceed with Priscilla Owen. There are five people on the Executive Calendar, and our intention would be to debate these nominees, one by one; and hopefully, as other nominees come out of the Judiciary Committee, to take them up as well. So we will be proceeding with Priscilla Owen.

Mr. REID. Mr. President, one further statement.

The ACTING PRESIDENT pro tempore. The Democratic leader.

Mr. REID. Mr. President, in that we have started this process, my friend, the distinguished majority leader, should be advised we will not agree to committees meeting during the time we are doing debate on Priscilla Owen.

The ACTING PRESIDENT pro tempore. Is there objection to the request, as modified?

Mr. KENNEDY. Reserving the right to object, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I was wondering if our leader is familiar with the letter which members of our Judiciary Committee sent to the chairman of our committee that points out there are now some 30 vacancies on the Federal bench for which the President has not yet sent a nominee to the Senate. If he would work with Senators of both parties to identify qualified, consensus nominees for each of these spots, the vacancy numbers on our courts could be lowered even further. However, as much as we have offered to work with him finding these nominees and getting them confirmed, there has been absolutely no response.

I am just wondering whether, as we are addressing the issues of one nominee—and the issue that is before the Senate is filling vacancies on the courts—I am just interested if the majority leader has any information from the administration as to when we are going to be able to fill these other nominations.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, I would be happy to look at the letter and request of the administration, what requests are made in the letter, and see what their response would be.

In the meantime, Mr. President, what I would like to do is proceed with Priscilla Owen, who is a qualified nominee, who is a nominee we are going to have a lot of debate on back and forth, to determine whether or not she is out of the mainstream, as people say. We will go through regular order and take these nominees the President has submitted to the Judiciary Committee, who have been fully evaluated in the Judiciary Committee, and who now are on the Executive Calendar ready for business.

So we are going to begin that debate shortly.

Mr. KENNEDY. Well, reserving my rights further, Mr. President, as I understand, there is a new nominee who is on the Executive Calendar, Brian Sandoval of Nevada, who has general broad support. Is he not a nominee we could confirm in a matter of moments here? We could at least take care of that vacancy.

Mr. FRIST. Mr. President, I do not believe he is on the Executive Calendar. To the best of my knowledge—at least he is not on the Executive Calendar as printed today.

The ACTING PRESIDENT pro tempore. Is there objection?

The Senator from Vermont.

Mr. LEAHY. Mr. President, reserving the right to object, and I shall not, but I would also remind everybody that the distinguished Democratic leader has said he had no objection to going to—this is a court of appeals judge—Thomas Griffith, of Utah, to be U.S. circuit judge for the District of Columbia circuit. While Mr. Griffith is one I would vote against, for reasons I have already stated, from the nose count I have, he would easily be confirmed.

I would also note that I have total agreement with the distinguished senior Senator from Nevada, who said he would be willing to do this in a relatively short time. I just mention that because I would not want anybody to think this is a person being held up, even though some of us object to him.

The ACTING PRESIDENT pro tempore. Is there objection?

The Democratic leader.

Mr. REID. Mr. President, I would also like to make a suggestion. The idea is not original with me. I wish it were. But we had a meeting last night. The distinguished majority leader was present at that meeting. My friend, the junior Senator from Utah, suggested that what might be good for this body is the same thing that happened when we had the difficult issue here 6½ years ago dealing with the impeachment of a President of the United States. At that time, we retired to the Old Senate Chambers. No staff was there, just 100 Senators. We worked through some very difficult problems, and it surprised everyone.

The distinguished Senator from Massachusetts and now retired Senator Phil Gramm were the people who saved the day—two people who battled ideologically for a combined total of 40 or 50 years. Basically, because of them, we resolved an extremely difficult issue as to how the impeachment would be handled.

So I would ask my distinguished friend, the Republican leader, to consider joining with me and having, in the next day or so—hopefully today—have all of us retire to the Chamber and sit down and talk through this issue and see if there is a way we can resolve this short of this so-called nuclear option. I think it would be good for the body. I think it would be good for the American public to see we are able to sit down in the same room and work things out. I am not sure that we could, but I think it would be worthy of our efforts. Nothing ventured, nothing gained. I would ask my friend if he would consider following the suggestion of Senator BENNETT of Utah.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, as always, we will take into consideration all suggestions and be happy to talk to the leadership on both sides of the aisle as to whether that suggestion is the most appropriate way. We have engaged in negotiations and attempts to satisfy both sides over the last 4 months, 5 months, since these unprecedented filibusters came before this body. After 214 years of a threshold of 50 votes, all of a sudden, in the last Congress, it was radically changed by the other side to become 60 votes, denying the sort of people—a little bit akin to what we just heard over the last few minutes, where I am trying to move to a qualified nominee, Priscilla Owen, and we hear these attempts to delay, even right now, and to sidetrack and consider somebody else. That is the challenge.

That is why we are on the floor of the Senate, with the light of day, with the American people watching at this point, to take it to the body of the Senate and ask that fundamental question: Is Priscilla Owen out of the mainstream? Eighty-four percent of Texans think she is in the mainstream. Are 84 percent of Texans out of the mainstream? If the answer to that question is, no, they are not out of the mainstream, then all we want is a vote, an up-or-down vote—accept, reject; confirm, yes, no. That is all we are asking for.

We do not want the constitutional option. We did not ask for the constitutional option. What has happened is because of the other side of the aisle, in shattering the Senate tradition for 214 years, where the filibuster was never even contemplated, now it is being used on a routine basis. One out of every four of the President's nominees who have come over for the circuit

courts are filibustered, blocked, not given that courtesy of a vote, when that is our responsibility, to give advice and consent.

So in response to my good friend, the Democratic leader, yes, as proposals come forward, we will consider all. Both leaders spent 50 minutes or so, as the papers reported, today talking with people who are trying to come to some reasonable conclusion. We will continue to do that. So I would be happy to consider another idea.

I think what is important now, though, is to come to the floor of the Senate. Let's shed light on this. Let's do take this. Yes, it is an inside-the-Senate decision, and we make our own traditions and rules, but it is important for the American people to see is Priscilla Owen, is Janice Rogers Brown deserving of a vote, yes or no, on the floor of the Senate.

So I would recommend we continue discussions and let's proceed with this nominee, continue the debate over the course of the day, or it may be 2 days, and answer this question: Is she qualified? Does she deserve an up-or-down vote?

The ACTING PRESIDENT pro tempore. Is there objection to the request?

The Democratic leader.

Mr. REID. Mr. President, I know we need to move on. I want to briefly say we are following the rules. We believe in following the rules, not breaking the rules. And while it is good to talk about this up-or-down vote, the fact is if we move forward as contemplated by the majority, it is moving toward breaking the rules to change the rules. That is improper. It will change the Senate forever and that is not good.

Mr. KENNEDY. Mr. President, further reserving the right to object, I want to support our Democratic leader. I believe the record now is we have approved 96 percent of the judicial nominees of this administration. And as we know in terms of reading the Constitutional Convention our Founding Fathers expected this was going to be, we were going to exercise our own independent best judgment on nominees. And if I could ask the majority leader, is this the same Priscilla Owen which our current Attorney General suggested ''unconscionable acts of judicial activism?'' That is, our current Attorney General has accused this nominee of that kind of activity. Is this the same Priscilla Owen who is now being recommended, about which our current Attorney General made that comment not once, not twice, not three times, but 11 times?

Mr. MCCONNELL. Regular order, Mr. President.

The ACTING PRESIDENT pro tempore. Regular order has been called for. The Senator must either object or permit the request to move forward.

Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. Reserving the right to object, I would not object——

The ACTING PRESIDENT pro tempore. The Senator cannot reserve the right to object. He must object or grant the request.

Is there objection? Without objection, it is so ordered.

The clerk will report the nominee.

The legislative clerk read the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

The ACTING PRESIDENT pro tempore. The first hour of debate is now under the control of the majority leader or his designee.

The majority leader.

Mr. FRIST. Mr. President, I rise today as the leader of majority party of the Senate, but I do not rise for party. I rise for principle. I rise for the principle that judicial nominees with the support of the majority of Senators deserve up-or-down votes on this floor. Debate the nominee for 5 hours, debate the nominee for 50 hours, vote for the nominee, vote against the nominee, confirm the nominee, reject the nominee, but in the end vote.

Senators, colleagues, let's do our duty and vote. Judicial nominees deserve an up-or-down vote.

In this debate we will discuss two of the President's judicial nominees. These outstanding nominees, Priscilla Owen and Janice Rogers Brown, had the support of a majority of Senators in the last Congress, but they were denied, they were denied up or down votes. I expect we will also discuss such consequential topics as the meaning of the Constitution and Senate rules and procedures. No doubt this will be a spirited debate, as it should be. And I also hope it will be a decisive debate. So let us begin.

In the last Congress, for the first time in history a minority of Senators obstructed the principle of a fair up-or-down vote on judicial nominees. That was unprecedented. Never in 214 years of Senate history had a judicial nominee with majority support been denied an up-or-down vote. Yet it happened—again, and again, and again, and again, and again, and again. A minority of Senators denied an up-or-down vote not just once to one nominee but 18 times on 10 individual nominees. These men and women, these nominees are among the best legal minds in America and they all would be serving on the Federal bench today. All they needed was a vote. But they were not given the courtesy of an up-or-down vote on the floor of the Senate. The minority denied them a vote and set a new precedent. The minority in the last Congress rewrote the rules of advice and consent. They unilaterally increased the threshold for confirmation from 50 votes, where it had been throughout history, to 60 votes.

Now some in the minority say they will harden the precedent and obstruct judicial nominees in this Congress. And if they are not allowed to do so, if the Senate returns to the way it worked for 214 years, they will retaliate. They will obstruct the Senate's other business. They will obstruct the people's business. They will hold back our agenda to move America forward. An energy strategy to reduce our dependence on foreign oil, held back; an end to the medical lawsuit abuse to reduce the cost of health care, held back; a simpler, fairer Tax Code to create jobs and to encourage economic growth, held back. A minority of Senators will hold America back just because a majority of Senators, a majority of people in this body want to do what most Americans of all things expect us to do, and that is to vote.

The minority should allow Senators to fulfill our constitutional responsibility of giving advice and consent and vote. And they should allow America to move forward.

The principles that endured for 214 years do not endure because they appeal to one party or the other. They endure because they serve a vital purpose. In this case, the principle of an up-or-down vote ensures the President can fulfill his constitutional duty to appoint judges.

Let me read a passage in the Constitution.

> The President shall have power, by and with the advice and consent of the Senate, to make Treaties, provided two-thirds of the Senate present concur, and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public ministers and consuls, judges of the Supreme court, and all other officers of the United States.

The Framers wrote in the Constitution that two-thirds of Senators must approve treaties, but they specifically did not require the same number of votes to confirm judicial nominees.

After much debate and compromise, the Framers concluded that the President should have power to appoint and the Senate should confirm or reject nominees by a simple majority vote. For 214 years Republican and Democratic minorities alike restrained themselves, they used restraint, they abided by the Framers' design and Senate tradition and gave nominees brought to this floor simple majority up-or-down votes. This was the practice.

Then came the last Congress. With its obstruction the minority set a new precedent—60 votes before the Senate could proceed to an up-or-down vote on a judicial nominee. For 214 years the threshold for advice and consent in the Senate was 50 votes, a majority. In the last Congress——

Mr. SCHUMER. Would my colleague yield for a question.

Mr. FRIST. Mr. President, I would like to proceed with my statement and would be happy to yield for a comment.

For 214 years the threshold for advice and consent in the Senate was 50 votes. In the last Congress the minority party radically increased that threshold to 60, and that is wrong, and we will restore the tradition.

This unprecedented threshold gave the minority a virtual veto, in effect control, over the judicial appointments of the President. The minority destroyed 214 years of Senate tradition,

defied the clear intent of the Constitution, and undermined the Democratic will of the American people. You can't get much more radical than that.

This new precedent cannot be allowed to stand in this Congress. We must restore the 214-year-old principle that every judicial nominee with majority support deserves an up-or-down vote.

Why? First, the American people elect their Senators for a reason. It is to represent them. And they expect us to do our job. The Senate is a deliberative body. We are a proudly deliberative body. But we also have certain responsibilities which include giving advice and consent on the President's judicial nominations. When a judicial nominee comes to this floor and has majority support but is denied a simple up-or-down vote, Senators are simply not doing their job. And the sad fact is we did not do our job in the last Congress. The minority's judicial obstruction has saddled President Bush with the lowest confirmation rate for appeals court nominees of any modern President. This is disgraceful. We owe it to the people we serve and to the Senate as an institution to do our job. We should vote up or down on judicial nominees.

Second, the judicial branch also has a job to do and it needs judges to do it. Right now there are 46 vacancies on the Federal bench. That includes 17 vacancies on appeals courts. But it is not just the vacancies. Qualified nominees who can fill those seats can't get up-or-down votes to be confirmed in the Senate.

Let me give you an example. Four of the 17 vacancies on Federal appeals courts are in the region that serves my home State of Tennessee—4 of the 17 vacancies. Those nominees have been waiting a combined 13 years for a simple up-or-down vote on this floor—13 years they have been waiting. Either confirm these nominees or reject the nominees but don't leave them hanging. Don't leave our courts hanging. Don't leave the country hanging. If nominees are rejected, fine, that is fair. At least rejection represents a vote. But give nominees the courtesy, the courtesy of a vote.

Third, judicial nominees deserve up-or-down votes because they deserve to be treated fairly. Let me tell you about the nominees we are about to consider, Priscilla Owen and Janice Rogers Brown. Priscilla Owen has been a Texas Supreme Court Justice for the last 10 years. She was reelected with 84 percent of the vote in 2000. Her service won praise from Members of both parties. Former Justice Raul Gonzalez, a Democrat, said:

> I found her to be apolitical, extremely bright, diligent in her work and of the highest integrity. I recommend her for confirmation without reservation.

Justice Owen has also been a leader for providing free legal service for the poor and she has worked to soften the impact of legal proceedings on children of divorcing parents.

On May 9, 2001, President Bush nominated Priscilla Owen to the Fifth Circuit Court of Appeals. To this day, more than 4 years later, even though a majority of Senators in this body support her, she has been denied an up-or-down vote. That is just plain wrong, and it is unfair. Priscilla Owen deserves a vote.

Now let me tell you about Janice Rogers Brown. She is the daughter of an Alabama sharecropper. She was educated in segregated schools and worked her way through college and law school. She went on to serve in prominent positions in California State government. Today Janice Rogers Brown is a justice on the California Supreme Court and she was retained as a justice by the people of California with 76 percent of the vote.

On July 25, 2003, President Bush nominated Justice Brown for the U.S. Court of appeals. To this day, nearly 2 years later, even though a majority of Senators support her, she has been denied an up-or-down vote on the floor of the Senate.

That is wrong. That is unfair. Janice Rogers Brown deserves a vote.

Janice Rogers Brown can get 76 percent of the vote in California, Priscilla Owen can get 84 percent of the vote in Texas, but neither can get a vote here on the floor of the Senate. Why? The minority says they are out of the mainstream. Are 76 percent of Californians and 84 percent of Texans out of the mainstream? Denying Janice Rogers Brown and Priscilla Owen a vote is what is out of the mainstream. Justice Brown and Justice Owen deserve better. They deserve to be treated fairly. They deserve the courtesy of a vote.

The consequences of this debate are not lost on any Member of this body. Soon we, 100 Senators, will decide the question at hand: Should we allow a minority of Senators to deny votes on judicial nominees who have the support of a majority of this body or should we restore the 214-year practice of voting up or down on all judicial nominees who come to this floor?

I have to believe the Senate will make the right choice. We will choose the Constitution over obstruction. We will choose principle over politics. We will choose votes over vacillation. And when we do, the Senate will be the better for it. The Senate will be, as Daniel Webster once described it:

> . . . a body to which the country looks, with confidence, for wise, moderate, patriotic, and healing counsels.

To realize this vision, we don't need to look as far back as the age of Webster or Clay or Calhoun. All we must do is look at the recent past and take inspiration from the era of Baker, Byrd, and Dole. For 70 percent of the 20th century, the same party controlled the White House and the Senate. Yet during that period, no minority ever denied a judicial nominee with majority support an up-or-down vote on this floor. Howard Baker's Republican minority didn't deny Democrat Jimmy Carter's nominees. Robert Byrd's Democratic minority did not deny Republican Ronald Reagan's nominees. Bob Dole's Republican minority did not deny Democrat Bill Clinton's nominees. These minorities showed restraint. They respected the appointments process. They practiced the fine but fragile art of political civility. Sure they disagreed with the majority at times, but they nonetheless allowed up-or-down votes to occur.

The Senate must do what is right. We must do what is fair. We must do the job we were elected to do and took an oath to do. We must give judicial nominees the up-or-down votes they deserve. Let us debate, and let Senators be heard. Let the Senate decide, and let this body rise on principle and do its duty and vote.

The PRESIDING OFFICER (Mr. DEMINT). The Senator from New York.

Mr. SCHUMER. Will my colleague from Tennessee yield for a question?

Mr. FRIST. Mr. President, I would be happy to.

Mr. SCHUMER. Mr. President, when I came on the floor, my colleague was talking about the 214 years of tradition of no filibusters. Isn't it correct that on March 8 of 2000, my friend from Tennessee voted to uphold the filibuster of Richard Paez?

Mr. FRIST. Mr. President, in response, the Paez nomination—we will come back and discuss it further. Actually, I would like to come back to the floor and discuss it. It really brings to, I believe, a point what is the issue. The issue is that we have leadership-led partisan filibusters that have obstructed not 1 nominee but 2, 3, 4, 5, 6, 7, 8, 9, 10 in a routine way. The issue is not cloture votes per se; it is the partisan leadership-led use of the cloture vote to kill, to defeat, to assassinate these nominees. That is the difference.

Cloture has been used in the past on this floor to postpone, to get more information, to ask further questions. But each and every time, the nominee, including Paez, got an up-or-down vote on the floor of the Senate where all 100 Senators could vote yes or no, confirm or reject.

Paez got an up-or-down vote. That is all that we ask on the floor, that Priscilla Owen, that Justice Brown get a simple vote, approved, disapproved, confirmed, rejected.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, the majority leader said that during the Dole years, Clinton nominees were treated fairly. Sixty-nine Clinton nominees were not even given the decency of a hearing. They never saw the light of day. We have participated in hearings. The matters have come to the floor. For my friend to say that Clinton was treated fairly under the Dole years is simply untrue.

Everyone should know that Priscilla Owen and Janice Rogers Brown have had votes right here on the Senate

floor in compliance with the rules of the Senate. They have had votes. It is as if we are retreating 50, 60 years. When you keep telling these falsehoods enough, people start believing them. The American people are not believing this. These two women about whom my friend speaks have had votes.

My friend from Massachusetts asked a question. The President's lawyer, Alberto Gonzales, and now the Attorney General of the United States and previously a member of the Texas Supreme Court, said on multiple occasions that Priscilla Owen's activism was unconscionable. Alberto Gonzales is a smart man. He knows what the word means, but in case someone doesn't, let me read what it does mean. Unconscionable: Shockingly unjust and unscrupulous. That is what the Attorney General of the United States of America says about Priscilla Owen. Mainstream? I think not. Shockingly unjust or unscrupulous—that is what Priscilla Owen is in the mind of the Attorney General of the United States.

I ask unanimous consent that my time be charged against the Democrats' time when we take that, approximately an hour from now.

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

Mr. REID. There will be a lot more said about Priscilla Owen, but I think a fairly good indication of the kind of judge she is should come from the Attorney General of the United States who says that her unconscionable activism is replete through her opinions. I assume he knows what it means. I am confident he does. He is a brilliant man. ''Shockingly unjust, unscrupulous''—those are not the words of the Senate Judiciary Committee, not some special interest group; those are the words of the Attorney General of the United States about Priscilla Owen. And she has had a vote here on the Senate floor.

Janice Rogers Brown, I am sure she has come from nothing to something. I think that is good. That is the way America should be. But before anyone starts crowing about the vote in California, she didn't have an opponent. It is a Missouri system. She had no opponent.

Her opinions, if they weren't on such serious matters, would be laughable—seriously, laughable. The California Supreme Court is made up of seven justices; six of them are Republicans. She has dissented, in the last 6 years alone, 31 different times.

Among other things, she has said: Supreme Court decisions upholding New Deal protections, like the minimum wage and the 40-hour workweek, are, in her words, ''the triumph of our own socialist revolution.'' Tell someone working at General Motors, tell someone working at Titanium Metals in Henderson, NV, that the 40-hour workweek is part of the socialist revolution. Tell somebody working on nights and weekends and holidays that they can't get time and a half, or tell somebody working at McDonald's or in a plastics factory in Fallon, NV, that they are not entitled to the minimum wage. That is Janice Rogers Brown, who has had a vote on the Senate floor.

Yesterday, I spoke about a statement the majority leader made calling the filibuster a procedural gimmick. Again, going to the dictionary, it defines gimmick as ''an ingenious new scheme or angle.'' The filibuster is not a scheme, and it certainly is not new. The filibuster is far from a procedural gimmick. It is part of the fabric of this institution we call the Senate. It was well known in colonial legislatures, before we became a country, and it is an integral part of our country's 214-year history.

The first filibuster in the Congress happened in 1790. It was used by lawmakers from Virginia and South Carolina who were trying to prevent Philadelphia from hosting the first Congress. Since then, the filibuster has been employed hundreds and hundreds and hundreds of times. It has been employed on legislative matters. It has been employed on procedural matters relating to the President's nominations for Cabinet and sub-Cabinet posts. And it has been used on judges for all those years. One scholar estimates that 20 percent of the judges nominated by Presidents have fallen by the wayside, most of them as a result of filibusters.

Senators have used the filibuster to stand up to popular Presidents, to block legislation and, yes, even, as I have stated, to stall executive nominees. The roots of the filibuster are found in the Constitution and in our own rules.

In establishing each House of Congress, Article I, section 5 of the Constitution states that:

Each House may determine the rules.

In crafting the rules of the Senate, Senators established the right to extended debate. And they formalized it with rule XXII almost 100 years ago. This rule codified the practice that Senators could debate extensively.

Under rule XXII, debate may be cut off under limited circumstances: 67 votes to end a filibuster of a motion to amend a Senate rule. That is what is being attempted here. But, no, we are not going to follow the Senate rules. No, because of the arrogance of power of this Republican administration, which controls the Supreme Court, the House, and the Senate. It is not enough that they come to the people's body and say: Let's take our chances by a fair ball game. They are going to change the rules in the middle of the ball game. Talk about people having votes—these nominees, all 10 of them, have had votes. It is unfair for the majority to continually say it is 10. Three of them either retired or withdrew. We have agreed for votes on two others. It is five people who are not in the mainstream. Janice Rogers Brown accuses senior citizens of blithely cannibalizing their grandchildren. That is in the mainstream? Priscilla Owen in the mainstream?

This administration is unwilling to play by the rules. It takes 67 votes to change a Senate rule when there is a filibuster in progress. But we are going to have CHENEY, the Vice President, come sit where the Presiding Officer is sitting now and say that it only takes 51. This great paragon of virtue is going to say it only takes a simple majority. We need 60 votes to end a filibuster against legislative business.

It doesn't take a legal scholar to know this. We have all read in the newspapers that this is a slippery slope. Once you have a rule changed—illegally—then you can do it again. There is precedent on the books. In the future, it will be changed. If we decide we don't like Bolton—the man who was chasing people down the hall throwing papers at them—to be a representative of the U.N., if we decide we want to filibuster him, we can change the rules to say he is the President's man and is entitled to a simple majority vote. You cannot do that. It may be an issue of importance to the President or the majority leader on a legislative matter, so just change the rule. The precedent will have been set. A simple majority is all that is necessary.

A conversation between Thomas Jefferson and George Washington I believe describes the Senate and our Founding Fathers' vision of this body in which we are so fortunate to serve. Jefferson asked Washington:

What is the purpose of the Senate? Washington responded with a question of his own:

Why did you pour that coffee into your saucer?

Jefferson replied:

To cool it.

To which Washington said:

Even so, we pour legislation into the senatorial saucer to cool it.

That is exactly what the filibuster does. It encourages moderation and consensus, gives voice to the minority so cooler heads may prevail. It also separates us from the House of Representatives, where the majority rules through the Speaker appointing the Rules Committee. It is very much in keeping with the spirit of the Government established by the Framers of our Constitution, limited government, separation of powers, and checks and balances. The filibuster is a critical tool in keeping the majority in check. The Presiding Officer, who is a new Member of the Senate, someday will be in the minority. That is the way it works.

This central fact has been acknowledged and even praised by Senators from both parties: The filibuster is a critical tool to keep the majority in check. In fact, another freshman Senator, my colleague from Georgia, Senator ISAKSON, recently shared a conversation he had with an Iraqi Government official. Senator ISAKSON asked this official if he was worried about the majority in Iraq overrunning the minority. The official replied:

No . . . we have the secret weapon called the ''filibuster.''

In recalling the conversation, Senator ISAKSON remarked:

If there ever were a reason for optimism . . . it is one of [the Iraq] minority leaders proudly stating one of the pillars and principles of our Government as the way they would ensure that the majority never overran the minority.

They were comparing what they were going to experience in Iraq to what we now have—the filibuster. Of course, he was right.

I spoke yesterday about Senator Holt and his 1939 filibuster to protect workers' wages and hours. There are also recent examples of the filibuster achieving good.

In 1985, Senators from rural States—even though there were few of them—used the filibuster to force Congress to address a major crisis in which thousands of farmers were on the brink of bankruptcy.

In 1995, 10 years later, the filibuster was used by Senators to protect the rights of workers to a fair wage and a safe workplace.

I cannot stand here and say the filibuster has always been used for positive purposes. It has not. Just as it has been used to bring about social change, it was also used to stall progress that this country needed to make. It is often shown that the filibuster was used against civil rights legislation. But civil rights legislation passed. Civil rights advocates met the burden. It is noteworthy that today, as I speak, the Congressional Black Caucus is opposed to the nuclear option—unanimously opposed to it.

For further analysis, let's look at Robert Caro. He is a noted historian and Pulitzer Prize winner, and he said this at a meeting I attended. He spoke about the history of the filibuster. He made a point about its legacy that was important. He noted that when legislation is supported by the majority of Americans, it eventually overcomes a filibuster's delay, as a public protest far outweighs any Senator's appetite to filibuster.

But when legislation only has the support of the minority, the filibuster slows the legislation—prevents a Senator from ramming it through, and gives the American people enough time to join the opposition.

Mr. President, the right to extended debate is never more important than when one party controls Congress and the White House. In these cases, the filibuster serves as a check on power and preserves our limited government.

Right now, the only check on President Bush is the Democrats' ability to voice their concern in this body, the Senate. If Republicans roll back our rights in this Chamber, there will be no check on their power. The radical rightwing will be free to pursue any agenda they want, and not just in judges. Their power will be unchecked on Supreme Court nominees, the President's nominees in general, and legislation such as Social Security privatization.

Of course, the President would like the power to name anybody he wants to lifetime seats on the Supreme Court and other Federal courts. It is interesting to note that the statistics used by the majority leader do not take into consideration the nominees who we have been willing to clear. Sure, you get statistics like that when they will not bring them forward.

Basically, that is why the White House has been aggressively lobbying Senate Republicans to change Senate rules in a way that would hand dangerous new powers over to the President over two separate branches—the Congress and the judiciary—and he and his people are lobbying the Senate to break the rules to change the rules. I am sorry to say this is part of a disturbing pattern of behavior by this White House and the Republicans in Washington, especially the leadership.

From DICK CHENEY'S fight to slam the doors of the White House so the American people are kept in the dark about energy policy while the White House has the lights turned on—between the public interests or the corporate interests, it is always the corporate interests—to the President's refusal to cooperate with the 9/11 Commission, to Senate Republicans' attempt to destroy the last check in Washington on Republican power, to the House majority's quest to silence the minority in the House, Republicans have sought to destroy the balance of power in our Government by grabbing power for the Presidency, silencing the minority, and weakening our democracy.

America does not work that way. The radical rightwing should not be allowed to dictate to the President and to the Republican Senate leaders, as they are trying to do.

For 200 years, we have had the right to extended debate. It is not some ''procedural gimmick.'' It is within the vision of the Founding Fathers of this country. They did it; we didn't do it. They established a government so that no one person and no single party could have total control.

Some in this Chamber want to throw out 214 years of Senate history in the quest for absolute power. They want to do away with Mr. Smith, as depicted in that great movie, being able to come to Washington. They want to do away with the filibuster. They think they are wiser than our Founding Fathers. I doubt that is true.

Mr. President, will the Senator notify us as to how much time the Republicans have in the first wave of statements and how much time the Democrats have when they are allowed to make statements?

The PRESIDING OFFICER (Mr. GRAHAM). The Republicans have 42 minutes and the Democrats have 41 minutes.

Mr. REID. I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Parliamentary inquiry: It was my understanding that I was to have 1 hour because a good bit of time has been consumed by dialog and questions earlier today.

Mr. REID. Mr. President, I will respond, if I could. As indicated, that is why I asked the question. You have 42 minutes and we have 41. We need to stick to that. I would have no objection to your using the full time and deducting 15 minutes, or whatever it is, from the next hour that you have. That would be appropriate.

Mr. SPECTER. Mr. President, that would be acceptable to me. I am the manager, in my capacity as chairman of the Judiciary Committee, on Priscilla Owen. We would accommodate to have an equal amount of time allotted to the Democrats. It may be, Mr. President, that I will not use the full hour.

Mr. REID. I simply say, if the Senator needs the full hour, I ask that it be deducted so we can kind of keep on track here. We will use 42 minutes our first go-around. We ask that you deduct whatever time you use off of the second time that you are to be recognized.

Mr. FRIST. Mr. President, I ask the distinguished chairman this. We have 41 minutes on our side and 42 on the other side. If you don't complete your remarks in 41 minutes, then we will agree to yield an equivalent amount of time in the next hour, to deduct that equal amount of time in the next hour from both sides.

Mr. REID. We don't need the time on our side.

Mr. LEAHY. Mr. President, I think the suggestion the Senator from Pennsylvania made was a good one. Whatever time he uses beyond the 40 minutes, we get an equal amount of time here. That way we would also know where we stand. The distinguished Senator from Nevada—

Mr. REID. Then following the two managers making their statements, thereafter, we go to an hourly timeframe and we have to, I think—it would be good for the managers not to be extending the time because it makes it impossible when you have people scheduled to come over here. I agree to this under the extraordinary circumstances also of the two managers of this nomination—that they be given a full hour. Following that, the Republicans would be recognized for an hour, and the Democrats for an hour, and we go on that basis.

Mr. President, I have somebody here complaining that we have already set the schedule. We are entitled to the time by the rules.

Mr. FRIST. Mr. President, I ask if the chairman would try to keep his remarks within the time limit agreed to, about 42 minutes, and we can stay on schedule. I ask the Democratic leader, would that be acceptable? I ask unanimous consent that we, as agreed earlier, have 42 minutes on our side and 41 minutes on the other side.

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

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, as we begin consideration of the nomination of Texas Supreme Court Justice Priscilla Owen for the U.S. Court of Appeals for the Fifth Circuit, the Senate Chamber is filled with anticipation that we may be embarking on a historic debate which could redefine minority rights in the Senate and impact our fundamental constitutional doctrine of separation of powers.

As we all know, if 60 votes are not obtained to invoke cloture to cut off debate on this nominee and three others to be called up sequentially for confirmation votes, a ruling is likely to be sought to change the required vote from 60 to 51, unless a compromise can first be reached.

This controversy did not arise, in my judgment, because Democrats concluded that Miguel Estrada and nine other President Bush circuit court nominees were unqualified, so they should be filibustered, but rather because it was payback time for Republican treatment of President Clinton's nominees.

While there have been a few scattered cloture votes in the history of the Senate, it is totally unprecedented for a party to engage in such a systematic pattern of filibusters. In almost 25 years on the Judiciary Committee, I have seen circuit court nominees confirmed routinely where their qualifications were no better than those under fire today. These filibusters are the combination of a power struggle between Republicans and Democrats as to which party can control the judicial selection process through partisan maneuvering.

As a starting point, it is important to acknowledge that both sides—Democrats and Republicans—have been at fault. Both claim they are the victims and that their party's nominees have been treated worse than the other's. Both sides cite endless statistics. I have heard so many numbers spun so many different ways that my head is spinning. I think even Benjamin Disraeli, the man who coined the phrase, there are ''lies, damn lies, and statistics,'' would be amazed at the creativity employed by both sides in contriving numbers in this debate.

In 1987, upon gaining control of the Senate and the Judiciary Committee, the Democrats denied hearings to seven of President Reagan's circuit court nominees and denied floor votes for two additional circuit court nominees. As a result, the confirmation for Reagan circuit nominees fell from 89 percent prior to the Democratic takeover to 65 percent afterwards.

While the confirmation rate decreased, the length of time it took to confirm judges increased. From the Carter administration through the first 6 years of the Reagan administration, the confirmation process for both district and circuit court seats consistently hovered at approximately 50 days. For President Reagan's final Congress, however, the number doubled to an average of 120 days for these nominees to be confirmed. The pattern of delay and denial continued for 4 years of President George H.W. Bush's administration. President Bush's lower court nominees waited on average 100 days to be confirmed, which is about twice as long as had historically been the case. The Democrats also denied hearings for more nominees.

President Carter had 10 nominees who did not receive hearings. For President Reagan, the number was 30. In the Bush senior administration, the number jumped to 58.

When we Republicans won the 1994 election and gained the Senate majority, we exacerbated the pattern of delay and blocking of nominations. Over the course of President Clinton's Presidency, the average number of days for the Senate to confirm judicial nominees increased even further to 192 days for district court nominees and 262 days for circuit court nominees. Through blue slips and holds, 70 of President Clinton's nominees were blocked.

During that time, I urged my Republican colleagues on the Judiciary Committee to confirm well-qualified Democrats. For example, I broke rank with my colleagues on the Republican side to speak and vote in favor of Marsha Berzon and Richard Paez.

After the 2002 elections, with control of the Senate returning to Republicans, the Democrats resorted to the filibuster on 10 circuit court nominations, which was the most extensive use of that tactic, really unprecedented, in the Nation's history.

The filibuster started with Miguel Estrada, one of the most competent and talented appellate lawyers in the country. The Democrats followed with filibusters against nine other circuit court nominees. During the 108th Congress, there were 20 cloture motions on 10 nominations, and all 20 failed.

To this unprecedented move, President Bush responded by making for the first time in the Nation's history two recess appointments of nominees who had been successfully filibustered by the Democrats. That impasse was broken when President Bush agreed to refrain from further recess appointments.

Against this background of bitter and angry recriminations, with each party serially trumpeting the other party to get even or really to dominate, the Senate now faces dual threats. One called the filibuster and the other the constitutional or nuclear option which rivals the U.S.-U.S.S.R. confrontation of mutual assured destruction. Both situations are accurately described by the acronym, MAD.

We Republicans are threatening to employ the constitutional or nuclear option to require only a majority vote to end judicial filibusters. The Democrats are threatening to retaliate by stopping the Senate agenda on all matters except national security and homeland defense. Each ascribes to the other the responsibility for blowing up the place.

This gridlock occurs at a time when we expect a U.S. Supreme Court vacancy within the next few months. If a filibuster would leave an eight-person Court, we could expect many 4-to-4 votes since the Court now decides cases with 5-to-4 votes. A Supreme Court tie vote would render the Court dysfunctional leaving in effect the circuit court decision with many splits among the circuits, so the rule of law would be suspended on many major issues.

Regardless of which side wins the vote on the constitutional or nuclear option, there would be serious consequences. If the option succeeds, first, the rights of the Senate's minority would be significantly diminished, and, second, reducing the cloture vote on nominees would inevitably and ultimately invite a similar attack on cloture on the legislative calendar which would change the nature of the Senate tremendously.

On the other hand, if the option fails, there are undesirable consequences. Then, any Senate minority party of 41 or more would be emboldened to institutionally and permanently revise the balance of power between the President's constitutional power of nominations and the Senate's constitutional authority for confirmation.

Second, I think it would embolden the Democrats to use the filibuster on other Presidential nominations, such as John Bolton whose nomination is pending before the Senate for ambassador to the U.N.

After a Democratic member of the Foreign Relations Committee put a hold on the Bolton nomination, the ranking member was quoted on a Sunday talk show as saying:

It's too premature to talk about filibustering Mr. Bolton.

Therefore, it is obvious that a filibuster on Bolton is not ruled out.

A vote on the constitutional or nuclear option could affect an imminent nomination or nominations to the Supreme Court. If a vote on the option failed, it would be a reaffirmation of the Democratic minority's power to filibuster any judicial nominee without necessarily showing substantial cause or extraordinary circumstances. If the option passed, it could give the President greater leverage, reducing his concern that his nomination could be thwarted.

Historically—and I believe this is of tremendous importance, Mr. President—historically, the constitutional separation of powers has worked best when there was a little play in the so-called joints. When both sides are unsure of the outcome, the result is more likely to be in the middle rather than at either extreme.

On the current state of the record, in my opinion, the outcome of a prospective vote on the constitutional or nuclear option is uncertain. I have not rendered a decision because I believe I can be most helpful on brokering a compromise by remaining silent. When neither side is confident of success—

and I think that is the case today—the chances for compromise are far greater.

As I see it, the national interest would be served by structuring a compromise to return to the status quo before 1987. When Senator HARRY REID, the Democratic leader, says his party would abandon the filibuster unless there are ''extraordinary circumstances,'' that escape clause should be narrowly defined and codified in a Senate rule instead of an agreement between the parties' leaders.

Even with a narrowly defined definition of what constitutes extraordinary circumstances, the final decision would necessarily reside with the individual Senators in the case of any perceived ambiguity. If we Republicans then concluded that there was not a good-faith exercise of extraordinary circumstances, we could regard the agreement as vitiated and feel free to resort to the constitutional or nuclear option.

To achieve a compromise, Senators must take the initiative without being unduly influenced by the far left or far right. It has not escaped attention that the so-called groups are using this controversy as major fundraising vehicles. I continue to be personally highly offended by the commercials, from Gregory Peck in 1987 to the ones broadcast this weekend in Pennsylvania, seeking to influence my own vote. Believe me, they are counterproductive or ineffectual at best and certainly insulting.

Senators, with our leaders, must take charge to craft a way out. The fact is, all or almost all of the Senators want to avoid the pending crisis. I have had many conversations with my Democratic colleagues about the filibuster of judicial nominees. Many of them have told me they do not personally believe it is a good idea to filibuster President Bush's judicial nominees in such a pattern. They believe this unprecedented use of a filibuster does damage to this institution and to the prerogatives of the President. Yet despite their concerns, they have given in to party loyalty and voted repeatedly to filibuster Federal judges in the last Congress.

Likewise, there are many Republicans in this body who question the wisdom of the constitutional or nuclear option. They recognize that such a step would be a serious blow to the rights of the minority that have always distinguished this body from the House of Representatives. Knowing that the Senate is a body that depends upon collegiality and compromise to pass even the smallest resolution, many of my Republican colleagues worry that the rule change would impair the ability of the institution to function.

I have repeatedly heard colleagues on both sides of the aisle say it is a matter of saving face. But as yet, we have not found a formula to do so. I suggest the way to work through the current impasse is to bring to the floor circuit court nominees one by one for up-or-down votes with both leaders explicitly releasing their Members from party-line voting.

There are at least five, and perhaps as many as seven, pending circuit court nominees who could be confirmed or at least voted up or down. If the straitjacket of party loyalty were removed, even more might be confirmed.

In moving in the Judiciary Committee to select nominees for floor action shortly after becoming chairman earlier this year, I first selected William Myers because two Democrats had voted to end debate in the 108th Congress and one candidate for the Senate in 2004 since elected made a campaign statement that he would vote to end the Myers filibuster and confirm him. Adding those 3 votes to 55 Republicans, we were within striking distance to reach 60 or more.

I carefully examined Myers' record. Noting that he had opposition from some groups such as Friends of the Earth and the Sierra Club, it was my conclusion that nonetheless his environmental record was satisfactory, or at least not a disqualifier, as detailed in my statement at the Judiciary Committee executive session on March 17.

To be sure, critics could pick at his record, as they could at any Senator's record, but overall, in my judgment, Mr. Myers was worthy of confirmation.

I then set out to solicit views on Myers, including the ranchers, loggers, miners, and farmers. In those quarters, I found significant enthusiasm for his confirmation. I then urged them to have their members contact Senators who might be swing votes. I then followed up with personal talks to many of those Senators and found several prospects to vote for cloture.

Then the screws of party loyalty were applied and tightened, and the prospects for obtaining the additional votes to secure 60 for cloture—the prospects vanished. I am confident that if the party pressure had not been applied, the Myers filibuster would have ended, and he would have been confirmed. That result could still be obtained if the straitjacket of party loyalty were removed on the Myers nomination.

Informally, but authoritatively, I have been told that the Democrats will not filibuster Thomas Griffith or Judge Terrence Boyle. Griffith is on the Senate calendar awaiting floor action and Boyle is on the agenda for Judiciary Committee action. Both could be confirmed this month.

There are no objections to three nominations from the State of Michigan for the Sixth Circuit, Richard Griffin, David McKeague and Susan Neilsen, but their confirmations are held up because of objections to a fourth nominee. I urge my Democratic colleagues to confirm these three uncontested Michigan Sixth Circuit nominees and fight out the fourth vacancy and the Michigan District Court vacancies on another day. The Michigan Senators do make a valid point on the need for consultation on the other Michigan vacancies, and I believe that can be accommodated.

In the exchange of offers and counteroffers between Senator FRIST and Senator REID, Democrats have made an offer to avoid a vote—on the nuclear option—by confirming one or perhaps two of the four filibustered judges: Priscilla Owen, Janice Rogers Brown, William H. Pryor, or William Myers, with the choice to be selected by Republicans. An offer to confirm any one or two of four nominees is an explicit concession that each is qualified for the court and that they are being held hostage as pawns in a convoluted chess game which has spiraled out of control.

If the Democrats really believe each one is unqualified, a deal for confirmation for any one of them is repugnant to the basic Democratic principle of individual fair and equitable treatment and violates Senators' oaths on the constitutional confirmation process. Such a deal on confirmations would only confirm public cynicism about what goes on in Washington behind closed doors.

Instead, let the Senate consider each of the four without the constraints of party-line voting. Let both leaders release their caucuses from the straitjacket of party-line voting and even encourage Members to vote their consciences on these issues of great national importance. Let us revert to the tried-and-tested method of evaluating each nominee individually.

In a ''press availability'' on March 10, Senator REID referred to the nuclear option and said:

> If it does come to a vote I ask Senator Frist to allow his Republican colleagues to follow their conscience. Senator Specter recently said that Senators should not be bound by Senate loyalty—they should be bound by Senate loyalty rather than by party loyalty on a question of this magnitude. I agree.

But Senator REID did not make any reference to my urging him to have the Democrats reject the party-line straitjacket on filibustering. If both parties were to vote their consciences without regard to the party line, I believe that the filibusters would disappear in the context of the current constitutional crisis and many, if not most, Republicans who do not like the constitutional/nuclear option would abandon it.

The fact is that any harm to the Republic, at worst by confirming all of the pending circuit court nominees, is infinitesimal compared to the harm to the Senate whichever way the vote would turn out on the nuclear/constitutional option. None of these circuit judges could make new law because all are bound and each agreed on the record to follow U.S. Supreme Court decisions. While it is frequently argued that circuit court opinions are, in many cases, final because the Supreme Court grants certiorari in so few cases, circuit courts sit in panels of three so that no one of these nominees could

unilaterally render an egregious decision, since at least one other circuit judge on the panel must concur.

If a situation does arise where a panel of three circuit judges makes an egregious decision, it is subject to correction by the court en banc, and then the case may always be reviewed by the Supreme Court if it is really egregious.

While it would be naive to deny that the quid pro quo or log rolling are not frequent congressional practices, these approaches are not the best way to formulate public policy or make governmental decisions. The Senate has a roadmap to avoid the nuclear winter in a principled way. Five of the controversial judges can be brought up for up-or-down votes on this state of the record, and the others are entitled to individualized treatment on the filibuster issue. It may be that the opponents of one or more of these judges may persuade a majority of Senators, including some Republican Senators, that confirmation should be rejected. A group of Republican moderates has, with some frequency, joined Democrats to defeat a party-line vote. The President has been explicit in seeking only up-or-down votes as opposed to commitments on confirmation.

The Senate has arrived at this confrontation by exacerbation, as each side ratcheted up the ante in delaying and denying confirmation to the other party's Presidential nominees. The policy of conciliation and consultation could diffuse the situation. One good turn deserves another. If one side realistically and sincerely takes the high ground, there will be tremendous pressure on the other side to follow suit. So far, offers by both sides have been public relations maneuvers to appear reasonable, to avoid blame and place it elsewhere.

Meanwhile, the far left and the far right are urging each side to the shun compromise. One side shouts ''pull the trigger.'' The other side retorts, ''filibuster forever.'' Their approach would lead to the extreme judges at each end of the political spectrum as control of the Senate inevitably shifts from one party to another.

Late yesterday afternoon, a group of so-called moderate Senators met with the leaders, and one idea which came from one of the Democratic Senators was to consider the five nominees—Owen, Brown, Pryor, and Myers, along with Judge Saad of Michigan—and then to either have three confirmed, two rejected; or two confirmed and three rejected.

The suggestion was then made that if all of the nominees could get a floor vote, that there might be a whip check to determine whether two might not pass on a rollcall vote, which is the way the Senate functions. That consideration I think is worth further exploration.

A well-known story is told about Benjamin Franklin. Upon exiting the Constitutional Convention in Philadelphia, he was approached by a group of citizens asking what sort of a government the constitutional delegates had created. Franklin responded, ''A Republic, if you can keep it.''

In this brief response, Franklin captured the essential fragility of our great democracy. Although enshrined in a written Constitution and housed in granite buildings, our government is utterly dependent upon something far less permanent, the wisdom of its leaders. Our Founding Fathers gave us a great treasure, but like any inheritance, we pass it on to successive generations only if our generation does not squander it. If we seek to emulate the vision and restraint of Franklin and the Founding Fathers, we can hand down to our children and grandchildren the Republic they deserve, but if we turn our backs on their example, we will debase and cheapen what they have given us.

At this critical juncture in the history of the Senate, let us tread carefully, choose wisely, and prove ourselves worthy of our great inheritance. Since the United States and the Union of Soviet Socialist Republics avoided a nuclear confrontation in the Cold War by concessions and confidence-building measures, why should not Senators do the same by crossing the aisle in the spirit of compromise?

Mr. President, I now turn to the specifics on the nomination of Texas Supreme Court Justice Priscilla Owen. She comes to the floor of the Senate for consideration with an outstanding academic record. She attended the University of Texas in 1972 and 1973. She graduated from Baylor University in 1975, cum laude, from the Baylor University School of Law in 1977, cum laude, evidencing an excellent academic record. She has a fine professional record with a practice of Sheehy, Lovelace and Mayfield, where she was a law clerk in 1976 and 1977, and then an associate and partner at Andrews, Kurth, Campbell and Jones from 1978 to 1994. From 1995 to the present, she has been a justice on the Supreme Court of Texas.

She was at the top of her law school class; in 5 years, completed law school and undergraduate, contrasted with the usual 7. She had the highest score on the statewide bar exam and was reelected with 84 percent of the vote and endorsement of every major newspaper.

The American Bar Association has unanimously rated her well qualified.

In the course of her work on the Texas Supreme Court, she has handed down many decisions which have demonstrated real analytical and real legal scholarship. She has been criticized on some of the decisions which she has rendered on the so-called judicial bypass.

Under the a Texas law, constitutional under U.S. Supreme Court precedent, a minor may have an abortion if there is notice to at least one parent.

Justice Owen has been criticized, with a very broad brush, for being hostile to Roe v. Wade, which on the record is simply not true.

In the case of Jane Doe (I), in the year 2000, she voted with the majority but filed a concurring opinion. The language she used was that the legislature intended for the minors to learn about arguments ''surrounding abortion'', and not ''against'' abortion. So, in handing down this decision, she was not urging that minors making their decision on obtaining an abortion hear the arguments against abortion, but rather ''surrounding,'' which would obviously state both sides.

On cases where she has denied judicial bypass, they have been in the context of sound judicial principle, where she has refused to overturn the findings of the lower court judge who had access to the witnesses and could see and hear exactly what was going on and had a much better basis for fact-finding.

Illustrative of this position is the case captioned In re Doe (II), a 2000 Supreme Court of Texas decision where the court reversed and ordered a judicial bypass.

It is true Justice Owen was one of three justices who dissented, but she did so because she concluded that the majority improperly reweighed the evidence and usurped the rule of the trial judge. As a sound legal principle, the trial judge is entitled to deference on the findings of fact because the trial judge, rather than the appellate court, has heard the witnesses.

There are other notable cases where Justice Owen has handed down thoughtful, informed, scholarly opinions. They have not pleased everyone, but that is what judges do. One case is particularly worthy of note, a case captioned Operation Rescue National v. Planned Parenthood of Houston and Southwest Texas. In this case, doctors and abortion clinics brought action for civil conspiracy, tortious interference, and invasion of privacy and property rights against anti-abortion groups and protesters, seeking injunctive relief and damages. The trial court entered a $1.2 million judgment on jury verdict and a permanent injunction creating buffer zones around certain clinics and homes in which protesters could not protest.

The issue was whether the jury verdict was based on a proper jury charge and whether the injunction infringed on the protesters' freedoms of expression. Justice Owen joined the 7 to 2 majority decision which affirmed the jury verdict was proper under Texas law.

The decision also upheld the injunction while modifying it in certain respects. Under the majority's opinion, a limited number of peaceful protesters could approach patients and act as sidewalk counselors who would seek to discuss the issues surrounding abortions with patients, as long as such discussions were ceased upon request of the patient. The majority concluded this type of protesting would not endanger patients' health and safety.

Following Justice Owen's nomination to the Fifth Circuit, pro-choice groups criticized the ruling as hostile to abortion rights. But at the time the ruling was handed down, Planned Parenthood of Houston and Southwest Texas hailed it as ''a complete and total victory.''

This case is illustrative of some of the difficult issues involved in that kind of a factual situation. In enjoining this kind of harassing practice, subject to certain limitations, and upholding a verdict in excess of $1 million, Justice Owen exercised judicial discretion and sensibility in arriving at the decision.

In the case of Ft. Worth Osteopathic Hospital, Inc. v. Reese, Justice Owen handed down decisions demonstrating respect for Roe v. Wade under a factual situation where plaintiffs brought wrongful death and survival action on behalf of a viable fetus who died in utero against the treating physicians and the hospital and also brought medical negligence claims in their individual capacities.

Justice Owen joined the Texas Supreme Court's 8-to-1 decision holding that the Texas wrongful death and survival statutes do not violate the equal protection clause by prohibiting parents of a stillborn fetus from bringing those claims. Justice Owen, in joining in that decision, was explicitly following the precedent of Roe v. Wade.

There is a series of cases which illustrates judicial temperament, judicial demeanor, a sound judicial philosophy, which I ask unanimous consent to have printed in the RECORD: First, *Chilkewitz* v. *Hyson*, 22 S.W.3d 825 (Tex. 1999); second, *In Re D.A.S.*, 973 S.W.2d 296 (Tex. 1998); third, *Abrams* v. *Jones* 35 S.W.3d 620 (Tex. 2000); fourth, *Quick* v. *City of Austin*, 7 S.W.3d 109 (Tex. 1999); fifth, *Hernandez* v. *Tokai Corporation*, 2 S.W.3d 251 (Tex. 1999); sixth, *NME Hospitals* v. *Rennels*, 994 S.W.2d 142 (Tex. 1999); next, *Kroger Company* v. *Keng*, 23 S.W.3d 347 (Tex. 2000); and, *Crown Life Insurance Company* v. *Casteel*, 22 S.W.3d 378 (Tex. 2000), all of which show Justice Owen to be a very sound jurist and worthy of confirmation to the Court of Appeals for the Fifth Circuit.

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

CHILKEWITZ V. HYSON

22 S.W.3D 825 (TEX. 1999)

Facts: Plaintiff brought suit against defendant doctor for medical practice. After the statute of limitations ran, the defendant moved for summary judgment on the basis that he was a professional association and because the plaintiff had not claimed the professional association as a defendant, the statute of limitations barred suit against him.

Issue: Whether the Texas Rules of Civil Procedure permitted a suit against a party's assumed name, in this case the doctor, if the plaintiff did not name the defendant's association as a defendant in the suit.

Outcome: A unanimous Texas Supreme Court, in an opinion written by Justice Owen, held that the rules of civil procedure permitted suit against a party in its assumed name. The court also held that there was evidence in this case that the defendant's professional association conducted business in the name of the individual doctor and the plaintiff's naming of the defendant's assumed name in the complaint was sufficient.

Note: Justice Owen stood up against formalism and allowed a Plaintiff to bring suit for medical malpractice.

IN RE D.A.S

973 S.W.2D 296 (TEX. 1998)

Facts: The defendants, two juveniles, challenged a ruling that held the Anders procedure, which requires defense counsel, if they find a case to be wholly frivolous, to request permission to withdraw and submit a briefing to the court with anything in the record that might arguably support the defendant's appeal, was inapplicable in juvenile cases. The defendants requested mandamus relief.

Procedural History: The Court of Appeals rejected the challenge and refused to allow the defense counsel to withdraw.

Issue: Whether the Anders procedure applies to juvenile cases.

Outcome: Justice Owen, writing for the 6–2 majority, held that the Anders procedure applied to juvenile proceedings because Anders protected the juveniles' statutory right to counsel on appeal. Justice Owen found that extending Anders to juvenile appeals properly balanced a juvenile's statutory right to counsel against the appointed counsels' obligation not to prosecute frivolous appeals. She also determined that Anders provided the juveniles with more protection because both the attorney and the court of appeals would have to determine whether there were any arguable issues on appeal.

Dissent: The dissent argued that mandamus relief was inappropriate. Judicial review through petition for review from the court of appeals' final decision was an adequate remedy for the juvenile defendants.

ABRAMS V. JONES

35 S.W.3D 620 (TEX. 2000)

Facts: In the midst of an acrimonious divorce, the plaintiff father sued his daughter's psychologist for access to his minor daughter's medical records.

Issue: Whether a parent has judicial recourse under Tex. Health & Safety Code Ann. § 611.0045(e) when a treating psychologist refuses to allow another psychologist, selected by the challenging parent, access to the minor-child's medical records.

Outcome: Justice Owen, writing for the 7–2 majority, reversed and denied access of the medical records to the father. Justice Owen held that the Texas legislature imposed some limits on the parent's right of access to confidential mental health records. Justice Owen found that the psychologist had presented sufficient evidence that the child would be harmed if the records were released to the father.

QUICK V. CITY OF AUSTIN

7 S.W.3D 109 (TEX. 1999)

Facts: Landowners challenged the City of Austin's Save Our Springs Ordinance, a water pollution control measure enacted in 1992. The landowners contested the ordinance because it was arbitrary, unreasonable, and inefficient. They also asserted that the Ordinance was void because it was enacted without a public hearing, it impermissibly regulated the number, use, and size of buildings in the City's extraterritorial jurisdiction, and the Texas Natural Resource Conservation Commission had not approved it.

Issue: Whether the City of Austin's ''Save Our Springs'' Ordinance was a valid exercise of city authority.

Outcome: Justice Owen joined the 5–4 majority, which held that the Ordinance was a valid legislative act that did not need to be approved by the Texas Natural Resource Conservation Commission to become effective and enforceable. While the Ordinance clearly affected land use, its methods were nationally recognized limitations and thus furthered the stated goal of protecting and preserving a clean water supply. The Court found that the Legislature did not limit the city's authority to set the ordinance's effective date; therefore, Austin was not required to obtain permission of the Commission before enacting the ordinance.

HERNANDEZ V. TOKAI CORP.

2 S.W.3D 251 (TEX. 1999)

Facts: Minor child misused a butane lighter and was injured. Suit brought against manufacturer and distributor of the lighters. The trial court granted summary judgment for the lighter manufacturer. On appeal, the 5th Circuit Court of Appeals submitted a certified question as to whether the action could proceed under Texas law.

Issue: Whether a defective-design products liability claim against the product's manufacturer may proceed if the product was intended to be used only by adults, if the risk that children might misuse the product was obvious to the product's manufacturer and to its intended users, and if a safer alternative design was available.

Outcome: The 5th Circuit Court of Appeals submitted a certified question as to whether the action could proceed under Texas law. Justice Owen joined the unanimous opinion of the court, holding that a defective-design claim may proceed for an injury caused by a product that did not have a child-resistant mechanism that would have prevented or substantially reduced the risk of injury from a child's foreseeable misuse if, with reference to the product's intended users, the design defect made the product unreasonably dangerous, a safer alternative design was available, and the defect was the cause of the injury.

Note: Justice Owen held that a manufacturer of cigarette lighters has a duty to make certain that its products are child resistant—even though the lighters were only meant to be used by adults.

NME HOSPITALS, INC. V. MARGARET A. RENNELS, M.D.,

994 S.W.2D 142 (TEX. 1999)

Facts: The plaintiff doctor sued NME Hospitals for unlawful employment discrimination under the Act and conspiracy to violate the Act. The defendant hospital filed for summary judgment because it was not her direct employer under the Texas statute.

Procedural History: The lower trial court granted summary judgment for the hospital. The appeals court reversed.

Issue: Whether a plaintiff may sue someone other than her own employer for an unlawful employment practice under Texas Labor Code §21.055, the Texas Commission on Human Rights Act

Outcome: In a case of first impression, the Texas Supreme Court unanimously held that to have standing under the Texas statute the plaintiff must show: (1) that the defendant is an employer within the statutory definition of the Act; (2) that some sort of employment relationship exists between the plaintiff and a third party; and (3) that the defendant controlled access to the plaintiff's employment opportunities and denied or interfered with that access based on unlawful criteria. Finding that the plaintiff met these criteria, the Court held that the plaintiff had standing to sue the client of her employer for unlawful employment practice.

KROGER CO. V. KENG

23 S.W.3D 347 (TEX. 2000)

Facts: Plaintiff brought suit against the defendant grocery store, a workers' compensation nonsubscriber, alleging that the

store's negligence proximately caused her to suffer injuries during an on the job accident. Kroger denied the allegations and responded that plaintiff's conduct either caused or contributed to the incident, entitling Kroger to protection under the comparative responsibility statute.

Issue: Whether a non-subscriber to workers' compensation insurance is entitled to a jury question regarding its employee's alleged comparative responsibility for his or her injuries.

Outcome: Justice Owen joined the Texas Supreme Court's unanimous opinion, affirming the court of appeals' decision and holding that a non-subscribing employer was not entitled to a jury question on its employee's alleged comparative responsibility. The court relied on the legislative intent of Texas' comparative responsibility statute and deference to the legislature in reconciling a Texas Court of Appeals' circuit split.

Note: Justice Owen ruled for the plaintiff and a plaintiff's right not to have her workers compensation claims reduced for comparative negligence.

CROWN LIFE INSURANCE CO. V. CASTEEL

22 S.W.3D 378 (TEX. 2000)

Facts: Casteel sold insurance policies as an independent agent of Crown Life Insurance Company. One of the policies sold by Casteel led to a lawsuit by policyholders against Casteel and Crown. In that lawsuit, Casteel filed a cross-claim against Crown for deceptive trade practices. The trial court rendered judgment that Casteel did not have standing to bring suit against Crown, holding that Casteel was neither a ''person'' as defined under Article 21.21 of the Texas Insurance Code, nor a ''consumer'' under the Deceptive Trade Practices Act (DTPA), and therefore lacked standing to bring suit under those statutes. The court of appeals held that Casteel was a ''person'' with standing to sue Crown under Article 21.21, but that Casteel did not have standing to sue under the incorporated DTPA provisions because he was not a ''consumer.''

Issue: Whether an insurance agent is a ''person'' with standing to sue an insurance company under Article 21.21 and whether an insurance agent must also be a ''consumer'' to have standing to recover under Article 21.21 for incorporated DTPA violations.

Outcome: Justice Owen joined a unanimous Texas Supreme Court in holding that an insurance agent does not have standing to sue as ''consumer'' for violations of the DTPA. However, the court also held that despite not having standing to bring suit under the DPTA, an insurance agent is a ''person'' with standing to sue an insurance company for violations of Article 21.21 of the Insurance Code.

Note: Illustrates Justice Owen's willingness to rule against the insurance and allow the plaintiff to bring suit.

Mr. SPECTER. In conclusion, Mr. President, I know my time is nearly up. I had a chance to talk at some length with Justice Priscilla Owen. She is an intelligent, articulate lawyer who has had very substantial experience on the Supreme Court of her State for some 10 years. She has been endorsed by 84 percent of the electorate of Texas. She has recognized the Supreme Court decision in Roe v. Wade and is bound to apply it and has recognized its principles and is not at all hostile to Roe v. Wade.

In the 24 years and 4 months I have served on the Judiciary Committee, I have voted on many, many, many circuit judges. If Priscilla Owen had come before this Senate in any other context for consideration, except get-even time in response to the way President Clinton's nominees were treated, with some 70 rejected, in a spiraling context which started the last 2 years of President Reagan's administration, had she come here at any other time, she would have moved through this Senate on a voice vote or been unanimously confirmed.

I suggest a careful reading of her record and a careful analysis, aside from the tumult and turmoil of the Senate today, supports her confirmation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, how much time is available to the Senator from Vermont?

The PRESIDING OFFICER. There is 39 minutes.

Mr. LEAHY. I thank the Presiding Officer.

It is my understanding the distinguished Senator from Pennsylvania did not use extra time?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. Mr. President, I recommend all the Republicans and Democrats listen to the speech given by the distinguished Senator from Pennsylvania. I said to him earlier this morning if it were he and I who were allowed to work this out, we could work it out probably in less than an hour. I said the same thing to the President and to our two leaders.

Hopefully everyone understands the significance of this debate and what the Republican leader, the majority leader is doing. He has decided to trigger the nuclear option. That is what it is. This nuclear option is something any Senate majority could have done any time over the past 50 years. It boils down to the Republican Senate leader declaring the Senate rules governing filibusters are out of order.

The nonpartisan Senate Parliamentarian has indicated that would violate the Senate rules. It would. The nonpartisan Congressional Research Service has studied this and concluded it is unprecedented. Why? Because it amounts to breaking the rules.

We are talking about judging whether nominees will be fair and impartial judges who will follow the law and the majority is willing to break the rules to do that. When you have a slim majority and are willing to use parliamentary brute force, if you want to break the rules, you can. It does not make it right. It makes it wrong, but you can do it.

The American people ought to recognize this for what it is, an abuse of power to advance a power grab. It is an effort by the White House and the Republican Senate majority to undercut the checks and balances of the Senate. They intend to use majority power to override the rights of the minority.

Actually, it is not an isolated effort. It is part of a sustained effort by this administration and partisan operatives in the Congress to consolidate power in one branch, the executive branch, and ignore our constitutional history of three separate branches acting as checks and balances on each other. It is an effort at one-party rule. It undercuts the rights of the minority in the Senate, it undermines the role of the Senate as a check on the executive, and it leads to a Republican rubberstamp on a less independent judiciary.

The constitutional protections of the American people are at stake in this debate, not just someone's political future, the constitutional protections of the American people. At stake are the protections provided for the American people by the judicial branch against overreaching by the political branches; by the Senate against an aggressive executive branch, and by the minority against the tyranny of the majority.

As this debate begins, I urge the American people to be involved because it is their rights that are at stake. It is the independence, fairness, and nonpartisan protection of the judiciary that protects their rights that is being threatened. It is a constitutional check that the Senate was intended by the Founders to keep the executive from acting like a king, that is being threatened by curtailing the rights of the minority.

This is an exercise in breaking the rules to change the rules. Note that as this debate begins, it begins in accordance with the Senate rules, including rule XXII, the longstanding rule the Republican majority intends to override by the end of this process by parliamentary brute force.

The Senate is now being threatened with a fundamental change through a self-inflicted wound. ''Master of the Senate'' author Robert Caro recalled an important chapter in the Senate and the Nation's history. Consider this and contrast it with what is happening here today.

When Senator Lyndon Johnson of Texas left the Senate, he was the most powerful majority leader in the history of this country. When he was elected Vice President with President Kennedy and he was preparing to leave the Senate, he told his protege and successor, Senate Mansfield of Montana, that he, Johnson, would keep attending the Democratic luncheons and help his successor as majority leader in running the Senate. Senator Mansfield said no, Vice President Johnson was no longer a Member of the Senate, but an officer of the executive branch and by means of that office was accorded the privilege of presiding over the Senate.

What a contrast Senator Mike Mansfield's respect for the separation of powers and checks and balances is from those in power today. I say that as one who was privileged to serve here with Senator Mansfield.

Instead, this White House took an active role in naming the present Senate leadership and this White House regularly sends Vice President CHENEY and

Karl Rove to Republican caucus luncheons to give the Republican majority its marching orders. What a difference from the days of Mike Mansfield and Lyndon Johnson.

The current Republican majority leader, who is my friend, announced that he intends to leave the Senate next year. He made no secret of his intent to run for the Republican nomination for President. With that in mind, he is apparently prepared to become the first majority leader in the history of the Senate whose legacy would be a significantly weakened Senate. Every other majority leader has left the Senate stronger than it was or at least as strong as it was, as a check and balance against an executive. This would be the first time it would be left weaker.

Many, unfortunately, on the other side—many but not all—are apparently ready to sacrifice the Senate's role in our constitutional system of checks and balances. It is my hope that our system of checks and balances will be preserved with a handful of Republican Senators voting their conscience and standing up to the White House and its pressure. I know the zealotry of the narrow special interest leaders who are demanding this mutilation of the Senate's character. I am one of many who have been the target of their brutal and spurious personal attacks.

My hope is that a number of the fine women and men of both parties with whom I am privileged to serve as a custodian of our Nation's liberties will act in the finest traditions of the Senate. One of their number has come to this floor in recent days to remind all Senators of senatorial profiles in courage. Sadly, it is that courage that will be necessary to avert the overreaching power grab now underway.

There have been other recent threats to our system of government. Republican partisans in the House, in a standoff with President Clinton, shut down the Government in 1995. A few years later, they impeached a popularly-elected President for the first time in our history. Fortunately, the Senate stood up and functioned as it was intended during that trial and rejected those efforts. I was privileged to be one of those who worked with both sides to make sure that trial ended the way it did.

In 2000, a divided nation saw an election decided by the successful litigation of the Republican Party and the intervention of a narrow activist decision of the Supreme Court to stop vote counting in Florida. Then we witnessed Senator JEFFORDS virtually driven out of the Republican caucus. We have seen an aggressive executive branch that has been aided by a compliant congressional majority.

If the Senate's role in our system of coequal branches of the Federal Government is to be honored, it is going to take Republican Senators joining others in standing up for the American people's rights, the independence of the judiciary, the rules of the Senate, and the rights of the minority.

During the last several days, we have seen the Democratic leader make offer after offer to head off this showdown. We have heard stirring speeches from Senator BYRD, Senator INOUYE, Senator KENNEDY, Senator BIDEN, Senator BAUCUS, Senator MURRAY, Senator BOXER, Senator FEINSTEIN, and others, who have come to this floor to set the record straight. But this is a setting in which Democratic Senators alone will not be able to rescue the Senate and our system of checks and balances from the breaking of the Senate rules being planned. If the rights of the minority are to be preserved, if the Senate is to be preserved as the greatest of parliamentary bodies, it will take at least six Republicans standing up for fairness and for checks and balances.

Now I know from my own conversations that a number of Republican Senators know in their hearts this nuclear option is the wrong way to go. I know Republican Senators, with whom I have had the privilege to serve for anywhere from 2 years to more than 30 years, know better. I hope more than six of them will withstand the political pressures being brought upon them and do the right thing and the honorable thing, and that they will put the Senate first, the Constitution first, but especially the American people first. History and those who follow us will carefully scrutinize these moments and these votes. Those voting to protect the rights of the minority will be on the right side of history.

Like the senior Senator from Pennsylvania, I remember President Kennedy's publication of ''Profiles in Courage.'' Along with so many Americans, I remember reading about those Senators who stood up to their party to vote against the conviction of President Andrew Johnson. More recently, I witnessed the strength it took for my friend, Senator Mark Hatfield, a distinguished Republican, to cast a vote of conscience against amending the Constitution. He did it under intense and unfair pressures. I believe we are now seeing the current Senate leadership taking the Senate to another precipice. It will take the votes of independent and conscientious Republican Senators, such as Senator Hatfield, to prevent the fall.

The Framers of the Constitution warned against the dangers of factionalism undermining our structural separation of powers. Some in the Senate have been willing to sacrifice the historic role of the Senate as a check on the President in the area of nominations.

Under pressure from the White House, over the last 2 years we saw the former Republican chairman of the Senate Judiciary Committee lead Senate Republicans in breaking with longstanding precedent, in breaking the rules, even committee rule IV, which was put in there at the request of Republicans to protect minorities. But when the Republicans took the majority, they violated the rules, longstanding precedent and Senate tradition. With the Senate and the White House under control of the same political party, we have witnesses committee rules broken or misinterpreted away. The broken committee rules and precedent include the way that homestate Senators were treated, the way hearings were scheduled, the way the committee questionnaire was unilaterally altered, and the way the Judiciary Committee's own historic protection of the minority by rule IV was repeatedly violated. In the last Congress, the Republican majority of the Judiciary Committee destroyed virtually every custom and courtesy that used to help create and enforce cooperation and civility in the confirmation process. I ask unanimous consent to have printed in the RECORD a recent article from the Wall Street Journal noting some of these developments.

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

[From the Wall Street Journal, May 3, 2005]

WAR OVER JUDGES IS NO LONGER A SUBTLE FIGHT

WASHINGTON.—Just 10 years ago, a Senate minority had several avenues for affecting a president's judicial nominations, from closed-door maneuvers within the Judiciary Committee to quiet negotiations with the White House.

Now there is only one sure way, and it isn't quiet at all: the filibuster.

The gradual disappearance of other levers of influence is an often overlooked cause of the battle over judicial nominations that is raging in Washington. Both parties have played a part, with the result that the Senate stands on the brink of a governmental crisis.

Some analysts say the consequences could be deep and lasting. Republicans are threatening to choose the ''nuclear option'' of using Senate rules to bar judicial filibusters. In the short term, Democrats have threatened to bottle up Republican legislative priorities. But over the long term, some analysts say, the ban could dilute the Senate's power and smooth the way for judicial choices reflecting the dominant ideological blocs within the party holding the White House.

The filibuster once was a seldom-used threat that forced competing political camps to compromise—''the shotgun behind the door,'' says Charles Geyh, a law professor at Indiana University. If it is disarmed, he adds, ''The long-term impact is pretty scary. These devices have been stabilizing influences on the process for a long time.''

The chipping away at minority influence began in the 1970s when Democratic Sen. Ted Kennedy of Massachusetts, then chairman of the Senate Judiciary Committee, attempted to dilute the ability of a senator to employ a common tactic for blocking unwelcome nominations. It was called the ''blue slip''—named for the color of the paper used by the chairman to inform senators not on the committee that the White House had submitted a judicial nominee from their states.

A senator could object by checking off his or her disapproval or by refusing to return the blue slip to the chairman. For decades, opposition from a home-state senator was enough to kill a nomination. As a result, the blue slip was most commonly employed as a

lever for forcing negotiations with the White House.

As President Jimmy Carter sought to put his stamp on the federal bench in the late 1970s, Mr. Kennedy proposed a new blue-slip policy. It allowed the Judiciary chairman to override a home-state senator's objection if he concluded that opposition was based on race or sex. The Massachusetts liberal met only mixed success, however, as other senators continued to respect the traditional blue-slip process.

Two decades later, with Republicans in charge of the Judiciary Committee, they began using their clout to exercise what Democrats called a ''shadow filibuster'' by simply refusing to give about 60 of President Bill Clinton's judicial candidates a hearing or vote on the Senate floor.

Republicans argue that the White House shared blame for some of the delays, saying some nominees hadn't undergone background checks when they were forwarded to the committee. But Republican Sen. Mitch McConnell of Kentucky recently conceded on the Senate floor that the Democrats have ''a legitimate complaint'' about how the Clinton appointees were treated.

In 2003, Republican Judiciary Chairman Orrin Hatch of Utah changed the practice further. He proceeded with hearings on Bush judicial nominees even if they were vigorously opposed by senators from the nominee's home state.

That change reduced the need for the White House to negotiate with the Senate. The result was diminished consultation between the president and the minority within the chamber, a practice that started with President George Washington, and extended through the Clinton administration. Mr. Clinton consulted with Mr. Hatch even on his two U.S. Supreme Court nominees, Ruth Bader Ginsburg and Stephen Breyer.

In the last Congress, five judicial nominees had blue-slip problems, including four receiving negative recommendations from both of Michigan's Democratic senators. Even so, all five of them were approved by the committee on party-line votes and advanced to the full Senate, according to committee records. Democrats blocked final votes on all of them.

Before the current stalemate, the filibuster had been used effectively against a judicial nominee just once. In 1968, a minority coalition of Republicans and Southern Democrats blocked President Lyndon B. Johnson's attempt to elevate Supreme Court Justice Abe Fortas, a supporter of civil rights and the Great Society programs, to the chief justice's chair. After a cloture vote to end the filibuster failed, 45–43, Mr. Fortas asked the president to withdraw his name.

Republicans today discount the significance of that vote, arguing it wasn't clear Mr. Fortas would have been approved by the full Senate if the filibuster had been overcome. By contrast, there is little doubt that President George W. Bush's contested nominees could attract a majority in the chamber, where Republicans hold 55 seats.

Yet even in that 1968 debate, some senators recognized the possibility that the Fortas stalemate would echo in future debates. ''If we, for the first time in our history, permit a Supreme Court nomination to be lost in a fog of a filibuster,'' cautioned Democratic Sen. Philip Hart of Michigan, ''I think we would be setting a precedent which would come back to haunt our successors.''

After the Fortas battle, senators gradually began reaching for the filibuster weapon. According to a 2003 analysis by the Congressional Research Service, the Senate held 17 votes to halt filibusters on judicial nominees between 1969 and 2002, although many were intended to force negotiations on legislation or judicial candidates rather than defeating the nominees.

None of the filibusters succeeded until the Democrats managed to block 10 of Mr. Bush's first-term appellate-court nominees. After his re-election, Mr. Bush resubmitted the names of seven of those candidates. Those are the nominees in contention today.

Mr. LEAHY. We suffered through 3 years during which Republican staff stole Democratic files off the Judiciary computer servers. It is as though those currently in power believe they are above our constitutional checks and balances and they can reinterpret any treaty, law, rule, custom, or practice. If they don't like it or they find it inconvenient, they set it aside. It was tragic that the committee that judges the judges did not follow its own rules but broke them to achieve a predetermined result.

It was through these means that divisive and controversial judicial nominees were repeatedly brought before the Senate in the last Congress. It was through these abuses that the majority acted as handmaidens to the administration to create confrontation after confrontation over controversial nominees. They dragged the judiciary, which should be above politics, into the political thicket and did so for partisan gain.

I applaud the Senator from Pennsylvania who has worked to bring us back in the Senate Judiciary Committee to following our rules in the comity that makes it work. I regret that filibusters have been necessary in the past 2 years. I wish Republicans would not have followed their years of secret holds and pocket filibusters of more than 60 of President Clinton's nominees, judicial nominees, and more than 200 of his executive nominees. I wish they would not have flipped the script once a Republican became President and dismembered the rules and traditions of the Judiciary Committee.

I have urged consultation and cooperation over the last 4 years. I had the privilege of chairing the Senate Judiciary Committee for 17 months with President Bush in the White House, and we confirmed 100 of President Bush's judicial nominees, including a number of controversial nominees, including some I was opposed to. I voted against them, but I made sure they got hearings.

The President and his enablers in the Senate cannot seem to take ''yes'' for an answer. The Senate has confirmed 208 of his judicial nominees and we are withholding consent on 5.

He rejects our advice, but he demands our consent. That is wrong, and that goes against the Constitution. The Constitution speaks of advice and consent, not order and rubberstamp.

What the White House ignores is that President Bush completed his first term with the third highest total of confirmed judges in our history—in our history—and more Federal judges on the courts than at any time in our history. The truth is, Senate Democrats have cooperated extensively in confirming more than 95 percent of this President's judicial nominees—208 of them.

George Washington, the most popular and powerful President in our history, was not successful in all of his judicial nominations. The Senate rejected President Washington's nomination of John Rutledge to be Chief Justice of the Supreme Court. For example. And certainly I would hope that the current President would not assume he stands higher in our history books than George Washington.

The truth is, in President Bush's first term, the 204 judges confirmed were more than were confirmed in either of President Clinton's two terms, more than during the term of this President's father, and more than Ronald Reagan's first term when he had a Republican majority in the Senate. By last December, we had reduced judicial vacancies from the 110 vacancies I inherited in the summer of 2001 to its lowest level, lowest rate, and lowest number in decades, since President Ronald Reagan was in office.

Unfortunately, this President has chosen confrontation over cooperation. In fact, it is mid-May, and he has only sent one new nomination to the Senate all year. Im connection with that nomination, Democrats on the Judiciary Committee have written to the Chairman urging a prompt hearing. With the support of the nominee's home-state Senators, one a Democrat and one a Republican, the nomination of Brian Sandoval will be added to the long list of judicial confirmations.

But that leave 30 judicial vacancies without nominations. Back on April 11, the Democratic leader and I wrote to the President urging him to work with Senators of both parties to identify nominees for these 30 vacancies. To date, he has not responded. Instead he, his Vice President, his Chief of Staff and his spokesperson continue to prod the Senate toward triggering the nuclear option. I ask unanimous consent to have that letter printed in the RECORD.

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

U.S. SENATE,
Washington, DC, April 11, 2005.

Hon. GEORGE W. BUSH,
President,
Washington, DC.

DEAR MR. PRESIDENT: There are currently 28 vacancies on the Federal courts of appeals and district courts for which you have not forwarded nominees to the Senate. We write to offer to help you obtain consultation and advice from the Senate on these vacancies so that you may select nominees who will generate strong, bipartisan support.

This evening the Senate is scheduled to consider your nomination of Paul Crotty to become a federal judge in New York. We expect Mr. Crotty to be confirmed with the support of his home-state Senators and an overwhelming vote. We have each been urging you for some time to work with the Senate to fill federal judicial vacancies with qualified, consensus nominees. It is now imperative that we do so.

When you met with Russian President Putin earlier this year, you noted that

checks and balances and an independent judiciary are among the fundamental requirements of democracy. We agree. We therefore urge you to make clear to Senate Republican leaders that you do not favor the so-called ''nuclear option'' which would remove an important check on executive power. Instead, let us work together to identify consensus judicial candidates. Let us preserve our independent judiciary, which is the envy of the world.

Respectfully,

HARRY REID,
Democratic Leader.
PATRICK LEAHY,
Ranking Member.

Mr. LEAHY. When it comes to the judiciary, the independent judiciary, the branch of Government always looked at with most favor and most respect by Americans, wouldn't it be good if the President, in making his nominations, would act as a uniter, not as a divider? Instead, the President has acted as a divider, not a uniter. He has sent the Senate divisive and controversial nominees. When the Senate debates them and withholds consent, he stubbornly renominates them over and over again. Rather than work with us to find consensus nominees, which usually pass this Senate 100 to nothing, he disparages us and exploits the issue as a partisan matter.

Under our Constitution, the Senate has an important role in the selection of our judiciary. The brilliant design of our Founders established the first two branches of Government would work together to equip the third branch to serve as an independent arbiter of justice. As George Will once wrote: ''A proper constitution distributes power among legislative, executive and judicial institutions so that the will of the majority can be measured, expressed in policy and, for the protection of minorities, somewhat limited.''

The structure of our Constitution and our own Senate rules of self-governance are designed to protect minority rights and to encourage consensus. Despite the razor-thin margin of recent elections, the majority party is not acting in a measured way but in complete disregard for the traditions of bipartisanship that are the hallmark of the Senate. When these traditions are followed, I can tell my colleagues from 31 years of experience, the Senate works better, and the American people are better served. Instead, the current majority is seeking to ignore precedents and reinterpret longstanding rules to its advantage.

The practice of ''might makes right'' is wrong. The Senate's rules should not be toyed with like a playground game of King of the Hill, to be changed at the whim of any current majority.

The Senate majority leader seems intent on removing the one Senate protection left for the minority, the protection of debate in accordance with the longstanding tradition of the Senate and its standing rules. In order to remove the last remaining vestige of protection for the minority, the Republican majority is poised to break the Senate rules, violate the Senate rules, overturn the Senate rules, and end the filibuster by breaking those rules. They are intent on doing this—why?—to force through the Senate this President's most controversial and divisive judicial nominees.

As the Reverend Martin Luther King, Jr. wrote in his famous Letter From A Birmingham Jail:

> Let us consider a more concrete example of just and unjust laws.
>
> An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal.

Fair process is a fundamental component of the American system of law. If we cannot have a fair process in these halls or in our courts, how will the resulting decisions be viewed? If the rule of law is to mean anything, it must mean that it applies to all equally. The rule of law must apply the same to Republicans and Democrats. The rule of law must apply the same to all Americans. And certainly the rule of law must apply on the floor of the U.S. Senate.

No man and no party should be above the law. That has been one of the strengths of our democracy. Our country was born in reaction to the autocracy and corruption of King George, and we must not forget our roots as a nation of both law and liberty. The best guarantee of liberty is the rule of law, meaning that the decisions of government are not arbitrary and that rules are not discretionary or enforced to help one side and then ignored to aid another.

Mr. President, nothing I will ever do in my life will equal the opportunity, the honor, the privilege to be one of the 100 serving in this Senate. But not one of this 100—who are privileged to serve at any given time to represent 280 million Americans—none of us owns the Senate. The Senate will be here once we leave. It is our responsibility to leave the Senate as strong as it was when we came in. It is our responsibility, our sworn responsibility, to leave the Senate the body that has always been a check and balance.

How can any Senator look himself or herself in the mirror if they weaken the Senate, if they allow the Senate to no longer be the check and balance it should be? Why would anyone want to serve here if they come to this body with that in mind?

James Madison, one of the Framers of our Constitution, warned in Federalist Number 47 of the very danger that is threatening our great Nation, a threat to our freedoms from within:

> [The] accumulation of all powers legislative, executive and judiciary in the same hands . . . may justly be pronounced the very definition of tyranny.

That is what they are trying to do, put all the power into one hand. All of us should know enough of history to know we should not do that.

George Washington, our great first President, reiterated the danger in his famous Farewell Address to the American People:

> The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism.

Now, our freedoms as Americans are the fruit of too much sacrifice to have the rules broken in the Senate, especially to break them in collusion with the executive branch. What ever happened to the concept of separation of powers? We all give great speeches on the separation of powers. Don't just give the speeches, do not just talk the talk, let's walk the walk.

The effort to appoint loyalists to courts in the hope that they will reinterpret precedents and overturn the very laws that have protected our most fundamental rights as Americans is base and wrong. The American people deserve better than what we have seen with the destruction of rule after rule by a majority willing to sacrifice the role of the Senate as a check and balance in order to aid a President determined to pack the Federal courts. It is the courts themselves that serve as the check on the political branches. Their independence is critical and must be preserved.

Look at what we are talking about, Mr. President. We have confirmed 208 judges. We are saying no to five. Is this a judicial crisis that should allow the majority to destroy the Senate? The record of 208 confirmations and reduction of judicial vacancies to an historic low provide no basis on which to break the rules of the Senate. The Democratic leader's efforts to make additional progress demonstrate there is no reason for the majority to take the drastic and irreversible step of ending protection of the minority through the tradition of extended debate in the Senate.

The White House and Senate Republican leadership's campaign for the nuclear option seeks to end the role of the Senate serving as a check on the executive. That is so shortsighted. It is so wrong. It is so unjustified. We fought a revolution in this country to have a Constitution that is designed to have the Senate provide balance and act as a check.

I will have more to say about these important matters and about the nomination that the Judiciary Committee previously rejected and that the Senate has previously debated as we proceed over the next several days. There is one other aspect of this matter I need to mention. I will say this in my individual capacity as a Senator from Vermont, as a man of faith, as a man who cares deeply about this institution, our country, our Constitution, our first amendment and our constitutional provision that does not allow a religious test for those who serve.

Supporters of a power-hungry executive have gone so far as to seek to inject an unconstitutional religious test

into the debate. All Americans should fear this. They have characterized those who oppose the most extreme of the President's nominees as being against faith, against people of faith. They have called for mass impeachment of judges and other measures to intimidate the judiciary, to remove the independence of the judiciary. I commend the President for personally rejecting at least that demagoguery at a recent press conference. I wish he would go further and tell those making these charges and inflammatory claims to stop.

A Republican clergyman, Pat Robertson, said he believes Federal judges are ''a more serious threat to America than Al Qaeda and the September 11 terrorists'' and ''more serious than a few bearded terrorists who fly into buildings'' and ''the worst threat America has faced in 400 years—worse than Nazi Germany, Japan, and the Civil War.''

For shame. For shame. This is the sort of incendiary rhetoric that is paving the way to the nuclear option. It is wrong. It is destructive. Further, injecting religion into politics to claim a monopoly on piety and political truth by demonizing those you disagree with is not the American way.

As Abraham Lincoln has said:

I know that the Lord is always on the side of the right, but it is my constant anxiety and prayer that I and this nation should be on the Lord's side.

He was so right. We all would do well spending a little more time wondering whether we are on God's side and less time declaring infallibly that He is on ours.

Those driving the nuclear option engage in a dangerous and corrosive game of religious McCarthyism in which anyone daring to oppose one of this President's nominees is being branded as anti-Christian or anti-Catholic or against people of faith.

Dr. Dobson of Focus on the Family said of me, ''I do not know if he hates God but he hates God's people.''

I wonder every Sunday when I am at mass, what planet is this person from?

When Senator HATCH was attacked during his Presidential campaign on his religion, I came to his defense. When Senator LOTT was under attack, Senators JEFFORDS and SPECTER spoke in his defense.

When they charge us with being against people of faith for opposing nominees, what are they saying about the 208 Bush judicial nominees whom Democrats have voted for and helped confirm? Are they saying the five we oppose are people of faith but the 208 we voted for are not? Are they by definition people without faith?

These kinds of charges, this virulent religious McCarthyism, is fraudulent on its face. It is contemptible. It is contemptible.

Chief Justice Rehnquist is right to refer to the Federal judiciary as the crown jewel of our system of government. It is an essential check and balance, a critical source of protection of the rights of all Americans, including our religious freedom.

Just this morning the distinguished senior Senator from Pennsylvania and the distinguished senior Senator from Illinois conducted a hearing in the Judiciary Committee where they heard the testimony of Judge Joan Lefkow of Chicago. She is the Federal judge whose mother and husband were murdered in their home. The hearts of all of us go out to her. She asked that we repudiate the gratuitous attacks on the judiciary, and I do so, again, here today. I ask those members of Congress who are so quick to take the floor and say let's impeach judges or let's condemn judges or specific judges, to stop it. Listen to what Judge Lefkow said:

In this age of mass communication, harsh rhetoric is truly dangerous. Fostering disrespect for judges can only encourage those that are on the edge, or on the fringe, to exact revenge on a judge who ruled against them.

We should stop those kinds of speeches, whether it is on this floor or the other body. They are beneath, us, all of us.

I remember Justice Sandra Day O'Connor made a similar observation. I recently spoke with her and told her how much I appreciated that.

The Senator from Pennsylvania spoke about Benjamin Franklin. Let me reiterate. In September 1787, as the Constitutional Convention drew to a close, someone came up to Benjamin Franklin to ask whether all of the arduous work of drafting the Constitution produced a republic or a monarchy. Benjamin Franklin told them, ''A Republic, if you can keep it.''

We have fought world wars, a civil war, we have gone through elections, assassinations, changes in Government, we have gone through all these traumas, the Great Depression, and attacks on our soil. In all of it we have joined together to keep this Republic. We have kept our freedoms through checks and balances, checks and balances woven through our constitutional system so brilliantly by our Founders. Those checks and balances can easily be unthreaded and unwoven by the abuse of power. Let us hope that never happens. Remember, it can happen not just through big steps, it can happen through small steps.

This action that is being proposed to the Senate, the nuclear option, is a large step, a large abuse of power, a step with consequences we can only begin to imagine. It would be a vote for confrontation over consensus. I hope each of us will reflect on its consequences, and then, in the end, such a travesty will never befall the Senate.

Mr. President, how much time is remaining to the Senator from Vermont?

The PRESIDING OFFICER. There is 10½ minutes.

Mr. LEAHY. Mr. President, I see the distinguished deputy Democratic leader in the Chamber and I will yield the remainder of my time to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Senator from Vermont, not only for his excellent statement this morning, but also for his leadership in the Senate Judiciary Committee. It has been my honor to serve with him on that committee during my tenure in the Senate.

The point he made at the close of his remarks bears repeating. We are debating an important constitutional principle of checks and balances. We are considering for the first time in over 200 years the so-called ''nuclear option'' which will destroy one of the rules of the Senate which has been used so many times on so many occasions for so many different things. This is a strategy that has been put together by the leadership in the Senate and it undoubtedly will occasion great debate in this Chamber for many hours.

But I would like to admonish my colleagues on both sides of the aisle to take care in the words they use during the course of this debate. This morning, unfortunately, the majority leader came to the floor and said the following:

The issue is not cloture votes per se; it is the partisan leadership-led use of cloture votes to kill, to defeat, to assassinate these nominees.

I know the majority leader. I know him to be a man of genuine caring and humanity. He has proven that so many times in his personal life as a doctor, as a surgeon, as a person who has taken on humanitarian causes which many in the Senate would shrink from. And so I know those words, if they were given to him by someone, do not reflect his heart. And if they were said in a moment without thinking, it is something we could all make a mistake and do. But I would urge him and urge each and every one of us to choose words carefully in the debate about judges.

We were reminded this morning with the testimony of Judge Lefkow before the Senate Judiciary Committee how important words can be. She called for a variety of things we can do to protect judges across America, but she also went to the question of words. She said:

Frankly, I ask you—

The Senate Judiciary Committee—

to publicly and persistently repudiate gratuitous attacks on the judiciary such as the recent statement of Pat Robertson on national television and, unfortunately, some Members of Congress, albeit in much more measured terms.

Judge Lefkow understands as I do and every Member of the Senate that we live in a country that prides itself on freedom, the freedom to express yourself, the freedom for people to say things without fear that the Government will come down on them, even if we hate every word they say. But the point she was making was to take care, to denounce those comments that cross the line.

When we hear in this debate about changing the rules of the Senate as it

relates to judges, let us take care to understand there are differences of opinion as to whether these men and women who are being discussed share the views of many Americans, whether their views are extreme. But the issue is not about them personally.

Some have suggested you can't oppose a judicial nominee here unless you oppose that nominee's gender, that nominee's religion, that nominee's race, that nominee's ethnic background, that nominee's upbringing. All of those things are false. My consideration of these nominees has gone to the heart of the issue. I consider myself to be without prejudice. I hope I am. I do my best to avoid it in everything I say and do. But for those who come to the floor and say you can't oppose this nominee unless you are in a position where you disagree with their religion, that is just plain wrong. There are so many lines that are crossed between religious and political belief. The issue of the death penalty in my Catholic religion is one that is hotly debated among Catholics. Many of the leading Catholic legislators, Republican and Catholic, disagree in their votes with the church's official position. But it is a public issue that should be discussed and it doesn't reflect on the nominee or the religion of a Congressman or Senator when we discuss it.

So when words are expressed during the course of the debate that those of us who oppose these nominees are setting out to kill, to defeat, or to assassinate these nominees, those words are inappropriate. Those words go too far.

Let me remind those who follow this debate, as I said earlier, the majority leader is a good man, a humane man, a sensitive man who has been closer to life and death than any of us in this Chamber, and I believe those words given to him were inappropriate, and if they were said in a careless moment I am sure do not reflect his heart.

But let us take care during the course of this debate to understand that our differences as to these nominees come down to issues of law and public policy which members of the judiciary decide. If I disagree with one of these nominees or any judge as to their opinions, it is not going to reflect anything on them personally. It reflects on the fact that we have to make decisions as to whether they should serve on the bench.

This is a historic moment in the Senate. There may never be another one like it. We are considering a change in the Senate, a change in this institution which, sadly, will ripple out as a pebble in a pond for generations to come. This is not an isolated case involving one, two, or five judges. It is a change in the Senate rules that will uniquely change this special institution.

I fear that many of the people in the White House and on the floor of the Senate who are grabbing for this political victory don't realize it is going to change an important institution we have counted on throughout our history. Those Founding Fathers who wrote the Constitution made the Senate a special institution, an institution where, in fact, minority rights and the minority's opportunity to speak would always be protected. To take away those minority rights by Vice President CHENEY making a casual ruling from the Chair, to sweep away 214 years of precedent and rules so that someone can score a quick victory in terms of even 1, 2, or 10 judges is entirely inappropriate.

I hope there will be enough Members on the other side of the aisle who understand our special responsibility. It is an historic responsibility. It goes beyond this President. It goes beyond any political party, and it certainly goes beyond the press release of the day. It goes to the heart of why we are entrusted with this responsibility to serve in the Senate. We are hoping that when the nuclear option comes, there will be Senators willing to stand up for this tradition and for these constitutional values.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I have been listening to the debate. The people who may be listening to this across the country and around the world on television, to the extent they are following it, may be forgiven if they wonder what is going on. People are talking about what we are doing on the floor in such breathless and nearly apocalyptic terms, referring to the nuclear option. This is not about America's foreign policy. This is about the rules of the Senate and the power of the Senate to determine for itself the rules by which we are governed. It is certainly an important matter, but we should tone down our rhetoric a little and try to address squarely the issue.

I worry when I hear Senators use words such as ''despicable,'' ''Neanderthal,'' ''scary,'' or ''kook'' in describing nominees by this President to the Federal bench. I would have thought that kind of rhetoric was unbecoming to a body such as the Senate, sometimes called the world's greatest deliberative body. I hope during the course of the debate we will take a deep breath, as we try to calmly but deliberately address the issues that lie before us. That is what I will strive to do for my part.

I want to talk in particular about Priscilla Owen. Before I do, I neglected to ask unanimous consent that I be allotted 20 minutes out of our side's time.

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

Mr. CORNYN. I want to respond first to an argument made earlier this morning. This is in the category of we can disagree about matters of opinion and matters about policy, but we should not disagree about the facts, when the facts are so plainly there before us and evident.

Richard Paez, a nominee of President Clinton, has been held up as perhaps one of the examples of our side treating a Democratic President's nominee unfairly. As this chart aptly demonstrates, if we would agree to treat Priscilla Owen exactly the way that Paez was treated, then Priscilla Owen would be sitting on the Fifth Circuit today, just as Judge Paez is now serving on the circuit court in the Federal judiciary. In other words, this is not an example justifying the actions being taken against this President's nominees. This is an example of why the obstruction we have seen is wrong and unfair. All we are asking for in this debate is a simple up-or-down vote for this President's nominees.

Priscilla Owen has been waiting 4 years for that simple up-or-down vote, which is all we are asking for. As I said, 4 years ago, Priscilla Owen was nominated to serve on the U.S. Circuit Court of Appeals. She serves currently and has served on the Texas Supreme Court, where I had the honor of serving with her. She is an exceptional jurist, a devoted public servant, and an extraordinary Texan. Yet after 4 years, she still awaits an up-or-down vote on the Senate floor.

This is the irony of where we find ourselves. Although a bipartisan majority stands ready to confirm her nomination, a partisan minority obstructs the process and refuses to allow a vote. What is more, this partisan minority insists for the first time in history that she must be supported by a supermajority of 60 Senators, rather than the constitutional standard and Senate tradition of a majority vote.

I know Priscilla personally. It is hard for me to reconcile the caricature that most people have seen drawn of her by some of the rhetoric used, certainly, with what I know about her personally. Those who know her would not recognize her from the caricature being created in the Senate and elsewhere when talking about this outstanding nominee.

She is a distinguished jurist and a distinguished public servant. She has excelled at virtually everything she has undertaken. She was a top graduate of her law school class at the remarkable age of 23 years and received the top score on the Texas bar examination. She entered the legal profession at a time when few women did. After a distinguished record in private practice, she reached the pinnacle of the Texas bar, which is the Texas Supreme Court. She was supported by a larger percentage of Texans in her last election than any of her colleagues—84 percent—after enjoying the endorsement of virtually every newspaper in the State. She has been honored as the Young Lawyer of the Year by her alma mater, as well as an outstanding alumna of Baylor University.

The irony in this partisan obstruction of a bipartisan majority who stand ready to confirm her is that Priscilla Owen enjoys bipartisan support in the State of Texas. Three former Democratic judges on the Texas Supreme

Court, as well as a bipartisan group of 15 past presidents of the State bar of Texas support this nominee.

The Houston Chronicle, one of our major newspapers, in the year 2000 called her ''[c]learly academically gifted,'' stating that she ''has the proper balance of judicial experience, solid legal scholarship, and real-world know-how to continue to be an asset on the high court.''

The Dallas Morning News, another major newspaper in our State, wrote on September 4, 2002:

> She has the brainpower, experience and temperament to serve ably on an appellate court.

The Washington Post wrote in 2002:

> She should be confirmed. Justice Owen is indisputably well qualified.

Priscilla Owen is not just intellectually capable and legally talented, she is also a fine human being with a big heart. The depth of her humanity and compassion is revealed through her significant free legal work and community activity. In fact, she has spent most of her life devoted to her community. She has worked, for example, that all citizens be ensured access to justice, as the Texas Supreme Court's representative on the mediation task force of that court, as well as her service on statewide committees of lawyers and her successful efforts to prompt the Texas Legislature to provide millions of dollars per year for legal services to the poor.

She was instrumental in organizing a group known as Family Law 2000, which seeks to find ways to educate parents about the effect that divorce can have on their children and to lessen the negative impacts therefrom. She teaches Sunday school at her church, St. Barnabas Episcopal Mission in Austin, TX, where she is an active member. It is plain, from these and so many other examples, that Justice Owen bears no resemblance to the caricature that has been painted of her in the Senate. She is, in fact, a fine person and a distinguished leader of the legal community.

One would think that after 4 long years, she would be afforded the simple justice of an up-or-down vote. I remain optimistic, hopeful, that this violation of many years of Senate tradition, the imposition of a new supermajority requirement of 60 votes, will be laid aside in the interest of proceeding with the people's business, a job my colleagues and I were elected to faithfully execute.

For more than 200 years, it was a job that we faithfully executed when it came to voting on a President's judicial nominees. Senators from both sides of the aisle exercised mutual restraint and did not abuse the privilege of debate out of respect for two coequal branches of government—the executive, that has a constitutional right to choose his or her nominees, and an independent judiciary.

Until 4 years ago, colleagues on both sides of the aisle consistently opposed the use of the filibuster to prevent judicial nominees from receiving an up-or-down vote. One of our colleagues, the senior Senator from Massachusetts, said in 1998:

> Nominees deserve a vote. If our . . . colleagues don't like them, vote against them. But don't just sit on them—that is an obstruction of justice . . .

The senior Senator from Vermont, in 1998, said:

> I have stated over and over on this floor that I would refuse to put an anonymous hold on any judge; that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty.

I could not agree more with those comments made in 1998 from the very same colleagues who today oppose the same principle they argued for a few short years ago. We are doing a disservice to the Nation and a disservice to this fine nominee in our failure to afford her that up-or-down vote.

The new requirement the partisan minority is now imposing—that nominees will not be confirmed without the support of 60 Senators—is, by their own admission, unprecedented in Senate history. The reason for this is simple. The case for opposing this fine nominee is so weak that using a double standard and changing the rules is the only way they can hope to defeat her nomination. What is more, they know it.

Before her nomination was caught up in partisan special interest politics, the ranking Democrat on the Judiciary Committee predicted that Priscilla Owen would be swiftly confirmed. On the day of the announcement of the first group of nominees, including Justice Owen, he said he was ''encouraged'' and that ''I know them well enough that I would assume they'll go through all right.''

Notwithstanding the change of attitude by the partisan minority, this gridlock is really not about Priscilla Owen. Indeed, just a few weeks ago the Democratic leader announced that Senate Democrats would give Justice Owen an up-or-down vote, albeit only if other nominees were defeated or withdrawn. Obviously, with these kinds of offers being made based on cutting deals and pure politics, this debate is not about principle. It is all about politics. It is shameful.

We should all subscribe to the notion that any nominee of any President, if they enjoy majority support in the Senate, should get an up-or-down vote. I am talking about whether we have a Democrat in the White House or a Republican, whether we have Democrat majorities in the Senate or Republican.

The rules should apply across the board exactly the same to all nominees, regardless of who wins and who loses from a political consideration.

But what bothers me most is that any fair examination of Justice Owen's record demonstrates how unconvincing and unjustified the critics' arguments are against her specifically.

For example, she was accused of ruling against injured workers, employment discrimination plaintiffs, and other sympathetic parties on a variety of occasions. Never mind the fact that good judges, such as Justice Owen, do their best to follow the law, regardless of which party will win and which party will lose. That is what good judges do. Never mind that many of her criticized rulings were unanimous or near-unanimous decisions of a nine-member Texas Supreme Court. Never mind that many of these rulings simply followed Federal precedents authored or agreed to by appointees of President Carter and President Clinton, or by other Federal judges unanimously confirmed by the Senate. And never mind the fact that judges often disagree, especially when a law is ambiguous and requires careful and difficult interpretation.

One of the focal points on Justice Owen's record is a criticism of enforcing a popular Texas law that requires parental notification before a minor can obtain an abortion. Her opponents allege in the parental notification case that then-Justice Alberto Gonzales, our current Attorney General, accused her of ''judicial activism.'' I heard that argument again this morning on the floor, notwithstanding the fact the charge is demonstrably untrue.

For any Member to repeat this argument that is simply not true, in spite of the fact that it has been demonstrated that it is not true, is to me an unconscionable act of distortion of the facts. Here again, we can disagree about the policies, and we can even decide to vote differently on a nominee, but let's not disagree on the facts when they are so clear. Not once did Alberto Gonzales say Justice Owen is guilty of judicial activism. To the contrary, he never even mentioned her name in the particular opinions that are being discussed. Furthermore, our current Attorney General has since testified under oath that he never accused Justice Owen of any such thing.

What's more, the author of the parental notification law that was at issue supports Justice Owen for this nomination, as does the pro-choice, Democratic law professor who was appointed to the Texas Supreme Court advisory committee who was supposed to write rules, and did write rules, to implement the law. In her words, Owen simply did ''what good appellate judges do every day. . . . If this is activism, then any judicial interpretation of a statute's terms is judicial activism.''

Mr. President, I ask unanimous consent that this letter be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. CORNYN. Mr. President, the American people know judicial activism when they see it. They know a controversial ruling that is totally out of step with a judge's accepted role in our form of government when they see it,

whether it be the redefinition of marriage, the expulsion of the Pledge of Allegiance from our classrooms and other expressions of faith from the public square, the elimination of the three-strikes-and-you're-out law, and other penalties for convicted criminals, or the forced removal of military recruiters from college campuses. Justice Owen's rulings come nowhere near those examples of judicial activism that we would all recognize clearly and plainly.

There is a world of difference between struggling to interpret the ambiguous expressions of a statute and refusing to obey a legislature's directives altogether, or substituting one's personal views or agenda for the words of a statute.

It is clear, then, that Justice Owen's record deserves the broad and bipartisan support that she has gotten, and it is equally clear that her opposition only comes from a narrow band on the far-left fringes of the political spectrum.

So if the Senate were simply to follow more than 200 years of consistent Senate and constitutional tradition, dating back to our Founders, there would be no question about her being confirmed; she would be. Legal scholars across the political spectrum have long concluded what we in this body know instinctively, and that is to change the rules of confirmation, as the partisan minority has done, badly politicizes the judiciary and hands over control of the judiciary to special interest groups.

Mr. President, 4 years is a long time. The majority leader and those who support this nominee's confirmation have shown extraordinary patience during this debate. But there is a point at which patience ceases to be a virtue, and I suggest that we have reached that point. We need a resolution of this issue. We need for Senators to step up and to vote ''yes'' or vote ''no.'' But we simply need for them to vote.

The record is clear. The Senate tradition has always been majority vote, and the desire by some to alter that Senate tradition has been roundly condemned by legal experts across the spectrum.

Professor Michael Gerhardt, who advises Senate Democrats about judicial confirmations, has written that a supermajority requirement for confirming judges would be ''problematic, because it creates a presumption against confirmation, shifts the balance of power to the Senate, and enhances the power of the special interests.''

D.C. Circuit Judge Harry Edwards, a respected Carter appointee, has written that the Constitution forbids the Senate from imposing a supermajority rule for confirmations. After all, otherwise, ''[t]he Senate, acting unilaterally, could thereby increase its own power at the expense of the President'' and ''essentially take over the appointment process from the President.'' Edwards thus concluded that ''the Framers never intended for Congress to have such unchecked authority to impose supermajority voting requirements that fundamentally change the nature of our democratic processes.''

Georgetown law professor Mark Tushnet has written that ''[t]he Democrats' filibuster is . . . a repudiation of a settled, pre-constitutional understanding.'' He has also written: ''There's a difference between the use of the filibuster to derail a nomination and the use of other Senate rules—on scheduling, on not having a floor vote without prior committee action, etc.—to do so. All those other rules . . . can be overridden by a majority vote of the Senate . . . whereas the filibuster can't be overridden in that way. A majority of the Senate could ride herd on a rogue Judiciary Committee chair who refused to hold a hearing on some nominee; it can't do so with respect to a filibuster.''

And Georgetown law professor Susan Low Bloch has condemned supermajority voting requirements for confirmation, arguing that they would allow the Senate to ''upset the carefully crafted rules concerning appointment of both executive officials and judges and to unilaterally limit the power the Constitution gives to the President in the appointment process. This, I believe, would allow the Senate to aggrandize its own role and would unconstitutionally distort the balance of powers established by the Constitution.''

She even wrote on March 14, 2005: ''Everyone agrees: Senate confirmation requires simply a majority. No one in the Senate or elsewhere disputes that.''

Mr. President, the record is clear. The Senate tradition has always been majority vote, and the desire by some to alter that Senate tradition has been roundly condemned by legal experts across the political spectrum.

Throughout our Nation's more than 200-year history, the constitutional rule and Senate tradition for confirming judges has been majority vote—and that tradition must be restored. After four years of delay, giving Justice Priscilla Owen an up-or-down vote would be an excellent start.

EXHIBIT 1

MAY 3, 2005.

Re Priscilla Owen.

Hon. JOHN CORNYN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CORNYN: I write in support of the nomination of Priscilla Owen to the United States Court of Appeals for the Fifth Circuit. I write as a law professor who specializes in constitutional law. I write as a pro-choice Texan, who is a political independent and has supported many Democratic candidates. And I write as a citizen who does not want the abortion issue to so dominate the political debate that good and worthy judicial candidates are caught in its cross hairs, no matter where they stand on the issue.

Justice Owen deserves to be appointed to the Fifth Circuit. She is a very able jurist in every way that should matter. She is intelligent, measured, and approaches her work with integrity and energy. She is not a judicial activist. She does not legislate from the bench. She does not invent the law. Nothing in her opinions while on the Texas Supreme Court could possibly lead to a contrary conclusion, including her parental notification opinions. I suspect that Priscilla Owen's nomination is being blocked because she is perceived as being anti-choice on the abortion issue.

This perception stems, I believe, from a series of opinions issued by the Texas Supreme Court in the summer of 2000 interpreting the Texas statute that requires parental notification prior to a minor having an abortion. The statute also provides for what is called a ''judicial bypass'' to parental notification. Justice Owen wrote several concurring and dissenting opinions during this time. She has been criticized for displaying judicial activism and pursuing an anti-choice agenda in these opinions. This criticism is unfair for two reasons.

First, the Texas statute at issue in these cases contains many undefined terms. Further, the statutory text is not artfully drafted. I was a member of the Texas Supreme Court's Advisory Committee that drafted rules in order to help judges when issuing decisions under this parental notification statute. My involvement in this process made it clear to me that in drafting the parental notification statute, the Texas Legislature ducked the hard work of defining essential terms and placed on the Texas courts a real burden to explicate these terms through case law.

Moreover, the statute's legislative history is not useful because it provides help to all sides of the debate on parental notification. Several members of the Texas Legislature wanted a very strict parental notification law that would permit only infrequent judicial bypass of this notification requirement. But several members of the Texas Legislature were on the other side of the political debate. These members wanted no parental notification requirement, and if one were imposed, they wanted courts to have the power to bypass the notification requirement easily. The resulting legislation was a product of compromise with a confusing legislative history.

In her decisions in these cases, Justice Owen asserts that the Texas Legislature wanted to make a strong statement supporting parental rights. She is not wrong in making these assertions. There is legislative history to support her. Personally, I agree with the majority in these cases. But I understand Justice Owen's position and legal reasoning. It is based on sound and clear principles of statutory construction. Her decisions do not demonstrate judicial activism. She did what good appellate judges do every day. She looked at the language of the statute, the legislative history, and then decided how to interpret the statute to obtain what she believed to be the legislative intent.

If this is activism, then any judicial interpretation of a statute's terms is judicial activism. Justice Owen did not invent the legislative history she used to reach her conclusion, just as the majority did not invent their legislative history. We ask our judges to make hard decisions when we give them statutes to interpret that are not well drafted. We cannot fault any of these judges who take on this task so long as they do this work with rigor and integrity. Justice Owen did exactly this.

Second, we must be mindful that the decisions for which she is being criticized had to do with abortion law. I do not know if Justice Owen is pro-choice or not, but it does not matter to me. I am pro-choice as I stated before, but I would not want anyone placed on the bench who would look at abortion law

decisions only through the lens of being pro-choice. Few categories of judicial decisions are more difficult than those dealing with abortion. A judge has to consider the fact that the fetus is a potential human, and this potential will be ended by an abortion. All judges, including those who are pro-choice, must honor the spiritual beauty that is potential human life and should grieve its loss. But a judge has other important human values to consider in abortion cases. A judge also has to consider whether a woman's independence and rights may well be unconstitutionally compromised by the arbitrary application of the law. All this is further compounded when a minor is involved who is contemplating an abortion. I want judges who will make decisions in the abortion area with a heavy heart and who, therefore, will make sure of the legal reasoning that supports such decisions.

I think the members—all the members—of the Texas Supreme Court did exactly this when they reached their decisions in the parental notification cases. I was particularly struck by the eloquence of Justice Owen when she discussed the harm that may come to a minor from having an abortion. She recognized that the abortion decision may haunt a minor for all her life, and her parents should be her primary guides in making this decision. Surely, those of us who are pro-choice have not come to a point where we would punish a judge who considers such harm as an important part of making a decision on parental notification, especially when legislative history supports the fact that members of the Texas Legislature wanted to protect the minor from this harm. As a pro-choice woman, I applaud the seriousness with which Justice Owen looked at this Issue.

If I thought Justice Owen was an agenda-driven jurist, I would not support her nomination. Our founders gave us a great gift in our system of checks and balances. The judicial branch is part of that system, and it is imperative that it be respected and seen as acting without bias or predilection, especially since it is not elected. Any agenda-driven jurist—no matter the issue—threatens the honor accorded the courts by the American people. This is not Priscilla Owen. So even though I suspect Justice Owen is more conservative than I am and even though I disagree with some of her rulings, this does not change the reality that she is an extremely well-qualified nominee who should be confirmed.

It would be unfair to place Priscilla Owen in the same category with other nominees who, in my opinion, are judicial activists and who I do not support. Some of these other nominees appear to want to dismantle programs and policies based on a political or economic agenda not supported by legal analysis or constitutional history. They appear to want to push their views on the country while sitting on the bench. Priscilla Owen should not be grouped with them. Justice Owen possesses exceptional qualities that have made and will make her a great judge. I strongly urge her confirmation.

Sincerely,

LINDA S. EADS,
Associate Professor of Law.

The PRESIDING OFFICER. The Senator has used his time.

Mr. CORNYN. I see my colleague, the senior Senator from Texas, on the floor, and she intends to speak on the same subject.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Texas, Mrs. HUTCHISON, is recognized.

Mrs. HUTCHISON. Madam President, I am very pleased my colleague, Senator CORNYN, has made a wonderful statement about Priscilla Owen. He is one of the few people who has actually served with her, being a member of the Texas Supreme Court with her. So having his insight into her as a professional is, I think, very enlightening for the record of this debate. I thank my colleague from Texas, who is one of the few people in the Senate who actually has been a state Supreme Court justice. I think that gives him a particular advantage in talking about her as a judge with judicial temperament, the demeanor of a judge, and her qualities as a judge. I thank my colleague.

Mr. President, I am going to talk today about Priscilla Owen as a person. I think it is a part of this debate that has never really been brought forth. I am here to support her because she has been a stellar representative of the judges in our country, as she has waited more than 4 years since she was nominated to have an up-or-down vote by the Senate. We have voted on Priscilla Owen, and she has won confirmation four times in the Senate. But here we are again trying to get a vote that will put her in the office to which she has been nominated and for which she has received the majority vote.

I have heard my colleagues, and some interest groups, use very extreme language to describe Priscilla Owen. These statements are coming, in many cases, from people who have never met her and whose minds were made up before they ever learned one thing about her. I want to spend a few minutes talking about Priscilla Richman Owen, the person that is known to those of us in Texas who have seen her as a professional.

Last month, I was sent an interesting document. It was the newsletter of the graduating class of Texas A&M University, the class of 1953. A prominent story had the headline: ''Pat Richman's Legacy.'' It told a story almost nobody in the class knew—that Pat Richman, of Palacious, TX, who had died tragically only 2 years after their graduation from Texas A&M and had left a baby daughter, that daughter of their beloved classmate is now at the center of a national controversy.

Pat Richman was a leader of the Corps of Cadets at Texas A&M, first sergeant of his company, and later its battalion commander. He was one of the stars of the class, one of its most promising leaders. Pat Richman entered active duty in the U.S. Army upon graduation and was shipped to Korea eight months later, but not before marrying his long-time sweetheart. When the boat left, his wife was pregnant.

Pat returned from Korea in May, 1955, having served his country, having done his duty to our Nation. Priscilla was 7 months old. He had never seen his baby daughter. On the way back across the Pacific, news came to the ship. Researchers, led by Jonas Salk, had created a vaccine to combat the scourge of polio. One of Pat's best friends remembers him exclaiming: ''This is wonderful. This means my daughter will never have to worry about being crippled by that disease.''

When Pat arrived back in Texas and was discharged, he accepted a job with the extension service that took him to south Texas. Suddenly, over a single weekend, he contracted bulbar polio. He was rushed into an iron lung—and died in a Houston hospital. Priscilla Owen was 10 months old.

As you would expect, the sudden death of this promising young man sent his entire family into shock, especially his wife. Priscilla's mother retreated to a family farm in Collegeport, Texas. She stayed there for five years grieving and trying to reassemble her life. Eventually, she remarried, and the small family moved to what was considered the big city, Waco, Texas. That is where Priscilla Richman Owen grew up and went to school.

Priscilla became a top student. She was a class officer. She worked part time in high school and college at her stepfather's insurance business, and she sent out premium notices and posted payments. During summers, she returned to Collegeport, helping run cattle and work in the rice field. As a teenager, she spent long days during the rice harvest driving the auger wagon, taking rice from the wet fields to a kiln and drying them.

Priscilla Richman started college at the University of Texas at Austin. After a year, though, she returned home to Waco to be closer to her family, and she enrolled at Baylor University. Her academic record was good, we should say, but it was not perfect. It was not perfect. She got one B-plus—one B-plus in all of her days in college and law school. The rest were A's. Priscilla Owen advanced to law school after only three years of college. She was named editor of the Baylor Law Review.

She finished college and law school after five years and three months, and when she took the Texas bar exam in 1977 at age 23, she got the highest score in the State.

Priscilla Owen was recruited into the Andrews Kurth law firm, one of the biggest in Houston, as a litigator at a time when women were not really in the courtroom very much. She was highly successful, creating a statewide reputation in oil and gas litigation. She chaired the firm's recruitment committee and was made a partner of the firm at the age of 30.

In 1993, when she had been at Andrews Kurth for 17 years, she was asked to run for election to the Texas Supreme Court as a Republican. Although judicial nominees run by party in Texas, she was really apolitical. She had made donations to judicial candidates in both parties just trying to be a contributor and a community leader.

I am amused when I hear interest groups say that Priscilla Owen is a partisan, an ideologue. In 1993, when she was asked to run for the Supreme Court of Texas, she could not remember in what primary she had voted. It would have been determined by the judge races at the time and whether there was a race in the Democratic or Republican primaries. She was told it would be difficult to run on the ticket if she had not voted in the primary in the previous election, and she had to go down to the courthouse to find out in which primary she had voted. It was Republican, and so she said yes.

As it happened, in 1994, when she was running, I was running for reelection, and we campaigned together. I invited her to join me on campaign trips. I have to tell you, she is not a rabble-rousing speaker. Priscilla Owen is a judge. She is soft spoken. She is scholarly. She is what you would want a judge to be. She managed to win with 53 percent of the vote and became an immediate leader on the Texas Supreme Court.

She also became a leader in a cause that makes me smile because I hear people on the other side of the aisle describing her as if she is some big partisan. She writes articles and lobbies the Texas Legislature to do away with partisan election of judges because, as she said in her articles, she thinks it taints the ability of the court to provide impartial justice.

This is actually a controversial position for a judge in our State to say that we should do away with partisan elections, because most of the Republicans in Texas think we should keep partisan elections. But she is not a politician, she is a judge—exactly what we would want in a person nominated for the circuit court of appeals.

When she was up for reelection in 2000, something happened that really had not happened very often to a Republican running statewide in Texas. The Democrats did not even put an opponent against her. She had a libertarian opponent, and virtually every major newspaper in Texas endorsed her. She was returned to office with 84 percent of the vote.

We will have a lot of opportunity on the Senate floor to discuss her court opinions, especially the mischaracterizations of those opinions that various interest groups have made. But I want to share with you what she does when she is not hearing and deciding cases because I believe it will shed light on the character of this person whom I do not recognize when I hear her described on this floor by many who have not even met with her.

She gave up a highly lucrative private practice a dozen years ago at the height of her earning power to run on a reform platform for our State's highest court because there were scandals on the supreme court at the time and we were trying to recruit top-quality people to bring back the integrity and dignity of our supreme court. So she sought a State government salary and gave up her big law firm partner share.

The Code of Judicial Ethics restricts her off-bench activities. She cannot help raise funds even for her church. But she has devoted countless hours toward helping the less fortunate, those in need, and improving access to the judicial system.

For example, Justice Owen is a dog enthusiast and serves on the board of Texas Hearing and Service Dogs. This organization rescues dogs from pounds, provides expensive training for them, and then gives the dogs to quadriplegics, paraplegics, and the hearing and sight impaired—people who cannot afford these trained animals on their own. The dogs perform all sorts of tasks that allow these disabled people to live more independent lives.

She is a founding member of the St. Barnabas Episcopal Mission in Austin, Texas. She serves as head of the church's altar guild. And she teaches Sunday school to preschool, kindergarten, and grade school children. On any given Sunday, you can find Justice Owen hopping on one leg, reading stories, and helping these children find ways to make the right choices in their conduct.

Justice Owen has also worked to ensure that all Texas citizens are now provided access to justice. Yesterday at a press conference, a former president of the Texas Bar Association, one of 15 former State bar presidents—Republicans and Democrats—who support her, told an interesting story. In the mid-1990s, the Congress sharply reduced funding for the Legal Services Corporation. The Texas legal aid system for the poor, including migrant workers, was in serious jeopardy. Priscilla Owen led a committee that persuaded the Texas Legislature to provide millions in additional funding for legal services for the poor. The funding filled gaps caused by the Federal cut to help give legal help for housing, domestic abuse, and food assistance eligibility to thousands of low-income Texans who otherwise would not have been able to have that help.

Priscilla Owen was the supreme court's representative on the Mediation Task Force. The group worked countless hours over many months to resolve differences between lawyer and non-lawyer mediators. As we know, mediation often provides an effective alternative to expensive, full-blown trials, thus making justice more accessible to people who cannot afford expensive lawyers.

Justice Owen is a member of the Gender Bias Reform Implementation Committee and the Judicial Efficiency Task Force on Staff Diversity. She was instrumental in organizing Family Law 2000 to educate parents about the effect of divorce and to lessen the negative impact on children.

These are not headline-grabbing assignments. There is no public glory in this quiet work. I do not see pictures of Justice Owen in the newspapers about all of these activities she has undertaken just to make our State and her community a better place to live. Justice Owen is not a particularly public person. In fact, as you may have read in the press last week, members of her church had no idea what she did for a living until a story appeared about her and this controversy in the Austin newspaper.

Throughout her four years awaiting a Senate vote, Priscilla Owen has not complained, not in public, not in private. She has sat quietly by as people who do not have the faintest idea what she is really like have vilified her, distorted her opinions, and questioned her motives.

Many of my colleagues on the other side of the aisle have declined any opportunity to meet with this lovely person. They have refused to sit down and ask her questions, to see if the person who is portrayed in the propaganda is really the same person. It is their loss because they are missing the opportunity to know a truly exceptional human being.

Over two years ago, an ordinary Texan named Nancy Lacy, who is Priscilla Owen's sister, attended her long-delayed confirmation hearings before the Judiciary Committee in Washington. She sat behind Justice Owen, and she later gave the Dallas Morning News a summary of what she saw. She said:

> It was eye opening. . . . It was a hard experience because no matter what she said, they were going to stick with the propaganda. It was obvious. I was hoping they were going to really give her a shot, try to get to know who she really is, ask thoughtful questions.
>
> But the information they had was wrong to begin with. I felt sorry for them at times; their staffs didn't do a very good job. It was obvious the special interest groups gave them the information, and they didn't research to see if it was true. The handwriting was on the wall.

You know, Madam President, it makes you stop and think when real people come before committees in this Congress how they must feel when they are tortured and pricked and badgered the way we often do without realizing that these are good people. They are people willing to serve, even if you might disagree with them. They are willing to serve our country and they have not been treated well. I believe Priscilla Owen, especially, has not been treated well by this Senate.

I am going to end with a wrap-up of the beginning of the speech that I have made. The Texas A&M class of 1953 held their annual reunion at a hotel in San Antonio last month. Priscilla Richman Owen, known to the group as Pat Richman's daughter, was their special guest. She was able to hear contemporaries of her father tell stories about him that she had never heard before to get a better idea of what he would have been like if he had lived into his seventies instead of dying when she was 10 months old. It was, by all accounts, a moving experience.

I hope that when the class of 1953 and the people who went with Pat Richman to serve our country in Korea meet again, that Pat Richman's daughter will come back and she will be a member of the Court of Appeals, of the Fifth Circuit Court of Appeals of the United States. I think she deserves confirmation.

I thank the chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. ALLEN. Is it true that the pending business before the Senate is the nomination of Priscilla Owen and other judges?

The PRESIDING OFFICER. That is correct.

Mr. ALLEN. Madam President, in my view there are four pillars that are absolutely essential for a free and just society. The first of those pillars is freedom of religion, where people's rights are not enhanced or diminished on account of their religious beliefs. The second pillar is freedom of expression, where people say what they want without retribution. Third is private ownership of property. And the fourth pillar for a free and just society is the rule of law, where disputes are fairly adjudicated and our God-given rights are protected.

I believe it is absolutely essential that we have judges on the bench at the Federal level and indeed all levels of Government who understand that their role is to adjudicate disputes fairly and honestly, to apply to the facts and the evidence of the case the laws that were made by elected representatives. We are a representative democracy. Judges ought to apply the law, not invent the law, not serve as a superlegislature, not to use their own personal views as to what the law should be. It is absolutely essential for our country, for the rule of law, for the stability one would want for the rule of law, for the credibility and the fair administration of justice, that we have judges who understand this basic principle.

When it comes to the appointment of judges and the election of judges, in some States they are elected, in some they are appointed. At the Federal level, the way it has been since the beginning of the Republic is the President nominates a man or a woman for a particular vacancy. That individual is examined very closely by the Judiciary Committee. They question and try to determine what is their temperament and what will they become once they put on a robe. Especially at the Federal level it is important because they are given lifetime appointments, so there is questioning done as to their scholarship and their judicial philosophy. That is very important.

If that person passes muster in the Judiciary Committee, the procedure, for the past 200 years, was that the nominee get a favorable recommendation. Once in a while they come out of the committee with no recommendation. But ultimately what happens is 100 Senators vote. They vote up or down on these nominations. That is our responsibility. It is my responsibility to the people of the Commonwealth of Virginia who elected me to confirm judges or deny confirmation—but ultimately vote.

What has happened in the last three years, though, is an abrogation of this approach and fair consideration of judicial nominees. We have seen unprecedented obstruction and a requirement, in effect, of a 60-vote margin, particularly for circuit court judges.

Wendy Long, the counsel to the Judicial Confirmation Network, observed a month ago:

> It is abundantly clear that the American people are tired of the partisan, political maneuvering and the unwarranted character assassinations against qualified candidates for the Federal bench.

She observed, and I agree:

> People see through these aggressive negative attacks waged by some individuals and groups on the left and they want it to end. They want Senators to do their jobs and hold a straight up-or-down vote on nominees based on their qualifications, not the baseless negative rhetoric of the left.

I agree. I think the people of America believe these nominees deserve a fair vote based on their qualifications. I think my colleagues should take notice.

Two of the nominees who have suffered at the hands of the opposition are Judges Priscilla Owen and Janice Rogers Brown. First, in respect to Justice Owen, I listened to the heartfelt views of Senator HUTCHISON of Texas about Justice Owen. Senator HUTCHISON knows her better than I do, but I strongly support Justice Owen; not just her nomination but her confirmation. In fact, she is arguably one of the best nominees President Bush has nominated to the appellate court. Even the American Bar Association agrees. They unanimously rated Judge Owen well qualified, their highest rating.

Sadly, Justice Owen was the first unanimously approved well-qualified ABA nominee who was held up a few years ago in the Judiciary Committee.

What are some of the reasons why the Democrats are opposing Justice Owen? The Number one reason I have heard is it was because of her interpretation of Texas' parental notification statute. The Democrats and her opponents have charged Justice Owen is found to be an activist in cases involving the interpretation of the Texas parental notification statute that was enacted in 1999.

If you want to look at that statute, it says as follows. It requires notice to a parent when a minor woman seeks an abortion, but allows exceptions when the trial court judge concludes the minor is mature and sufficiently well informed to make the decision without notification of a parent; that notification would not be in the best interests of the minor; or that notification may lead to physical, sexual, or emotional abuse of the minor.

From reading Justice Owen's opinions with respect to the statute, I found that Justice Owen interpreted the parental notice statute in Texas and its exceptions fairly and neutrally, in accord with the plain legislative language, as well as relying on precedent from the Supreme Court of the United States. She expressly relied on U.S. Supreme Court cases addressing similar laws to interpret the statutory exceptions. In fact, even the Washington Post has opined that:

> While some of Justice Owen's opinions—particularly on matters related to abortion—seem rather aggressive, none seems to us beyond the range of reasonable judicial disagreement.

That is the Washington Post and I would hardly call the Washington Post a bastion of conservative philosophy.

Justice Owen's record in these cases is far from that of an activist. In fact, it demonstrates her judicial restraint and her understanding of the proper role of an appellate judge. Under the Texas statute, the Supreme Court of Texas does not review judicial bypass cases unless the bypass has already been rejected at the trial and the intermediate appellate court level. In other words, every time Justice Owen voted to deny a judicial bypass, she was simply upholding the rulings of lower courts. That means she upheld the ruling of the trial judge, the only judge who actually saw and heard the case, a decision with which at least two out of three appellate court judges agreed.

This type of deference is entirely appropriate in cases such as this, where the determination turns largely on the factual findings and the credibility of the witnesses. The trial judge who actually observes and hears the testimony of a plaintiff in a judicial bypass case is best positioned to determine the credibility of that evidence and that witness.

By deferring to the trial court's judgment on factual questions, Justice Owen has appreciated, obviously, the proper role of an appellate judge. However, when a trial judge commits a clear error, Justice Owen has not hesitated to reverse the judgment and order a bypass, or remand for further proceedings, as she has done on three occasions.

My colleagues, I understand this parental notification issue. As Governor of Virginia, I worked for the passage and signed Virginia's requirement to notify parents if their unwed minor daughter, 17 or younger, is planning an abortion. Opponents of this attacked me and said things very similar to what you hear about Justice Owen. They said we were trying to tear down Roe v. Wade. That is quite contrary from my standpoint. I want the record

to note that Justice Owen has repeatedly demonstrated adherence to Supreme Court precedent, including Roe v. Wade. In fact, almost 80 percent of the American people believe a parental notification statute for a minor is reasonable.

I asked my staff to look back in my documents to find the speech I gave before I signed the bill on March 22, 1997. Here is the reasoning that motivated me and the people of Virginia to finally pass a parental involvement measure—and I am for parental consents even better, but our statute is similar to Texas. I said on the steps of Mr. Jefferson's capital in Richmond, VA:

> Today we are signing legislation affirming the importance and the necessity of a parent's guidance and counsel if their young daughter is facing the trauma of an abortion. Ladies and gentlemen, parents have the right and the responsibility to be involved with important decisions in their young children's lives, especially those that affect their physical and emotional health.

It was hard to get this bill passed. It was 17 years before it actually passed, a true parental notification bill. This was logical law. When one considers that for a minor to get their ears pierced, one needs parental consent, it makes a great deal of sense to me that if a young daughter, unwed, 17 or younger, is going through a trauma of abortion, a parent ought to be involved. That is what the Texas law was about. When daughters are going through this trauma, parents ought to know as opposed to being in the dark.

But I want to stress that the Texas statutes and the Virginia statutes are merely parental notice statutes. Those statutes express the views of the people of the State of Texas, the Commonwealth of Virginia, and indeed the more than 40 States that have some sort of parental involvement statutes on their books. In fact, they reflect the views of this country. In fact, they believe what Justice Owen was doing was correct in applying this statute as she did.

In summation, Justice Owen is a person with outstanding qualifications. She graduated at the top of her class at the Baylor Law School and subsequently earned the highest score in the State on the December 1977 Texas Bar Exam. After graduation she practiced commercial litigation for 17 years and became a partner at one of the most respected law firms in the State of Texas. Finally, in 1994, Justice Owen was elected to the Texas Supreme Court. In 2000, she won reelection by an overwhelming 84 percent of the vote, and was endorsed by every major newspaper in Texas.

Her support is wide and it is bipartisan, ranging from a number of former Democratic judges on the Supreme Court of Texas to a bipartisan group of 15 past presidents of the State Bar of Texas.

It is important that we act on Justice Owen's nomination because the Judicial Conference of the United States has designated the seat Justice Owen is nominated for as a judicial emergency. Justice Owen is well qualified to be a judge on the Fifth Circuit Court of Appeals, and the longer the opposition keeps holding up this nomination—and this has been going on now for 4 years—the longer average citizens will have to wait to have their cases heard. She deserves a fair up-or-down vote.

With respect to Justice Janice Rogers Brown, she has been nominated by the President to the U.S. Court of Appeals for the DC Circuit, where currently one-fourth of that court is vacant. Her qualifications are impeccable. In the past years I talked about Miguel Estrada, another outstanding nominee who had unanimous support, the highest recommendation from the American Bar Association, and who was denied, year after year, the fairness of an up-or-down vote. He was a modern-day Horatio Alger story.

Justice Brown is an American success story as well. She reflects the fact that with hard work and determination you can succeed if you put your mind to it. Her rise from the humble beginnings she had in the segregated South to becoming the first African-American woman to serve on the highest court in the largest State in the country is truly an inspiring American success story.

In her 9 years on the California Supreme Court, Justice Brown has earned the reputation of being a brilliant and fair jurist who is committed to the rule of law. That reputation has returned her to the court when she was supported by 76 percent of California voters, which was the largest margin of any of the four justices up for retention that year. Her reputation has also led the Chief Justice of the California Supreme Court to call on Justice Brown to write the majority opinion more times, in 2001 and 2002, than any other justice on the Supreme Court of California. When someone gets 76 percent of the vote and is called on to write the majority opinion more times than any other justice on that court, that means you are well respected and you are doing a good job and that you are clearly within the mainstream, not out of the mainstream as is asserted by those who obstruct her vote.

Justice Brown's opponents would like the American people to think she is a radical, an ideological extremist in her opposition to government. I contend if she was so extreme, why did 76 percent of California voters support her? Sadly, her opponents continually attack her for her opposition to government even though she has stated for the record that she does not hate government. If she hates government, why is she a part of it?

A thorough analysis of her opinions clearly indicate she is capable of dissecting her personally held views of her dislike of expansive government, from her opinions that seek to apply the law as it exists and defer to the legislative judgments on how best to address social and economic problems.

Justice Brown has been extremely cooperative with the Senate Judiciary Committee. She testified for nearly 5 hours at her hearing and answered every charge leveled against her. Justice Brown is clearly qualified for this job, and her colleagues, Republican and Democrats alike, agree.

Twelve of her colleagues wrote the following about her:

> We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical and very hard working. We know she is a jurist who applies the law without favor, without bias and with an even hand.

Now, isn't that what one would want in a judge? This quote best summarizes my faith that many people, including myself, have in Justice Brown. In an October 17, 2003 letter to Senator HATCH, Judge Talmadge R. Jones of the Sacramento Superior Court wrote:

> More importantly, the exceptional judicial performance of Justice Brown as a Circuit Judge will readily be apparent to everyone, and a worthy tribute to the confidence placed in her by both the President and the United States Senate.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ALLEN. I ask unanimous consent to be allowed 5 more minutes.

Mr. SCHUMER. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. SCHUMER. If the Senator wants to arrange to go for the next hour under Republican time, that is just fine.

I would like to accommodate my friend, but we have a set schedule. We come at different times and places and we have stuck by it. We are already 2 or 3 minutes over, so I have to object.

Mr. ALLEN. Madam President, I ask Unanimous Consent that I be allowed 1 minute and add 1 minute to the Democrats' side to sum up.

Mr. SCHUMER. I will accept that.

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

Mr. ALLEN. I thank my colleagues.

In summation, Priscilla Owen, Janice Rogers Brown, and all of the President's nominees, deserve a fair up-or-down vote.

The people all across this country, whether they are down in Cajun county in Louisiana, whether they are down in Florida, whether they are in the Black Hills of South Dakota, or whether they are in the Shenandoah Valley of Virginia, expect action on judges. As much as people care about less taxation and energy security for this country and wanting us to be leaders in innovation, they really expect the Senate to act on judges. It is a values issue. It is a good government issue. It is a responsibility-in-governing issue that needs to be addressed.

As I said earlier, there is no reason to filibuster these nominations. As Senators we have a responsibility to vote. These nominees deserve fair consideration, fair scrutiny, but ultimately we have a responsibility to get off our

haunches, show the backbone, show the spine, vote yes or vote no, and be responsible to our constituents.

I thank you, Madam President, and I yield the floor.

Mr. SCHUMER. I believe I now have 30 minutes?

The PRESIDING OFFICER (Mr. THUNE). The minority has 61 minutes remaining.

Mr. SCHUMER. But I have 30 of that, or 31. I yield 3 minutes to my colleague from the State of Washington, and then 1 minute to my colleague from the State of California, and then I will take the remaining 26 minutes.

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

The Senator from Washington.

Mrs. MURRAY. Mr. President, I thank my colleague from New York for yielding me just a few minutes. I was over in my office a few minutes ago listening to the debate on both sides, and I heard my good friend and colleague, the Senator from Texas, talk about her tremendous friendship and passion for the woman whose nomination is in front of the Senate today, Priscilla Owen.

I have tremendous respect for Senator HUTCHISON and all of her passion she has put in here. All Senators have been in a position of fighting hard for something we believe in, someone we care about. Sometimes we win, sometimes we have lost.

One of the things that was said was that many of the colleagues on this side of the aisle, many of my colleagues have declined any opportunity to meet with this lovely person. They have refused to sit down and ask her questions to see if the person that is portrayed and the propaganda is really the same person.

Mr. President, I want to set the record straight. I did sit down and meet with Judge Owen yesterday at the request of the Senator from Texas. I could not agree more, she was a lovely person. But this is not a debate about a lovely person. This is a debate about a record on judicial decisions and about whether that record merits promoting someone to a lifetime appointment.

I will later today join with my colleagues to give more specifics, but I have sat down with Priscilla Owen. I have asked her questions, and I have reviewed the record. This is not about a person. This is about a record. It is about a record that is outside the mainstream on parental consent, which we have heard about. But not just that, it is about victims' rights, which any of us can be. It is about workers' rights, about a bias about campaign contributions. We will be setting that record straight throughout this debate.

It is especially important for all to recognize a record says what someone will be and what decisions they will make about any one of us in this country in the future. That is what I dispute. That is what I will discuss later today when I have more time to outline.

We can all agree that lovely people deserve opportunities, but when it comes to our courts and when it comes to making decisions about us, our family, about women, about children, about rape victims, about workers, the many things that come before a court, a record is what we have to look at and what we have to stand on.

I thank my colleague from New York for giving me an opportunity to respond.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I will rebut something that my friend from Virginia, Senator ALLEN, said about Janice Rogers Brown. He said she was in the mainstream. This is a woman who has served on the California Supreme Court that is made up of six Republicans and one Democrat. She has dissented a third of the time because her Republican friends on that court are not radical enough for her. Thirty-one times she stood alone on the side of a rapist, on the side of energy companies against the consumers, against women who were seeking to get contraception. It goes on and on—against workers. She said it was fine for Latinos to have racial slurs used against them in the workplace.

This is a woman with an inspiring personal life story. But it is what she has done to other people's lives that makes her far out of the mainstream.

I thank my colleague for yielding. I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, this debate is not only about Priscilla Owen and whether she should become an appellate judge, but it is about something much more momentous. If the situation in the Senate were not so grave, there might be some humor in the fact my strict constructionist Republican friends who daily claim to be against activist judges are, through the nuclear option, engaging in the most activist reading of the Constitution to seat an activist judge on the appellate court. That is breathtaking hypocrisy.

But we are more profound than that. We are on the precipice of a crisis, a constitutional crisis. The checks and balances which have been at the core of this Republic are about to be evaporated by the nuclear option, the checks and balances which say if you get 51 percent of the vote you do not get your way 100 percent of the time. It is amazing. It is almost a temper tantrum by those on the hard right. They want their way every single time, and they will change the rules, break the rules, misread the Constitution so they will get their way.

That is not becoming of the leadership of the Republican side of the aisle, nor is it becoming of this Republic. That is what we call abuse of power.

There is, unfortunately, a whiff of extremism in the air. In place after place, the groups that were way out of the mainstream with their disproportionate influence on the White House and the Republican leadership in this Senate seem to push people to abuse power.

It happened in the Schiavo case, and there was a revulsion in America. It happened with threats against judges, both made by some of my colleagues in this body and certainly by some well-known activist religious figures. It has happened on Social Security where there is an attempt to undo a very successful government program. And that is why the popularity, the respect that this Republican leadership has in America, goes down every day. I know, as chair of the DSCC, because I keep an eye on those things.

I make a plea. It is to the seven or eight Republicans on that side of the aisle. Every one of them has told us they know the nuclear option is wrong. It is a plea to have the courage to stand up for what is right. There are many others of our colleagues on the other side of the aisle who have already said they know the nuclear option is wrong, but they say they cannot resist the pressure. I understand it. We have had times on the Democratic side where groups on the left extreme have had undue influence. But it is in yours and America's detriment and to our party's detriment.

We are on the precipice of a constitutional crisis. It rests on the shoulders of three or four men or women on the other side of the aisle. We hope we will not fall into the abyss.

Judges are now under siege. Our Constitution is under attack. Our precious system of checks and balances is under assault. Some of my colleagues seem to have forgotten we in the Senate have a constitutional role to play, and we will. The Founding Fathers did not intend us to march lockstep like lemmings behind every Presidential appointee no matter how many times he or she is put before the Senate. The Founding Fathers, whom many of us like to cite, foresaw collaboration between the President and the Senate in the seating of judges. The Founding Fathers expected, because of the advice and consent clause, the President would be judicious, that he would talk to the Senate about nominees.

This President has done none of that. No President has nominated judges more through an ideological spectrum than this President. When he asks why he doesn't get cooperation from the Democrat side, he has reaped what he has sown. No consultation, no discussion, and nominees who tend to be way over at the extreme.

As Hamilton wrote in the Federalist Papers about the importance of the Senate's role in approving judicial nominees, the possibility of rejection of nominees would be a strong motive to use care in proposing. But this President, instead of taking that care that the Founding Fathers sought, has seen some of his nominees—a handful—rejected, and now instead of accepting that as a consequence of no consultation and of nominating extreme judges,

he seeks to encourage the majority leader and others to change the rules in this hallowed institution.

Why are we at this crisis point? The bottom line is that no President in memory has taken so little care in the proposing of judges.

What about abuse of power? I will talk for a moment, before I talk about Priscilla Owen, about the nuclear option. If there ever was something that signified an abuse of power, a changing of the rules in midstream simply because you could not get your way on every judge, it is this nuclear option. There is now a desperate attempt on the other side of the aisle not to call it the nuclear option, but it was my colleague from Mississippi, the former majority leader, who gave it that name—with justification. You won't change the name. To call it the constitutional option is hypocrisy. There is nothing in the Constitution that talks about filibuster or majority vote when it comes to judges in the Senate.

It is a nuclear option because it will vaporize whatever is left of bipartisanship and comity in the Senate.

Now, let me ask a question: How much power does the Republican leadership need? How much power is it entitled to? Does a 1- or 2-percent point victory in the last election, does a margin of five Senators give them the right to get their way all the time and then to change the rules if they can't?

The American people are understanding this. There are only three branches of Government. The Republican Party has a tight grip on all three. Republicans control the Presidency, they control the House, they control the Senate. They already have control of the courts.

As the chart shows, of all of our judicial circuits, only two have slight Democratic majorities. The sixth is even. And all the others have Republican majorities.

The circuit courts, the courts of last resort, are overwhelmingly Republican already in terms of their appointees. And on the new judges they have been able to fill, they have gotten their way 95 percent of the time. As one of my colleagues said, if your child came home and said they got a 95 on their test, would you pat them on the head and say ''good job'' or would you say ''go change the rules, cheat until you get 100 percent''? That is what the other side is doing.

Ninety-five percent should make this President very happy. And maybe it would if he was left to his own devices. But the group of hard-right extremists, who seem to have disproportionate sway, are not happy unless they have 100 percent.

Now, let me talk a little bit about calling it a ''constitutional option.'' The other side will, with a straight face, either tomorrow or the next day, invoke our democracy's chief charter, the Constitution, in ruling that judicial filibusters are prohibited by the Constitution. There is only one problem. There is nothing in the Constitution that supports the nuclear option. There is nothing in the Constitution that requires a majority vote for every judicial nominee. Republicans know this.

The Senator from Tennessee, our majority leader, who got on the floor earlier today and said for 214 years there have not been filibusters of judges, has a very short memory. I asked him this morning, Did you not, on March 8, 2000, vote in favor of a filibuster of Richard Paez to the Ninth Circuit Court of Appeals? Here is a copy of the vote. Voting no: FRIST, Republican of Tennessee. Did he think it was unconstitutional then? He said on the floor, in answer, Well, some are successful, some are not. I have never known the Constitution to say that something is unconstitutional if it fails and constitutional if it succeeds. When we talk about attempted murder or robbery or larceny, it is still a crime.

So I would like to ask my colleague to answer during this debate, How can he distinguish as unconstitutional our votes to block judges, and it is perfectly acceptable, 5 years ago, his vote to block a judge, or the scores of votes by other Republicans in favor of filibusters over the years, including those against Paez and Berzon and Fortas? Were they unconstitutional? I do not think so.

Furthermore, have judges never been blocked? All the time. One out of every five Supreme Court nominees did not make it to the Supreme Court. That is part of the tradition of this country. Should the Senate have majority say? No. Should we have the say the majority of the time? No. Should we have the say some of the time? Yes. And there is the balance. The more a President consults, the more the President nominates moderate nominees, the more likely his nominees will succeed. Bill Clinton had a little trouble, but he consulted ORRIN HATCH regularly. PATRICK LEAHY has not been consulted by the President at all.

Another interesting point. It seems the only people who seem to cling to the nuclear option are those in elected office who are susceptible to the power and sway of these extremist groups. Conservatives who are not in public office, retired elected officials, commentators, have repeatedly said the nuclear option is not constitutional.

How about George Will—hardly a liberal—one of the country's most foremost commentators. Here is what he said:

> Some conservatives say the Constitution's framers ''knew what supermajorities they wanted''—the Constitution requires various supermajorities, for ratifying treaties, impeachment convictions, etc.; therefore, other supermajority rules are unconstitutional. But it stands—

Listen to this.

> But it stands conservatism on its head to argue that what the Constitution does not mandate is not permitted.

Of course. The people who advocate this are the greatest activists of all. And it is an unbelievable turnaround, an unbelievable act of hypocrisy, that all of a sudden activism, which means interpreting things in the Constitution which are not in the writings of the Constitution, is OK when you want to get your way. It is wrong.

Now, let me talk a little bit about Priscilla Owen. She is the nominee before us today. This is the third time we have considered the nomination of Priscilla Owen. Each previous time she got an up-or-down vote. She did not get 60, but she sure got an up-or-down vote. Everyone's vote was on the record. This was not being done, what was done in the Clinton years, which was not even letting judges come up for a vote. Here we are again.

Why are we doing Priscilla Owen again? Because 95 percent is not good enough for the President or for the leadership here in the Senate. On the merits, nothing has changed. There is no question she is immoderate and that she is a judicial activist. I continue to believe Justice Owen will fail my litmus test, my only litmus test in terms of nominating judges; that is, will they interpret law, not make law? Will they not impose their own views and have enough respect for the Constitution and the laws of this land that they will not impose their own views?

Well, do not ask me. Ask the people who served with Justice Owen. They believe that she, time and time again, cast aside decades of legal reasoning, miles of legislation, to impose her own views. If there was ever a judge who would substitute her own views for the law, it is Judge Owen. Her record is a paper trail of case after case where she thinks she knows better than hundreds of years of legal tradition.

In one case, In re Jane Doe, Judge Owen's dissent came under fire from her colleagues in the Texas Supreme Court. They referred to her legal approach as an effort to ''usurp the legislative function.'' That was a very conservative court, and they still said Justice Owen put her views ahead of the law.

Even more troubling, of course, is what Attorney General Alberto Gonzales said. He sat on the same court with Judge Owen. He wrote a separate opinion in which he chastised the dissenting judges, including Justice Owen, for attempting to make law, not interpret the law. These are Judge Gonzales' words, not mine. He said that to construe the law as the dissent did ''would be an unconscionable act of judicial activism.'' Those are not my words. Those are the words of the man the President has appointed as Attorney General.

In another case, Montgomery Independent School District v. Davis, the majority ruled in favor of a teacher who had been wrongly dismissed, and the majority, including Judge Gonzales, wrote that:

> the dissenting opinion's misconception . . . stems from its disregard—

Not its misinterpretation; ''its disregard''—

of the [rules] the Legislature established.

In a third case, Texas Department of Transportation v. Able, Justice Gonzales also took Justice Owen to task for her activism, indicating she had misunderstood the plain intent of the State legislature.

The list goes on and on. And there is nothing to indicate she has backed off from her activist tendencies.

As extreme as Justice Owen is, Justice Janice Rogers Brown is even more so.

The things she has said are unbelievable. She is an activist judge, more committed to advancing her own extreme beliefs and ideas than guaranteeing a fair shake for millions of Americans who would be affected by her decisions on the DC circuit. There was the Lochner case which threw out as unconstitutional a law that said bakery workers could not work a certain number of hours. That was a New York law, so we are not even dealing with federalism. It was decided in 1906 or 1901, close to 100 years ago. If you go to law school, it is called the worst Supreme Court decision of the 20th century.

She said it was decided correctly. Judge Janice Rogers Brown believes that if an employer wanted to employ a child for 80 hours in awful conditions, that would be that employer's constitutional right.

Justice Brown's views on economics make Justice Scalia look very liberal. She doesn't want to roll back the clock to the 1950s or even the 1930s. She wants to go back to the 1800s. She has been nominated to the most important court in the country when it comes to enforcing Government laws and rules—environmental, labor—and yet she abhors Government.

Here is what she once wrote:

> Where government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies.

Does the kind of person who thinks that way belong on any court of appeals, and particularly on the DC Court of Appeals? Absolutely not.

For those reasons, the American Bar Association gave her one of the lowest rankings any of this administration's circuit court judges have ever received.

We stand on the edge. This is an amazing time. I wake up in the morning, sometimes with butterflies in my stomach, thinking the Senate might actually attempt to do this. If there was ever a time where the power grab has been so harsh, so real, and so unyielding, it is now. It is not simply that we have a disagreement of ideas and we argue vehemently. It seems much more that the leadership on the other side can't stand the fact that they don't always get their way and that they have to change the rules to do it.

People who hate activist judges are becoming activist themselves in the sense that they read into the Constitution things that are never there. People who say that they respect bipartisanship are going to undo whatever is left of bipartisanship here in the Senate.

Amazingly enough, with all of the smoke pumped by the radical right's media machines, talk radio, the American people have a deep understanding. The only solace I have, as we are on the edge of this crisis and the eve of a great vote in the Senate, is that the American people understand what majority leader FRIST is up to. They understand this is a power grab. They understand this is a breaking of the rules. They understand the checks and balances will go by the wayside. What was good enough 4 years ago, votes on filibusters, is not acceptable today.

I believe the nuclear option, even if it should pass on the floor this week or next week, will not stand, that the American people will understand what is attempting to be done, they will rise up and, whether it is at the polls or just in the court of public opinion, cause the nuclear option to be undone.

That is the faith I have in the Government we have and the people who are governed. But let us not go through that. We will stop progress in the Senate. We will ruin bipartisanship, whatever is left of it, and we will be playing with fire when it comes to the constitutional checks and balances that are at the core of our Constitution and our Republic.

I will have plenty more to say in the upcoming weeks, but it is a momentous time. I appeal once again to my colleagues: Think of what you are doing. Think of its consequences. Maybe we won't have to live with this, the greatest undoing of the Constitution that this Senate has seen in decades.

I yield the remaining time to my colleague from California.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from New York. He serves as the ranking member of the Subcommittee on Administrative Oversight and the Courts of the Judiciary Committee, and he more or less heads all of the hearings with respect to these judges. He has done an excellent job. He is thorough. As everybody knows, he is a smart and intelligent man. He has made a very eloquent statement. So I thank him.

Last week I came to the floor and discussed the nuclear option. I recognize today that we are now faced with going down this path. I am concerned that once begun, it is going to be hard, if not impossible, to reverse it.

I find it ironic in his statement the majority leader said:

> All Members are encouraged to ensure that rhetoric in this debate follows the rules and best traditions of the Senate.

That is exactly what this side of the aisle is fighting for—the rules and the traditions of the Senate. We are standing up to those in the other party who want to break the rules and precedent of the Senate. So in reality, it is those of us on this side of the aisle who are asking the majority leader to follow all the rules and precedents of the Senate, not just the one he supports or any other group of Members might support.

Some have argued this debate is too inside baseball or, more appropriately perhaps, too inside the beltway and that Americans don't care about it. However, I believe that is wrong. To date, I have received about 16,000 phone calls, and they are running three to one in favor of opposing the nuclear option. The reason is, people are beginning to understand this debate is built on the very foundation of why we are here, why our democracy has been successful over 200 years, and why our Constitution is looked at as a model across the world in emergent democracies.

Let me try to explain, once again, why Senators take their role of advise and consent so seriously and what this nuclear option will mean, not only for the Senate and the judiciary but for our Constitution and our country.

First, Federal judges' decisions impact laws that affect our everyday lives—privacy protection, intellectual property, laws of commerce, civil rights, environmental regulations, highway safety, product liability, the environment, retirement security. And those are just a few examples. Who we confirm is important because their ability to interpret basic law, based on the Constitution of the United States, is critical to our functioning. Their independence to do that is critical.

Secondly, Federal judges enjoy lifetime appointments. They don't come and go with administrations, as do Cabinet Secretaries. They cannot be removed from the bench, except in extremely rare circumstances. In fact, in our Government's over 200-year history, only 11 Federal judges have been impeached and, of those, only 2 since 1936.

Thirdly, Federal judges are meant to be independent. The Founding Fathers intentionally embedded language in the U.S. Constitution to provide checks and balances. Inherent in our Government is conflict and compromise, and that is the fundamental principle in the structure of our Government. The judiciary is meant to be an independent, nonpartisan third branch.

I think John Adams, in 1776, made it very clear on the point of checks and balances and an independent judiciary, when he said:

> The dignity and stability of government in all its branches, the morals of the people and every blessing of society, depends so much upon on upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checked upon that . . . [The judges'] minds should not be distracted with jarring interests; they should not be dependent upon any man or body of men.

Now, that is the clearest statement of intent from our Founding Fathers, that the judiciary should be and must be independent. That is what is being

eroded with the partisanship and with the nuclear option. The Senate was meant to play an active role in the selection process. The judiciary was not solely to be determined by the executive branch. Last week, I described how, in the Constitutional Convention, the first effort put forward was actually to have the Senate nominate and appoint judges. Then it was later on, with the consideration of others, changed to allow the President to nominate. But the explanation in the Federalist Papers is all centered around the Senate having the real power to confirm, and that power is not a rubberstamp.

Because of these fundamental concerns, for centuries there have been heated and important debates surrounding judicial nominations. Today, rather than utilizing and preserving the natural tension and conflict our Constitution created, some in the Republican Party want to eviscerate and destroy that foundation. Blinded by political passion, some are willing to unravel our Government's fundamental principle of checks and balances to break the rules and discard Senate precedent.

The nuclear option, if successful, will turn the Senate into a body that could have its rules broken at any time by a majority of Senators unhappy with any position taken by the minority. It begins with judicial nominations. Next will be executive appointments, and then legislation.

A pocket card being passed around in support of the nuclear option states this:

The majority continues to support the legislative filibuster.

Yes, they do today, but what happens when they no longer support it tomorrow or the next day? If the nuclear option goes forward and they break Senate rules and throw out Senate precedent, then any time the majority decides the minority should not have the right to filibuster, the majority can simply break the rules again. Fifty-one votes are not too hard to get. Get the Vice President, have a close Senate, and you get it. That will be new precedent again in the Senate. So once done, it is very hard to undo. That is why precedent plays such a big part in everything we do because we recognize that once you change it, you open that door for all time. It can never be shut again. If this is allowed to happen—if the Republican leadership insists on enforcing the nuclear option, the Senate becomes ipso facto the House of Representatives, where the majority rules supreme and the party in power can dominate and control the agenda with absolute power.

The Senate is meant to be different. In my talks, I often quote George Washington and point out how the Senate and House are often referred to as a cup of coffee and a saucer. The House is a cup of coffee. You drink your coffee out of the cup. If it is too hot, you pour it into the saucer—the Senate—and you cool it. The Senate is really formed on the basis that no legislation is better than bad legislation and that the debates and disagreements over judicial nominations ensures that the Senate confirms the best qualified candidates.

So the Senate is meant to be a deliberative body, and the rights of the minority, characterized by the filibuster, are purposely designed to be strong. Others describe the Senate as a giant bicycle wheel with 100 spokes. If one Senator—one spoke—gets out of line, the wheel stops and, in fact, that is true. In our rules, any Senator can put a hold on a piece of legislation and essentially force the majority to go to a cloture vote—essentially, force a 60-vote necessity for any matter to be brought to the floor. This distinguishes us from the House. Because we know it is such a strong right, we are very reluctant and very reserved in the use of that right. This is what has produced comity in this House, the collegiality. Everybody knows if you put a hold on something too often, you are going to jeopardize things you want. So what goes around comes around and comity, such as it may be, exists.

Now, when one party rules all three branches, that party rules supreme. But now one party is saying that supreme rule is not enough, that they must also completely eliminate the ability of the minority to have any voice, any influence, any input.

This is not the Senate envisioned by our Founding Fathers. It is not the Senate in which I have been proud to serve for the last 12 years. And it is not the Senate in which great men and women of both parties have served with distinction for over 200 years. We often refer to the longest filibuster in history, which was conducted by Senator Strom Thurmond and lasted for more than 24 hours. That was an actual filibuster, standing on the floor and orating, or asking the clerk to read the bill, or reading the telephone directory, and doing it hour after hour after hour, sending the message that you are stopping debate, that on the great wheel of comity one spoke is sticking out and stopping it. People listen because, unlike the House, debate and discussion has been important. It has been fundamental in our being, and our ability to stand up on the floor of the Senate and discuss issues of import before the world on television, for the CONGRESSIONAL RECORD, for all of the people who watch on closed circuit television, becomes a signal, I think, on Capitol Hill.

When Democrats were in the White House—I will talk for a moment on Senate procedure—Republicans used the filibuster and other procedural delays to deny judicial nominees an up-or-down vote. So denying a judicial nominee an up-or-down vote is nothing new. It has been done over and over and over again. I speak as a member of the Judiciary Committee for 12 years, and I have seen it done over and over and over again. So why suddenly is an up-or-down vote now the be all and end all?

Last administration, Republicans used the practice of blue slips or an anonymous hold, which I have just described, to allow a single Senator—not 41 Senators, but 1—to prevent a nomination from receiving a vote in the Judiciary Committee, a 60-vote cloture vote on the floor, or an up-or-down vote on the floor of the Senate. This was a filibuster of one, and it can still take place within the Judiciary Committee.

The fact is, more than 60 judicial nominees suffered this fate during the last administration. In other words, over 60 Clinton judges were filibustered successfully by one Senator, often anonymous, often in secret, no debate as to why. It was an effective blackball.

This is not tit-for-tat policy, but it is important to recall that Senate rules have been used throughout our history by both parties to implement a strong Senate role and minority rights, even the right of one Senator to block a nomination.

Republicans have argued that the nominations they blocked are different because in the end, some, such as Richard Paez and Marsha Berzon, were confirmed. This ignores that it took over 4 years to confirm both of them because of blue slips and holds.

In addition, if a party attempts to filibuster a nomination and a nominee is eventually confirmed, that does not mean it is not a filibuster. Failure does not undo the effort. I pointed out earlier where, in 1881, President Hayes nominated a gentleman to the Supreme Court. That was successfully filibustered throughout President Hayes' term. When President Garfield then came into office, he renominated the individual, and the Senate then confirmed that individual. But that does not negate the filibuster. It was the first recorded act of a filibuster of a judicial nominee, and it, in fact, took place and was successful for the length of President Hayes' term.

More importantly, while some of Clinton's nominations eventually broke through the Republican pocket filibuster, 61 of President Clinton's judicial nominations were not confirmed because of Republican opposition. Not only were they not confirmed, they were not given a committee vote in Judiciary. They were not given a cloture vote here or an up-or-down vote on the floor. So these are really crocodile tears.

Republicans have also argued that the reason the nuclear option is needed now is because the Clinton nominees were not defeated by a cloture vote. In essence, because different procedural rules were used to defeat a nominee, it does not count.

On its face, this argument is absurd. To the nominee, whatever rule was used, their confirmation failed and the result is the same: They did not get a

vote, and they are not sitting on the Federal bench.

As I said, 61 Clinton nominees, in the time I have sat on the Senate Judiciary Committee—so I have seen this firsthand—were pocket filibustered by as little as one Senator in secret and, therefore, provided no information about why their nomination was blocked. There was no opportunity to address any concern or criticism about their record and qualifications.

Just to straighten out the record because I debated a Senator yesterday: 23 of these were circuit court nominees and 38 were district court nominees. In addition, unlike what some have argued, this practice was implemented throughout the Clinton administration when Republicans controlled the Senate, not just in the last year or final months of the tenure of the President.

The reason I mention this is because there is sort of an informal practice in the Judiciary Committee—it is called the Thurmond rule—that when a nominee is nominated in the fall of year of a Presidential election, that nominee does not generally get heard. But I am not only talking about nominees at the tail end; I am talking about nominees who were nominated in each of the 6 years of the Clinton Administration in which the Republican party controlled the Senate.

The following is a list of President Clinton's judicial nominees who were blocked:

Nominees	Court nominated to	Date nomination first submitted to Senate
Circuit Court		
Charles R. Stack	Eleventh Circuit	10/27/95
J. Rich Leonard	Fourth Circuit	12/22/95
James A. Beaty, Jr	Fourth Circuit	12/22/95
Helene N. White	Sixth Circuit	01/07/97
Jorge C. Rangel	Fifth Circuit	07/24/97
Robert S. Raymar	Third Circuit	06/05/98
Barry P. Goode	Ninth Circuit	06/24/98
H. Alston Johnson, III	Fifth Circuit	04/22/99
James E. Duffy, Jr	Ninth Circuit	06/17/99
Elena Kagan	DC Circuit	06/17/99
James A. Wynn, Jr	Fourth Circuit	08/05/99
Kathleen McCree Lewis	Sixth Circuit	09/16/99
Enrique Moreno	Fifth Circuit	09/16/99
James M. Lyons	Tenth Circuit	09/22/99
Allen R. Snyder	DC Circuit	09/22/99
Robert J. Cindrich	Third Circuit	02/09/00
Kent R. Markus	Sixth Circuit	02/09/00
Bonnie J. Campbell	Eighth Circuit	03/02/00
Stephen M. Orlofsky	Third Circuit	05/25/00
Roger L. Gregory	Fourth Circuit	06/30/00
Christine M. Arguello	Tenth Circuit	07/27/00
Andre M. Davis	Fourth Circuit	10/06/00
S. Elizabeth Gibson	Fourth Circuit	10/26/00
District Court		
John D. Snodgrass	Northern District of Alabama.	09/22/94
Wenona Y. Whitfield	Southern District of Illinois	03/23/95
Leland M. Shurin	Western District of Missouri	04/04/95
John H. Bingler, Jr	Western District of Pennsylvania.	07/21/95
Bruce W. Greer	Southern District of Florida	08/01/95
Clarence J. Sundram	Northern District of New York.	09/29/95
Sue E. Myerscough	Central District of Illinois	10/11/95
Cheryl B. Wattley	Northern District of Texas	12/12/95
Michael D. Schattman	Northern District of Texas	12/19/95
Anabelle Rodriguez	District of Puerto Rico	01/26/96
Lynne R. Lasry	Southern District of California.	02/12/97
Jeffrey D. Colman	Northern District of Illinois	07/31/97
Robert A. Freedberg	Eastern District of Pennsylvania.	04/23/98
Legrome D. Davis	Eastern District of Pennsylvania.	07/30/98
Lynette Norton	Western District of Pennsylvania.	04/29/98
James W. Klein	District of Columbia	01/27/98
J. Rich Leonard	Eastern District of North Carolina.	03/24/99
Frank H. McCarthy	Northern District of Oklahoma.	04/30/99
Patricia A. Coan	District of Colorado	05/27/99
Dolly M. Gee	Central District of California.	05/27/99
Frederic D. Woocher	Central District of California.	05/27/99
Gail S. Tusan	Northern District of Georgia	08/03/99
Steven D. Bell	Northern District of Ohio	08/05/99
Rhonda C. Fields	District of Columbia	11/17/99
S. David Fineman	Eastern District of Pennsylvania.	03/09/00
Linda B. Riegle	District of Nevada	04/25/00
Ricardo Morado	Southern District of Texas	05/11/00
K. Gary Sebelius	District of Kansas	06/06/00
Kenneth O. Simon	Northern District of Alabama.	06/06/00
John S.W. Lim	District of Hawaii	06/08/00
David S. Cercone	Western District of Pennsylvania.	07/27/00
Harry P. Litman	Western District of Pennsylvania.	07/27/00
Valerie K. Couch	Western District of Oklahoma.	09/07/00
Marian M. Johnston	Eastern District of California.	09/07/00
Steven E. Achelpohl	District of Nebraska	09/12/00
Richard W. Anderson	District of Montana	09/13/00
Stephen B. Lieberman	Eastern District of Pennsylvania.	09/14/00
Melvin C. Hall	Western District of Oklahoma.	10/03/00

Mrs. FEINSTEIN. Mr. President, the overwhelming question I have—and let me ask everybody here—is the public interest better served by 41 Senators stating on the floor of the Senate why they are filibustering a nominee, as Senator SCHUMER did, as others have done earlier, and the reasons hang out in public? Everybody can hear the reasons; they can be refuted. There are reasons given with specificity. They are based on opinions, they are based on speeches, they are based on writings, and they are discussed right on the floor in public. Or is the public interest better served by one Senator, in secret, putting a hold on a nominee or blue-slipping the nominee and preventing that nominee from ever having a hearing, from ever having a markup, from ever having a vote in the Senate, and it is all done on the QT, no discussion, no debate. It is, as I said, the epitome of blackballs that exists in the Senate.

All during the Clinton years, Republicans did not argue that checks and balances had gone too far. In fact, the opposite occurred. Republicans went to the floor to defend their right to block nominations. Senator HATCH is a good friend of mine, but nonetheless here is his 1994 statement about the filibuster:

It is one of the few tools that the minority has to protect itself and those the minority represents.

That was on judges. That was the chairman of the Judiciary Committee.

In 1996, Senator LOTT, then the leader, stated:

The reason for the lack of action on the backlog of Clinton nominations—

That is an admission there were backlogs of Clinton nominations—

was his steadily ringing office phones saying ''No more Clinton Federal judges.''

Also, in 1996, Senator CRAIG said:

There is a general feeling that no more nominations should move. I think you'll see a progressive shutdown.

Now there are crocodile tears and people are upset because 41 of us—not 1—41 want to debate in public. We have voted no on cloture because we believe our views are strong enough, that our rationale is strong enough and substantive enough to face public scrutiny and warrant an extended debate in the true tradition of the Senate.

We may not all agree. Our country is based on a foundation that protects the freedom to disagree, to debate, to require compromise. Neither party will always be right when it comes to the best policies for our country, and neither party will always be in power. So, as I said initially, it is important to put this political posturing in context. I believe filibusters should be far apart and few, and should be reserved for the rare instances for judicial nominations that raise significant concerns.

I voted against cloture in my Senate career of 12 years on only 11 judicial nominations and voted to confirm 573. I believe judicial nominees must be treated fairly and evenhandedly. I also believe it is the duty of the Senate to raise concerns or objections when there are legitimate issues that need to be discussed.

Discharging our obligation to advise and consent is not an easy task, especially when it involves making a choice to oppose a nomination. As I discussed earlier, I strongly believe the use of the blue slip and anonymous holds has been abused in previous Congresses. During the reorganization of the Senate in 2000, Senators DASCHLE and LEAHY worked to make the process more fair and public. At that time, a blue slip was no longer allowed to be anonymous and instead became a public document. This refining forced Senators opposed to a nominee to be held accountable for their positions. They could not hide behind a cloak of secrecy. This step also wiped out many of the hurdles that had been used to defeat nominations, so many of the tools used by Republicans in the past, and referred to as a way to draw distinctions with a public cloture vote, are no longer available.

Today the blue slip is still used. However, with each chairmanship, its effectiveness and its role has been modified. Each chair of the Judiciary Committee says they are going to adhere to the blue slip in a different way. That is the anomaly in this process. One person in Judiciary decides what the rules are going to be. This is what we ought to change.

Recently, Senator SPECTER, for example, has indicated he will honor negative blue slips. It is a piece of paper that Senators from a nominee's home state send in. If you do not send them in or if you say you do not favor the nominee, that nominee does not proceed. So Senator SPECTER has said he will honor negative blue slips when they are applied to district court nominees and that even one negative blue slip will be considered dispositive. However, when it comes to circuit court, blue slips will be given great weight but will not be dispositive on a nomination.

Given that the meaning and effect of a blue slip has changed, and I suspect will continue to change depending on which party controls the Senate and which party is in the White House, I believe the blue slip process should be eliminated altogether. In reality, its usefulness has already been lost.

Instead, I have long supported the creation of a specific timeline for how judicial nominations should be considered. Three months after nominations are submitted by the President, they should be given a hearing in the Judiciary Committee. In 6 months they should be given a vote in the committee. And in 9 months, floor action should be taken on the nomination. But the filibuster should remain the basic right of this institution. I believe implementing this timeframe would go a long way toward alleviating the tension that has plagued the consideration of judicial nominees.

I would like to spend a few moments, since I believe I have the time, on one nominee. It is the nominee who comes from California. Of course I represent California. This is very hard for me to do, but I believe this nominee clearly indicates the legitimacy of our position. I would like to turn to the President's choice for a seat on the most powerful appellate court in the Nation, the DC Circuit, Janice Rogers Brown.

In the case of this particular nominee, out of all the nominations, Justice Brown, in my view, is the clearest cut. She has given numerous speeches over the years that express an extreme ideology, I believe an out-of-the-mainstream ideology. In those speeches she has used stark hyperbole, startlingly vitriolic language. That has been surprising, especially for a judge, let alone a State Supreme Court justice from my State. But statements alone would not be enough for me to oppose her nomination, because there are many nominees whose opinions I have strongly disagreed with and voted to confirm. Jeffrey Sutton and Thomas Griffith immediately come to mind.

Rather, my concern is that these views expressed in Justice Brown's speeches also drive her legal decisionmaking. On far too many occasions she has issued legal opinions based on her personal political beliefs, rather than existing legal precedent. Let me give some instances.

In a speech to the Institute for Justice on August 12, 2000, Justice Brown stated this:

> Today, senior citizens blithely cannibalize their grandchildren because they have a right to get as much free stuff as the political system will permit them to extract.

From the context of the speech, it is clear Justice Brown is referring to Social Security and Medicare, two essential programs that protect individuals in their retirement, and two programs that today's senior citizens have been contributing to financially for decades.

Unfortunately, her legal decisions reflect the same visceral hostility toward the rights of America's seniors. Let me give you an example.

In Stevenson v. Superior Court, Justice Brown wrote a dissenting opinion that would have changed California law to make it more difficult for senior citizens to demonstrate age discrimination. A Republican justice, writing for the majority of the California Supreme Court, criticized Justice Brown's opinion and he stated this:

> The dissent's real quarrel is not with our holding in this case, [meaning the majority] but with this court's previous decision . . . and even more fundamentally with the legislature itself. . . . The dissent [of Justice Brown] refuses to accept and scarcely acknowledges these holdings.

''These holdings'' being the law of the State of California.

Justice Brown's open disdain toward Government is also disturbing, especially in light of her nomination to the District of Columbia Circuit. Let me explain why this is so important. The DC Circuit is the most prestigious and powerful appellate court below the Supreme Court because of its exclusive jurisdiction over critical Federal constitutional rights and Government regulations. Given this exclusive role, the judges serving on this court play a special role in evaluating Government actions.

Janice Brown's statements on the Federal Government raise serious concerns about how she would perform on the DC Circuit if given a lifetime position. Let me illustrate.

At a 2000 Federalist Society event, Justice Brown stated:

> Where government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is: families under siege, war in the streets, unapologetic expropriation of property, the precipitous decline of the rule of law, the rapid rise of corruption, the loss of civility and the triumph of deceit. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

We asked her about these statements in the Judiciary Committee. Her answer was, ''Well, I write my own speeches.'' So these are her words. These are her words, of somebody going on the DC Circuit with enormous hostility to virtually anything the Government would do, and saying the Government is responsible for the loss of civility, the triumph of deceit.

Justice Brown's statements and actions demonstrate that she is an activist judge with an unfortunate tendency to replace the law as written with her own extreme personal beliefs. This is not the kind of judge who should be on the nation's second most powerful court.

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

Mrs. FEINSTEIN. I will yield the floor, but if an opportunity comes up, I will ask to recover it again.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, we are debating in the Senate today a very important issue. It is an issue that we must deal with and one that may take days of debate.

For a series of reasons, it has become more and more of interest to the American people the nature and quality of judges that we appoint. That has resulted in a serious concern about the role of courts, the critical doctrine of separation of powers; that is, what judges do and what they should do and what their prerogatives are and what their responsibilities are as a judge.

President Bush, in his campaigns both times, made absolutely clear that he believed the judge should be a neutral arbiter, a fair referee and, as such, not have an agenda when they go on the bench. He has appointed and nominated judges that share that view. And they have been doing splendid jobs—the judges that have been confirmed. He has not asked that they promote his agenda, his politics, his view of the social policies of America, he has simply asked that they do the jobs they were appointed to do—that they serve in the judicial branch of our government.

It is true, however, that the American people have seen some things in the judicial branch that have troubled them. They have seen, for a number of years, two judges on the Supreme Court consistently dissent in death penalty cases. They don't like the death penalty so they dissent in cases that uphold its use. They declare, in every case they consider, that the death penalty cruel and unusual, and therefore, prohibited by the Constitution of the United States. But they failed to note that in that very same Constitution there are eight or more references to capital crimes, permitting the taking of a person's life with due process of law, there are multiple references to the death penalty in the Constitution and I think it is important to note that every State, at the time the Constitution was adopted, had a death penalty and virtually every country had one as well.

Therefore, it is inconceivable to me how a judge who would follow his oath to obey the commands of the Constitution could ever interpret the phrase ''cruel and unusual''—certainly it was not unusual if it was the law of every State in the Nation at that time and the Federal Government had laws supporting the death penalty. So we know that some judges continue to conclude that the death penalty is cruel and unusual. That is activism. They have allowed their personal opposition to the death penalty to solely drive them, and they have manipulated the words of the Constitution to make it say something it plainly does not say.

Now we are seeing cases of judicial activism on a whole raft of issues. We have seen the Pledge of Allegiance struck down by a Federal court. We have seen the erosion of rights of property protected by the fifth amendment that says you cannot take someone's property without paying them for it. We have had courts redefine the meaning of marriage under the guise of interpreting a constitutional phrase that absolutely was never ever intended to

affect the definition of marriage. It was probably the last thing in their minds when the people ratified the Constitution.

We have had judges cite as authority proceedings in the European Union, but it is our Constitution we ratified. It is our Constitution, not some other. How can they define and make rulings based on opinions in Europe when they go against the very document that orchestrates and organizes our Government?

We have consent decrees in prisons and schools and mental health hospitals where Federal judges dominate whole Government agencies and state legislatures for 30 years. We have had judges say you cannot have a Christmas display because it violates the first amendment. And, we know that jackpot verdicts are all too common.

The American people are concerned about these things. These things are bigger than Republican and Democrat, they go to the heart of the separation of powers doctrine. President Bush was honest and direct, and many of the people he has nominated have had an objection to their nomination because, on occasion, they have written something or have made a speech that indicates they share the view that a judge should show restraint and not promote their own personal agenda from the bench.

That is the way it has been for 200 years. I remember when this debate got kicked off, I saw ''Meet the Press,'' when Hodding Carter was on it, and used to be on the staff of President Carter, and he said: Well, I have to admit we liberals are at the point we are asking the courts to do for us that which we can no longer win at the ballot box.

Too often that is what this is about. A lot of these issues that are being decided by courts and judges would never ever prevail at the ballot box. They would not be passed by the Congress.

People say they are nice folks. They are smart people. If you criticize a judge, you are doing something that is highly improper; you should never criticize a judge. That is not the history of the Republic. What the American people need to understand, I cannot emphasize this too much, the principle on these issues I have just talked about is very deep. What we are suggesting is, and what is being implicated here is, that unelected judges who are given a lifetime appointment by which they are independent and unaccountable to the public, should not set social and political policy in this country.

Is that too much to ask? We have seen too much of that. It is being taught in the law schools that the good judges are the ones that step out in a bold way and move the law forward to higher realms, they would say. But have they forgotten that the people, if they wish to have a death penalty and it is consistent with a Constitution, their opinion makes little difference? They have one vote in the election, as everyone else does. If their views do not get ratified, so what?

Some people say: Well, the courts had to act because the legislature did not act. But when the legislature does not act, that is an act. That is a decision, a decision not to change an existing law, and it deserves respect.

Our judges are people who take their office on trust. We have some exceedingly fine ones and most do show discipline, but I do believe this is a point in our history when the American people and the Congress need to decide together what we expect out of judges. Do we expect them to be the avant-garde of social and political policy? Or do we expect them to be faithful and true arbiters of legitimate disputes to interpret the law as they find it?

There is only one way, consistent with our Constitution and our history and our body politic, for our system to continue to work, and that is that judges show restraint. That is what this debate is about. It is not about Republicans. It is not about Democrats or such things.

One of the things that has occurred in this confirmation process, for now nearly 20 years, has been the influence of outside hard-left activist groups who have a clear agenda with regard to the Judiciary. They know exactly what they want from the Judiciary, and they are determined to get it. They have banded together. They build dossiers on nominees. They systematically take out of context their comments and their statements and their positions. They release that to the public. Frequently, they have support from the major liberal news organizations in the country to the sensational charges they make and they sully the reputations of nominees who are good and fine nominees.

It is a very difficult to turn the tide on that. It is unfair. We will talk about that some today. But we have to recognize this.

If I criticize my colleagues on the other side of the aisle, I would say this: Those people were not elected to the Senate. They have not taken an oath to advise and consent and to do so honestly and with intellectual integrity. They did not do that. They are advocates. They raise money by trying to demonstrate to those who would contribute to them that President Bush's nominees are extreme and out of the mainstream. They should not be calling the shots here. Frankly, my view is, too often they have. Too often they have taken nominees, and they have smeared them up, muddied them up, and then our Senators have not stepped back and given them a fair shake. I do not mean that personally to my colleagues, but I think that is a fair observation. I believe too often that has occurred.

Two of the things that are typical of that can be seen in an ad now being run on television against Priscilla Owen—I don't know in how many States—by People For the American Way. Let me remind you that Justice Priscilla Owen, from Texas, was given the highest possible rating by the American Bar Association. She finished at the top of her class in law school. She made the highest possible score on the Texas bar exam. A lot of people take that exam. That is a big deal, in my opinion. She got 84 percent of the vote in her reelection. She had the support of every major newspaper in Texas, and many of them are not Republican newspapers. She is a superb, magnificent nominee.

However, the People for the American Way TV ad wants you to believe that she is an activist judge, even though we know that for her whole career her whole philosophy of law is that judges should follow the law and not legislate from the bench. That is her deepest abiding principle—be faithful to it and not depart from it, whether or not she agrees with it.

The People for the American Way cites as proof of her activism a fellow justice on that court, now the Attorney General of the United States of America, Alberto Gonzales, who they say accused her of being an activist in an opinion he wrote. So they declare: Ah, she is an activist. The President's own Attorney General said she is an activist. That is simply not so.

Let me just talk about the facts of this opinion for a minute. We need to drive this home because so far as I can tell that is the only charge that has been made against her that amounts to anything at all that has ever been consistently raised by those who oppose her nomination.

In the opinion the People for the American Way cites as their evidence, what happened was this—the Texas Supreme Court was evaluating the meaning of the Texas parental notification law on abortion for a teenager or a minor. Minors in Texas have to notify at least one of their parents before they undergo the significant medical procedure of an abortion, unless there is a bypass to the parental notification requirement granted by a court. And minors are allowed to ask for that judicial bypass for many reasons. This process allows them to set forth the reasons and not have to tell their parents that they are going to have an abortion.

Well, in this circumstance, a trial judge heard the case. He saw the child who wanted to bypass and not tell her parents, and he concluded that she did not meet the statutory requirements and should tell her parents. Lets be clear—the Texas parental notification requirement does not give the parents veto power, it does not mean they have to ''consent.'' She could still have the abortion, just as long as she told them, ''notified'' them, of what she was about to do. The reason to have this kind of law is simple—there is a serious concern that if you cannot give a child an aspirin at school without parental permission, surely we ought not to be having doctors perform abortions on children without at least having the parents notified of it.

That is what Texas voted to have as their law. The Supreme Court has upheld parental notification statuses as constitutional. So, in Texas, there became a fuss over the meaning of the law and Justice Owen concluded that the trial judge was correct in their decision that the girl did not meet the requirements for parental notification and should notify her parents before the abortion. Justice Owen dissented from the main opinion and concluded that the trial judge was correct and the child should notify her mama or daddy that she was going to have an abortion. Whereas, Judge Gonzales's opinion said that he had studied the Texas statute and I have concluded that—it is not perfectly clear, but I have concluded the legislature intended A and B. Therefore, if I don't rule the other way, since I have concluded the legislature intended A and B, then I will be an activist even though I personally hate to see this child not tell her parents.

So, to help us clear up this matter, he came before the Judiciary Committee, of which I am a member, and testified about this case. Senator BROWNBACK, who is in the Chamber, asked him about it as Attorney General. And he was rock solid. He has written a letter saying he was not referring to Justice Owen when he made that comment in his opinion about activism; certainly, did not mean to. He was referring to his own self, that if he had concluded that the legislature meant these things, then he was compelled to rule against the trial judge or he would be labeling himself an activist. Justice Owen did not agree, she had not concluded the same things about the legislation that Judge Gonzalez had.

An SMU law professor wrote a beautiful letter on behalf of Justice Owen. She said:

> I am pro-choice, absolutely, but I believe she followed the law carefully. She was a scholar. She thought it through like a judge should think it through, and, absolutely, this is not evidence of activism and it, absolutely, should not be held against her.

Mr. President, I want to know what the time agreement is and where we are.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator has 43½ minutes remaining.

Mr. SESSIONS. Mr. President, I see Senator BROWNBACK is in the Chamber. I will finish within my 30 minutes. I believe he will be speaking in the next 30 minutes; is that correct—or in that 40 minutes?

The PRESIDING OFFICER. That is an appropriate division of time.

Mr. SESSIONS. I wish to share a little bit about Justice Janice Rogers Brown. She grew up not too far from where I grew up in rural Alabama, in Greenville, AL. She, as a young African-American child, had parents who were sharecroppers. They had a tough life. She ended up moving, as a teenager, to California, where she went through the school system there, did exceedingly well, went to UCLA Law School and achieved great success there, and eventually became a judge. It is terrific, the story of her life and her achievements.

She has served for 9 years now on the California Supreme Court. She does, every day on the California Supreme Court, the same kind of things which President Bush has nominated her to do on the Court of Appeals here in DC. As such, she reviews the transcripts of the trials of cases conducted by trial judges under them to see if there was an error in the conduct of that trial. The California Supreme Court does not conduct trials. They do not make opinions. They review trials below them to make sure they were conducted properly, that the judge followed the law and did not commit errors.

I think she has been trained exceedingly well. As a member of the California Supreme Court she reads briefs. She listens to arguments by counsel, and then writes opinions as they make those judgments. Those opinions should be unbiased and I believe hers have been and will continue to be. We need judges who write well and follow the law and rule consistent with the law. If you look at Justice Brown's career, I do not think anyone can contend she has performed other than admirably on the bench. She has written beautifully and thoughtfully. She graduated from UCLA, one of the Nation's finest law schools.

In February of 2004, last year, the alumni of that not so conservative law school presented Justice Brown with an award for public service. In recognizing her, her fellow UCLA alumni—the people who know her—they did not condemn her for being some extremist. They said this:

> Janice Rogers Brown is a role model for those born to prejudice and disadvantage, and she has overcome adversity and obstacles and, since 1996, has served as a member of the California Supreme Court. The professional training she received at UCLA Law School has permitted her, even now, when decades remain to further enhance her career, to have already a profound and revitalizing impact upon the integrity of American jurisprudence.

I will repeat that:

> She has even now been found to have already a profound and revitalizing impact upon the integrity of American jurisprudence.

I could not agree more. They go on to say this:

> Despite her incredible intellect, work ethic, determination, and resultant accomplishments, she remains humble and approachable.

That is important in a judge. A lot of judges get to the point they think they were anointed and not appointed, but she has been on the bench for 9 years, and they still say she keeps her perspective and remains approachable to all. That is not the Janice Rogers Brown you will be hearing about from those who want to tar and feather her.

I will take the word of the people who know her, who have actually studied her record, over the rhetoric of the interest groups who are not the least bit interested in the integrity of the judiciary. They are interested in their agenda. From my observation, one of their guiding principles is that the ends justify the means.

After law school, Justice Brown served as a deputy legislative counsel in California for 2 years. She then spent 8 years as a deputy attorney general in the office of the California Attorney General, where she wrote briefs and participated in oral arguments before appellate courts on behalf of the State's criminal appeals. So she learned a lot about criminal law, and she prosecuted criminal cases in court and litigated a variety of civil issues. Her keen intellect and work ethic made her a rising star on the California legal scene.

In 1994, then-Governor Pete Wilson tapped her as his legal affairs secretary. Governor Pete Wilson came to Washington last week. For the most part, he was here to affirm Justice Brown. He thinks she is a magnificent nominee. He absolutely supports her. He said he couldn't be more proud of her service on the court and that it was outrageous what they were saying about this fine nominee's record.

She was then nominated and confirmed as an associate justice on the California Third District Court of Appeals. And in 1996, as a result of her superior performance on the appellate court, Governor Wilson elevated her to the California Supreme Court.

I ask to be notified after 30 minutes have been consumed.

The PRESIDING OFFICER. The Senator has 7 minutes remaining.

Mr. SESSIONS. Since she was appointed to the Supreme Court, a couple things have happened that provide confidence in her good performance.

During the 1998 election, she was on the ballot and had to win the majority of the vote to stay on the bench. The people of California, who didn't vote for President Bush and certainly are not a rightwing electorate, voted to keep Justice Janice Rogers Brown on the court with 76 percent of the vote. That is a big vote by any standard. Probably 20 percent of the people in California vote against anybody on the ballot. Other judges were on the ballot. She got a higher percentage of the vote than any of the other four judges on the ballot. That is an affirmation by the people of California.

In 2002, for example, Justice Brown's colleagues on the supreme court relied on her to write the majority opinion for the court more times than any other justice. What happens on a court, such as a supreme court, once the court votes on how a case should be decided, they appoint a member of the court to write the opinion. If you write the opinion, you have to be on the majority side. If some don't agree and the majority agrees, then somebody writes the majority opinion for the court.

We have had the suggestion that this justice of the California Supreme Court

is somehow out of the legal mainstream, but in 2002, more than any other justice on the court, she was called on to write the majority opinion. That speaks volumes for the fact that she is not out of the mainstream. And there are few courts in the United States more liberal than the California Supreme Court.

Professor Gerald Ullman, who is a law professor in California, wrote a beautiful letter supporting her. His statement sums up what we ought to think about as we consider this nomination. He said:

I don't always agree with her opinions.

And then he said this:

I have come to greatly admire her independence, her tenacity, her intellect, and her wit. It is time to refocus the judicial confirmation process on the personal qualities of the candidates, rather than the hot button issues of the past. We have no way of predicting where the hot buttons will be in the years to come, and our goal should be to have judges in place with a reverence for our Constitution who will approach these issues with independence, an open mind, and a lot of commonsense, a willingness to work hard, and an ability to communicate clearly and effectively. Janice Rogers Brown has demonstrated all these qualities in abundance.

Her colleagues support her. A bipartisan group of Justice Brown's former judicial colleagues, including all of her colleagues on the court of appeals for the Third Circuit in California, have written in support of her nomination. Twelve current and former colleagues wrote a strong letter to the committee stating:

Much has been written about Justice Brown's humble beginnings, and the story of her rise to the California Supreme Court is truly compelling. But that alone would not be enough to gain our endorsement for a seat on the Federal bench. We believe that Justice Brown is qualified because she is a superb judge. We who have worked with her on a daily basis know her to be an extremely intelligent, keenly analytical, and a very hard worker. We know that she is a jurist who applies the law without favor, without bias, and with an even hand.

That was received by the committee October 16, 2003, when this process began.

Justice Owen and Justice Brown are both immensely qualified to serve on the Federal bench. They deserve fair consideration by this body. That should come in the form of an up-or-down vote, not a filibuster. I trust we will have that soon. They certainly deserve it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I thank my colleague from Alabama for his presentation and his work on the Judiciary Committee since the time we have both been in the Senate. He has served for some time and has done an excellent job. He brings a lot of good sense to it. We are both very familiar with Janice Rogers Brown and Justice Owen. They have been in front of us for years now. Priscilla Owen was in front of us when I was last on the Judiciary Committee over 2 years ago. I can remember that during her confirmation hearing, she gave a law school professor dissertation to almost every question that came up. She had the answers. She responded directly to our colleagues. She is a brilliant lady, both on resume and in person.

Something you said earlier caught my attention, because it is what a lot of this battle is about. The left in America doesn't get this agenda through the legislative or executive branch, so they go through the courts.

And that is really what we are fighting about now, it seems to me—you have judges we are putting forward for confirmation who are strict constructionists, meaning they will rule within the letter of the law of the Constitution. The left wants people who will be super legislators, legislating from the bench. In your experience on the Judiciary Committee, have you heard that debate taking place, or is it always pretty much underneath the water, you really don't see it? Have you heard that debate rise up where people say, well, we cannot change the marriage definition in the U.S. Congress or in the States, so we are going to do it through the courts?

Mr. SESSIONS. This motive is not talked about regularly in an open way, but in a way it did become open. Shortly after Justice Owen was nominated, the Republicans lost a majority in the Senate. I was chairing at that time the Court Subcommittee of the Judiciary Committee, and that changed and Senator SCHUMER became chairman of the committee. He announced that all judges were basically driven by their politics, and they all had ideologies, and that we ought to just consider their politics when we are confirming them. We had a hearing on the politics of ideology and how we should handle it. I thought the witnesses were uniform, including Lloyd Cutler, counsel to Jimmy Carter and to President Clinton, in their rejection of that principle.

They all agreed that the classical American rule of law says that judges are to be nonpartisan, that they are referees and arbiters and objective interpreters of the law, and it would undermine that principle to start treating them like politicians. So it was discussed in a way that was honest, actually, and I think the overwhelming result from the ABA and the witnesses was that considering politics during the judicial confirmation process would not be a good way to go.

I know Senator BROWNBACK is aware that a lot of the groups that drive the objections to these nominees are very agenda-driven groups, they are activists, and I think that is pretty obvious to anybody who is watching.

Mr. BROWNBACK. Mr. President, that has been my view of what has been taking place recently. Individuals increasingly have said we cannot win this legislative fight in the States or in the Congress, so we are going to take it to the courts. A judge who is a strict constructionist would ask, is this within our purview under the Constitution? And if it is not, the case would be thrown out, rather than the judge saying that the Constitution is an organic, living document, and I can look at this law imaginatively, how I want to, and then somehow find a way to reach the conclusion I want.

To me, that is what the frustration of the public has been—that somehow they are now thrown out of the process. They can vote for or against the Senator from Alabama or the Senator from Kansas or the Senator from New Hampshire or the Senator from Massachusetts on the basis of a policy issue. But they don't have any right or ability to be able to contact a judge. Yet you have these massive issues that directly impact people regarding marriage and life. We have a bill up now where a Federal court has said that the Congress has appropriated this money and that is inappropriate and they must give these moneys out. Under the Constitution, the appropriation powers are clearly given to the Congress. The court is now stepping into that.

My question to my colleague would be, Where does this stop if you don't start putting on judges who are judges rather than super legislators? Where does it stop?

Mr. SESSIONS. I could not agree more with the Senator. He stated that so beautifully and, I believe, so fairly. It is the real question here. As you know—and I am not sure most of the people in our country have fully thought it through—once a judge says the Constitution means that marriage should be redefined and every legislative finding to the contrary is void, the only recourse the American people have is to try to pass a constitutional amendment that requires, as you know, a two-thirds vote of both Houses of Congress and three-fourths of the States. It is a monumental task. And then if you criticize the judge for their ruling, people say: Oh, you are violating the separation of powers. I think when the courts tread into those areas and start imposing political views, they can only expect that there will be criticism in return.

Mr. BROWNBACK. I would think they would expect criticism on that. But that has been the built-up frustration, where people say the only way we can go is to amend the actual Constitution in the process. I do not believe that is the right way for our democracy to be going. I appreciate my colleague from Alabama and his work on these issues. I believe that is really at the core of these matters.

Mr. President, I note that we have had a lot of debate on Priscilla Owen and Janice Rogers Brown. I don't think anyone who listens to any of this debate is unfamiliar with these two individuals. I am going to talk some more, as well, about these individuals and answer some questions and comments made from the other side about these two individuals.

At the end of the day, we need to recognize what this is about. I believe President Bush responded to this well at his last press conference when he was asked: Why do you think the Senate Democrats are opposing your nominees? Do you think it is based on the religious preference of your nominees? Some of these are people of faith who have religious conviction. He said: No, I think it is because they would interpret the law rather than trying to rewrite the law, that these are people who would stay within the construction of the law and the construction of the Constitution and not try to rewrite it.

I believe that is what really is at stake here. Are you going to have a super legislative judiciary, or are you going to have one where it is the role of a judiciary to determine what is constitutional within the framework of the Constitution, not what some sort of expansive living document reading of the Constitution would be? That really is the heart of the matter we are debating here today. It is a very live issue in front of us right now.

I note to those who may be listening to these proceedings right now, last week, a Federal judge in the State of Nebraska ruled that the State constitutional amendment that the people in Nebraska had passed defining marriage as the union of a man and a woman—the people of Nebraska passed a State constitutional amendment with 70 percent of the vote, which is a high mark in any election, saying, yes, we agree that the union of a man and woman is the definition of marriage in Nebraska. A Federal court in Nebraska ruled that is not only unconstitutional under several different provisions, but that civil unions must be granted to people of the same gender. The Federal court is saying you must give that.

So it is not just saying that the State of Nebraska is wrong and cannot define marriage, which we have left up to the States in the history of the Republic, but it is also saying that the U.S. Constitution, in some reading of it, actually requires the recognition of same-sex civil unions. Where was that ever written in the Constitution? Where was that ever considered in any sort of constitutional debate? Why is that, at this point in time in our Constitution, seen as somehow in this organic document of where we are today?

I think we have had 17 States now directly vote on the issue of marriage, and every one of them said marriage is the union of a man and a woman. Now you have a Federal court that says, no, that is not allowable for States to determine. States in every place and every region in the country have passed this when the people were allowed to vote. Now you see again the issue-setting of an activist judiciary going in and saying: We know what the people think and what the people vote on this, but we say different. You are going to create yet another festering frustration among the people of America if the court starts walking—and apparently it has—into this issue of the definition of marriage. These are things, if properly left to legislative bodies to determine, look at and figure, wrestle with, and have elections about, which people can have an impact on and say, I think this should be a certain way, and a determination is then made by the people. That has been left up to the people, and it should be.

When the court steps in and makes a new determination, makes a new ruling on it, that is going to build to that festering. It happened in 1973 in Roe v. Wade, where the Court discovers this right to privacy that is a constitutional right to abortion, which cannot be limited in any means, by any State, by the Federal Government, by the Congress.

Prior to that period of time, it had been held valid, constitutional, and appropriate for States to regulate and to deal with this issue, so we had different States ruling different ways prior to Roe v. Wade. This is what would happen again if and when Roe v. Wade is overturned; the States simply would then handle this issue as they did prior to 1973. But once the Court discovers this constitutional right to privacy that is interpreted to mean there is a right to abortion, the states cannot decide for themselves at all.

We are starting down the same path with marriage. We can look around the country and ask: Why are people fired up about the judiciary? Why, during the last election cycle, was the lead applause line for President Bush's rallies about appointing judges who will stay within the laws rather than rewriting them?

The reason is people have this deep-felt frustration at how the courts are coming at all of these opinions, so contrary to the feelings of the vast majority of people in the United States. And where is it written within the Constitution, if it is within the document, that we should have a constitutional right to abortion? Bring it to this body, with two-thirds of the House and two-thirds of the Senate, three-fourths of the States passing it. That is how you amend the Constitution, not by a majority vote of the Supreme Court. That is the durable way we amend the Constitution and deal with it, instead of this building up of frustrations to the point where people say: I have been disenfranchised. I thought the people voted, that the people ruled, within the parameters of the Constitution.

Remember, the Constitution gives a broad swath of power to the people and limits government. That is the role of the Constitution. It gives broad authority and power to the people and limits the role of the government.

We have embarked today upon addressing this issue. Really what we are seeing take place now are these large plates pushing against each other. Political scientists for years have debated the issue of Presidential power taking away from legislative power. That has always been the debate over the years. During a war, a President is stronger; the legislative body is considered weaker. Outside of war, it reverses and the legislature assumes more authority over the executive branch. And for years political scientists have debated this back and forth—who is gaining, who is receding. Yet we have seen taking place now over the past 40 years an ever-increasing encroachment of the judicial branch within these purviews reserved under the Constitution for the legislative and the executive branches.

I spoke of one just previously with my colleague from Alabama, and that is the appropriation of money. In the Constitution, the appropriation of money is given to the legislative body. That is specifically stated within the Constitution.

Jerry Solomon, a former Congressman from New York who passed away, observed that a number of colleges in the United States were not allowing military recruiters to come on to their college campuses. He said they ought to at least have them come on to the campuses and have their voices heard. The colleges said no.

Congressman Solomon put forward an amendment that if a college decides to bar military recruiters from its campus, that is its right, but it then cannot receive certain Federal appropriations. The amendment said if you are not going to let military recruiters on campus, then we have the right to withhold these Federal funds. If you are not going to give them a chance at free speech, we think there is some price to be paid with that.

It is the authority of the Congress to appropriate money. That was done with the Solomon amendment. It passed by a majority vote. It passed by a majority vote in the Senate and was signed into law by the President of the United States.

Now a Federal court says, no, Congress, you cannot do that. The money must go to those colleges in spite of the Solomon amendment. How many places across the country are courts allocating money for States? These are specific authorities and powers reserved to the legislative body, and the reason is, the Founders, in all their wisdom, said legislators are elected by the people, and the allocation of money is one of the key power for any governmental entity that should belong to the elected representatives of the people. But now we have the courts continually taking, taking, taking. The judiciary continues to come in to areas reserved for the executive and legislative branches, and so we come to where we are today: President Bush seeking to appoint judges, bright judges, well-qualified judges, balanced judges, ones who say the law should be interpreted as to what the law is, not what they choose for it to be or what outside groups want it to be. The Constitution is what it is, and it is not something through which I can invent new rights, however much as I think they should be in the Constitution. If that right is

to be, it should be passed by two-thirds of the House, two-thirds of the Senate, three-fourths of the States, and then it becomes a constitutional amendment, not by a majority vote at the Supreme Court.

This is what these judges generally stand for. It is what we should get the judiciary back to. And yet nominees who would do that are being blocked, they are being filibustered inappropriately.

Priscilla Owen, Janice Rogers Brown—we have a group of four judges who collectively have been filibustered for a total of 13 years. It is amazing that they would be filibustered for that period of time.

This is a key, defining moment for us as a country. Will the judiciary be the judiciary, or is it to continue to accumulate power and become more of a superlegislative body? That is much of the debate that is in front of us today with the judges. That is taking place in the form of Priscilla Owen, Janice Rogers Brown, and several other judges. That remains the issue.

When a Supreme Court position comes open, will we appoint somebody who will stay within the letter of the law of the Constitution or not? Will it require 60 votes to approve a Supreme Court judge, something that is never required, or will it be a majority vote? Must we have a supermajority?

If you want a supermajority to approve a Supreme Court judge, then amend the Constitution to state that it requires a supermajority, like we do with respect to treaties, what it takes to approve a treaty. The Founders did not say that. They said advise and consent. They did not say a supermajority or two-thirds vote of the body. They said advise and consent. Do you anywhere interpret a supermajority vote to be required to approve a Supreme Court nominee? No, that is not within the reading and understanding of the document. But because this role of judges as legislators keeps coming back up, particularly from the left, it is going to continue to be pushed.

There have been a number of issues raised regarding the nominees. I now want to address what has been raised.

It has been asserted that current Attorney General Alberto Gonzales accused Priscilla Owen of judicial activism. He is Attorney General of the United States and was on the Texas Supreme Court with Justice Owen. I asked the Attorney General in his confirmation hearing for Attorney General if that was something he had said about Priscilla Owen. He said no. He testified under oath that Justice Owen is a great judge he never accused of judicial activism. That is Alberto Gonzales, under oath, in front of the Judiciary Committee of the Senate.

I think that should put that to sleep. He testified under oath that he had never accused Justice Owen of engaging in judicial activism.

Justice Brown was accused of justice activism in supporting the Lochner case. Again, I want to put that issue to rest. Indeed, Justice Brown has taken issue with the Lochner decision. This is considered a judicial activism case. She is being accused of supporting it, when in fact she actually stated in an opinion that:

> The Lochner court was justly criticized for using the due process clause as though it provided a blank check to alter the meaning of the Constitution as written.

That is Justice Janice Rogers Brown, in a written opinion on Lochner. She cannot be accused of this. Maybe her words in a speech are accused, saying she is supportive of Lochner, but her actual stated written opinion says, no, that the Court was justly criticized for the Lochner case. I think those are important things to put clearly in the record.

Mr. President, I inquire of the Chair how much time remains of my allocation?

The PRESIDING OFFICER. The Senator from Kansas has 10 minutes remaining.

Mr. BROWNBACK. Mr. President, I want to cover some of the ground on Janice Rogers Brown that is well known in this situation because she has been in front of us so much, so long, but I think it bears repeating. She was born to sharecroppers, came of age in the Jim Crow era, went to segregated schools. Do you know what motivated her to become a lawyer? It was her grandmother's stories of NAACP lawyer Fred Gray, who defended Rosa Parks, and her experience as a child of the South.

When she was a teenager, Justice Brown's family moved to Sacramento, CA. She received her bachelor's degree in economics from California State in Sacramento in 1974 and her law degree from the UCLA School of Law in 1977. These are all well-known matters.

I don't know if people know as well all of her public service, but they probably cannot because it is so extensive. All but 2 years of her 28 years in her legal career have been in public service. This is a public servant of 26 years standing.

I ask the Presiding Officer or anybody listening, if you serve as a public servant for 26 years in the State of California, how can you be a radical conservative out of the mainstream judicial thought? Can that be while you are serving for 26 years in public service in the State of California in various capacities? She began her career in 1977 and served 2 years as a deputy legislative counsel in the California Legislative Counsel Bureau. From 1979 to 1987 she was deputy attorney general in the office of the attorney general of California. Governor Pete Wilson selected her to serve as his legal affairs secretary from 1991 to 1994. She then served on the State court of appeals for 2 years before joining the California Supreme Court where she served with distinction until 1996. Then she was involved in her community.

So we have 26 years of public service in the State of California. I do not see how that person could be somebody out of the mainstream of thought and serve in so many capacities in that State. That seems to me to defy logic.

She has performed a lot of community service. She served as a member of the California Commission on the Status of African-American Males, focused on ways to correct inequities in the treatment of African-American males in employment and in the criminal justice and health care systems. Is this out of the mainstream? She was a member of the Governor's Child Support Task Force which reviewed and made recommendations on how to improve California's child support system. Out of the mainstream? She was a member of the Community Learning Advisory Board of the Rio Americano High School and developed a program to provide government service internships to high school students in Sacramento. Out of the main stream? She taught Sunday school at the Cordova Church of Christ for more than 10 years, just as former President Carter teaches Sunday school. Out of the mainstream?

Given the impressive range of her activities and legal and personal experiences, it is no surprise that the President would nominate her. What is surprising is that she would be labeled somehow out of the mainstream. I think this is simply and demonstrably ridiculous. If Janice Rogers Brown is an extremist, the people of California, I guess, must be so, too. In 2002 they overwhelmingly approved her in a retention election with 76 percent of the vote. Her support was more than any other justice on the ballot in that election.

If Janice Rogers Brown is extremist, so, too, must be a bipartisan group of 15 California law professors who wrote to the Senate Judiciary Committee in support of Janice Rogers Brown, knowing her to be:

> . . . a person of high intellect, unquestionable integrity and evenhandedness.

She is not out of the mainstream. She is extraordinarily qualified, and this is just an attempt to smear a good candidate.

I turn, finally, to one issue about the approval rate of court of appeals judges under President Bush. We heard a lot of numbers thrown around about judges and the number who have been approved by this administration and what happened under the remainder of the Clinton years administration. I want to put up one chart about this and talk briefly about it.

We have a Republican President and a Republican Senate. I am delighted. I think we are going to make good progress for the American people and show progress in moving things forward. I want to go back to two other Democrats, two Democratic Presidents who had Democratic Senates under them, an appropriate comparison of apples and apples, and look at the approval rate of circuit court judges. Remember you have federal district court

judges, circuit court judges, and then Supreme Court Justices. Circuit court and Supreme Court jurists are the ones who have the most latitude on enforcement, interpretation, or rewriting of laws.

Look what we had under Democrat President Johnson, a Democrat President: 95 percent approval rate of circuit court judges. President Carter, Democrat President, Democrat Senate: 93 percent approval rate. President Bush, Republican President, Republican Senate: 67 percent approval rate of circuit court judges.

What changed during this period of time? I suppose some would say they are nominating a different sort of nominees who are not qualified or outside the mainstream, but I think that argument has been put to rest. What you have taking place is the unprecedented use and threat of the filibuster that has never been used before and is targeted at the circuit court, not at the lower Federal court, the finders of fact at the district court level, but at the appellate level so that continued broad interpretation of laws by which some would seek to put their own views more in, can continue to be expressed: 95, 93, 67.

Others will argue, What about the Clinton years? You have a Republican Senate and a Democrat President. There are obviously differences of opinion that will occur during that period of time, more so than when you have a body that is of the same party. But even then, we move forward large numbers of Clinton nominees. This is unprecedented, 67 percent, the falloff from what has taken place because of the use of the filibuster.

This needs to change back to where the filibuster is not used against judicial nominees. Actually, I encourage my colleagues on the other side of the aisle not to use the filibuster on this so we can move forward with up-or-down votes and leave the institution intact, the way it has been for two centuries, where the filibuster is not used on the advice and consent provisions of judges that is required. Filibuster means supermajority vote on circuit court or Supreme Court nominees. That is not contemplated, it is not considered, it is not appropriate under the Constitution.

It is time to move these judges on forward. We are going to have a robust debate for the next several days about this. The issue underlying that is really going to be about the role of the judiciary, whether it is expansive in rewriting broadly laws and the Constitution, or if it is more strict constructionist, staying within the roles and boundaries of what the judiciary should be.

I offer to have the American people decide what role the judiciary has, what role the United States Senate has on appointing people to the judiciary. I regret we are at this point. I regret this chart shows this way. But nonetheless it is what it is. It is something that now we have to deal with. It will be a robust debate, and I hope at the end of the day what we will have is the approval of circuit court judges who are mainstream and who are consistent; the role of the judiciary being appropriate as it was designed by the Framers of the Constitution and the Founders of the Republic and within the lines of the Republic. If that is what we will get back to, their proper roles, the legislative, executive, and judicial branches, it will be a long time coming. But I think it is important and it is worth doing.

Mr. President, I thank my colleagues and yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, it has always been a great privilege for me to come to the floor of the Senate and engage in debate. I graduated from a high school senior class of nine students—in the top five, by the way. I come from a town of 350 people in the southwest ranching corner of North Dakota. I think it is a great privilege to be here, and a wonderful opportunity.

The reason the Senate is such an extraordinary opportunity—and I have had the privilege to serve in both the House and the Senate—is that the Senate is the place of debate, unlimited debate. Yes, there is the opportunity for a filibuster in the Senate, but that is what forces compromise in the Senate. Unlike the House, there is a forcing of compromise, which is what makes Government work.

I have been listening to this discussion. It is quite remarkable. This is a big issue. This is a serious issue. I have been listening attentively to the speakers. Our former colleague, the late Senator Moynihan, once said, everyone is entitled to their own opinion, but they are not entitled to their own set of facts. What is happening here is the continuation of the development of a book of fiction by the majority side.

They come to us and say the filibuster with respect to judicial nominations is very unusual, it is unprecedented, it is unconstitutional. Total fiction. How can they say that with a straight face? At least you would think they would laugh from time to time about what they are trying to pull over the American people.

They have filibustered. They have delayed. They have blocked forever judicial nominations when there was a Democrat in the White House.

Let me read a few names: Snodgrass, Whitfield, Shurin, Bingler, Greer, Sundram, Stack, Wattley, Beaty, Rodriguez, Lasry, Klein, Freedberg, Norton. I could read 60 of these. These are the names of lifetime appointments to the bench the President sent down to this Chamber in the 1990s, most of which never even got 1 day of hearings, not 1 day of hearings. Some of them, by the way, were filibustered, but most were not even given the courtesy of 1 day of hearings because the majority party did not like them, and did not want them confirmed. So they used their control of the Judiciary Committee to make sure they were not confirmed. There were over 60 of them.

Now, the current President, President George W. Bush, has sent 218 names for a lifetime appointment on the Federal bench. We have approved 208. Yes, that is right, 218 names the President has sent and we have approved 208.

The Constitution says something about this. It is not what my colleagues have described. They misread the Constitution. The Constitution provides a two-step process for putting someone on the Federal bench for a lifetime: One, the President nominates; and, two, the Congress decides. That is called advice and consent. It is not the President who decides who goes on the Federal bench for a lifetime. It is a two-step process. The candidate for a lifetime appointment must survive both, must get a Presidential nomination and then must be approved by the Senate.

My colleagues say there is a requirement in the Constitution that there be an up-or-down vote that you cannot filibuster. First, unlike my colleagues on that side of the aisle, many of whom have voted for filibusters—and I will not embarrass them by reading their names, but I could because they have voted for filibusters previously on judicial nominations. Unlike those circumstances, we have voted on all of these judges. The 10 who were not approved had a vote in the Senate on a motion to proceed, on a motion to invoke cloture. It required 60 votes and they did not get the 60 votes so the nomination did not proceed.

The majority party is upset about that. They believe democracy is one-party rule, the same party in the White House, the House, and the Senate. They want their way and if they do not get their way, they intend to violate the Senate rules to change the rules. They will not ask the Parliamentarian when they make the motion. Why? Because they are wrong and they know it, and they will violate the rules of the Senate, so they put their person in the Presiding Officer's chair, the President of the Senate, and by 51 votes they will violate the rules of the Senate for the first time in 200 years. Why? Because their nose is bent out of shape because they have not gotten every single judge on the court they wanted. They have only gotten 208 out of 218.

Let me describe some I have opposed. I actually opposed one who was sent to us by President Bush who wrote that he believed a woman is subservient to a man. I voted against that one. I guess I don't want someone on the Federal bench for a lifetime who believes a woman is subservient to a man. One of the keenest, finest minds of the 18th century, but not someone suited to go to the Federal bench for a lifetime now, in my judgment. That person actually did get through the Senate, I regret to say.

Let me talk about a couple because the majority has brought them to town recently and they have been on television. Let me describe the record of a couple of these nominees.

First let me talk about Janice Rogers Brown. She did not get the 60 votes. Let me describe why. Ms. Brown, as described by the last speaker, has a wonderful life story, but she has served at some great length in the State of California, and her views are so far out of the mainstream that one wonders what would have persuaded the President to send her name down.

Let me give an example. She believes zoning laws represent theft of property. Let me explain that to you. Zoning laws decide if you move into a residential area and you have a house in a residential area and the lot right next door to you is empty, you can have some confidence they are not going to move a porn shop into that next lot. Or there is not going to be a massage parlor in that next lot, or somebody is not going to bring an automobile salvage company and put it on the lot next to your house. Zoning laws. She thinks zoning laws are a theft of property.

Do Americans want someone who believes there ought not be zoning? Or if you decide you should not have a porn shop next to a school, you ought to pay the person who owns the property in order to avoid having the porn shop locate next to a school? Or a massage parlor next to the nursing home? That is so preposterous. What on Earth is that kind of thinking and why do we have a nomination of someone who thinks like that?

That same nominee says, by the way, the Medicare Program and Social Security Program are the last vestiges of socialism, the last of the New Deal socialistic impulses of our country, and says that these are cannibalizing from our grandchildren. That we are cannibalizing from our grandchildren because we have things such as Social Security and Medicare.

Am I pleased to oppose a nominee with those views? Of course I am. We have a right in this Chamber and that right is in the Constitution to prevent someone such as that from going on the Federal bench. The majority party says no, you do not have that right. They say they have what is called the constitutional option.

Let me ask, in the hours in which we debate this, if one Member of the Senate, just one—I am not asking for five, three or two, just one member of the Senate will come to the Chamber of the Senate with the Constitution in their pocket. Yes, you can put it in your pocket. It is a rather small document. If you cannot read it, we will get remedial reading or have someone read it to you. Come down to the Senate and tell us where it says that the minority in the Senate does not have the right to invoke the rules of the Senate to prevent someone from going on the bench for a lifetime? Where does it say that in the Constitution?

I was on a television program with one of my colleagues from the other side. That colleague was saying it is unconstitutional for us to filibuster a court nominee. That very colleague has previously voted to filibuster a court nominee. I wonder how they can stop from grinning—at least? I understand where a full-bellied laugh would not occur on the Senate floor—but how can you avoid grinning when you stand up and perpetrate these fictions?

They know better.

Again, as my colleague, the late Senator Moynihan said, everyone is entitled to their opinion, but not everyone is entitled to their own set of facts. Let's at least deal with the truth in the Senate.

There is much we ought to do in the Senate. My colleagues on the floor are colleagues most often who stand up and talk about the real issues. I am talking about Senator KENNEDY and Senator DAYTON and others on the issues of jobs, the jobs going overseas at a record pace, health care, health care costs that are devastating to people and to their budgets and to businesses. Energy, the price of gasoline, the fact we are held hostage by the Saudis and Kuwaitis and Iraqis and Venezuelans for oil we put through our transportation system and through gasoline that we run through our fuel injectors, and yet is there any discussion of that in the Senate? No, no, not at all. Not at all. This is an agenda driven outside this Chamber by interest groups that have forgotten the Ninth Commandment. Yes, there were Ten Commandments, and the Ninth says: Thou shalt not bear false witness.

I ask my fellow citizens, turn on your television and see what they are running on television: advertisements coming from religious organizations that fundamentally misrepresent—and they know they misrepresent—the facts with this issue. The Ninth Commandment says: Thou shalt not bear false witness. The truth is this. The truth is, that this Congress has a right to an equal voice in who spends a lifetime on a Federal bench. The truth is, we have cooperated to an extraordinary degree with this President. We have approved 208 Federal judges. Let me say, two of them are sitting on the Federal bench in North Dakota. I was proud to work for both of them. They are both Republicans. I am a Democrat. I am pleased they are both on the Federal bench. I worked with the White House to get them there. I supported them, as I have done with most of the nominees coming from this President.

But we have every right to decide, when this President sends us the name of a nominee so far outside the mainstream—and that is the case with the two they are talking about now, one from Texas, one from California—we have a right to decide not to advance those names to give them a lifetime appointment on the Federal bench.

To those who stand up on the floor of the Senate and say: Well, there has never been a filibuster before—you know better than that. If they keep doing it, I am going to come down and read the names of all of them on the majority side that have voted for the filibuster. And I will read the names of all 60 judges into the RECORD—I should not say 60 judges—60 nominees the last President sent down here that, in many cases, did not even have the courtesy of a hearing.

This position is hypocrisy, and it needs to change. This so-called nuclear option is called ''nuclear,'' and it was coined by the majority party. It is called ''nuclear'' because nuclear relates to almost total destruction. And some of them are gleeful now that they are headed toward a nuclear approach on the floor of the Senate.

This is a great institution. I am proud to be part of it. But this is not a proud day. America's greatest moments are not found in circumstances such as this. America's greatest mistakes are often wrapped in the zeal of excessive partisanship, and that is what we find here. And America's greatest mistakes are almost always—almost always—preceded by a moment, a split second, when it is possible to change your mind and do the right thing.

That moment, that split second exists now for the majority leader and those who feel as he does, that they ought to exercise the total destructive option they call the nuclear option.

We ought to, in my judgment, work together. Mr. President, 208 of 218 judges means we have worked together and done the right thing. There are no apologies from this side for exercising our constitutional right to make sure we have men and women on the Federal bench whom we are proud of, who represent the mainstream of this country. We have done that time and time and time again with President George W. Bush, and will continue to do that. But we will not give up the right to exercise our responsibilities here on the floor of the Senate on these important issues.

Mr. President, I believe my time has expired. I believe the Senator from Massachusetts follows me today. I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Massachusetts.

Mr. KENNEDY. I thank the Chair.

Mr. President, I would like to ask the Chair to remind me when I have 10 minutes remaining.

The PRESIDING OFFICER. The Senator currently has 45 minutes.

Mr. KENNEDY. Mr. President, I commend my friend and colleague from North Dakota for the excellent presentation he made. As a member of the Judiciary Committee, I remember the well over 60 nominees who were denied the courtesy to be considered and to have a hearing and go to the Senate and have a debate and discussion on the floor of the Senate.

I do not think any of us who are strongly opposed to what the Senator

has referred to as the nuclear option are interested just to retaliate against these Republican judges, the half a dozen or so who have been mentioned, debated, and discussed today, in return for the way the over 60 nominees were treated under the previous administration. But it does respond to the suggestions that have been made here on the floor that somehow institutionally our friends on the other side have always been for fairness in the consideration of these nominees and considerate of the President in meeting his responsibility of advising the Senate.

I think many of us believe very deeply that if there are Members in this body who, as a matter of conscience, feel strongly that those nominees or any nominee fails to be committed to the fundamental core values of the Constitution, that they ought to be able to speak to it, they ought to be able to speak to it and not be muzzled, not be gagged, not be silenced. That is the issue that is before the Senate now and will be addressed in these next few days, and why it is enormously important for the country to pay attention to this debate and this discussion.

There is no breakdown in the judicial confirmation process. Democrats in this closely divided Senate have cooperated with the President on almost all his nominations. The Senate has confirmed 208 of President Bush's 218 nominees in the past 4 years, most of whom are not people we would have chosen ourselves. Ninety-five percent have been confirmed.

Only a handful did not receive the broad, bipartisan support needed for confirmation. Their records show they would roll back basic rights and protections. Janice Rogers Brown, William Pryor, Priscilla Owen, and William Myers would erase much of the country's hard-fought progress toward equality and opportunity. Their stated values—subordinating the needs of families to the will of big business, destroying environmental protections, and turning back the clock on civil rights—are not mainstream values.

Democrats have, under the Senate's rules, declined to proceed on those nominees to protect America from their radical views.

The President has renominated William Pryor for the 11th Circuit, which includes the States of Florida, Alabama, and Georgia. Mr. PRYOR's record makes clear that his views are far outside the legal mainstream. Mr. PRYOR is no conservative. Instead, he has pushed a radical agenda contrary to much of the Supreme Court's jurisprudence over the last 40 years.

Mr. PRYOR has fought aggressively to undermine Congress's power to protect individual rights. He has tried to cut back on the Family and Medical Leave Act, the Americans with Disabilities Act, and the Clean Water Act. He has criticized the Voting Rights Act. He has been contemptuously dismissive of claims of racial bias in the application of the death penalty. He has relentlessly advocated its use, even for persons with mental retardation. He has even ridiculed the Supreme Court Justices, calling them ''nine octogenarian lawyers who happen to sit on the Supreme Court.'' He can't even get his facts right. Only 2 of the 9 Justices are 80 or older.

Mr. PRYOR's opposition to basic protections for the rights of the disabled is particularly troubling. In one case, Justice Scalia, for a unanimous Court—a unanimous Court—rejected his position that the Americans With Disabilities Act does not apply to State prisons.

In another case, the Supreme Court rejected his view that provisions of the act ensuring that those with disabilities have access to public services are unconstitutional.

In that case, a plaintiff who uses a wheelchair challenged the denial of access to a courthouse where he had to crawl up the stairs to reach the courtroom. Mr. Pryor claimed that the Congress could not require States to make public facilities accessible to the disabled. He said that because the disabled have ''no absolute right'' to attend legal proceedings affecting their rights, denying them access to courthouses does not violate the principle of equal protection.

The Supreme Court also rejected his radical view that executing retarded persons is not cruel and unusual punishment. And later the Eleventh Circuit court, a court dominated by conservative Republican appointees, unanimously rejected Mr. Pryor's attempt to evade the Supreme Court decision. He had tried to prevent a prisoner with an IQ of 65, who even the prosecution agreed was mentally retarded, from claiming that he should not be executed.

On women's rights, Mr. Pryor has criticized constitutional protections against gender discrimination. He dismissed as ''political correctness'' the Supreme Court's decision that a State-run military academy could not deny admission to women because of stereotypes about how women learn.

Mr. Pryor has an especially troubling record on voting rights. In a 1997 statement to Congress, he opposed section 5 of the Voting Rights Act, an indispensable tool for assuring that all Americans have the right to vote regardless of race or ethnic background. He called this important law an ''affront to federalism'' and ''an expensive burden that has far outlived its usefulness.''

In March, we commemorated the 40th anniversary of Bloody Sunday when Martin Luther King, Jr., Congressman John Lewis, and others were brutally attacked on a peaceful march in Mr. Pryor's home State of Alabama in support of voting rights for all, regardless of race. Yet now the administration wants our consent to a nominee who opposes the Voting Rights Act. There is too much at stake to risk confirming a judge who would turn back progress on protecting the right to vote.

It is no surprise that civil rights leaders oppose Mr. Pryor's nomination, including Rev. Fred Shuttlesworth, a leader in the Alabama movement for voting rights, and many of Rev. C. T. Vivian's and many of Dr. King's other close advisers and associates.

There can be no doubt that Mr. Pryor sees the Federal courts as a place to advance his political agenda. When President Bush was elected in 2000, Mr. Pryor gave a speech praising his election as the ''last best hope for federalism.'' He ended his speech with these words:

> . . . a prayer for the next administration: Please God, no more Souters.

In another speech he said he was thankful for the Bush v. Gore decision:

> I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.

His call to politicize the Supreme Court shows that he views the courts as places to make laws, not interpret them.

The real question is why, when there are so many qualified Republican attorneys in Alabama, the President would choose such a divisive nominee. Why pick one whose record raises so much doubt as to whether he will be fair? Why pick one who can muster only a rating of ''partially unqualified'' from the American Bar Association? The administration has given us no good answers to these questions because there are none. Mr. Pryor is clearly on the far fringe of legal thinking and not someone who should be given a lifetime appointment to the court of appeals.

Of course, we oppose the attempt to break the Senate rules to put Mr. Pryor on the court. That is what our Founding Fathers would have wanted us to do, not to act as a rubber stamp for the administration.

Priscilla Owen, whose nomination the Senate is debating today, is another candidate on the far fringes of legal thinking. Her record raises equally grave concerns that she would try to remake the law. Four times the Senate has declined to confirm her because of concerns that she won't deal fairly with a wide range of cases that can come before the Fifth Circuit, especially on issues of major concern to workers, consumers, victims of discrimination, and women exercising their constitutional right. Yet the President chose to provoke a fight in the Senate by renominating her, among other plainly unacceptable nominees whom the Senate declined to confirm in the last Congress.

Nothing has changed since we last reviewed her record to make Justice Owen worthy of confirmation now. Her supporters argue that she is being opposed solely because of her hostility to women's constitutionally protected right to choose. In fact, her nomination raises a wide range of major concerns because she so obviously fails to approach cases fairly and with an open mind.

As the San Antonio Express News has stated, her ''record demonstrates a results-oriented streak that belies supporters' claims that she strictly follows the law.''

It is not just Senate Democrats who question her judicial activism and willingness to ignore the law. Even newspapers that endorsed her for the Texas Supreme Court now oppose her confirmation, after seeing how poorly she served as judge.

The Houston Chronicle wrote:

Owen's judicial record shows less interest in impartially interpreting the law than in pushing an agenda.

And that she, it continues, ''too often contorts rulings to conform to her particular conservative outlook.''

It noted that:

It's worth saying something that Owen is a regular dissenter on a Texas Supreme Court made up mostly of other conservative Republicans.

The Austin American Statesman, in their editorial, said Priscilla Owen ''is so conservative that she places herself out of the broad mainstream of jurisprudence'' and that she ''seems all too willing to bend the law to fit her views . . . ''

The San Antonio Express News said:

[W]hen a nominee has demonstrated a propensity to spin the law to fit philosophical beliefs, it is the Senate's right—and duty—to reject the nominee.

These are the San Antonio Express News, the Austin American Statesman, and the Houston Chronicle.

Her colleagues on the conservative Texas Supreme Court have repeatedly described her in the same way. They state that Justice Owen puts her own views above the law, even when the law is crystal clear.

Her former colleague on the Texas Supreme Court, our Attorney General Alberto Gonzales, has said she was guilty of ''an unconscionable act of judicial activism.'' This is what the current Attorney General of the United States said when he was on the supreme court: Justice Owen's opinion was ''an unconscionable act of judicial activism.''

Justice Gonzales's statement that her position in this case was ''an unconscionable act of judicial activism'' was not a random remark. Not once, not twice, but numerous times Justice Gonzales and his other colleagues on the Texas Supreme Court have noted that Priscilla Owen ignores the law to reach her desired result.

In one case, Justice Gonzales held the Texas law clearly required manufacturers to be responsible to retailers who sell their products if those products are defective. He wrote that Justice Owen's dissenting opinion would judicially amend the statute to let manufacturers off the hook.

In 2000, Justice Gonzales and a majority of the Texas Supreme Court upheld a jury award holding the Texas Department of Transportation and the local transit authority responsible for a deadly auto accident. He explained that the result was required by the plain meaning of the Texas law. Owen dissented, claiming that Texas should be immune from these suits. Justice Gonzales wrote that she misread the law, which he said was clear and unequivocal.

In another case, Justice Gonzales joined the court's majority that criticized Justice Owen for disregarding the procedural limitations in the statute and taking a position even more extreme than had been argued by the defendant.

In another case in 2000, landowners claimed a Texas law exempted them from local water quality regulations. The court's majority ruled the law was an unconstitutional delegation of legislative authority to private individuals. Justice Owen dissented and sided with the large landowners, including contributors to her campaign. Justice Gonzales joined a majority opinion criticizing her, stating that most of her opinion was nothing more than inflammatory rhetoric, which merits no response.

Justice Gonzales also wrote an opinion holding that an innocent spouse could recover insurance proceeds when her coinsured spouse intentionally set fire to their insured home. Justice Owen joined a dissent that would have denied the coverage of the spouse on the theory that the arsonist might somehow benefit from the court's decision. Justice Gonzales's majority opinion stated that her argument was based on a ''theoretical possibility'' that would never happen in the real world, and that violated the plain language of the insurance policy.

In still another case, Justice Owen joined a partial dissent that would have limited the basic right to jury trials. The dissent was criticized by the other judges as a ''judicial sleight of hand'' to bypass the Texas constitution.

Priscilla Owen is one of the most frequent dissenters on the conservative Texas Supreme Court in cases involving basic protections for workers, consumers, and victims of discrimination. That court is dominated by Republican appointees, and is known for frequently ruling against plaintiffs. Yet, when the Court rules in favor of plaintiffs, Justice Owen usually dissents, taking the side of the powerful over individual rights.

She has limited the rights of minors in medical malpractice cases. She has tried to cut back on people's right to relief when insurance company claims are unreasonably denied, even in cases of bad faith. Her frequent dissents show a pattern of limiting remedies for workers, consumers, and victims of discrimination or personal injury.

She dissented in a case interpreting a key Texas civil rights law that protects against discrimination based on age, race, gender, religion, ethnic background, and disability. Justice Owen's opinion would have required employees to prove discrimination was the only reason for the actions taken against them—even though the law clearly states that workers need only prove that discrimination was one of the motivating factors. Justice Owen's view would have changed the plain meaning of the law to make it nearly impossible for victims of discrimination to prevail in civil rights cases.

She joined an opinion that would have reversed a jury award to a woman whose insurance company had denied her claim for coverage of heart surgery bills. Many other such cases could be cited.

Justice Owen also dissented in a case involving three women who sought relief for intentional infliction of emotional distress on the job because of constant humiliating and abusive behavior by their supervisor.

The supervisor harassed and intimidated employees by the daily use of profanity; by screaming and cursing at employees; by charging at employees and physically threatening them; and by humiliating employees, including making an employee stand in front of him in his office for as long as thirty minutes while he stared at her. The employees he harassed suffered from severe emotional distress, tension, nervousness, anxiety, depression, loss of appetite, inability to sleep, crying spells and uncontrollable emotional outbursts as a result of his so-called supervision. They sought medical and psychological help because of their distress.

Eight Justices on the Texas court agreed that the actions, viewed as a whole, were extreme and outrageous enough to justify the jury's verdict of intentional infliction of emotional distress. Justice Owen wrote a separate opinion, stating that while she agreed that there was evidence to support the women's case, she thought most of it was ''legally insufficient to support the verdict.''

Justice Owen's record is particularly troubling in light of the important issues that come before the Fifth Circuit, which is also one of the most racially and ethnically diverse Circuits, with a large number of low-income workers, Latinos, and African-Americans. It is particularly vital that judges on the court are fair to workers, victims of discrimination, and those who suffer personal injuries.

Some have said that those who raise questions about Justice Owen's record are somehow smearing her personally. That's untrue and unfair. Each of us has a responsibility to review her record and to take seriously the problems we find.

That means taking seriously the rights of persons like Ralf Toennies, who was fired at age 55, and found that Justice Owen wanted to impose obstacles to his age discrimination claim that were nowhere in the statute. We must take seriously the rights of the women employees criticized by Justice Owen for their testimony on workplace harassment in the emotional distress

case. We can't ignore the rights of the millions of families who live in the Fifth Circuit States of Texas, Louisiana, and Mississippi.

Finally, Justice Owen's supporters have also suggested that she should be confirmed to the Court of Appeals because Texas voters elected her to their Supreme Court.

Obviously, there is a huge difference between State judges who must submit to local elections to keep their positions and Federal judges who are lifetime appointees, and are not meant to respond to popular opinion. If we confirm Justice Owen to the Fifth Circuit, she will serve for life. So our responsibility as Senators is very different. The record of each nominee for a Federal judgeship is carefully considered by Senators from all 50 States.

Likewise, the fact that she received a high rating from the American Bar Association or did well on the bar exam does not erase her disturbing record. Priscilla Owen's record raises major questions about her commitment to the basic rights guaranteed by the Constitution to all our citizens.

Mr. President, I want to take a few moments now to go over with the Senate some of the rules that are going to have to be broken by the majority in order to try to change the rules of the Senate.

I want to review very quickly what we are faced with here. I will give two examples of individuals who I think failed to meet the standard for approval in the Senate, that they have a commitment to the core values of the Constitution. We have just seen examples and statements and comments from both individuals and from newspapers and other sources that I think established convincingly these individuals do not have that kind of core commitment required and should not be given lifetime appointments.

Neither the Constitution, nor Senate rules, nor Senate precedents, nor American history provide any justification for the majority leader's attempt to selectively nullify the use of the filibuster to push through these radical nominees. Equally important, neither the Constitution, nor the rules, nor precedent, nor history provide any permissible means for a bare majority of the Senate to take that radical step without breaking or ignoring clear provisions of applicable Senate rules and unquestioned precedents.

Here are some of the rules and precedents the executive will have to ask its allies in the Senate to break or ignore in order to turn the Senate into a rubberstamp for the nominations:

First, they will have to see that the Vice President himself is presiding over the Senate so that no real Senator needs to endure the embarrassment of publicly violating Senate rules and precedent and overriding the Senate Parliamentarian the way our Presiding Officer will have to do.

Next, they will have to break paragraph 1 of rule V, which requires 1 day's specific written notice if a Senator intends to try to suspend or change any rule.

Then they will have to break paragraph 2 of rule V, which provides that the Senate rules remain in force from Congress to Congress, unless they are changed in accordance with the existing rules.

Then they will have to break paragraph 2 of rule XXII, which requires a motion, signed by 16 Senators, a 2-day wait, and a three-fifths vote to close debate on the nomination itself.

They will also have to break rule XXII's requirement of a petition, a wait, and a two-thirds vote to stop debate on a rules change.

Then, since they pretend to be proceeding on a constitutional basis, they will have to break the invariable rule of practice that constitutional issues must not be decided by the Presiding Officer, but must be referred by the Presiding Officer to the entire Senate for full debate and decision.

Throughout the process, they will have to ignore or intentionally give incorrect answers to proper parliamentary inquiries which, if answered in good faith and in accordance with the expert advice of the Parliamentarian, would make clear that they are breaking the rules.

Eventually, when their repeated rule-breaking is called into question, they will blatantly, and in dire violation of the norms and mutuality of the Senate, try to ignore the minority leader and other Senators who are seeking recognition to make lawful motions or pose legitimate inquiries or make proper objections.

By this time, all pretense of comity, all sense of mutual respect and fairness, all of the normal courtesies that allow the Senate to proceed expeditiously on any business at all will have been destroyed by the preemptive Republican nuclear strike on the floor.

To accomplish their goal by using a bare majority vote to escape the rule requiring 60 votes to cut off debate, those participating in this charade will, even before the vote, already have terminated the normal functioning of the Senate. They will have broken the Senate compact of comity and will have launched a preemptive nuclear war. The battle begins when the perpetrators openly, intentionally, and repeatedly break clear rules and precedents of the Senate, refuse to follow the advice of the Parliamentarian, and commit the unpardonable sin of refusing to recognize the minority leader.

Their hollow defenses to all these points demonstrate the weakness of their case.

They claim that ''we are only breaking the rules with respect to judicial nominations. We promise not to do so on other nominations or on legislation.'' No one seriously believes that. Having used the nuclear option to salvage a handful of activist judges, they will not hesitate to use it to salvage some bill vital to the credit card industry, oil industry, pharmaceutical industry, Wall Street, or any other special interest. In other words, the Senate majority will always be able to get its way, and the Senate our Founders created will no longer exist. It will be an echo chamber to the House, where the tyranny of the majority is so rampant today.

One of the greatest privileges of my life is serving the people of Massachusetts in the Senate. I am reminded every day of my obligation to speak up for them and fight for their concerns, their hopes, and their values in this Chamber. Many brave leaders from Massachusetts have held the seat I hold today in the Senate. This seat was held by John Quincy Adams, who went on to become the sixth President and was a great champion of free speech. He debated three Supreme Court nominees and voted to confirm them all. He refused to be silenced.

Charles Sumner was the Senate's leading opponent of slavery. He was beaten to within an inch of his life for speaking up for his convictions. It took him 3 years to recover from the injuries and return to the Senate to speak out against slavery once again. He debated 11 Supreme Court nominees and voted for 10 of them. He refused to be silenced.

Daniel Webster was one of our Nation's greatest orators and the architect of the Great Compromise of 1850. He spoke up for a united America with the words ''liberty and union, now and forever, one and inseparable.'' You can hear his words ringing through these halls even now. He debated 12 Supreme Court nominations; he voted to approve 8 and opposed 4. He refused to be silenced.

Henry Cabot Lodge, the Republican, opposed President Wilson's efforts to join the League of Nations. He was the leading Republican voice on foreign policy in his time. He debated 20 Supreme Court nominees, voted for 18, and he opposed 2. He refused to be silenced.

John Kennedy not only was a champion for working men and women in Massachusetts, but he also battled intolerance, injustice, and poverty during his time in the Senate. He debated and supported four Supreme Court nominees. He, too, refused to be silenced.

These great Senators are remembered and respected in our history because they spoke up for their convictions. They were not intimidated. They did not back down from their beliefs. They were not muzzled. They were not gagged. They would not be silenced. And it will be a sad day for our democracy if the voices of our Nation's elected representatives can no longer be heard.

Mr. President, I yield the remaining time to my friend and colleague, the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I thank my good friend from Massachusetts.

The Book of Proverbs teaches:

Do not boast of tomorrow, for you do not know what the day will bring.

In the play ''Heracles,'' the great playwright Euripides wrote:

All is change; all yields its place and goes.

And the Greek philosopher Heraclitus said:

Change alone is unchanging.

I urge my colleagues to bear the constancy of change in mind as they consider the proposal to break the rules to change the rules of the Senate. Many in the Senate's current majority seem bent on doing that. They seem quite certain that they shall retain the Senate majority for quite some time thereafter.

But as Bertrand Russell said:

Most of the greatest evils that man has inflicted upon man have come from people feeling quite certain about something, which, in fact, was false.

My colleagues do not need to strain their memories to recall changes in the control of the Senate. Most recently, the Senate changed from Democratic to Republican control as a result of the 2002 election. Democrats did control the Senate throughout the sixties and the seventies, but since then the Senate has governed under six separate periods of one party's control. The Senate switched from Democratic to Republican control in 1980, back to Democratic control in 1986, back to Republican control in 1994, back to Democratic control in 2001, and back to Republican control again in 2002.

Similarly, some in the Senate can remember the decade after World War II. The Senate switched from Democratic to Republican control in 1946, back to Democratic control in 1948, back to Republican control in 1952, and then back to Democratic control again in 1954. Senators who served from 1945 to 1955, a mere 10 years, served under five separate periods of one party's majority control.

One cannot always see that change is coming, but change comes nonetheless. For example, in November 1994, Washington saw one of the most sweeping changes in power in Congress of recent memory. Very few saw that coming. The majority in the House and the Senate changed from Democratic to Republican.

It is by no means easy to see that change coming. In March of 1994, just several months before the election, voters told the Gallup poll that they were going to vote Democratic by a ratio of 50 percent Democratic to 41 percent Republican. That same month, March of 1994, voters told the ABC News poll that they were going to vote Democratic by a ratio of 50 percent Democratic to 34 percent Republican. As late as September of 1994, voters told the ABC News poll that they were going to vote Democratic by a ratio of 50 percent Democratic to 44 percent Republican. On the first Tuesday in November 1994, however, more than 52 percent of voters voted Republican for Congress. Democrats lost 53 seats in the House and 7 seats in the Senate.

In 1980, the Senate changed hands from Democratic to Republican control, but in August of 1980, voters in States with a Senate election told the ABC News-Louis Harris poll that they would vote for Democrats for the Senate by a margin of 47 percent for Democrats and 45 percent for Republicans. And on the first Tuesday in November 1980, Democrats lost 12 seats in the Senate.

In November 2002, the voters gave the Republican Party victory in the Senate. But my colleagues in the majority would do well to remember.

After a victorious campaign, Roman generals used to be rewarded with a triumph—a triumphant parade through the streets of Rome. Citizens acclaimed them like gods. But tradition tells us that behind the general on his chariot stood a slave who whispered: Remember that you are mortal.

In the ceremony of a Pope's elevation, they used to intone: Sic transit gloria mundi: ''So the glory of this world away.'' At that very moment, they would burn a handful of flax. The burning flax would symbolize how transitory the power in this world is.

In an address in Milwaukee in 1859, Abraham Lincoln said:

It is said an Eastern monarch once charged his wisemen to invent him a sentence, to be ever in view, and which should be true and appropriate in all times and situations. They presented him with the words: ''And this, too, shall pass away.'' How much it expresses! How chastening in the hour of pride! How consoling in the depths of affliction!

Mr. President, I urge my colleagues to remember that this Senate majority, too, shall pass away. This truth may console us in the minority, should the majority choose to break the rules to change the rules. But better still, better still would it be if the truth of constant change would chasten the current majority into abiding by the rules that protect Senators when they are in the majority and when they are in the minority alike.

We should protect the rules to protect minority rights, for no one can ''know what the day will bring.''

We should protect the rules that protect minority rights, for ''all yield [their] place and go.''

And we should protect the rules that protect minority rights, for it is true of majority control, as it is true of all things, that ''change alone is unchanging.''

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

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

Mr. BAUCUS. Mr. President, I yield the remainder of time on our side. I understand we have an order to go to recess.

The PRESIDING OFFICER. The Senator is correct.

RECESS

The PRESIDING OFFICER. Without objection, the Senate will stand in recess until 4:45 today.

Thereupon, the Senate, at 3:43 p.m., recessed until 4:45 p.m. and reassembled when called to order by the Presiding Officer (Mr. COBURN).

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDING OFFICER. Under the previous agreement, the majority controls the next 60 minutes. The Senator from Georgia.

Mr. CHAMBLISS. Are we in morning business or are we prepared to proceed?

The PRESIDING OFFICER. We are on nominations.

Mr. CHAMBLISS. Let me start by asking, what is the pending business before the Senate?

The PRESIDING OFFICER. The nomination of Priscilla Owen to be U.S. Circuit Judge.

Mr. CHAMBLISS. Mr. President, I would like to take some time to discuss the nominations of two nominees, actually, to the Federal Court of Appeals. First, Justice Priscilla Owen of the Supreme Court of the State of Texas to the U.S. Circuit Court of Appeals for the Fifth Circuit, and then Justice Janice Rogers Brown of the Supreme Court of California to the U.S. Circuit Court of Appeals for the District of Columbia, along with why we need to move forward to a fair up-or-down vote on the nominations.

I would like to start with Judge Priscilla Owen.

Justice Owen's qualifications to serve on the Fifth Circuit Court are readily apparent to anyone who looks at her background and experience. Speaking to her in person—as I did 2 years ago, shortly after I came over to the Senate—only reinforces her obvious capabilities as a judge.

Justice Owen graduated cum laude from Baylor Law School and then proceeded to earn the highest score on the Texas Bar exam that year.

She practiced law for 17 years and became a partner with Andrews & Kurth, a highly respected law firm in Texas, before being elected to the Supreme Court of Texas in 1994.

Before I talk any more about Justice Owen's qualifications as a judge, I want to speak briefly about Priscilla Owen and the kind of person she is. Priscilla Owen has spent much of her life devoting time and energy in service of her community. She serves on the board of Texas Hearing & Service Dogs, and is a

member of St. Barnabas Episcopal Mission in Austin, TX, where she teaches Sunday school and serves as the head of the altar guild.

Having been a Sunday school teacher myself, and having grown up in the Episcopal Church—and my mother was the head of the altar guild for several decades—I know how much work that involved from a civic and religious standpoint.

She has worked to ensure that all citizens are provided access to justice as the court's representative on the Texas Supreme Court Mediation Task Force and to various statewide committees regarding legal services to the poor and pro bono legal services.

She was part of a committee that successfully encouraged the Texas legislature to provide millions of additional dollars per year for legal services for the poor.

Justice Owen is a member of the Gender Bias Reform Implementation Committee and the Judicial Efficiency Committee Task Force on Staff Diversity.

She was instrumental in organizing Family Law 2000 to educate parents about the effect of divorce and to lessen the negative impacts on children.

Justice Priscilla Owen was elected by the people of Texas, the second most populous State in this great country, to its highest court, the Supreme Court of Texas, where she serves today. In her last reelection in the year 2000, she won 84 percent of the vote and had the endorsement of every major newspaper in Texas.

Yet, there are still people who want the United States Senate to reject her nomination to the Federal bench because she is supposedly out of the mainstream in her legal reasoning. Out of the mainstream? The people of Texas obviously don't think she's out of the mainstream. In fact, I submit to you that in Texas and in the Fifth Circuit overall, she represents the mainstream of legal thought.

I would imagine my friends on the other side of the aisle would agree with me that the American Bar Association is an organization considered by many to be well within the mainstream of legal thinking in this country. The ABA rated Justice Owen as ''Well Qualified'' for the Fifth Circuit—this is its highest rating, often called the ''gold standard'' and indicating the best possible qualifications to serve on the Federal bench. By their opposition to Justice Owens confirmation, my colleagues on the other side seem to be telling the ABA: ''Don't bother with your rating; it just doesn't matter to us.''

Even though they used to refer to a well qualified rating as the ''golden standard'' for judicial nominees, now it seems this is just not about qualifications.

A judicial nominee's qualifications should matter most, and that nominee's qualifications should be the sole criterion for approving or blocking a nomination.

The focus should be on these candidates and their legal knowledge and experience. It should not be reduced to partisan battles over politics or ideology. The essential principle for picking a Federal judge should be their commitment to the law. We need judges who put the law before personal philosophy, ideology, or politics. That is what separates the judiciary from the legislative branch.

Senators should not inject politics into the process, and nominees should keep their politics out of the process as well.

The comments of some of my Democrat colleagues underscore that this debate is not about whether Priscilla Owen is well qualified as a judge. Her record reflects it, the ABA acknowledges it, and so do many of my colleagues on the other side. For example, consider these comments:

Senator DURBIN on September 5, 2002:

There is no dispute that Justice Owen is a woman of intellectual capacity and academic accomplishment.

Senator FEINSTEIN on July 23, 2002:

Justice Owen comes to us with a distinguished record and with the recommendations of many respected individuals within her State of Texas . . . [She is] personable, intelligent, and well spoken. It is clear to me that Justice Owen knows the law.

Senator KENNEDY on September 5, 2002:

Justice Owen is an intelligent jurist.

Senator KOHL on May 1, 2003:

We all recognize her legal talents.

And Senator SCHUMER on July 23, 2002:

I don't think there is any question about your legal excellence. You have had a distinguished academic and professional career . . . I think anyone who has listened even to 10 minutes of this hearing today has no doubt about the excellence in terms of the quality of your legal knowledge and your intelligence, your articulateness, et cetera.

I take my colleagues at their words. These comments are true and genuine. With that in mind and knowing that Justice Owen has the endorsement of the ABA as ''well qualified,'' since she was reelected with 84 percent of the vote in her home State, how can anyone try to say she is out of the mainstream? Why is it wrong to simply give her a fair up-or-down vote to see whether a majority of Senators believes she is qualified for this position?

Let me remind Members again that the Fifth Circuit seat to which she has been nominated has been designated as a judicial emergency by the Judicial Conference of the United States. The judges down in the Fifth Circuit need some relief. Dockets are getting backlogged. Cases are being delayed and not moving as they should. People who live in the Fifth Circuit need some relief.

Last week, on May 9, we marked the fourth anniversary of Justice Owen's nomination to the Fifth Circuit bench. Obstructing a nominee of the caliber of Priscilla Owen to a seat characterized as a judicial emergency is wrong. We cannot afford to drag this process out any further. Now is no time for obstructing the nomination of an eminently qualified jurist, one the American Bar Association has unanimously rated as ''well qualified,'' for confirmation to this Fifth Circuit seat. Let's get beyond the politics and confirm this nominee. I urge my colleagues to give Priscilla Owen a fair up-or-down vote on her nomination to the Fifth Circuit Court of Appeals.

I now will move on to discuss another nominee being considered by the Senate, Justice Janice Rogers Brown, who the President has nominated to sit on the U.S. Circuit Court of Appeals for the District of Columbia.

Since 1996, Janice Rogers Brown has been an associate justice for the Supreme Court of California, our country's most populous State. Justice Brown was initially appointed to the California high court by then-Governor Pete Wilson. She was reelected to the California Supreme Court in 1998 by the citizens of California, at which time she received 76 percent of the vote in favor of her reelection.

Prior to her service on the California Supreme Court, Justice Brown served for 2 years as a State appellate judge in California. Before that, she served as legal affairs secretary for Governor Wilson. For all but 2 of the past 24 years, Justice Brown has dedicated her career to work in public service positions.

Despite this background of public service and accomplishment, Justice Brown, unfortunately, has become the target of liberal interest groups who claim she is out of the mainstream of legal thinking. Those who oppose confirmation of these two fine State supreme court justices, Janice Rogers Brown and Priscilla Owen, apparently have no regard for the people of our two most populous States, California and Texas, the people who know these judges much better than anyone in this room or this body.

I submit again, in California, our Nation's most populous and one of our more diverse States, reelection of Justice Brown was 76 percent of the vote. That proves she is regarded as in the mainstream of legal thought.

Justice Brown rose from her early years as a child of sharecropper parents in the State of Alabama in the 1950s, one of the more difficult times in the history of our country for minorities, to sit on the highest court in the State of California. With a 76 percent reelection tally, it is obvious that a lot of people like Janice Rogers Brown. But nevertheless, Justice Brown has overcome adversity through her life and now she is facing it in her nomination to the DC Circuit Court of Appeals.

It is a core fundamental principle of the American judicial system that justice is blind. The people can get a fair hearing regardless of who they are, where they come from, or what they look like. Surely, nominees to the Federal bench deserve the same rights to a fair hearing as any of us.

Americans have a right to know where their Senators stand. Americans have a right to hold their Senators accountable. If a Senator opposes any nominees, he or she should vote against them, but they should vote. They should not hide behind Senate rules and parliamentary loopholes to block a vote. Our Nation's legal system is more important than, and should be above, petty partisan politics. There is never any reason under any circumstances that either political party should stall the courts from doing their necessary work just for political gain. As Americans, we deserve a fair, functioning legal system that is responsive to the law and not to some special interest group.

We already have too much politics in America. We already have too much politics in our legal system. While it is an unfortunate truth that partisan politics infects Washington, it has no place in our courts, it has no place in the verdicts delivered by our Federal judges, and it has no place in the confirmation process. We need the most qualified judges, not those who know how to work their way through the political system. It is and must always be a core fundamental principle of the American judicial system that people can get a fair hearing. Surely nominees to the Federal bench deserve the same rights to a fair hearing as any of us. The confirmation of judges should not be about ideology or partisanship. We need to adhere to a consistent process of investigation and decisionmaking that upholds the independent nature of our judicial system. Nominees should be judged by their qualifications, nothing less and nothing more. Once the investigation is done, nominees deserve an up-or-down vote.

Just as the Senate has been granted by the Constitution the right of advice and consent, the Constitution has also bestowed on them the responsibility to decide yes or no. If the nominee is found wanting, a ''no'' vote should be cast. But the permanent indecision and passing the buck serves no one. The essential principle in picking a Federal judge should be their understanding and commitment to the law. We need judges who put the law before personal philosophy, personal ideology, and, certainly, personal politics. That is what separates and protects an independent judiciary system from the mere politicized legislative branch.

When it comes to confirming judges, the primary criteria should be judicial and legal competence. The men and women who make up the Federal judiciary should be the best people available for the job, experienced, knowledgeable, and well versed in the law. Their job is too important to be determined by any single issue or political litmus test.

I hope at the end of this debate, whether it ends tonight, whether it ends tomorrow, whether it ends next week, that we can come together in a bipartisan way to look these two judges in the eye and say: We are going to give you an up-or-down vote. I think you are qualified and I will vote yes, or I think you are not qualified and I will vote no. That is our obligation. That is our duty. That is the direction in which we must move.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, once again, I rise to speak on behalf of the nomination of Justice Priscilla Owen to the Fifth Circuit Court of Appeals. I am very honored to do so. As we all know, the debate over this nomination will take place within the context of a historic constitutional struggle over the President's right to obtain an up-or-down vote for his judicial nominees.

In all seven of these cases—in all seven—each of them has bipartisan up-or-down majority support. All we ask is they get a vote.

Now, that will be resolved soon enough, but we should not forget that this is a fight worth having because this campaign of ongoing obstruction is depriving us of good and needed judges such as Priscilla Owen. We should not forget that in the end this debate is about the individual nominees and their qualifications for service on the Federal bench. This is a debate about Justice Priscilla Owen, and I am proud to support her.

Because Justice Owen's nomination has never come up for an up-or-down vote, I have had 4 years to consider this nomination and to get to know her personally, and to further familiarize myself with her record on and off the bench. The passage of time has only strengthened my conviction that she is wholly deserving of a seat on the Federal bench. She is a woman of real accomplishments, and the State of Texas is justifiably proud of her. I am proud of her. I am confident that if she is ever given the vote she deserves, she will do our country proud as a Federal circuit court of appeals judge.

In her years as a justice on the Texas Supreme Court, Priscilla Owen has demonstrated the cautious, impartial mind and the willingness to listen that we seek from our judges in this country. Both her private practice—where she became one of the first to break through the ''glass ceiling'' for women, became a major partner in one of the major law firms in the country, after being first in her class in law school, first on the bar examination, with the highest grade there—and her actions on the bench provide examples of the honor and dignity that an individual can bring to the practice of law.

Finally, she has comported herself with confidence and professionalism in the face of exaggerations and unfair complaints lodged against her by interest groups—the outside, leftwing interest groups—committed to her defeat. The people of Texas have recognized these attributes in Judge Owen and rewarded her twice by electing her and reelecting her to the Texas Supreme Court. In fact, she was reelected with 84 percent of the vote. Yet some try to characterize her as somehow outside of the mainstream.

How can they justify that? For 4 long years now, her nomination has languished as a result of a deliberate and systematic strategy to deny up-or-down votes to the President's majority-supported nominees. They claim nominees such as Justice Owen are extremists and conservative activists. Her record does not support these assertions, and I commend the President for renominating this eminently qualified jurist. In contrast to the false charge that she is an extremist—and I might add, how can she be an extremist and have the highest approval of the American Bar Association, certainly not a conservative group? So in contrast to the false charge that she is an extremist, the fact is Priscilla Owen is one of those relatively few nominees who received a unanimously well-qualified rating from the American Bar Association, the highest rating possible.

I am under no illusions here. The Senate is a unique, deliberative institution where the opportunity for serious debate must be vigilantly protected. Unfortunately, it seems likely that not many are going to have their minds changed by this debate. I hope the newly elected Members of the Senate will pay close attention to the facts surrounding the nomination of Priscilla Owen.

The Senate already knows Justice Owen quite well. We have spent literally hundreds of hours discussing her nomination. Many Senators have probably made up their minds. But for many people, this inside-the-beltway dispute is just now starting to draw attention. Only now, as this debate is coming to a head, is it the leading story on the network nightly news. Therefore, it is as much for the American people tuning into this debate as it is for my colleagues here that I want to address a handful of the unfair charges being made against her. And we have heard them here on the floor today.

Justice Owen graduated first in her class from Baylor Law School. She received the highest score on the State bar exam. She went on to become a partner in the prestigious firm of Andrews & Kurth.

She was admitted to practice before various State and Federal courts. She is a member of the American Law Institute, a prestigious organization; the American Judicature Society, the American Bar Association, and a fellow of the American and Houston Bar Foundations. In short, she possesses all the attributes and membership in traditional legal organizations that are recognized by all of us, and these organizations place her firmly in the mainstream of all American lawyers and of American jurisprudence.

Committed to the principle of equal justice for all, she participated on the

committee that successfully encouraged the Texas legislature to enact legislation resulting in millions of dollars per year in additional funds for providers of legal services to the poor. Does that sound like an extremist?

This is the resume of somebody fully within the mainstream of our legal community. It is not the resume of a radical or an extremist, as has been portrayed by some in this body on the other side. It is the resume of a successful attorney who went on to serve the public as a justice on the Texas Supreme Court.

She carried these mainstream professional habits, honed in private practice, with her into her career as a judge on the Texas Supreme Court. It is worth reconsidering what she had to say before the Senate Judiciary Committee during her first confirmation hearing way back on July 1, 2002. In her opening statement, she referred to the four principles that guide her decisionmaking as a judge. I am quoting her here.

Now, these are her four rules she lives by.

No. 1: Always remember that the people that come into my court are real people with real problems.

No. 2: When it is a statute that is before me, I must enforce it as you in the Congress or in the State legislature, as the case may be, have written it, unless it is unconstitutional.

No. 3: I must strictly follow United States Supreme Court precedent.

No. 4: Judges must be independent, both from public opinion and from the parties and lawyers who appear before them.

That is a statement of Justice Priscilla Owen before the Senate Judiciary Committee on July 21, 2002. This is hardly radical stuff. In fact, I would wager a vast majority of the American people agree with those principles.

Yet to listen to those committed to stonewalling this nomination—she has now been waiting 4 years for this vote—you would walk away with a very different impression, if you listened to them. I have been debating judicial nominations for a long time—all 29 years of my service in the Senate—but these most recent attacks are novel ones. The insistence on denying Justice Owen and other nominees up-or-down votes is part of a larger story dating back over 20 years now.

In those earlier debates, some committed to an activist judiciary used to wear the label ''judicial activist'' proudly on their sleeves. Over time, however, they have come to understand that the American people like their judges interpreting rather than making the laws. Judges should behave as judges, not junior auxiliaries to the legislative branch. So now they charge conservative nominees with being activists as well.

This is the principle charge against Justice Owen. The American people are going to have to make up their own minds on this, but to me it is very clear that argument does not hold any water. Look at her record. Look at those who are behind her. Look at all the Democrats who have supported her.

The abortion rights lobbyists focus their attention on a series of Justice Owen's opinions in cases involving the Texas parental notification statute. It is worth noting that contrary to the wishes of a vast majority of Americans, and the Supreme Court, groups such as the National Abortion Rights Action League oppose even these modest popular restrictions on abortion rights, that are supported by 80 percent of the American people. The reality is it is Justice Owen, not these groups, who is in the mainstream. The groups are the ones who are outside of the mainstream.

By the way, these are far-left Democratic Party groups that are far outside the mainstream in their interpretation. Anybody who disagrees with them on anything is ''outside of the mainstream'' or ''extremist.'' Unfortunately, some of our colleagues parrot what they say and what they tell them to say.

In Texas, the law requires that a minor notify her parents of her decision to have an abortion. That is what the law of Texas says. This is common in many States. Such statutes receive broad bipartisan support. I have mentioned 80 percent of the American people support these types of statutes. Yet, in their wisdom, the Texas legislature provided an opportunity for a judicial bypass of this notification of parents requirement in certain circumstances.

Judge Owen has been vilified in her dissent in the case of In re Doe I where she had to interpret the State's requirement that a minor seeking a judicial bypass of the notification of parents requirement demonstrate sufficient maturity to get the bypass. A fair reading of that opinion shows you Justice Owen made a reasonable interpretation of the Texas law.

The other day it was reported that Nancy Keenan, the president of the abortion advocacy group the National Abortion Rights Advocacy League, said she is committed to keeping what she called ''out of touch theological activists'' off the bench. I can only hope this talking point was not aimed at Justice Owen's decision, which is certainly well within the mainstream and supported by 80 percent of the American people. If so, her point misses the point entirely. Sadly, it seems that the deliberate misreading of Justice Owen's opinion may be for the sole purpose of raising ill-founded doubts against Justice Owen and other qualified nominees.

Priscilla Owen only interpreted the law to require that a minor seeking an abortion fully understand the importance of the choice she is making and be mature enough to make that choice. I thought these groups were in favor of supporting the right to make an informed choice. When it comes to Justice Owen, I guess it is easier to unfairly tar her as an anti-abortion activist.

This is a false charge, and it is contrary to the laws of many States and other laws as well. Yet some interest groups keep feeding this same misleading information to journalists around the country. Just last night, the evening news on one of the major networks reported as fact the patently false charge that Attorney General Gonzales called Justice Owen a judicial activist when he was her colleague on the Texas Supreme Court. This charge was made again this morning by the senior Senator from Massachusetts. Think about that. They know this claim is fiction, but they nonetheless continue to launch it as though people should believe it, even though it is fiction.

Attorney General Gonzales confirmed this under oath—he was not criticizing Justice Owen—in his January 6, 2005, confirmation hearing, and it is clear to anyone who bothers to read the opinions that he never referred to Owen or any other judge on the Texas Supreme Court as a judicial activist. He was basically referring to himself. He felt if he didn't rule the way he did, he would be a judicial activist. He didn't make any criticism of her. But to read the newspapers and to hear the television broadcasters and to listen to our colleagues on the other side, they completely distort what Attorney General Gonzales says. As a matter of fact, Attorney General Gonzales was one of the strongest supporters of Priscilla Owen because she is a terrific justice, as he knows because he served side by side with her on the Texas Supreme Court.

In the end, I am happy to have this debate. The American people know judicial activism when they see it. Just last week a Federal judge in Nebraska invalidated a State constitutional amendment preserving traditional marriage in that State. If that opinion is upheld, that will bind every State in the Union under the full faith and credit clause. Talk about activism.

But I am sure that my colleagues on the other side will find that that judge was in the judicial mainstream or the mainstream of American jurisprudence. If they want to argue that Justice Owen's interpretation of a popular parental notification statute is an activist one, I will be here to debate that all day long. I might add that parents, in many of the cases, who are concerned about their daughters, ought to have at least the privilege of being in a position to help their daughters through those trying times. That is what the courts and the statutes have said. That is what any reasonable person would say. Yet they brand Priscilla Owen as an extremist.

Why didn't the American Bar Association do that? Why did the American Bar Association give her the highest possible rating that you can get? During the Clinton years that was the gold standard, the absolute gold standard. Why isn't it the gold standard today? Why is this really terrific person being called a judicial activist, outside of the

mainstream, and an extremist? It is awful.

Those opposed to Justice Owen ignore the host of decisions in which she protected workers, consumers, the environment, crime victims, and the poor—as though she didn't care about people. There is a host of decisions where she has shown great care for people. They select individual things and then distort them. It makes you wonder what their objection to this nominee really is. It is clear they are not really interested in having a serious debate on the merits of Justice Owen's nomination. For whatever reason, they are dead set on not having her on the Federal bench.

We are going to hear her described as an out-of-control activist. That couldn't be further from the truth. The senior Senator from Massachusetts has called her and others of the President's nominees Neanderthals. Come on here. This is supposed to be a sophisticated body. These are decent people. She was supported by virtually everybody in the State of Texas in her last reelection—84 percent of the vote—every bar association president and former president, 15 of them, every major editorial board. And we know they are not generally in favor of Republicans, but they all supported her.

She was first in her law school class, best bar exam in the State, partner in a major law firm, broke through the glass ceiling. She is a sitting justice on the Texas Supreme Court, reelected by an enormous majority, unanimously well-qualified rating from the American Bar Association. And she is a Neanderthal? Give me a break.

That is how far these debates have deteriorated over the years, especially when you find a moderate to conservative woman such as Priscilla Owen or a moderate to conservative African-American justice like Janice Rogers Brown.

Janice Rogers Brown, think about it—sharecropper's daughter, worked her way through college and law school as a single mother, went on to hold three of the highest positions in California State Government, State counsel to the Governor of the State of California, then-Governor Pete Wilson, nominated her for the Supreme Court of California. She writes the majority of the majority opinions on that liberal court. In other words, she is writing for all the of judges on that court in the majority opinions. She is a terrific human being. Her problem is she is a conservative African-American jurist, approved by the American Bar Association. And they call her an extremist.

We have had negotiations here where they were willing to throw these two women, Priscilla Owen and Janice Rogers Brown, off the cliff in favor of three or four men, white males, all of whom deserved being confirmed themselves. I thought they were all bad and extremist, according to them. Why would they allow any of them to go through? Then again, if they are not, why haven't they voted for them and why have they filibustered?

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, first of all, let me acknowledge that the senior Senator from Utah is so much more knowledgeable on all these issues than most of the rest of us—certainly much more than I am. He has been on the committee and has chaired the Judiciary Committee. He knows these things. He is an attorney. I am none of the above. I chair a committee called Environment and Public Works. But I think it is important for those of us who are not living this every day to express ourselves because we have just as strong feelings, even though we don't work with this on a daily basis.

Mr. President, what is the question pending before the Senate?

The PRESIDING OFFICER. The nomination of Priscilla Owen to be U.S. circuit judge.

Mr. INHOFE. Mr. President, today, I want to enter into this debate, as we have so many times, on these judicial nominees, including Justice Priscilla Owen and Justice Janice Rogers Brown, both of whom are highly qualified.

Priscilla Owen was nominated by President Bush to the U.S. Court of Appeals for the Fifth Circuit, a seat that has been designated a judicial emergency by the Judicial Conference of the United States. That means we have to fill the seat. She has served on the Texas Supreme Court since 1994 and was endorsed for reelection by every major Texas newspaper. She practiced commercial litigation for 17 years. She received her undergraduate degree from Baylor University and graduated third in her class from Baylor Law School in 1977. The American Bar Association has unanimously rated Justice Owen as ''well-qualified,'' the highest possible rating. She is the first nominee considered well-qualified by the ABA to be denied a floor vote by the Democrats.

Priscilla Owen even has significant bipartisan support from three former Democrat judges on the Texas Supreme Court and a bipartisan group of 15 past presidents of the State Bar Association of Texas. Justice Owen has served the legal field in many capacities. She was liaison to the Texas Supreme Court's mediation task force and on statewide committees on providing legal services to the poor and pro bono legal services. She has always been very sensitive to the poor.

Justice Owen organized a group called Family Law 2000, which warns parents about the difficulties children face when parents go through a divorce.

Similarly, President Bush has nominated Justice Brown to the U.S. Court of Appeals for the DC Circuit. This morning, I was at the White House. As I came back, I walked by that district court office and thought very much at that time about Justice Brown. She currently serves as an associate justice on the California Supreme Court, a position she has held since 1996. She is the first African-American woman to serve on California's highest court and was retained with 76 percent of the statewide vote in her last election.

It is kind of interesting that they use the term ''out of the mainstream'' quite often. Yet here is someone who got 76 percent of the vote in a statewide election. Justice Owen actually got 84 percent. I don't think anybody in this body has been able to gain those majorities.

Justice Brown was the daughter of a sharecropper. She was born in Greenville, AL, in 1949. She grew up attending segregated schools during the practice of Jim Crow policies in the South. Her family moved to Sacramento, CA, when she was in her teens, and she later received her B.A. in economics from California State, and earned her J.D. from UCLA School of Law in 1977.

She has participated in a variety of statewide and community organizations dedicated to improving the quality of life for all citizens of California.

For example, she has served as a member of the California Commission on the Status of African-American Males, as a member of the Governor's Child Support Task Force, and as a member of the Community Learning Advisory Board of the Rio Americano High School.

Two weeks ago, my colleague in the other Chamber, Congressman DAN LUNGREN of California—he is a Congressman I served with for many years when I was in the other body, and he went on to be the Attorney General from the State of California. He spoke of his professional experience with Justice Brown. I really think it is important to go back to people who have served with them at the grassroots level. He was in State government with her in the early 1990s. Congressman LUNGREN said:

> . . . It is my observation that in the absence of the opportunity to be voted up or down, to be subjected to a debate on the floor of the United States Senate in the context of such a consideration, that in fact the Janice Rogers Brown that I know in the State of California . . . is not the person that I hear discussed, the person that I hear characterized, or the person that I see presented in the press and other places.
>
> When I was elected the attorney general in the State of California and took office in January of 1991, I asked a number of people who had previously served in the attorney general's Office for recommendations of people who should serve at the top level of the department of justice in my administration. Her name (Justice Brown) was always offered by those who had experience in that office.
>
> During the confirmation hearings that we had, I had the opportunity to review the opinions that she had written while on the appellate court. Interestingly enough, every single member of the appellate court on which she served recommended her confirmation to the California supreme court. I recall at the time that the chief justice of the California supreme court, Justice Ron George, surprised the public hearing that we had by actually putting on the table every

single written opinion that she had done and advising everybody there that he had read every opinion that she had written at that point in time, not once but twice, and rendering his opinion that she was well qualified to serve on the California supreme court.

Further quoting:

If you look at her opinions, they are the opinions of someone who understands what I believe jurists ought to understand, that their obligation is to interpret the law, not make the law.

He concluded his statement by saying:

My point this evening is a simple one. That which we are observing in the Senate is denying the American people an opportunity to review the nominees of the President of the United States. It is my belief that Janice Brown should be presented to the United States Senate for consideration. She is an American story. From the humblest background, she has risen to the highest court in the most populous State in the Nation. She subscribes to a judicial philosophy considered radical in some circles, that the text of the Constitution actually means something. She holds to a consistent enforcement of individual rights that is not result oriented.

In my judgment, these are the qualities of a true jurist and is why she should be confirmed to sit on the DC Circuit Court of Appeals and, at the very least, that her story be told in open debate on the floor of the United States Senate in the context of the consideration of her nomination by the whole body.

That is what we are attempting to do today. This is a debate that could quickly be brought to an end by a simple up-or-down vote. We offered the minority as much time as they wanted to debate these nominees, as long as an up-or-down vote would follow. But this hasn't happened.

As a matter of fact, at least seven of my colleagues from the other side of the aisle have actually stated the same thing—that nominees deserve an up-or-down vote regarding previous nominees, and they all received an up-or-down vote. The same people now that are objecting to an up-or-down vote are the ones who stood up and said we think they should have an up-or-down vote previously. Somehow that has changed from the 1990s, and they don't want that.

Let me remind them that Senator DURBIN said this on September 28, 1998: We should vote the person up or down. That is all we want.

Senator FEINSTEIN, on September 16, 1999, said a nominee is entitled to a vote. Vote them up or down.

Again, Senator FEINSTEIN, a month later, said in October of 1999:

Our institutional integrity requires an up-or-down vote.

That is what we are talking about, our institutional integrity. I agree with Senator FEINSTEIN from 1999.

On March 7, 2000, Senator KENNEDY said:

The Chief Justice of the U.S. Supreme Court said, ''The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry, it should vote him up or down, which is exactly what I would like.

Senator LAUTENBERG said:

Talking about the fairness in the system and how it is equitable for a minority to restrict the majority view, why can we not have a straight up-or-down vote?

That was on June 21, 1995.

Senator LEAHY, who actually chaired that committee, said:

When President Bush nominated Clarence Thomas to the U.S. Supreme Court, I was the first Member of the Senate to declare my opposition to his nomination. I did not believe that Clarence Thomas was qualified to serve on the Court. Even with strong reservations, I felt that Judge Thomas deserved an up-or-down vote.

Again, 4 years later, Senator LEAHY said:

. . . I also took the floor on occasion to oppose filibusters to hold them up and believe that we should have a vote up or down.

Senator LINCOLN said:

It's my hope that we'll take the necessary steps to give these men and these women especially the up-or-down vote that they deserve.

That was in the year 2000.

Senator SARBANES said:

It is not whether you let the President have his nominees confirmed. You will not even let them be considered . . . with an up-or-down vote.

I could go on and on. In fact, I did the other day. I went over so many of these people who are demanding an up-or-down vote. Not only are my colleagues on the other side of the aisle holding up these qualified judges by not allowing an up-or-down vote, I also believe they are discriminating against people of faith.

I will reiterate a quote from an article in the L.A. Times that I read on the floor in April regarding the filibuster of qualified nominees, such as Justices Owen and Brown. It states, and I am quoting now the L.A. Times which has never been accused of being a Republican newspaper:

These are confusing days in Washington. Born-again conservative Christians who strongly want to see President Bush's judicial nominees voted on are leading the charge against the Senate filibuster, and liberal Democrats are born-again believers in that reactionary, obstructionist legislative tactic. Practically every big-name liberal senator you can think of derided the filibuster a decade ago and now sees the error of his or her ways and will go to amusing lengths to try to convince you that the change of heart is explained by something deeper than the mere difference between being in the majority and being in the minority.

I know that both Justice Brown and Justice Owen are active members of churches and are distinguished women of faith.

Justice Brown has taught adult Sunday school at her church for more than 10 years, and Justice Owen teaches Sunday school and is the head of the altar guild at her church.

One has to ask the question, Have we come to the point in America where Sunday school teachers are disqualified by the strength of their faith and the boldness of their beliefs?

The Bible urges us, like Justices Brown and Owen, to be bold in our faith. I Timothy 3:13 says:

For they that have used the office of a deacon well purchase to themselves a good degree, and great boldness in the faith which is in Christ Jesus.

Hebrews 4:16 says:

Let us therefore come boldly unto the throne of grace, that we may obtain mercy. . . .

I agree with Justice Brown, as she recently told an audience, that people of faith were embroiled in a war against secular humanists who threatened to divorce America from its religious roots, according to a newspaper quoted in an April 26, L.A. Times article.

One example of this attack is our parental notification and consent laws which require girls under 18 who are seeking an abortion to either notify or obtain permission—either notify or obtain permission—from one or both of her parents. Many States have such laws. However, there are many instances where these protective laws have been struck down by liberal judges who are bypassing the law and legislating from the bench.

For example, on August 5, 1997, the California Supreme Court issued its decision in American Academy of Pediatrics v. Lungren. The court held that the 1987 statute requiring minors seeking abortion to obtain parental consent or judicial authorization violates the California Constitution's explicit right to privacy.

This is outrageous. Parents have a right to know what their children are doing. Children who are not old enough to vote or drink, why should they be old enough to have an abortion without at least telling their parents? We are not talking about getting permission, we are talking about notifying them.

In another case, Planned Parenthood v. Danforth, the Supreme Court held that statutes, which allow a parent or guardian to absolutely prohibit an abortion to be performed on a minor child, were unconstitutional.

There are a number of such cases. The whole point is this is outrageous.

We keep hearing people say these two justices are out of mainstream America, and I suggest to you, Mr. President, that it is the individuals who are making the accusations who are out of the mainstream. It was not long ago that they did polling on all these traditional values, and it would seem to me that the traditional values are in the mainstream. It is the liberals who are opposing these nominations who are out of the mainstream.

To give an example, by 85 to 15 percent, Americans say religion is very or fairly important in their lives. Only 15 percent say it is unimportant.

In the case of Government should help faith-based initiatives to help the poor, 72 percent of Americans agree. On the issue of whether violent attackers of pregnant women who kill the baby should be prosecuted for killing the baby, 84 percent say yes. That is mainstream.

On the issue of whether children should be allowed to pray in school, 78 percent of Americas agree.

And 73 percent of Americans favor a law requiring women under the age of

18 to get parental consent for any abortion. Democrats are with the 24 percent who oppose it.

That is mainstream America, Mr. President. Also, 74 percent oppose removing all references to God from oaths of public office—74 percent—and 91 percent of Americans want to keep the phrase ''under God'' in the Pledge of Allegiance.

Those who are opposing them are on the other side of these issues. I suggest this all averages to over 78 percent of the American people believe these issues, and that is clearly the will of the American people. That is mainstream. That is what our Founding Fathers talked about when they founded this great country, this one Nation under God.

We have said it over and over again. I see the distinguished Senator from Nevada is here to speak. I agree with all the liberal Democratic Senators who in the 1990s said: All we want is an up-or-down vote; that is all we are asking today. They got theirs, now we deserve ours.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I rise to discuss the issue of judicial nominees, their confirmation process and whether nominees should receive an up-or-down vote.

We are currently discussing Justice Priscilla Owen and her nomination to the Fifth Circuit Court of Appeals. There has been a lot said about this nominee. Her qualifications have been enumerated on the Senate floor. We have heard that she was elected with 84 percent of the vote in Texas. This is a very large percentage that represents overwhelming support in her home State of Texas.

My Democrat colleagues have questioned her position on the issue of parental notification. As my friend and colleague from the State of Oklahoma talked about, parental notification is supported by nearly 80 percent of the American people.

Before a school nurse gives a child an aspirin, the school will ask for the parent's permission. When it comes to an abortion, which is a surgical procedure, abortion providers do not want to be held to the same standard. The vast majority of the American people believe that a parent should be notified before a surgical procedure, like an abortion, is performed on a child.

The parental notification cases that Priscilla Owen has heard while serving on the Texas Supreme Court all involved a lower court decision that the child should tell a parent about her desire to have an abortion. So in many of these cases, Justice Owen was upholding the determination of the lower court judge who had directly listened to the testimony of the minor who wanted an abortion.

In these cases, there was disagreement among the justices on the Texas Supreme Court, but in cases where she voted in favor of parental notice, her determination was the same as the lower court. It was very reasonable. Anybody could look at that and say this is a reasonable person.

When we review the record of a judicial nominee, when we review their opinions, we should ask ''does that judge follow the law?'' We ask ''is this judge well reasoned?'' We ask ''did they look at the facts?'' Anybody who has reviewed Priscilla Owen's record and her opinions would conclude that she has a good temperament. They would conclude that she was not making law but was interpreting the law according to the way the Texas Legislature had intended. In cases involving parental notification, they would conclude that she had faithfully applied the law.

In addition to discussing Justice Owen's nomination, I also want to address the confirmation process as a whole. In the past, whether it was Judge Robert Bork or Clarence Thomas, Republicans were unhappy with the treatment that some nominees of Republican President's received. The reputation of Judge Bork and Justice Thomas had been attacked. These fine men were vilified. Republicans felt that those nominees were treated unfairly in committee and then on the floor.

When President Clinton was President, some of his nominees were likewise mistreated. The committee process was used to delay hearings or to bottle up nominees. In most cases though, those nominees were eventually given an up or down vote. We have heard the other side complain about the delays that President Clinton's nominees experienced. I believe that the Senate ought to fix that.

I think it is damaging to our system of government to deny any nominee an up or down vote. The Senate should, whether someone is nominated to serve as a judge or in the administration at an agency or department, provide each nominee with an up or down vote. The Senate should reject this delaying tactic which denies a nominee a timely up-or-down vote in committee and on the Senate floor. We ought to fix the whole process.

Unfortunately, both Republicans and Democrats have been escalating the fight over nominees for years. As I pointed out before, many Republicans felt that Judge Bork was mistreated. In response, President Clinton's nominees were too. What one side does, the other side will ratchet it up to the next level when they come into power. We can't keep doing that. Neither side is going to win if we continue on this path. But the American system of government and the American people will surely lose. Good people will no longer be willing to serve in the administration or in positions on the bench if we can't put an end to this. No American is going to want to have their name put up for a position if they are promised to be treated so horribly.

My home State of Nevada is part of the Ninth Circuit Court of Appeals. A few years ago, Nevada had an opening on the Ninth Circuit. I spoke with several people, people who would have been well-qualified as a candidate. I asked if they would be interested if I put their name forward? I consider it a great honor to be on the appellate court. The common feedback: ''Why would I want to put in my name and go through that process given all that you have to go through?''

My fear is that we are discouraging the very type of people who should apply for these positions from doing so. We need the absolute best legal minds to serve on the appeals courts and Supreme Court that we can possibly get. It should be an honor to serve there. We should not do anything to dishonor those positions with the political farce that we have going on in the Senate.

The Democrats have accused Republicans of wanting to change the rules. The rules changed 2 years ago. And it was the Senate Democrats that changed the rules with a partisan filibuster. A partisan filibuster was never done in the history of the Senate before 2003, never. Search the history books, it is very clear. The two cases Democrats bring up were not partisan filibusters. The one case about Abe Fortas, that was clear, he had engaged in objectionable practices while serving as an associate justice on the Supreme Court and was opposed by many Senators in both parties. He was not opposed on a party line basis. It was clear to President Johnson that his nominee did not have the votes to be confirmed as Chief Justice of the Supreme Court.

What we call the constitutional option—is an effort to reestablish the tradition of what the Senate has always done. The minority is correct that filibusters were allowed under the rules. But the people who considered them in the past, the majority of Senators, said it would do too much damage to the institution to actually carry out those filibusters. So, in a bipartisan fashion in the past, before the Democrats led the current filibusters, Senators got together and said: We will go ahead and have up-or-down votes on these nominees.

I believe, for the future of this institution and for the future of bringing good people to the judiciary, we need to fix this process once and for all. Whether it is a Republican President or a Democrat President and whether Republicans or Democrats are in control of the Senate, regardless of which party is in charge, good people should have an up-or-down vote in a timely fashion in committee as well as on the floor of the Senate.

I hope we can join across the aisle and fix this. I actually thought we should have fixed it last year before the Presidential election. I tried to extend my hand across the aisle last year and say to Democrats: We don't know who is going to win the Presidential election, so let's put something in place now so that the filibuster will not continue after the 2004 elections.

I don't think it should matter whether it is a Republican President or Democrat President sending nominees up here. It is OK to vote against them, but I don't believe that only 40 Senators of one party should be able to choose who is on the bench.

The PRESIDING OFFICER. The time of the majority has expired.

Mr. ENSIGN. Mr. President, I will conclude very briefly with this. For the good of our country, for the balance of powers, we need to end this process of filibustering good people. These good people deserve an up-or-down vote. It is only fair. Let's join together in a bipartisan fashion to do that.

I yield the floor.

The PRESIDING OFFICER. The minority now controls 90 minutes.

Who yields time? The Senator from Minnesota.

Mr. DAYTON. Mr. President, ''how a minority, reaching majority, seizing authority, hates the minority'' is attributed by the Library of Congress to a Leonard Robinson, in 1968. So I guess there is a historical precedent for the attitudes of the majority in the Senate today. The minority is treated often with contempt and disdain. Presiding Officers read their mail or sign photos while our Members speak on the Senate floor. Democratic conferees are excluded from the committee meetings. Our Democratic Senate leader is again smeared and targeted as an obstructionist. For what? For leading the minority party's lawful and proper dissent to the policies and practices of the majority, as though the expression of dissent on the floor of the Senate were improper or un-American or, now we are even being told, un-Christian, when, in fact, it is the intolerance of dissent that is improper, undemocratic, and the charges that political or policy disagreements here are actions ''against people of faith'' are the slurs of charlatans.

We are at this brink because during President Bush's first term, our Democratic caucus blocked approval of 10 of the President's judicial nominees, while 208 of his nominees were confirmed. That is a 95-percent approval rate. Ninety-five percent of President Bush's judicial nominees were confirmed by the Senate, but that is not good enough for this majority and this President. Nothing less than 100 percent is acceptable. It has to be their way all the time.

A President who said he was going to change the tone in Washington, promote bipartisanship, encourage democracy, does just the opposite. He demands congressional submission, insists on his way always, denounces and tries to destroy whoever disagrees with him.

I am astonished that the Senate Republican leadership has flip-flopped just because the President is now Republican instead of Democratic. Republicans were in the majority in the Senate for the last 6 years of President Bill Clinton's two terms, and they certainly did not champion their now precious principle of an up-or-down vote for the full Senate for each of his judicial nominees. To the contrary, they themselves prevented—or condoned others preventing—69 of President Clinton's judicial nominees from a vote by the full Senate. Many were denied confirmation hearings. Sometimes one Senator singlehandedly blocked judicial nominations. They received no votes by the Senate, not by part of the Senate, not by all of the Senate, not once, not ever, not this year, not next year, not in 4 years, not ever—69 judicial nominations. Republican leaders not only defended their actions to deny confirmation votes to Clinton nominees, they bragged about it.

Here are some of the statements they made at the time:

> The confirmation process is not a numbers game and I will not compromise the Senate's advise and consent function simply because the White House has sent us nominees that are either not qualified or controversial.

Another:

> So we are not abusing our advise and consent power. As a matter of fact, I don't think we have been aggressive enough in utilizing it to ensure that nominees to the Federal bench are mainstream nominees. Do I have any apologies? Only one, I probably moved too many judicial nominations already. When I go around my State or around the country the last thing I hear people clamoring for is more lifetime tenured Federal judges.

Regarding the use of the filibuster, Republican leaders were equally emphatic:

> It is very important that one faction or one party not be able to ride roughshod over the minority and impose its will. The Senate is not the House.

The filibuster is one of the few tools the minority has to protect itself and those the minority represents. Clearly, what distinguishes the Senate as a legislative body is unlimited debate, a traditional aspect that most Senators have felt very important for 200 years. The only way to protect minority views in the Senate is through extended debate.

Their judicial blocking tactics are right, but ours are wrong. Their use of the filibuster is good, and ours is bad. How convenient. How self-serving. And how wrong.

It is bad enough that the Senate Republican leadership wants to change the Senate rules to suit their purposes and disregard 214 years of bipartisan institutional wisdom which understood and cared about the proper role of the Senate in our carefully designed system of checks and balances. As James Madison, one of our Constitution's principal architects, said during the Constitutional Convention in 1787:

> In order to judge the form to be given to the Senate, take a view of the ends to be served by it. First, to protect the people against the rulers. Second, to protect the people against the transient impressions which they themselves must be led.

It is bad enough the Republican leadership wants to weaken the Senate's historic role and present responsibility. But what is even worse, much worse, is that they evidently intend to violate the procedures and disregard the rules by which the Senate can properly change one of its existing rules. They are going to use their own new and unprecedented procedure and disregard a ruling of the professional parliamentarian that their procedure violates Senate rules.

A senior Republican aide was quoted in today's Washington Post that Senator FRIST does not plan to consult the Senate Parliamentarian at the time the nuclear option is deployed. The Parliamentarian ''has nothing to do with this. He is a staffer and we don't have to ask his opinion.''

Of course they don't because they are going to throw out the existing Senate rules that they do not like and make up new rules that they do like. Then they are going to ask the Presiding Officer, one of their own, to rule in their favor and then all vote to ratify what they have just done, even though it is wrong, and they know it is wrong.

They can't change a wrong into a right with a vote. They cannot disguise a shameful abuse of power by calling it a constitutional option. There is nothing constitutional about violating Senate rules, there is nothing American about violating Senate rules, and there is nothing senatorial about violating Senate rules.

In my career, I have learned to be effective in politics you have to become a realist. To remain effective, you have to remain an idealist. When I came to the Senate almost 4½ years ago, I was both realistic and idealistic. I knew that the legislative process brings out the best and the worst in people. But I thought the Senate would inspire more of the best. That the 1,863 men and women who had preceded me into this institution, many of them the best, the brightest, and the wisest of their generations, I thought their collective wisdom embodied in the Senate's rules and procedures would elevate our individual conduct and our collective actions and protect us and, more importantly, protect the American people from the missteps or the misguided attempts of one Senator, of a minority, or even of a majority.

My faith in the uplifting effect of the Senate was perhaps wrong or, rather, it was right until now. Now we are at the brink of desecrating this great institution. It will be a disgrace and a desecration if the Republican leaders of the Senate disregard longstanding Senate rules and substitute their own new rules and if a majority of Senators vote to approve this wrongdoing.

Everyone here should know whatever their honest differences of opinion about Justice Owen, unilaterally breaking rules because you do not like them or because you will not get your way by following them, is wrong. It is terribly wrong.

Now, why would the Senate's Republican leadership do this to the institution? To prove what, to whom? This

week's Congressional Quarterly reports that the Senate majority leader told a group of conservative activists questioning his resolve to invoke the nuclear option:

Remember, before I came here I used to cut people's hearts out.

That is a very revealing statement. Not ''saved'' hearts or ''mended'' hearts, but cut them out.

This ploy will cut out the Senate's heart of integrity. Why do it? From much of what I have read, this is being set up as a presidential purity test. I respect the majority leader's right to run for President. I respect that absolutely. I wish that it would not involve the institution of the Senate.

According to the executive director of the American Conservative Union, if he—the majority leader—aspires to the 2008 Republican Presidential nomination, it is a test he has to pass. This is pass-fail. He does not get a grade here. He cannot get a C for effort. He needs to deliver on this.

So this is not a constitutional option. It is a campaign opportunity, except that Senate leaders are supposed to deliver the Senate from this, from the President—any President—demanding that every one of his nominees be approved by a submissive body, the Senate; from political zealots and ideological fanatics demanding we give up our role and our responsibility so they can fulfill their delusional rantings of how Federal judges cause everything they cannot tolerate. Because there is no doubt about it, getting 218 judges, instead of 208 judges, is just their beginning. And then, by God, those judges had better decide every case just right for them or it is ''impeach, impale or eliminate.''

Self-anointed evangelist James Dobson—recently, on a national televised rally appeared with the Senate Republican leader—has called the United States Supreme Court Justice Anthony Kennedy the ''most dangerous man in America,'' and he has demanded he be impeached, along with Justices O'Connor, Ginsburg, Souter, Breyer, and Stevens, that is, six of the nine members of the Supreme Court that he wants to impeach; a Court he has compared to Nazism and to the Ku Klux Klan.

Not to be outdone, and this is a contest of extreme, incendiary, vitriolic hysterics, the director of Operation Rescue has alleged that the courts of this land have become a tool in the hands of the devil, by which the culture of death has found access.

Pat Robertson has written that the out-of-control judiciary is the most serious threat America has faced in nearly 400 years of history, more serious than al-Qaida, more serious than Nazi Germany and Japan, more serious than the Civil War.

Don Feder of Vision America claims:

Liberal judges have declared unholy war on us, and unless Christians fight back their faith, family, and freedom will be lost.

He also promised that whatever prominent Republican was willing to take the lead on the issue of judicial reform and impeachment will probably have the Republican presidential nomination in 2008.

Not one to miss such an opportunity, House Majority Leader TOM DELAY declared that the judiciary has ''run amok,'' and poses a threat to self-government. He threatens Congress must take action to rein in the judiciary and that such actions must be more than rhetoric.

And remember, before he came here, he used to exterminate things. So the threat of a congressional leader in running amok to take action against Federal judges must be taken as ominously as he undoubtedly intended it to be.

God's will and Jesus's word are hijacked by false prophets like James Dobson and Pat Robertson. The independence of Federal judges is threatened by TOM DELAY. Now the integrity of the Senate's rules and procedures may be violated. And these are the men who want to run our country. They want to dictate who is elected, decide who will be appointed, and even determine who is on God's side, who is not.

Well, if ever—if ever—there were a need for 51 profiles in courage in the Senate, it is now, to save this Senate from those who would savage it for their own gain. The world will note and long remember what we do here, and we will be judged—as we should—whether we acted so that, as Abraham Lincoln said, government of the people, by the people, and for the people shall not perish on this Earth or here in the Senate.

Mr. President, 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.

Mrs. MURRAY. 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. MURRAY. Mr. President, I have been traveling around my State, like many of my colleagues have. When I travel around, people keep stopping me and asking me: Why should I hear about the judges you are debating back in Washington DC? Whether I am in Spokane talking to constituents at a town meeting or in a grocery store on Saturday or talking to family members at home, they all want to know what we are talking about and why this debate matters in their lives.

Well, my answer to those constituents, whether it is someone in a grocery store or just chatting with someone or a family member, is that we are here for a very important reason; that is, to fight for basic American values, values all of us hold dear. I tell them we are fighting for the rights of minorities so all of us have an opportunity for a voice and a seat at the table. I tell them we are fighting for the constitutional principles that were given to the Senate 200 years ago.

Today, in the Senate, unfortunately, those values are under attack. What we see in their continuing rush for power is that some here on the other side want to turn this great institution simply into a rubberstamp for the current administration. Nowhere is that more clear to me than with the nomination that is in front of us tonight, and that is of Judge Priscilla Owen.

Senator FRIST said the other day that the only argument he has heard against Justice Owen is on parental consent. I happen to agree with Senator FRIST that her views and her decisions on this subject are very important, but if he has not heard the arguments against Justice Owen, I think he has not been listening enough.

On everything from parental consent to victims' rights, to workers' rights, to bias towards her campaign contributors, Justice Owen is too far out of the mainstream. Her radical views make a lifetime appointment inappropriate by this body. Let me take just a few minutes to talk about some of those important objections.

In Read v. Scott Fetzer Company, a 1998 case, Justice Owen ruled that a rape victim—a rape victim—could not collect civil damages against a vacuum cleaner company that employed an in-home dealer who raped her while he was demonstrating the company's product even though the company had failed to check his references, and if they had, they would have found out he had harassed women at his other jobs and previously been formally charged and fired for inappropriate sexual conduct with a child. But Justice Owen ruled that rape victim could not collect civil damages against that company.

I believe it is pretty clear that Justice Owen does not protect victims' rights.

In another case, in GTE Southwest, Incorporated v. Bruce, a 1990 case, Justice Owen sided with an employer whom the majority in that case ruled inflicted intentional emotional distress on employees when he subjected them to ''constant humiliating and abusive behavior,'' including the use of harsh vulgarities, infliction of physical and verbal terror, frequent assaults, and physical humiliation. Justice Owen wrote her own opinion to make sure it was clear she thought the shocking behavior was not enough to support a verdict for the workers.

It is clear to me that Justice Owen will not protect workers' rights and should not be promoted to a lifetime appointment by this body.

Justice Owen's record shows she has consistently put huge corporations ahead of people. She took campaign contributions from companies including Enron and Halliburton, and then she issued rulings in their favor. Many of her campaign contributions came from a small group of special business interests that advanced very clear anticonsumer and anti-choice agendas. Critically, her record has shown that

her donors enjoy greater success before her than before the majority of the court. Again, it is very clear to me that Justice Owen will not protect the rights of the people against these huge special interests and is not deserving of being promoted to a lifetime appointment by this body.

But you do not have to just listen to me. Listen to what some of her colleagues on the Texas Supreme Court said about her decisions.

In FM Properties v. City of Austin, the majority called her dissent ''nothing more than inflammatory rhetoric.''

In the case of In re Jane Doe III, Justice Enoch wrote specifically to rebuke Owen for misconstruing the legislature's definition of the sort of abuse that may occur when parents are notified of a minor's intent to have an abortion, saying:

abuse is abuse; it is neither to be trifled with nor its severity to be second guessed.

And finally, as has been stated by my colleagues on the floor of the Senate, now-Attorney General Alberto Gonzales, then an Owen colleague, criticized her, not once, not twice, but 10 times in his rulings and called one of her interpretations of a parental consent law an ''unconscionable act of judicial activism.''

Unfortunately, this nomination is before us. This is the type of activist judge we are being asked to give a lifetime appointment. By stripping the Senate of its constitutional role, we are seeing the effort to pack the courts with radical judges, push an extreme agenda, and leave millions of Americans behind.

That is why I say to my constituents, whether they walk up to me in a grocery store or it is one of my family members or somebody I am talking to in Spokane or Yakima or Vancouver or Bellingham, the debate we are having is critically important. For the people we promote to lifetime appointments, we need to know they will be fair and evenhanded and that they will protect the rights of Americans no matter where they live. That is why this fight is important, and that is why my colleagues are here on the floor of the Senate.

I see my colleague from Illinois is on the floor. I know he is here to speak as well. I yield time to him.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Washington who has been on the floor today addressing some of the major issues we are considering. This is an historic debate. Although there are few people gathered on the Senate floor, many people across Capitol Hill and across the Nation are following this debate. This is the first time in the history of the Senate where there is an attempt being made to change one of the most fundamental rules and one of the most fundamental values of this institution. To think how many Senators have come and gone in the history of this body—the number is fewer than 1,900 in total—In all of that time, no Senator has been so bold as to stand up and do what we understand the majority leader is likely to do very soon, the so-called nuclear option.

Why in the history of this Chamber has no Senator ever done this? Because, frankly, it strikes at the heart of this institution. It goes to the value of the Senate in our Constitution. When the Constitution was written, the Senate was created as a different place. I served in the House of Representatives for 14 years. I was proud of that service, enjoyed it, and value the House of Representatives and its role. But it is a different chamber.

The Senate was created so the minority would always have a voice. Think about it. There are two Senators from every State, large or small. Think of the rules of the Senate from the beginning which said: No matter who you are, what Senator you may be, you can take to this floor and do as I am doing at this moment, begin a debate which cannot be closed down unless an extraordinary majority of the Senate makes that decision.

Senator FRIST, now the Republican majority leader, has decided it is time to change that 200-year tradition, to change the rules of the Senate in the middle of the game. By this change, he will change a relationship between the Senate and the President. That is a bold move. It is a move we should think about very seriously. He will have Vice President CHENEY in the chair, but that is no surprise. Every President and every Vice President wants more power. That is the nature of our Government. But the Founding Fathers understood that, not just as a human impulse but a political impulse. They said: The way we will restrain too much power in the Presidency is to have checks and balances, to give to other branches of Government—the judiciary and the legislative branch—an opportunity to check the power of the President. We think about that today, and the rules of the Senate were part of those checks and balances.

A President can't appoint a judge to a lifetime appointment without the advice and consent of the Senate. In other words, the President's power is limited by the power of the Senate to advise and consent. The words were carefully chosen. The Senate wasn't directed to always approve the President's nominees. The President submits the nominees and the Senate, as a separate institution of Government, makes the decision as to whether those nominees will go forward. That is a limitation on the President's power.

This President, when we take a look at the record of how many judges he has submitted and how many have been approved, has done quite well for himself. This is the score for President Bush since he has been elected President: 208 of his judicial nominees have been approved, and only 10 have not. More than 95 percent of this President's nominees have been approved by the Senate.

How far back do you have to go to find another President with a batting record this good? Twenty-five years. This President has done better than any President in the last 25 years in having his judicial nominees approved. But from President Bush's point of view, from Vice President CHENEY's point of view, it is not good enough. He wants them all. He wants every single one of them, without dissent, without disagreement, without debate in the Senate. He wants them all.

Should every President have that power? I don't think so. Republican or Democrat, Presidents have to know they can go too far. They can make bad decisions, decisions which take America down a path that is not right. And they should know they will be held accountable for making those decisions. They should know they can come up with the names of nominees who are not good people for lifetime appointments and that when they come to the Senate, the Senate will review them and may say no. It is that check and balance which makes the difference.

One of the central arguments that has been made over and over again about triggering the nuclear option, which Senator FRIST is preparing to do, is the assertion that the Senate has never denied a judicial nominee with majority support an up-or-down vote. That argument is plain wrong and it is misleading. President Clinton had 61 judicial nominees who never received an up-or-down vote. I know. I was here. I watched it. I watched it as Senator ORRIN HATCH and the Judiciary Committee buried these nominees, refused to even give them a hearing. An up-or-down vote? They didn't get close to even an invitation to Washington. Nominated by the President, they were ignored and rejected by the Senate Judiciary Committee. Now we have these pious pronouncements that every judicial nominee deserves an up-or-down vote. I don't know if it is the water in Washington, water out of the Potomac River. It seems to create political amnesia among those who serve in the Senate. Some of the same Senators on the Republican side who have come to the floor and said every nominee deserves an up-or-down vote were the Senators who were stopping the nominees of President Clinton without so much as a hearing.

''We want fairness.'' They sure didn't want fairness when it came to that President and his nominees.

I am sure the vast majority of them, probably all of them, would have had majority support, had they received an up-or-down vote. But they were stopped in committee. I know it. I used to go and plead for judges from Illinois nominated by President Clinton. I can recall Senators—and I won't name names; I could—who just told me no. We are not going to let President Clinton fill these courts. We are hoping he will be gone soon, and we will put a Republican President in. We will take

care of those vacancies. We have some people we want to put on those spots. The fairness of an up-or-down vote wasn't the case around here at all. It was fundamentally unfair.

The Republicans exercised their filibusters, these pocket filibusters, against 61 nominees from President Clinton's White House who never received a vote in the Judiciary Committee. And the myth of the up-or-down vote is also demonstrated by looking at the history of Supreme Court nominations.

Norman Ornstein is well recognized on Capitol Hill, a thoughtful man. He pointed out today in an article in a newspaper known as Roll Call that there have been 154 nominations in our Nation's history to the Supreme Court. Of that 154, 23 never received an up-or-down vote; 1 out of 7 of the Supreme Court nominees never received an up-or-down vote. What a weak argument from the other side.

Not only does history argue they are wrong, their memories should argue they are wrong. They didn't offer an up-or-down vote to those nominees from President Clinton.

Let's talk about this particular circuit. Let's talk about what happened here in the context of the Priscilla Owen nomination for the Fifth Circuit. Justice Owen is the only judicial nominee ever nominated by the President on two occasions after being rejected by the Senate Judiciary Committee. Never before has a judicial nominee received a negative vote in committee and been confirmed by the Senate. The Republican leadership speaks at great length about the unprecedented maneuvers of Democrats, but their strategy on this nominee is a first. Surely Justice Owen and Charles Pickering, the former embattled nominee to the Fifth Circuit, are not the only people qualified to serve on that circuit. It is a circuit that covers the States of Texas, Louisiana, and Mississippi. This is an area of roughly 30 million people. It is amazing to me that President Bush and his fine people in the White House couldn't find another name to bring to us for that important court.

Justice Owen has been given two confirmation hearings, something which 61 Clinton nominees never had a chance to receive. Three of President Clinton's nominees for the very same circuit were denied even a single hearing. Let's take a look at these nominees.

Enrique Moreno, an accomplished trial attorney, nominated on September 16, 1999, by President Clinton to fill a vacancy in the Fifth Circuit. No hearing. No committee vote. No floor vote. Certainly, no up-or-down vote. I would hope that my friends on the Republican side would scratch their heads and search their memories and remember Enrique Moreno when they say every nominee is entitled to an up-or-down vote. He was found qualified. He was turned down to keep the vacancy, in the hopes of the Senate Republicans, that a Republican President would come along to fill it.

Let's look at another nominee in the same circuit. Jorge Rangel, a law firm partner, a former Texas district court judge, was nominated July 24, 1997. No hearing. No committee vote. No floor vote. This qualified man languished for months, waiting for his chance for even a hearing before the Judiciary Committee. But the Senate Republicans said, no; this wasn't about filling a vacancy. It was about keeping a vacancy so they, in the hopes of the next election, could fill it.

Finally, look at Alston Johnson. He was in a major law firm, nominated April 22, 1999, by President Clinton. He was renominated in 2001. He never received a hearing when Senator HATCH was chairman of the Judiciary Committee. He never received a committee vote. Certainly, he had no up-or-down floor vote. Why? To keep the vacancy alive for Priscilla Owen, in the hopes that someday there would be a Republican President who could fill it.

The Judiciary Committee chairman, Orrin Hatch, denied each of these nominees a vote and a hearing. Now the Republicans want to reap the benefits of their delay tactics. But they don't come to this with clean hands. This vacancy exists today because three people were treated very poorly. They never received the benefit of the hearing that Priscilla had. They never had the committee vote that Priscilla Owen had. They were not debated on the floor. They say she should be confirmed because she has a ''well-qualified'' rating by the American Bar Association. Let me tell you, it is an argument of convenience. The nominees I just mentioned—Jorge Rangel, Enrique Moreno, and Alston Johnson—all had ratings of ''well-qualified''. But their nominations were buried by Senator HATCH. So this ''good housekeeping seal of approval,'' the ABA rating, meant nothing to the Senate Republicans when it came to the Clinton nominees.

Much has been said today on the floor about Justice Owen's record in preventing pregnant minors in Texas from receiving abortions through a process known as a ''judicial bypass.'' What is that all about? Most States, in writing laws, say when it comes to a minor seeking an abortion, there can be extraordinary circumstances when parental consent is not appropriate. We can think about those. There are victims of incest. You would not expect the victim to go to the family member who perpetrated that crime for permission for an abortion. So they create a process where those victims, with the help of an advocate, can go to court and say to the court: My circumstances are unusual. I should be treated differently and given a different opportunity.

We have heard the comment made by then-Texas Supreme Court justice, and now our Attorney General, Alberto Gonzales. When Priscilla Owen issued an opinion in the case involving judicial bypass, he said—Attorney General Gonzales—that her dissenting position in this case:

> It would be an unconscionable act of judicial activism.

That is the Attorney General of the United States commenting on the record of Priscilla Owen, who the administration is now propounding to fill this vacancy.

Make no mistake, the vote on this nominee, Priscilla Owen, is not a referendum on the contentious issue of abortion. I don't oppose her because we differ on abortion rights. In fact, we have confirmed 208 of President Bush's judicial nominees, over 95 percent. Trust me, the vast majority of them do not share my view on the issue of abortion. But that is not the test, nor should it be. We expect President Bush to nominate people who have a position on abortion that may differ from mine. That doesn't disqualify anybody. That is why 95 percent of his nominees have been approved, despite those differences.

In my view, the Owen nomination is not just about abortion. I oppose her because I don't believe she has taken an evenhanded or moderate approach to applying the law. What distinguishes this nominee, Priscilla Owen, from other judges being confirmed is that she has repeatedly demonstrated her unwillingness to apply statutes and court decisions faithfully—on the issue of abortion and many other issues.

There is no dispute that Justice Owen is a woman of intellectual capacity and academic accomplishment. The question before the Senate, however, is whether she exhibits the balance and freedom from rigid ideology that must be the bedrock of a strong Federal judiciary. The answer, regrettably, is no.

Although the Senate is once again a house divided, concerns about Justice Owen cross party lines. Those who know her the best, including colleagues on the Republican-dominated Texas Supreme Court, have repeatedly questioned the soundness of her logic, her judgment, and her legal reasoning during her 10 years on that court.

Consider some of the published comments of her colleagues on the Texas Supreme Court.

In the case of FM Properties v. City of Austin, Justice Owen dissented in favor of a large landowner which sought to write its own water quality regulations. The court majority wrote:

> Most of Justice Owen's dissent is nothing more than inflammatory rhetoric and thus merits no response.

That was the majority of the Texas Supreme Court. Think about it. Attorney General Gonzales says she has taken part in unconscionable acts of judicial activism. The majority of her Texas Supreme Court says her dissent is nothing more than inflammatory rhetoric in this case.

Then look at her dissenting opinion in the case of Fitzgerald v. Advanced Spine Fixation Systems, in favor of limiting liability for manufacturers who made harmful products that injured innocent people. What they said

was that her dissent would in essence ''judicially amend the statute to add an exception not implicitly contained in the language of the statute.'' To put it in layman's terms, she is not being a judge, she is being a legislator and is writing law.

According to the majority, her dissent in a case involving the Texas open records law, City of Garland v. Dallas Morning News here is what the majority of the court said about this nominee, Priscilla Owen:

Effectively writes out the . . . Act's provisions and ignores its purpose to provide the public ''at all times to complete information about the affairs of government and the official acts of public officials and employees.''

According to six justices, including three appointed by George W. Bush when he was Governor of the State, Justice Owen's dissenting opinion in Montgomery Independent School District v. Davis is guilty of ''ignoring credibility issues and essentially stepping into the shoes of the fact-finder to reach a specific result.''

In other words, she is picking and choosing the evidence without treating it fairly. Who said that? Six justices on her own Texas Supreme Court. Three of them were appointed by George W. Bush. Her colleagues said that Owen's dissent, in this case against a teacher who was unfairly fired ''not only disregards the procedural limitations in the statute but takes a position even more extreme than that argued for by the [school] board.''

Judges can and should have lively debate over how to interpret the law. Senator CORNYN, our colleague from Texas, tried to assure us that judges in Texas always talk this way. But Justice Owen's tenure on the Texas Supreme Court is remarkable for both the frequency and intensity with which her fellow Republicans on the court have criticized her for exceeding the bounds of honest disagreement. These are Republican fellow justices carping, not Democrats. They are fellow justices, appointed by Governor George W. Bush and others.

According to those who served with her and know her best, she has often been guilty of ignoring plain law, distorting legislative history, and engaging in extreme judicial activism.

All too often during her judicial career, Justice Owen has favored manufacturers over consumers, large corporations over individual employees, insurance companies over claimants, and judge-made law over jury verdicts. This pattern is consistent with her State court campaign promises. But it ill suits a person seeking a lifetime appointment to the Federal bench who promises to be fair and balanced.

Let me mention one example, a case I asked Justice Owen about at her hearing in 2002, Provident American Insurance Company v. Castaneda. Justice Owen, writing for a divided court, ruled in favor of an insurance company that tried to find anything in its policy to avoid paying for critical surgery for a young woman named Denise Castaneda.

Denise suffered from hemolytic spherocytosis, a genetic condition causing misshapen blood cells, and she needed to have her spleen and gallbladder removed. Denise's parents obtained preapproval for the surgery, yet Justice Owen allowed the insurance company to deny coverage, in clear bad faith of their contractual obligation.

One of her colleagues on the court who disagreed with her in this case, Justice Raul Gonzalez, said Justice Owen's opinion ''ignores important evidence that supports the judgment . . . and resolves all conflicts in the evidence against the verdict [for the family that was denied coverage].''

Justice Raul Gonzalez concluded:

If the evidence of this case is not good enough to affirm judgment, I do not know what character or quantity of evidence would ever satisfy the Court in this kind of case.

Nor is it easy to satisfy Justice Owen in the judicial bypass cases. Her tortured reasoning in cases involving the Texas parental notification law exhibits the same inclination by Justice Owen for judicial activism I discussed earlier.

I am alarmed by her attempt to force young women seeking a legal judicial bypass under Texas law to demonstrate that they considered religious issues in their decision whether they were to have an abortion. This religious awareness test has no support in Supreme Court case law. She may view it as something to be added to the law. It is not the law. And when judges go beyond the clear limits of the law, they are writing the law, and that is not their responsibility.

Justice Owen told the Judiciary Committee she would not be an activist, that she would merely follow the law. That is a safe answer. We hear it from every nominee. But when it comes to the issue of abortion, the law is not well settled. One study shows that of 32 circuit court cases applying the 1992 case Planned Parenthood of Southeastern Pennsylvania v. Casey, only 15 of those cases were decided by unanimous panels. So in a majority of the cases, judges viewing identical facts and laws reached different conclusions.

Priscilla Owen is a member and officer of the Federalist Society. If you have never heard of it, this is the secret handshake at the White House. If you are a member of the Federalist Society, you are much more likely to progress, to have a chance to serve for a lifetime on the bench. I have tried, as nominees would come before the Judiciary Committee, to ask them: What is the Federalist Society? Why is it so important that résumés for would-be judges be checked by the Federalist Society for the Bush White House to consider you?

I asked Priscilla Owen if she agreed with the Federalist Society's published mission statement which says:

Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society.

Here is her response:

I am unfamiliar with this mission statement . . . I have no knowledge of its origin or its context.

She ducked the question. I can only conclude that she does not find that mission statement repugnant. She joined the Federalist Society, and that is the viewpoint.

It is a small organization. Fewer than 1 percent of lawyers across America are members of this Federalist Society. Yet over one-third of President Bush's circuit court nominees are members of the Federalist Society. If you do not have a Federalist Society secret handshake, then, frankly, you may not even have a chance to be considered seriously by the Bush White House.

When it comes to nominees to the appellate court, the White House has made political ideology a core consideration. President Bush did not take office with a mandate to appoint these kinds of judges. He lost the popular vote in his first election, won the electoral vote by a decision of the Supreme Court, and came back in this last election and won by virtue of one State. Had Ohio gone the other way, he would not be President today. What kind of mandate is that for rewriting the courts and the laws that they consider?

The Nation needs more judicial nominees who reflect the moderate views of the majority of Americans and who have widespread bipartisan support. Priscilla Owen is not one of them. I do not believe this nominee should receive a lifetime appointment, and I do not believe she is worth a constitutional confrontation.

Today we had a gathering on the steps of the Senate of Democrats serving in the House and the Senate. We were glad that our colleagues from the House came over to support us in this debate on the nuclear option. They do not have the constitutional responsibility of confirming nominees to the court, but they understand a little bit about debate.

Sadly, in the House of Representatives since I left, debate has virtually come to a standstill. Efforts are being made to close down debate, close down amendments. The House meets 2 or 3 days a week, if they are lucky, and goes home accomplishing very little except the most basic political agenda. What a far cry from the House of Representatives in which I served. We used to go on days, sometimes weeks, on critically important issues such as the spread of nuclear weapons around the world. They were hotly contested debates. There were amendments that passed by a vote or two where we never knew the outcome when we cast our vote. It does not happen anymore. The House of Representatives has shut down debate, by and large, and when they get to a rollcall vote that is very close, they will keep the rollcall vote open for hours, twisting the arms of

Congressmen to vote the way the leadership wants them to.

That is what is happening in the House. Sadly, that is what happens when a group is in power for too long. They forget the heritage of the institution they are serving. All that counts is winning, and they will win at any cost.

That is what is happening in this debate. There are forces in the Senate that want to win at any cost, but the cost of the nuclear option is too high. The cost of the nuclear option means we will turn our back on a 200-year-plus tradition. We will turn our back on extended debate and filibuster so this President can have more power.

You wonder if 6 Republicans out of 55 are troubled by this. That is what it comes down to. If 6 Republicans believe this President has gone too far, that is the end of the debate on the nuclear option—6 out of 55. It is possible it could reach that point where six come forward. I certainly hope they do. They will be remembered. Those six Republicans who step forward and basically say the President is asking for too much power, those six Republicans who say the special interest groups that are pushing this agenda so the President will have every single judicial nominee, those six Republicans will be remembered. They will have stood up for the institution.

It will not be popular. In some places I am sure they are going to be roundly criticized, and they may pay a political price. But we would like to think—most of us do—that at that moment in time when we are tested to do the right thing, even if it is not popular, we will do it. I certainly hold myself to that standard. Sometimes I meet it, sometimes I fail.

For those who are considering that today, I say to them there has never been a more important constitutional debate in the Senate in modern memory. ROBERT C. BYRD, the Senator from West Virginia, comes to the floor every day and carries our Constitution with him in his pocket. He has written a two- or three-volume history of the Senate. He knows this institution better than anybody.

I have listened to Senator BYRD, and I have measured the intensity of his feeling about this debate. It is hard for anyone to describe what this means to Senator BYRD. He believes what is at stake here is not just a vote on a judge. What is at stake here is the future of the Senate, the role of the issues, such as checks and balances, and I agree with him.

My colleagues made an argument that we have to go through these judicial nominees and approve them because we face judicial emergencies. Let me read what Senator FRIST, the Republican majority leader, said on May 9:

> Now, 12 of the 16 court of appeals vacancies have been officially declared judicial emergencies. The Department of Justice tells us the delay caused by these vacancies is complicating their ability to prosecute criminals. The Department also reports—

According to Senator FRIST—

> that due to the delay in deciding immigration appeals, it cannot quickly deport illegal aliens who are convicted murderers, rapists, and child molesters.

That was Senator FRIST's quote on May 9, waving the bloody shirt that if we do not move quickly on judicial nominees, it will leave vacancies that allow these criminals on the street.

Facts do not support what Senator FRIST said. In fact, you have to go back to 1996 to find a lower number of judicial emergencies. Think about this. In 1994, there were 67 judicial emergencies, meaning vacancies that badly needed to be filled. That, of course, was during the Clinton years, when many of the Republicans were not holding hearings and insisting we didn't need to fill vacancies. Today the number of judicial emergencies is 18. What a dramatic difference.

I think it is clear. There are fewer judicial emergencies now than there have been in the last 9 or 10 years. For any Senator to come to the floor and argue that we are creating a situation where criminals are roaming all over the streets—where were these same critics during the Clinton years when there were many more judicial emergencies and they were turning down the Clinton nominees, denying them even an opportunity for a hearing?

I think this debate is going to test us—in terms of the future of the Senate, in terms of our adherence to our oaths to protect and defend the Constitution of the United States.

Janice Rogers Brown is also a nominee who will likely follow Priscilla Owen to the floor. She, too, has been considered not only in committee but also on the floor, and she will have her nomination submitted for us to consider again.

She, of course, is looking for appointment to the second highest court in the land, the DC Circuit Court of Appeals. I have heard my colleagues, Senator BOXER and Senator FEINSTEIN, from Judge Janice Rogers Brown's home State of California, describe some of the things she has said during the course of serving as a judge. To say she is out of the mainstream is an understatement. She is so far out of the mainstream on her positions that you find it interesting that, of all of the conservative Republican attorneys and judges in America, this is the best the White House can do, to send us someone who has such a radical agenda that she now wants to bring to the second highest court in the land. And that is what we are up against.

There are some who argue, Why don't you just step aside? Let these judges come through. I hope it doesn't come to that. But I hope it does come to a point that we make it clear the nuclear option is over. I believe Senator HARRY REID, the Democratic leader, has said and I believe that we will conscientiously review every single nominee. The President can expect to continue to receive 95-percent approval, unless he changes the way he nominates judges—maybe even better in the future. But for us to change the rules of the Senate may give this President a temporary victory. It may have some special interest groups calling Senator FRIST, the Republican majority leader, congratulating him. But, frankly, it will not be a day of celebration for those who value the Constitution and the traditions of the Senate.

At this point I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I come to the floor this evening to join my colleagues to talk about the Senate's deliberations on some of our administration's judicial nominations. It is very clear to me this is a debate about basic American values. In drafting the Constitution, the Framers wanted the Senate to provide advice and consent on nominees who came before us to ensure that these very rights and values were protected. I believe as a Senator I have a responsibility to stand up for those values on behalf of my constituents from my home State of Washington.

Many activists today are complaining that certain Senators are attacking religious or conservative values. I must argue that it is others, not Democratic Senators, who are exercising their rights, who are pursuing a nomination strategy that attacks the basic values that were outlined in our Constitution.

Our democracy values debate. It values discussion. Our democracy values the importance of checks and balances. Our democracy values an independent judiciary. But with this nuclear option and the rhetorical assault that is being launched at Democratic Senators by activists around the country, we now see those values under attack. The nuclear option is an assault on the American people and many of the things we hold dear. It is an attempt to impose on the country, through lifetime appointments, the extreme values held by a few at the cost of many. It is the tyranny of the majority personified. Confirming these nominees by becoming a rubberstamp for the administration would be an affront to the 200-year-old system we have in place, a system of checks and balances. At the same time I have to say it would be an affront to the values I promised to defend when I came to the Senate.

It is not always easy. Building and maintaining a democracy is not easy. But our system and the rights and the values it holds dear are the envy of the world. In fact, the entire world looks at us as a model for government. It is our values they look to. We have to protect them, not only for us but for other fledgling democracies around the world.

I returned recently from a bipartisan trip we took to Israel, Iraq, Georgia, and Ukraine, where we saw up close leaders who are working very hard to

write constitutions, to write laws, to write policies. They were working hard, all of them, to assure that even those who did not vote in the majority in their country would have a voice.

The challenges were varied in every country we went to. They faced everything from protecting against terrorists to, in some cases, charging for electricity for the first time, to, in other cases, reforming corrupt institutions. But making sure that democracies survive means having debates, it means bringing people to the table, and it means making tough decisions. But in each case, the importance of not disenfranchising any group within that country was an important part of making sure that democracy worked.

So how we in this country accomplish the goal of sustaining a strong democracy and ensuring people—all people—participation is extremely important.

Elections are the foundation of our democracy. They actually determine the direction of our country. But an election loss doesn't mean you lose your voice or you lose your place at the table. Making sure we all have a seat at the table is increasingly important to keep our democracy strong. That is why those of us on this side are fighting so hard to keep our voice, to have a seat at the table.

Recently we have heard a lot from the other side about attacks on faith and values. In fact, some are trying to say our motive in this debate is somehow antifaith. I have to argue that just the opposite appears to me to be true. We have faith in our values, we have faith in American values, and we have faith that those values can and must be upheld.

This is not an ideological battle between Republicans and Democrats, it is about keeping faith with the values and ideals our country stands for. Having values and having faith in those values requires—requires that we make sure those without a voice are listened to. Speaking up for those in poverty to make sure they are fed is a faith-based value. Making sure there is equal opportunity and justice for the least among us is a faith-based value. Fighting for human rights, taking care of the environment, are faith-based values.

To now say those of us who stick up for minority rights are antifaith is frightening and, frankly, it is wrong. I hope those who have decided to make this into some kind of faith/antifaith debate will reconsider. This debate should be about democracy. It should be about the protection of an independent judiciary. And certainly it is a debate about the rights of minorities.

Our system of Government, of checks and balances, and our values, are under attack today by this very transparent grab for power. They are, with their words and potential actions, attempting now to dismantle this system despite the clear intent of the Framers and the weight of history and precedent. They think they know better, and I think not.

Today, it is fashionable for some of my colleagues on the other side of the aisle to disparage what they call activist judges. But this power grab, this nuclear option reveals the true motivation. There are those who want activists on the bench to interpret the law in a way I believe undermines important American values.

I believe we have a responsibility to stand up and say no to extreme nominees. But to know that, you do not need to listen to me. Just look back at the great Founders of this democracy. The Framers, in those amazing years when our country was founded, took very great care in creating this new democracy. They wrote into the Constitution the Senate's role in the nomination process. They wrote into the Constitution and spoke about protecting the minority against the tyranny of the majority and their words ring true today.

James Madison, in his famous Federalist No. 10, warned against the superior force of an overbearing majority or, as he called it, a dangerous vice.

He said:

> The friend of popular governments never finds himself so much alarmed for their character and faith as when he contemplates their propensity to this dangerous vice.

Years prior, John Adams wrote in 1776 on the specific need for an independent judiciary and checks and balance. He said:

> The dignity and stability of government in all its branches, the morals of the people and every blessing of society depends so much on an upright and skillful administration of justice that the judicial power ought to be distinct from both the legislative and executive and independent upon both so that it may be a check upon both as both should be checks upon that. The Judges therefore should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness and attention. Their minds should not be distracted with jarring interests; they should not be dependent on any man or body of men.

I have to shudder at the thought of what some of the great thinkers, the great Founders of our democracy, would say to this attempted abuse of power. Frankly, one of the best interpretations of the thoughts was offered to this Senate by Robert Caro, the great Senate historian. He wrote a letter in 2003 and he talked about the need for the Senate to maintain its history and its traditions despite popular pressures of the day and of the important role that debate and dissension plays in any discussion of judicial nominations. In particular, he wrote of his concern for the preservation of Senate tradition in the face of attempted changes by a majority run wild.

He said, in part:

> In short, two centuries of history rebut any suggestion that either the language or intent of the Constitution prohibits or counsels against the use of extended debate to resist presidential authority. To the contrary, the nation's Founders depended on the Senate's members to stand up to a popular and powerful president. In the case of judicial appointments, the Founders specifically mandated the Senate to play an active role providing both advice and consent to the President. That shared authority was basic to the balance of powers among the branches.
>
> I am . . . attempting to say as strongly as I can that in considering any modification Senators should realize they are dealing not with the particular dispute of the moment, but with the fundamental character of the Senate of the United States, and with the deeper issue of the balance of power between majority and minority rights.

Protection of minority rights has been a fundamental principle since the infancy of this democracy. It should not—in fact, it cannot—be laid to rest in this Chamber with this debate.

I know there are a lot of people wondering why the Senate is spending so much time talking about Senate rules and judicial nominations. They are wondering why I am talking about nominees and quoting Madison and Adams. They are wondering what this means to them.

I make it clear: This debate is about whether we want a clean, healthy environment and the ability to enforce our laws to protect it fairly. This debate is about whether we want to protect essential rights and liberties. This debate is about whether we want free and open government. This debate is about preserving equal protection under the law. This debate is about whether we want to preserve the independent judiciary, whether we want to defend the Constitution, and whether we will stand up for the values of the American public.

I believe these values are too precious to abdicate. Trusting in them, we will not let Republicans trample our rights and those of millions of Americans who we are here to represent. We will stand and say yes to democracy, yes to an independent judiciary, yes to minority rights, and no to this unbelievable abuse of power.

I see my colleague from New York is here, and I know he has time tonight, as well.

I yield the floor.

The PRESIDING OFFICER (Mr. DEMINT). The Senator from New York.

Mr. SCHUMER. Mr. President, first, I compliment my friend and colleague from the great State of Washington for her outstanding remarks and leadership on this issue. She knows, because of her experience and her compassion and humanity, what this nuclear option would mean to this Senate. I thank the Senator for her leadership.

Mr. President, there are so many things to say here. The idea of blowing up the Senate, literally, almost, at least in terms of the rules, at least in terms of comity, and at least in terms of bipartisanship, all because 10 judges have not been approved, is just appalling.

I mentioned earlier today, it seems like a temper tantrum if we do not get our way on every single one, say the hard-right groups, we will show them they cannot stop us on anything. That is how ideologues think. That is how

people who are so sure they have the message from God or from somebody else, that they know better than everyone else, that is how they think. They cannot tolerate the fact that some of these judges, a small handful, have been held up.

We can tell in the debate today where the enthusiasm and the passion is. There is a weariness on the other side of the aisle. My guess is that more than half of those on the other side, if it were a secret ballot, would vote against the nuclear option. They know it is wrong. Ten have said to me: I am under tremendous pressure; I have to vote for it. The reason the majority leader has not called for a vote is because of the courageous handful who have resisted the pressure. Four of them have told me of the pressure on them.

We used to hear about these groups influencing things. Does anyone have any doubt that if not for the small groups, some dealing with social issues because they think America has been torn away from them, some deal with economic issues—they hate the fact that the commerce clause actually can protect workers. Their idea is that self-made businessman should not pay taxes, should be able to discriminate, should be able to pollute the air and water.

Janice Rogers Brown basically stands for the philosophy of the 1890s and said over and over again that we should go back to the days when if you had a lot of money and power, you could do whatever you wanted. It is an abnegation of history, of the knowledge we have learned. It is an abnegation of the free market principles are the best principles.

But we have learned over the years they need some tempering and some moderation. That is why we do not have the booms and busts that characterized America from 1870 to 1935. That is why people live better. Not because corporate America did good for them. They did do some good, and they do more good now. It was through unionization, through government rules that we transformed America from a nation of a very few rich, a small middle class, and a whole lot of poor people, into an America that had more rich people, a large—gigantic, thank God—middle class, and still too many poor people but fewer poor people.

But Janice Rogers Brown believes all government regulation is wrong. She believes the New Deal was a socialist revolution that had to be undone. Do mainstream conservatives believe that? Is it any wonder even the Chamber of Commerce is against the nuclear option? No.

There are so many points I wish to make, and fortunately it seems we will have a lot of time to make these points. I will focus on something that has not been focused on before, and that is this idea of an up-or-down vote.

First, we have had votes. Yes, the other side has needed 60 to prevail on the small number of judges we have chosen to filibuster. Yes, certainly there has not been a removal of cloture, but the bottom line is we have had votes, unlike when Bill Clinton was President and 60 judges were pushed aside and not given a vote.

The other point of the up-or-down vote is let 51 votes decide, let's each come to our own decision as we weigh the judges.

Let me show the independence of the decisions that have been made by those on the other side.

This is a compilation of all the votes taken by Republican Members of the Senate for every one of President Bush's court of appeals nominees. There have been 45. How many times has any Republican voted against any 1 of those 45 at any single vote? If, of course, we were all coming to an independent decision, do you think there would be 100, 200, 300 out of the 2,700-some-odd votes cast? You would think so. Independent thinking, let's have an up-or-down vote. Here is what it is: 2,703 to 1. Let me repeat that because it is astounding: 2,703 ''yes'' votes by Republicans for court of appeals nominees—45 of them—and 1 vote against.

Now, how is that? First, people ask, Well, who is the one vote? Why did one person, at one point, dissent from the marching lockstep to approve every single nominee the President has proposed? Well, I will tell you who it was. It was TRENT LOTT, the former majority leader. On what judge? On Judge Roger Gregory, who was nominated by Bill Clinton to be the first Black man to sit on the Fourth Circuit, which has a large black population. It is Virginia, North Carolina, South Carolina—I am not sure if it has Georgia in it or not; I think not Georgia.

And when President Bush renominated him, TRENT LOTT voted against him, maybe to help his friend, Jesse Helms, who blocked every nominee and certainly every African-American nominee on the Fourth Circuit. That is it. That is TRENT LOTT right there on Roger Gregory. TRENT LOTT on every other nominee, every other Republican Senator on every nominee: 100 percent of the time they voted for the President's nominee.

So this idea that we are a deliberative body, and we are going to look at each person on the merits, I heard our majority leader say: Let's look. Do you know what this means? Do you know what this spells, these numbers? R-U-B-B-E-R-S-T-A-M-P. This Senate, under Republican leadership, has become a complete rubber stamp to anyone the President nominates. Did maybe one of those nominees strike a single Member of the other side as going too far on a single issue? Did maybe one of those nominees do something that merited they not be on the bench? Did maybe one of those nominees not show judicial temperament? I guess not. Rubber stamp: 2,703 to 1. Once was there a dissent, only once, and on Roger Gregory, the first African-American nominee to the Fourth Circuit.

So what is happening here is very simple. The hard-right groups, way out of the mainstream, not Chambers of Commerce or mainstream churches, but the hard-right groups, as I said, either some who believe, almost in a theocratic way, that their faith—a beautiful thing—should dictate not just their politics but everyone's politics, and some, from an economic point of view, who do not believe there should be any Federal Government involvement in regulating our industries, our commerce, et cetera—these groups are ideologues. They are so certain they are right.

They have some following in this body, but it is not even a majority of the Republican side of the aisle. And they certainly do not represent the majority view of any Americans in any single State. But they have a lot of sway. And until this nuclear option debate occurred, they had very little opposition. People did not know what was going on. And now, of course, this debate allows us to expose the lie.

Let me say another thing about this idea. One out of every five Supreme Court nominees who was nominated by a President in our history never made it to the Supreme Court. The very first nominee, Mr. Rutledge, nominated by George Washington, was rejected by the Senate, in a Senate that had, I believe it was, eight of the Founding Fathers. Eight of the twenty-two people who voted in the Senate had actually signed the Constitution, defining them as Founding Fathers. Did they have votes like this? Of course not because the Founding Fathers, in this Constitution, wanted advice and consent. They say in the Federalist Papers, they wanted the President to come to the Senate and debate and discuss.

Has any Democrat been asked? Has PATRICK LEAHY, our ranking member of Judiciary, been asked about who should be nominees in these courts? Has there been a give-and-take the way Bill Clinton regularly called ORRIN HATCH, chairman of the Judiciary Committee? There is a story, I do not know if it is apocryphal, that ORRIN HATCH said: You can't get this guy for the Supreme Court. You can't get this guy, but Breyer will get through. And President Clinton nominated Breyer. Did Stephen Breyer have ORRIN HATCH's exact political beliefs? No. Did he have Bill Clinton's exact ones? No. It was a compromise. That is what the Constitution intended.

But when a President nominates judges through an ideological spectrum, when he chooses not moderates, and not even mainstream conservatives, but people who are way over—way over—we have safeguards. One of those safeguards is the filibuster. It says to the President: If you go really far out and do not consult and do not trade off, you can run into trouble.

Well, George Bush did not consult. He did what he said in the campaign,

that he was going to nominate ideologues. He said: I am going to nominate judges in the mold of Scalia and Thomas. There probably should be a few Scalias on our courts. They should not be a majority. And Bush nominates a majority. And he is now sowing what he has reaped—or reaping what he has sown. I come from New York City. We do not have that much agriculture, although I am trying to help the farmers upstate.

So that is the problem. This is not the Democrats' problem. This is the way the President has functioned in terms of judicial appointments. This is the way the Republican Senate, to a person, has been a rubber stamp without giving any independent judgment.

This is the way the Founding Fathers wanted we Democrats and the Senate as a whole to act. And that is what we are doing.

And then, when they do not get their way—quite naturally, we did what we are doing—they throw a temper tantrum. They say: We have to have all 100 percent. I want to repeat this because this was said by someone—I do not remember who—but I think it is worth saying. If your child, your son or daughter, came home and got 95 percent on a test, 95 percent, what would most parents do? They would pat him or her on the head and say: Great job, Johnny. Great job, Jane. Maybe try to do a little better, but you have done great. I am proud of you.

When President Bush gets the 95 percent, he does not do that. President Bush would advise—what he is doing, in effect, is saying to Johnny or Jane: You only got 95 percent?

This is not what President Bush does. It is what the far-right groups do, the hard-line far right. Only 95 percent? Break the rules and get 100 percent. What parent would tell their child that? Yet that is what these narrow-minded groups are saying. And wildly enough, the majority leader and most—and thank God, not yet all—of his caucus is agreeing. Break the rules, change the whole balance of power and checks and balances in this great Senate and great country so we don't have 95 percent, but 100 percent.

What is it that is motivating them? Some say it is a nomination on the Supreme Court that might be coming up, that they can't stand the fact that Democrats might filibuster. I can tell you, if the President nominates someone who is a mainstream person, who will interpret the law, not make the law, there won't be a filibuster.

They say: Well, they will have to agree with the Democrats on everything. Bunk. I haven't voted for all 208. I probably voted for about 195. I guarantee you, of those 195, I didn't agree with the views of many. No litmus test have I. I voted for an overwhelming majority who were pro-life even though I am pro-choice. I voted for an overwhelming majority who probably want to cut back on Government activity in areas that I would not cut back. But at least there was a good-faith effort by these nominees, at least as I interviewed them, being ranking Democrat on the Courts Subcommittee, to interpret the law, not to make the law.

There are some the President nominated you can't tolerate, that are unpalatable. I debated Senator HATCH on the Wolf Blitzer show. He keeps bringing up the old saw: You are opposing Janice Rogers Brown because you can't stand having an African-American conservative.

They said that about PRYOR in terms of being a Catholic and about Pickering in terms of being a Baptist. It is a cheap argument. I don't care about the race, creed, color, or religion of a nominee. If that nominee believes the New Deal was a socialist revolution, if that nominee believes the case the Supreme Court decided that said wage and hour laws were unconstitutional was decided correctly in 1906, even though it was overturned, I will oppose that nominee. That person should not be on the second most important court in the land. No way. We are doing what the Founding Fathers wanted us to do. We are doing the right thing.

One other point, and it relates to this hallowed document—the Constitution. In the 1960s and 1970s, one of the main bugaboos of the conservative movement was that the courts were going too far. They called them activist judges. They believed—from the left side, not from the right side—that these judges were making law, not interpreting the law. And there are cases where they were right. I remember being in college and being surprised as I studied some of the cases that the Supreme Court would do this.

So they created a counterreaction. Ronald Reagan nominated conservative judges, not as conservative as George Bush's, but the bench had largely been appointed by moderates, whether it be Kennedy, Johnson, Nixon, Ford, or Carter. So when Reagan came in and began to sprinkle some conservatives in there, people didn't make too much of a fuss, especially at the courts of appeal level.

The point I am making is this: So they didn't like activist judges, judges who would sort of read the Constitution and divine what was in it. And they had a movement that said: You only read the Constitution in terms of the words. If it doesn't say it in the Constitution, you don't do it.

I defy any Republican who says they don't believe in activist judges to find the words ''filibuster,'' ''up-or-down vote,'' ''majority rule,'' when it comes to the Senate. I would say that anyone who is now saying the Constitution says there cannot be a filibuster is being just as activist in their interpretation of the Constitution as the judges they condemned in the 1960s and 1970s.

I thank the Chair for the courtesy and yield the floor.

Mr. LEAHY, Mr. President, 3 years ago I first considered the nomination of Priscilla Owen to be a judge on the United States Court of Appeals for the Fifth Circuit. After reviewing her record, hearing her testimony and evaluating her answers I voted against her confirmation and explained at length the strong case against confirmation of this nomination. Nothing about her record or the reasons that led me then to vote against confirmation has changed since then. Unlike the consideration of the nomination of William Myers, on which the Judiciary Committee held another hearing this year before seeking reconsideration, there has been no effort to supplement the record on this nomination. Justice Owen's record failed to justify a favorable reporting of the nomination in 2002 and was inadequate to gain the consent of the Senate during the last 2 years.

In 2001, Justice Owen was nominated to fill a vacancy that had by that time existed for more than 4 years, since January 1997. In the intervening 5 years, President Clinton nominated Jorge Rangel, a distinguished Hispanic attorney from Corpus Christi, to fill that vacancy. Despite his qualifications, and his unanimous rating of well qualified by the ABA, Mr. Rangel never received a hearing from the Judiciary Committee, and his nomination was returned to the President without Senate action at the end of 1998, after a fruitless wait of 15 months.

On September 16, 1999, President Clinton nominated Enrique Moreno, another outstanding Hispanic attorney, to fill that same vacancy. Mr. Moreno did not receive a hearing on his nomination either—over a span of more than 17 months. President Bush withdrew the nomination of Enrique Moreno to the Fifth Circuit and later sent Justice Owen's name in its place. It was not until May of 2002, at a hearing presided over by Senator SCHUMER, that the Judiciary Committee heard from any of President Clinton's three unsuccessful nominees to the Fifth Circuit. At that time, Mr. Moreno and Mr. Rangel, joined by a number of other Clinton nominees, testified about their treatment by the Republican majority. Thus, Justice Owen's was the third nomination to this vacancy and the first to be accorded a hearing before the committee.

In fact, when the Judiciary Committee held its hearing on the nomination of Judge Edith Clement to the Fifth Circuit in 2001, during the most recent period of Democratic control of the Senate, it was the first hearing on a Fifth Circuit nominee in 7 years. By contrast, Justice Owen was the third nomination to the Fifth Circuit on which the Judiciary Committee held a hearing in less than 1 year. In spite of the treatment by the former Republican majority of so many moderate judicial nominees of the previous President, we proceeded in July of 2001—as I said that we would—with a hearing on Justice Owen.

Justice Owen is one of among 20 Texas nominees who were considered

by the Judiciary Committee while I was chairman. That included nine district court judges, four United States Attorneys, three United States Marshals, and three executive branch appointees from Texas who moved swiftly through the Judiciary Committee.

When Justice Owen was initially nominated, the President changed the confirmation process from that used by Republican and Democratic Presidents for more than 50 years. That resulted in her ABA peer review not being received until later that summer. As a result of a Republican objection to the Democratic leadership's request to retain all judicial nominations pending before the Senate through the August recess in 2001, the initial nomination of Justice Owen was required by Senate rules to be returned to the President without action. The Committee nonetheless took the unprecedented action of proceeding during the August recess to hold two hearings involving judicial nominations, including a nominee to the Court of Appeals for the Federal Circuit.

In my efforts to accommodate a number of Republican Senators—including the Republican leader, the Judiciary committee's ranking member, and at least four other Republican members of the committee—I scheduled hearings for nominees out of the order in which they were received that year, in accordance with longstanding practice of the committee.

As I consistently indicated, and as any chairman can explain, less controversial nominations are easier to consider and are, by and large, able to be scheduled sooner than more controversial nominations. This is especially important in the circumstances that existed at the time of the change in majority in 2001. At that time we faced what Republicans have now admitted had become a vacancy crisis in the Federal courts. From January 1995, when the Republican majority assumed control of the confirmation process in the Senate, until the shift in majority, vacancies rose from 65 to 110 and vacancies on the courts of appeals more than doubled from 16 to 33. I thought it important to make as much progress as quickly as we could in the time available to us that year, and we did. In fact, through the end of President Bush's first term, we saw those 110 vacancies plummet to 27, the lowest vacancy rate since the Reagan administration.

The responsibility to advise and consent on the President's nominees is one that I take seriously and that the Judiciary Committee takes seriously. Justice Owen's nomination to the court of appeals has been given a fair hearing and a fair process before the Judiciary Committee. I thank all members of the committee for being fair. Those who had concerns had the opportunity to raise them and heard the nominee's response, in private meetings, at her public hearing and in written follow-up questions.

I would particularly like to commend Senator FEINSTEIN, who chaired the hearing for Justice Owen, for managing that hearing so fairly and evenhandedly. It was a long day, where nearly every Senator who is a member of the Committee came to question Justice Owen, and Senator FEINSTEIN handled it with patience and equanimity.

After that hearing, I brought Justice Owen's nomination up for a vote, and following an open debate where her opponents discussed her record and their objections on the merits, the nomination was rejected. Her nomination was fully and openly debated, and it was rejected. That fair treatment stands in sharp contrast to the way Republicans had treated President Clinton's nominees, including several to the Fifth Circuit.

That should have ended things right there. But looking back, we now see that this nomination is emblematic of the ways the White House and Senate Republicans will trample on precedent and do whatever is necessary in order to get every last nominee of this President's confirmed, no matter how extreme he or she may be. Priscilla Owen's nomination was the first judicial nomination ever to be resubmitted after already being debated, voted upon and rejected by the Senate Judiciary Committee.

When the Senate majority shifted, Republicans reconsidered this nomination and sent it to the Senate on a straight, party-line vote. Never before had a President resubmitted a circuit court nominee already rejected by the Senate Judiciary Committee, for the same vacancy. And until Senator HATCH gave Justice Owen a second hearing in 2003, never before had the Judiciary Committee rejected its own decision on such a nominee and granted a second hearing. And at that second hearing we did not learn much more than the obvious fact that, given some time, Justice Owen was able to enlist the help of the talented lawyers working at the White House and the Department of Justice to come up with some new justifications for her record of activism. We learned that given six months to reconsider the severe criticism directed at her by her Republican colleagues, she still admitted no error. Mostly, we learned that the objections expressed originally by the Democrats on the Judiciary Committee were sincerely held when they were made, and no less valid after a second hearing. Nothing Justice Owen said about her record—indeed, nothing anyone else tried to explain about her record—was able to actually change her record. That was true then, and that is true today.

Senators who opposed this nomination did so because Priscilla Owen's record shows her to be an ends-oriented activist judge. I have previously explained my conclusions about Justice Owen's record, but I will summarize my objections again today.

The first area of concern to me is Justice Owen's extremism even among a conservative Supreme Court of Texas. The conservative Republican majority of the Texas Supreme Court has gone out of its way to criticize Justice Owen and the dissents she joined in ways that are highly unusual, and in ways which highlight her ends-oriented activism. A number of Texas Supreme Court Justices have pointed out how far from the language of statute she strays in her attempts to push the law beyond what the legislature intended.

One example is the majority opinion in *Weiner* v. *Wasson*, 900 S.W.2d 316, Tex. 1995. In this case, Justice Owen wrote a dissent advocating a ruling against a medical malpractice plaintiff injured while he was still a teenager. The issue was the constitutionality of a State law requiring minors to file medical malpractice actions before reaching the age of majority, or risk being outside the statute of limitations. Of interest is the majority's discussion of the importance of abiding by a prior Texas Supreme Court decision unanimously striking down a previous version of the statute. In what reads as a lecture to the dissent, then-Justice JOHN CORNYN explains on behalf of the majority:

> Generally, we adhere to our precedents for reasons of efficiency, fairness, and legitimacy. First, if we did not follow our own decisions, no issue could ever be considered resolved. The potential volume of speculative relitigation under such circumstances alone ought to persuade us that stare decisis is a sound policy. Secondly, we should give due consideration to the settled expectations of litigants like Emmanuel Wasson, who have justifiably relied on the principles articulated in [the previous case]. . . . Finally, under our form of government, the legitimacy of the judiciary rests in large part upon a stable and predictable decision-making process that differs dramatically from that properly employed by the political branches of government.

According to the conservative majority on the Texas Supreme Court, Justice Owen went out of her way to ignore precedent and would have ruled for the defendants. The conservative Republican majority, in contrast to Justice Owen, followed precedent and the doctrine of stare decisis. A clear example of Justice Owen's judicial activism.

In *Montgomery Independent School District* v. *Davis*, 34 S.W. 3d 559, Tex. 2000, Justice Owen wrote another dissent which drew fire from a conservative Republican majority—this time for her disregard for legislative language. In a challenge by a teacher who did not receive reappointment to her position, the majority found that the school board had exceeded its authority when it disregarded the Texas Education Code and tried to overrule a hearing examiner's decision on the matter. Justice Owen's dissent advocated for an interpretation contrary to the language of the applicable statute. The majority, which included Alberto Gonzales and two other appointees of then-Governor Bush, was quite explicit

about its view that Justice Owen's position disregarded the law:

The dissenting opinion misconceives the hearing examiner's role in the . . . process by stating that the hearing examiner 'refused' to make findings on the evidence the Board relies on to support its additional findings. As we explained above, nothing in the statute requires the hearing examiner to make findings on matters of which he is unpersuaded. . . .

The majority also noted that:

The dissenting opinion's misconception of the hearing examiner's role stems from its disregard of the procedural elements the Legislature established in subchapter F to ensure that the hearing-examiner process is fair and efficient for both teachers and school boards. The Legislature maintained local control by giving school boards alone the option to choose the hearing-examiner process in nonrenewal proceedings. . . . By resolving conflicts in disputed evidence, ignoring credibility issues, and essentially stepping into the shoes of the factfinder to reach a specific result, the dissenting opinion not only disregards the procedural limitations in the statute but takes a position even more extreme than that argued for by the board.

Another clear example of Justice Owen's judicial activism.

Collins v. *Ison-Newsome*, 73 S.W.3d 178, Tex. 2001, is yet another case where a dissent, joined by Justice Owen, was roundly criticized by the Republican majority of the Texas Supreme Court. The Court cogently stated the legal basis for its conclusion that it had no jurisdiction to decide the matter before it, and as in other opinions where Justice Owen was in dissent, took time to explicitly criticize the dissent's positions as contrary to the clear letter of the law.

At issue was whether the Supreme Court had the proper ''conflicts jurisdiction'' to hear the interlocutory appeal of school officials being sued for defamation. The majority explained that it did not because published lower court decisions do not create the necessary conflict between themselves. The arguments put forth by the dissent, in which Justice Owen joined, offended the majority, and they made their views known, writing:

The dissenting opinion agrees that ''because this is an interlocutory appeal . . . this Court's jurisdiction is limited,'' but then argues for the exact opposite proposition . . . This argument defies the Legislature's clear and express limits on our jurisdiction. . . . The author of the dissenting opinion has written previously that we should take a broader approach to the conflicts-jurisdiction standard. But a majority of the Court continues to abide by the Legislature's clear limits on our interlocutory-appeal jurisdiction.

They continue:

[T]he dissenting opinion's reading of Government Code sec. 22.225(c) conflates conflicts jurisdiction with dissent jurisdiction, thereby erasing any distinction between these two separate bases for jurisdiction. The Legislature identified them as distinct bases for jurisdiction in sections 22.001(a)(1) and (a)(2), and section 22.225(c) refers specifically to the two separate provisionsn of section 22.001(a) providing for conflicts and dissent jurisdiction. . . . [W]e cannot simply ignore the legislative limits on our jurisdiction, and not even Petitioners argue that we should do so on this basis.

Again, Justice Owen joined a dissent that the Republican majority described as defiant of legislative intent and in disregard of legislatively drawn limits. Yet another clear example of Justice Owen's judicial activism.

Some of the most striking examples of criticism of Justice Owen's writings, or the dissents and concurrences she joins, come in a series of parental notification cases heard in 2000. They include:

In *In re Jane Doe 1*, 19 S.W.3d 346, Tex. 2000, where the majority included an extremely unusual section explaining its view of the proper role of judges, admonishing the dissent, joined by Justice Owen, for going beyond its duty to interpret the law in an attempt to fashion policy.

Giving a pointed critique of the dissenters, the majority explained that, ''In reaching the decision to grant Jane Doe's application, we have put aside our personal viewpoints and endeavored to do our job as judges—that is, to interpret and apply the Legislature's will as it has been expressed in the statute.''

In a separate concurrence, Justice Alberto Gonzales wrote that to construe the law as the dissent did, ''would be an unconscionable act of judicial activism.''

A conservative Republican colleague of Justice Owen's, pointing squarely to her judicial activism.

In *In re Jane Doe 3*, 19 S.W. 3d 300, Tex. 2000, Justice Enoch writes specifically to rebuke Justice Owen and her follow dissenters for misconstruing the legislature's definition of the sort of abuse that may occur when parents are notified of a minor's intent to have an abortion, saying, ''abuse is abuse; it is neither to be trifled with nor its severity to be second guessed.''

In one case that is perhaps the exception that proves the rule, Justice Owen wrote a majority that was bitterly criticized by the dissent for its activism. In *In re City of Georgetown*, 53 S.W. 3d 328, Tex. 2001, Justice Owen wrote a majority opinion finding that the city did not have to give the Austin American-Statesman a report prepared by a consulting expert in connection with pending and anticipated litigation because such information was expressly made confidential under other law namely, the Texas Rules of Civil Procedure.

The dissent is extremely critical of Justice Owen's opinion, citing the Texas law's strong preference for disclosure and liberal construction. Accusing her of activism, Justice Abbott, joined by Chief Justice Phillips and Justice Baker, notes that the legislature, ''expressly identified eighteen categories of information that are 'public information' and that must be disclosed upon request . . . [sec. (a)] The Legislature attempted to safeguard its policy of open records by adding subsection (b), which limits courts' encroachment on its legislatively established policy decisions.'' The dissent further protests:

[b]ut if this Court has the power to broaden by judicial rule the categories of information that are ''confidential under other law,'' then subsection (b) is eviscerated from the statute. By determining what information falls outside subsection (a)'s scope, this Court may evade the mandates of subsection (b) and order information withheld whenever it sees fit. This not only contradicts the spirit and language of subsection (b), it guts it.

Finally, the opinion concluded by asserting that Justice Owen's interpretation, ''abandons strict construction and rewrites the statute to eliminate subsection (b)'s restrictions.''

Yet again, her colleagues on the Texas court, citing Justice Owen's judicial activism.

These examples, together with the unusually harsh language directed at Justice Owen's position by the majority in the Doe cases, show a judge out of step with the conservative Republican majority of the Texas Supreme Court, a majority not afraid to explain the danger of her activist views.

I am also greatly concerned about Justice Owen's record of ends-oriented decision making as a Justice on the Texas Supreme Court. As one reads case after case, particularly those in which she was the sole dissenter or dissented with the extreme right wing of the Court, her pattern of activism becomes clear. Her legal views in so many cases involving statutory interpretation simply cannot be reconciled with the plain meaning of the statute, the legislative intent, or the majority's interpretation, leading to the conclusion that she sets out to justify some pre-conceived idea of what the law ought to mean. This is not an appropriate way for a judge to make decisions. This is a judge whose record reflects that she is willing and sometimes eager to make law from the bench.

Justice Owen's activism and extremism is noteworthy in a variety of cases, including those dealing with business interests, malpractice, access to public information, employment discrimination and Texas Supreme Court jurisdiction, in which she writes against individual plaintiffs time and time again, in seeming contradiction of the law as written.

One of the cases where this trend is evident is *FM Properties* v. *City of Austin*, 22 S.W. 3d 868, Tex. 1998. I asked Justice Owen about this 1998 environmental case at her hearing. In her dissent from a 6–3 ruling, in which Justice Alberto Gonzales was among the majority, Justice Owen showed her willingness to rule in favor of large private landowners against the clear public interest in maintaining a fair regulatory process and clean water. Her dissent, which the majority characterized as ''nothing more than inflammatory rhetoric,'' was an attempt to favor big landowners.

In this case, the Texas Supreme Court found that a section of the Texas

Water Code allowing certain private owners of large tracts of land to create ''water quality zones,'' and write their own water quality regulations and plans, violated the Texas Constitution because it improperly delegated legislative power to private entities. The Court found that the Water Code section gave the private landowners, ''legislative duties and powers, the exercise of which may adversely affect public interests, including the constitutionally-protected public interest in water quality.'' The Court also found that certain aspects of the Code and the factors surrounding its implementation weighed against the delegation of power, including the lack of meaningful government review, the lack of adequate representation of citizens affected by the private owners' actions, the breadth of the delegation, and the big landowners' obvious interest in maximizing their own profits and minimizing their own costs.

The majority offered a strong opinion, detailing its legal reasoning and explaining the dangers of offering too much legislative power to private entities. By contrast, in her dissent, Justice Owen argued that, ''[w]hile the Constitution certainly permits the Legislature to enact laws that preserve and conserve the State's natural resources, there is nothing in the Constitution that requires the Legislature to exercise that power in any particular manner,'' ignoring entirely the possibility of an unconstitutional delegation of power. Her view strongly favored large business interests to the clear detriment of the public interest, and against the persuasive legal arguments of a majority of the Court.

When I asked her about this case at her hearing, I found her answer perplexing. In a way that she did not argue in her written dissent, at her hearing Justice Owen attempted to cast the FM Properties case not as, ''a fight between and City of Austin and big business, but in all honesty, . . . really a fight about . . . the State of Texas versus the City of Austin.'' In the written dissent however, she began by stating the, ''importance of this case to private property rights and the separation of powers between the judicial and legislative branches . . .'', and went on to decry the Court's decision as one that, ''will impair all manner of property rights.'' 22 S.W. 3d at 889. At the time she wrote her dissent, Justice Owen was certainly clear about the meaning of this case—property rights for corporations.

Another case that concerned me is *GTE Southwest, Inc.* v. *Bruce*, 990 S.W.2d 605, where Justice Owen wrote in favor of GTE in a lawsuit by employees for intentional infliction of emotional distress. The rest of the Court held that three employees subjected to what the majority characterized as ''constant humiliating and abusive behavior of their supervisor'' were entitled to the jury verdict in their favor. Despite the Court's recitation of an exhaustive list of sickening behavior by the supervisor, and its clear application of Texas law to those facts, Justice Owen wrote a concurring opinion to explain her difference of opinion on the key legal issue in the case—whether the behavior in evidence met the legal standard for intentional infliction of emotional distress.

Justice Owen contended that the conduct was not, as the standard requires, ''so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency . . .'' The majority opinion shows Justice Owen's concurrence advocating an inexplicable point of view that ignores the facts in evidence in order to reach a predetermined outcome in the corporation's favor.

Justice Owen's recitation of facts in her concurrence significantly minimizes the evidence as presented by the majority. Among the kinds of behavior to which the employees were subjected—according to the majority opinion—are: Upon his arrival the supervisor, ''began regularly using the harshest vulgarity . . . continued to use the word ''f——'' and ''motherf——r'' frequently when speaking with the employees . . . repeatedly physically and verbally threatened and terrorized them . . . would frequently assault each of the employees by physically charging at them . . . come up fast . . . and get up over (the employee) . . . and yell and scream in her face . . . called (an employee) into his office every day and . . . have her stand in front of him, sometimes for as long as thirty minutes, while (the supervisor) simply stared at her . . . made (an employee) get on her hands and knees and clean the spots (on the carpet) while he stood over her yelling.'' Justice Owen did not believe that such conduct was outrageous or outside the bounds of decency under state law.

At her hearing, in answer to Senator Edwards's questions about this case, Justice Owen again gave an explanation not to be found in her written views. She told him that she agreed with the majority's holding, and wrote separately only to make sure that future litigants would not be confused and think that out of context, any one of the outrages suffered by the plaintiffs would not support a judgment. Looking again at her dissent, I do not see why, if that was what she truly intended, she did not say so in language plain enough to be understood, or why she thought it necessary to write and say it in the first place. It is a somewhat curious distinction to make—to advocate that in a tort case a judge should write a separate concurrence to explain which part of the plaintiff's case, standing alone, would not support a finding of liability. Neither her written concurrence, nor her answers in explanation after the fact, is satisfactory explanation of her position in this case.

In *City of Garland* v. *Dallas Morning News*, 22 S.W. 3d 351, Tex. 2000, Justice Owen dissented from a majority opinion and, again, it is difficult to justify her views other than as being based on a desire to reach a particular outcome. The majority upheld a decision giving the newspaper access to a document outlining the reasons why the city's finance director was going to be fired. Justice Owen made two arguments: that because the document was considered a draft it was not subject to disclosure, and that the document was exempt from disclosure because it was part of policy making. Both of these exceptions were so large as to swallow the rule requiring disclosure. The majority rightly points out that if Justice Owen's views prevailed, almost any document could be labeled draft to shield it from public view. Moreover, to call a personnel decision a part of policy making is such an expansive interpretation it would leave little that would not be ''policy.''

Quantum Chemical v. *Toennies*, 47 S.W. 3d 473, Tex. 2001, is another troubling case where Justice Owen joined a dissent advocating an activist interpretation of a clearly written statute. In this age discrimination suit brought under the Texas civil rights statute, the relevant parts of which were modeled on Title VII of the federal Civil Rights Act—and its amendments—the appeal to the Texas Supreme Court centered on the standard of causation necessary for a finding for the plaintiff. The plaintiff argued, and the five justices in the majority agreed, that the plain meaning of the statute must be followed, and that the plaintiff could prove an unlawful employment practice by showing that discrimination was ''a motivating factor.'' The employer corporation argued, and Justices Hecht and Owen agreed, that the plain meaning could be discarded in favor of a more tortured and unnecessary reading of the statute, and that the plaintiff must show that discrimination was ''the motivating factor,'' in order to recover damages.

The portion of Title VII on which the majority relies for its interpretation was part of Congress's 1991 fix to the United States Supreme Court's opinion in the Price Waterhouse case, which held that an employer could avoid liability if the plaintiff could not show discrimination was ''the'' motivating factor. Congress's fix, in Section 107 of the Civil Rights Act of 1991, does not specify whether the motivating factor standard applies to both sorts of discrimination cases, the so-called ''mixed motive'' cases as well as the ''pretext'' cases.

The Texas majority concluded that they must rely on the plain language of the statute as amended, which could not be any clearer that under Title VII discrimination can be shown to be ''a'' motivating factor. Justice Owen joined Justice Hecht in claiming that federal case law is clear (in favor of their view), and opted for a reading of the statute that would turn it into its polar opposite, forcing plaintiffs into just the situation legislators were trying to avoid. This example of Justice

Owen's desire to change the law from the bench, instead of interpret it, fits President Bush's definition of activism to a ''T''.

Justice Owen has also demonstrated her tendency toward ends-oriented decision making quite clearly in a series of dissents and concurrences in cases involving a Texas law providing for a judicial bypass of parental notification requirements for minors seeking abortions.

The most striking example is Justice Owen's expression of disagreement with the majority's decision on key legal issues in Doe 1. She strongly disagreed with the majority's holding on what a minor would have to show in order to establish that she was, as the statute requires, ''sufficiently well informed'' to make the decision on her own. While the conservative Republican majority laid out a well-reasoned test for this element of the law, based on the plain meaning of the statute and well-cited case law, Justice Owen inserted elements found in neither authority. Specifically, Justice Owen insisted that the majority's requirement that the minor be ''aware of the emotional and psychological aspects of undergoing an abortion'' was not sufficient and that among other requirements with no basis in the law, she, ''would require . . . [that the minor] should . . . indicate to the court that she is aware of and has considered that there are philosophic, social, moral, and religious arguments that can be brought to bear when considering abortion.'' *In re Jane Doe 1*, 19 S.W.3d 249, 256, Tex. 2000.

In her written concurrence, Justice Owen indicated, through legal citation, that support for this proposition could be found in a particular page of the Supreme Court's opinion in Planned Parenthood v. Casey. However, when one looks at that portion of the Casey decision, one finds no mention of requiring a minor to acknowledge religious or moral arguments. The passage talks instead about the ability of a State to ''enact rules and regulations designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear.'' Justice Owen's reliance on this portion of a United States Supreme Court opinion to rewrite Texas law was simply wrong.

As she did in answer to questions about a couple of other cases at her hearing, Justice Owen tried to explain away this problem with an after-the-fact justification. She told Senator CANTWELL that the reference to religion was not to be found in Casey after all, but in another U.S. Supreme Court case, H.L. v. Matheson. She explained that in ''Matheson they talk about that for some people it raises profound moral and religious concerns, and they're talking about the desirability or the State's interest in these kinds of considerations in making an informed decision.'' Transcript at 172. But again, on reading Matheson, one sees that the only mention of religion comes in a quotation meant to explain why the parents of the minor are due notification, not about the contours of what the government may require someone to prove to show she was fully well informed. Her reliance on Matheson for her proposed rewrite of the law is just as faulty as her reliance on Casey. Neither one supports her reading of the law. She simply tries a little bit of legal smoke and mirrors to make it appear as if they did. This is the sort of ends-oriented decision making that destroys the belief of a citizen in a fair legal system. And most troubling of all was her indication to Senator FEINSTEIN that she still views her dissents in the Doe cases as the proper reading and construction of the Texas statute.

At her second, unprecedented hearing in 2003, Justice Owen and her defenders tried hard to recast her record and others' criticism of it. I went to that hearing, I listened to her testimony, and I read her written answers, many newly formulated, that attempt to explain away her very disturbing opinions in the Texas parental notification cases. But her record is still her record, and the record is clear. She did not satisfactorily explain why she infused the words of the Texas legislature with so much more meaning than she can be sure they intended. She adequately describes the precedents of the Supreme Court of the United States, to be sure, but she simply did not justify the leaps in logic and plain meaning she attempted in those decisions.

I read her responses to Senator HATCH's remarks at that second hearing, where he attempted to explain away cases about which I had expressed concern at her first hearing. For example, I heard him explain the opinion she wrote in F.M. Properties v. City of Austin. I read how he recharacterized the dispute in an effort to make it sound innocuous, just a struggle between two jurisdictions over some unimportant regulations. I know how, through a choreographed exchange of leading questions and short answers, they tried to respond to my question from the original hearing, which was never really answered, about why Justice Owen thought it was proper for the legislature to grant large corporate landowners the power to regulate themselves. I remained unconvinced. The majority in this case, which invalidated a state statute favoring corporations, did not describe the case or the issues as Senator HATCH and Justice Owen did. A fair reading of the case shows no evidence of a struggle between governments. This is all an attempt at after-the-fact, revisionist justification where there really is none to be found.

Justice Owen and Chairman HATCH's explanation of the case also lacked even the weakest effort at rebutting the criticism of her by the F.M. Properties majority. In its opinion, the six justice majority said, and I am quoting, that Justice Owen's dissent was ''nothing more than inflammatory rhetoric.'' They explained why her legal objections were mistaken, saying that no matter what the state legislature had the power to do on its own, it was simply unconstitutional to give the big landowners the power they were given. No talk of the City of Austin v. the State of Texas. Just the facts.

Likewise, the few explanations offered for the many other examples of the times her Republican colleagues criticized her were unavailing. The tortured reading of Justice Gonzales' remarks in the Doe case were unconvincing. He clearly said that to construe the law in the way that Justice Owen's dissent construed the law would be activism. Any other interpretation is just not credible.

And no reasons were offered for why her then-colleague, now ours, Justice Cornyn, thought it necessary to explain the principle of stare decisis to her in his opinion in Weiner v. Wasson. Or why in Montgomery Independent School District v. Davis, the majority criticized her for her disregard for legislative language, saying that, ''the dissenting opinion misconceives the hearing examiner's role in the . . . process,'' which it said stemmed from, ''its disregard of the procedural elements the Legislature established . . . to ensure that the hearing-examiner process is fair and efficient for both teachers and school boards.'' Or why, in Collins v. Ison-Newsome, a dissent joined by Justice Owen was so roundly criticized by the Republican majority, which said the dissent agrees with one proposition but then ''argues for the exact opposite proposition . . . [defying] the Legislature's clear and express limits on our jurisdiction.''

I have said it before, but I am forced to say it again. These examples, together with the unusually harsh language directed at Justice Owen's position by the majority in the Doe cases, show a judge out of step with the conservative Republican majority of the Texas Supreme Court, a majority not afraid to explain the danger of her activist views. No good explanation was offered for these critical statements last year, and no good explanation was offered two weeks ago. Politically motivated rationalizations do not negate the plain language used to describe her activism at the time.

When he nominated Priscilla Owen, President Bush said that his standard for judging judicial nominees would be that they ''share a commitment to follow and apply the law, not to make law from the bench.'' He said he is against judicial activism. Yet he has appointed judicial activists like Priscilla Owen and Janice Rogers Brown.

Under President Bush's own standards, Justice Owen's record of ends-oriented judicial activism does not qualify her for a lifetime appointment to the Federal bench.

The President has often spoken of judicial activism without acknowledging

that ends-oriented decision-making can come easily to extreme ideological nominees. In the case of Priscilla Owen, we see a perfect example of such an approach to the law, and I cannot support it. The oath taken by federal judges affirms their commitment to ''administer justice without respect to persons, and do equal right to the poor and to the rich.'' No one who enters a federal courtroom should have to wonder whether he or she will be fairly heard by the judge.

Justice Priscilla Owen's record of judicial activism and ends-oriented decision making leaves me with grave doubt about her ability to be a fair judge. The President says he opposes putting judicial activists on the Federal bench, yet Justice Priscilla Owen unquestionably is a judicial activist. I cannot vote to confirm her for this appointment to one of the highest courts in the land.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, what is the matter pending before the Senate at this time?

The PRESIDING OFFICER. The nomination of Priscilla Owen.

Mr. COBURN. I thank the Chair.

Mr. President, I would like to spend a few minutes talking about what we have heard on the Senate floor today. The Presiding Officer and I are new Members to the Senate. We were not here as this struggle began. I must say, I am pretty deeply saddened by the misstatements of fact, the innuendo, the half-truths we have heard on the Senate floor today. I also am somewhat saddened by the fact that the Constitution is spoken about in such light terms. Because what the Constitution says is that, in fact, the Senate sets its own rules and the Senate can change its own rules. The first 100 years in this body, there was not a filibuster, and that filibuster has gone through multiple changes during the course of Senate history.

I pride myself on not being partisan on either the Democratic or the Republican side. I am a partisan for ideas, for freedom, for liberty. I am also a partisan for truth. I believe, as we shave that truth, we do a disservice not only to this body, but we also do a disservice to the country.

Another principle I am trying to live by is the principle of reconciliation. As we go forward in this debate, it is important for the American people to truly understand what the history is in this debate. At the beginning of the Congress, the majority, whether it be Democrat or Republican in any Congress, whoever is in control, has a right to set up the rules.

Those rules were set up in this Congress with one provision—that an exception be made on the very issue we are talking about today. Why was that exception put there? That exception was put there in an attempt to work out the differences over the things that have happened in the past so we would not come to this point in time. I believe the majority leader, although maligned today on the floor, has made a great and honest effort to work a compromise in the matter before us.

I also believe what has happened in the past in terms of judges not coming out of committee probably has been inappropriate. That is not a partisan issue either. It has happened on both sides. As a matter of fact, there are appellate judges now being held up by Democratic Senators because they disagree on their nomination to come through the Judiciary Committee.

As a member of the committee and a nonlawyer on the Judiciary Committee, it is becoming plain to me to see the importance of the procedure within the committee.

Having said that, the Constitution gives the right to the President to appoint, under the advice and consent of the Senate. The debate is about whether we will take a vote.

President Bush's appellate court nominees have the lowest acceptance rate of any of the last four Presidents.

Is that because the nominees are extreme? Or is there some other reason why we are in this mess that we find ourselves in? I really believe it is about the question: where do Supreme Court judges come from? They come from the appellate courts most often. And whether or not we allow people—good, honest people—to put their names forward and come before this body and have true advice and consent is a question we are going to have to solve in the next couple of weeks.

There are lots of ways of solving it. One is doing what Senator BYRD did four times in his history as leader of this body—a change in the rules by majority vote because the majority has the majority. That is not a constitutional option; that is a Byrd option. That is an option vested in the power of the Senate under the Constitution to control the rules of the Senate.

Another little bit of history. Twenty-five years ago, the filibuster was eliminated on the Budget and Reconciliation Act. The Congress didn't fall apart. Under Senator BYRD's changes of the rules, the Senate did not fall apart. So the issue really is about whether or not the majority has the power to control the rules in the Senate. And the debate also is about whether or not we are going to have an up or down, a fair vote on judges—just like we should have a debate on whether we should have a process change in the Judiciary Committee for those judges who are appointed by any President to come through.

I said in my campaign for this office that conservative and liberal wasn't a test for me for judges. The foundation and principles of our country, and proof of excellence in the study of and acting on the law should be the requirements. We had the unfortunate example today—this week—of a Federal judge in Nebraska negating a marriage law that defined marriage as between a man and a woman—an appointed judge deciding for the rest of us—it could very well decide for all 50 States—whether or not we are going to recognize marriage as between a man and a woman. We have heard Priscilla Owen's name linked several times because of her decisions—there were 13 or 14 decisions that came before the Texas Supreme Court on judicial review of a minor's access to an abortion without parental notification—not consent, but notification.

In the one case that they bring up and misquote Attorney General Gonzales on, she in fact did what the law said to do. The federal appellate court is not entitled, nor is the Supreme Court of Texas, to review the findings of fact. The finder of fact is the original court. They cannot make decisions on that. So she dissented on that basis. Judge Gonzales' statement was about whether or not he could go along with that in terms of what would be applied to him in terms of judicial activism. He has since said under oath that in no way, or at any time, did he accuse Priscilla Owen of being a judicial activist.

Let's talk about activism. I want to relate a story that happened to me about 6 years ago. I was in Stigler, OK, having a townhall meeting. A father walked in, 35 years of age, with tears running down his cheek. In his hand, he had a brown paper sack, and he interrupted this meeting between me and about 60 people. His question to me was: ''Dr. Coburn, how is it that this sack could be given to my 12-year old daughter?'' Of course, I didn't know what was in the sack. What was in the sack was birth control pills, condoms, and spermicide. The very fact that his daughter could be treated in a clinic without his permission for contraceptives came about through judicial activism. The fact is that 80 to 85 percent of the people in this country find that wrong. Yet, it cannot be turned around. The fact is that 80 percent of the people in this country believe that marriage is defined as that union between a man and a woman, and a Federal judge—not looking at the Constitution—not looking at precedent, actually makes that change.

So it is a battle about ideas. Priscilla Owen recognizes what the law is. She has stated uniformly that she will follow the precedents set before the court. But we have gotten to where we are in terms of the issues that inflame and insight so much polarization in this body and throughout the country because we have not had people following the law, but in fact we have had judicial activism.

I congratulate President Bush for sending these nominees to the Senate floor. I have interviewed Priscilla Owen. Her history, her recommendations, her ratings are far in excess of superior. So why would this wonderful woman, who has dedicated her life to the less fortunate, to families, to reinstituting and strengthening marriage, to making sure people who didn't

have legal aid had it, why is she being so lambasted, so maligned because of her beliefs? The beliefs she has are what 80 percent of the people in this country have, but she doesn't fit with the beliefs of the elite liberal sect in this country.

So it is a battle of ideas. It is a battle that will shape the future of our courts. How is it that a woman of such stature will have the strength to withstand for 4 years—she has put everything about her, every aspect of her personal life, her public life, her judicial career out front and has stood strong to continue to take the abuse and maligning language that comes her way. Why would somebody do that? It is because she believes in this country. She believes in the foundational principles that our colleague from New York held up in the Constitution. She has sworn and believes in that Constitution. She has the courage to know that the fight for our children, for our parents to control the future for our children, is worth the fight.

I would like to spend a minute going over some poll numbers with the American public on the very issue of whether or not a minor child ought to have parental involvement in a major procedure such as an abortion.

Having delivered over 4,000 babies, having handled every complication of pregnancy that is known, I am very familiar with these issues.

There are five polls I would like to put in the RECORD. I ask unanimous consent that they be printed in the RECORD.

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

POLLS ON REQUIRING PARENTAL INVOLVEMENT IN MINORS' ABORTIONS

[March 23, 2005]

Polls	Favor (percent)	Oppose (percent)
"Do you favor or oppose requiring parental notification before a minor could get an abortion?" Favor: 75%; Oppose: 18%; DK/NA 7%. (Quinnipiac University Poll, March 2–7, 2005.) (1,534 registered voters; margin of error: ±2.5%)	75	18
"Next, do you favor or oppose each of the following proposals? How about— . . . A law requiring women under 18 to get parental consent for any abortion?" Favor: 73%; Oppose: 24%; No Opinion: 3%. (CNN/USA Today/Gallup, January 10–12, 2003.) (1,002 adults; margin of error: ±3%)	73	24
"Do you favor or oppose requiring that one parent of a girl who is under 18 years of age be notified before an abortion is performed on the girl?" Favor: 83%; Oppose: 15%; Don't Know/Refused: 2%. (Wirthlin Worldwide, October 19–22, 2001.) (1,021 adults; margin of error: ±3.07%)	83	15
"Should girls under the age of 18 be required to get the consent of at least one parent before having an abortion?" Required: All—82%; Men—85%; Women—80%. Not Required: All—12%; Men—9%; Women—14%. Depends: All—2%; Men—2%; Women—2%. Don't Know: All—4%; Men—4%; Women—4%. (Los Angeles Times, June 8–13, 2000.) (2,071 adults; margin of error: ±2%)	82	12
"Would you favor or oppose requiring parental consent before a girl under 18 could have an abortion? Favor: 78%; Oppose: 17%; DK/NA/Depends: 5%. (CBS News/NY Times, January 1998.)	78	17

Mr. COBURN. One is a March 2–7, 2005, poll from Quinnipiac University:

Do you favor or oppose requiring parental notification before a minor could get an abortion?

That is notification. Seventy-five percent of the people in this country agree with that. It is not an extreme position when 75 percent of our fellow Americans think that is right—think that in fact we don't give up rights to our children until they are emancipated and are adults.

Next, do you favor or oppose each of the following proposals: A law requiring women under 18 to get parental consent for any abortion?

That is not notification, that is consent. That is a CNN/USA Today/Gallup poll, January 10, 2003.

Seventy-three percent favor parents being involved in the health care of their children and major decisions that will affect their future.

Do you favor or oppose requiring that one parent of a girl who is under 18 years of age be notified before an abortion is performed on the girl?

Eighty-three percent favor the parent being notified. That is a Wirthlin Worldwide poll.

Should girls under the age of 18 be required to get the consent of at least one parent before having an abortion?

That is a Los Angeles Times poll. Eighty-two percent believe that.

What is described as extreme is mainline to the American public. What we have is a battle for ideas, a battle under which the future of our country will follow.

The word "activist" in reference to judges is a word that is wildly used. It is almost amusing that we hear it from one side of the Senate to the other side of the Senate. What is activism on one side is not activism on the other. What is activism to the minority is not activism to the majority.

What is activism? Activism is reaching into the law and the precedents of law and creating something that was not there before. Activism is intentionally misinterpreting statutes to produce a political gain. I will go back to the child and the father, 35 years of age, screaming at the depths of his heartache as to how in our country we have gotten to the point where a judge can decide ahead of the Senate, ahead of the House, ahead of both bodies and the President, what will happen to our minor children. That is what this debate is about.

Priscilla Owen exemplifies the values that the American people hold, but she also exemplifies the values of the greatest jurists of our time: a strict adherence to the law, a love of the law, and a willingness to sacrifice her life and her career and her personal reputation to go through this process.

Senator ENSIGN, the Senator from Nevada, made a very good point a moment ago, and I think it bears repeating. How many people will not put their name up in the future who are eminently qualified, have great judicial history, will have great recommendations from the American Bar Association but do not want to have to go through the half-truths, the innuendos, and the slurring of character that occurs, to come before this body?

My hope is that before we come to the Byrd option or a change in the rules, that cooler heads will decide that we will not filibuster judges in the future, and we will not block nominations at the committee. That is reasonable. We do not have to do that. A President should have his nominees voted on. If they come to the committee and they do not have a recommendation, they should still come to the floor, or if they have a recommendation they not be approved, they should still come to the floor, or if they have a recommendation they be approved, they should still come to the floor. But it is fair for a President to have a vote on their nominations.

We have seen this President's numbers on appointments. That is right. Why has he had so many people appointed? Because he has nominated great jurists, and could they have filibustered others, they would have. The ironic part is that they say that Priscilla Owen is "not qualified." However, in the negotiations leading up to the point we find ourselves, the offer has been made that we can pick two out of any four of the people who are on the queue to come before this body and let those two go through and two be thrown away. If that is the case, if any two will do, then they are obviously qualified. If they are acceptable under a deal, then they are obviously qualified.

The argument against qualification, the activist charges do not hold water. What does hold water is the fact that these individuals who stand in the mainstream of American thought, values, and ideals will be appellate judges and that someday maybe have an appointment or a nomination for a Supreme Court judgeship. That holds water. We have to decide in the Senate whether or not we are going to allow the process of filibustering judicial nominations to continue. If it continues, then lots of good people will never put their name in the hat. Lots of good people will never be on the court. What will be on the court are people who are not proven, people who do not have a record, people who are not the best. That is what will be on the court. The country deserves better, the Senate can do a better job than we are doing today, and it is my hope that we can resolve this conflict in a way that will create in the Senate a reputation that says reconciliation over the issues that divide us is a principle that we can all work on, that we can solve,

that we can do the work of the American people. But if that is not possible, then it is well within the constitutional powers of the leader of this body to change the rules so that we can carry out our constitutional responsibilities.

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

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

HEALTH CARE

Mr. SANTORUM. Mr. President, at a time when the importance of the U.S. Food and Drug Administration is highlighted by concerns over the safety of pharmaceuticals, it would be foolish to move forward with importation policies that would circumvent the safety regulations of the FDA. I want to take this opportunity to highlight a recent international Internet pharma-trafficking network that was shut down in Philadelphia, which I strongly believe provides a very accurate, and disturbing, window on what exactly a prescription drug importation scheme would mean for Americans.

On April 20, 2005, the Department of Justice announced the unsealing of an indictment returned by a Federal grand jury on April 6, 2005. The indictment chronicled how the ''Bansal Organization'' used the Internet to fill orders for pharmaceuticals. In turn, this crime ring facilitated millions of unprescribed pills coming into the United States—of which the bio-efficacy and the safety have yet to be determined—to consumers who only needed a credit card. These drugs included potentially dangerous narcotics, such as codine and Valium, drugs that can cause serious harm if not taken under a physician's supervision, and which have been highlighted repeatedly as drugs that pose special concerns as we debate possible importation.

Stretching from America to countries such as India, Antigua, and Singapore, officials estimate that this international conspiracy provided $20 million worth of un-prescribed drugs to hundreds of thousands of people worldwide—most if not all of whom had no idea where their drugs originated. This drug scam exemplifies how the Internet can be a door to an unregulated world of just about any kind of pharmaceutical—including counterfeits and potentially dangerous narcotics. This is particularly concerning given the growing ease at which prescription drugs can be purchased over the Internet.

At the heart of the debate on foreign importation of prescription drugs is the concern over the cost of prescription drugs. Often proponents claim that importation would allow Americans access to other countries' drugs at a cheaper price, despite thorough analysis by the U.S. Health and Human Services Task Force on Prescription Drug Importation. The HHS Task Force reported that any associated cost savings with importation would be negated by the costs associated with constructing and attempting to safely maintain such a system, and ultimately concluded what both past and current Administrations have found: the safety of imported drugs purchased by individuals, via the Internet or other means, cannot be guaranteed. Moreover, generic prescription drugs in America are on average 50 percent less than their foreign counterparts. This holds true in the case of the ''Bansal Organization,'' in which the vast majority of the trafficked drugs were sold at prices higher than what a consumer would have paid at a legitimate pharmacy. The safety of the American drug supply should not be sacrificed for supposed savings. Those that continue to purport that importation would provide cheaper drugs are misleading the American people, and as a result putting their health and lives at risk.

Importation will not equate to cheaper drugs for Americans, but it will lead to an explosion of opportunities for counterfeiters to take advantage of the American people by compromising the safety of our drug supply. Many individuals, both patients and healthcare professionals, who testified during the HHS Task Force's proceedings expressed significant concerns that importation would compromise the integrity of the American drug supply by creating a vehicle through which terrorists could easily introduce harmful agents in the United States. Recall that in 1982, seven Americans died after ingesting Tylenol laced with cyanide. More recently, in July 2003 members of a Florida-based drug-counterfeiting ring who sold and diluted counterfeited drugs were indicted, and 18 million tablets of counterfeit Lipitor were recalled after evidence revealed that this popular anti-cholesterol drug had been manufactured overseas and repackaged in the United States to hide the deception. Importation would provide for any of these acts to be committed on a larger, exponentially more devastating, national scale. To put this in perspective, in 2003, 69 million prescriptions were written for Lipitor in the United States alone.

The ''Bansal Organization'' bust is but the latest in a series of illicit pharmaceutical trafficking scams, which are extremely lucrative, and which our law enforcement officials are already struggling to combat on a daily basis. Why would we elect to open the door to importation when we know that doing so will create infinite opportunities to compromise the safety of our drug supply?

As we continue to debate the best ways to ensure that Americans have access to the highest quality, affordable prescription drugs, I would caution my colleagues that importation is not the answer. It would be unconscionable to facilitate in any way the dangerous shortcuts utilized in the Philadelphia drug scam—shortcuts that circumvent the essential ongoing patient relationship with physicians and other licensed professionals trained to monitor potential medication interactions and side effects that can lead to serious injury and/or death.

Congress should uphold the strong regulatory standards on drug safety that exist today, and not open our borders to prescription drugs from a world of unknown sources.

VICARIOUS LIABILITY REFORM

Mr. SANTORUM. Mr. President, being mindful of yesterday's passage of SAFETEA, I rise to speak to an issue that was not addressed in the Senate bill. This is an area of the legal system needing reform that affects interstate commerce in the transportation sector—vicarious liability. These types of laws exist in only a handful of States where nonnegligent owners of rented and leased vehicles are liable for the actions of vehicle operators.

Although a vehicle renting or leasing company may take every precaution to ensure that a vehicle is in optimal operating condition and meets every safety standard, these companies can still be subject to costly lawsuits due to the actions of the vehicle's operator, over which the company has no control. Under these laws, leasing or rental companies can be liable simply because they are the owner of the vehicle.

Though only a few States enforce laws that threaten nonnegligent companies with unlimited vicarious liability, they affect consumers and businesses from all 50 States. Vicarious liability means higher consumer costs in acquiring vehicles and buying insurance and means higher commercial costs for the transportation of goods. Left unreformed, these laws could have a devastating, effect on an increasing number of small businesses that have done nothing wrong.

The House acted in H.R. 3 to address these unfair laws by creating a uniform standard to exclude nonnegligent vehicle renting and leasing companies from liability for the actions of a customer operating a safe vehicle. Under this provision, States would continue to determine the level of compensation available for accident victims by setting minimum insurance coverage requirements for every vehicle. Vicarious liability reform would not protect companies that have been negligent in

their renting or leasing practices or in the care of the vehicle. This provision is a common sense reform that holds vehicle operators accountable for their own actions and does not unfairly punish owners who have done nothing wrong.

Unfortunately, the Senate bill does not contain this important reform. I urge my colleagues. to consider the merits of this provision and retain the House-passed language in the conference bill.

TRANSPORTATION EQUITY ACT

I–49 AND I–69

Mr. PRYOR. Mr. President, I rise today to discuss a matter of great importance to my State, one that I hear about every time I go home. Economic development and job creation is something that every Arkansan is concerned about. One surefire way to generate economic development and create jobs is through highway construction. The U.S. DOT estimates that for every $1 billion of investment in highways, 47,500 jobs are created, but the benefits go far beyond that. It does Arkansans no good to have good health care, education, and jobs if they don't have the roads to get there. Furthermore, business investors do not want to place their companies anywhere that does not have ready access to interstate roads.

My State is in the process of building two new interstates that would jumpstart economic growth, relieve congestion, and provide two additional freight corridors between our two largest trading partners.

Future Interstate 49 connects Canada with New Orleans and would provide the only north-south corridor within 300 miles, cutting through Kansas City, MO and Western Arkansas. 1–49 is extremely important to Arkansas, as it traverses the fastest growing part of my State, which is home to Wal-Mart, Tyson's, JB Hunt Transportation, and numerous other transportation companies. The potential for freight movement along this corridor is enormous. However, the State of Arkansas has lacked the funds to make significant progress along the most expensive part of the corridor.

Future Interstate 69 connects Canada with Mexico through Michigan, Indiana, Kentucky, Tennessee, Mississippi, Arkansas, and Texas. It also has enormous potential for freight movement, but it also cuts across the poorest region of my State where economic development is vitally important to the future of local communities. The amount of jobs a project such as I–69 would create has the potential to lift these areas out of poverty.

During debate on the highway bill, I have requested amounts that would provide Arkansas with a sufficient amount of money to make significant progress on these two extremely important roadways.

Mr. BAUCUS. I want to first commend the Senator for his continued work on transportation issues. He is a real leader in this area and I appreciate his hard work on behalf of the State of Arkansas. I am aware of the Senator's requests and I understand the importance of these projects to Arkansas and the country. My colleague has been very persistent and we have worked hard to include a formula in the bill that provides a significant increase in funding to Arkansas so that the State may be able to accomplish this task. Specifically, Arkansas stands to gain over $550 million over the 5 years of this bill, a 30 percent increase from the levels they received under TEA–21. Would this amount be sufficient to make progress on the two important interstates Senator PRYOR has mentioned?

Mr. PRYOR. I thank the Senator from Montana for his question. My understanding is that this amount would be enough to make substantial progress on both projects until the next reauthorization. However, since this bill does not include references to specific projects, the difficulty would be to make sure these projects did indeed receive a large portion of this increase. Since the increases are largely through apportioned programs to the State, could my State use the increases to fund these interstate projects?

Mr. BAUCUS. The Senator is correct that the bill in the Senate does not have specific funding for projects. However, it is up to the State of Arkansas to make the decision on how to spend this increase in funding and the additional money to the State can certainly be used to make progress on these projects. I would expect that many States would consider projects such as the ones described in Arkansas that are nationally significant. It would be up to the State to set those priorities and move forward. I believe the projects in Arkansas, both 1–49 and 1–69, are in various stages of development and construction. It is my understanding that both projects are eligible for Federal funding under this reauthorization bill we have written.

Mr. PRYOR. I thank Senator BAUCUS for his hard work as a manager of this bill and the ranking member of the Transportation and Infrastructure Subcommittee of EPW and ranking member of the Finance Committee, and I compliment him for this strong bill he has helped put together. The Senator always listens to my concerns, and I appreciate his willingness to include such robust funding for my home State.

DESIRE TO WITHDRAW S.J. RES. 13

Mr. BROWNBACK. Mr. President, several weeks ago I introduced a joint resolution which has been given the number S.J. Res. 13. This resolution is a one sentence amendment to the Constitution declaring that marriage is between a man and a woman. I would like the RECORD to reflect at this point that I would like to withdraw this resolution.

I understand that under the Senate rules, a unanimous consent withdrawing a joint resolution would not be in order. Thus, copies S.J. Res. 13 will remain available from the Government Printing Office. However, while it is my intent to continue to hold hearings on the important issue of traditional marriage, it is not my intent to advance S.J. Res. 13 through the legislative process.

ELLSWORTH AIR FORCE BASE

Mr. JOHNSON. Last week, Secretary of Defense Donald Rumsfeld sent his base closure recommendations to the Base Realignment and Closure Commission. I am deeply disappointed with his decision to include Ellsworth Air Force Base. This recommendation is short-sighted and harmful to our national security. I am confident that the BRAC Commission will recognize the invaluable contribution that Ellsworth makes to the defense of our homeland and will support removing it from the list.

Ellsworth is one of only two bases in the country where the B–1 is stationed. In the past decade, the B–1 has been invaluable to our national defense and it is truly the backbone of our bomber fleet. B–1 crews stationed at Ellsworth have flown missions in Kosovo, Afghanistan, and Iraq. During Operation Iraqi Freedom, B–1s were integral in liberating Iraq by dropping more than half the satellite guided munitions on critical targets including command and control facilities, bunkers, and surface-to-air missile sites.

In addition, Ellsworth is strategically located and has excellent access to B–1 training ranges. It is not threatened by urban encroachment or congested air space and has strong community support. During the past decade, I have used my position on the Military Construction Appropriations subcommittee to help direct funding to Ellsworth for critical upgrades including a new base operations building, a B–1 training facility, and military housing that ranks amongst the best in the country. Given its ideal location, as well as the long-term investment in the base's infrastructure, Ellsworth is capable of expanding and accepting new missions.

I emphatically disagree with the Secretary's recommendation to close Ellsworth, and I am eager to work with the Ellsworth Task Force, and the entire South Dakota Congressional delegation, to ensure Ellsworth remains a vital part of our national defense. Ellsworth is a premier installation that has proven it can be a competitive military base for decades to come.

To that end, I am cosponsoring legislation that will postpone this round of base closures. At a time when we are engaged in two military conflicts, as well as rotating soldiers back to the U.S. from overseas installations, we should not be closing bases at home. Simultaneously closing domestic and

overseas bases will irrevocably damage our ability to defend against threats at home and abroad.

This bill will delay this round of domestic base closures until the recommendations offered by the Overseas Basing Commission report has been reviewed by the Department of Defense. In addition, the bill would prohibit this round of base closures from commencing until combat units currently deployed to Iraq have returned home and the Pentagon completes the quadrennial defense review. I firmly believe that these are reasonable and appropriate steps to ensure we do not irreversibly impair our national defense.

The entire State of South Dakota is proud of Ellsworth and the men and women stationed there for their role in keeping America safe. We are confident that the commission will see the military value of Ellsworth and will support removing it from the base closure list.

ADDITIONAL STATEMENTS

HONORING SOUTH DAKOTA AMERICAN LEGION AUXILIARY

● Mr. JOHNSON. Mr. President, I rise today to publicly commend two American Legion Auxiliary units in South Dakota for the wonderful services they provide to their communities. I point to Unit 230 Pike-Huska American Legion Auxiliary Post of Aurora, and Unit 74 of Brookings as fine units whose efforts are worthy of recognition.

In April of 2005, Unit 230 in Aurora sponsored an Election Forum designed to introduce voters to the four candidates running for Aurora City Council. The meeting enabled the community to not only meet the candidates, but also learn about their positions on various issues.

Additionally, Aurora Unit 230 joined with Brookings Unit 74 to fulfill ''The Dictionary Project.'' Since Aurora school children are bussed to the three schools in the Brookings School District, the two units collaborated by purchasing and hand delivering 206 dictionaries, one to each third grade student in the Brookings district. Upon receiving the dictionary, each student signed it, thus establishing it as his or hers to keep. ''The Dictionary Project'' was so successful that the Auxiliary plans to continue this generous program each year.

I am proud to have this opportunity to honor the American Legion Auxiliary Unit 230 and Unit 74 for their outstanding service. Their commitment to encouraging voter awareness and helping our young people in their pursuit of knowledge is admirable. I strongly commend their hard work and dedication, and I am very pleased that their efforts are being publicly recognized and celebrated. It is with great honor that I share their impressive commitment to civic duty with my colleagues.●

CIVIC EDUCATION IN ACTION

● Mr. CRAPO. Mr. President, today I would like to recognize the outstanding efforts of a group of young Idahoans from Madison High School in Rexburg, ID. These young men and women came to Washington, D.C., to represent my State in the national finals of the ''We the People: the Citizen and the Constitution'' program. They represented Idaho well and are a tribute to our State's youth.

The national finals include a mock congressional hearing which gives the students the opportunity to translate their specialized learning in history, social studies, government and civics into action. As they use their newly-gained knowledge of the Constitution and the Bill of Rights to examine, counter and defend issues facing America today, they come to appreciate the timeless nature of this great document. This experience gives students the opportunity to apply civic values to real-life challenges and will serve them in whatever they choose to do after they graduate from high school.

Idaho can be proud of the growth of civic virtue in these young people. As they look beyond themselves to the realm of the public good, Idaho and America will benefit as these individuals develop into responsible, intelligent citizens who practice discernment in judgment in matters of concern to our State and Nation. In the future, these student citizens will be more inclined to exhibit leadership faithful to the ideals upon which our country was built and consonant with the notions of liberty, freedom, justice and rule of law.●

CONGRATULATING STEVE SINTON

● Mrs. FEINSTEIN. Mr. President, I rise today to congratulate Steve Sinton of Shandon, CA, on winning the American Farmland Trust's 2005 Steward of the Land Award. This award recognizes Steve for his lifelong commitment to conservation and sound stewardship practices. He is the ninth American farmer to win this award, and I am pleased to praise his efforts and achievements today.

Created in 1997 in honor of farmer and conservationist Peggy McGrath Rockefeller, the American Farmland Trust gives the Steward of the Land Award each year to a farmer or farm family in the United States who has shown outstanding leadership at the national, State, and local levels in protecting farmland and caring for the environment. This award recognizes ranchers such as Steve and helps raise awareness about the public benefits of good stewardship and the importance of conserving land for future generations.

Through his work on his own land and throughout the State of California, Steve Sinton has epitomized the spirit of this award through his dedication to protecting our country's farmlands and ranchlands, understanding how critical they are to supporting our local communities, sustaining our Nation's food supply, and preserving clean water and wildlife habitat.

A fourth generation California rancher, Steve and his wife Jane manage 18,000 acres of ranchland and 125 acres of vineyards where they utilize a variety of innovative practices to promote sustainability and protect the environment. He effectively works with local governments to protect ranch and farmlands, and Steve and his family have also played an important role in providing habitat for the reintroduction of the California condor on their land, including essential nesting grounds.

But Steve's efforts go far beyond his own family's farm. Steve helped form the California Rangeland Trust in 1998 where he was elected to serve as the founding chairman. With his leadership, the Rangeland Trust has protected over 170,000 acres of ranchland. Steve has also served as vice-chairman of the California Cattlemen's Association Land Use Committee, where his dedication and leadership galvanized support among the ranching community for agricultural conservation and conservation practices.

A look at Steve's family history makes clear why he works so hard for farmland preservation and takes these efforts so seriously. Steve's family came to San Luis Obispo County in 1874 and bought the family farm the following year, meaning that Steve's family has been ranching in the county for 130 years. Steve grew up on the family ranch and attended my alma mater, Stanford University, before heading to the University of Colorado School of Law. After five years with the California Department of Water Resources in Sacramento, CA, Steve returned to San Luis Obispo County to help manage the family's ranches and continue his private water law practice. In addition to all this, Steve also has been active in his community, working with numerous organizations, coaching sports, and serving on the Shandon School Board for fifteen years.

As a U.S. Senator representing the State of California, I congratulate Steve on winning this award and thank him for his many years of service to our State. I wish to send my very best to Steve, his wife Jane, and their two children Julie and Daniel.●

MESSAGE FROM THE HOUSE

At 11:39 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2360. An act making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2360. An act making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; to the Committee on Appropriations.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 1061. A bill to provide for secondary school reform, and for other purposes.

S. 1062. A bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–2231. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the semi-annual report submitted in accordance to the Inspector General Act of 1978, as amended for October 1, 2004 through March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2232. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, transmitting, pursuant to law, a report entitled ''Defense Acquisition Challenge Program Fiscal Year 2004''; to the Committee on Armed Services.

EC–2233. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the periodic report on the national emergency with respect to Iran that was declared in Executive Order 12170 of November 14, 1979; to the Committee on Banking, Housing, and Urban Affairs.

EC–2234. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Karnal Bunt; Compensation for Custom Harvesters in Northern Texas'' (APHIS Docket No. 03–052–3); to the Committee on Agriculture, Nutrition, and Forestry.

EC–2235. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Alternaria destruens Strain 059; Exemption from the Requirement of a Tolerance'' (FRL No. 7708–3) received on May 16, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2236. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Fludioxonil; Pesticide Tolerance'' (FRL No. 7711–9) received on May 16, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2237. A communication from the Chairman, Naval Sea Cadet Corps, transmitting, pursuant to law, the 2004 Annual Report of the U.S. Naval Cadet Corps; to the Committee on the Judiciary.

EC–2238. A communication from the Administrator, Small Business Administration, transmitting, pursuant to law, the report of a vacancy in the position of Inspector General, received on May 17, 2005; to the Committee on Small Business and Entrepreneurship.

EC–2239. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''Department of Energy Activities Relating to the Defense Nuclear Facilities Safety Board''; to the Committee on Energy and Natural Resources.

EC–2240. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''The Coordination of Provider Education Activities Provided Through Medicare Contractors in Order to Maximize the Effectiveness of Federal Education for Providers of Services and Suppliers''; to the Committee on Finance.

EC–2241. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Coordinating Care for Medicare Beneficiaries: Early Experiences of 15 Demonstration Programs, their Patients, and Providers''; to the Committee on Finance.

EC–2242. A communication from the Attorney Advisor, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a vacancy in the position of Administrator, received on May 17, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2243. A communication from the Attorney Advisor, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a vacancy in the position of Administrator, received on May 17, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2244. A communication from the Attorney Advisor, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a vacancy in the position of Administrator, received on May 17, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2245. A communication from the Vice President, Government Affairs, National Railroad Passenger Corporation, Amtrak, transmitting, pursuant to law, a report entitled ''Amtrak Strategic Reform Initiatives and Fiscal Year 2006 Grant Request''; to the Committee on Commerce, Science, and Transportation.

EC–2246. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on the Department's Fiscal Year 2004 Competitive Sourcing Efforts; to the Committee on Commerce, Science, and Transportation.

EC–2247. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''NASA Grant and Cooperative Agreement Handbook—Research Misconduct'' (RIN2700–AD11) received on May 17, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2248. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Implement Resolutions Adopted by the Inter-American Tropical Tuna Commission and the Parties to the Agreement on the International Dolphin Conservation Program'' ((RIN0648–AS05) (I.D. No. 102004 A)) received on May 17, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2249. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled ''Pacific Halibut Fisheries; Catch Sharing Plan; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments'' (RIN0648–AS61) received on May 17, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2250. A communication from the Regulation Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs'' (RIN2125–AE97) received on May 18, 2005; to the Committee on Commerce, Science, and Transportation.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted with printed report 109–1 with Minority views:

By Mr. LUGAR for the Committee on Foreign Relations.

*John Robert Bolton, of Maryland, to be the Representative of the United States of America to the United Nations, with the rank and status of Ambassador, and the Representative of the United States of America in the Security Council of the United Nations.

*Nomination was reported without recommendation, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. NELSON of Florida:

S. 1059. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to specify procedures for the conduct of preliminary damage assessments, to direct the Secretary of Homeland Security to vigorously investigate and prosecute instances of fraud, including fraud in the handling and approval of claims for Federal emergency assistance, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. COLEMAN (for himself, Mr. SMITH, Ms. SNOWE, Mr. DAYTON, and Mr. HARKIN):

S. 1060. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase of hearing aids; to the Committee on Finance.

By Mrs. MURRAY:

S. 1061. A bill to provide for secondary school reform, and for other purposes; read the first time.

By Mr. KENNEDY (for himself, Mr. REID, Mr. DURBIN, Mr. HARKIN, Mr. DODD, Ms. MIKULSKI, Mr. JEFFORDS, Mrs. MURRAY, Mr. REED, Mr. BINGAMAN, Mrs. CLINTON, Mr. AKAKA, Mrs. BOXER, Mr. CORZINE, Mr. DAYTON, Mr. FEINGOLD, Mr. INOUYE, Mr. KERRY, Ms. LANDRIEU, Mrs. LINCOLN, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. OBAMA, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SCHUMER, Ms. STABENOW, Mr. WYDEN, and Mr. JOHNSON):

S. 1062. A bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; read the first time.

By Mr. NELSON of Florida (for himself, Mr. BURNS, and Mrs. CLINTON):

S. 1063. A bill to promote and enhance public safety and to encourage the rapid deployment of IP-enabled voice services; to the Committee on Commerce, Science, and Transportation.

By Mr. COCHRAN (for himself, Mr. KENNEDY, Mr. WARNER, Ms. CANTWELL, Ms. COLLINS, and Mr. DAYTON):

S. 1064. A bill to amend the Public Health Service Act to improve stroke prevention, diagnosis, treatment, and rehabilitation; to the Committee on Health, Education, Labor, and Pensions.

By Mr. THUNE (for himself and Mrs. CLINTON):

S. 1065. A bill to amend title 10, United States Code, to extend child care eligibility for children of members of the Armed Forces who die in the line of duty; to the Committee on Armed Services.

By Mr. VOINOVICH (for himself, Ms. STABENOW, Mr. BUNNING, Mr. LEVIN, Mr. ALEXANDER, Mr. DEWINE, Mr. MCCONNELL, and Mr. FRIST):

S. 1066. A bill to authorize the States (and subdivisions thereof), the District of Columbia, territories, and possessions of the United States to provide certain tax incentives to any person for economic development purposes; to the Committee on Finance.

By Mrs. LINCOLN (for herself, Mr. BROWNBACK, Mr. JEFFORDS, and Mr. DORGAN):

S. 1067. A bill to require the Secretary of Health and Human Services to undertake activities to ensure the provision of services under the PACE program to frail elders living in rural areas, and for other purposes; to the Committee on Finance.

By Mrs. DOLE (for herself and Mr. BAUCUS):

S. 1068. A bill to provide for higher education affordability, access, and opportunity; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN:

S. 1069. A bill to suspend temporarily the duty on certain cases or containers for toys; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 1070. A bill to suspend temporarily the duty on certain cases for toys; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 1071. A bill to extend the temporary suspension of duty on certain bags for toys; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 1072. A bill to extend the temporary suspension of duty on cases for certain children's products; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 1073. A bill to extend the temporary suspension of duty on certain children's products; to the Committee on Finance.

By Mr. HARKIN:

S. 1074. A bill to improve the health of Americans and reduce health care costs by reorienting the Nation's health care system toward prevention, wellness, and self care; to the Committee on Finance.

By Mr. THUNE (for himself, Ms. SNOWE, Mr. BINGAMAN, Ms. COLLINS, Mr. DOMENICI, Mr. GREGG, Mr. JOHNSON, Mr. LOTT, Ms. MURKOWSKI, Mr. STEVENS, and Mr. SUNUNU):

S. 1075. A bill to postpone the 2005 round of defense base closure and realignment; to the Committee on Armed Services.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DEWINE (for himself and Mrs. FEINSTEIN):

S. Res. 145. A resolution designating June 2005 as ''National Safety Month''; to the Committee on the Judiciary.

By Ms. CANTWELL (for herself, Mrs. MURRAY, Mr. STEVENS, and Mr. PRYOR):

S. Res. 146. A resolution recognizing the 25th anniversary of the eruption of Mount St. Helens; considered and agreed to.

By Ms. MURKOWSKI (for herself, Mr. CRAPO, Mr. DEWINE, Mr. CRAIG, Ms. LANDRIEU, Mrs. LINCOLN, Mr. VITTER, Mr. ALLEN, and Mrs. FEINSTEIN):

S. Res. 147. A resolution designating June 2005 as ''National Internet Safety Month''; considered and agreed to.

By Mr. LOTT (for himself and Mr. DODD):

S. Res. 148. A resolution to authorize the display of the Senate Leadership Portrait Collection in the Senate Lobby; considered and agreed to.

ADDITIONAL COSPONSORS

S. 471

At the request of Mr. SPECTER, the names of the Senator from Minnesota (Mr. DAYTON), the Senator from North Dakota (Mr. DORGAN), the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Hawaii (Mr. AKAKA) were added as cosponsors of S. 471, a bill to amend the Public Health Service Act to provide for human embryonic stem cell research.

S. 484

At the request of Mr. WARNER, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 499

At the request of Mr. DODD, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 499, a bill to amend the Consumer Credit Protection Act to ban abusive credit practices, enhance consumer disclosures, protect underage consumers, and for other purposes.

S. 537

At the request of Mr. BINGAMAN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 537, a bill to increase the number of well-trained mental health service professionals (including those based in schools) providing clinical mental health care to children and adolescents, and for other purposes.

S. 603

At the request of Ms. LANDRIEU, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 603, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 635

At the request of Mr. SANTORUM, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 635, a bill to amend title XVIII of the Social Security Act to improve the benefits under the medicare program for beneficiaries with kidney disease, and for other purposes.

S. 662

At the request of Ms. COLLINS, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 662, a bill to reform the postal laws of the United States.

S. 792

At the request of Mr. DORGAN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 792, a bill to establish a National sex offender registration database, and for other purposes.

S. 881

At the request of Ms. CANTWELL, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 881, a bill to provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land for the production of hydropower by the Grand Coulee Dam, and for other purposes.

S.J. RES. 18

At the request of Mr. MCCONNELL, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S.J. Res. 18, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

At the request of Mrs. FEINSTEIN, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from Maryland (Ms. MIKULSKI), the Senator from Wisconsin (Mr. KOHL) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S.J. Res. 18, supra.

S. RES. 104

At the request of Mr. FEINGOLD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Res. 104, a resolution expressing the sense of the Senate encouraging the active engagement of Americans in world affairs and urging the Secretary of State to take the lead and coordinate with other governmental agencies and non-governmental organizations in creating an online database of international exchange programs and related opportunities.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COLEMAN (for himself, Mr. SMITH, Ms. SNOWE, Mr. DAYTON, and Mr. HARKIN):

S. 1060. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase of hearing aids; to the Committee on Finance.

Mr. COLEMAN. Mr. President, today I am introducing legislation to help millions of Americans enjoy the gift of sound. I am pleased to be joined by Senators GORDON SMITH, OLYMPIA J. SNOWE, MARK DAYTON, and TOM HARKIN, who I know care as deeply about these issues as I do.

Hearing loss is one of the most common and widespread health problems affecting Americans today. In fact, thirty-three babies are born each day with hearing loss, making deafuess the most common birth defect in America. According to the National Council on Aging, as many as 70 percent of our elderly experience hearing loss. All told, 31.5 million Americans currently suffer from some form of hearing loss.

The good news is that 95 percent of individuals with hearing loss can be successfully treated with hearing aids. Unfortunately, however, only 22 percent of Americans suffering from hearing loss can afford to use this technology. In other words, over 24 million Americans will live without sound because they cannot afford treatment.

That is why we are introducing the Hearing Aid Assistance Tax Credit Act.

This legislation provides help to those who need it most, our children and seniors, by providing a tax credit of up to $500, once every 5 years, toward the purchase of any ''qualified hearing aid'' as defined by the Federal Food, Drug, and Cosmetic Act.

Hearing aids are not just portals to sound, but portals to success in school, business, and life. That is why a number of diverse organizations, including the Hearing Industries Association, Self Help for Hard of Hearing People, the International Hearing Society, the Deaf and Hard of Hearing Alliance, American Speech-Language-Hearing Association, and the American Academy of Audiology support the Hearing Aid Assistance Tax Credit Act.

I ask unanimous consent that their letters of support be printed in the RECORD.

Hearing loss may be one of the most common health problems in the United States, but it doesn't have to be. We can tackle the problem head on with the Hearing Aid Assistance Tax Credit Act.

I look forward to working with my colleagues this Congress to approve this commonsense solution to a serious problem.

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

DEAF AND HARD OF HEARING ALLIANCE: A COALITION OF CONSUMER AND PROFESSIONAL ORGANIZATIONS,

May 18, 2005.

Hon. NORM COLEMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR COLEMAN: We, the undersigned, representing both consumer and health professional organizations of the Deaf and Hard of Hearing Alliance (DHHA), write to express our strong support for the ''Hearing Aid Assistance Tax Credit Act'' you are introducing in the Senate today. While we support and encourage more comprehensive solutions, we believe your legislation can aid some who presently have no options but to pay out of pocket for these essential devices.

Enactment of your legislation will provide a tax credit of up to $500 per hearing aid, available once every five years, towards the purchase of a hearing aid(s) for individuals age 55 and over, or those purchasing a hearing aid for a dependent.

As you have pointed out with the introduction of this bill, special tax treatment would improve access to hearing aids since only 22 percent of Americans who could benefit from hearing aids currently use them. Approximately 1 million children under the age of 18 and nearly 10 million Americans over the age of 54 have a diagnosed hearing loss but are not currently using a hearing aid.

The expense of the hearing aid is an important factor why Americans with hearing loss go without these devices. Some 40 percent of individuals with hearing loss have incomes of less than $30,000 per year. Nearly 30 percent of those with hearing loss cite financial constraints as a core reason they do not use hearing aids. In 2002, the average cost for a hearing aid was over $1,400, and almost two-thirds of individuals with hearing loss require two devices, thereby increasing the average out of pocket expense to over $2,800. The new tax credit you propose will assist many who might otherwise do without and have limited options.

Hearing aids are presently not covered under Medicare, or under the vast majority of state mandated benefits. In fact, 71.4% of hearing aid purchases do not involve third party payments, placing the entire burden of the hearing aid purchase on the consumer.

The need is real. Hearing loss affects 2–3 infants per 1,000 births. For adults, hearing loss usually occurs more gradually, but increases dramatically with age. Ten million older Americans experience age-related hearing loss. For workers, noise induced hearing loss is the second most self-reported occupational injury. Ten million young adults and working aged Americans have noise-induced hearing loss.

Enactment of your bill will make a difference in the lives of some people with hearing loss. Currently 1.28 million Americans of all ages purchase hearing aids each year, with many individuals requiring two devices, bringing the total number of hearing aids purchased across all age groups to approximately 2 million. This number has remained constant over recent years. While the legislation is not intended to cover the full cost of hearing aids, it will provide some measure of financial assistance to the groups who are in need of these devices but are unable to afford them.

Thank you for your leadership on this important issue. We look forward to working with you to seek enactment of your legislation during the 109th Congress.

Sincerely,

Alexander Graham Bell Association for the Deaf & Hard of Hearing (AGBell), American Academy of Audiology (AAA), American Speech-Language-Hearing Association (ASHA), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Cued Language Network of America (CLNA), Media Access Group at WGBH.

National Association of the Deaf (NAD), National Court Reporters Association (NCRA), National Cued Speech Association (NCSA), Self Help for Hard of Hearing People (SHHH), Telecommunications for the Deaf, Inc. (TDI), TECHUnit.

MAY 17, 2005.

Hon. NORM COLEMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR COLEMAN: The American Speech-Language-Hearing Association (ASHA) commends you for your continued leadership on behalf of the estimated 28 million American children and adults with hearing loss by introducing legislation to provide assistance to those purchasing hearing aids. The Hearing Aid Assistance Tax Credit Act will provide financial assistance to those who need hearing aids, but are unable to afford them. This bill will provide much needed assistance to those adults over 55 years of age and families with children who experience hearing loss.

Studies indicate that when children with hearing loss receive early intervention and treatment with devices such as hearing aids, their speech and language development improves dramatically, making the need for special education services less likely and costly. Research has also shown that the quality of life greatly improves for elderly individuals who use hearing aids.

On behalf of the 118,000 audiologists, speech-language pathologists, and hearing, speech, and language scientists qualified to meet the needs of the estimated 49 million (or 1 in 6) children and adults in the United States with communication disorders, we thank you for introducing this important piece of legislation and look forward to working with you and your staff.

Sincerely,

DOLORES E. BATTLE,
President, American Speech-Language-Hearing Association.

INTERNATIONAL HEARING SOCIETY,
Livonia, MI, May 16, 2005.

Hon. NORM COLEMAN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR COLEMAN: On behalf of the International Hearing Society (IHS), I write to enthusiastically endorse the Hearing Aid Assistance Tax Credit Act. IHS represents the vast majority of traditional hearing aid dispensers (hearing aid specialists) in the United States. Hearing aid specialists are licensed in 49 states (and registered in Colorado) specifically to provide hearing health services. Our members test hearing; select, fit and dispense hearing aids; and provide hearing rehabilitation and counseling services. Hearing aid specialists dispense approximately one-half of all hearing aids in this country.

IHS is deeply appreciative of your interest in improving access to hearing health care. Only approximately 20% of those who could benefit from amplification actually utilize hearing aids. Allowing a credit against tax for the purchase of hearing aids would likely promote access to this effective but dramatically underutilized device.

We look forward to working together to promote the nation's hearing health, a vital component of overall health and well-being. Please contact me or our Washington Counsel Karen S. Sealander of McDermott Will & Emery with questions or for further information.

Sincerely,

HARLAN S. CATO,
President.

MAY 18, 2005.

Hon. NORM COLEMAN,
U.S. Senate,
Washington, DC.,

DEAR SENATOR COLEMAN: On behalf of the Hearing Industries Association (HTA) and the individuals with hearing loss served by our members, I want to thank you for introducing the Hearing Aid Assistance Tax Credit Act, and offer HIA's strong endorsement and support for this worthwhile legislation.

The Hearing Industries Association (HIA) is dedicated to providing information about, promoting the use of, and enhancing access to amplification devices in the United States. These devices include externally worn hearing aids, implantable hearing aids (cochlear, middle ear and brain stem) and an array of assistive listening devices (both personal and public area communication systems used in auditoriums, theaters, classrooms and public buildings). Our members work with the medical community and hearing aid professionals to treat hearing loss in children and adults, and we have seen firsthand the dramatic benefit that hearing aids can provide in terms of greater safety, increased ability to communicate, and an overall significantly enhanced quality of life.

For the 31.5 million Americans who have some degree of hearing loss, the vast majority (95%) can be treated with hearing aids. Yet only 20% of those with hearing loss use hearing aids, while a full 30% cite financial constraints as the reason they do not use hearing aids. This modest bill would help countless older adults and children who need hearing aids, but simply cannot afford them. The benefits, in terms of reduced special education costs for children, as well as reduced injuries and psychological and mental disorders associated with hearing loss in older adults, are immense.

Again, on behalf of HIA and the individuals with hearing loss whom we serve, we applaud your leadership in introducing the Hearing Aid Assistance Tax Credit Act, and look forward to working with you to pass the bill in the 109th Congress.

Sincerely,

CAROLE ROGIN,
Hearing Industries Association.

DEAR SENATOR COLEMAN: On behalf of Self Help for Hard of Hearing People, the Nation's largest consumer group for people with hearing loss, we would like to express our support of the Hearing Aid Assistance Tax Credit Act.

More than 28 million Americans at all stages of life have some form of hearing loss. If left untreated, hearing loss can severely reduce the quality of one's personal and professional life. A landmark study conducted by the National Council on Aging (NCOA) concluded that hearing loss was associated with, among other things: depression, impaired memory, social isolation and reduced general health. For infants and children left untreated, the cost to schools for special education and other programs can exceed $420,000, with additional lifetime costs of $1 million in lost wages and other health complications, according to a respected 1995 study published in the International Journal of Pediatric Otorhinolaryngology.

While fully 95 percent of individuals with hearing loss could be successfully treated with hearing aids, only 22 percent currently use them, according to the largest national consumer survey on hearing loss in America. Almost ⅓ of the individuals surveyed cite financial constraints as a core reason they do not use hearing aids, which is not surprising since hearing aids are not covered under Medicare, or under the vast majority of state mandated benefits. In fact, over 71 percent of all hearing aid purchases involve no third party payments, thereby placing the entire burden of the purchase on the consumer.

The Hearing Aid Assistance Tax Credit Act offers a practical, low cost, and common sense solution to help older individuals who may not otherwise be able to afford to purchase a hearing aid, or those purchasing a hearing aid for their child. The bill is not intended to cover the full cost of hearing aids, but would simply provide some measure of financial assistance to the populations who are most in need of these devices but may not be able to afford them: those approaching or in retirement, and families with children.

This bipartisan initiative is endorsed by virtually the entire spectrum of organizations and consumer groups within the hearing health community. We view this legislation as an effective and responsible means to encourage individuals to treat their hearing loss in order to maintain or improve quality of life.

We are pleased to offer you our support.

Respectfully,

TERRY PORTIS,
Executive Director,
Self Help for Hard of Hearing People.

AMERICAN ACADEMY OF AUDIOLOGY,
Reston, VA, May 17, 2005.

Hon. NORM COLEMAN,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR COLEMAN: The American Academy of Audiology, the largest organization of audiologists representing over 9,700 audiologists, commends you on your leadership on hearing health care issues and championing policies that benefit individuals with hearing loss.

The Academy supports the Hearing Aid Assistance Tax Credit Act which would provide a tax credit of up to $500 per hearing aid, available once every five years, towards the purchase of a hearing aid(s) for individuals age 55 and over, or those purchasing a hearing aid for a dependent. As you have pointed out with the introduction of this bill, special tax treatment would improve access to hearing aids since only 22 percent of Americans who could benefit from hearing aids currently use them. Approximately, 1 million children under the age of 18 and nearly 10 million Americans over the age of 54 have a diagnosed hearing loss but are not currently using a hearing aid.

Hearing aids are presently not covered under Medicare, or under the vast majority of state mandated benefits. In fact, 71.4 percent of hearing aid purchases do not involve third party payments, placing the entire burden of the hearing aid purchase on the patient/consumer. This legislation is a beginning step to helping some individuals with this expense and raises the awareness of the impact that hearing loss has on today's society.

In addition, the Academy endorses the Hearing Health Accessibility Act (S. 277) to provide Medicare beneficiaries with the option of going to an audiologist or a physician for hearing and balance diagnostic tests. Direct access would improve Medicare beneficiaries' access to hearing care without diminishing the important role of medical doctors, or expanding the scope of practice for audiology. The Academy urges you to support this legislation as well.

The Academy appreciates the opportunity to work with you to promote these important initiatives in the 109th Congress. Again, we thank you for your leadership in introducing the Hearing Aid Assistance Tax Credit Act and for your dedication to the needs of individuals with hearing loss and the health care professionals providing the services they need to fully function in society.

Sincerely,

RICHARD E. GANS,
President.

S. 1060

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hearing Aid Assistance Tax Credit Act''.

SEC. 2. CREDIT FOR HEARING AIDS FOR SENIORS AND DEPENDENTS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. CREDIT FOR HEARING AIDS.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the amount paid during the taxable year, not compensated by insurance or otherwise, by the taxpayer for the purchase of any qualified hearing aid.

''(b) MAXIMUM AMOUNT.—The amount allowed as a credit under subsection (a) shall not exceed $500 per qualified hearing aid.

''(c) QUALIFIED HEARING AID.—For purposes of this section, the term 'qualified hearing aid' means a hearing aid—

''(1) which is described in section 874.3300 of title 21, Code of Federal Regulations, and is authorized under the Federal Food, Drug, and Cosmetic Act for commercial distribution, and

''(2) which is intended for use—

''(A) by the taxpayer, but only if the taxpayer (or the spouse intending to use the hearing aid, in the case of a joint return) is age 55 or older, or

''(B) by an individual with respect to whom the taxpayer, for the taxable year, is allowed a deduction under section 151(c) (relating to deduction for personal exemptions for dependents).

''(d) ELECTION ONCE EVERY 5 YEARS.—This section shall apply to any individual for any taxable year only if such individual elects (at such time and in such manner as the Secretary may by regulations prescribe) to have this section apply for such taxable year. An election to have this section apply may not be made for any taxable year if such election is in effect with respect to such individual for any of the 4 taxable years preceding such taxable year.

''(e) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowed under any other provision of this chapter.''.

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C . Credit for hearing aids.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

By Mr. NELSON of Florida (for himself, Mr. BURNS, and Mrs. CLINTON):

S. 1063. A bill to promote and enhance public safety and to encourage the rapid deployment of IP-enabled voice services; to the Committee on Commerce, Science, and Transportation.

Mr. NELSON of Florida. Mr. President, I rise today with my colleagues,

Senators BURNS and CLINTON, to introduce the ''IP-Enabled Voice Communications and Public Safety Act of 2005'' and ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1063

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''IP–Enabled Voice Communications and Public Safety Act of 2005''.

SEC. 2. EMERGENCY SERVICE.

(a) 911 AND E–911 SERVICES.—Notwithstanding section 2(b) or any other provision of the Communications Act of 1934, the Commission shall prescribe regulations to establish a set of requirements or obligations on providers of IP-enabled voice service to ensure that 911 and E–911 services are available to customers to IP-enabled voice service. Such regulations shall include an appropriate transition period by which to comply with such requirements or obligations and take into consideration available industry technological and operational standards, including network security.

(b) NON-DISCRIMINATORY ACCESS TO CAPABILITIES.—Each entity with ownership or control of the necessary emergency services infrastructure shall provide any requesting IP-enabled voice service provider with nondiscriminatory access to their equipment, network, databases, interfaces and any other related capabilities necessary for the delivery and completion of 911 and E911 calls and information related to such 911 or E911 calls. Such access shall be consistent with industry standards established by the National Emergency Number Association or other applicable industry standards organizations. Such entity shall provide access to the infrastructure at just and reasonable, nondiscriminatory rates, terms and conditions. The telecommunications carrier or other entity shall provide such access to the infrastructure on a stand-alone basis.

(c) STATE AUTHORITY.—Nothing in this Act, the Communications Act of 1934, or any Commission regulation or order shall prevent the imposition on or collection from a provider of voice services, including IP-enabled voice services, of any fee or charge specifically designated or presented as dedicated by a State, political subdivision thereof, or Indian tribe on an equitable, and nondiscriminatory basis for the support of 911 and E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 and E–911 services or enhancements of such services.

(d) STANDARD.—The Commission may establish regulations imposing requirements or obligations on providers of voice services, entities with ownership or control of emergency services infrastructure under subsections (a) and (b) only to the extent that the Commission determines such regulations are technologically and operationally feasible.

(e) CUSTOMER NOTICE.—Prior to the compliance with the rules as required by subsection (a), a provider of an IP-enabled voice service that is not capable of providing 911 and E–911 services shall provide a clear and conspicuous notice of the unavailability of such services to each customer at the time of entering into a contract for such service with that customer.

(f) VOICE SERVICE PROVIDER RESPONSIBILITY.—An IP-enabled voice service provider shall have the sole responsibility for the proper design, operation, and function of the 911 and E911 access capabilities offered to the provider's customers.

(g) PARITY OF PROTECTION FOR PROVISION OR USE OF IP-ENABLED VOICE SERVICE.—

(1) PROVIDER PARITY.—If a provider of an IP-enabled voice service offers 911 or E–911 services in compliance with the rules required by subsection (a), that provider, its officers, directors, employees, vendors, and agents, shall have immunity or other protection from liability of a scope and extent that is not less than the scope and extent of immunity or other protection from liability that any local exchange company, and its officers directors, employees, vendors, or agents, have under the applicable Federal and State law (whether through statute, judicial decision, tariffs filed by such local exchange company, or otherwise), including in connection with an act or omission involving the release of subscriber information related to the emergency calls or emergency services to a public safety answering point, emergency medical service provider, or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility.

(2) USER PARITY.—A person using an IP-enabled voice service that offers 911 or E–911 services pursuant to this subsection shall have immunity or other protection from liability of a scope and extent that is not less than the scope and extent of immunity or other protection from liability under applicable law in similar circumstances of a person using 911 or E–911 service that is not provided through an IP-enabled voice service.

(3) PSAP PARITY.—In matters related to IP-enabled 911 and E–911 communications, a PSAP, and its employees, vendors, agents, and authorizing government entity (if any) shall have immunity or other protection from liability of a scope and extent that is not less than the scope and extent of immunity or other protection from liability under applicable law accorded to such PSAP, employees, vendors, agents, and authorizing government entity, respective, in matters related to 911 or E–911 communications that are not provided via an IP-enabled voice service.

(h) DELEGATION PERMITTED.—The Commission may, in the regulations prescribed under this section, provide for the delegation to State commissions of authority to implement and enforce the requirements of this section and the regulations thereunder.

SEC. 3. MIGRATION TO IP–ENABLED EMERGENCY NETWORK.

Section 158 of the National Telecommunications and Information Administration Organization Act (as added by section 104 of the ENHANCE 911 Act of 2004) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following:

''(d) MIGRATION PLAN REQUIRED.—

''(1) NATIONAL PLAN REQUIRED.—No more than 18 months after the date of the enactment of the ENHANCE 911 Act of 2004, the Office shall develop and report to Congress on a national plan for migrating to a national IP-enabled emergency network capable of receiving and responding to all citizen activated emergency communications.

''(2) CONTENTS OF PLAN.—The plan required by paragraph (1) shall—

''(A) outline the potential benefits of such a migration;

''(B) identify barriers that must be overcome and funding mechanisms to address those barriers;

''(C) include a proposed timetable, an outline of costs and potential savings;

''(D) provide specific legislative language, if necessary, for achieving the plan; and

''(E) provide recommendations on any legislative changes, including updating definitions, to facilitate a national IP-enabled emergency network.

''(3) CONSULTATION.—In developing the plan required by paragraph (1), the Office shall consult with representatives of the public safety community, technology and telecommunications providers, and others it deems appropriate.''.

SEC. 4. DEFINITIONS.

(a) IN GENERAL.—For purposes of this Act:

(1) 911 AND E–911 SERVICES.—

(A) 911.—The term ''911'' means a service that allows a user, by dialing the three-digit code 911, to call a public safety answering point operated by a State, local government, Indian tribe, or authorized entity.

(B) E–911.—The term ''E–911 service'' means a 911 service that automatically delivers the 911 call to the appropriate public safety answering point, and provides automatic identification data, including the originating number of an emergency call, the physical location of the caller, and the capability for the public safety answering point to call the user back if the call is disconnected.

(2) IP-ENABLED VOICE SERVICE.—The term ''IP-enabled voice service'' means an IP-enabled service used for real-time 2-way or multidirectional voice communications offered to a customer that—

(A) uses North American Numbering Plan administered telephone numbers, or successor protocol; and

(B) has two-way interconnection or otherwise exchange traffic with the public switched telephone network.

(3) CUSTOMER.—The term ''customer'' includes a consumer of goods or services whether for a fee, in exchange for an explicit benefit, or provided for free.

(4) IP-ENABLED SERVICE.—The term ''IP-enabled service'' means the use of software, hardware, or network equipment that enable an end user to send or receive a communication over the public Internet or a private network utilizing Internet protocol, or any successor protocol, in whole or part, to connect users—

(A) regardless of whether the communication is voice, data, video, or other form; and

(B) notwithstanding —

(i) the underlying transmission technology used to transmit the communications;

(ii) whether the packetizing and depacketizing of the communications occurs at the customer premise or network level; or

(iii) the software, hardware, or network equipment used to connect users.

(5) PUBLIC SWITCHED TELEPHONE NETWORK.—The term ''public switched telephone network'' means any switched common carrier service that is interconnected with the traditional local exchange or interexchange switched network.

(6) PSAP.—The term ''public safety answering point'' or ''PSAP'' means a facility that has been designated to receive 911 calls.

(b) COMMON TERMINOLOGY.—Except as otherwise provided in subsection (a), terms used in this Act have the meanings provided under section 3 of the Communications Act of 1934.

By Mr. COCHRAN (for himself, Mr. KENNEDY, Mr. WARNER, Ms. CANTWELL, Ms. COLLINS, and Mr. DAYTON):

S. 1064. A bill to amend the Public Health Service Act to improve stroke prevention, diagnosis, treatment, and rehabilitation; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, the month of May is Stroke Awareness Month, and it is a privilege to join Senators COCHRAN, WARNER, CANTWELL, COLLINS, and DAYTON in introducing the Stroke Treatment and Ongoing Prevention Act of 2005. The STOP Stroke Act is a vital step in building a national network of effective care to diagnose and quickly treat victims of stroke and improve the quality of care for stroke patients across America.

For over 20 years, stroke has been the third leading cause of death in our country, affecting about 700,000 Americans a year and killing approximately 163,000 a year. Every 45 seconds, another American suffers a stroke. Every 3 minutes, another American dies. Few families today are untouched by this cruel, debilitating, and often fatal disease that strikes indiscriminately, and robs us of our loved ones. Even for those who survive, a stroke can have devastating consequences. Over half of all survivors are left with a disability.

Prompt treatment with clot-dissolving drugs within three hours of a stroke can dramatically improve these outcomes. Yet, only 2–3 percent of all stroke patients are treated with such a drug within those crucial first three hours. Few Americans recognize the symptoms of stroke, and crucial hours are often lost before a patient receives treatment. Emergency room staffs are often not trained to recognize and manage the symptoms, which further adds to the delay in treatment. Patients at hospitals with primary stroke centers have nearly five times greater chance of receiving clot-dissolving drugs.

Modern medicine is generating new scientific advances that increase the chance of survival and at least partial or even full recovery following a stroke. Physicians are learning to manage strokes more effectively, and they are also learning how to prevent them in the first place.

But science doesn't save lives and protect health by itself. We need to do more to bring new discoveries to the patient and new awareness to the public. That means educating as many people as possible about the warning signs of stroke, so that they know enough to seek medical attention. It means training doctors and nurses in the best techniques of care. It means finding better ways to treat victims as quickly and as effectively as possible—so that they have the best chance of full recovery.

Our bill provides grants to States to implement statewide systems of stroke care that will give health professionals the equipment and training they need to treat this disorder. It also establishes a continuing education program to make sure that medical professionals are well trained and well aware of the newest treatments and prevention strategies. The initial point of contact between a stroke patient and medical care is usually an emergency medical technician. Grants under this bill may be used to train these personnel to provide more effective care to stroke patients in the crucial first few moments after an attack.

The bill directs the Secretary of Health and Human Services to conduct a national media campaign to inform the public about the symptoms of stroke, so that more patients can recognize the symptoms and receive prompt medical care. The bill also authorizes the Secretary of HHS, acting through CDC, to operate the Paul Coverdell National Acute Stroke Registry, which will collect data about the care of stroke patients and assist in the development of more effective treatments.

The bill also provides new resources for states to improve the standard of care for stroke patients in hospitals, and to increase the quality of care in rural hospitals through improvements in telemedicine.

On Monday, the Wall Street Journal published an excellent article on the inadequate treatment that stroke patients often encounter when ambulances bring them to hospitals with staffs not trained in the early treatment of stroke or lacking the needed equipment to intervene early. Over twenty years ago, the survival of trauma victims was very much dependent on whether the ambulance took them to a hospital with a trauma care center, or to a hospital not equipped to treat traumatic injury. Congress passed the Trauma Care Systems Planning and Development Act of 1990 that revolutionized the treatment for accident victims. Now in 2005, it is long past time to see that state of the art care is made available to stroke patients as quickly as possible.

Stroke is a national tragedy that leaves no American community unscarred. Fortunately, if the right steps are taken during the brief window of time available, effective treatment can make all the difference between healthy survival and disability or death. We need to do all we can to see that those precious few hours are not wasted. The STOP Stroke Act is a significant step in reaching that goal. May is Stroke Awareness Month, and I urge Congress to act quickly on this legislation, and give stroke victims a far better chance for full recovery.

I ask unanimous consent that the full text of a Wall Street Journal article of May 9 on this issue be printed in the RECORD.

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

[From the Wall Street Journal, May 9, 2005]

STROKE VICTIMS ARE OFTEN TAKEN TO WRONG HOSPITAL

(By Thomas M. Burton)

Christina Mei suffered a stroke just before noon on Sept. 2, 2001. Within eight minutes, an ambulance arrived. Her medical fate may have been sealed by where the ambulance took her.

Ms. Mei's stroke, caused by a clot blocking blood flow to her brain, occurred while she was driving with her family south of San Francisco. Her car swerved, but she was able to pull over before slumping at the wheel. Paramedics saw the classic signs of a stroke: The 45-year-old driver couldn't speak or move the right side of her body.

Had Ms. Mei's stroke occurred a few miles to the south, she probably would have been taken to Stanford University Medical Center, one of the world's top stroke hospitals. There, a neurologist almost certainly would have seen her quickly and administered an intravenous drug to dissolve the clot. Stanford was 17 miles away, across a county line.

But paramedics, following county ambulance rules that stress proximity, took her 13 miles north, to Kaiser Permanente's South San Francisco Medical Center. There, despite her sudden inability to talk or walk and her facial droop, an emergency-room doctor concluded she was suffering from depression and stress. It was six hours before a neurologist saw her, and she never got the intravenous clot-dissolving drug.

In a legal action brought against Kaiser on Ms. Mei's behalf, an arbitrator found that her care had been negligent, and in some aspects ''incomprehensible.'' Today, Ms. Mei can't dress herself and walks unsteadily, says her lawyer, Richard C. Bennett. The fingers on her right hand are curled closed, and she has had to give up her main avocations: calligraphy, ceramics and other types of art. Kaiser declined to comment beyond saying that it settled the case under confidential terms ''based on some concerns raised in the litigation.''

Stroke is the nation's No. 1 cause of disability and No. 3 cause of death, killing 164,000 people a year. But far too many stroke victims, like Ms. Mel, get inadequate care thanks to deficient medical training and outdated ambulance rules that don't send patients to the best stroke hospitals.

Over the past decade, American medicine has learned how to save stroke patients' lives and keep them out of nursing homes. New techniques offer a better chance of complete recovery by dissolving blood clots and treating even more lethal strokes caused by burst blood vessels in the brain. But few patients receive this kind of treatment because most hospitals lack specialized staff and knowledge, stroke experts say. State and county rules generally require paramedics to take stroke patients to the nearest emergency room, regardless of that hospital's level of expertise with stroke.

Stroke care is positioned roughly where trauma care was a quarter-century ago. By 1975, surgeons expert at treating victims of car crashes and other major accidents realized that taking severely injured patients to the nearest emergency room could mean death. So the surgeons led a push to make selected regional hospitals into specialized trauma centers and to overhaul ambulance protocols so that paramedics would speed the most severely injured to those centers. Now, in many areas of the U.S., accident victims go quickly to a trauma center, and trauma specialists say this change has saved lives and lessened disability.

Eighty percent or more of the 700,000 stokes that Americans suffer annually are ''ischemic,'' meaning they are caused by blockage of an artery feeding the brain, usually a blood clot. Most of the rest are ''hemorrhagic'' strokes, resulting from burst blood vessels in or near the brain. Although they have different causes, both result in brain tissue dying by the minute.

Several factors have combined to prevent improvement in stroke care. In some areas, hospitals have resisted movement toward a system of specialized stroke centers because nondesignated institutions could lose business, according to neurologists who favor the

changes. In addition, stroke treatment has lacked an organized lobby to galvanize popular and political interest in the ailment.

DOCTOR IGNORANCE

A big reason for the backwardness of much stroke treatment is that many doctors know little about it. Even emergency physicians and internists likely to see stroke victims tend to receive scant neurology training in their internships and residencies according to stroke specialists.

''Surprisingly, you could go through your entire internal medicine rotation without training in neurology, and in emergency medicine it hasn't been emphasized,'' says James C. Grotta, director of the stroke program at the University of Texas Health Science Center at Houston.

Many hospitals don't have a neurologist ready to deal with emergencies. As a result, strokes aren't treated urgently there, even though short delays increase chance of severe disability or death. Even if doctors do react quickly, recent research has shown that many aren't sure what treatment to provide.

For example, a survey published in 2000 in the journal Stroke showed that 66 percent of hospitals in North Carolina lacked any protocol for treating stroke. About 82 percent couldn't rapidly identify patients with acute stroke.

As with other life-threatening conditions, stroke patients are better off going where doctors have had a lot of practice addressing their ailment. A seven-year analysis of surgery in New York state in the 1990s showed that patients with ruptured blood vessels in the brain were more than twice as likely to die—16% versus 7%—in hospitals doing few such operations, compared with those doing them regularly. A national study published last year in the Journal of Neurosurgery showed a similar disparity.

Another major shortcoming of most stroke treatment, according to many neurologists, is the failure to use the genetically engineered clot-dissolving drug known as tPA. Short for tissue plasminogen activator, tPA, which is made by Genentech Inc., has been shown to be a powerful treatment that can lessen disability for many patients. A study published in 2004 in The Lancet, a prominent medical journal, showed that the chances of returning to normal are about three times greater among patients getting tPA in the first 90 minutes after suffering a stroke, even after accounting for tPA's potential side effect of cerebral bleeding that can cause death. But several recent medical-journal articles have found that nationally, only 2% to 3% of strokes caused by clots are treated with tPA, which has no competitor on the market.

Some authors of studies supporting the use of tPA have had consultant or other financial relationships with Genentech. Skeptics of the drug point to these ties and stress tPA's side-effect danger. But among stroke neurologists, there is a strong consensus that the drug is effective.

One reason why many patients don't receive tPA is that they arrive at the hospital more than three hours after a stroke, the time period during which intravenous tPA should be given. But many hospitals and doctors don't use tPA at all, even though it has been available in the U.S. since 1996. The dissolving agent's relatively high cost—$2,000 or more per patient—is a barrier. Medicare pays hospital a flat reimbursement of about $6,700 for stroke treatment, regardless of whether tPA is used.

AIRPORT EMERGENCY

Glender Shelton of Houston had an ischemic stroke caused by a clot at Los Angeles International Airport on Dec. 30, 2003. In full view of other holiday travelers, Ms. Shelton, then 66, slumped over, and an ambulance was called. It was 4:45 p.m.

By 5:55 p.m., she arrived at what now is called Centinela Freeman Regional Medical Center, four miles away in Marina del Rey. Hospital records show that doctors thought Ms. Shelton had suffered an ''acute stroke.'' But she didn't get a CT scan, a recommended initial step, until 9 p.m. By then, she was already outside the three-hour window for safely administering intravenous tPA. Records also say she didn't receive the drug ''due to unavailability of neurologist until after the patient had been outside the three-hour time window.''

Ms. Shelton's daughter, Sandi Shaw, was until recently nurse-manager of the prestigious stroke unit at the University of Texas Health Science Center at Houston. Ms. Shaw says that at her unit, her mother would have had a CT scan within five minutes of arriving, and tPA probably would have been administered 30 or 35 minutes after that.

Today, according to her daughter, Ms. Shelton often can't come up with words or relatives' names, can't take care of her finances, and can't follow certain basic commands in neurological tests.

Kent Shoji, an emergency-room doctor at Centinela Freeman who handled Ms. Shelton's case, says, ''She was a possible candidate for tPA,'' but a CT scan was required first. ''The order was put in for a CT scan,'' Dr. Shoji says, ''I can't answer why it took so long.''

A Centinela Freeman spokeswoman says, ''We did not have 24/7 coverage with our CT scan, and we had to call, a technician to come in. That's pretty common with a community hospital.'' The hospital has since been acquired by a larger health system and now does have 24-hour CT capability.

'PAROCHIAL INTERESTS'

A hospital-accrediting group has begun designating hospitals as stroke centers, but that is only part of what is needed, stroke experts assert. They say hospitals typically have to come together to create local political momentum to change state or county rules to that ambulances actually take stroke patients to stroke centers, not the nearest ER. New York, Maryland and Massachusetts are moving toward creating stroke-care systems, and Florida recently passed a law creating stroke centers. But in many places, short-term economic interests impede change, some doctors say.

''There are still very parochial interests by hospitals and physicians to keep patients locally even if they're not equipped to handle them,'' says neurosurgeon Robert A. Solomon of New York Presbyterian Hospital/Columbia. ''Hospitals don't want to give up patients.''

The University of California at San Diego runs one of the leading stroke hospitals in the country. It and others in the area that are well prepared to treat stroke patients have sought for a decade to set up a regional system, but there has been little progress, says Patrick D. Lyden, UCSD's chief of neurology, ''Some hospitals are resisting losing stroke business,'' he says. ''We have the same political crap as in most communities. Paramedics still take people to the local ER.''

Among the opponents of the stroke-center concept during the 1990s was Richard Stennes, the ER director at Paradise Valley Hospital south of San Diego. In various public debates, Dr. Stennes recalls, he argued that many apparent stroke patients would be siphoned away from community hospitals even if they didn't turn out to have strokes. Also, he argued that tPA might cause more injury than it prevents. And then there was the economic issue: ''Those hospitals without all the equipment and stroke experts,'' he says, ''would be concerned about all the patients going to a stroke center and taking the patients away from us.'' Dr. Stennes has since retired.

''All hospitals and clinicians try to deliver the right care to patients, especially those with urgent medical needs,'' says Nancy E. Foster, vice president for quality of the American Hospital Association, which represents both large and small hospitals. ''Community hospitals may be equally good at delivering stroke care, and it would be important for patients to know how well prepared their local hospital is.''

Stroke experts aren't proposing that every hospital needs to specialize in stroke care but instead that in every population center there should be at least one that does. In Atlanta, Emory University's neuro-intensive care unit illustrates the special skills that make for top care. Owen B. Samuels, director of the unit, estimates that 20% to 30% of patients it treats received poor initial medical care before arriving at Emory, jeopardizing their futures or even lives. Brain hemorrhages, for example, are commonly misdiagnosed, even in patients who repeatedly showed up at emergency rooms with unusually severe headaches, Dr. Samuels says.

The Emory unit has 30 staff members, including two neuro-critical care doctors and five nurse practitioners. A team is on duty 24 hours a day. The unit handles about two dozen patients most days, keeping the staff busy. On the ward, nearly all patients are unconscious or sedated, so it's eerily silent. Patients generally need to rest their brains as they recover from stroke or surgery.

After a hemorrhagic stroke, blood pressure in the cranium builds as blood continues to seep out of the ruptured vessel. Pressure can be deadly, cutting off oxygen to the brain. Or escaped blood can cause a ''vasospasm,'' days after the original stroke, in which the brain reacts violently to seeped-out blood. In the worst case, the brain herniates, or squeezes out the base of the skull, causing death. To avoid this, nurses at Emory constantly monitor brain pressure and temperatures. They put in drain lines. They infuse medicines to dehydrate, depressurize and stop bleeding.

Since Emory launched the neuro-intensive unit seven years ago, 42% of patients with hemorrhagic strokes have become well enough to go home, compared with 27% before. Fewer need rehabilitation—31% versus 40%—and the death rate is down.

Damica Townsend-Head, 33, gave the Emory team a scare. After surgery last fall for a hemorrhagic stroke, her brain swelling was ''really out of control,'' Dr. Samuels says, raising questions about whether she would survive. The staff put a ''cooling catheter'' into a blood vessel, which allowed the circulation of ice water to bring down the temperature in her blood and brain. They intentionally dehydrated her brain to lower pressure. A month later, she woke up and recovered with minimal disability. She still walks with a cane and tires easily, but her speech is normal and she hopes to return soon to work. ''I consider her what we're in business for,'' Dr. Samuels says.

PUBLIC AWARENESS

The public's low awareness of stroke symptoms—and the need to respond immediately—can also hinder proper care. Ischemic strokes, those caused by clots or other artery blockage, cause symptoms such as muscle weakness or paralysis on one side, slurred speech, facial droop, severe dizziness, unstable gait and vision loss. People with this kind of stroke are sometimes mistaken for being drunk. In addition to intense head

pain, a hemorrhagic stroke often leads to nausea, vomiting or loss of balance or consciousness. Still, many people with some of these symptoms merely go to bed in hopes of improving overnight, doctors say. Instead, they should go immediately to a hospital and demand a CT scan as a first diagnostic step.

The well-funded American Heart Association, established in 1924, has made many people aware of heart attack symptoms and thereby saved many lives. In contrast, the American Stroke Association was started only in 1998 as a subsidiary of the heart association. The stroke association spent $162 million last year out of the heart association's $561 million overall budget.

Justin Zivin, another University of California at San Diego stroke expert, says the stroke association ''is a terribly ineffective bunch. When it comes to actual public education, I haven't seen anything.''

The stroke association counters that it is buying television and radio ads promoting awareness, similar to ones produced in 2003 and 2004. The group also sponsors research and education, including an annual international stroke-medicine conference.

It's not just the general public that fails to recognize stroke symptoms. Often, emergency-room doctors and nurses don't either. Gretchen Thiele of suburban Detroit began having horrible headaches last May, for the first time in her life. ''She wasn't one to complain, but she said, 'I can't even lift my head off the pillow.''' recalls her daughter, Erika Mazero. Ms. Thiele, 57, nearly passed out from the pain one night and suffered blurred vision. When the pain recurred in the morning, she went to the emergency room at nearby St. Joseph's Mercy of Macomb Hospital. Ms. Mazero says that during the six hours her mother spent there, she was given a CT scan, but not a spinal tap, which could definitively have shown she had a leaking brain aneurysm, meaning a ballooned and weakened artery in her brain. After the CT, Ms. Thiele was given a muscle relaxant and pain medicine and sent home, her daughter says.

Two months later, the blood vessel burst. Neurosurgeons at William Beaumont Hospital in Royal Oak, Mich., did emergency surgery, but Ms. Thiele suffered massive bleeding and died. Ali Bydon, one of the neurosurgeons at Beaumont, says a CT scan often is inadequate and that her condition could have been detected earlier with a spinal tap, also called a lumbar puncture. ''Had she had a lumbar puncture and perhaps an operation earlier, it might have saved her life,'' says Dr. Bydon. ''In general, a person who tells you, 'I usually don't get headaches, and this is the worst headache of my life,' is something that should alarm you.''

In addition, he says Ms. Thiele ''absolutely'' was experiencing smaller-scale bleeding in May that foreshadowed a more serious rupture. If doctors identify this kind of bleeding early, he says, chances of death are ''minimal.'' But when a rupture occurs, he says, ''25% of patients never make it to the hospital, 25% die in the hospital and 25% are severely disabled.''

A St. Joseph's hospital spokeswoman says the hospital has ''very aggressive standards for treatment, and we met this standard.'' declining to elaborate.

DETERMINED NURSE

Paramedics did the right thing after Chuck Toeniskoetter's stroke, but only because of some extraordinary intervention. Mr. Toeniskoetter, then 55, was on a ski trip, Dec. 23, 2000, at Bear Valley, near Los Angeles. He had just finished a run at 3:30 p.m. when, in the snowmobile shop, he began slurring his words and nearly fell over. Kathy Snyder, the nurse in the ski area's first-aid room quickly diagnosed stroke. She called a helicopter and an ambulance.

Ms. Snyder says she knew the closest hospital with a stroke team was Sutter Roseville Medical Center in Roseville, CA. The helicopter pilot was planning to take Mr. Toeniskoetter to a closer ER, but Ms. Snyder says she stood on the helicopter runners, demanding the patient go to Sutter. The pilot eventually relented. Mr. Toeniskoetter went to Sutter, where he promptly received tPA. Today, he has no disability and is back running a real estate-development business in the San Jose area. ''Trauma patients go to trauma centers, not the nearest hospital,'' he says. ''Stroke victims, too, require a real specialized sort of care.''

One-third of all strokes are suffered by people under 60, and hemorrhagic strokes in particular often strike young adults and children. Vance Bowers of Orlando, Fla., was 9 when he woke up screaming that his eyes hurt, shortly after 1 a.m. on Jan. 8, 2001. Malformed blood vessels in his brain were bleeding. He was in a coma by the time an ambulance delivered him at 1:57 a.m. to the nearest emergency room, at Florida Hospital East Orlando.

Emergency-room doctors soon realized Vance had a hemorrhagic stroke. But neurosurgery isn't performed at that hospital. A sister hospital 14 minutes away by ambulance, Florida Hospital Orlando, did have neurosurgical capability. But in part because of administrative tangles, Vance didn't get to the second hospital until 4:37 a.m., more than two hours after his arrival. Surgery began at 6:18 a.m. ''This delay may have cost this young man the possibility of a functional survival,'' Paul D. Sawin, the neurosurgeon who operated on Vance, said in a letter to the hospitals' joint administration.

Florida Hospital, an emergency-medicine group and an ER doctor recently agreed to settle a lawsuit filed against them in Orange County, Fla., Circuit Court by the Bowers family. The defendants agreed to pay a total of $800,000, court records show. Monica Reed, senior medical officer of the hospital, says the care Vance received was ''stellar'' and that any delays weren't medically significant. Vance's stroke, not the care he received, caused his injuries, she said.

Vance, now 13, survived but is mentally handicapped and suffers daily seizures, his mother, Brenda Bowers, says. Once a star baseball player, he goes by wheelchair to a class for disabled children. He speaks very slowly but not in a way that many people can understand. ''He remembers playing baseball with all of his friends,'' his mother says but they rarely come around any more. ''He really misses all that.''

By Mr. THUNE (for himself and Mrs. CLINTON):

S. 1065. A bill to amend title 10, United States Code, to extend child care eligibility for children of members of the Armed Forces who die in the line of duty; to the Committee on Armed Services.

Mr. THUNE. Mr. President, today I rise with my distinguished colleague from New York, Senator CLINTON, to introduce legislation that will provide a surviving spouse with two years of child care eligibility on any military instillation or Federal facility with a child care center. The legislation was inspired by our work on the Senate Armed Services Committee. In February the committee held an important hearing on improving survivor benefits and the government's role in helping survivors cope with the loss of a loved one. All too often surviving spouses are forced to make difficult, life changing decisions alone. Both Senator CLINTON and I are determined to provide as much help as possible to those who must bear the burden of loss, particularly those with young children. By providing two years of child care eligibility, our goal is to ensure that a surviving spouse has the time and tools necessary to make a healthy adjustment to life after the servicemember's death. Many decisions face survivors, most importantly, how to make a living. Often that means having to reenter the work force after years of being a working mother. The question of how to adequately care for young children while trying to find employment or restart a career should not be an issue. Further, we have expanded this eligibility to include access to child care centers in other Federal facilities. This will aide surviving spouses with children if they are in the process of relocating to an area of the country without a military base nearby, but in the proximity of a local Federal building. I am honored that Senator CLINTON is working with me on this legislation and I encourage my colleagues to support this important measure.

By Mr. VOINOVICH (for himself, Ms. STABENOW, Mr. BUNNING, Mr. LEVIN, Mr. ALEXANDER, Mr. DEWINE, Mr. MCCONNELL, and Mr. FRIST):

S. 1066. A bill to authorize the States (and subdivisions thereof), the District of Columbia, territories, and possessions of the United States to provide certain tax incentives to any person for economic development purposes; to the Committee on Finance.

Mr. VOINOVICH. Mr. President, I rise today to introduce the Economic Development Act of 2005 to authorize States to provide tax incentives for economic development purposes.

This legislation is crucial to preserve tax incentives as an important tool for State and local governments to promote economic development in the wake of last year's decision by the Sixth Circuit Court of Appeals in Cuno v. DaimlerChrysler.

In its decision in Cuno, the Sixth Circuit struck down Ohio's manufacturing machinery and equipment tax credit, which I helped enact while I was Governor of Ohio, on grounds that it violated the ''dormant'' Commerce Clause of the U.S. Constitution. The court ruled that the tax incentive violated the Commerce Clause of the U.S. Constitution because it granted preferential tax treatment to companies that invest within the State rather than in other States.

The Cuno decision has had severe repercussions across the country. The decision immediately cast doubt on the constitutionality of tax incentives presently offered by all fifty States. As

a result, States and businesses have been reluctant to go forward with new projects that depend on the availability of tax incentives out of concern that the Cuno decision may be used to invalidate those incentives. This legal uncertainty has worsened an already challenging economic environment. Furthermore, the decision threatens to undermine federalism by dramatically restricting the ability of States to craft their tax codes to promote economic development in the manner they determine is best. If left standing, this decision will handcuff the States in the Sixth Circuit, as well as States in other circuits where the court chooses to follow Cuno, in their efforts to promote economic growth and create jobs. Additionally, it will cripple their ability to compete internationally. In today's competitive economic environment, we can not afford to unilaterally discard the use of tax incentive to attract business to this country. As a former Governor who had to compete against Japan, Canada, China and Europe for new business projects, I know just how important a role tax incentives can play in attracting new businesses. I can assure you that our competitors are certainly not going to stop using tax incentives. Neither should we.

Fortunately, the U.S. Constitution gives Congress the power to determine which State actions violate the Commerce Clause. The purpose of the Economic Development Act of 2005 is therefore to have Congress override the decision in Cuno by authorizing States to provide tax incentives for economic development purposes. The legislation would remove the legal uncertainty surrounding tax incentives created by the Cuno decision and preserve the States' power to design their tax codes to promote economic development.

The history of the tax incentive struck down in Cuno demonstrates the important role tax incentives can play in promoting economic development. When I was Governor of Ohio, at my request and as part of my jobs incentive package, the Ohio Legislature enacted the manufacturing machinery and equipment tax incentive to encourage businesses to expand their operations in Ohio and to help draw new businesses to Ohio. It worked. Between 1993 and 1997, Ohio was ranked number one in the Nation by Site Selection and Industrial Development magazine three times for highest number of new facilities, expanded facilities, and new manufacturing plants. Since the program's inception, businesses have been eligible to claim a total of $2 billion in credits toward $34 billion in new equipment investments.

Currently, this incentive is part of an incentive package being offered to automobile manufacturer DaimlerChrysler in support of its plans for a $200 million expansion of their Jeep plant. The ruling by the Sixth Circuit in Cuno, however, puts that expansion in jeopardy and threatens to undermine Ohio's competitiveness in attracting new businesses.

In the Cuno decision, the Sixth Circuit ruled that the manufacturing machinery and equipment tax incentive, given by Ohio to DaimlerChrysler as part of its incentive package, violated the Commerce Clause of the U.S. Constitution because it discriminated against interstate commerce by granting preferential tax treatment to companies that expanded within the State rather than in other States.

The Cuno decision is troubling for several reasons. First, I believe the Sixth Circuit failed to appreciate the need for States to condition the availability of certain tax incentives on the undertaking of the specified economic activity within a State. In the case of the manufacturing machinery and equipment tax incentive, Ohio needed to limit the availability of the tax incentive to the investments undertaken in the State. Otherwise, Ohio would have been giving companies a tax incentive for activity that did not benefit the State. In other words, Ohio would have been effectively subsidizing investment in other States. We all know that in economics there is no free lunch and States should not be forced to provide a free lunch when they choose to give tax incentives. If Ohio or any other State is willing to forego tax revenue, it should be allowed to receive something in return, namely investment or other economic activity in the State. Accordingly, Ohio's tax incentive did not discriminate against interstate commerce. It merely required companies, if they chose to take advantage of the incentive, to undertake the investment in Ohio, the same State that would be foregoing tax revenue to provide the incentive.

There is also a little legal fiction present in the Cuno decision. The court states that Ohio could have provided a direct subsidy to companies that undertook investment in the State. Because Ohio decided to structure the program as a tax credit, however, the court said that it ran afoul of the Commerce Clause. I do not see how a direct subsidy does not violate the dormant Commerce Clause, but a tax credit does. They are economically the same.

If left standing, the Cuno decision will have a particularly detrimental effect on the U.S. manufacturing sector. From rising energy and health care costs to frivolous lawsuits and unfair international trade practices, the U.S. manufacturing sector and the hard working men and women who drive it are getting squeezed from all sides. Despite all they are up against, it's a testament to their ability and determination that they are still the most productive manufacturers in the world. This Sixth Circuit decision, however, is a new roadblock that threatens to take away one of the most effective and efficient means for assisting manufacturers who want to create new jobs here in America. The Economic Development Act of 2005 will make sure that manufacturers don't lose key tax incentives just when such incentives are needed the most.

The Cuno decision also sets a bad precedent that, if not checked, could upset our carefully balanced federal system. One of the most ingenious aspects of the U.S. Constitution is that it leaves a great deal of power with the States. It gives the States flexibility to devise their own solutions and, in the process, fosters innovation in government. Thus, the States are the laboratories of our democracy and an innovation they have developed to help create jobs and prosperity are programs that encourage new growth through tax incentives for training, job creation, and investment in new plants and equipment. The availability of tax incentives was critical to our success in Ohio and in being number one in new plant construction and expansion. Because Ohio had the ability to devise tax incentives that fit its economic development needs, we were able to create thousands of new jobs. My legislation will guarantee that the States remain our engines of innovation.

This legislation is something that Congress should have done a long time ago. The courts are not well-suited to making the often complex policy decisions regarding whether a tax incentive truly discriminates against interstate commerce and hinders the creation of a national market, or whether a tax incentive actually fosters innovation and job growth. Such decisions necessarily involve a careful weighing of competing and often mutually exclusive interests, and therefore should be made by Congress. Moreover, judicial decisions often fail to provide bright lines on which incentives run afoul of the dormant Commerce Clause, injecting uncertainty about the validity of certain tax incentives that makes businesses weary of relying on them and reduce their effectiveness. Indeed, the Supreme Court itself has called its dormant Commerce Clause jurisprudence a ''quagmire.'' Hence, it is time that Congress provide some clear rules on the treatment of tax incentives under the Commerce Clause.

As Supreme Court Justice Felix Frankfurter stated nearly a half-century ago:

> At best, this Court can only act negatively; it can determine whether a specific state tax is imposed in violation of the Commerce Clause. Such decisions must necessarily depend on the application of rough and ready legal concepts. We cannot make a detailed inquiry into the incidence of diverse economic burdens in order to determine the extent to which such burdens conflict with the necessities of national economic life. Neither can we devise appropriate standards for dividing up national revenue on the basis of more or less abstract principles of constitutional law, which cannot be responsive to the subtleties of the interrelated economies of Nation and State.
>
> The problem calls for solution by devising a congressional policy. Congress alone can provide for a full and thorough canvassing of the multitudinous and intricate factors which compose the problem of the taxing

freedom of the States and the needed limits on such state taxing power. Congressional committees can make studies and give the claims of the individual States adequate hearing before the ultimate legislative formulation of policy is made by the representatives of all the States. . . . Congress alone can formulate policies founded upon economic realities. . . .

The Economic Development Act of 2005 is a good first step toward providing the prudent and carefully considered legislation that Justice Frankfurter urged the Congress to pass nearly a half century ago.

At its core, the Economic Development Act of 2005 recognizes that decisions should be made, if possible, at the State and local level. States make and should make decisions about the programs and services they want to provide with their tax dollars, not the least of which are economic development programs. Highway funding, education funding, welfare funding, and funding for seniors programs all vary from state to state because State legislatures, acting on behalf of their citizens, make choices and set priorities. This has allowed government policy to reflect the diversity of interests in our great republic and results in better and more responsive government. Accordingly, states should be allowed to prioritize economic development in an effort to create jobs and prosperity for their citizens, and, yes, attract business from outside their State. If States choose to use tax incentives to promote economic development, then that is not a violation of the interstate commerce clause, that's simply their choice. It is called federalism, and it should not be thwarted by the courts.

There are a couple of points about this legislation that I would like to discuss. First, this legislation is carefully crafted to protect the most common and benign forms of tax incentives, but not to authorize those tax incentives that truly discriminate against interstate commerce. I believe this bill strikes the right balance between protecting States' tax rights and preserving long-established protections against truly discriminatory State tax practices. Second, this legislation does not invalidate any tax incentives. It only authorizes tax incentives. Any tax incentive not covered by the legislation's authorization is simply subject to the traditional dormant Commerce Clause review by the courts. Third, this legislation does not require any state to provide tax incentives. Although I had success using tax incentives to foster economic growth in Ohio while I was Governor, I recognize that some states have concerns about whether and how to offer tax incentives and therefore believe it should be left to the states to resolve these concerns.

I am pleased that this legislation is being co-sponsored by all of the Senators representing States in the Sixth Circuit. We all realize that the right of states to make their own decisions about the programs and services they offer within their boundaries is their own and should not be taken away. Moreover, if the Supreme Court fails to review the Cuno decision, then our States, the States in the Sixth Circuit, will be at a competitive disadvantage in attracting businesses against other states which are not affected by the Cuno decision and can offer tax incentives.

The bill has also been endorsed by Governor Bob Taft of Ohio, the National Governors Association, the National League of Cities, the National Association of Counties, the National Conference of Mayors and the Federation of Tax Administrators, as well as by broad-based business coalitions and the Teamsters.

I am hopeful that the seriousness of this issue, and the severity of the ruling's possible ramifications, will allow us to see quick and positive consideration of my bill. The States are in a crisis mode because of this ruling. In Ohio, as I'm sure is the case across the country, many important projects have been put on hold as we await the court's further action.

The challenges that manufacturers and workers face today are daunting but surmountable. The last thing we need, however, is an artificial legal hurdle that threatens to trip us up. I urge my colleagues to support the Economic Development Act of 2005 so that we can preserve the ability of the States to foster economic development and help put our economy, and especially our manufacturing industries, back on the road to recovery and prosperity.

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

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

S. 1066

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Economic Development Act of 2005''.

SEC. 2. AUTHORIZATION.

Congress hereby exercises its power under Article I, Section 8, Clause 3 of the United States Constitution to regulate commerce among the several States by authorizing any State to provide to any person for economic development purposes tax incentives that otherwise would be the cause or source of discrimination against interstate commerce under the Commerce Clause of the United States Constitution, except as otherwise provided by law.

SEC. 3. LIMITATIONS.

(a) TAX INCENTIVES NOT SUBJECT TO PROTECTION UNDER THIS ACT.—Section 2 shall not apply to any State tax incentive which—

(1) is dependent upon State or country of incorporation, commercial domicile, or residence of an individual;

(2) requires the recipient of the tax incentive to acquire, lease, license, use, or provide services to property produced, manufactured, generated, assembled, developed, fabricated, or created in the State;

(3) is reduced or eliminated as a direct result of an increase in out-of-State activity by the recipient of the tax incentive;

(4) is reduced or eliminated as a result of an increase in out-of-State activity by a person other than the recipient of the tax incentive or as a result of such other person not having a taxable presence in the State;

(5) results in loss of a compensating tax system, because the tax on interstate commerce exceeds the tax on intrastate commerce;

(6) requires that other taxing jurisdictions offer reciprocal tax benefits; or

(7) requires that a tax incentive earned with respect to one tax can only be used to reduce a tax burden for or provide a tax benefit against any other tax that is not imposed on apportioned interstate activities.

(b) NO INFERENCE.—Nothing in this section shall be construed to create any inference with respect to the validity or invalidity under the Commerce Clause of the United States Constitution of any tax incentive described in this section.

SEC. 4. DEFINITIONS; RULE OF CONSTRUCTION.

(a) DEFINITIONS.—For purposes of this Act—

(1) COMPENSATING TAX SYSTEM.—The term ''compensating tax system'' means complementary taxes imposed on both interstate and intrastate commerce where the tax on interstate commerce does not exceed the tax on intrastate commerce and the taxes are imposed on substantially equivalent events.

(2) ECONOMIC DEVELOPMENT PURPOSES.—The term ''economic development purposes'' means all legally permitted activities for attracting, retaining, or expanding business activity, jobs, or investment in a State.

(3) IMPOSED ON APPORTIONED INTERSTATE ACTIVITIES.—The term ''imposed on apportioned interstate activities'' means, with respect to a tax, a tax levied on values that can arise out of interstate or foreign transactions or operations, including taxes on income, sales, use, gross receipts, net worth, and value added taxable bases. Such term shall not include taxes levied on property, transactions, or operations that are taxable only if they exist or occur exclusively inside the State, including any real property and severance taxes.

(4) PERSON.—The term ''person'' means any individual, corporation, partnership, limited liability company, association, or other organization that engages in any for profit or not-for-profit activities within a State .

(5) PROPERTY.—The term ''property'' means all forms of real, tangible, and intangible property.

(6) STATE.—The term ''State'' means each of the several States (or subdivision thereof), the District of Columbia, and any territory or possession of the United States.

(7) STATE TAX.—The term ''State tax'' means all taxes or fees imposed by a State.

(8) TAX BENEFIT.—The term ''tax benefit'' means all permanent and temporary tax savings, including applicable carrybacks and carryforwards, regardless of the taxable period in which the benefit is claimed, received, recognized, realized, or earned.

(9) TAX INCENTIVE.—The term ''tax incentive'' means any provision that reduces a State tax burden or provides a tax benefit as a result of any activity by a person that is enumerated or recognized by a State tax jurisdiction as a qualified activity for economic development purposes.

(b) RULE OF CONSTRUCTION.—It is the sense of Congress that the authorization provided in section 2 should be construed broadly and the limitations in section 3 should be construed narrowly.

SEC. 5. SEVERABILITY.

If any provision of this Act or the application of any provision of this Act to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of this Act to any

person or circumstance shall not be affected by the holding.

SEC. 6. EFFECTIVE DATE.

This Act shall apply to any State tax incentive enacted before, on, or after the date of the enactment of this Act.

By Mr. HARKIN:

S. 1074. A bill to improve the health of Americans and reduce health care costs by reorienting the Nation's health care system toward prevention, wellness, and self care; to the Committee on Finance.

Mr. HARKIN. Mr. President, for more than a decade, I have spoken out about the need to fundamentally reorient our approach to health care in America—to reorient it towards prevention, wellness and self care.

I don't think you'll find too many people who would argue with the statement that if you get sick, the best place in the world to get the care you need is here in America. We have the best trained, highest-skilled health professionals in the world. We have cutting-edge, state-of-the-art equipment and technology. We have world-class health care facilities and research institutions.

But, when it comes to helping people stay healthy and stay out of the hospital, we fall woefully short. In the U.S., we spend in excess of $1.8 trillion a year on health care. Fully 75 percent of that total is accounted for by chronic diseases—things like heart disease, cancer, and diabetes. And what these diseases have in common is that—in so many cases—they are preventable.

In the United States, we fail to make an up-front investment in prevention. So we end up spending hundreds of billions on hospitalization, treatment, and disability. This is foolish—and, clearly, it is unsustainable. In fact, I've long said that we don't have a health care system here in America, we have a ''sick care'' system. And it is costing us dearly both in terms of health care costs and premature deaths.

Consider the cost of major chronic diseases—diseases that, as I said, are so often preventable.

For starters the annual cost of obesity is $117 billion. For cardiovascular disease is about $352 billion. For diabetes it's $132 billion. For smoking it's more than $75 billion. And for mental illness it's $150 billion; indeed, major depression is the leading cause of disability in the United States.

Now, if I bought a new car, drove that car off the lot, and never maintained it—never checked the oil, never checked the transmission fluid, never got it tuned up—you'd think I was crazy, not to mention grossly irresponsible. The common-sense principle with an automobile is: ''I pay a little now to keep the car maintained, or I pay a whole lot later.''

Well, it's the same with our national health priorities. Right now, our health care system is in a downward spiral. We are not paying a little now; so we are paying a whole lot later.

For example, we are failing to address the nation's growing obesity epidemic. Today 65 percent of our population is overweight or obese. Obesity is associated with numerous health problems and increased risks of diabetes, heart disease, stroke, and several types of cancer, to name just a few.

Another contributing factor to our health crisis is tobacco. We don't hear as much about the dangers of tobacco use, today, as we used to. That's because there is a perception that we've turned the corner—that we've done all that we need to do. But that perception is not accurate. In 2002, 46 million American adults regularly smoked cigarettes—that 26 percent of our population. Nearly 40 percent of college-aged students smoke. What this means is that after decades of education and efforts to stop tobacco use, more than one in every four Americans is still addicted to nicotine and smoking.

Mental health is another enormous challenge that we are grossly neglecting. Mental health and chronic disease are intertwined. They can trigger one another. It is about time we stop separating the mind and body when discussing health. Prevention and mental health promotion programs should be integrated into our schools, workplaces, and communities along with physical health screenings and education. Surely, at the outset of the 21st century, it's time to move beyond the lingering shame and stigma that often attend mental health.

Seventy percent of all deaths in the U.S. are now linked to chronic conditions such as heart disease, cancer, and diabetes. In so many cases, these chronic diseases are caused by poor nutrition, physical inactivity, tobacco use, and untreated mental illness. This is unacceptable.

After many months of meetings and discussions with Iowans and experts across the nation, today I am re-introducing comprehensive legislation designed to transform America's ''sick care'' system into a true health care system—one that emphasizes prevention and health promotion.

I am calling this bill the HeLP America Act, with HeLP as an acronym for Healthy Lifestyles and Prevention. The aim is to give individuals and communities the information and tools they need to take charge of their own health.

Because if we are serious about getting control of health-care costs and health-insurance premiums, then we must give people access to preventive care . . . and we must give people the tools they need to stay healthy and stay out of the hospital.

This will take a sustained commitment from government, schools, communities, employers, health officials, and the tobacco and food industries. But a sustained effort can have a huge payoff—for individuals and families, for employers, for society, for government budgets, and for the economy at large.

As I said, the HeLP America Act is comprehensive legislation. It a very complex, multifaceted bill. But, this afternoon, I'd just like to outline the bill's major elements:

The first component addresses healthy kids and schools. Prevention and the development of a healthy habits and lifestyles must begin in the early years, with our children. Unfortunately, today, we are heading in exactly the wrong direction. More and more children all across America are suffering from poor nutrition, physical inactivity, mental health issues, and tobacco use.

For example, just since the 1980s, the rates of obesity have doubled in children and tripled in teens. Even more alarming is the fact that a growing number of children are experiencing what used to be thought of primarily as adult health problems. Almost two-thirds—60 percent—of overweight children have at least one cardiovascular disease risk factor. Recent studies of children have shown that increasing weight, greater salt consumption from fast food, and poor eating habits have contributed to the rise in blood pressure, higher cholesterol levels, and a shockingly rapid increase in adult-onset diabetes.

The HeLP America Act will more than double funding for the successful PEP program, which promotes health and physical education programs in our public schools. I find it disturbing that more than one third of youngsters in grades 9 through 12 do not regularly engage in adequate physical activity. This is a shame, because studies show that regular physical activity boosts self-esteem and improves health.

The HeLP America Act will also expand the Harkin Fruit and Vegetable Program to provide more free fresh fruits and vegetables in more public schools. The bill will also encourage give schools incentives to create healthier environments, including goals for nutrition education and physical activity.

The HeLP America Act would also establish a grant program to provide mental health screenings and prevention programs in schools, along with training for school staff to help them recognize children exhibiting early warning signs. It will improve access to mental health services for students and their families.

New to the HeLP Act this year is a strong focus on breastfeeding promotion. Sound nutrition begins the moment a baby is born and there is a vast body of scientific evidence that shows beyond a shadow of a doubt that mom's milk is the ideal form of nutrition to promote child health. But in the U.S. we don't do enough to encourage breastfeeding. The HeLP America Act seeks to remove some of those barriers and to encourage new mothers to breastfeed.

The second broad component of the HeLP American Act addresses Healthy Communities and Workplaces. For example, the bill aims to create a healthier workforce by providing tax

credits to businesses that offer wellness programs and health club memberships. Studies show that, on average, every $1.00 that is invested in workplace wellness returns $3.00 in savings on health costs, absences from work, and so on.

At a field hearing in Iowa last year, I heard from Mr. Lynn Olson, CEO of Ottumwa Regional Health Center. The Center offers a comprehensive wellness program for its employees, including reduced health insurance premiums for those employees who meet individual health goals. The Center has seen tremendous savings from their investment in health promotion.

My bill also creates a grant program for communities, encouraging them to develop localized plans to promote healthier lifestyles. For example, we want to support efforts like those going on in Webster County and Mason City, IA, where mall walking programs have been expanded into community-wide initiatives to promote wellness.

At the same time, the bill provides new incentives for the construction of bike paths and sidewalks to encourage more physical activity, especially walking. It is shocking that, today, roughly one-quarter of walking trips take place on roads without sidewalks or shoulders. And bike lanes are available for only about 5 percent of bike trips.

As my colleagues know, I have been a longstanding advocate for the rights of people with disabilities. So I have given special attention to health-promotion programs and activities that include this population. I just mentioned the bill's incentives to create bike lanes and sidewalks on newly constructed roads. This will make a big difference to people with disabilities, who often are forced to travel in the street alongside cars because there are no sidewalks or bike lanes available for wheelchairs.

The Centers for Disease Control has funded a program called Living Well with a Disability, which has actually decreased secondary conditions and led to improved health for participants. The program is an eight-session workshop that teaches individuals with disabilities how to change their nutrition and level of physical activity. The program not only increases healthy activities for people with disabilities, but has also led to a 10 percent decline in the cost for medical services, particularly emergency-room care and hospital stays.

In addition, my bill includes a Working Well with a Disability program, which will build partnerships between employers and vocational rehabilitation offices with the aim of developing wellness programs in the workplace.

Mr. President, the third component of the HeLP America Act addresses Responsible Marketing and Consumer Awareness. Having accurate, readily available information about the nutritional value of the foods we eat is the first step toward improving overall nutrition. Unfortunately, because of all the gimmicks and hype that marketers use to entice us to buy their products, determining the nutritional value of the foods we buy can be problematic—especially in restaurants. This is why the HeLP America bill proposes to extend the nutritional labeling requirements of the National Labeling and Education Act, which currently covers the vast majority of retail foods, to restaurants foods as well, which were exempted from the NLEA when it first passed.

The marketing of junk food—especially to kids—is out of control. It was estimated that junk food marketers, alone, spent $15 billion in 2002 promoting their fare. And, I don't have to tell you, they are not advertising broccoli and apples. No, the majority of these ads are for candy and fast food—foods that are high in sugar, salt, fat, and calories.

Children—especially those under 8 years of age—do not always have the ability to distinguish fact from fiction. The number of TV ads that kids see over the course of their childhood has doubled from 20,000 to 40,000. The sad thing is that, way back in the 1970s, the Federal Trade Commission recommended banning TV advertising to kids. And what was Congress's response? We made it even harder for the FTC to regulate advertising for children than it is to regulate advertising for adults. My bill will restore the authority of the FTC to regulate marketing to kids, and it encourages the FTC to do so.

The fourth component of the HeLP American Act addresses Reimbursements for Prevention Services. Right now, our medical system is setup to pay doctors to perform a $20,000 gastric bypass instead of offering advice on how to avoid such risky procedures. The bill will reimburse and reward physicians for practicing prevention and screenings. It will also expand Medicare coverage to pay for counseling for nutrition and physical activity, mental health screenings, and smoking-cessation programs. It also would establish a demonstration project in the Medicare program, long overdue in my opinion, under which we can learn how best to use our health care dollars to prevent chronic diseases rather than just manage them once they've occurred. Frankly, it's a little embarrassing that we haven't done this before.

Finally, let me point out that the HeLP America Act will be paid for by creating a new National Health Promotion Trust Fund paid for through penalties on tobacco companies that fail to cut smoking rates among children, by ending the taxpayer subsidy of tobacco advertising, and also by reinstating the top income tax rates for wealthy Americans.

It's time for the Senate to lead America in a new direction. We need a new health care paradigm—a prevention paradigm.

Some will argue that avoiding obesity and preventable disease is strictly a matter of personal responsibility. Well, we all agree that individuals should act responsibly. I'm all for personal responsibility. But I also believe in government responsibility. Government has a responsibility to ensure that people have the information and tools and incentives they need to take charge of their health. And that is what the HeLP America Act is all about.

Of course, this description of my bill just scratches the surface. The HeLP America Act is comprehensive. It is ambitious. And I fully expect an uphill fight in some quarters of Congress.

But just as with the Americans with Disabilities Act 14 years ago, I am committed to doing whatever it takes—and for as long as it takes—to pass this critically needed legislation.

It's time to heed the Golden Rule of Holes, which says: When you are in a hole, stop digging. Well, we have dug one whopper of a hole by failing to emphasize prevention and wellness. And it's time to stop digging.

By Mr. THUNE (for himself, Ms. SNOWE, Mr. BINGAMAN, Ms. COLLINS, Mr. DOMENICI, Mr. GREGG, Mr. JOHNSON, Mr. LOTT, Ms. MURKOWSKI, Mr. STEVENS, and Mr. SUNUNU):

S. 1075. A bill to postpone the 2005 round of defense base closure and realignment; to the Committee on Armed Services.

Mr. THUNE. Mr. President, I rise today to introduce a bill that would delay the implementation of the 2005 round of the Defense Base Closure and Realignment report issued by the Department of Defense on May 13, 2005. The bill would postpone the execution of any decisions recommended in the report until certain anticipated events, having potentially large or unforeseen implications for our military force structure, have occurred, and both the department and Congress have had a chance to fully study the effects such events will have on our base requirements.

The bill identifies three principal actions that must occur before implementation of BRAC 2005. First, there must be a complete analysis and consideration of the recommendations of the Commission on Review of Overseas Military Structures. The overseas base commission has itself called upon the Department of Defense to ''slow down and take a breath'' before moving forward on basing decisions without knowing exactly where units will be returned and if those installations are prepared or equipped to support units that will return from garrisons in Europe, consisting of approximately 70,000 personnel.

Second, BRAC should not occur while this country is engaged in a major war and rotational deployments are still ongoing. We have seen enough disruption of both military and civilian institutions due to the logistical strain brought about by these constant rotations of units and personnel to Iraq and Afghanistan without, at the same time, initiating numerous base closures and the multiple transfer of units and missions from base to base. This is simply too much to ask of our military, our communities and the families of our

servicemen and women, already stretched and over-taxed. And frankly, our efforts right now must be devoted to winning the global war on terrorism, not packing up and moving units around the country.

Our bill would delay implementation of BRAC until the Secretary of Defense determines that substantially all major combat units and assets have been returned from deployment in the Iraq theater of operations, whenever that might occur.

Third, to review or implement the BRAC recommendations without having the benefit of either the Commission or Congress studying the Quadrennial Defense Review, due in 2006, and its long-term planning recommendations seems counter-intuitive and completely out of logical sequence. Therefore, the bill requires that Congress receive the QDR and have an opportunity to study its planning recommendations as one of the conditions before implementing BRAC 2005.

Fourth and Fifth: BRAC should not go forward until the implementation and development by the Secretaries of Defense and Homeland Security of the National Maritime Security Strategy; and the completion and implementation of Secretary of Defense's Homeland Defense and Civil Support Directive—only now being drafted. These two planning strategies should be key considerations before beginning any BRAC process.

Finally, once all these conditions have been met, the Secretary of Defense must submit to Congress, not later than one year after the occurrence of the last of these conditions, a report that assesses the relevant factors and recommendations identified by the Commission on Review of Overseas Base Structure; the return of our thousands of troops deployed in overseas garrisons that will return to domestic bases because of either overseas base reduction or the end of our deployments in the war; and, any relevant factors identified by the QDR that would impact, modify, negate or open to reconsideration any of the recommendations submitted by the Secretary of Defense for BRAC 2005.

This proposed delay only seems logical and fair. There is no need to rush into decisions, that in a few years from now, could turn out to be colossal mistakes. We can't afford to go back and rebuild installations or relocate high-cost support infrastructure at various points in this country once those installations have been closed or stripped of their valuable capacity to support critical missions. I, therefore, introduce this legislation today and call upon my colleagues to join us in supporting its passage.

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

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

S. 1075

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

SECTION 1. POSTPONEMENT OF 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT.

(a) POSTPONEMENT.—Effective May 13, 2005, the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by adding at the end the following:

''SEC. 2915. POSTPONEMENT OF 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT.

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the round of defense base closure and realignment otherwise scheduled to occur under this part in 2005 by reasons of sections 2912, 2913, and 2914 shall occur instead in the year following the year in which the last of the actions described in subsection (b) occurs (in this section referred to as the 'postponed closure round year').

''(b) ACTIONS REQUIRED BEFORE BASE CLOSURE ROUND.—(1) The actions referred to in subsection (a) are the following actions:

''(A) The complete analysis, consideration, and, where appropriate, implementation by the Secretary of Defense of the recommendations of the Commission on Review of Overseas Military Facility Structure of the United States.

''(B) The return from deployment in the Iraq theater of operations of substantially all (as determined by the Secretary of Defense) major combat units and assets of the Armed Forces.

''(C) The receipt by the Committees on Armed Services of the Senate and the House of Representatives of the report on the quadrennial defense review required to be submitted in 2006 by the Secretary of Defense under section 118(d) of title 10, United States Code.

''(D) The complete development and implementation by the Secretary of Defense and the Secretary of Homeland Security of the National Maritime Security Strategy.

''(E) The complete development and implementation by the Secretary of Defense of the Homeland Defense and Civil Support directive.

''(F) The receipt by the Committees on Armed Services of the Senate and the House of Representatives of a report submitted by the Secretary of Defense that assesses military installation needs taking into account—

''(i) relevant factors identified through the recommendations of the Commission on Review of Overseas Military Facility Structure of the United States;

''(ii) the return of the major combat units and assets described in subparagraph (B);

''(iii) relevant factors identified in the report on the 2005 quadrennial defense review;

''(iv) the National Maritime Security Strategy; and

''(v) the Homeland Defense and Civil Support directive.

''(2) The report required under subparagraph (F) of paragraph (1) shall be submitted not later than one year after the occurrence of the last action described in subparagraphs (A) through (E) of such paragraph.

''(c) ADMINISTRATION.—For purposes of sections 2912, 2913, and 2914, each date in a year that is specified in such sections shall be deemed to be the same date in the postponed closure round year, and each reference to a fiscal year in such sections shall be deemed to be a reference to the fiscal year that is the number of years after the original fiscal year that is equal to the number of years that the postponed closure round year is after 2005.''.

(b) INEFFECTIVENESS OF RECOMMENDATIONS FOR 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT.—Effective May 13, 2005, the list of military installations recommended for closure that the Secretary of Defense submitted pursuant to section 2914(a) of the Defense Base Closure and Realignment Act of 1990 shall have no further force and effect.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 145—DESIGNATING JUNE 2005 AS ''NATIONAL SAFETY MONTH''

Mr. DEWINE (for himself and Mrs. FEINSTEIN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 145

Whereas the mission of the National Safety Council is to educate and influence society to adopt safety, health, and environmental policies, practices, and procedures that prevent and mitigate human suffering and economic losses arising from preventable causes;

Whereas the National Safety Council works to protect lives and promote health with innovative programs;

Whereas the National Safety Council, founded in 1913, is celebrating its 92nd anniversary in 2005 as the premier source of safety and health information, education, and training in the United States;

Whereas the National Safety Council was congressionally chartered in 1953, and is celebrating its 52nd anniversary in 2005 as a congressionally chartered organization;

Whereas even with advancements in safety that create a safer environment for the people of the United States, such as new legislation and improvements in technology, the unintentional-injury death toll is still unacceptable;

Whereas the National Safety Council has demonstrated leadership in educating the Nation in the prevention of injuries and deaths to senior citizens as a result of falls;

Whereas citizens deserve a solution to nationwide safety and health threats;

Whereas such a solution requires the cooperation of all levels of government, as well as the general public;

Whereas the summer season, traditionally a time of increased unintentional-injury fatalities, is an appropriate time to focus attention on both the problem and the solution to such safety and health threats; and

Whereas the theme of ''National Safety Month'' for 2005 is ''Safety: Where We Live, Work, and Play'': Now, therefore, be it

Resolved, That the Senate—

(1) designates June 2005 as ''National Safety Month''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities that promote acknowledgment, gratitude, and respect for the advances of the National Safety Council and its mission.

Mr. DEWINE. Mr. President, today I join with Senator FEINSTEIN to submit a resolution to designate June 2005 as ''National Safety Month.'' This year, the National Safety Council has selected ''Safety: Where We Live, Work, and Play'' as the theme for National Safety Month.

Public safety in our homes, communities, workplace, and on our roads and highways is a vital challenge that we must constantly address. According to

the National Safety Council, more than 20 million Americans suffer disabling injuries and 100,000 people die from their injuries each year. In the United States, nearly 43,000 people die each year from motor vehicle crashes, making auto fatalities the number one killer of those between the ages of 4 and 34. Many of these deaths and injuries can be prevented with proper education and precautionary measures.

The goal of National Safety Month is to raise public awareness of safety and prevention in hopes of reducing these deaths and injuries. June also is an appropriate month to focus our efforts on public safety since the summer season is traditionally a time of increased unintentional injuries and fatalities. Throughout the month, the National Safety Council and other safety organizations will urge businesses to increase their standards of safety in the workplace and provide information to individuals regarding injury prevention in homes, communities, and on roads and highways. I look forward to working with other members of the Senate and House and the safety organizations to help educate the public on the importance of injury prevention, so that we can reach our goal of saving more lives.

I thank Senator FEINSTEIN for her support of this resolution and for her continued dedication to public safety. I would also like to thank the National Safety Council and congratulate them as the Council celebrates its 92nd anniversary in 2005, as a leading source of safety and health information, education, and training in the United States.

SENATE RESOLUTION 146—RECOGNIZING THE 25TH ANNIVERSARY OF THE ERUPTION OF MOUNT ST. HELENS

Ms. CANTWELL (for herself, Mrs. MURRAY, Mr. STEVENS, and Mr. PRYOR) submitted the following resolution; which was considered and agreed to:

S. RES. 146

Whereas, on May 18, 1980, at 8:32 a.m. Pacific Daylight Time, the volcano of Mount St. Helens erupted, changing its elevation from 9,677 feet to 8,363 feet;

Whereas the eruption was triggered by an earthquake of magnitude 5.1 approximately 1 mile beneath the volcano;

Whereas the lateral blast covered an area approximately 230 square miles and reached as far as 17 miles northwest of the crater;

Whereas the velocity of the blast was estimated to be at least 300 miles per hour;

Whereas the pyroclastic flows covered 6 square miles, reached temperatures of 1,300 degrees Fahrenheit, and moved at speeds between 50 and 80 miles per hour;

Whereas, as a result of the eruption, over 4,000,000,000 board-feet of timber was blown down, which is enough material to build about 150,000 homes;

Whereas volcanic ash clouded the sky above eastern Washington, reached the east coast of the United States in 3 days, and eventually circled the globe in 15 days;

Whereas the eruption claimed the lives of 57 people; and

Whereas tens of thousands of animals perished: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the 25th Anniversary of the eruption of Mount St. Helens on May 18, 2005;

(2) acknowledges the importance of monitoring all 169 volcanoes in the United States and its territories;

(3) recognizes the invaluable work of the Department of the Interior, the United States Geological Survey, the United States Forest Service, the Directorate of Emergency Preparedness and Response of the Department of Homeland Security, and the Cascade Volcano Observatory in monitoring the activities of Mount St. Helens;

(4) acknowledges the progress in science that has led to a more comprehensive understanding of volcanology, seismology, and plate tectonics, thus enhancing the ability to predict volcanic activity and eruptions; and

(5) supports monitoring volcanoes and helping to develop emergency response plans to ensure that the people and communities of the United States are safe.

SENATE RESOLUTION 147—DESIGNATING JUNE 2005 AS ''NATIONAL INTERNET SAFETY MONTH''

Ms. MURKOWSKI (for herself, Mr. CRAPO, Mr. DEWINE, Mr. CRAIG, Ms. LANDRIEU, Mrs. LINCOLN, Mr. VITTER, Mr. ALLEN, and Mrs. FEINSTEIN) submitted the following resolution; which was considered and agreed to:

S. RES. 147

Whereas in the United States, more than 90 percent of children in grades 5–12 now use computers;

Whereas 26 percent of children in grades 5–12 in the United States are online for more than 5 hours a week, and 12 percent of such children spend more time online than they do with their friends;

Whereas 53 percent of children and teens in the United States like to be alone when ''surfing'' the Internet, and 29 percent of such children believe their parents would either express concern, restrict their Internet use, or take away their computer if their parents knew where they were surfing on the Internet;

Whereas 32 percent of the Nation's students in grades 5–12 feel they have the skills to get past filtering software, and 31 percent of youths in the United States have visited an inappropriate place on the Internet, 18 percent of them more than once;

Whereas 51 percent of the Nation's students in grades 5–12 trust the people they chat with on the Internet;

Whereas 12 percent of the Nation's students in grades 5–12 have been asked by someone they chatted with on the Internet to meet face to face, and 11.5 percent of such students have actually met face to face with a stranger they chatted with on the Internet; and

Whereas 39 percent of youths in grades 5–12 in the United States admit to giving out their personal information, such as name, age, and gender over the Internet, and 14 percent of such youths have received mean or threatening email while on the Internet: Now, therefore, be it

Resolved, That the Senate—

(1) designates June 2005 as ''National Internet Safety Month'';

(2) recognizes that National Internet Safety Month provides an opportunity to educate the people of the United States on the dangers of the Internet and the importance of being safe and responsible online;

(3) commends and recognizes national and community organizations for their work in promoting awareness of the dangers of the Internet and for providing information and training that develops the critical thinking and decision making skills needed to be safe online; and

(4) calls on Internet safety organizations, law enforcement, educators, community leaders, parents, and volunteers to increase their efforts to raise the level of awareness in the United States regarding the need for online safety.

SENATE RESOLUTION 148—TO AUTHORIZE THE DISPLAY OF THE SENATE LEADERSHIP PORTRAIT COLLECTION IN THE SENATE LOBBY

Mr. LOTT (for himself and Mr. DODD) submitted the following resolution; which was considered and agreed to:

S. RES. 148

Whereas the objective of the Senate Leadership Portrait Collection is to commemorate the distinguished service to the Senate and the Nation of those Senators who have served as Majority Leader, Minority Leader, or President pro tempore: Now, therefore, be it

Resolved, That (a) portraits in the Senate Leadership Portrait Collection may be displayed in the Senate Lobby at the direction of the Senate Commission on Art in accordance with guidelines prescribed pursuant to subsection (d).

(b) The Senate Leadership Portrait Collection shall consist of portraits selected by the Senate Commission on Art of Majority or Minority Leaders and Presidents pro tempore of the Senate.

(c) Any portrait for the Senate Leadership Portrait Collection that is acquired on or after the date of adoption of this resolution shall be of an appropriate size for display in the Senate Lobby, as determined by the Senate Commission on Art.

(d) The Senate Commission on Art shall prescribe such guidelines as it deems necessary, subject to the approval of the Committee on Rules and Administration, to carry out this resolution.

AMENDMENTS SUBMITTED AND PROPOSED

SA 762. Mr. NELSON, of Florida (for himself, Mr. HAGEL, Mr. CORZINE, Mr. NELSON of Nebraska, Mr. SMITH, Ms. CANTWELL, Mr. DAYTON, Mr. KERRY, Ms. LANDRIEU, Ms. MIKULSKI, Mrs. MURRAY, Ms. STABENOW, Mrs. BOXER, Mr. PRYOR, Mr. DURBIN, Mr. JEFFORDS, Mr. JOHNSON, and Mr. SALAZAR) submitted an amendment intended to be proposed by him to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 762. Mr. NELSON of Florida (for himself, Mr. HAGEL, Mr. CORZINE, Mr. NELSON of Nebraska, Mr. SMITH, Ms. CANTWELL, Mr. DAYTON, Mr. KERRY, Ms. LANDRIEU, Ms. MIKULSKI, Mrs. MURRAY, Ms. STABENOW, Mrs. BOXER, Mr. PRYOR, Mr. DURBIN, Mr. JEFFORDS, Mr. JOHNSON, and Mr. SALAZAR) submitted an amendment intended to be

proposed by him to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities and the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table as follows:

At the end of subtitle D of title VI, add the following:

SEC. 642. REPEAL OF REQUIREMENT OF REDUCTION OF SBP SURVIVOR ANNUITIES BY DEPENDENCY AND INDEMNITY COMPENSATION.

(a) REPEAL.—Subchapter II of chapter 73 of title 10, United States Code is amended—

(1) in section 1450(c)(1), by inserting after ''to whom section 1448 of this title applies'' the following: ''(except in the case of a death as described in subsection (d) or (f) of such section)''; and

(2) in section 1451(c)—

(A) by striking paragraph (2); and

(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(b) PROHIBITION ON RETROACTIVE BENEFITS.—No benefits may be paid to any person for any period before the effective date provided under subsection (e) by reason of the amendments made by subsection (a).

(c) PROHIBITION ON RECOUPMENT OF CERTAIN AMOUNTS PREVIOUSLY REFUNDED TO SBP RECIPIENTS.—A surviving spouse who is or has been in receipt of an annuity under the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, that is in effect before the effective date provided under subsection (e) and that is adjusted by reason of the amendments made by subsection (a) and who has received a refund of retired pay under section 1450(e) of title 10, United States Code, shall not be required to repay such refund to the United States.

(d) RECONSIDERATION OF OPTIONAL ANNUITY.—Section 1448(d)(2) of title 10, United States Code, is amended by adding at the end the following new sentences: ''The surviving spouse, however, may elect to terminate an annuity under this subparagraph in accordance with regulations prescribed by the Secretary concerned. Upon such an election, payment of an annuity to dependent children under this subparagraph shall terminate effective on the first day of the first month that begins after the date on which the Secretary concerned receives notice of the election, and, beginning on that day, an annuity shall be paid to the surviving spouse under paragraph (1) instead.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the later of—

(1) the first day of the first month that begins after the date of the enactment of this Act; or

(2) the first day of the fiscal year that begins in the calendar year in which this Act is enacted.

SEC. 643. EFFECTIVE DATE FOR PAID-UP COVERAGE UNDER SURVIVOR BENEFIT PLAN.

Section 1452(j) of title 10, United States Code, is amended by striking ''October 1, 2008'' and inserting ''October 1, 2005''.

PRIVILEGE OF THE FLOOR

Mr. CORNYN. Mr. President, I ask unanimous consent that Caroline Garner, a member of my staff, be granted the privileges of the floor.

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

PRIVILEGE OF THE FLOOR

Mr. DAYTON. Mr. President, I ask unanimous consent the privilege of the floor be granted to Dana Chasin on my staff today and for subsequent debate on judicial nominations.

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

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

On Tuesday, May 17, 2005, the Senate passed H.R. 3, as follows:

(The bill will be printed in a future edition of the RECORD.)

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a–1928d, as amended, appoints the following Senators to the Senate Delegation to the NATO Parliamentary Assembly during the 109th Congress: The Honorable JEFF SESSIONS of Alabama; the Honorable MIKE ENZI of Wyoming; the Honorable JIM BUNNING of Kentucky; and the Honorable NORM COLEMAN of Minnesota.

ORDER TO PRINT H.R. 3

Mr. FRIST. I ask unanimous consent that H.R. 3, as passed by the Senate, be printed as passed.

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

RECOGNIZING THE 25TH ANNIVERSARY OF THE ERUPTION OF MOUNT ST. HELENS

Mr. FRIST. I ask unanimous consent the Senate proceed to the immediate consideration of S. Res. 146, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 146) recognizing the 25th anniversary of the eruption of Mount St. Helens.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid on the table, and any statements be printed in the RECORD without intervening action or debate.

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

The resolution (S. Res. 146) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 146

Whereas, on May 18, 1980, at 8:32 a.m. Pacific Daylight Time, the volcano of Mount St. Helens erupted, changing its elevation from 9,677 feet to 8,363 feet;

Whereas the eruption was triggered by an earthquake of magnitude 5.1 approximately 1 mile beneath the volcano;

Whereas the lateral blast covered an area approximately 230 square miles and reached as far as 17 miles northwest of the crater;

Whereas the velocity of the blast was estimated to be at least 300 miles per hour;

Whereas the pyroclastic flows covered 6 square miles, reached temperatures of 1,300 degrees Fahrenheit, and moved at speeds between 50 and 80 miles per hour;

Whereas, as a result of the eruption, over 4,000,000,000 board-feet of timber was blown down, which is enough material to build about 150,000 homes;

Whereas volcanic ash clouded the sky above eastern Washington, reached the east coast of the United States in 3 days, and eventually circled the globe in 15 days;

Whereas the eruption claimed the lives of 57 people; and

Whereas tens of thousands of animals perished: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the 25th Anniversary of the eruption of Mount St. Helens on May 18, 2005;

(2) acknowledges the importance of monitoring all 169 volcanoes in the United States and its territories;

(3) recognizes the invaluable work of the Department of the Interior, the United States Geological Survey, the United States Forest Service, the Directorate of Emergency Preparedness and Response of the Department of Homeland Security, and the Cascade Volcano Observatory in monitoring the activities of Mount St. Helens;

(4) acknowledges the progress in science that has led to a more comprehensive understanding of volcanology, seismology, and plate tectonics, thus enhancing the ability to predict volcanic activity and eruptions; and

(5) supports monitoring volcanoes and helping to develop emergency response plans to ensure that the people and communities of the United States are safe.

NATIONAL INTERNET SAFETY MONTH

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of S. Res. 147 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 147) designating June 2005 as National Internet Safety Month.

There being no objection, the Senate proceeded to consider the resolution.

Ms. MURKOWSKI. Mr. President, I rise in support of the resolution designating June 2005 as National Internet Safety Month. I am pleased to have Mr. CRAPO, Mr. DEWINE, Mr. CRAIG, Ms. LANDRIEU, Mrs. LINCOLN, Mr. ALLEN, and Mrs. FEINSTEIN join me in submitting this resolution.

The Internet has become one of the most significant advances in the twentieth century and, as a result, it affects people's lives in a positive manner each day. However, this technology presents dangers that need to be brought to the attention of all Americans.

Never before has the problem of online predatory behavior been more of a concern. Consider the pervasiveness of Internet access by children and the rapid increase in Internet crime and predatory behavior. Never before have powerful educational solutions—like

Internet safety curricula for grades kindergarten through 12, youth empowerment Internet safety campaigns and community-based Internet safety awareness presentations with the formation of community action teams—been more critical and readily at hand. It is imperative that every community in every State be made aware of the increase in Internet-based criminal activity so that all Americans may learn about the Internet safety strategies which will help them to keep their children safe from victimization.

Consider the facts: In the United States, more than 90 percent of children in grades 5 through 12 now use computers and have Internet access. Twenty-six percent of children in that age group are online for more than 5 hours a week and 12 percent spend more time online than they do with their friends.

An alarming statistic is that 39 percent of youths in grades 5 through 12 in the United States admit giving out their personal information, such as their name, age and gender over the Internet. Furthermore, 12 percent of students in the same age group have been asked by a stranger on the Internet to meet face to face. Unfortunately, 11.5 percent of students in this age group have actually met face to face with a stranger they met on the Internet.

Most disturbing are the patterns of Internet crimes against children. In 1996, the Federal Bureau of Investigation was involved in 113 cases involving Internet crimes against children. In 2001, the FBI opened 1,541 cases against people suspected of using the Internet to commit crimes involving child pornography or abuse. The U.S. Customs Service now places the number of Web sites offering child pornography at more than 100,000. Moreover, there was a 345 percent increase in the production of these sites just between February 2001 and July 2001, according to a recent study.

Now is the time for America to focus its attention on supporting Internet safety, especially bearing in mind that children will soon be on summer vacation and will subsequently spend more time online. Recent Internet crime trends indicate a call to action as it pertains to national Internet safety awareness at all levels.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 147) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 147

Whereas in the United States, more than 90 percent of children in grades 5–12 now use computers;

Whereas 26 percent of children in grades 5–12 in the United States are online for more than 5 hours a week, and 12 percent of such children spend more time online than they do with their friends;

Whereas 53 percent of children and teens in the United States like to be alone when ''surfing'' the Internet, and 29 percent of such children believe their parents would either express concern, restrict their Internet use, or take away their computer if their parents knew where they were surfing on the Internet;

Whereas 32 percent of the Nation's students in grades 5–12 feel they have the skills to get past filtering software, and 31 percent of youths in the United States have visited an inappropriate place on the Internet, 18 percent of them more than once;

Whereas 51 percent of the Nation's students in grades 5–12 trust the people they chat with on the Internet;

Whereas 12 percent of the Nation's students in grades 5–12 have been asked by someone they chatted with on the Internet to meet face to face, and 11.5 percent of such students have actually met face to face with a stranger they chatted with on the Internet; and

Whereas 39 percent of youths in grades 5–12 in the United States admit to giving out their personal information, such as name, age, and gender over the Internet, and 14 percent of such youths have received mean or threatening email while on the Internet: Now, therefore, be it

Resolved, That the Senate—

(1) designates June 2005 as ''National Internet Safety Month'';

(2) recognizes that National Internet Safety Month provides an opportunity to educate the people of the United States on the dangers of the Internet and the importance of being safe and responsible online;

(3) commends and recognizes national and community organizations for their work in promoting awareness of the dangers of the Internet and for providing information and training that develops the critical thinking and decision making skills needed to be safe online; and

(4) calls on Internet safety organizations, law enforcement, educators, community leaders, parents, and volunteers to increase their efforts to raise the level of awareness in the United States regarding the need for online safety.

AUTHORIZING DISPLAY OF SENATE LEADERSHIP PORTRAIT COLLECTION

Mr. FRIST. I ask unanimous consent the Senate now proceed to consideration of S. Res. 148 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 148) to authorize the display of the Senate leadership portrait collection in the Senate lobby.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The resolution (S. Res. 148) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 148

Whereas the objective of the Senate Leadership Portrait Collection is to commemorate the distinguished service to the Senate and the Nation of those Senators who have served as Majority Leader, Minority Leader, or President pro tempore: Now, therefore, be it

Resolved, That (a) portraits in the Senate Leadership Portrait Collection may be displayed in the Senate Lobby at the direction of the Senate Commission on Art in accordance with guidelines prescribed pursuant to subsection (d).

(b) The Senate Leadership Portrait Collection shall consist of portraits selected by the Senate Commission on Art of Majority or Minority Leaders and Presidents pro tempore of the Senate.

(c) Any portrait for the Senate Leadership Portrait Collection that is acquired on or after the date of adoption of this resolution shall be of an appropriate size for display in the Senate Lobby, as determined by the Senate Commission on Art.

(d) The Senate Commission on Art shall prescribe such guidelines as it deems necessary, subject to the approval of the Committee on Rules and Administration, to carry out this resolution.

MEASURES READ THE FIRST TIME—S. 1061 AND S. 1062

Mr. FRIST. Mr. President, I understand that there are two bills at the desk, and I ask for their first reading en bloc.

The PRESIDING OFFICER. The clerk will read the titles of the bills for the first time en bloc.

The legislative clerk read as follows:

A bill (S. 1061) to provide for secondary school reform, and for other purposes.

A bill (S. 1062) to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

Mr. FRIST. Mr. President, I now ask for a second reading and, in order to place the bills on the calendar under the provisions of rule XIV, I object to my own request, all en bloc.

The PRESIDING OFFICER. Objection is heard.

The bills will receive their second reading on the next legislative day.

S. 1062

Mr. KENNEDY. Mr. President, it has now been 8 long years since the Nation's hardworking men and women had an increase in the minimum wage. The essence of the American dream is that if people work hard and play by the rules they can succeed in life and support their families. But for millions of hardworking Americans earning the minimum wage, that dream has become a cruel hoax. An American who works full time, year-round at the current minimum wage of $5.15 an hour earns $10,700 a year—$5,000 below the poverty line for a family of three. The minimum wage is too low.

Today Congressman GEORGE MILLER and I are introducing the Fair Minimum Wage Act of 2005 to raise the minimum wage to $7.25 an hour in three steps over the next 2 years. This increase will directly raise the pay of

seven and a half million workers, and indirectly benefit eight million more. Sixty-one percent of the beneficiaries are women, and one-third of those women are mothers. More than a third are people of color.

Two new reports emphasize the urgency of this increase for millions of low-wage Americans and their families. The Children's Defense Fund reports that a single parent working full time at the current minimum wage earns enough to cover only 40 percent of the cost of raising two children. Nearly 10 million children live in households that would benefit from the increase we are proposing.

A report from the Center for Economic Policy Research shows that minimum wage jobs are not just entry-level jobs for teenagers, contrary to what we often hear from opponents of the minimum wage. A third of minimum wage earners from ages 25 to 54 will still be earning the minimum wage 3 years later. Only 40 percent of them will have moved out of the low-wage workforce 3 years later.

No matter how hard they work, minimum wage workers are forced each day to make impossible choices—between paying the rent and buying groceries, or between paying the heating bill and buying clothes. These hard-working Americans have earned a raise and they deserve a raise. No one who works for a living should have to live in poverty.

ORDERS FOR THURSDAY, MAY 19, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, May 19. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and that the Senate then return to executive session and resume consideration of the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals; provided further that the time from 10 a.m. to 10:45 be under the control of the majority leader or his designee, and the time from 10:45 to 11:45 be under the control of the Democratic leader or his designee; provided further that from 11:45 to 1:45 be under majority control, and from 1:45 to 3:45 be under Democrat control. I further ask consent that the times then rotate every 60 minutes in a similar fashion; provided further that 6:45 to 8:15 be under the control of the Democratic leader or his designee, and that 8:15 to 8:45 be under the control of the majority leader or his designee.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow, the Senate will resume consideration of the nomination of Priscilla Owen to be a U.S. circuit judge for the Fifth Circuit. A number of our colleagues came to the floor today to speak on the nomination, and we had a good, substantive debate from both sides of the aisle. I hope Members will continue to come to the floor during tomorrow's session and engage in this important discussion.

I continue to hope that at some point, after everyone has had an opportunity to speak, we will be able to have an up-or-down vote on the nomination of Priscilla Owen. In the meantime, I thank Senators for coming to the floor, and I do encourage Senators to take advantage of the opportunity to speak over the course of the next several days.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8 p.m., adjourned until Thursday, May 19, 2005, at 9:30 a.m.

EXTENSIONS OF REMARKS

REMEMBERING SAMUEL WEBB SCALES

HON. CHARLES W. "CHIP" PICKERING

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 18, 2005

Mr. PICKERING. Mr. Speaker, in March, Starkville, Mississippi lost a native son and a civic leader with the passing of Samuel Webb Scales. He served his family, our Nation's military, and achieved greatness in the world of international business.

After graduating from Starkville High School, Sam Scales went on to further education at the University of the South, Mississippi State College and the Vanderbilt Law School. For the past twelve years he has served as the Civilian Aide to the Secretary of the Army, and was bestowed with the title of Civilian Aide to the Secretary of the Army Emeritus two years ago, which has the equivalent military rank of Lieutenant General.

Sam Scales served in the U.S. Marine Corps from 1941 until 1945 and attained the rank of Sergeant Major. He served in the U.S. Army Reserve from 1948 to 1972 and retired at the rank of Lieutenant Colonel. During his military career, he served in various assignments including Troop Commander (Calvary); Aide de Camp to Commanding General (Armored Division); General Staff Officer, Joint General Staff (Thailand); General Staff Officer (Australian Army).

Sam Scales served as Vice President of the Harlington National Bank (Texas); Chairman of the Board of Starr Associates (Bangkok, Thailand); Liaison Officer of Phoenix Assurance (Sidney, Australia); Chairman of the Board of Service Y Comisiones S.A. de CY (Mexico City); Senior Vice President of Continental Insurance Company and Regional Vice President for Latin America (Panama) as well as fourteen other U.S. corporations located throughout Latin America.

He was a member of the Association of the U.S. Army (AUSA), the Navy League and Sigma Chi Fraternity at Mississippi State University. He was a member of the Episcopal Church of the Resurrection in Starkville.

Mr. Speaker, Starkville mourns the passing of Sam Scales. Our prayers go with his wife Bette, his children Hunter, Twila, Bette, Walton, John and Jennifer as well as his five grandchildren and one great-grandchild. His accomplishments, like so many of his generation, can hardly be measured in words, but I am proud to have been able to take this opportunity to note his life's achievements and to remember this young boy from Starkville who grew to be a great man and leader around the world.

IN MEMORY OF PETER RODINO, JR.

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 18, 2005

Mr. RANGEL. Mr. Speaker, I rise to honor the life of Congressman Peter Rodino, Jr., a great American and distinguished member of this body. Congressman Rodino passed away recently, and the life he led is without question worthy of our praise.

In Congress, Peter represented the Newark area of New Jersey for over 40 years. In such time he would be associated with some of the most important events in American History. As Chairman of the House Judiciary Committee he presided over the Watergate Hearings that ultimately resulted in the resignation of a sitting President.

However, his stewardship during that trying process was executed with a humbleness and reverence that earned him the respect of a grateful Nation. In so doing, he demonstrated to his fellow Congressional colleagues the requirements of true leadership.

Peter Rodino, Jr. was born in Newark, New Jersey in 1909, to a hardworking immigrant family. He received a bachelor's degree from the University of Newark and a law degree from Rutgers University before starting a law practice in the late 1930's.

He would later serve his country during World War II, where he earned the Bronze Star and would have the distinction of being one of the first enlisted men to receive a battlefield commission as an officer.

In 1949 he was elected to the U.S. Congress where he built his reputation through his work on veterans affairs and civil rights issues. In the 1980s, he fought against what he viewed as efforts by the Reagan administration to limit the reach of civil rights laws, as well as efforts to end school busing.

He supported landmark civil rights legislation in 1957 and was one of the primary sponsors of the Civil Rights Act of 1966. In the mid–1960s, he helped lead an effort to end immigration quotas and enact fair-housing standards. He also wrote the 1982 extension to the Voting Rights Act, and was House leader in making Martin Luther King Jr.'s birthday a national holiday.

Despite all this he was best known for his leadership on the Judiciary Committee during the Congressional hearings on Watergate. In a period that was so politically charged, Peter was seen as fair, objective, and dedicated to upholding the integrity of the Congress.

At the outset of the hearings he set the tone by stating "Whatever the result, whatever we learn or conclude, let us now proceed with such care and decency and thoroughness and honor that the vast majority of American people, and their children after them, will say: That was the right course. There was no other way."

He never wavered from the spirit of those words, as the hearings played out over the coming months. In the end, though the country would see their President resign, they had confidence that the system had done its job, and that our government would endure.

This was due in large part to Peter's leadership. At that time, I was a young man just beginning my tenure in Congress, but having had the opportunity to observe Peter taught me lessons of leadership that I have never forgotten.

William Penn once said, "Sense shines with a double luster when it is set in humility. An able and yet humble man is a jewel worth a kingdom." If this is the measure of a man, than Congressmen Peter Rodino is a jewel our nation will never replace. His spirit and the lessons his life provide will continue to guide us.

CONGRATULATIONS AND BEST WISHES TO SISTER GRETCHEN KUNZ

HON. CHET EDWARDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 18, 2005

Mr. EDWARDS. Mr. Speaker, I rise today to recognize a champion for improved access to healthcare, Sister Gretchen Kunz, president and CEO of the St. Joseph's Health System. I would like to extend my most sincere thanks and congratulations to Sister Gretchen for her principled service and dedication to the healthcare needs of Brazos Valley citizens. Since first coming to St. Joseph's in 1981, Sister Gretchen has shepherded St. Joseph's through many challenges while expanding access to the quality care that Brazos Valley citizens need and deserve.

On June 13th, Sister Gretchen will start a new mission for St. Joseph's, bringing her unparalleled energy to the hospital system's charitable organization, the St. Joseph's Foundation. There, Sister Gretchen will continue to serve the needs of the community as she has done so well for the last 24 years. We can rest assured that Sister Gretchen's legacy of passionate service and motto of "there is no end to getting better" will continue to inspire those who follow in her footsteps.

The career of Sister Gretchen Kunz is a model of selfless service and sacrifice. Her tireless efforts to improve the quality of life for the people of the Brazos Valley have undoubtedly touched countless lives.

It is my privilege to honor the work of Sister Gretchen Kunz and I personally want to thank her for the shining example to us all and wish her well in her future endeavors.

RECOGNIZING THE CHILDREN OF CONGREGATION SHIR SHALOM OF SONOMA, CALIFORNIA

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 18, 2005

Mr. THOMPSON of California. Mr. Speaker, I rise today to acknowledge the children of Congregation Shir Shalom in Sonoma, California who are deeply concerned about the tragedy taking place in Darfur, Sudan. These children recognize that the world cannot stand by while whole populations are slaughtered because of their race or religious beliefs. In the children's own words:

We are Jewish children at Congregation Shir Shalom in Sonoma, California, who have learned about tikkun olam, about making the world a better place. We have learned that Jews cannot be just for ourselves. We must be for others, too.

In our synagogue's school, we have learned there are other children we do not know, but who are living in danger in Darfur, Sudan. We know that bandits and other bad people are killing them and their families. Many people have died in Darfur, including many children. Also, children in Darfur and their mothers and fathers have had their things stolen from them. Because of all this millions have run away from their homes in Darfur.

As Jewish children, we know about the Holocaust, when Jews were killed just for being Jews. We know that there are people in Darfur who are now being killed just for being who they are.

Knowing this, we know we cannot stand by and let it happen. We know we are only children, so we need the help of grown-ups in our city, our state, and national governments to take action to protect the children in Darfur and their families.

We ask our government to make it safe for families living in Darfur. We ask for bandits and other bad people to be stopped from robbing and killing the children, women, and men living in Darfur. That way maybe all the food that is being sent to the people in Darfur might get through. Books might get through, too, and then children in Darfur can get to go to school like we do.

We ask all this because we are all human, and it is important to not just think of ourselves. It is important to make the world a better place for children like us who just want peace and maybe a chance to play and have fun like we can do in Sonoma, California.

Please listen to what we are asking and do what you can do to help those living in Darfur, Sudan have a chance to be happy.

Mr. Speaker, these words are profound and they will echo through history. We owe it to the children of Congregation Shir Shalom and to the children of Darfur to do everything in our power to resolve this grave humanitarian crisis.

PROVIDING FOR CONSIDERATION OF H.R. 1279, GANG DETERRENCE AND COMMUNITY PROTECTION ACT OF 2005

SPEECH OF

HON. HILDA L. SOLIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 11, 2005

Ms. SOLIS. Mr. Speaker, I rise today in opposition to H.R. 1279. This punitive bill does nothing to help fight and deter the root of the gang problem plaguing our neighborhoods. I represent communities that are afflicted with gang violence, and I know first hand the suffering that families have to go through as a result. I support a combined approach to the gang problem that encourages prevention, intervention and suppression.

This bill is filled with criminal sanctions that would only help exacerbate the gang problem. The legislation would federalize a host of crimes currently and competently handled by the states. It would also penalize even nonviolent drug dealing and some misdemeanors as crimes of violence. Without reason, the legislation expands the definition of criminal street gang. The bill imposes unduly harsh and discriminatory mandatory minimum sentences and expands the use of the federal death penalty to new offenses.

I strongly oppose the provision that allows the government sole discretion in deciding whether or not to try juveniles as adults. It is a proven fact that prosecuting children as adults increases, not decreases, crime. Study after study has shown that youth transferred to the adult criminal justice system are more likely to re-offend and to commit more serious crimes upon release than youth who remained in the juvenile system. At a time when the Bush administration has proposed huge cuts to programs that serve our youth, it is irresponsible to pass legislation that would only destabilize our communities and aggravate crime.

This bill is a simplistic approach to a complex problem that has its roots in the lack of a quality education and after school programs and negative influences from adults and broken families, among other problems. Our society must provide young people with meaningful alternatives that will draw them away from the gang lifestyle. We should not be soft on crime; my community has suffered for many years and we know how gang violence has scarred our families. That is why we must punish those who need to be punished while also remembering to give youth the opportunity to succeed in life. I support effective measures to combat gang-related crime and this bill completely fails to do that.

TRIBUTE TO LAST FULL-TIME CHAIRMAN OF TENNESSEE VALLEY AUTHORITY BOARD, GLENN MCCULLOUGH

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 18, 2005

Mr. CONYERS. Mr. Speaker, Glenn McCullough steps down today as the 12th and last full-time Chairman of the Tennessee Valley Authority Board.

I have worked with thousands of people during my years in Congress., Chairman McCullough has been one of the kindest and most honorable with whom I have had the privilege to work.

Glenn McCullough, in my opinion, has been an outstanding Chairman for TVA. He has had the extremely difficult job of attempting to balance all kinds of competing interests, and he has done the job well.

He has done great things for the environment and the employees at TVA while still remembering that many TVA ratepayers and low-income people also need help, too.

Chairman McCullough is a man of high integrity who should be remembered as one of the finest Chairman TVA has ever had. He has worked as hard as possible for the people of the Valley, and this Nation is a better place today because of his service.

I would like to call to the attention of my colleagues and other readers of the RECORD the following article from the May 16 edition of the Knoxville News Sentinel.

DEPARTING CHAIRMAN SAYS UTILITY STILL FACES FINANCIAL, ENVIRONMENTAL CHALLENGES

(By Duncan Mansfield)

Departing Chairman Glenn McCullough said the Tennessee Valley Authority is stronger than when he arrived in 1999, but the nation's largest public utility still faces financial, environmental and competitive challenges.

Tougher soot and smog requirements on coal-fired power plants could cost TVA $4 billion to $5 billion beyond the $6 billion it has already spent or committed for pollution controls.

Rising fuel prices for its fleet of fossil plants, gas turbines and nuclear stations could force further cost-cutting and a likely electric rate increase that would affect some 8.5 million people receiving TVA power in Tennessee and six surrounding states.

Yet as McCullough nears the end of his term on Wednesday, May 18, as the 12th and final full-time chairman in the 72-year history of TVA, he remains optimistic about TVA's future.

''I think TVA will continue to be a high performer,'' McCullough told The Associated Press in a recent interview in his 12th floor office at TVA headquarters in Knoxville.

McCullough, 50 was mayor of his hometown of Tupelo, Miss.—TVA's first member city—when he was appointed to an unexpired term on the three-member TVA board in 1999 by President Clinton. In 2001, President Bush elevated McCullough, backed by then-Senate Majority Leader Trent Lott, R-Miss., to chairman.

During his tenure, TVA changed its Tennessee River watershed plan to improve recreational use, set rising peak-power demand records, adopted a rate increase in 2003 to pay for coal plant pollution controls and developed the first commercial wind farm in the Southeast.

TVA also reduced a nearly $28 billion long-term debt by $1.8 billion. In doing so, the agency eliminated hundreds of jobs and put one of its twin headquarters towers in Knoxville up for sale as surplus. The tower sale is pending, and the payroll stands at 12,700—compared to more than 30,000 in the 1980s.

The self-financing government agency with a $7 billion budget also took heat over extravagant travel and entertainment spending by executives but moved quickly to crack down with new internal policies.

However, McCullough said the boldest actions were the 2001 write-off of $3.4 billion in

non-producing assets, including three unfinished nuclear reactors, and the $1.8 billion decision to restart a mothballed reactor at the Browns Ferry station in Alabama by 2007.

''It was a good business decision, not an easy one,'' he said of the write-offs, while the gamble on the Browns Ferry reactor—60 percent complete—could pay off in meeting baseload demand through 2014.

''All of those things kind of roll off the tongue, but I tell you, there are thousands of people that did their job better so that TVA could have record generation and record clean air and record economic growth and record debt reduction,'' McCullough said.

Looking ahead, McCullough said a rate increase, which has become rare in recent years at TVA, seems inevitable because of rising fuel costs that can't be controlled.

''I think the future board will have to determine what rates need to be and when adjustments are necessary,'' he said. ''I don't know how much, and I don't know when.''

McCullough doesn't know if he will be on an expanded part-time board that is being created after he leaves. Senate Majority Leader Bill Frist, R-Tenn., pushed the board restructuring to make the group more open and responsive. The White House has yet to name nominees.

McCullough sees plenty of opportunities and challenges ahead for them.

TVA is working with two national consortiums studying designs and licensing for the next generation of nuclear plants, while TVA assesses the feasibility of using its unfinished Bellefonte nuclear plant in Alabama as a possible project site.

Meanwhile, TVA continues to review efficiencies and costs of new ''clean coal'' technologies for its fossil fleet. McCullough believes coal and nuclear should remain the foundation of TVA's power system.

''We are also looking at the business model,'' McCullough said. ''There could be some opportunities for TVA to do joint ventures with perhaps other utilities or other entities that make good business sense.''

He cited TVA's deal set up a few years ago to buy power from the Red Hills Power Plant and Mississippi Lignite Mining Co. near Ackerman, Miss., as an example of a successful joint venture.

Meanwhile, growing private and commercial development along the Tennessee River continues to stir resentment among the families of former residents displaced by TVA's hydroelectric dam projects in the 1930s and '40s.

McCullough is sympathetic to a point. ''Land in the valley is almost sacred. That is a characteristic of the South that I am frankly proud of—'Don't mess with the land.' I understand that,'' he said.

''But if you look on the TVA seal, you see the words 'Progress Through Resource Development,''' he said. ''And you can't make progress without some development.''

McCullough said he is looking forward to going home to Tupelo and spending time with his wife, Laura, and two teenage sons, and weighing his career options.

More low-key than his predecessors, McCullough said being chairman of TVA, like being mayor of Tupelo, was ''a wonderful opportunity to make a positive difference.''

''I didn't ask to come to TVA, and I didn't ask to be chairman. But I was asked to do this job, and it was a unique opportunity,'' he said. ''If you get it right, if you make good decisions and fulfill the mission of TVA, then the people of the valley can be better off for generations to come. And that can be satisfying.''

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, May 19, 2005 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MAY 23

2 p.m.
Finance
Taxation and IRS Oversight Subcommittee
To hold hearings to examine exposing the individual alternative minimum tax (AMT).
SD–628

MAY 24

9:30 a.m.
Energy and Natural Resources
Business meeting to consider comprehensive energy legislation.
SD–366

10 a.m.
Commerce, Science, and Transportation
To hold hearings to examine S. 529, to designate a United States Anti-Doping Agency and to examine the competitive pressures that lead amateur athletes to use drugs, the sources of such drugs, and the science of doping.
SR–253

Finance
To hold hearings to examine the nominations of Timothy D. Adams, of Virginia, to be Under Secretary of the Treasury for International Affairs, Shara L. Aranoff, of Maryland, to be a Member of the United States International Trade Commission, Suzanne C. DeFrancis, of Maryland, to be Assistant Secretary of Health and Human Services for Public Affairs, and Charles E. Johnson, of Utah, to be Assistant Secretary of Health and Human Services for Budget, Technology, and Finance.
SD–628

Homeland Security and Governmental Affairs
Oversight of Government Management, the Federal Workforce, and the District of Columbia Subcommittee
To hold an oversight hearing to examine a review of the U.S. Office of Special Counsel, focusing on safeguarding the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing.
SD–562

2 p.m.
Homeland Security and Governmental Affairs
Federal Financial Management, Government Information, and International Security Subcommittee
To hold an oversight hearing to examine the competitive effects of specialty hospitals.
SD–562

2:30 p.m.
Judiciary
Crime and Drugs Subcommittee
To hold hearings to examine issues relating to methamphetamine abuse.
SD–226

Health, Education, Labor, and Pensions
Education and Early Childhood Development Subcommittee
To hold hearings to examine issues relating to American history.
SD–430

3 p.m.
Banking, Housing, and Urban Affairs
To hold hearings to examine money laundering and terror financing issues in the Middle East.
SD–538

MAY 25

9:30 a.m.
Energy and Natural Resources
Business meeting to consider comprehensive energy legislation.
SD–366

Environment and Public Works
To hold an oversight hearing to examine permitting of energy projects.
SD–406

Homeland Security and Governmental Affairs
To hold hearings to examine how counterfeit goods provide easy cash for criminals and terrorists.
SD–562

9:50 a.m.
Health, Education, Labor, and Pensions
Business meeting to consider proposed Head Start Improvements For School Readiness Act, S. 518, to provide for the establishment of a controlled substance monitoring program in each State, and pending nominations.
SD–430

10 a.m.
Agriculture, Nutrition, and Forestry
To hold hearings to examine the U.S. Grain Standards Act.
SR–328A

Banking, Housing, and Urban Affairs
To hold hearings to examine the nominations of Ben S. Bernanke, of New Jersey, to be a Member of the Council of Economic Advisers, and Brian D. Montgomery, of Texas, to be Assistant Secretary of Housing, Federal Housing Commissioner, Department of Housing and Urban Development.
SD–538

Commerce, Science, and Transportation
To hold hearings to examine S. 360, to amend the Coastal Zone Management Act.
SR–253

Indian Affairs
To hold hearings to examine S.J. Res. 15, to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States.
SR–485

2:30 p.m.
Homeland Security and Governmental Affairs
To hold hearings to examine the nomination of Linda Morrison Combs, of North Carolina, to be Controller, Office of Federal Financial Management, Office of Management and Budget.
SD–562

Judiciary
Intellectual Property Subcommittee
To hold hearings to examine piracy of intellectual property.
SD–226

MAY 26

9:30 a.m.
Environment and Public Works
Clean Air, Climate Change, and Nuclear Safety Subcommittee
To hold an oversight hearing to examine the Nuclear Regulatory Commission.
SD–406

Energy and Natural Resources
Business meeting to consider comprehensive energy legislation.
SD–366

Homeland Security and Governmental Affairs
Investigations Subcommittee
To hold hearings to examine the container security initiative and the customs-trade partnership against terrorism, focusing on how Customs utilizes container security initiative and customs trade partnership against terrorism in connection with its other enforcement programs and review the requirements for and challenges involved in transitioning these from promising risk management concepts to effective and sustained enforcement operations.
SD–562

10 a.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To hold hearings to examine aviation capacity and congestion challenges regarding summer 2005 and future demand.
SR–253

Banking, Housing, and Urban Affairs
To hold hearings to examine the report to Congress on international economic and exchange rate policies.
SH–216

Health, Education, Labor, and Pensions
To hold hearings to examine issues relating to the 21st century workplace.
SD–430

SEPTEMBER 20

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentation of the American Legion.
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Wednesday, May 18, 2005

Daily Digest

HIGHLIGHTS

The House passed H.R. 1817, Homeland Security Authorization Act for Fiscal Year 2006.

House Committees ordered reported 33 sundry measures, including the following appropriations for Fiscal Year 2006: Military Quality of Life, and Veterans Affairs, and Related Agencies; and the Energy and Water Development, and Related Agencies.

Senate

Chamber Action

Routine Proceedings, pages S5373–S5452

Measures Introduced: Seventeen bills and four resolutions were introduced, as follows: S. 1059–1075, and S. Res. 145–148. **Pages S5436–37**

Measures Passed:

Recognizing Anniversary of Mount Saint Helens Eruption: Senate agreed to S. Res. 146, recognizing the 25th anniversary of the eruption of Mount St. Helens. **Page S5450**

National Internet Safety Month: Senate agreed to S. Res. 147, designating June 2005 as ''National Internet Safety Month''. **Pages S5450–51**

Senate Leadership Portrait Display Authorization: Senate agreed to S. Res. 148, to authorize the display of the Senate Leadership Portrait Collection in the Senate Lobby. **Page S5451**

Nomination Considered: Senate began consideration of the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit. **Pages S5373–S5433**

A unanimous-consent-time agreement was reached providing for further consideration of the nomination at 9:30 a.m., on Thursday, May 19, 2005. **Page S5452**

Appointments:

Senate Delegation to the NATO Parliamentary Assembly: The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a–1928d, as amended, appointed the following Senators to the Senate Delegation to the NATO Parliamentary Assembly during the 109th Congress: Senators Sessions, Enzi, Bunning, and Coleman. **Page S5450**

Executive Reports of Committees: Senate received the following executive report of a committee:

Report to accompany the nomination of John Robert Bolton, of Maryland, to be the U.S. Representative to the United Nations, with the rank and status of Ambassador, and the U.S. Representative in the Security Council of the United Nations, and to be U.S. Representative to the Sessions of the General Assembly of the United Nations during his tenure of service as U.S. Representative to the United Nations (PN 326) (PN 327) (Ex. Rept. 109–1) **Page S5436**

Messages From the House: **Page S5435**

Measures Referred: **Page S5436**

Measures Read First Time: **Page S5436**

Executive Communications: **Page S5436**

Executive Reports of Committees: **Page S5436**

Additional Cosponsors: **Page S5437**

Statements on Introduced Bills/Resolutions: **Pages S5437–49**

Additional Statements: **Page S5435**

Amendments Submitted: **Pages S5449–50**

Privilege of the Floor: **Page S5440**

Adjournment: Senate convened at 9:30 a.m. and adjourned at 8 p.m. until 9:30 a.m., on Thursday, May 19, 2005. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S5452.)

Committee Meetings

(Committees not listed did not meet)

REGULATION NMS

Committee on Banking, Housing, and Urban Affairs: Committee concluded a hearing to examine Regulation National Market System (NMS) designed to strengthen our national market system for equity securities, focusing on recent market developments, after receiving testimony from John A. Thain, New York Stock Exchange, Robert Greifeld, NASDAQ Stock Market, and Edward J. Nicoll, Instinct Group, Inc., all of New York, New York; Gerald D. Putnam, Archipelago Holdings, Inc., Chicago, Illinois; and Meyer S. Frucher, Philadelphia Stock Exchange, Inc., Philadelphia, Pennsylvania.

HUMAN SPACE FLIGHT

Committee on Commerce, Science, and Transportation: Subcommittee on Science and Space concluded a hearing to examine human space flight, focusing on the status and role of the Space Shuttle in human space flight, plans for the Shuttle's retirement, progress in minimizing the gap between the retirement of the Space Shuttle and the introduction of the Crew Exploration Vehicle, after receiving testimony from Michael D. Griffin, Administrator, National Aeronautics and Space Administration; Allen Li, Director, Acquisition and Sourcing Management, Government Accountability Office; Joan Johnson-Freese, Chair, Department of National Security Decision Making, Naval War College, United States Navy; Michael J. McCulley, United Space Alliance, Houston, Texas; and Scott J. Horowitz, ATK Thiokol, Inc., Brigham City, Utah.

NOMINATIONS

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine the nominations of David A. Sampson, of Texas, to be Deputy Secretary of Commerce, who was introduced by Senator Hutchison, and John J. Sullivan, of Maryland, to be General Counsel of the Department of Commerce, after the nominees testified and answered questions in their own behalf.

BUSINESS MEETING

Committee on Energy and Natural Resources: Committee continued markup of proposed comprehensive energy legislation, focusing on provisions relating to coal, vehicles and fuels, hydrogen, and research and development, but did not complete action thereon, and will meet again tomorrow.

ECO-TERRORISM

Committee on Environment and Public Works: Committee concluded an oversight hearing to examine eco-terrorism, acts of politically motivated violence to force changes in attitudes about certain issues, specifically examining the Earth Liberation Front (''ELF'') and the Animal Liberation Front (''ALF''), after receiving testimony from John E. Lewis, Deputy Assistant Director, Counterterrorism Division, Federal Bureau of Investigation, and Carson W. Carroll, Deputy Assistant Director, Field Operations, Bureau of Alcohol, Tobacco, Firearms, and Explosives, both of the Department of Justice; Bradley M. Campbell, New Jersey Department of Environmental Protection, Trenton; David Martosko, Center for Consumer Freedom, Washington, D.C.; David J. Skorton, The University of Iowa, Iowa City; and Monty A. McIntyre, Seltzer, Caplan, McMahon, Vitek, San Diego, California, on behalf of Garden Communities.

FLORIDA HURRICANES

Committee on Homeland Security and Governmental Affairs: Committee concluded a hearing to examine Federal Emergency Management Agency (FEMA)'s response to the 2004 Florida hurricanes, and its impact on taxpayers, and a related measure, S. 1059, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to specify procedures for the conduct of preliminary damage assessments, to direct the Secretary of Homeland Security to vigorously investigate and prosecute instances of fraud, including fraud in the handling and approval of claims for Federal emergency assistance, after receiving testimony from Senator Nelson (FL); Richard L. Skinner, Acting Inspector General, and Michael D. Brown, Under Secretary for Emergency Preparedness and Response, both of the Department of Homeland Security.

BUSINESS MEETING

Committee on Health, Education, Labor and Pensions: Committee ordered favorably reported the following business items:

S. 1021, to reauthorize the Workforce Investment Act of 1998, with an amendment in the nature of a substitute, and

The nomination of Raymond Simon, of Arkansas, to be Deputy Secretary of Education.

INDIAN TRUST LANDS

Committee on Indian Affairs: Committee concluded an oversight hearing to examine issues relating to the taking of land into trust by the Bureau of Indian Affairs (BIA) for federally-recognized Indian tribes, focusing on land used for gaming purposes, after receiving testimony from George T. Skibine, Acting

Deputy Assistant Secretary of the Interior for Policy and Economic Development, Office of Indian Affairs; David K. Sprague and John Shagonaby, both of the Gun Lake Tribe, Dorr, Michigan; James T. Martin, United South and Eastern Tribes, Inc., Nashville, Tennessee; Mike Jandernoa, 23 Is Enough, Grand Rapids, Michigan; and David Crosby, Santa Ynez, California.

PROTECTING THE JUDICIARY

Committee on the Judiciary: Committee concluded a hearing to examine issues relating to protecting the judiciary at home and in the courthouse, after receiving testimony from Senators Durbin and Obama; Judge Joan Humphrey Lefkow, United States District Court for the Northern District of Illinois; Judge Jane R. Roth, United States Court of Appeals for the Third Circuit, on behalf of the Judicial Conference of the United States; Chief Magistrate Judge Samuel Alba, United States District Court for the District of Utah; and Benigno G. Reyna, Director, and Kim R. Widup, United States Marshal for the Northern District of Illinois, both of the United States Marshals Service, Department of Justice.

House of Representatives

Chamber Action

Measures Introduced: 55 public bills, H.R. 2418–2472; 4 resolutions, H. Con. Res. 156–158, and H. Res. 286 were introduced. **Pages H3554–56**

Additional Cosponsors: **Pages H3556–57**

Reports Filed: Reports were filed today as follows:

Report on the Revised Suballocations of Budget Allocations for Fiscal Year 2006 (H. Rept. 109–85);

H.R. 2419, making appropriations for energy and water development for the fiscal year ending September 30, 2006 (H. Rept. 109–86); and

H. Res. 287, providing for consideration of H.R. 2361, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006 (H. Rept. 109–87). **Page H3554**

Speaker: Read a letter from the Speaker wherein he appointed Representative Simpson to act as Speaker pro tempore for today. **Page H3439**

Chaplain: The prayer was offered today by Dr. Johnny Hunt, Pastor, First Baptist Church in Woodstock, Georgia. **Page H3439**

Discharge Petition: Representative Hooley moved to discharge the Committee on Rules from the consideration of H. Res. 267, providing for the consideration of H.R. 376, to amend title XVIII of the Social Security Act to authorize the Secretary of Health and Human Services to negotiate fair prices for Medicare prescription drugs on behalf of Medicare beneficiaries (Discharge Petition No. 1).

Homeland Security Authorization Act for Fiscal Year 2006: The House passed H.R. 1817, to authorize appropriations for fiscal year 2006 for the Department of Homeland Security, by a recorded vote of 424 ayes to 4 noes, Roll No. 189. **Pages H3442–H3543**

Rejected the Thompson of Mississippi motion to recommit the bill back to the Committee on Homeland Security with instructions to report the same back to the House forthwith with an amendment, by a recorded vote of 199 ayes to 228 noes, Roll No. 188. **Pages H3540–43**

Agreed to the amendment in the nature of a substitute printed in part A of H. Rept. 109–84 is considered as the original bill for the purpose of amendment, in lieu of the amendments reported by the Committees on Homeland Security, Energy & Commerce, and the Judiciary. **Pages H3465–H3540**

Agreed to:

Cox amendment (no. 2 printed in H. Rept. 109–84) that authorizes funds to be appropriated for FY 2006 to reimburse States and localities for the costs associated with having State and local law enforcement trained and certified by DHS' Immigration and Customs Enforcement to enforce Federal immigration laws; **Pages H3475–79**

Kennedy of Rhode Island amendment (no. 3 printed in H. Rept. 109–84) that will ensure that in replacing the color-coded terror alert system as required by the bill, that DHS draws on expertise in how to best communicate risk to the public; **Pages H3479–80**

Cox amendment (no. 4 printed in H. Rept. 109–84) that requires DHS to coordinate its activities regarding protection of critical infrastructure with ''other relevant Federal agencies''; **Pages H3480–81**

Ehlers amendment (no. 6 printed in H. Rept. 109–84) that changes the ''30 minute rule'' that requires passengers on commercial flights into and out

of Washington Reagan National Airport to remain seated for 30 minutes by reducing that time to 15 minutes; **Pages H3482–83**

DeFazio amendment (no. 7 printed in H. Rept. 109–84) that makes improvements to the Federal Flight Deck Officers Program; **Pages H3483–84**

Cardin amendment (no. 8 printed in H. Rept. 109–84) that adds the Information Assurance Directorate of the National Security Agency to the list of Federal agencies that the DHS Under Secretary for Science and Technology shall coordinate with on cybersecurity research and development activities; **Page H3484**

Slaughter amendment (no. 9 printed in H. Rept. 109–84) that improves pre-clearance border crossing programs; **Pages H3484–85**

Wamp amendment (no. 11 printed in H. Rept. 109–84) that permits the Department of Energy laboratories to team up with a university or consortium of universities when competing for DHS's Centers for Excellence; **Page H3487**

Cardin amendment (no. 14 printed in H. Rept. 109–84) that requires DHS to conduct a study of the feasibility and desirability of expanding the ''National Capital Region'' area beyond its existing boundaries; **Page H3490**

Slaughter amendment (no. 15 printed in H. Rept. 109–84) that requires the Secretary of DHS to report to Congress within six months of the enactment of this bill on its efforts to reduce the imitation of badges, identification, uniforms, or other insignia used by any officer of DHS; improve the design of the various forms of DHS identification to prevent illegal replication; increase public awareness of imitation forms of Homeland Security identification; teach the public to identify authentic Homeland Security identification; assess the effectiveness of their efforts; and recommend any legislation or administrative actions necessary to achieve their objectives; **Page H3490–91**

Kennedy of Minnesota amendment (no. 16 printed in H. Rept. 109–84) that requires the Secretary to carry out an Advanced Technology Northern Border Security Pilot Program; **Pages H3491–92**

Jackson-Lee amendment (no. 17 printed in H. Rept. 109–84) that instructs GAO to conduct a study examining the impact of an increase in Temporary Protected Status application fees on the nationals of countries for which TPS is available and the differential in cost between the current statutory fee and the cost-based fee proposed by Customs and Immigration Services; **Pages H3492–94**

Manzullo amendment (no. 21 printed in H. Rept. 109–84) that strengthens the ''Buy American Act''; **Pages H3501–02**

Putnam amendment (no. 22 printed in H. Rept. 109–84) as modified by unanimous consent, that allows FEMA reimbursement for funeral expenses only if the death was determined by a medical examiner to be caused by a natural disaster; **Pages H3502–03**

Souder amendment (no. 23 printed in H. Rept. 109–84) that extends the current authorization of appropriations for the Office of Counternarcotics Enforcement at DHS to fiscal year 2006; **Pages H3503–05**

Hooley amendment (no. 13 printed in H. Rept. 109–84) that prohibits any money in the DHS authorization bill to come from an increase in airline ticket taxes (by a recorded vote of 363 ayes to 65 noes, Roll No. 184); and **Pages H3489–90, H3537–38**

Norwood amendment (no. 18 printed in H. Rept. 109–84), that clarifies the existing authority of State and local enforcement personnel to apprehend, detain, remove, and transport illegal aliens in the routine course of duty (by a recorded vote of 242 ayes to 185 noes, Roll No. 185). **Pages H3494–99, H3538**

Rejected:

Meek amendment (no. 1 printed in H. Rept. 109–84) that sought to increase funding for the Department of Homeland Security's Office of Inspector General (by a recorded vote of 184 ayes to 244 noes, Roll No. 183); **Pages H3474–75, H3536–37**

Jackson-Lee amendment (no. 20 printed in H. Rept. 109–84) that sought to have the Secretary of DHS submit a report to Congress on the number and types of border violence activities that have occurred; the types of activities involved; a description of the categories of victims that exists; and a description of the steps that DHS is taking and any plan that the Department had formulated to prevent these activities (by a recorded vote of 182 ayes to 245 noes, Roll No. 186); and **Pages H3499–H3501, H3538–39**

Thompson amendment in the nature of a substitute (no. 24 printed in H. Rept. 109–84) that sought to authorize $6.9 million over H.R. 1817 in homeland security funding, and includes a number of policy proposals to close security gaps and to restructure DHS (by a recorded vote of 196 ayes to 230 noes, Roll No. 187). **Pages H3505–36, H3539–40**

Withdrawn:

Eddie Bernice Johnson of Texas amendment (no. 5 printed in H. Rept 109–84) that was offered and subsequently withdrawn that sought to authorize a limited amount for grants for the National Medical Preparedness Consortium to standardize training, national health care policies, and standards of care for emergency medical professionals to prepare for mass casualties resulting from a terrorist event involving WMD; **Pages H3481–82**

Souder amendment (no. 10 printed in H. Rept 109–84) that was offered and subsequently withdrawn that sought to make the Customs and Border

Protection's Office of Air and Marine Operations the lead DHS agency to conduct airspace security around the Nation's Capitol and for special events of national significance; and **Pages H3485–87**

Thompson (MS) amendment (no. 12 printed in H. Rept 109–84) that was offered and subsequently withdrawn that sought to require the Secretary of DHS to report to Congress on how to coordinate and protect the various infrastructure in the area between Port Elizabeth and Newark International Airport, New Jersey. **Pages H3487–89**

Agreed that the Clerk be authorized to make technical and conforming changes in engrossment of the bill to reflect the actions of the House. **Page H3544**

H. Res. 283, the rule providing for consideration of the bill was agreed to by a recorded vote of 284 ayes to 124 noes, Roll No. 182, after agreeing to order the previous question by a yea-and-nay vote of 226 yeas to 199 nays, Roll No. 181. **Pages H3452–54**

House Democracy Assistance Commission—Appointment: The Chair announced the Speaker's appointment of the following Members to the House Democracy Assistance Commission: Representatives Dreier (Chairman), Kolbe, Gillmor, Kirk, Boozman, Wilson (SC), Cole (OK), Miller (MI), and Fortenberry. **Page H3454**

Read a letter from the Minority Leader wherein she appointed Representatives Price (NC) (Ranking Member), Reyes, Capps, Holt, Schiff, Davis (AL), and Schwartz (PA) to the House Democracy Assistance Commission. **Pages H3454–55**

Quorum Calls—Votes: One yea-and-nay vote and eight recorded votes developed during the proceedings today and appear on pages H3453–54, H3454, H3536–37, H3537–38, H3538, H3538–39, H3539–40, H3542–43, and H3543. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 8:45 p.m.

Committee Meetings

MILITARY QUALITY OF LIFE—VA/ENERGY AND WATER DEVELOPMENT APPROPRIATIONS FISCAL YEAR 2006; REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FISCAL YEAR 2006

Committee on Appropriations: Ordered reported the following appropriations for Fiscal Year 2006: Military Quality of Life, and Veterans Affairs, and Related Agencies appropriations; and the Energy and Water Development, and Related Agencies.

The Committee approved the Revised Suballocation of Budget Allocations for Fiscal Year 2006.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006

Committee on Armed Services: Ordered reported, as amended, H.R. 1815, National Defense Authorization Act for Fiscal Year 2006.

SCHOOL READINESS ACT

Committee on Education and the Workforce: Ordered reported, as amended, H.R. 2123, School Readiness Act of 2005.

DRUG FREE SPORTS ACT

Committee on Energy and Commerce: Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on H.R. 1862, Drug Free Sports Act. Testimony was heard from Frank Shorter, former Chairman, United States Anti-Doping Agency; Donald P. Garber, Commissioner, Major League Soccer; Robert Foose, Executive Director, Major League Soccer Players Union; Allan H. Selig, Commissioner, Major League Baseball; Donald Fehr, Executive Director, Major League Baseball Players Association; Gary Bettman, Commissioner, National Hockey League; Robert Goodenow, Executive Director, National Hockey League Players Association; David Stern, Commissioner, National Basketball Association; and William Hunter, Executive Director, National Basketball Players Association.

Hearings continue tomorrow.

INCREASING GENERIC DRUG UTILIZATION

Committee on Energy and Commerce: Subcommittee on Health held a hearing entitled ''Increasing Generic Drug Utilization: Saving Money for Patients.'' Testimony was heard from public witnesses.

ENHANCING DATA SECURITY

Committee on Financial Services: Subcommittee on Financial Institutions and Consumer Credit held a hearing entitled ''Enhancing Data Security: The Regulators' Perspective.'' Testimony was heard from Lydia B. Parnes, Director, Bureau of Consumer Protection, FTC; Sandra Thompson, Deputy Director, Division of Supervision and Consumer Protection, FDIC; and Robert M. Fenner, General Counsel, National Credit Union Administration.

MISCELLANEOUS MEASURES; KOSOVO: CURRENT AND FUTURE STATUS

Committee on International Relations: Approved a motion authorizing the Chairman to request that the following measures be considered under suspension of the rules: H. Con. Res. 44, Recognizing the historical significance of the Mexican holiday of Cinco do Mayo; H. Con. Res. 89, Honoring the life of Sister Dorothy Stang; H. Con. Res. 149, amended,

Recognizing the 57th anniversary of the independence of the State of Israel; H. Res. 191, Urging the Government of Romania to recognize its responsibilities to provide equitable, prompt, and fair restitution to all religious communities for property confiscated by the former Communist government in Romania; H. Res. 272, Recognizing the historic steps India and Palistan have taken toward achieving bilateral peace; H. Res. 273, amended, Urging the withdrawal of all Syrian forces from Lebanon, support for free and fair democratic elections in Lebanon, and the development of democratic institutions and safeguards to foster sovereign democratic rule in Lebanon; H. Res. 282, Expressing the sense of the House of Representatives regarding anti-Semitism at the United Nations; H. Con. Res. 153, Welcoming His Excellency Hamid Karzi, the President of Afghanistan, on the occasion of his visit to the United States in May 2005, and expressing support for a strong and enduring strategic partnership between the United States and Afghanistan.

The Committee also held a hearing on Kosovo: Current and Future Status. Testimony was heard from R. Nicholas Burns, Under Secretary, Political Affairs, Department of State; Mira R. Ricardel, Acting Assistant Secretary, International Security Policy, Department of Defense; Daniel P. Serwer, Vice-President and Director, Peace and Stability Operations, and Balkans Initiate, United States Institute of Peace; and public witnesses.

UN PEACEKEEPING REFORM

Committee on International Relations: Subcommittee on Africa, Global Human Rights and International Operations held a hearing on UN Peacekeeping Reform: Seeking Greater Accountability and Integrity. Testimony was heard from Philo L. Dibble, Principal Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State; and public witnesses.

MISCELLANEOUS MEASURES

Committee on International Relations: Subcommittee on the Middle East and Central Asia approved for full Committee action the following measures: H. Con. Res. 149, amended, Recognizing the 57th anniversary of the independence of the State of Israel; H. Res. 273, amended, Urging the withdrawal of all Syrian forces from Lebanon, support for free and fair democratic elections in Lebanon, and the development of democratic institutions and safeguards to foster sovereign democratic rule in Lebanon; H. Res. 282, Expressing the sense of the House of Representatives regarding anti-Semitism at the United Nations; and H. Con. Res. 153, Welcoming His Excellency Hamid Karzi, the President of Afghanistan, on the occasion of his visit to the United States in May 2005, and expressing support for a strong and enduring strategic partnership between the United States and Afghanistan.

MISCELLANEOUS MEASURES

Committee on the Judiciary: Ordered reported the following bills: H.R. 742, Occupational Safety and Health Employer Access to Justice Act of 2005; H.R. 2293, To provide special immigrant status for aliens as translators with the United States Armed Forces; and H.R. 744, Internet Spyware Prevention (I–SPY) Act of 2005.

The Committee also continued mark up of H.R. 800, Protection of Lawful Commerce on Arms Act.

MISCELLANEOUS MEASURES

Committee on Resources: Ordered reported the following measures H.R. 38, Upper White Salmon Wild and Scenic Rivers Act; H.R. 125, amended, To authorize the Secretary of the Interior to construct facilities to provide water for irrigation, municipal, domestic, military, and other uses from the Santa Margarita River, California; H.R. 362, amended, Ojito Wilderness Act; H.R. 394, amended, To direct the Secretary of the Interior to conduct a boundary study to evaluate the significance of the Colonel James Barrett Farm in the Commonwealth of Massachusetts and the suitability and feasibility of its inclusion in the National Park System as apart of the Minute Man National Historical Park; H.R. 432, Betty Dick Residence Protection Act; H.R. 481, amended, Sand Creek Massacre National Historic Site Establishment Act of 2005; H.R. 517, Secure Rural Schools and Community Self-Determination Reauthorization Act of 2005; H.R. 539, amended, Caribbean National Forest Act of 2005; H.R. 599, amended, Federal Lands Restoration, Enhancement, Public Education, and Information Resources Act of 2005; H.R. 774, Rocky Mountain National Park Boundary Adjustment Act of 2005; H.R. 853, To remove certain restrictions on the Mammoth Community Water District's ability to use certain property acquired by that District from the United States; H.R. 873, Northern Marianas Delegate Act; H.R. 975, Trail Responsibility and Accountability for the Improvement of Lands Act; H.R. 1084, To authorize the establishment at Antietam National Battlefield of a memorial to the officers and enlisted men of the Fifth, Sixth, and Ninth New Hampshire Volunteer Infantry Regiments and the First New Hampshire Light Artillery Battery who fought in the Battle of Antietam on September 17, 1862; H.R. 1428, amended, National Fish and Wildlife Foundation Reauthorization Act of 2005; H.R. 1492, amended, To provide for the preservation of the historic confinement sites where Japanese Americans were detained during World War II; H.R. 1797, Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act; H.R. 1905, Small Tracts Reform Act; H.R. 2130, Marine Mammal Protection Act Amendments of 2005; and H.R. 2362, National Geologic Mapping Reauthorization Act of 2005.

DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006

Committee on Rules: Granted by voice vote, an open rule providing for consideration of H.R. 2361, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes. The rule provides for one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. The rule waives all points of order against consideration of the bill. Under the rules of the House the bill shall be read for amendment by paragraph. The rule waives points of order against provisions in the bill for failure to comply with clause 2 of rule XXI (prohibiting unauthorized appropriations or legislative provisions in an appropriations bill), except as specified in the resolution. The rule authorizes the Chair to accord priority in recognition to Members who have pre-printed their amendments in the Congressional Record. Finally, the rule provides one motion to recommit with or without instructions.

NANOTECHNOLOGY INITIATIVE

Committee on Science: Subcommittee on Research held a hearing on The National Nanotechnology Initiative: Review and Outlook. Testimony was heard from public witnesses.

MISCELLANEOUS MEASURES

Committee on Transportation and Infrastructure: Ordered reported the following measures: H. Con. Res. 145, Expressing the sense of Congress in support of a national bike month and in appreciation of cyclists and others for promoting bicycle safety and the benefits of cycling; H. Res. 243, Recognizing the Coast Guard, the Coast Guard Auxiliary, and the National Safe Boating Council for their efforts to promote National Safe Boating Week; H.R. 624, To amend the Federal Water Pollution Control Act to authorize appropriations for sewer overflow control grants; H.R. 889, amended, Coast Guard and Maritime Transportation Act of 2005; H.R. 1359, amended, To amend the Federal Water Pollution Control Act to extend the pilot program for alternative water source projects; and H. Con. Res. 152, amended, Commemorating Mystic Seaport: the Museum of America and the Sea in recognition of its 75th year.

The Committee also approved GSA 3314(b) Resolutions.

TELEMEDICINE HEALTH CARE

Committee on Veterans' Affairs: Subcommittee on Health held an oversight hearing on the use and development of telemedicine technologies in the Department of Veterans Affairs health care system. Testimony was heard from the following officials of the Department of Veterans Affairs: Adam W. Darkins, M.D., Chief Consultant, Office of Care Coordination; Ross D. Fletcher, M.D., Chief of Staff, VA Medical Center, Washington, DC, Linda Godleski, M.D., VHA Lead for Telemental Health, Office of Care Coordination, Associate Chief of Staff for Education, VA Health Care System, State of Connecticut; B. Christopher Frueh, Staff Psychologist, VA Medical Center, State of South Carolina; and Sydney Wertenberger, R.N., Associate Director, Patient Care Services, VA Medical Center, Poplar Bluff, Missouri; Carolyn Clancy, M.D., Director, Agency for Healthcare Research and Quality, Department of Health and Human Services; and public witnesses.

PROTECT FOSTER CHILDREN ENROLLED IN CLINICAL TRIALS

Committee on Ways and Means: Subcommittee on Human Resources held a hearing on Protections for Foster Children Enrolled in Clinical Trials. Testimony was heard from Donald Young, M.D., Acting Principal Deputy Assistant Secretary, Planning and Evaluation, Department of Health and Human Services; Roberta Harris, Deputy Secretary, Department of Health and Family Services, State of Wisconsin; and public witnesses.

COMMITTEE MEETINGS FOR THURSDAY, MAY 19, 2005

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations: Subcommittee on Interior and Related Agencies, to hold hearings to examine proposed budget estimates for fiscal year 2006 for the Environmental Protection Agency, 9:30 a.m., SD–124.

Committee on Banking, Housing, and Urban Affairs: to continue hearings to examine Regulation NMS designed to strengthen our national market system for equity securities, focusing on recent market developments, 10 a.m., SD–538.

Committee on Energy and Natural Resources: business meeting to consider comprehensive energy legislation, 9:30 a.m., SD–366.

Committee on Environment and Public Works: Subcommittee on Fisheries, Wildlife, and Water, to hold an oversight hearing to examine the Endangered Species Act, 9:15 a.m., SD–406.

Committee on Foreign Relations: to receive a closed briefing regarding weapons proliferation, terrorism and democracy in Iran, 9 a.m., S–407, Capitol.

Full Committee, to hold hearings to examine weapons proliferation, terrorism and democracy in Iran, 10 a.m., SD–419.

Subcommittee on International Economic Policy, Export and Trade Promotion, to hold hearings to examine S. 883, to direct the Secretary of State to carry out activities that promote the adoption of technologies that reduce greenhouse gas intensity in developing countries, while promoting economic development, 1 p.m., SD–G50.

Committee on Health, Education, Labor, and Pensions: to hold hearings to examine higher education and corporate leaders, focusing on working together to strengthen America's workforce, 10 a.m., SD–106.

Committee on Homeland Security and Governmental Affairs: to hold hearings to examine the nominations of Philip J. Perry, of Virginia, to be General Counsel, Department of Homeland Security; to be followed by a hearing on the nominations of Carolyn L. Gallagher, of Texas, and Louis J. Giuliano, of New York, each to be a Governor of the United States Postal Service, and Tony Hammond, of Virginia, to be a Commissioner of the Postal Rate Commission, 9:30 a.m., SD–562.

Committee on the Judiciary: business meeting to consider S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, the nominations of Terrence W. Boyle, of North Carolina, to be United States Circuit Judge for the Fourth Circuit, Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit, Paul D. Clement, of Virginia, to be Solicitor General of the United States, Stephen Joseph Murphy III, to be United States Attorney for the Eastern District of Michigan, Anthony Jerome Jenkins, to be United States Attorney for the District of the Virgin Islands, and Gretchen C. F. Shappert, to be United States Attorney for the Western District of North Carolina, and committee rules for the 109th Congress, 9:30 a.m., SD–226.

Select Committee on Intelligence: to hold a closed meeting to discuss certain intelligence matters, 10:30 a.m., SH–219.

House

Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, hearing entitled "Challenges to American Competitiveness in Math and Science," 10 a.m., 2175 Rayburn.

Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, to continue hearings on H.R. 1862, Drug Free Sports Act, 10 a.m., 2123 Rayburn.

Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, hearing entitled "Financial Services Regulatory Relief: Private Sector Perspectives," 10 a.m., 2128 Rayburn.

Committee on Government Reform, hearing entitled "Steroid Use in Sports Part III: Examining Basketball Association's Steroid Testing Program," 9:30 a.m., 2154 Rayburn.

Committee on Homeland Security, Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity, hearing on H.R. 1509, Recreational Boaters Streamlined Inspection Act, 2 p.m., 210 Cannon.

Committee on House Administration, to mark up H.R. 1316, 527 Fairness Act of 2005, 10 a.m., 1310 Longworth.

Committee on International Relations, hearing and briefing on Reforming the United Nations: Budget and Management Perspectives, 9:30 a.m., 2172 Rayburn.

Committee on Resources, Subcommittee on Energy and Mineral Resources, oversight hearing entitled "The Impacts of High Energy Costs to the American Consumer," 10 a.m., 1324 Longworth.

Subcommittee on Fisheries and Oceans, hearing on H.R. 50, National Oceanic and Atmospheric Administration Act, 10 a.m., 1334 Longworth.

Committee on Small Business, Subcommittee on Regulatory Reform and Oversight, hearing on the benefits small businesses will receive if drilling is allowed in the Arctic National Wildlife Refuge, 2 p.m., 311 Cannon.

Committee on Veterans' Affairs, Subcommittee on Oversight and Investigations, oversight hearing regarding the Department of Veterans Affairs' and the Department of Defense's efforts to assist military personnel in making a "seamless transition" from active duty to veterans' status, 10 a.m., 334 Cannon.

Committee on Ways and Means, hearing on the Retirement Policy Challenges and Opportunities of our Aging Society, 10 a.m., 1100 Longworth.

Permanent Select Committee on Intelligence, to continue hearings on the PATRIOT Act, Part II, 9 a.m., 2167 Rayburn.

Next Meeting of the **SENATE**

9:30 a.m., Thursday, May 19

Senate Chamber

Program for Thursday: Senate will continue consideration of the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

9 a.m., Thursday, May 19

House Chamber

Program for Thursday: Consideration of H.R. 2361, Department of the Interior, Environment, and Related Agencies Appropriations Act for Fiscal Year 2006 (subject to a rule).

Extensions of Remarks, as inserted in this issue

HOUSE

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