a $5.6 trillion surplus and a surplus in our budget 3 years in a row.

At the same time that the administration pushes for new tax relief, it does little to acknowledge that tax relief already scheduled to occur is, in fact, taking place. I don't understand. If I were President of the United States, I would be out on the hustings saying: The Congress, in 2001, gave you tax relief, Mr. and Mrs. America, and this is what it looks like: In 2001, $41 billion was paid out to taxpayers. In 2002, $71 billion was paid out in tax cuts to taxpayers. In 2003, $90 billion is going to be paid out in tax cuts to taxpayers. That totals, Mr. and Mrs. America, $202 billion that you have already or are getting from the 2001 tax cut. And next year, 2004, you will get another $100 billion. That totals over $300 billion being paid out in tax cuts today from the 2001 tax cut.

Why, in our current fiscal circumstances, should we add on such a large amount of tax relief when that relief is now beginning to take effect from the 2001 tax cut? Next year, which is the earliest a new tax cut could reasonably take effect, we are already scheduled to see a 1-percent drop in marginal income tax rates, an increase in the individual estate tax exemption from $1 million to $1.5 million, and relief from the alternative minimum tax, or AMT. So these things are happening as a product of our 2001 tax cut. Why doesn't the President speak about them? That would reassure the American public, I believe.

Today I have heard two primary arguments in favor of this tax cut. I have found neither argument to be logical or persuasive. The first argument is that the tax cut will be stimulative. In fact, we know it will have little or no stimulative impact as it is currently structured. Let me mention a few of the reasons why.

Less than 20 percent of the tax cut can take effect within a year. Less than 20 percent of it can take effect within the next year. Economists agree that in order for tax cuts to be stimulative, they must be front loaded, and they must be large enough to make a meaningful impact.

The President's package fulfills neither requirement because its benefits largely accrue in the outyears. They would amount to a stimulus of less than 1 percent of GDP over the next 12 months.

A dynamic analysis of the effect of the package on the economy predicts it will generate little or no economic growth. The newly appointed head of the Congressional Budget Office, Douglas Holz-Eakin, recently conducted CBO's first foray into dynamic scoring. Dynamic scoring is a method of economic analysis that looks at the ripple effects of tax and spending bills on economic growth beyond their direct cost or benefit.

The results of the CBO study were eye opening. The President's tax cut proposal was projected to have little or no impact on economic growth and could actually reduce growth in the later years. The administration's own economic team released data indicating that over the long term, the plan creates few new jobs.

The tax cuts included in the plan provide very little bang for the buck.

The second argument in favor of the President's tax cut is that without the threat of large budget deficits, Congress will never act to rein in spending. Therefore, large budget deficits are actually a tool of responsible government. To me, this argument boggles the mind. Far from reining in spending, large deficits will actually increase spending by sending interest costs on our debt skyrocketing. Discretionary spending over the past several years has, in fact, been held tightly in check, and nearly all new discretionary spending is allocated to defense and homeland security.

Mr. President, the only way I believe we can return to the path of long-term growth is by balancing our budget and by proving our ability to act as long-term stewards of our economy. Right now, the biggest drags on this economy are uncertainty and distrust. Corporate leaders remain uncertain about geopolitical developments, such as the war against Iraq, North Korea, India/Pakistan, and what might happen next, and the risk of domestic terrorism. They are holding off investments until those concerns abate. Consumers share similar concerns and fear the loss of jobs or further deterioration in their retirement savings. Remember, large companies have crashed—Enron, Arthur Andersen, Global Crossings—and with them went retirement benefits. People have fear, and fear has entered the marketplace.

At the same time, small investors show little inclination to get back into the stock market as corporate scandals continue. So I believe the appropriate medicine for this uncertainty and distrust is strong regulatory action by agents such as the Securities and Exchange Commission and the Accounting Oversight Board, to increase accounting transparency and to stop corporate criminal behavior before it begins.

In the Senate, I have tried to push for corporate accountability in the energy sector. God knows it is necessary, and I hope to introduce an amendment on the energy bill.

The return of investor confidence will have a positive impact on our markets and our economy. Coupled with strong congressional leadership committed to keeping our budget in balance, I believe we can quickly return to healthy rates of economic growth.

What will not work, however, is further deficit spending for tax cuts we cannot afford. When I last voted for a tax cut in March of 2001, we were projected to run a $5.6 trillion surplus through 2010. Our economic outlook at that point could not be more different than our current circumstances.

Now we face cumulative deficits of approximately $2 trillion over 10 years, if interest costs are included. Those are unified deficits and do not reflect the one-time boost we are getting from surpluses in the Medicare and Social Security trust funds. If those surpluses were not included, our deficits over 10 years would add up to over $3 trillion.

Unfortunatey, Congress cannot ensure an immediate return to economic growth. What we can do, however, is prove to those Americans who contribute to the economy that Congress can properly manage the government's finances. Yet our current course is taking us in the opposite direction.

I urge my colleagues to oppose any new tax cuts, no matter what the size, and focus on laying the groundwork for a return to long-term economic growth.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

ENERGY POLICY ACT OF 2003—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

Pending:

Frist-Daschle amendment No. 539, to eliminate methyl tertiary butyl ether from the United States fuel supply, to increase production and use of renewable fuel, and to increase the Nation's energy independence.

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

Mr. DOMENICI. Mr. President, I think the Senate now knows that S. 14, a comprehensive energy policy, is before the Senate. Obviously, we are going to have to take some time in this calendar of ours to get it done.

We always speak of a comprehensive energy bill and we tell the country we need one. We have one before us. There are many of us who think it is very good. We won't know how good the Senate thinks it is until we have had a chance to go through it and vote on it. I am very hopeful that those who have amendments will start thinking about coming down here to offer them.

The pending amendment is a major one—the so-called ethanol amendment. That is the bill which establishes a national goal of 5 billion barrels by the year 2012. It is a very important contribution to America's independence and a component of the bill, if adopted, when adopted, that will create diversification. It will be moving toward independence rather than dependence. Obviously, it has fantastic side effects for rural America, agricultural America, which those who have been working on it for years have already spoken to, and many more will.

Nonetheless, there are Senators who have concerns about the pending amendment. There are Senators who want to amend it. I urge and ask those Senators who have amendments to get them down here and let the Senate pass judgment on whether it wants the ethanol package that has been worked on for years, which is bipartisan and was introduced essentially by the majority and minority leaders, with cosponsors in ample numbers from both sides of the aisle as an indication of its support. I hope Senators who we understand have amendments will begin to bring them down so we can debate and vote on them.

I understand that at this point the distinguished Senator from Ohio, Mr. VOINOVICH, desires to speak in favor of the amendment. As manager of the bill, even though we are operating under no time agreements, I yield the floor at this point, assuming he will give his 15-minute address.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. VOINOVICH. Mr. President, I thank the Senator from New Mexico for this opportunity to speak in favor of the ethanol amendment, No. 539.

This amendment has been offered by the distinguished majority leader and the distinguished minority leader. As I have often stated, it is about time this Nation had an energy policy. I have said that, I think, 3 years in a row. Last year, we worked very hard to come up with what we considered to be a decent package. Unfortunately, that package did not come out of conference committee and we are here today, this week, to see if we cannot resurrect part of that and enhance it with some of the improvements that were done in the Energy Committee under the chairmanship of Senator DOMENICI.

When the President released his national energy policy in May of 2001, he noted that America was too dependent upon foreign oil; that we needed to increase our use of renewable fuels, such as ethanol and biodiesel; and that we needed to protect the environment while producing the energy that drives our economy. President Bush was right about that 2 years ago and, quite frankly, the urgency is greater today than it was then.

The United States has a responsibility to develop a policy that harmonizes the needs of our economy and our environment. These are not competing needs and too often are looked upon as if they are. A sustainable environment is critical to a strong economy. A sustainable economy is critical to providing the funding necessary to improve our environment.

We need a policy that broadens our base of energy resources to create stability, guarantee reasonable prices, and protect America's security. It has to be a policy that will keep energy affordable. Finally, it has to be a policy that won't cripple the engines of commerce that fund the research that will yield environmental protection technologies for the future.

I believe that increasing our use of alternative and renewable fuels, such as ethanol and biodiesel, is a key element in our effort to construct a viable energy policy.

During the last Congress, I worked with a number of my colleagues, including Senators HAGEL, DASCHLE, JEFFORDS, INHOFE, GRASSLEY, BOND, and BINGAMAN, to develop an ethanol package that would not only increase the use of renewable fuels in America but would provide other tangible benefits for the American people. That package was included in the comprehensive energy bill passed by the Senate in an overwhelming bipartisan vote.

This year, thanks to the leadership of Chairman INHOFE, we were able to vote language out of the Environment and Public Works Committee that reflects that bipartisan agreement we reached last year on a bipartisan basis. Thanks to the leadership of our distinguished majority and minority leaders, as well as a large number of Senators, we again have the opportunity to pass legislation that contains a renewable fuels package.

Mr. President, passage of an ethanol bill will protect our national security, economy, and our environment. Amendment No. 539 contains the language in S. 791, the Renewable Fuels Act of 2003, which was introduced and shepherded through the EPW Committee by Chairman INHOFE. This language establishes a nationwide renewable fuels standard of 5 billion gallons by 2012, repeals the Clean Air Act's oxygenate requirement for reformulated gasoline, and phases down the use of MTBE over a 4-year period.

This language has strong, bipartisan support and is the result of long negotiation between the Renewable Fuels Association, the National Corn Growers Association, the Farm Bureau Federation, the American Petroleum Institute, the Northeast States for Coordinated Air Use Management, and the American Lung Association.

It is hard to get all those people together on any piece of legislation. I think it is wonderful.

I happen to come from a State that is an oil State. We have Ashland Marathon Oil in Ohio. I also come from a State that has a large number of people who belong to the Corn Growers Association. I think we are fifth or sixth in the Nation in producing corn.

I recall a couple of years ago them coming to me and asking me to take their cause on this particular issue. I suggested to them, rather than do that, I wanted them to go into a room and start to negotiate and start talking to each other.

I will never forget it. We were in the LBJ Room. I saw a bunch of people on stage at a big news conference. A year before, if anyone had said those people would stand on the same stage together, they had to say they had something wrong with their head.

My colleagues in the Senate should realize this is an unusual situation for all of these people to get together, and that is why it is so important that we do not allow any amendments to this very carefully put together compromise by all of these various organizations and groups.

In fact, I suggest we ought to be looking to do that in so many more instances around here where people just talk past each other instead of talking to each other.

It is with no small irony we are discussing issues affecting our gasoline supply so shortly after our troops were engaged in a war in the Middle East. As we know, they are still engaged and will be for a long time.

While our purpose in Iraq was to end a regime that sought to become the arsenal of terrorism and liberate the Iraqi people from oppression and violence, our mere presence in that part of the world highlights the fact that we are entirely too dependent on the oil we import from the Middle East.

The amendment the majority leader has offered, a compromise that will triple the amount of domestically produced ethanol used in America, is one essential tool in reducing our dependence on imported oil.

It is no secret we currently import over 58 percent of the oil we use. Last year, we imported an average of 4,558,000 barrels per day from OPEC countries and 442,000 barrels per day from Iraq. It is interesting; all during the last several years while we were bombing Iraq occasionally and maintaining the no-fly zone, we were getting an enormous amount of oil from Iraq. In some instances, almost 5 percent of our oil for this country was coming from Iraq.

Again, last year we imported nearly a half million barrels from Iraq. This dependence is not getting better. The Energy Information Administration estimates that our dependency on imported oil could grow to nearly 70 percent by 2020.

Although our troops were successful in the liberation of Iraq, our greatest energy challenge remains the need to reduce our reliance on foreign sources and to meet our energy needs.

President Bush has stated repeatedly that energy security is a cornerstone for national security, and I agree. It is crucial that we become less dependent on foreign sources of oil and look more to domestic sources to meet our energy needs, and ethanol is an excellent domestic source. It is a clean-burning, home-grown renewable fuel that we can rely on for generations to come. The renewable fuels standard in this language will displace 1.6 billion barrels of oil.

Ethanol is not only good for our Nation's economy, tripling the use of renewable fuels over the next decade will also reduce our national trade deficit by more than $34 billion. A lot of our trade deficit has to do with importing oil. It will increase the U.S. gross domestic product by $156 billion by 2012. It will create more than 214,000 new jobs. It will expand household income by an additional $51.7 billion. It will save taxpayers $2 billion annually in reduced Government subsidies due to the creation of new markets for corn.

The benefits for the farm economy are even more pronounced. Ohio is sixth in the Nation in terms of corn production and is among the highest in the Nation in putting ethanol into its gas tanks. Over 40 percent of all gasoline in Ohio sold contains ethanol.

An increase in the use of ethanol across the Nation means an economic boost to thousands of farm families across my State and across the States throughout this country.

Currently, ethanol production provides 192,000 jobs and $4.5 billion to net farm income nationwide. Passage of this amendment will increase net farm income by nearly $6 billion annually. Passage of this amendment will create $5.3 billion of new investment in renewable fuels production capacity.

Phasing out MTBE on a national basis will be good for our fuel supply because refiners are under tremendous strain from having to make several different gasoline blends to meet various clean air requirements. And no new refineries, as you know, Mr. President, have been built in the last 25 years.

The effects of various State responses to the threat of MTBE contamination, including bans and phaseouts on different schedules, will add a significant burden to existing refineries. That is why we have to get this bill done this year. States are banning it, and refiners are trying to figure out how they are going to deal with this new marketplace.

We went through this a couple of years ago when we had a shutdown of one of the oil supplies from Michigan and then from Texas. They were reformulating gas, and we saw the price of gasoline skyrocket at that time.

The MTBE phaseout provisions in this package will ensure that refiners will have less stress on their system and that gasoline will be more fungible nationwide. That is very important.

Expanding the use of ethanol will also protect our environment by reducing auto emissions, which will mean cleaner air and improved public health. Use of ethanol reduces emissions of carbon monoxide and hydrocarbons by 20 percent. Ethanol also reduces emissions of particulate by 40 percent. Use of ethanol reformulated gas helped move Chicago into attainment of the Federal ozone standard, the only RFG area to see such an improvement.

In 2002, ethanol use in the United States reduced greenhouse gas emissions by 4.3 million tons, the equivalent of removing more than 630,000 vehicles from the road.

It is my hope and expectation that the Senate will adopt this fuels package. These issues have been in front of us for far too long, and now that we have everybody in the same room at the same time agreeing to the same legislation, we need to move it. We need to get this amendment done. I urge my colleagues to support amendment No. 539.

Mr. DOMENICI. Mr. President, I ask the Senator from Ohio if he can remain in the Chamber for a few moments. An amendment is going to be offered to the bill, and I have to be elsewhere. Will the Senator do that for the Senator from New Mexico?

Mr. VOINOVICH. I will be happy to.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from California.

AMENDMENT NO. 542 TO AMENDMENT NO. 539

Mrs. FEINSTEIN. Mr. President, I very much respect the Senator from Ohio. He has been both a distinguished mayor and a distinguished Governor of his State. I hate to disagree with him, but in this case I find the ethanol mandate in this bill to be egregious, to be wrongheaded, to be just terrible public policy. I will go through my concerns about this mandate point by point, and then I will end by offering a second-degree amendment.

My first concern is this: Only 2.1 billion gallons of ethanol were produced in 2002. The ethanol mandate before us requires 5 billion gallons by 2012.

This fuel additive is not necessary to make clean-burning gasoline. Yet it is mandated into our fuel supply. Under the credit trading provisions of the ethanol mandate, States are going to be forced to pay for ethanol whether they use it or not. Let me repeat that. Under the credit trading provisions in this bill, States are going to be forced to pay for it, whether they use it or not.

Secondly, this is going to drive up the price of gasoline. It can only do so. The Council of Economic Advisers and the Federal Trade Commission have advised President Bush that the ethanol mandate is:

> Costly to both consumers and the Government and will provide little environmental benefit.

So this provision will force up prices. California's costs are already high. I just paid $50 for a tank of gasoline when I was home in California. Wait until this bill goes into operation.

Ninety-nine percent of all ethanol production is based in the Midwest. States outside the Corn Belt have severe infrastructure and ethanol supply problems. This, too, means higher gas prices.

Finally, we have a dangerously high market concentration in this bill. The ethanol industry today is highly concentrated, with the largest supplier, Archer Daniels Midland, controlling 46 percent of the market, and the top seven firms controlling 71 percent of the market. That is according to the GAO.

ADM admitted to price fixing in 1996. Its executives went to jail. Last year, ADM purchased its largest competitor, Minnesota Corn Processers, which controlled 5 percent of the ethanol market. I believe we are taking a great risk by allowing one firm to control such a large percentage of the ethanol market, and this shows it: 46 percent, ADM; Williams Bio-Energy, 6 percent; Cargill, 5 percent; High Plains Corporation, 4 percent; New Energy Corporation, 4 percent; Midwest Grain, 3 percent; Chief Ethanol, 3 percent. These are the top seven ethanol producers in the United States.

So you have a huge market concentration by a company that pled guilty to price fixing. It makes me, a Californian, very uneasy about what the future may bring under current law.

Gasoline is taxed by the Federal Government at 18.4 cents per gallon. Yet gasoline blended with ethanol is only taxed at 13.1 cents per gallon. The other 5.3 cents per gallon is credited to ethanol producers instead of funding the highway trust fund. According to the Congressional Research Service, over the past 20 years, this ethanol subsidy has cost the highway trust fund over $11 billion in foregone income.

Under the proposal in the Energy Tax Bill, these ethanol subsidies will be paid not from the highway trust fund, as was before us last year, but from the general fund, at the expense of taxpayers. So instead of spending money for education or Cops on the Beat, or parks, we are funding ethanol with billions in subsidies. It makes no sense to me.

The Congressional Research Service has indicated that the ethanol mandate will cost approximately $7 billion. This means $7 billion is diverted away from either the highway trust fund or the general fund, which means either we will have fewer jobs and roads or taxpayers will have to pick up the tab.

As I said, this future $7 billion loss is on top of the $11 billion in gas tax revenue that has already been lost by giving ethanol a partial exemption from the fuel tax.

My sixth reason is that ethanol has mixed environmental and health results. Evidence suggests that ethanol reduces carbon monoxide air pollution. However, evidence also suggests that mandating more ethanol will produce more smog in the summer months because ethanol produces nitrogen oxide (NO_X) emissions. Studies also show ethanol accelerates the ability of toxic gasoline additives, such as benzene, to break apart and seep into the ground water. Recently, the EPA disclosed that ethanol plants are emitting many more dangerous toxins than previously thought. I do not believe we should mandate so much use of something we know so little about.

One other thing on the benzene plumes, once they break away, they actually spread faster in water and soil than MTBE plumes. We know benzene is carcinogenic.

My seventh reason is that there is unprecedented liability protection. A safe harbor provision in the ethanol mandate will prevent legal redress if ethanol and other fuel additives harm the environment or public health. How will communities afford cleanup costs if there is liability protection for ethanol? I find this really egregious.

This reduces carbon monoxide but it increases nitrous oxide. The benzene plumes will break away. They spread more rapidly than MTBE. They can pollute our ground water but there is no remedy. There is no liability. They are liability-free. One of the reasons you now have the large oil companies going along with this bill is because they have liability protection.

So we are mandating something we do not know all of the results of in huge amounts, that are unnecessary in the first place, that may have adverse consequences, and then we are saying to the consumer, sorry, the damage is your problem, you cannot even go to court to get redress in the form of damages. What a sweetheart bill. My goodness, people should be embarrassed.

Ethanol already has a high tariff to keep imports out. If there is an ethanol shortage in the United States, States will not be able to import ethanol from countries abroad because of a high 54-cent-per-gallon tariff on foreign ethanol. So what are they doing? They already have a high tariff on foreign ethanol. Now we are mandating 5 billion gallons? That is egregious. It is wrong public policy.

My ninth reason is an ethanol mandate will strain the fuel supply. Using ethanol will constrict the overall gasoline supply because mixing MTBE with gasoline produces more fuel than mixing gasoline with ethanol. Consequently, in a State such as California where you have no extra refinery availability, you have to produce more than you did with MTBE because of the properties of ethanol which take more gasoline. That is going to be a real problem and that, too, will force up prices.

Tenth, ethanol is not a renewable fuel. According to many scientists and experts, including Cornell Professor David Pimentel, it takes more energy to make ethanol than we save by using it. So we can hardly call ethanol a renewable fuel.

Eleven, the ethanol mandate will largely benefit producers, not farmers. Ethanol subsidies pay more money to ethanol producers like ADM than farmers.

Twelve, the bottom line, this is a very bad deal. The ethanol mandate reflects a deal worked out behind closed doors, between ethanol lobbyists and oil interests that is going to harm consumers. Mandating 5 billion gallons by 2012 is terrible public policy. Since there are high costs for States like California to comply with any mandated Federal fuel requirement, these costs will only be passed on to drivers at the pump.

The ethanol mandate, as I have said, will drive up the price of gasoline. Instead of imposing a new mandate on our fuel supply, we should be lifting the one that already exists.

On July 29, 1999, the nonpartisan broad-based U.S. EPA blue ribbon panel on oxygenates and gasoline recommended that the 2 percent oxygenate requirement be removed in order to provide flexibility to blend adequate fuel supplies in a cost-effective manner while quickly reducing usage of MTBE and maintaining air quality benefits.

It is long past the time for Congress to act on that. Instead of mandating ethanol into our fuel supply, we should be lifting all mandates or at least allow States a choice. We need to provide flexibility to refiners to allow them to optimize how and what they blend instead of forcing them to blend gasoline with MTBE or ethanol.

California has long sought a waiver of the 2 percent oxygenate requirement. I have written and called former EPA Administrator Browner and the current Administrator, Christine Todd Whitman, both former President Clinton and President Bush, urging approval of the waiver for the State. Yet both the Clinton administration and the Bush administration have denied California's request. I know during the Clinton years an affirmative finding came from EPA to the White House. I also know that Members of both parties went to the White House to stop it from happening. I believe EPA would have no objection.

In the campaign, when I heard both Al Gore and George Bush say: We are for ethanol—I thought, oh boy, here it comes. And here it is today.

MTBE, methyl tertiary butyl ether, has been the oxygenate of choice by main refiners in their effort to comply with the Clean Air Act's reformulated gasoline requirements. Governor Davis of California has ordered a phaseout of MTBE in our State by the end of this year while the Federal law requiring 2 percent oxygenate remains, putting our State in an untenable position. This is because the most likely substitute for MTBE to meet the 2 percent requirement is ethanol, but it is tremendously costly to blend ethanol from the Midwest into the specially formulated California gasoline.

Without eliminating these mandates, we can expect disruptions and price spikes during the peak driving months of this summer on top of the high prices motorists are already paying. Just remember, you heard it here.

California has developed a gasoline formula that provides flexibility and provides clean air. Refiners use an approach called the predictive model which guarantees clean-burning RFG gas with oxygenates, with less than 2 percent oxygenates and with no oxygenates.

As Red Cavaney, president of the American Petroleum Institute, said in March before the Energy Committee:

> Refiners have been saying for years that they can produce gasoline meeting clean-burning fuels and federal reformulated gasoline requirements without the use of oxygenates. . . . In addition, reformulated blendstocks—the base into which oxygenates are added—typically meet RFG requirements before oxygenates are added.

So they are not necessary. These facts demonstrate oxygenates are not necessary.

I believe it is egregious to require this Nation to use more ethanol than we need in our fuel supply. Mandating 5 billion gallons into our fuel supply is terrible public policy. This amounts to a wealth transfer of billions of dollars from every State in the Nation to a handful of ethanol producers. It is families and businesses who will pay the higher costs that result from increased gas prices.

This sweeping policy will have long-term repercussions in our environment, on our health, our fuel supply, and the price of gasoline. Since ethanol production is subsidized by the Government with a credit from the Federal motor fuels tax, $1 for ethanol firms like ADM means $1 less to improve our Nation's roads and bridges.

The Congressional Research Service has indicated the ethanol mandate in this energy bill will divert $7 billion away from the highway trust fund. If the energy tax bill is passed into law, this money will no longer come from the highway trust fund. It will come from the general fund. As I said, it will be paid for by taxpayers.

This future $7 billion payout is on top of the $11 billion in gas tax revenue that has already been lost by giving ethanol a partial exemption from the fuel tax. Ethanol is a subsidized product. It is protected from foreign competition by high trade barriers. And now we are going to mandate a market for it. This is unconscionable. Forcing States to use ethanol we do not need, and forcing States to pay for ethanol we do not use amounts to a transfer of wealth from all States to Midwest corn States.

Under the credit trading provisions in this bill, if we do not use ethanol, we still have to pay for it.

Proponents of the ethanol mandate argue that gas price increases will be minimal, but the projections do not take into consideration the real-world infrastructure constraints and concentration in the market that can lead to price spikes. I believe everyone outside of the Midwest will have to grapple with how to bring ethanol to their States since the Midwest controls 99 percent of the production.

California has done more analysis than any other State on what it will take to get ethanol to the State. The bottom line is that it cannot happen without raising gasoline prices.

I am particularly concerned, as I pointed out, about the limited number of suppliers in the ethanol market. This leaves consumers vulnerable to price spikes as it did when electricity and natural gas prices soared in the West because a few out-of-State generating firms dominated the market. If we have learned anything from the recent western energy crisis, it is that when there is not ample supply and adequate competition in the market, prices soar and consumers pay.

I also mention that Archer Daniels Midland is the dominant producer in the highly concentrated ethanol market. It has purchased its largest competitor. It controls 46 percent of the market, and that is only what is now produced. The company has an even greater control over how ethanol is distributed and marketed.

I am also concerned about the long-term effects of mandating such a large amount of ethanol in our gasoline supply.

I mentioned the health effects about which we do not know much. I mentioned the environmental effects.

The scientific evidence is mixed. I believe it is bad public policy to mandate this amount before scientific and health experts can fully investigate the impact of ethanol on the air we breathe and the water we drink.

We made this mistake with MTBE and now we have learned that MTBE may well be a human carcinogen.

Ethanol is often made out to be an ideal renewable fuel, giving off fewer emissions. Yet, on balance, ethanol can be a cause of more air pollution because it produces smog in the summer months. Smog is a powerful respiratory irritant that affects large segments of the population, and it has an especially pernicious effect on the elderly, on children, and individuals with existing respiratory problems, as I mentioned, such as asthma.

Earlier this month, the American Lung Association named California the smoggiest State, by listing nine counties and six metropolitan areas as having the worst conditions. A 1999 report from the National Academy of Sciences found:

> The use of commonly available oxygenates [like ethanol] in reformulated gasoline has little impact on improving ozone air quality and has some disadvantages. Moreover, some data suggest that oxygenates can lead to higher Nitrogen Oxide emissions.

Nitrogen oxides, as we have said, cause smog.

The American Lung Association report also noted that half of Americans are living in counties with unhealthy smog levels. Why would we want to take the chance of increasing these unhealthy smog levels by mandating billions of unnecessary gallons of ethanol into our fuel supply?

Ethanol can be both good and bad for air quality. To me, it would make sense to maximize the advantages of ethanol while minimizing the disadvantages. This is exactly why States should have flexibility to decide what goes into their gasoline in order to meet clean air standards. All we should care about is if the clean air standards are met. Let the States have the flexibility. If we are mandating, why exempt manufacturers and refiners from their legal responsibility to provide a safe product?

Evidence also suggests that ethanol accelerates the ability of toxins found in gasoline to seep into our ground water supplies. The EPA Blue Ribbon Panel on Oxygenates found ethanol:

> . . . may retard biodegradation and increase movement of benzene and other hydrocarbons around leaking tanks.

According to a report by the State of California entitled ‘‘Health and Environmental Assessment of the Use of Ethanol as a Fuel Oxygenate,’’ there are valid questions about the impact of ethanol on ground and surface water. An analysis in the report found that there will be a 20-percent increase in public drinking water wells contaminated with benzene if a significant amount of ethanol is used. Benzene is a known human carcinogen, and we are giving them liability protection.

At a hearing held on the House side last year, Professor Gordon Rausser of UC Berkeley commented on the potential harm of ethanol in the ground water. Professor Rausser testified:

> When gasoline that contains ethanol is released into ground water, the resulting benzene plumes can be longer and more persistent than plumes resulting from releases of conventional gasoline. Research suggests that the presence of ethanol in gasoline will delay the degradation of benzene and will lengthen the benzene plumes by between 25 percent and 100 percent.

This evidence on the potential harm of ethanol is extraordinarily troubling.

For these reasons, I cannot support the amendment offered by the majority leader. I would like to offer a second-degree amendment that would require the Governor of a State to opt into the ethanol mandate. If the ethanol mandate is such a great mandate, then Governors should want to include their States in it. Why are we forcing them to do it? Everybody who comes down here for ethanol says it is the best thing since sliced bread. If it is so good, let that case be made to the Governors of States and let them opt into the program.

The Senators from Alaska and Hawaii have worked it out so that their States are exempted from this mandate. I believe each and every State should have this choice, so I am sending an amendment to the desk at this time that would do the same thing that Alaska and Hawaii have achieved. The Governor is able to opt into the mandate. If this is so wonderful, Governors will opt in. If it is not, Governors will not.

I yield the floor.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

> The Senator from California (Mrs. FEINSTEIN) proposes an amendment numbered 542 to amendment No. 539.

Mrs. FEINSTEIN. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To authorize the Governors of the States to elect to participate in the renewable fuel program)

Section 211(o)(2) of the Clean Air Act (as added by the amendment) is amended by inserting after subparagraph (B) the following:

‘‘(C) ELECTION BY STATES.—The renewable fuel program shall apply to a State only if the Governor of the state notifies the Administrator that the State elects to participate in the renewable fuel program.’’.

Mrs. FEINSTEIN. I ask the floor leader, the distinguished Senator from New Mexico, what is his pleasure? I understand there are no votes today. Shall I ask the amendment be set aside?

Mr. DOMENICI. No, I believe we will leave the amendment pending. The order is not that there will be no votes today but, rather, no votes until all Senators have returned. It could be this evening, but there is no order to do that or not to do it at this point, so it will remain the pending amendment.

Mrs. FEINSTEIN. I thank the Senator.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I am going to yield momentarily to the distinguished Senator from Ohio, Mr. VOINOVICH, who has worked for many years on this amendment. Suffice it to say, every argument the distinguished Senator from California made, and she made many of them, has been brought before the Committee on Environment and Public Works. They have been raised time and time again at many of the informal and formal hearings regarding this legislation. In the end, in the interest of getting something done that was uniform and that would work, they have all been denied. Efforts as she has put before us have been denied heretofore. I submit it is time for the Senate, at the earliest possible time, when we can, to vote. We should turn it down and leave in effect the national policy that is before us on ethanol, that has been so eloquently discussed on a number of occasions already in the Senate, and even today discussed by the distinguished Senator from the State of Ohio.

With that, I yield to the Senator from Ohio for further comments. I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I thank the Senator from New Mexico.

I respectfully disagree with some of the information that was provided to us by the distinguished Senator from California. First, I would like to say this second-degree amendment would create more balkanization of the fuel supply. We need a national fuel policy. This amendment, in my opinion, would further constrain the fuel supply in this country.

The bipartisan agreement that was negotiated last year between various organizations was not done behind closed doors. It was relatively transparent. In spite of some of the comments made about the environmental threat of ethanol, that agreement was supported by the American Lung Association. I am sure if they had any concern that this was going to harm the environment, they certainly would not have signed on to the agreement that was entered into last year.

The fuels agreement passed by the Senate last year includes the establishment of a renewable fuels standard. The RFS would provide for greater refinery flexibility in the fuels marketplace and the existing clean air oxygenate requirement, particularly as MTBE is phased out of gasoline. It does not require that a single gallon of renewable fuels be used in any particular State or region. Rather, the requirement is on refiners.

The RFS will allow much greater flexibility in the use of oxygenates, which should reduce the chances that localized supply disruptions of gasoline or oxygenates will result in retail supply shortages and price spikes.

The additional flexibility provided by the RFS credit trading provisions in the House and Senate bills would result in much lower costs to refiners and thus to consumers. The credit trading system will ensure that renewable fuels are used when and where it is most cost effective to do so.

In California, according to the information I have, nearly all of the refiners have voluntarily switched from MTBE to ethanol in advance of the State's MTBE phaseout deadline of January 1, 2004. The results can only be described as seamless. There have been no ethanol shortages, transportation delays, or logistical problems associated with the increased use of ethanol in the State.

In fact, according to an April 2003 California Energy Commission report, the transition to ethanol, which began in January of 2003, is progressing without any major problems. Today, approximately 65 percent of all California gasoline is blended with ethanol, and it is estimated that 80 percent of the fuel will contain ethanol by the summer.

As a result, while only about 100 million gallons of ethanol were used in the State last year, California refiners will use between 600 and 700 million gallons in 2003. Thus, efforts to carve out California from the RFS, while unjustified, are also completely unnecessary.

I would also like to make the point that any State may petition EPA for a waiver of the renewable fuels requirement for any year. If EPA, in consultation with the Departments of Energy and Agriculture, finds that there would be substantial harm to the economy or environment of a State, region, or the United States, or that there would be an inadequate domestic supply for distribution capacity to meet the requirement, EPA may reduce the volume of renewable fuel required in whole or in part. Such a waiver would be good for 1 year but could be renewed. Under this circumstance, the overall renewable fuel volume requirement would be reduced nationwide.

In addition, I would like to point out that the use of ethanol significantly reduces the tailpipe emissions of carbon monoxide, an ozone precursor, and VOCs and fine particulates that pose a health threat to children, seniors, and those with respiratory ailments. Perhaps that is one of the reasons the American Lung Association is supporting this compromise.

Importantly, renewable fuels help to reduce greenhouse gases emitted from vehicles, including carbon dioxide, methane, and other gases that contribute to global warming—another answer to the problem of carbons.

The fuels agreement included protects against any backsliding on air quality. First, the agreement tightens the toxic requirements of reformulated gasoline by moving the baseline that refiners must meet to 1999–2000. Secondly, refiners have agreed to meet southern-tier RFG standards for VOC emissions.

Other adjustments to the existing mobile source air toxics rule will ensure additional environmental protections. The agreement allows States and the Ozone Transport Assessment Group—I have been dealing with that group for many years and have had some large disagreements with them, but the agreement allows them to opt into RFG whether the State is in attainment for ozone or not.

Finally, the bill allows EPA, as I mentioned before, to waive a State's volatility to tolerance for ethanol-blended fuels, if necessary, for air quality. In other words, if there is a problem with ethanol in a period of time, the State can waive out of the requirement during that period of time.

I could say many other things, but I think most of the issues raised can be answered very easily. The last thing I would like to point out deals with the issue of cost. The Department of Agriculture has concluded that the ethanol tax incentive program actually—actually—saves the Government money by reducing farm program costs and stimulating rural economies. This is a big deal for rural economies in the United States of America.

I will also say that there was some statement about Archer Daniels Midland being the big supplier. In my State, the farmers and cooperatives are in the process of going forward with building processing plants for ethanol. You are going to have a lot more people in the marketplace when this legislation passes.

The USDA has stated that the net impact of the tax incentive on farm programs is a net savings of more than $3 billion annually. I point out, just as I mentioned before, there are 11 new ethanol facilities or under construction in the United States. Twenty or more ethanol facilities are in the planning stages.

Last but not least, the concern that has been raised regarding the Federal ethanol tax incentive's impact on the highway trust fund has been addressed in legislation introduced by Senators GRASSLEY and BAUCUS. It is supported by a broad coalition of transportation, local government, business, and agricultural people. The proposal returns full funding to the highway trust fund while restructuring and preserving the Federal tax incentives for ethanol.

So on all of these points, this amendment that we have offered, that is being sponsored by the majority leader and the minority leader, and so many Members of the Senate, is good for America, is good for our economy, is good for our security, and is good for the environment. And the amendment from the Senator from California, I think, would certainly make it less effective, if it were agreed to by the Senate. I urge its defeat.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that I be allowed to address the Senate for 2 minutes.

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

(The remarks of Mr. NELSON of Florida pertaining to the introduction of the legislation are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Nevada.

Mr. REID. Mr. President, I know the Chair is anxious to close the Senate for our caucuses. I ask the patience of the Chair. The majority will be here shortly. We have a very important unanimous consent request that we have to enter before the recess.

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

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

UNANIMOUS CONSENT AGREEMENT—RECONCILIATION

Mr. MCCONNELL. Mr. President, with regard to the reconciliation bill, we have reached agreement with the minority which I will now propound.

I ask unanimous consent that on Tuesday, May 13, at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to the consideration of the Senate reconciliation bill, if properly reported, and that there then be 14 hours remaining equally divided under the statutory limit.

Mr. REID. Reserving the right to object, I want to make sure there is an understanding. It is my understanding that the leader sometime this evening, after the bill is reported out of the Finance Committee, would bring this to the floor, but that we would not work on the bill tonight. The 14 hours would start running actually tomorrow; is that right? I wanted to make sure that was the understanding.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. That is the understanding.

Mr. REID. We have been, for the last 24 hours, suggesting that we would be