

nominating a Virginian to fill a traditional Maryland vacancy on the Fourth Circuit.

Most regrettably as well, the White House fanned the flames and refused to tamp down hateful and unfounded claims that amounted to religious McCarthyism. Senate Democrats refused to be cowed by Republican's false charges that they were anti-Hispanic, anti-African American, anti-Christian, antiwoman or antiman. We were none of these things. The fact of the matter is that Democrats were antijudicial zealot, period. Democrats stood up for the independence of the Federal courts and fair, nonpartisan judges for the American people.

These past 2 years we have witnessed the Senate Judiciary Committee and the Senate break with longstanding precedent and Senate tradition. With the Senate and the White House under control of the same political party we have witnessed rule after rule broken or misinterpreted away. The Framers of the Constitution warned against the dangers of such factionalism, undermining the structural separations of power. Republicans in the Senate have failed to defend the institutional role of this branch as a check on the President in the area of nominations. It weakens our Constitution to have such collusion and forfeits the strength and protections of our separation of powers that was designed to protect all Americans.

From the way that home State Senators are treated to the way hearings are scheduled, to the way the Committee questionnaire was altered unilaterally, to the way our Committee's historic protection of the minority by Committee Rule IV has been violated, to the theft of computer files, Republicans destroyed virtually every rule, precedent, custom and courtesy that used to help create and enforce cooperation and civility in the confirmation process. Their approach to our rules and precedents follows their own partisan version of the golden rule, which is that "he with the gold, rules." It is as if those currently in power believe that they are above our constitutional checks and balances and that they can reinterpret any treaty, law, rule, custom or practice they do not like or they find inconvenient.

Some of these interpretations are so contrary to well-established understandings that it is like we have fallen down the rabbit hole in Alice in Wonderland. I am reminded that the imperious Queen of Hearts rebuked Alice for having insufficient imagination to believe contradictory things, saying that some days she had believed six impossible things before breakfast. I have seen things I thought impossible on the Judiciary Committee and in the Senate, things impossible to square with the past practices of Committee and the history of the Senate.

Under our Constitution, the Senate has a vital role in the selection of our judiciary. The brilliant design of our

Founders established that the first two branches of government would work together to equip the third branch to serve as an independent arbiter of justice. 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, Republicans are not acting in a measured way but in complete disregard for the traditions of bipartisanship that are the hallmark of the Senate. Theirs is a practice of might makes right is wrong. One of the great strengths of the Senate is its role as a continuing body with continuing rules that have, until the 108th Congress, been respected and followed under either Democratic leadership or Republican control. Our rules must not change to give whoever is in the majority the power to jerry rig whatever result is desired.

As the Rev. Martin Luther King 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.

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. James Madison, one of the Framers of our Constitution, warned in Federalist No. 47 of the very danger that has threatened our great nation during the 108th Congress, 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."

The American people deserve better governance than we have seen with the destruction of rule after rule by a majority willing to sacrifice the power and precedents of the Senate. Our freedoms as Americans are the fruit of too much sacrifice to have the rules ignored in the United States Senate by partisans colluding with the White House to try to appoint unfit loyalists to courts who have been chosen with the hope that they will re-interpret our

great precedents and overturn the very laws that have protected our most fundamental rights as Americans.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

#### INTERNATIONAL GRANT PROGRAM

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to immediate consideration of Calendar No. 818, S. 2635.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant bill clerk read as follows:

A bill (S. 2635) to establish an intergovernmental grant program to identify and develop homeland security information, equipment, capabilities, technologies, and services to further the homeland security needs of the United States and to address the homeland security needs of Federal, State, and local governments.

There being no objection, the Senate proceeded to consider the bill which was reported from the Committee on Governmental Affairs with an amendment.

(Strike the parts shown in black brackets and insert the part printed in italic.)

S. 2635

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

#### SECTION 1. TECHNOLOGY CLEARINGHOUSE.

Section 430 of the Homeland Security Act of 2002 (6 U.S.C. 238) is amended—

(1) in subsection (c)—

(A) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively; and

(B) by inserting after paragraph (6) the following:

“(7) establishing a program to identify, develop, or modify existing or near term homeland security information, equipment, capabilities, technologies, and services to further the homeland security of the United States and to address the homeland security needs of Federal, State, and local governments;”;

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following:

“(d) HOMELAND SECURITY INFORMATION, EQUIPMENT, CAPABILITIES, TECHNOLOGIES, AND SERVICES GRANT PROGRAM.—

“(1) IN GENERAL.—In developing the program established under subsection (c)(7), the Secretary, acting through the Director of the Office for Domestic Preparedness and in consultation with the Under Secretary for Science and Technology, shall—

“(A) conduct a needs assessment of Federal, State, and local governments and first responders to identify—

“(i) the homeland security needs of Federal, State, and local governments and first responders; and

“(ii) areas where specific homeland security information, equipment, capabilities, technologies, and services could address those needs;

“(B) survey near term and existing homeland security information, equipment, capabilities, technologies, and services developed

within the United States and within other countries that—

["(i) are highly focused on homeland security issues; and

["(ii) have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism; and

["(C) provide grants, directly or through a nonprofit, nongovernmental organization, to eligible applicants to develop new, or modify existing, homeland security information, equipment, capabilities, technologies, and services to address the needs identified in subparagraph (A).

["(2) ELIGIBLE APPLICANTS.—An applicant is eligible to receive a grant under this subsection if the applicant—

["(A) addresses 1 or more needs of Federal, State, and local governments and first responders, as identified through the assessment conducted under paragraph (1)(A);

["(B) is a joint venture between—

["(i) a for profit business entity, academic institution, or non-profit entity; and

["(ii) another entity that has demonstrated capability in the area of counterterrorism or homeland security; and

["(C) meets any other qualifications that the Secretary may reasonably require.

["(3) PRIORITY.—The Secretary shall give priority to those applicants who propose to provide the homeland security information, equipment, technologies, or services developed or modified with grant funds to Federal, State, and local governments and first responders.

["(4) MATCHING REQUIREMENT.—The Secretary may require a recipient of a grant under this subsection to make available non-Federal matching contributions in an amount equal to up to 50 percent of the total proposed cost of the project for which the grant was awarded.

["(5) GRANT REPAYMENT.—The Secretary may require a recipient of a grant under this subsection to repay to the Secretary the amount of the grant, interest at an appropriate rate, and such charges for administration of the grant as the Secretary determines appropriate. The Secretary may not require that such repayment be more than 150 percent of the amount of the grant, adjusted for inflation on the basis of the Consumer Price Index.

["(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$25,000,000 for fiscal year 2005 to carry out the grant program established under this subsection."

**[SEC. 2. HOMELAND SECURITY INFORMATION, EQUIPMENT, CAPABILITIES, TECHNOLOGIES, AND SERVICES GRANT PROGRAM.**

[Section 313 of the Homeland Security Act of 2002 (6 U.S.C. 193) is amended—

["(1) by redesignating subsection (c) as subsection (d); and

["(2) by inserting after subsection (b) the following:

["(c) HOMELAND SECURITY INFORMATION, EQUIPMENT, CAPABILITIES, TECHNOLOGIES, AND SERVICES GRANT PROGRAM.—In developing the program described in section 430(d), the Under Secretary for Science and Technology shall assist the Director of the Office for Domestic Preparedness by reviewing, testing, and evaluating applications or proposals.".]

**SECTION 1. FINDINGS.**

*Congress finds the following:*

(1) *The development and implementation of technology is a crucial component of combating terrorism and implementing homeland security strategies.*

(2) *The Government of Israel and companies in Israel have extensive experience with matters pertaining to homeland security generally, and antiterrorism specifically, including expertise in*

*the fields of border integrity, transportation security, first responder equipment, and civil defense planning.*

(3) *The United States and Israel have an extensive history of working cooperatively and successfully to assist with the development of agricultural, defense, telecommunications, and other technologies that are mutually beneficial to each country, as exemplified by the success of the Binational Industrial Research and Development Foundation (referred to in this section as the "BIRD Foundation").*

(4) *Initiated in 1977 as a grant program, funded equally by the Governments of the United States and Israel in support of joint ventures between businesses in the United States and in Israel, the BIRD Foundation has invested \$180,000,000 in 600 projects over the past 27 years and has realized \$7,000,000,000 in sales and the development of a number of important technologies.*

(5) *The establishment of a similar binational program, or the expansion of the BIRD Foundation, to support the development of technologies and services applicable to homeland security would be beneficial to the security of the United States and Israel and would strengthen the economic ties between the two countries.*

**SEC. 2. UNITED STATES-ISRAEL HOMELAND SECURITY GRANT PROGRAM.**

(a) *ESTABLISHMENT.—There is established a program between the United States and Israel to identify, develop, or modify existing or near term homeland security information, equipment, capabilities, technologies, and services to further the homeland security of the United States and to address the homeland security needs of Federal, State, and local governments.*

(b) *HOMELAND SECURITY NEEDS ASSESSMENT.—In carrying out the program established under subsection (a), the Secretary of Homeland Security shall—*

(1) *conduct a needs assessment of Federal, State, and local governments and first responders to identify—*

(A) *the homeland security needs of Federal, State, and local governments and first responders; and*

(B) *areas where specific homeland security information, equipment, capabilities, technologies, and services could address those needs;*

(2) *survey near term and existing homeland security information, equipment, capabilities, technologies, and services developed within the United States and Israel; and*

(3) *provide grants, directly or through a nonprofit, nongovernmental organization, to eligible applicants to develop, manufacture, sell, or otherwise provide homeland security information, equipment, capabilities, technologies, and services to address the needs identified under paragraph (1).*

(c) *ELIGIBLE APPLICANTS.—An applicant is eligible to receive a grant under this section if the applicant—*

(1) *addresses one or more needs of Federal, State, and local governments and first responders, as identified through the assessment conducted under subsection (b)(1) or homeland security needs otherwise identified by the Department of Homeland Security;*

(2) *is a joint venture between—*  
(A) *a for profit business entity, academic institution, or non-profit entity in the United States and a for profit business entity, academic institution, or non-profit entity in Israel; or*  
(B) *the government of the United States and the government of Israel; and*

(3) *meets any other qualifications that the Secretary may reasonably require.*

(d) *APPLICATION.—Each eligible applicant seeking a grant under this section shall submit to the Secretary of Homeland Security, or the head of a nonprofit, nongovernmental organization authorized by the Secretary to award such grants, an application that contains—*

(1) *the identification of the joint venture applying for the grant and the identity of each entity participating in the joint venture;*

(2) *a description of the product or service with applications related to homeland security that the applicant is developing, manufacturing, or selling;*

(3) *the development, manufacturing, sales, or other activities related to such product or service that the applicant is seeking to carry out with grant funds;*

(4) *a detailed capital budget for such product or service, including the manner in which the grant funds will be allocated and expended; and*

(5) *such other information as the Secretary of Homeland Security may reasonably require.*

(e) *ADVISORY BOARD.—*

(1) *ESTABLISHMENT.—If the Secretary of Homeland Security makes funds available to a nonprofit, nongovernmental organization to award grants to eligible applicants, the Secretary shall establish an advisory board to monitor how such grants are awarded.*

(2) *MEMBERSHIP.—The advisory board shall be comprised of—*

(A) *an appropriate representative of the Government of the United States, as designated by the Secretary of Homeland Security; and*

(B) *an official designated by the Government of Israel.*

(f) *ADDITIONAL CONDITION.—*

(1) *IN GENERAL.—The Secretary of Homeland Security may impose a condition that the Government of Israel contribute an amount that the Secretary determines to be appropriate toward a project to be funded by a grant under this section before the disbursement of proceeds of such grant.*

(2) *LIMITATION.—The Secretary may not prescribe a condition that requires a contribution toward the project from the Government of Israel of an amount in excess of the amount of the grant awarded under this section for such project.*

(g) *PRIORITY.—The Secretary of Homeland Security shall give priority to those applicants who propose to market the homeland security information, equipment, technologies, or services developed or modified with grant funds to Federal, State, and local governments and first responders.*

(h) *MATCHING REQUIREMENT.—The Secretary of Homeland Security may require a recipient of a grant under this section to make available non-Federal matching contributions in an amount equal to up to 50 percent of the total proposed cost of the project for which the grant was awarded.*

(i) *GRANT REPAYMENT.—The Secretary of Homeland Security may, as appropriate, require a recipient of a grant under this section to repay to the Secretary, or the nonprofit, nongovernmental entity designated by the Secretary, the amount of the grant, interest at an appropriate rate, and such charges for administration of the grant as the Secretary determines appropriate. The Secretary may not require that such repayment be more than 150 percent of the amount of the grant, adjusted for inflation on the basis of the Consumer Price Index.*

(j) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Homeland Security to carry out the grant program established under this section—*

(1) *\$25,000,000 for fiscal year 2005; and*

(2) *such sums as may be necessary for fiscal year 2006.*

Mr. FRIST. Mr. President, I ask unanimous consent that the amendment at the desk be agreed to, the committee substitute amendment, as amended, be agreed to, the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4077) was agreed to, as follows:

On page 9, line 10, after "institution," insert "Department of Energy national laboratory,".

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 2635), as amended, was read a third time and passed, as follows:

S. 2635

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

#### SECTION 1. FINDINGS.

Congress finds the following:

(1) The development and implementation of technology is a crucial component of combating terrorism and implementing homeland security strategies.

(2) The Government of Israel and companies in Israel have extensive experience with matters pertaining to homeland security generally, and antiterrorism specifically, including expertise in the fields of border integrity, transportation security, first responder equipment, and civil defense planning.

(3) The United States and Israel have an extensive history of working cooperatively and successfully to assist with the development of agricultural, defense, telecommunications, and other technologies that are mutually beneficial to each country, as exemplified by the success of the Binational Industrial Research and Development Foundation (referred to in this section as the "BIRD Foundation").

(4) Initiated in 1977 as a grant program, funded equally by the Governments of the United States and Israel in support of joint ventures between businesses in the United States and in Israel, the BIRD Foundation has invested \$180,000,000 in 600 projects over the past 27 years and has realized \$7,000,000,000 in sales and the development of a number of important technologies.

(5) The establishment of a similar binational program, or the expansion of the BIRD Foundation, to support the development of technologies and services applicable to homeland security would be beneficial to the security of the United States and Israel and would strengthen the economic ties between the two countries.

#### SEC. 2. UNITED STATES-ISRAEL HOMELAND SECURITY GRANT PROGRAM.

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(b) HOMELAND SECURITY NEEDS ASSESSMENT.—In carrying out the program established under subsection (a), the Secretary of Homeland Security shall—

(1) conduct a needs assessment of Federal, State, and local governments and first responders to identify—

(A) the homeland security needs of Federal, State, and local governments and first responders; and

(B) areas where specific homeland security information, equipment, capabilities, technologies, and services could address those needs;

(2) survey near term and existing homeland security information, equipment, capabilities, technologies, and services developed within the United States and Israel; and

(3) provide grants, directly or through a nonprofit, nongovernmental organization, to eligible applicants to develop, manufacture, sell, or otherwise provide homeland security information, equipment, capabilities, technologies, and services to address the needs identified under paragraph (1).

(c) ELIGIBLE APPLICANTS.—An applicant is eligible to receive a grant under this section if the applicant—

(1) addresses one or more needs of Federal, State, and local governments and first responders, as identified through the assessment conducted under subsection (b)(1) or homeland security needs otherwise identified by the Department of Homeland Security;

(2) is a joint venture between—

(A) a for profit business entity, academic institution, Department of Energy national laboratory, or non-profit entity in the United States and a for profit business entity, academic institution, or non-profit entity in Israel; or

(B) the government of the United States and the government of Israel; and

(3) meets any other qualifications that the Secretary may reasonably require.

(d) APPLICATION.—Each eligible applicant seeking a grant under this section shall submit to the Secretary of Homeland Security, or the head of a nonprofit, nongovernmental organization authorized by the Secretary to award such grants, an application that contains—

(1) the identification of the joint venture applying for the grant and the identity of each entity participating in the joint venture;

(2) a description of the product or service with applications related to homeland security that the applicant is developing, manufacturing, or selling;

(3) the development, manufacturing, sales, or other activities related to such product or service that the applicant is seeking to carry out with grant funds;

(4) a detailed capital budget for such product or service, including the manner in which the grant funds will be allocated and expended; and

(5) such other information as the Secretary of Homeland Security may reasonably require.

(e) ADVISORY BOARD.—

(1) ESTABLISHMENT.—If the Secretary of Homeland Security makes funds available to a nonprofit, nongovernmental organization to award grants to eligible applicants, the Secretary shall establish an advisory board to monitor how such grants are awarded.

(2) MEMBERSHIP.—The advisory board shall be comprised of—

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(B) an official designated by the Government of Israel.

(f) ADDITIONAL CONDITION.—

(1) IN GENERAL.—The Secretary of Homeland Security may impose a condition that the Government of Israel contribute an amount that the Secretary determines to be appropriate toward a project to be funded by a grant under this section before the disbursement of proceeds of such grant.

(2) LIMITATION.—The Secretary may not prescribe a condition that requires a contribution toward the project from the Government of Israel of an amount in excess of the amount of the grant awarded under this section for such project.

(g) PRIORITY.—The Secretary of Homeland Security shall give priority to those applicants who propose to market the homeland security information, equipment, technologies, or services developed or modified

with grant funds to Federal, State, and local governments and first responders.

(h) MATCHING REQUIREMENT.—The Secretary of Homeland Security may require a recipient of a grant under this section to make available non-Federal matching contributions in an amount equal to up to 50 percent of the total proposed cost of the project for which the grant was awarded.

(i) GRANT REPAYMENT.—The Secretary of Homeland Security may, as appropriate, require a recipient of a grant under this section to repay to the Secretary, or the nonprofit, nongovernmental entity designated by the Secretary, the amount of the grant, interest at an appropriate rate, and such charges for administration of the grant as the Secretary determines appropriate. The Secretary may not require that such repayment be more than 150 percent of the amount of the grant, adjusted for inflation on the basis of the Consumer Price Index.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Homeland Security to carry out the grant program established under this section—

(1) \$25,000,000 for fiscal year 2005; and

(2) such sums as may be necessary for fiscal year 2006.

#### SENATE NATIONAL SECURITY WORKING GROUP

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 480, which was introduced by Senator FRIST earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 480) extending the authority for the Senate National Security Working Group.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 480) was agreed to, as follows:

S. RES. 480

*Resolved*, That Senate Resolution 105 of the One Hundred First Congress, 1st session (agreed to on April 13, 1989), as amended by Senate Resolution 149 of the One Hundred Third Congress, 1st session (agreed to on October 5, 1993), as further amended by Senate Resolution 75 of the One Hundred Sixth Congress, 1st session (agreed to on March 25, 1999), as further amended by Senate Resolution 383 of the One Hundred Sixth Congress, 2d session (agreed to on October 27, 2000), and as further amended by Senate Resolution 355 of the One Hundred Seventh Congress, 2d session (agreed to on November 13, 2002), is further amended—

(1) in section (1)(a)(3)—

(A) by striking subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (A) the following new subparagraphs:

"(B) The Working Group may also study any issues related to national security that