

S. 2137, LEGISLATIVE BRANCH APPROPRIATIONS, 1999  
SPENDING COMPARISONS—SENATE-REPORTED BILL—  
Continued

[Fiscal year 1999, in millions of dollars]

	De- fense	Non- de- fense	Crime	Man- datory	Total
Outlays .....		2,209		92	2,301
President's request .....					
Budget authority .....		2,472		94	2,566
Outlays .....		2,411		94	2,505
House-passed bill: .....					
Budget authority .....		2,330		94	2,424
Outlays .....		2,302		94	2,396
SENATE-REPORTED BILL COMPARED TO					
Senate 302(b) allocation: .....					
Budget authority .....		-38			-38
Outlays .....					
1998 level: .....					
Budget authority .....		104		2	106
Outlays .....		119		2	121
President's request .....					
Budget authority .....		-111			-111
Outlays .....		-83			-83
House-passed bill: .....					
Budget authority .....		31			31
Outlays .....		26			26

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions.

### RECESS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate stand in recess until the hour of 4 p.m. this afternoon.

There being no objection, the Senate, at 3:22 p.m., recessed until 4:03 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. STEVENS).

### LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1999

The Senate continued with the consideration of the bill.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

#### AMENDMENT NO. 3225

(Purpose: To make available on the Internet, for purposes of access and retrieval by the public, certain information available through the Congressional Research Service web site)

Mr. MCCAIN. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona (Mr. MCCAIN), for himself, and Mr. COATS, Mr. LEAHY, Mr. FAIRCLOTH, Mr. ASHCROFT, Mr. KERREY, Mr. ENZI, Mr. WYDEN, Mr. FEINGOLD, Mr. ABRAHAM, and Mr. ROBB, proposes an amendment numbered 3225.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

#### SEC. . AVAILABILITY OF CERTAIN CRS WEB SITE INFORMATION.

(a) AVAILABILITY OF INFORMATION.—

(1) IN GENERAL.—The Director of the Congressional Research Service shall make available on the Internet, for purposes of access and retrieval by the public, all information that—

(A) is available through the Congressional Research Service web site;

(B) is described in paragraph (2); and

(C) is not confidential as determined by—

(i) the Director; or

(ii) the head of a Federal department or agency that provided the information to the Congressional Research Service.

(2) INFORMATION.—The information referred to in paragraph (1)(B) is as follows:

(A) All Congressional Research Service Issue Briefs.

(B) All Congressional Research Service Reports that are available to Members of Congress through the Congressional Research Service web site.

(C) All Congressional Research Service Authorization of Appropriations Products or Appropriations Products.

(3) REMOVAL OF INFORMATION; CHANGES AND UPDATES.—Notwithstanding any other provision of this section, the Director of the Congressional Research Service may—

(A) remove from the information required to be made available on the Internet under this section the name of, phone number of, and information regarding, an employee of the Congressional Research Service;

(B) remove from the information required to be made available on the Internet under this section, any material the Director determines may infringe the copyright of a work protected under title 17, United States Code; and

(C) make any changes or updates in the information required to be made available on the Internet under this section that the Director determines are necessary to ensure that the information is accurate.

(b) TIME.—The information shall be so made available not earlier than 30 days after the first day the information is available to Members of Congress through the Congressional Research Service web site.

(c) REQUIREMENTS.—The Director of the Congressional Research Service shall make the information available in a manner that the Director determines—

(1) is practical and reasonable; and

(2) does not permit the submission of comments from the public.

(d) METHOD OF PUBLIC ACCESS.—The public shall have access to the web page containing Congressional Research Service information that is available to the public only through the Library of Congress' THOMAS web page (<http://thomas.loc.gov>). The Director of Congressional Research Service shall work with the Librarian of Congress to establish an appropriate Internet link to carry out this subsection. The Director of Congressional Research Service shall be responsible for maintaining and updating the web page containing Congressional Research Service products. The Director of Congressional Research Service shall have sole discretion to edit the web page based on the criteria established by this Act. The Librarian of Congress shall have the responsibility of working with the Director of Congressional Research Service only to the extent necessary to establish the link from the THOMAS web page to the public access Congressional Research Service web page. Nothing in this Act may be construed to interfere with the Librarian's normal duties concerning THOMAS.

(e) FURTHER APPROVAL NOT REQUIRED.—Notwithstanding the first proviso under the subheading "SALARIES AND EXPENSES" under the subheading "CONGRESSIONAL RESEARCH SERVICE" under the heading "LIBRARY OF CONGRESS" under title I of this Act (relating to prior approval of certain publications), the Director shall make information available in accordance with this section without the prior approval of the Committee on Rules and Administration of the Senate or the Committee on House Oversight of the House of Representatives.

Mr. MCCAIN. Madam President, this amendment to HR 4112 would direct the Director of the Congressional Research Service to post "CRS Reports to Congress" and "CRS Issue Briefs" on the Internet. My intention for offering this amendment would be to establish a web site for the public to access CRS products only through the THOMAS web site. This amendment is co-sponsored by Senators COATS, LEAHY, FAIRCLOTH, ASHCROFT, KERREY, ROBB, FEINGOLD, ABRAHAM, ENZI, and WYDEN.

I believe that it is important that the public be able to use this CRS information. For FY 1999, the American taxpayers will pay \$67.9 million to fund CRS' operations. CRS is well-known for being composed of expert specialists who write reports on the important policy issues of the day that are both factual and unbiased—a rarity for Washington. The public has a right to see that its money is being well-spent and has the right to see the product of their labors.

The CRS products can play an important role in educating the American public. Public access to these documents will mark an important milestone in opening up the federal government. Our constituents will be able to see the research documents that influenced our decisions and understand the trade-offs and factors that we consider before a vote. This will give the public an accurate view of Congress, instead of the current cynical view that sometimes prevails.

Also, constituents can learn a lot from these products. They can receive a concise, accurate summary of the issues before Congress. As elected representatives, we should do what we can to promote an informed, educated public. The educated voter is best able to make decisions and petition us to do the right things here.

I would also like to make my colleagues aware that in many cases these products are already out on the Internet. "Black market" private vendors can charge \$47 for a single report. Other web sites have outdated CRS products on them. It is not fair for the American people to have to pay a third party for out-of-date products that they have already footed the bill for.

I know that my colleagues in the Senate Committee on Rules and Administration have proposed that Senators and Committee chairman be allowed to post CRS products as they see fit on the Internet. I appreciate that gesture, and believe that it is a first step. However, I am proposing this amendment as a way to take this process to the next logical step—a centralized web site.

A centralized web site will make it much easier for the public to find CRS information. The public can just go to a web site and look up those products that interest them. That would be much easier than having them go through all of our web sites to find CRS reports. This web site will be attached to the Congressionally mandated THOMAS web site, so that our

constituents can find legislation and the relevant CRS products—simple one-stop shopping.

A centralized web site will also present the information in a non-partisan format. I know that cynical constituents will look at the CRS reports on a Member's web page, and believe that those products are only put up to gain adherents to a particular political position. CRS is a nonpartisan organization, and its work should be presented on a non-partisan web site. This will allow the public to see CRS as it truly is, not as a political organization.

This bill also gives the Director of CRS discretion to protect himself from liability suits. The Director will be allowed to remove the names and phone numbers of a CRS employee to keep the public from distracting them from doing their jobs. I have also been informed that CRS may not have permission to release copyrighted information over the Internet. While I hope that this situation can be quickly resolved, I have included a provision in the bill to allow the Director to remove unprotected copyrighted information from the bill. Finally, I have allowed a 30 day delay between the release of these CRS products to Members of Congress and the public. This will allow CRS to revise their products and make sure that it is accurate and up-to-date before releasing it to the public.

Opponents of this legislation have tried to accuse this bill of violating the "Speech or Debate" Clause of the Constitution. I find this argument to be complete and total nonsense. When I first introduced this bill, I submitted a letter from Stanley M. Brand, the former General Counsel to the House of Representatives, who has experience in litigating "Speech or Debate" cases. I would like to re-submit his letter for the RECORD, and highlight his quote that:

I believe that the concerns expressed . . . are either overstated, or the extent they are not, provide no basis for arguing that protection of CRS works will be weakened by your bill.

I ask unanimous consent that the letter be made part of the RECORD.

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

BRAND, LOWELL & RYAN,  
Washington, DC, January 27, 1998.

Hon. JOHN MCCAIN,  
U.S. Senate, Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR MCCAIN: I am writing to amplify the comments that I recently made to the press concerning applicability of the Speech or Debate Clause, U.S. Const. art. I, §6, cl. 1, to certain CRS products which your bill would, if enacted, make available on the Internet. Juliet Eilperin, Memo Claims That McCain Legislation to Put CRS Reports Online Could Have Constitutional Problems, Roll Call, January 15, 1998, p. 8.

First, as General Counsel to the House of Representatives I litigated virtually scores of cases involving the Speech or Debate Clause, including a landmark case before the Supreme Court reaffirming the central func-

tion of the clause in protecting the legislative branch from judicial and executive branch interference, *United States v. Helstoski*, 442 U.S. 477, *Helstoski v. Meanor*, 442 U.S. 500 (1979); see also, *Vander Jagt v. O'Neill*, 699 F.2d 1166 (D.C. Cir. 1983); *In Re Grand Jury Investigation*, 587 F.2d 589 (3d Cir. 1978); *United States v. Eilberg*, 507 F. Supp. 267 (E.D. Pa. 1980); *Benford v. American Broadcasting Co.*, 98 F.R.D. 42 (D. Md. 1983), *rev'd sub nom. In Re: Guthrie*, 735 F.2d 634 (4th Cir. 1984). Many of these cases which I litigated were cited in the CRS memorandum as supporting their conclusion that publication on the Internet would adversely affect the Speech or Debate Clause privilege.

I believe that the concerns expressed in the CRS memorandum are either overstated, or the extent they are not, provide no basis for arguing that protection of CRS works will be weakened by your bill. I also want you to know that I was, and remain, a strong advocate for vigorous assertion and protection of the Speech or Debate Clause privilege as a great bulwark of the separation of powers doctrine that protects the Congress from Executive and Judicial branch encroachment.

The CRS memorandum states "extensive involvement by CRS in the informing function might cause the judiciary and administrative agencies to reassess their perception of CRS as playing a substantial role in the legislative process, and thereby might endanger a claim of immunity even in an instance in which CRS was fulfilling its legislative mission."

This fear is simply unfounded. While the courts have consistently relegated the so-called "informing function" to non-constitutionally protected status, they have also steadfastly refused to permit litigants to pierce the privilege for activities that are cognate to the legislative process despite later dissemination outside the Congress. So, for example, *McSurely v. McClellan*, 553 F.2d 1277, 1286 n.3 (D.C. Cir. 1976)(en banc), the Court refused to allow a litigant to question Senate aides about acts taken with the Committee, even though acts of dissemination outside the Congress were subject to discovery. Publication of a CRS product on the Internet would no more subject CRS employees to questioning about the basis for their work, consultations with colleagues or the sources of that work, than would be the case if the same CRS product were obtained by means other than the Internet. Indeed, the fact that House and Senate proceedings are televised does not alter the applicability of the clause to floor speeches, committee deliberations, staff consultation, or other legislative activities. Even certain consultations concerning press relations are protected though dissemination to the media is not protected. Mary Jacoby, Hill Press Releases Protected Speech, Roll Call, April 17, 1995, p. 1 (the Senate Legal Counsel argued that because a legislative discussion is embedded in a press release doesn't entitle a litigant to question staff about the substance of the legislation); see also *Tavoulares v. Piro*, 527 F. Supp. 676, 682 (D.D.C. 1981) (court ordered congressional deponents to merely identify documents disseminated outside of Congress but did not permit questions regarding preparation of the documents, the basis of conclusions contained therein, or the sources who provided evidence relied upon in the documents), *Peroff v. Manual*, 421 F. Supp. 570, 574 (D.D.C. 1976)(preparation of a Committee witness by a congressional investigator is protected because "facially legislative in character"). Under this line of caselaw, it is difficult to foresee how the mere dissemination of a CRS product could subject any CRS employee to inquiry concerning the preparation of such a product. In short, because "discovery into alleged conduct of

[legislative aides] not protected by the Speech or Debate Clause can infringe the [legislative aides'] right to be free from inquiry into legislative acts which are so protected," *McSurely v. McClellan*, 521 F.2d 1024, 1033 (D.C. Cir. 1975), *aff'd en banc by an equally divided court*, 553 F.2d 1277 (1976) courts have imposed the Clause as a bar to any inquiry into acts unrelated to dissemination of the congressional reports.

In *Tavoulares v. Piro*, 527 F. Supp. at 682, the court ruled "[t]he fact that the documents were ultimately disseminated outside of Congress does not provide any justification" for piercing the privilege as to the staff's internal use of the document. *Accord McSurely v. McClellan*, 553 F.2d at 1296-1298 (use and retention of illegally seized documents by Committee not actionable); *United States v. Helstoski*, 442 U.S. 477, 489 (1979) (clause bars introduction into evidence of even non-contemporaneous discussions and correspondence which merely describe and refer to legislative acts in bribery prosecution of Member); *Eastland v. United States Servicemen's Fund*, 421 U.S. at 499 n. 13 (subpoena to Senate staff aide for documents and testimony quashed because "received by [the employee] pursuant to his official duties as a staff employee of the Senate" and therefore "... within the privilege of the Senate"). See also *United States v. Hoffa*, 205 F. Supp. 710, 723 (S.D. Fla. 1962), *cert. denied sub nom Hoffa v. Lieb*, 371 U.S. 892 (wiretap withheld from defendant by "invocation of legislative privilege by the United States Senate").

In the *Tavoulares* case, in which I represented the House deponents, part of the theory of plaintiff's case against the *Post* was that the reporter "laundered" the story through the committee "as a means of lending legitimacy" to the stories and information provided by other sources, *Tavoulares v. Piro*, 93 F.R.D. at 18. In pursuance of validating this theory, the plaintiff sought to prove that the committee never formally authorized the investigation, but rather that the staff merely served as a conduit and engaged in no *bona fide* investigative activity. The court ruled that "although plaintiffs have repeatedly suggested that the subject investigation was not actually aimed at uncovering information of valid legislative interest . . . it is clear that such assertions, even if true, do not pierce the legislative privilege."

As a practical matter, therefore, a litigant suing or seeking to take testimony from a CRS employee based on dissemination of a report alleged to be libelous or actionable may be unable to obtain the collateral evidence needed to prove such a claim—a serious impediment to bringing such a case in the first place.

Even in the case of *Doe v. McMillan*, 412 U.S. 306 (1973) relied on by the CRS memorandum to support its narrow view of the Clause's protection, the Court of Appeals on remand stated: "Restricting distribution of committee hearings and reports to Members of Congress and the federal agencies would be unthinkable." 566 F.2d 713, 718 (D.C. Cir. 1977). It would be similarly unthinkable to subject CRS to broad ranging discovery simply because its work product was made available on the Internet.

The CRS memorandum raises the specter that litigants might even seek "the files of CRS analysts" in actions challenging the privilege. It is beyond peradventure of doubt, however, that publication of even alleged defamatory or actionable congressional committee reports does not entitle a litigant to legislative files used or created in preparing such a report. *United States v. Peoples Temple of the Disciples of Christ*, 515 F. Supp. 246, 248-49 (D.D.C. 1981) *In re: Guthrie, Clerk, U.S. House of Representatives*, 773 F.2d 634 (4th Cir.

1984), *Eastland v. United States Servicemen's Fund*, 421 U.S. at 499, n. 13. Given the foregoing caselaw, I fail to see a realistic threat that CRS employees will be subjected to any increased risk of liability, or discovery of their files. Of course, nothing can prevent litigants from filing frivolous or ill-founded suits, but their successful prosecution or ability to obtain evidence from legislative files seems remote and nothing in your bill would change that.

The CRS memoranda even goes so far as to suggest that claims of speech or debate immunity for CRS products might lead to *in camera* inspection of material, itself an incursion into legislative branch discretion. Yet in the very case cited to by CRS memo, *no court* ordered *in camera* inspection of House documents. *In Re: Guthrie, supra*, involved *no in camera* inspection of legislative documents. These cases are typically litigated on the basis of the facial validity of the privilege and few, if any, courts of which I am aware have even gone so far as to order *in camera* inspection. See *United States v. Dowdy*, 479 F.2d 213, 226 (4th Cir. 1973) ("Once it was determined, as here, that the legislative function . . . was apparently being performed, the proprietary and motivation for the action taken as well as the detail of the acts performed, are immune from judicial inquiry"). Under the Clause, courts simply do not routinely resort to *in camera* review to resolve privilege disputes. Given the now highly developed judicial analysis of the applicability of the Clause to modern legislative practices it rarely occurs. In one recent celebrated case cited to by the CRS, the Court upheld a claim of privilege for tobacco company documents obtained by Congress even though they were alleged to have been stolen, without ever seeking *in camera* review. *Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 417 (D.C. Cir. 1995) ("Once the documents were received by Congress for legislative use—at least so long as congressmen were not involved in the alleged theft—an absolute constitutional ban of privilege drops like a steel curtain to prevent B&W from seeking discovery").

In an abundance of caution, and to address CRS' concerns, you might consider adding the following language to the bill: "Nothing herein shall be deemed or considered to diminish, qualify, condition, waive or otherwise affect applicability of the constitution's Speech or Debate Clause, or any other privilege available to Congress, its agencies or their employees, to any CRS product made available on the Internet under this bill."

I appreciate the CRS sensitivity to subjecting its employees, or their work product, to searching discovery by litigants. Based on the very good caselaw protecting their performance of legislative duties and the strong institutional precedent in both the House and Senate in defending CRS against such intrusions, I do not believe your bill creates any greater exposure to such risks than already exists.

I hope my views are helpful in your deliberations on this issue.

Sincerely,

STANLEY M. BRANCH.

Mr. MCCAIN. Madam President, in addition, I would like to point out that the Rules Committee has approved a decentralized system, where Senators can release CRS products on their private web pages. I see no difference between the release of CRS material on one hundred independent web pages and THOMAS, a Congressionally mandated web page. Both approaches should protect CRS equally.

I also urge my colleagues not to believe other arguments that CRS will

suffer from a huge rise in workload from this amendment. It will require only two computer technicians to set up this web site, and keep it updated. CRS already has a process for deciding which information goes up on their web site for Members of Congress. This bill only asks that they duplicate this process for a public version of that web page. Also, we release paper copies of these products to our constituents every day without causing a great strain to CRS staff. Finally, I have the results of an analysis of state legislative research organizations that do work similar to CRS and post these products on the Internet. None of these organizations have complained of a huge increased workload from releasing their products to the Internet.

In conclusion, I would like to point out that a centralized web site has been endorsed by the Congressional Accountability Project, the League of Women Voters, the American Council on Education, the American Library Association, the American Association of Engineering Societies, IBM, America Online Corporation, Intel Corporation, The Washington Post, The Dallas Morning News, The Arizona Republic, and a host of other groups, businesses, and newspapers interested in maintaining an informed electorate. I urge my colleagues to support this amendment. It will give CRS wide discretion to set up a nonpartisan centralized web site that will benefit the public and allow it to continue to do its great work for us.

Madam President, the number of people who use the Internet is increasing geometrically every single month. More and more Americans, especially young Americans, are relying on the Internet for information. Since we spend \$67 million a year in turning out the best possible information we can from Members of Congress, it seems to me at a very, very modest cost we should share that information with our constituents on the Internet at the web site that is already designated, the so-called THOMAS web site.

It is hard for me to understand why the Rules Committee has refused to act in an affirmative fashion on this issue. I hope we will be able to consider this amendment and that we will be able to have a voice vote on it and move forward and make this thing happen. If not, obviously, we will have to come back and back and back, but I have no doubt that the American people overwhelmingly, especially those who use the Internet to obtain information for themselves, for their classrooms, for their associates, for their families, should be privy to the same information that we are and that we provide our constituents in written form when requested rather than have to leaf through each of the 100 different web sites of Senators. It is time we caught up with the technology that is changing America. It is past time we caught up in a broad variety of ways, and this is one way we can do it.

Madam President, I yield the floor.

Mr. STEVENS. I ask the Senator from Virginia if he seeks the floor?

Mr. WARNER. Madam President, I thank my distinguished colleague. I do seek the floor. I would like to make a reply for the record on the amendment of the distinguished Senator from Arizona, Mr. MCCAIN.

Madam President, I thank my colleague. First, might I inquire of my colleague—I came as quickly as I could when I saw that Senator MCCAIN took the floor—is his amendment now on file? Have the yeas and nays been requested?

Mr. STEVENS. Madam President, the Senator from Virginia asks the question about Senator MCCAIN's amendment. The yeas and nays were not requested, to my knowledge.

The PRESIDING OFFICER. That is correct. They have not been requested.

Mr. STEVENS. The circumstances, I say to the Senator from Virginia, will preclude a vote on that amendment if cloture is granted at 10 a.m. tomorrow morning. If it is not granted, then he will be in a position to ask for the yeas and nays.

Mr. WARNER. Madam President, in fairness to my colleague from Arizona, even though I am in opposition, did he seek to have an up-or-down vote? I think we should extend the courtesy to him.

Mr. STEVENS. With due regard to the Senator's request, Madam President, the pending cloture vote would, if it is approved, mean that there would not be a vote on that amendment as it is not germane to the legislative appropriations bill.

Mr. WARNER. Madam President, I understand that, so I guess the Senator clarified as best he can the status of the amendment.

Mr. STEVENS. That is correct.

Mr. WARNER. I think it is important at this time as chairman of the Rules Committee to put into the RECORD some comments that I have.

Madam President, I also ask unanimous consent that if the distinguished Senator from Kentucky, Mr. FORD, desires to put something in, the RECORD be made available to his entry, as well as the distinguished Senator from Mississippi, Mr. COCHRAN. Both of these Senators have done a great deal of work on this and are in opposition to the McCain amendment. So I make that unanimous consent request in the event that they wish to do so.

Mr. STEVENS. Madam President, as I understand it, I would have to object.

Does the Senator wish to have an opportunity for those two Senators to make a statement today or put them in the RECORD?

Mr. WARNER. Just to put them in the RECORD.

Mr. STEVENS. I have no objection to that, nor do I have objection if the Senators wish to come now and speak. But I would object to keeping the Senate in session very much longer because we know we have a series of very long days coming now. Tuesday and Wednesday are going to be very long, and it is

our understanding the Senate will not be in session beyond 5 o'clock.

Mr. WARNER. Madam President, I will momentarily notify Mr. FORD.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. STEVENS. Will the Senator yield for a parliamentary inquiry? I understand the Senate will stand in adjournment following the statement of Senator WARNER.

The PRESIDING OFFICER. That is the unanimous consent agreement.

Mr. WARNER. Recognizing the distinguished Senator from Alaska wants to be brief, I will simply say this is a very important recommendation that the Senator from Arizona has made. It has been carefully studied by the Rules Committee. I, as chairman; Mr. FORD, as ranking member, we have taken a position in opposition—not to the ultimate goals sought by the distinguished Senator from Arizona, but to the time with which such a goal could likely be achieved. Second, we are still studying the issue and we are concerned that this proposal would take the Member out of the sequence of making this information available to the public. As I read the McCain request, it would mandate that the CRS and its Director would send a great deal of material—reports and issue briefs—right into the Internet system. No Member would be interposed between the recipients of that information and the Director of CRS.

That concerns this Senator a great deal, because if I am out there and come up on the system and access some of this information, it reads that the Director of the CRS put it out. Who is he? Of course, we all know that the CRS is a part of the Library of Congress. It was created for the purpose of accommodating the important needs of Members of Congress, committees, and their respective staffs. Suddenly, this information takes on the imprimatur that the Director takes this position on an issue, as opposed to a Member sending it out and the recipient contacting the Member.

So we, the Rules Committee, felt we should take a first step and therefore, on June 10, we sent to all Members of the Senate a Dear Colleague letter stating that we had now set up a system electronically whereby the CRS could, at the Member's request, transfer certain CRS products to a Member's web site.

I ask unanimous consent this letter be printed in the RECORD.

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

U.S. SENATE, COMMITTEE ON RULES  
AND ADMINISTRATION,

Washington, DC, June 10, 1998.

DEAR COLLEAGUE: The Committee on Rules and Administration wishes to advise all Senators of their ability to make Congressional Research Service (CRS) products available to the public via Member and Committee Internet web sites.

As you know, CRS works exclusively for Congress and is prohibited from disseminat-

ing its work directly to the public. However, in accordance with a longstanding policy in the Senate, Members can and often do release CRS products to the public as part of their constituent service activities.

With the rapidly expanding use of the Internet, we believe it is appropriate for Members and Committees to use their web sites to further disseminate CRS products. The Rules Committee has worked with CRS to develop a system to facilitate the posting of CRS products on Member and Committee web sites. We invite you to visit the Rules Committee web site at <http://www.senate.gov/rules/> to view our posting of CRS products and we encourage you to post CRS products on your web site.

It is our intent to evaluate the public interest in this feature and the accompanying impact on CRS, Committees and Member offices before considering additional ways to electronically disseminate CRS products.

Robert Newlen of CRS can be reached at 7-4313 to coordinate the posting of CRS products on your web site.

With kind regards,

JOHN WARNER,

Chairman.

WENDELL H. FORD,

Ranking Member.

Mr. WARNER. Also, I would like to have printed in the RECORD a letter by the Senator from Arizona and others, and a July 20 Dear Colleague from myself and Senator FORD. This will create a record of correspondence on this matter.

I ask unanimous consent those be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JUNE 24, 1998.

Hon. JOHN W. WARNER, *Chairman*,  
Hon. WENDELL H. FORD, *Ranking Member*,  
*Senate Committee on Rules and Administration*,  
*Russell Senate Office Building, Washington, DC.*

DEAR SENATORS WARNER AND FORD: We are writing to you in reference to your recent letter allowing Senators and their Committees to post issue Briefs and "Congressional Research Service (CRS) Reports to Congress" on the Internet. While we appreciate this first step to make this information available to the public over the Internet, we are concerned that this decentralized approach may end up hurting our shared goal of giving the public electronic access to CRS products.

We have a number of concerns that we believe must be addressed in order to ensure that CRS Reports and Issue Briefs are put up on the Internet in a way that will benefit both the American people and the Congressional Research Service.

(1) We are concerned that CRS products will become inherently politicized by a decentralized approach.

The major reason why the American public is clamoring for CRS products is that they contain both accurate and nonpartisan information about important political issues—a rarity for Washington. Our concern with a decentralized approach is that it will inherently politicize CRS in the eyes of the American people. Members and Committees will be able to release CRS information as it suits their political needs. It is a likely possibility that Members may not give their constituents access to CRS products if they do not want an issue discussed or if they disagree with the CRS analysis of the issue. This will allow individual Senators to censor what their constituents see. It will also mean that CRS products will be publicly

used to support Senators' political positions, and give the public an inaccurate impression that CRS is a partisan agency. If CRS becomes politicized, there are important public and legal ramifications that must be considered.

We want to ensure that CRS keeps its excellent nonpartisan reputation. That is why we proposed in S. 1578 that CRS remain in control of a centralized public access web site that would be attached to a nonpartisan Congressionally mandated site, such as either the THOMAS web site or the United States Senate web site ([www.senate.gov](http://www.senate.gov)). CRS already has a nonpartisan process for making its products available electronically over the Senate intranet, and we believe that it would be best to allow them to continue to use this nonpartisan process for the public.

(2) A decentralized system will be confusing to constituents.

There is no doubt that a decentralized system will confuse constituents. Considering that different Members and Committees may post different CRS products, it is almost impossible for a constituent to find information about an issue. Instead, they will become confused by the multiple places they have to search. When faced with having to examine possibly 580 web sites for information, the public is apt to either give up or request a centralized web site.

We proposed a centralized web site based on the intranet web page CRS has already established. This system will allow constituents to search a general index based on what CRS has already established in order to easily find products. This will be less confusing for our constituents.

(3) A decentralized system may cause legal and liability problems for CRS.

The strategy as outlined in your letter will leave copyrighted information in the public CRS products. We have been informed by CRS that this oversight will cause legal and liability problems for CRS. On February 26, 1998, Daniel P. Mulholland, the Director of CRS, testified before your committee that "If a CRS product, containing substantial copyrighted material (albeit with appropriate credit) is made available to the general public without permission and outside the confines of traditional fair use, liability is possible."

Furthermore, there is nothing in your plan that will remove the names of CRS analysts from their products. During our consultations, CRS requested that the names of these analysts be removed in order to prevent the public from calling these analysts with their complaints. We share CRS's concerns on these issues, and would ask that you consider our proposals to give the Director of CRS discretion to remove the names of analysts and copyrighted information as he feels is necessary.

(4) A decentralized system will be a logistical nightmare.

As alluded to earlier, we are concerned that a decentralized system with no protocol from the Senate Rules Committee will be a logistical nightmare. Different Members and Committees may end up putting up the same CRS products, while other products are not released to the public. If there is no rule about updating CRS reports, the public may end up seeing out of date CRS products that will misinform them or even be a liability concern for CRS. Finally, there is concern that there will be a drag on the Members' personal and committee office staff as they select and update the web pages.

We are also concerned that the restrictions in the Senate Internet Usage Policies may obstruct your attempts at a decentralized system. According to these restrictions: "During the 60 day period immediately preceding the date of any primary or general

election (whether regular, special, or runoff) for any national, state, or local office in which the Senator is a candidate, no Member may place, update or transmit information using a Senate Internet Server (FTP Server, Gopher, and World Wide Web), unless the candidacy of the Senator in such election is uncontested."

This clearly prohibits Members from posting CRS products on their web sites before elections. One-third of the Members of the Senate will not be able to update what they have posted during the biennial election cycle.

A centralized web site will solve all of these concerns. CRS already has a uniform system for maintaining its centralized intranet web site. This web site has prevented much of the confusion that a decentralized web site would entail. The legislation proposed by us during our discussions with you would simply ask that CRS use its existing processes to maintain a web site that the public could access through a non-partisan Congressionally mandated web page. We know that this proposal would only require 3 CRS staff and not involve over 100 personal office and committee staff.

(5) A decentralized system may cost more than a centralized system.

Our concern is that a decentralized system may incur the same costs for CRS as a centralized system, while also being a funding and time drag on personal and committee offices. CRS will still have to use the same staff and resources preparing products for public dissemination in either a centralized or decentralized web site. However, the decentralized proposal will also end up using valuable personal and committee staff resources to post the products on their web pages and update them.

While we appreciate your recent attempt to address the issue of giving the public access to CRS products, we want to make sure that this is not a mis-step. By using our proposal for a centralized web site, we hope to work with you to create a public venue for access to CRS products that will give the Director of CRS greater discretion over the dissemination of CRS products while also reducing the public visibility of CRS. This will give the American public access to the high quality information that they already pay for, and still allow CRS to perform its statutory responsibility to only serve Congress.

We look forward to your continued cooperation on this issue, and hope to continue working with you to pass S. 1578 and establish a centralized web site where the public can access CRS products.

Sincerely,

JOHN MCCAIN.  
LAUCH FAIRCLOTH.  
PATRICK LEAHY.  
MIKE ENZI.  
DAN COATS.  
SPENCER ABRAHAM.  
CHARLES ROBB.  
J. ROBERT KERREY.

COMMITTEE ON  
RULES AND ADMINISTRATION,  
Washington, DC, July 20, 1998.

DEAR COLLEAGUE: When the Senate considers the FY99 Legislative Branch Appropriations bill, Senator McCain is expected to offer an amendment that would mandate that the Congressional Research Service (CRS) directly release certain documents to the public through the THOMAS web site. As Chairman and Ranking Member of the committee with oversight of CRS, we have serious concerns regarding this amendment.

Let us state up front that we support the objective of using technological advances to increase the availability of CRS products to the public. Following testimony before the

Committee on Senator McCain's proposal, we announced a new initiative designed to increase access to this information while maintaining a long-standing policy that Congress, not CRS, disseminate CRS products to the public. This initiative, outlined in a June 10 letter which you have previously received, increases public access by facilitating dissemination of CRS information through member and committee home pages.

The McCain amendment would make a radical change in CRS policy by forcing CRS to directly disseminate material to the public. CRS is not an independent agency. It is an extension of our staff and was never intended to be an independent source of legislative information for the public. Instead, members communicate with their constituents and channel CRS information products to them as the member determines it is appropriate.

The Congressional Budget Office has estimated that the cost to CRS to implement this amendment would likely range between \$2 and \$8 million dollars annually. This amendment would create an entirely new mission for CRS—a public information function that CRS is neither organized nor funded to perform. The Rules Committee initiative, however, has minimal cost, preserves the representational relationship between a member and his or her constituents, and substantially increases public access to CRS information products.

Furthermore, the Joint Committee on Library is nearing completion of a report regarding this very matter. It would be premature to adopt this amendment prior to the completion of that report.

It is our intent to continue to evaluate the Rules Committee initiative to determine the level of public interest in CRS information products and to determine the best approach for achieving broader dissemination while preserving the historic role of CRS. We urge you to oppose this amendment and allow the Committee to continue to work with CRS to expand access to its products.

With kind regards,

WENDELL H. FORD,  
Ranking Member.  
JOHN WARNER,  
Chairman.

Mr. WARNER. This helps Members, then, to better understand the inner workings of the Rules Committee, what we have done for Members, and what Senator MCCAIN is endeavoring to do. It lays out my concerns that it is important that we run this initial test, whereby Members of the U.S. Senate can now put this material out or the committees of the Senate can put this material out. Let's make some assessment over the next few months of what it costs, what staff are involved, and to the extent there is an interest out there in the public for this very voluminous amount of information that is created by CRS. It may well be in the due course of time we will take a further step towards the goals Mr. MCCAIN has in his amendment.

So for the time being we oppose the amendment and ask Senators to entrust to the Committee on Rules and Administration the proper analysis of the objective by Senator MCCAIN, as well as the costs associated with it and the desirability, in the public domain, for the dissemination of this information.

That concludes the remarks of the Senator from Virginia.

Mr. FORD. Madam President, I rise in opposition to the amendment by my

colleague and good friend from Arizona. I do not do so because I disagree with his goal of making the good work of the Congressional Research Service available to the general public. Nor do I believe that the American people should be prevented from seeing the kinds of documents we use every day to help us make difficult decisions here in Congress. The Senator from Arizona is nothing if not consistent in his commitment to open government, and this current effort, like so many others, is continued proof of his faith in those principles.

That said, however, I oppose this amendment because it attempts to solve a problem that really doesn't exist. For years, all Members of Congress have had the opportunity to make CRS materials available to constituents upon request. This arrangement has been beneficial to everyone concerned: citizens receive information on issues of interest; Members of Congress are kept informed about the issues that concern their constituents; and the CRS—which is an extension of Congressional staff and not a public agency—maintains the ability to study and explain difficult issues for its primary audience, the Congress, without external pressure from groups with an interest in the issues that CRS is charged with researching.

Of course, as technology has changed, CRS has been able to improve the ways of delivering materials to Congress. While CRS still prints reports and delivers them to Congressional offices by hand and by mail, those same reports are also now available to Members and staff via the Internet. Congress, similarly, can make use of technology and the Internet to distribute CRS materials to their constituents. There is no reason to switch from the procedure of allowing Members of Congress to interact with their constituents with regard to CRS products to a system where CRS responds directly to the public.

That is why Senator WARNER and I, as Chairman and Ranking Member of the Rules Committee, recently circulated a "Dear Colleague" letter announcing that the Rules Committee will be providing selected CRS documents to the public through a special link on the Committee Web site and inviting Members and Committee Chairmen to investigate the feasibility of doing the same with their Web sites.

Although it might seem like a big step for the Rules Committee and other offices to make CRS documents available on the Internet, the truth is that our Web page is nothing more than a new twist on the old method of making CRS documents available to interested citizens. The only difference is that, instead of using what Internet users call "snail mail," Members of Congress can make CRS materials available to constituents at the click of a mouse or the press of a button.

What has not changed is the necessary participation of Member offices in the process. Without that participation—without the ability of Members

and Committees to respond to constituent requests and to provide CRS products accordingly—CRS risks losing its status as an extension of our staff and the scholarly research and non-partisan analysis that are its hallmarks will be jeopardized.

That is why I think the pending amendment—which would remove Congressional offices from the equation and require that CRS prepared and maintain a central public Website for its products—is flawed. What is worse, requiring CRS to put all of its products on the Internet would cost millions of dollars—money that could be put to better use in recruiting new CRS analysts to replace those who will be eligible to retire shortly after the turn of the century. I simply cannot understand why CRS should be saddled with a project of this size when we in Congress already have the means to use existing technology to significantly improve the traditional method of distributing CRS products.

Madam President, as Ranking Member of the Rules Committee I have had several opportunities to hear out my colleague from Arizona on this issue. I urge him and any colleagues who support this amendment to follow the lead of the Rules Committee in offering CRS products to constituents via the Internet. As of now, no other Senate Committee—including the Commerce Committee, chaired by my colleague from Arizona—has taken advantage of the offer by CRS to assist Committee and Member offices with online access to CRS products.

Madam President, I have always believed that “if it ain’t broke, don’t fix it”—and until it is clear that Committee- and member-sponsored online distribution of CRS products is inadequate, I do not think we should expend the energy of the Senate—or the resources of the CRS—on such a questionable solution. I urge my colleagues to oppose the amendment.

#### MEASURE PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 2330. A bill to improve the access and choice of patients to quality, affordable health care.

#### MEASURE READ THE FIRST TIME

The following bill was read the first time:

H.R. 1432. An act to authorize a new-trade investment policy for sub-Saharan Africa.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-6098. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Security Zone; Coast Waters Adjacent to Florida” (Docket 07-98-006) received on July 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC-6099. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Special Local Regulations; Cross River Swim Paducah Summerfest, Ohio River mile 934.5 to 936.0, Paducah, Kentucky” (Docket 08-98-040) received on July 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC-6100. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Special Local Regulations for Marine Events; New Jersey Off-shore Grand Prix” (Docket 05-98-006) received on July 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC-6101. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Beverly Homecoming Fireworks Display, Beverly Harbor, Beverly, MA” (Docket 01-98-082) received on July 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC-6102. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Safety Zone: Parade of Lights Fireworks Display, Boston Harbor, Boston, MA” (Docket 01-98-083) received on July 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC-6103. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Safety/Security Zone: San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay, CA” (Docket 11-98-005) received on July 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC-6104. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives; British Aerospace Model BAe 146-200A Series Airplanes” (Docket 98-NM-87-AD) received on July 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC-6105. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives; Airbus Model A320 Series Airplanes” (Docket 97-NM-197-AD) received on July 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC-6106. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-145 Series Airplanes” (Docket 98-NM-41-AD) received on July 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC-6107. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “IFR Altitudes; Miscellaneous Amendments” (Docket 29265) received on July 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC-6108. A communication from the Assistant Secretary for Tax Policy, Department of the Treasury, transmitting, a draft of proposed legislation regarding Puerto Rico and Virgin Islands Rum Excise Tax Collections; to the Committee on Finance.

EC-6109. A communication from the Director of the Office of Personnel Management,

transmitting, a draft of proposed legislation entitled “Omnibus Federal Human Resources Administrative Improvements Act”; to the Committee on Governmental Affairs.

#### REPORT OF COMMITTEE

The following report of committee was submitted:

By Mr. STEVENS, from the Committee on Appropriations;

Special Report entitled “Further Revised Allocation to Subcommittees of Budget Totals, Fiscal Year 1999” (Rept. No. 105-252).

#### ADDITIONAL COSPONSORS

S. 971

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 971, a bill to amend the Federal Water Pollution Control Act to improve the quality of coastal recreation waters, and for other purposes.

S. 1285

At the request of Mr. FAIRCLOTH, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1285, a bill to amend the Internal Revenue Code of 1986 to provide that married couples may file a combined return under which each spouse is taxed using the rates applicable to unmarried individuals.

S. 1482

At the request of Mr. COATS, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1482, a bill to amend section 223 of the Communications Act of 1934 to establish a prohibition on commercial distribution on the World Wide Web of material that is harmful to minors, and for other purposes.

S. 1862

At the request of Mr. DEWINE, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1862, a bill to provide assistance for poison prevention and to stabilize the funding of regional poison control centers.

S. 2098

At the request of Mr. CAMPBELL, the name of the Senator from Washington (Mr. GORTON) was added as a cosponsor of S. 2098, a bill to preserve the sovereignty of the United States over public lands and acquired lands owned by the United States, and to preserve State sovereignty and private property rights in non-Federal lands surrounding those public lands and acquired lands.

S. 2112

At the request of Mr. ENZI, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 2112, a bill to make the Occupational Safety and Health Act of 1970 applicable to the United States Postal Service in the same manner as any other employer.

S. 2114

At the request of Mr. DURBIN, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 2114, a bill to amend