

in the majority or minority, Democrat or Republican, liberal or conservative, we ought to be concerned when some small group of people, in the dark of night, overturn legitimate public roll-call decisions made by this body. We ought to be concerned about that because I think it is an erosion of democracy in our Republic that is deplorable, deplorable. How many more times is it going to happen? How does it render the Senate, this so-called deliberative body, when we can deliberate, make tough decisions here on the Senate floor, only to be overturned? What does it say?

With regard to the issues themselves I will say this: I said a couple of days ago this is the beginning. It was not our desire to shut the Government down, to block this bill ultimately. We wanted to give our Republican colleagues a chance to fix it. They have chosen not to fix any of these issues. But we will be back. We must be back. We will continue to offer amendments on whatever vehicle is presented to us. We are now preparing Congressional Review Act resolutions. The legislative veto is available to us on some of these matters and we will use it.

So we will be back again and again. These issues will not go away. We will continue to fight and we will continue to work, first, because we care about the institution but, second, because we care about these policies.

So, Mr. President, it is with great concern—chagrin, that we find ourselves in a position today that I wish had never presented itself to this body.

We will have a vote on cloture. We may have a vote on final passage. But it will not be the last vote on these issues.

I hope in the interest of this institution we will learn the hard lessons that these specific problems have created for each of us.

I yield the floor.

#### RESERVATION OF LEADER TIME

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

#### AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 2673, which the clerk will report.

The legislative clerk read as follows:

A conference report to accompany H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

The PRESIDENT pro tempore. Under the previous order, there will be 4½ hours equally divided between the

chairman and ranking member of the Appropriations Committee or their designee for debate only.

Who seeks recognition? The Senator from New Jersey.

Mr. CORZINE. Mr. President, I yield myself about 10 minutes, if that is appropriate.

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

Mr. CORZINE. I thank the Chair.

First of all, I want to speak today about this appropriations bill that is now on the floor. I have serious ambivalence about how we should deal with the specifics of this measure. I know members of the Appropriations Committee, led by the Presiding Officer, have worked long and hard. They have worked in a fair way to try to make sure they put together the best final product they can, have been sensitive to the needs of their colleagues, and have worked to try to be balanced about how they brought forth this final product. Unfortunately, through the conference process, a product has emerged that differs from that sought by our leaders here in the Senate.

It is with some ambivalence that I feel the need to express some of the reasons why I will not be supporting the Omnibus appropriations bill for 2004. It contains what I believe are serious policy flaws that, furthermore, don't deal actually with the appropriations process. They go far beyond what should be addressed, debated and concluded in the democratic forum of this Senate, and in the House.

It seems to me that the most serious problem here is not even those policies, although they are very important in and of themselves, but this process that has somehow overturned the policies supported by wide majorities in both houses, policies we worked so long and hard to deal with—I think this process is out of kilter.

But I also believe that, at a policy level, they are important, things such as overtime. It is just hard to believe when we can pass a dividend and capital gains tax cut to help those who are already doing well to improve wealth, and, to put it in economic terms, to reward capital, we are turning our backs on labor and on work.

I don't mean labor in an organized sense. I mean our workforce, the people who work. It seems to me that people who work should have at least the same value attested to their efforts as people who invest. Here we are talking about 8 million people who will come off these rolls of potential overtime benefits. For what reason? For what reason are we doing this when we want to reinforce the work ethic in this country? And these are the people who have modest to middle-income positions in our society.

It is extraordinarily difficult to understand this decision when you consider the context that both this Senate and the House of Representatives have opposed changes to our overtime rules. This bill is a turnaround from the will

of both bodies on this matter. It is incredibly difficult for me to understand why we are moving forward with this bill when we have something that strikes at the heart of what it is we value in this country. Work ought to be something that is rewarded. It ought to be recognized. It has been a part of the consensus we have in this country. Obviously, it is broadly conceived as being the right thing by the majority of folks in both houses and on both sides of the aisle. I have grave difficulty understanding this. It goes to the fundamental essence of how our economy works. Work ought to be valued at least the same as capital in this society.

Here we are turning our backs on it. We are sending the wrong signal to our kids, and to society in general. It is a big mistake, in my view—so big that I think it actually compromises the value of the overall piece of legislation.

Second, I have serious concerns about media concentration. Of course, a lot of us do not often like things that are said in the media. We don't like that to-and-fro which impacts us individually. But society is better by it. It is a lot better when we have a healthy debate of ideas and different viewpoints come out. That is what democracy is about.

The last time I checked, both sides of this body supported the media concentration rule at 35 percent. And somehow we have a different rule than what was agreed to by both houses. I heard the distinguished minority leader speak to the essence of the institution, and the institution is broader—not just the Senate but the Senate and the House. How can we reach agreements on things and then come out with a different result on something as important as how we communicate with the public in this country? How do we change the dynamics of political debate and news coverage on which the people rely to fulfill their civic duty and gather information to make decisions, such as who they are going to support? How will they make informed decisions when we have this concentration? It is an incredibly difficult concept for me to understand.

We don't raise a lot of cows in New Jersey, but we eat a lot of meat. I don't understand the country-of-origin labeling issue. Why would we not take the steps that are necessary to protect the American people and to protect the country's economic interests so we can keep the export markets open? This is not fundamentally sound on either the safety of the public or our own economic security. Why are we trying to cut jobs in this country? It is bad enough that we are cutting overtime. Now we are undermining our ability to actually be effective in the global market because we are making policy that reflects a narrow interest as opposed to the public's interests and the broader economic interests of the country.

It is hard to understand at a period in time when we are down 2.3 million jobs

in less than 3 years, where there hasn't been the kind of growth in economic reality of people's lives—that is, going to work: jobs. Here we have something that endangers the public and strikes at the heart of economic growth. Economic growth makes a difference in families' lives in America: jobs. I have trouble understanding this.

I heard my distinguished colleague from New Jersey yesterday come down and talk about the destruction of records on the purchase of firearms after 24 hours.

Where are we coming from in a world where we have a war on terror with people who like to buy guns and go and use them for purposes that are antagonistic to the security of the American people? We are passing a law that is going to make that activity much more available. We can't check out records of air flights into the United States in a week, and now we are willing to say that we are going to take records on the purchase of a gun and have them destroyed within 24 hours? Please, somebody tell me the rationality of that in the midst of a war on terrorism.

Our President spent three-quarters of the State of the Union address talking about how we need to protect Americans both at home and abroad, and we turn around and embed in this legislation—by the way, not pass in this body—we turn around and change a fundamental issue with regard to gun safety in this country. It is very hard for me to understand that. We are turning our backs on protecting the American people.

I heard my colleague from New Jersey say this is a real deal where he comes from, a real deal. Seven hundred people in my State—10 people in my hometown—died on 9/11. I don't understand why we are changing the elements of safety and security of the American people in an appropriations bill. Why are we doing that? What special interest is arguing for that? What interest makes that so important we do that here and now? I find it incredible we think this is the right way to move forward on gun safety.

Overtime and the value of work, free expression of political opinion in our country as reflected in our media rules, and the gun law changes in this climate of heightened concern about homeland security, I don't understand why these major policy moves are embedded in an appropriations bill, particularly when both Houses—at least on parts of these issues—have already said this is not the direction we want to take.

Mr. REID. If the Senator will yield for a question, will the Senator also agree—to complicate matters with what we are doing here today on the overtime issue, which is so important to so many millions, not hundreds, not thousands but so many millions of Americans—the Senator is aware that no matter what happens on this piece of legislation, the President now can do

whatever he wants? Whether this passes or not, the President can do whatever he wants; is the Senator aware of that?

Mr. CORZINE. To be honest, I believe I have a sense that the President can do whatever he wants to do with regard to this issue. I think they have already done that. This authorization is embedded in this bill. But I know they can stand back and stop this with the same regulations they proposed to start.

Mr. REID. Again, I ask my friend the question, we have in one of these appropriations bills a prohibition, a piece of legislation that would prevent the President from exercising his authority to take away overtime rights for people all over America; is the Senator aware of that?

Mr. CORZINE. The distinguished Senator from Nevada, our assistant minority leader, is exactly right. I have read those exact words and know the President can use his authority for good or he can turn his back on Americans.

Mr. REID. The Senator is aware that some time, for lack of a better description, in the dead of night, where there was no one from the public present, even though the House and the Senate passed provisions dealing with overtime, the Senate is aware it was stripped from the bill?

Mr. CORZINE. I understand this is not part of the legislative process that we have all been a part of in the Senate and that in the House of Representatives.

The PRESIDING OFFICER (Ms. MURKOWSKI). The time of the Senator is expired.

Mr. CORZINE. If the Chair will yield 1 minute.

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

Mr. CORZINE. Madam President, I repeat, the policies of this bill on overtime, media concentration, and certainly gun safety records are just incredibly out of connection with the reality of the world in which we live today. Work should be valued, open debate should be valued, and the safety of our citizens, our homeland security, should be valued.

Again, I compliment the leadership on its work on this appropriations bill. I just do not understand why we have had to mix it up and put it into a bowl of seriously flawed policies. There is a whole series of other policies, including vouchers in the school system, that have occurred without real debate—and I could go on—but overtime in this country is a value of work. Media concentration was designed so that America could have a free press and a free debate. We ought to be making sure we protect these fundamental rights. It ought to be done in a democratic way. I hope my colleagues will stand with us on principle on the Omnibus appropriations bill to fix it and come back to the fundamental underlying appropriations process.

Mr. STEVENS. I call attention to the Senators, as the leader's opening state-

ment indicated, it is entirely possible a vote on the cloture motion will occur before 2 p.m. There are 4½ hours of debate equally divided prior to this second cloture vote, but those Members who want to speak should indicate to their respective floor leaders if they want to speak so we are not going to have anyone disturbed over relying on the concept that there are 4½ hours when there probably will not be 4½ hours of debate.

Mr. REID. Will the Senator yield?

Mr. STEVENS. I yield.

Mr. REID. I appreciate very much the Senator making this statement. If there are Members desiring to speak and use the full 4½ hours, they have a right to do that. However, there have been requests on our side and on the majority side from Senators who would like to vote earlier. We would have to vote by 12 o'clock. So it would cut off 2 hours. We cannot vote at 12:30 because we have a policy luncheon starting at 12:30 and we have two votes.

If Members wish to speak, if they would notify the floor staff on both sides, we will divide up the time. If someone cannot come until this afternoon, that is the way it will be; we will have a vote at 2 o'clock.

I repeat what the distinguished President *pro tempore* has said: Some Senators wish to move forward more quickly, and we will do whatever the will of the body is, but we need to notify Senators as soon as possible.

Mr. STEVENS. Madam President, we are prepared to work with the minority in that regard and have the vote earlier if that is desired. I just want to call attention to the fact that Senators ought to take that into consideration in terms of whether or not they want to come to the floor and make a statement. If there is no indication anyone wants to speak, obviously we will go to a vote earlier.

At this time, I yield to the Senator from Texas, Mrs. HUTCHISON, the right to designate the time allocated under the time agreement on this side.

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

Mr. CORZINE. Will the Senator from Alaska yield for a unanimous consent request?

Mr. STEVENS. I am happy to yield for a unanimous consent request.

Mr. CORZINE. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of the concurrent resolution which I will send to the desk correcting the enrollment of the omnibus conference report. The resolution restores the Senate language barring the implementation of the regulations which will deny overtime pay to millions of workers; that the concurrent resolution be agreed to and the motion to reconsider be laid on the table.

Mr. STEVENS. Reluctantly, I must object to that request.

The PRESIDING OFFICER. The objection is heard.

Mrs. HUTCHISON. Parliamentary inquiry to the distinguished minority

whip: Is it premature to ask for unanimous consent to change the time of the vote?

Mr. REID. It is. I say to the distinguished Senator from Texas that we are now waiting to hear from a number of Senators who have indicated they want to speak. It is a question of whether they can do it before lunch or if they have to do it after lunch. We are trying to work on that as quickly as possible.

Mrs. HUTCHISON. Madam President, it would be in everyone's interest, once our Senators are notified, if we could set that time so our time could be roughly equally divided before then.

With that, Madam President, I will speak on our time and talk about the importance of passing the omnibus bill. This is a bill that encompasses many departments in our processes in the Senate. Normally, we try to pass each department separately so we can deal with those issues separately. Because of various circumstances, we now have a bill that takes in several major departments. Therefore, there are things that have not been debated separately. I know there are concerns that have been raised. However, we must pass this bill if we are going to have the will of today's Congress take effect for the appropriations between now and October 1 of this year.

If we do not pass this bill—the alternative is a continuing resolution—it means that last year's priorities would prevail, and there would be some major losses in funding for the next 9 months of this year.

Let's take, for instance, the veterans. Today we would lose, by not passing this bill, the ability to fully serve our veterans in their health care. Continued operations under a continuing resolution would force the Veterans' Administration to curtail the hiring of new physicians and nurses, pharmacy costs would continue to rise, and we would not have the money to pay for the added expenses that we are seeing in the medicine benefits to veterans. The waiting list for veterans medical care would start to rise, and it would mean the VA would not be able to expand its long-term care services under the old priorities.

Part of our bill this year that is before us today expands veterans medical benefits. If we pass a continuing resolution, we would not be able to increase that medical service. We have new veterans with medical needs coming home now from Iraq and Afghanistan. The idea that we would not fully fund the needs of veterans today is unthinkable. That is what would go by the wayside if we do not pass the omnibus bill.

Let's talk about education. In the bill, Pell grants maintain their historically high maximum award of \$4,050 to help disadvantaged students achieve the dream of a college education. Afterschool centers are increased in funding to \$1 billion.

Impact Aid—now, Impact Aid is for school districts that have a high num-

ber of bases, military personnel in that school district. Impact Aid helps the school district overcome the fact that you cannot tax Federal property. If a base is a major part of a school district, that is nontaxable property. Yet military personnel send their children to these schools. So the Federal Government has always made up the amount that would be lost in property taxes by giving Impact Aid. It is increased \$49 million over last year. That will be lost for the next 9 months if we do not pass this bill, thereby further strapping the school districts in the places that have a high volume of military personnel.

Wouldn't that be an incredible thing to say to our active duty military: Oh, we are putting more responsibility on you. We are putting more burden on you. Many of you are overseas, but you have to worry about the school districts not having the money to fully educate your children while you are serving our country. Is that really a message we want to send today to our military personnel?

Head Start funding, to help prepare our disadvantaged young children to learn and succeed in school, it is boosted by \$148 million in the omnibus. That would be lost for the next 9 months if we do not pass this bill, so we would not be able to get those programs geared up with the reforms that we are trying to put in place that make Head Start more of an educational experience rather than just a play experience that is day care. We are trying to give these young children the opportunity to proceed, before they get to kindergarten, with the very best early childhood education possible.

When I was home over the holidays, I visited one of these target Head Start centers, where children in the 3-year-old class and the 4-year-old class were learning their ABCs. They were learning their numbers. They were learning the computer. There were 3-year-olds and 4-year-olds working on the computer. This is the kind of Head Start Program we want to fund. That would be possible if we pass the omnibus bill. That would certainly be curtailed if we do not pass the bill.

The National Cancer Institute would have \$148 million more over the next year if we pass the omnibus bill. But if we stick with last year's priorities, the National Cancer Institute will have to stop its funding increases. Many people know, with the increase in health care research in the National Cancer Institute, we have been able to make great headway in fighting cancer, in finding the cause of cancer, and then finding something that will fight that particular cause of cancer.

The Geraldine Ferraro Cancer Education Program would be funded in fiscal year 2004 \$5 million. It would help educate the public on issues surrounding blood cancers. None of this funding would be provided under a continuing resolution. So that is \$5 million that would go to the education of

cancers such as lymphoma, leukemia, multiple myeloma, which is very important because these are the cancers that have historically been underfunded. Many people now are getting these cancers when they are not really aware that they need to have their blood checked but because they are losing energy. It is a terrible disease. The Geraldine Ferraro Cancer Education Program funding would lapse if we do not pass this bill.

Election reform. We made major steps in the right direction on election reform this year. The Help America Vote Act would be providing funding to States to make sure they follow through on Congress's commitment to strengthen the electoral process. None of this funding would be available under the continuing resolution.

In a very important Presidential election year, when we are going to elect every Member of the House and when we are going to elect one-third of the Senate, do we really not want to fully fund the reforms to assure our electoral process is fair, that it is a system where people can count on their vote counting? I hope not. That is \$1.5 billion in the omnibus bill that would not be funded for the next 9 months, until October 1, if we do not pass the bill.

So we obviously would not have any of these reforms in place if we do not fully fund and pass the omnibus bill that is before us today.

The Millennium Challenge. This is a program that would be both authorized and funded at \$1 billion this year to help developing countries achieve economic growth, to lay out alternatives to poverty, violence, and terrorism. This is very important in our war on terrorism. If we keep terrorists from being able to lock into a country that is very poor, we will give the people of that country hope, hope that there is something else besides just violence and continued poverty. Economic possibilities, economic opportunities are what will make a difference in many of these countries.

The FBI is a very important part of homeland security. We now have put the FBI into the same grid that works in homeland security, with intelligence sources to try to pick up the signals that maybe there would be another terrorist attack.

Under the omnibus bill, the FBI will be able to hire 229 new agents, receiving \$138 million in program improvements to help in the fight against terrorism. If we do not pass this omnibus bill, we will go 9 months without allowing the FBI to gear up for what we are asking them to do; and that is, to hire the agents to be a part of our homeland security.

The International Trade Administration is funded at \$28 million more this year. What would we lose if that funding goes by the wayside? This is what is focusing on many countries' compliance with trade standards, China's compliance with trade standards. We

have heard many concerns raised in our country about China complying with fair trade standards. We need to make sure China and every country meets the standards they have signed on that they would meet, standards that require intellectual property to be protected.

We don't want to allow people to copy the videotapes or the movies or the books that are being written by other people and not pay the intellectual property requirement to do so. But we need the enforcement capability. That will be lost.

We are targeting countries for cultural exchanges and education programs. One of the long-term goals in the war on terrorism is to try to bring people from countries that do not have democracy, that do not know freedom, to our country for cultural exchanges, for education, to show public education, giving our children the opportunity to learn, to read and write and learn math, to be able to function in a world that will create an economic base for a country. Many of the countries that are the home bed of terrorism do not have these freedoms.

Cultural exchanges are one of the long-term goals that we have in the war on terrorism to have people come from these countries to see what happens when you have a strong system of public education, to see what happens when you have freedom, to see how people can live when there is the right to free speech, when there is the right to a free public education that would give our young people the economic opportunities that education will give them.

A long-term continuing resolution that would not give any of these priorities that we have put in place in the bills that have come out of these committees would cause a \$5.5 million budget shortfall for the Small Business Administration. That would be almost a 20-percent reduction in their budget. Programs that help small businesses compete, such as the 7A program, would eventually be shut down if we have a continuing resolution rather than this omnibus bill.

As I have gone through my State during the past 2 months, I have found many small business people complaining that the Small Business Administration offices are being shut down, the services are not there, the opportunity to have Small Business Administration loans and counseling is not as it used to be. If we pass a continuing resolution instead of this omnibus bill, we will lose almost 20 percent of the Small Business Administration budget.

It is very important we pass this bill, if we are going to fully fund our veterans health care, if we are going to fully fund the schools in our home district military bases so that people on active duty serving our country will not have to worry that their children in school are not getting their full educational opportunities this year.

The National Cancer Institute, with a \$148 million cut over the next 9 months will have to stop the progress they are making in many arenas for finding the cure and the cause of cancer.

We are in a major election year. We would not fund the reforms that Congress has passed to assure every vote is counted, that we have good voting machines so that we won't have an issue such as what happened in Florida in the last Presidential election. We are helping States to have the integrity of the ballot in this very important election year for our Congress and for the President.

The International Trade Administration must be able to make sure that our intellectual property rights are met by countries such as China and other places that copy movies, copy books that don't pay the intellectual property requirements; the long-term exchange programs that will help us fight terrorism by giving the young people from a country that does not know freedom the opportunity to see what freedom and public education can bring; cutting back on the FBI—all of these are the things that would happen if we don't pass this omnibus bill.

It is my hope that we will have the opportunity to pass this bill today so we can put the imprimatur of Congress today on the next 9 months of funding in this fiscal year rather than rely on a bill that passed 2 years ago which doesn't take into account some of the reforms that have been made in Congress. It is my hope that Members will see that our veterans' needs and the needs of our active-duty military children in education and in cancer research will prevail. We will pass this bill and give our children a chance, and our country a chance, to have the increases we need for our homeland security, and the education of our children, and the research into cancer to find the cause and the cure. We must pass the omnibus bill to go forward in all of these aspects.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, we have run a hotline. We have notified what Senators we thought would be interested in coming. Senator KENNEDY and Senator CLINTON have indicated they wish to speak. We have asked Senator KENNEDY to come now. He will be here momentarily. Senator CLINTON will be here at around 11. What we propose—and hopefully the majority will be here momentarily—is that the vote occur at noon rather than 2 o'clock, with the time evenly divided. If Senator KENNEDY is ready to proceed, I ask that we

would look at the unanimous consent agreement and consider Senator KENNEDY's time in light of that.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. I will contact the leader's office.

Mr. REID. He is supposedly on his way down here now.

Mrs. HUTCHISON. I look forward to working with the distinguished Democratic whip to see if that can be put forward and locked in. I hope we would then start from a point to have equally divided time up until the vote at noon.

Mr. REID. So everyone should be aware that the vote will likely occur at 12 noon today.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, there are a number of provisions in this legislation, the omnibus bill, that have been talked about. But I hope my colleagues will give consideration to the fact that the appropriators and the Republican leadership stuck into this omnibus bill a number of different provisions that never passed the Senate or the light of day or the smell test. And took out provisions to help millions of Americans. One of the provisions that they took out of the omnibus bill was a provision that was supported by the Senate and supported by the House in a bipartisan fashion. That was the amendment to tell the Bush administration that they could not deny workers overtime. His proposal would affect 8 million workers. Yes, this is an enormously important omnibus bill. Yes, it is important that we deal with the problems in education and health. I yield to no one in my concern in those areas.

All we are asking is that we take the omnibus bill and put back in the protection for workers. Or we could have the Bush administration rescind its proposal to deny workers overtime protections.

We have challenges in our economy, but one of the great challenges in our economy is not that firefighters, nurses, and police officers are being overpaid. That is not the problem we are facing in our economy. But that is going to be the effect if this particular omnibus bill goes through. The administration will implement its overtime provisions. As I mentioned yesterday, it is not just those individuals I mentioned—firefighters, nurses, and police officers—it is also the veterans.

Listen to this, America. Since the time of the passage of the Fair Labor Standards Act, the United States has accepted the concept of a 40-hour week. Then workers who worked more than 40 hours would get time and a half. That has been an accepted part of the American workplace since the 1930s, when the Fair Labor Standards Act was passed. But now this administration has made a proposal to effectively eliminate the requirement to pay overtime to 8 million Americans, which includes firefighters, police officers, and

nurses. But they also put into this provision those who will be excluded. Listen to this. Those who will also be excluded will be those who receive the standard requirement and equivalent training in the Armed Forces. Do you hear that? Training in the Armed Forces. Over in Iraq, American service men and women have been trained. We have the best trained military in the world. The challenge of having a good military is to have the best in training, the best technology, the best leadership, and the best support for the families at home. Those are the elements of an effective military force. Now what we are saying to those who are in the military, the service men and women who have taken that training, which makes our military so superior—and being superior results in the saving of lives of service men and women—we are saying that kind of training in the Armed Forces will mean when you get back home, you fall into that category of the 8 million who will be precluded from getting overtime.

Can you imagine that? We have 200 training programs in the military. Great numbers of them fall within this particular provision of training in the Armed Forces. For the life of me, I cannot believe why this administration would write into their proposal that the training in the Armed Forces will mean you are going to be excluded from overtime pay. I just do not understand that. I just do not understand it. I wish those on the other side of the aisle who support that particular provision would come out here and explain that.

I want to mention another important provision in this overtime pay, the effect of which hits a particular group in our society, and they are the women who are working in the American workforce. Two factors have made life for middle-income and working families at least plausible and livable. One is the fact that women have entered the workforce and, secondly, many of these families have mortgaged their homes to deal with the problems of tuition escalation and other things, such as emergency health needs. The fact is there is no what they call in economics “elasticity” left in this. They don’t have other members of the families who can work once the husband and wife are working. You don’t have another husband and wife to go out there and you only have one home and if you mortgage that to educate your kids you just can’t do very much more. You are depending, to a significant extent, on overtime pay. I want to remind the Senate about what has been happening in the workforce. The middle-income mothers work 55 percent more hours today than 20 years ago. Here it is: It was 895 hours in 1979, and in 2000 it was 1388 hours—almost double what they were working in 1979, over a 20-year period. Why are they working? To provide for their families. What are we saying to these mothers who are working hard and making some overtime?

We are saying to the mothers and to the women in the families you are not going to be able to get that benefit either. You are not going to be able to get the benefit either. This falls particularly hard on the 8 million Americans who will be outside of the overtime definition, for the veterans who came back from Iraq in the military forces, because it will be said you are a professional now, you have had training in the Army. We have read in your record that you have had some training, so even though you are doing this job, we don’t have to pay you overtime. It says that in the Armed Forces training regulation.

This provision falls unduly harsh on the women. As women have increased their time in the paid labor market, their contributions to family income have also increased. These contributions have been particularly important to lower and middle-income families. An increase in time spent at work creates childcare and other family challenges. These added hours have had a negative effect on a parent’s ability to be at home after school, help with homework, or care for an ill or aging family member.

The Bush proposal would take away overtime protections for millions of American women, ensuring that they work longer hours for less pay. Women who are working today are going to work longer hours for less pay. That is the result of the overtime provision. Make no mistake about it. Our amendment protecting overtime—saying to the President that he can’t take away overtime pay—was taken out of the omnibus bill after it was passed on the floor of the Senate and in the House of Representatives. But the Republican leadership knew they could not win on the Bush proposal on the floor and they took it out of this bill—challenging this body to take it or leave it.

This is one Senator who is going to leave it because of what it is going to do to working families, for the women and veterans in this country. Women tend to dominate retail services and sales promotions that would be particularly affected by the Bush proposal. The increase in overtime, often with little advance notice, would take away from the families, disrupt the schedule of working parents, as well as impose additional childcare and other expenses. Women’s groups like Nine-to-Five, the American Association of University Women, National Organization for Women, National Partnership for Women and Families, and the YWCA express their strong support for the Harkin-Kennedy amendment to preserve the overtime protections. Those are the leading women’s groups—National Organization for Women, National Partnership for Women and Families, YWCA. Effectively, every group that represents women in our society strongly opposes these provisions which are written in by the Republican leadership denying overtime.

These organizations representing women—Nine to Five, the American

Association of University Women, the National Organization for Women, the National Partnership for Women and Families, and the YWCA—have all indicated their strong opposition to the overtime provisions. They know the adverse impact on women.

I wish to point out that of the millions of Americans who will lose their overtime, not only do we have police officers, nurses, and firefighters, but if we look at other categories, we see cooks, clerical workers, a large percent of which are women, physical therapists, dental hygienists, bookkeepers, lab technicians, graphic artists. These are major professional groups where, in a number of those areas, women are the majority of workers, so they would be adversely affected. This provision adversely affects veterans and adversely affects women.

Today’s New York Times points out what my colleague, my friend, John Kerry, mentioned as a veteran himself in Exeter, NH.

This is the New York Times story:

An omnibus spending bill has been stalled in Congress in partisan dispute over provisions to which Democrats object. One would allow the Bush administration to press ahead with rules that Democrats say could strip millions of their right to overtime pay. Hitting that theme, Mr. Kerry said the president would treat those who trained for some skilled jobs in the military as professionals ineligible for overtime pay, adding this “made my blood boil.”

“We need a president who understands that the first definition of patriotism is keeping faith with those who wore the uniform of the country,” Mr. Kerry, a Vietnam veteran, said. . . .

It could not be said any better than that.

Madam President, I ask unanimous consent that the entire New York Times article be printed in the RECORD.

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

[From the New York Times, Jan. 22, 2004]  
IGNORING OTHER CANDIDATES, KERRY TURNS  
FOCUS ON BUSH

(By David M. Halbfinger and Randal C. Archibold)

EXETER, NH, January 21.—Surging in the New Hampshire polls, Senator John Kerry ignored his rivals on Wednesday and blasted President Bush on health care and charged that new rules on overtime supported by the administration would bar many veterans from overtime pay.

Mr. Kerry said the president had rightly praised American troops and veterans in his State of the Union address. “But once again it’s an example of a say-one-thing-and-do-another administration,” he said, pointing to the overtime dispute.

An omnibus spending bill has been stalled in Congress in a partisan dispute over provisions to which Democrats object. One would allow the Bush administration to press ahead with rules that Democrats say could strip millions of their right to overtime pay. Hitting that theme, Mr. Kerry said the president would treat those who trained for some skilled jobs in the military as professionals ineligible for overtime pay, add in that this “made my blood boil.”

“We need a president who understands that the first definition of patriotism is keeping

faith with those who wore the uniform of the country," Mr. Kerry, a Vietnam veteran, said at Daniel Webster College in Nashua.

He spoke as two new polls showed him taking the lead in New Hampshire. The separate polls, in the Boston Herald and the Boston Globe, each put Mr. Kerry 10 points ahead of his closest rival, Howard Dean, although surveys in primaries are notoriously unreliable because of the difficulty in identifying likely voters.

Mr. Kerry also began commercials showing people praising his "leadership and experience" and emphasizing his endorsement by the Concord and Nashua newspapers.

Wednesday night at Phillips Exeter Academy, he drew about 1,000 people, easily his largest crowd for a stump speech in New Hampshire.

In his noon speech in Nashua, he rolled out a few new phrases to depict the president as out of touch with everyday Americans and in the thrall of the "special interests."

"You can tell from his State of the Union address that the President is facing re-election," Mr. Kerry said. "I wish he'd face reality. Watching President Bush's speech last night, one thing kept coming back to me: He just doesn't get it."

He invoked "the unheard majority in the health care debate," saying, "We need a president who's going to make sure their voice is finally heard, that they have access to the White House, not just those who contribute significantly to campaigns."

Mr. Kerry said he would reverse rules barring Medicare and states from negotiating for discounts on bulk purchases of prescription drugs and repeal a ban on re-importing American-made drugs from Canada. He called on Mr. Bush to work with states like New Hampshire that have tried to start re-importation.

Deriding the Medicare bill enacted last year as a benefit only for pharmaceutical companies, Mr. Kerry said, "If I'm president, I pledge to you, we will repeal that phony bill."

As Mr. Kerry aimed his fire at the White House, the second-place finisher in the Iowa caucuses, Senator John Edwards of North Carolina, briefly detoured to his native South Carolina, where the Democratic primary will be held Feb. 3.

At a packed sandwich shop in Greenville, Mr. Edwards sounded his themes of spreading optimism and hope in a country he sees dispirited by job loss, financial insecurity and shrinking education opportunities. And naturally he emphasized his roots in a state whose primary he says he must win to remain in contention. "I was born here, I still have a lot of family here," Mr. Edwards said to raucous applause, adding, "This is part of who I am and I intend to compete every way I know how."

Later, back in New Hampshire, Mr. Edwards reprised a line comparing his electoral potential in the South to that of his northeastern rivals. Answering a question at Roland's diner in Nashua on how he would get his agenda through a Republican Congress, he said: "The question is, who on the top of the Democratic ticket can go everywhere in America and campaign with the candidates and strengthen their ability to get elected?"

He added, "In Georgia, do you want John Edwards campaigning with you? Do you want Howard Dean campaigning with you? Do you want John Kerry campaigning with you?"

Later Wednesday evening, Mr. Edwards drew one of his largest crowds yet in New Hampshire, some 400 people who filled a V.F.W. hall in Portsmouth to overflowing. He drew strong applause for his vow to diminish the influence of special interests in

Washington who he said block legislation favorable to low-income and middle-class Americans.

"Let me tell you what we should do with these Washington lobbyists," he said. "We ought to cut them off at the knees. The truth is these people are stealing your democracy."

Senator Joseph I. Lieberman, who moved to Manchester rather than compete in Iowa, called the New Hampshire primary race wide open and talked up his ability to beat Mr. Bush as he spoke to high school students and business leaders. He urged voters to weigh his experience, consistency and predictability.

Mr. KENNEDY. Madam President, finally, I would have thought that since Tuesday—it is now Thursday—we would have heard someone on the other side come down and defend stripping these provisions out of the omnibus bill. The silence has been deafening. One would think if they were going to take these out, at least they would have the guts to come down here and explain to the American people why. Why did they take them out? Who took them out? Who asked that they be pulled out? What was the reason, after it had been supported by the Senate and House of Representatives? But all there is is silence—silence—from the Republican side.

That says something, does it not, when we are talking about something which has already been addressed in both Houses, passed in the Senate, passed in the House, and stripped out in the dead of night and there is silence on the other side.

American workers deserve better. We deserve to understand what the process was in taking out this provision that has been passed by the Senate, and the leadership refuses to give us an opportunity to have another vote to put it back in. Why are we not having a vote to be able to restore it? It doesn't take any time. We would agree to half an hour, with time evenly divided. Let's hear them defend the Labor Department's regulation, a regulation that will affect women, a provision that works unfairly against veterans, a regulation that is unfair to firefighters, police, and nurses. Where is the justification? There is silence on the other side.

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

Mr. KENNEDY. Yes, I yield.

Mr. REID. What the Senator is saying—I say in the form of a question—there may be silence on the other side but it is a little hard, with mad cow disease floating across the world and occurring in our country, for me to comprehend how anyone could defend not having country-of-origin labeling in this bill.

The Senator from Massachusetts has been in the Senate for an extended period of time. Madam President, with all of his experience, can he think of any reasonable rationale, logical argument that can be entered to defend their having taken something that passed the House and Senate dealing with country-of-origin labeling, namely,

that if you buy a hunk of meat, you should know from where it comes?

In all of the Senator's experience, his ability to articulate as well as anybody in the country today, could he in his mind figure out a way to defend that position?

Mr. KENNEDY. Well, the logic of the Senator's argument is so overwhelming and the common sense of it is so compelling.

Mr. REID. Could I ask another question?

Mr. KENNEDY. Let me complete this. As the Senator remembers, at the time we heard about the mad cow disease, there was not a family in America that was not asking what is the safety in terms of the food we are eating, the meat product our children and our families eat. All America was concerned about it. We have an opportunity to do something about it. We know what can be done about it.

As I hear the Senator from Nevada, it would not take an awful lot of time. I know the Senator's amendment. I do not think it would take more than half an hour to be able to include those provisions that would give the kind of additional health safety protections for the American people. It is not an absolute guarantee for every situation, but it would make a major difference. How long does the Senator think it would take to include those provisions that would provide the country-of-origin protection?

Mr. REID. I disagree strenuously with the Senator about needing half an hour. It could be done in 5 minutes, 2½ minutes on each side. This is so clear cut. The Republicans en masse would vote in favor of this.

This is something that has been directed from 16th and Pennsylvania Avenue. It was done in the dead of night. The Republican leaders did not follow the legislative prerogatives within the Constitution and caved to the President and corporate America.

This would take 5 minutes. We are going to have a chance to vote on this, and when we do, it will overwhelmingly pass.

Mr. KENNEDY. We could do it now, am I correct, or do it if there was agreement?

Mr. REID. We could do it now in 5 minutes. Nobody will oppose it. I dare anybody to come to this floor and oppose what is going on in this country on mad cow. My 13-year-old granddaughter at dinner Monday night asked her little 8-year-old brother, Aiden: Would you like a piece of mad cow? Even children are afraid of this.

Mr. KENNEDY. Well, there you are.

Mr. REID. Could I ask the Senator another question? I apologize. I hope I am not imposing too much.

Relying upon the experience of the Senator from Massachusetts, whom we have all heard on many occasions explain as well as anybody who could on an issue, we have a situation where the President of the United States has indicated for a while now that he wants



to take away overtime for millions and millions of Americans, and we, the Congress assembled, the House and the Senate, said we do not want him to do that, and we passed provisions and laws saying he cannot do that.

Again, in the dead of night, the Republican leadership in the House and the Senate caved in to 16th and Pennsylvania Avenue. Now, I ask the Senator from Massachusetts, can he come up with any logical argument as to why the American people should be faced with police officers, firemen, nurses, cooks, paralegals, dental hygienists, social workers not being able to get overtime?

Overtime went into effect during the Depression, 70 years ago. Can the Senator come up with any way anyone could articulate a defense of having this overtime provision in this legislation?

Mr. KENNEDY. The answer is special privilege, special interest. Just to add to what my good friend from Nevada pointed out, the Department of Labor then had the gall to publish suggestions to show American business how to make sure these 8 million were not going to receive the overtime. This is just special interest politics: Mad cow, overtime, power of special interests. These are the similar kinds of interests that denied this institution the opportunity to permit negotiation of drug prices under Medicare. What is in the public interest there? America is finally going to find out the Bush administration is primarily interested in protecting the special interests, not the public interest.

That is what I heard across the various small towns, communities, and farms in Iowa. The American people are beginning to get it and nothing illustrates it more clearly than the proposed overtime change in regulations which so adversely affects not only these 8 million Americans but particularly members of the Armed Forces, returning veterans, and the women in our society.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, I will be very brief. I want to address a change in the time we will be voting today and move that ahead. I want Senators to know just as soon as possible. I will propound a unanimous consent request and then comment on it for 1 minute.

Madam President, I ask unanimous consent that the cloture vote on the conference report now occur at 12 noon; provided further, that the time prior to the vote on cloture be for debate only, and that the time be equally divided between the chairman or ranking member or their designees, with the final 10 minutes equally divided between the two leaders or their designees; provided further, that all of the provisions of the previous order remain.

Mr. REID. Twelve noon today.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Twelve noon today.

Mr. FRIST. That is correct.

The PRESIDING OFFICER. Twelve noon today. Without objection, it is so ordered.

Mrs. HUTCHISON. Parliamentary inquiry: The time would be equally divided from now or from the beginning of the session?

Mr. REID. If there is a problem with time and more time is needed for the majority, we will include Senator KENNEDY's time. We only have Senator KENNEDY and Senator CLINTON. If somebody else comes, I am sure we will not have trouble dividing up the time.

Mrs. HUTCHISON. That is fine. I didn't know how it would come up. I wanted to make sure, if we have some people before 12, that there is some way to accommodate them.

Mr. FRIST. Madam President, we have been working with both sides of the aisle to make sure people have had adequate time to address this issue over the last day and a half. These are very important issues and why we have brought this bill to cloture votes and another vote. So the vote will be at 12 noon, with the understanding that this will give people adequate time to speak. We will stick with the time being equally divided.

To clarify, the vote will be at noon, an hour and 20 minutes from now. If we are successful with that cloture vote, there will be another vote right after the first vote. So we would have both of those votes between noon and 1 o'clock.

At that point, if we are successful, the plan is to go to the pension rate reform bill. We would begin debate on that bill today, as well as amendments today and tomorrow.

The reason I am making this announcement now is because I want to put everybody who is interested in that pension reform legislation on notice that they need to be around today, tomorrow, and Monday, during which we will debate and offer amendments.

If we are successful with these two votes and we get on the pension bill, I will be able to say no more votes today or tomorrow if we can stack those votes for Monday afternoon. We will have no votes after the omnibus bill today if we can make progress on the pension bill and come to an agreement that we will stack those votes for late Monday afternoon.

Mr. REID. Will the majority leader yield? The ranking member of the HELP Committee, Senator KENNEDY, has indicated he is ready to begin some debate on this bill on our side this afternoon. Senator BAUCUS, as you know, is recovering from that accident where he fell. He will not be here. The Finance Committee is aware Senator KENNEDY will be managing the bill on our side. So we are ready to proceed on this matter as soon as the omnibus work is completed.

Mr. FRIST. Madam President, I very much appreciate that participation. Coming back on January 20, there were

a lot of things going on. This weekend people are going back to their States to have certain meetings. It is important we continue the business. I appreciate the work on both sides this week. It has been a productive week on many important issues, and we will continue to make progress over the course of the day.

If it goes as outlined—I would like to be able after the second vote today to begin the pension debate, with both sides having people available—we would have no more votes Thursday or Friday—I am not making that announcement now, but hopefully later this afternoon—and then we will stack votes for Monday afternoon. I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Texas.

Mrs. HUTCHISON. Mr. President, the Senator from New York is on the floor and Senator BENNETT is on his way, but I want to take a moment and say I understand some of the concerns that have been raised, but this is a bill that puts Congress's imprimatur on spending for the next 9 months. It does not take last year's priorities. It takes this year's priorities.

We have had a chance to talk about it. We have had a chance to debate. We have had amendments earlier in the process. There has been a full vetting of the differences on this bill. My bottom line is, are we going to let this bill fail and have a continuing resolution that will go from January to October 1 and fail to enact the reforms in election law that will ensure the integrity of the ballot in our country during a Presidential election year? Are we going to keep \$148 million from going into the National Cancer Institute when we are doing great research on the causes of cancer and the potential cures? Are we going to fail to meet the needs of our veterans by not allowing the hiring of physicians and nurses, not fully funding the pharmacy costs which are going through the roof, which we must fund for the veterans who are needing drugs as so many people in our country do? Are we not going to fully fund the impact aid schools where our military children go to school while their parents are in Iraq and Afghanistan? Are we going to let those schools' budgets be cut back? I ask, what is the alternative to passing this bill? The alternative is using last year's budget, last year's priorities, and not putting the stamp of this Congress on these priorities in place.

I think we have to look at our choices. The choices are increasing the FBI, increasing impact aid for our schools, increasing National Cancer Institute funding, increasing the ability to make sure China and other countries are complying with intellectual property laws. We will lose a lot if we do not pass this omnibus bill today and go forward with the funding programs for next year on an orderly basis.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Madam President, I listened to the debate with respect to the fiscal year 2004 Omnibus appropriations bill that is before us. I agree with many of the points my friend from Texas was making about the important appropriations in this bill and the necessity for providing the funds needed to run the significant, critical programs of our Government. It is regrettable, therefore, that we are confronted with this particular choice. It was an unnecessary choice. It is a false choice.

The appropriators worked very hard. I have the highest respect for members of the Appropriations Committee. In their hard work, they produced recommendations about what funding was needed for the critical functions of our Government. If that is what we were voting on today, I do not know that there would be a debate. I am confident there would be overwhelming support for that part of the bill. But we all know what happened was not the bill that came out of the Appropriations Committee or the bills that came out of the Senate. Instead, in a conference committee, legislation was inserted into this appropriations bill that has far-reaching consequences.

So here we are being asked to support the ongoing funding of the functions of our Government, which all of us agree is important, at the cost of supporting some very serious changes in our laws that will have far-reaching consequences for the people who live in our States and our country.

As Members of the legislative body, the legislative branch of Government—because we have three branches, three coequal branches under our Constitution—we have two primary responsibilities. First, we are the voices of the people who elect us. That doesn't mean we always agree with every constituent. That would be impossible. I have 19 million constituents. But it does mean that we listen and we pay attention and we try to make the very best judgments we can about what is in the interests of the people we represent.

Then, second, we are part of the system of checks and balances among the branches of Government our Founders so brilliantly invented.

I believe this omnibus bill and the process through which it was constructed violates both of those primary duties. This bill is laden with provisions that were rejected by a vote in this body, and some by votes in the other body. We took a vote. We said, representing the people of New York or Nevada or Utah or America, we are for it or against it but here is where we stand. Apparently the majority vote is no longer the rule in Congress, much to my amazement and distress. That is because this bill has many provisions which were rejected, which were turned away, yet here they are in the bill. We are asked that we either vote for everything or risk the loss of funding for critical Government functions. To me, it just defies our constitutional system.

There is a phrase, "under cover of darkness." I think this bill represents, "under cover of conference." This is one of those processes that may sound a little arcane and even boring to people watching at home or sitting in the gallery, but this is the way our Government in this body, the Congress, works. The Senate passes something. The House passes something. Then, in order to work out any differences between the two Houses, they go to what is called a conference committee where they say: Here is what you passed, and here is what you passed. How do we compromise? Compromise is the very essence of a legislative body.

But that is not what happened this time. What happened is that the conference committee became a separate, equal, powerful, independent legislative body run by the administration. It was under cover of conference that the White House unilaterally added provisions to this bill which reflect their political ideology and agenda, whether or not the duly elected Members of the House and the Senate agreed.

Nowhere is the antidemocratic nature of this process more apparent than in the denial of overtime pay protections for 8 million Americans, including 450,000 New Yorkers. This is a significant overhaul of our Nation's worker protection laws. It was proposed under a cloak of secrecy without a single congressional hearing, without a single public hearing.

As many of my colleagues remember, when the previous administration, the Clinton administration, issued regulations governing how we work today with computer terminals and repetitive kinds of procedures which cause carpal tunnel syndrome and other sorts of problems, regulations were issued to help redesign the workplace and protect the modern worker, particularly office workers but also people on assembly lines who do repetitive work hour after hour. The Clinton administration Labor Department issued ergonomics regulations. That is the phrase that describes how we try to improve the workplace to deal with these kinds of stresses.

The Republicans in Congress attacked the Labor Department for issuing these regulations, claiming they had rushed to judgment because the Clinton administration held only 27 days of public hearings—27 days. Here we are being asked to vote to radically change the overtime compensation rules of our country, and we have never had a public hearing from this administration. Nevertheless, the changes, when they were announced, got a huge outpouring of reaction and a lot of scrutiny from workers and unions and people who know what it means to have to work hard and be told you are going to work hard and you are not going to be paid any more money for it. Many tough questions were asked.

As Members of the House and Senate learned more about these proposals, we became concerned and we said wait a

minute, we don't think that is fair. On September 10 of last year, with bipartisan support, we addressed this proposed rule and we saw, in the House, a motion passed to instruct the conference committee to adopt the Senate language, which was on a bipartisan basis, to reject changes under these kinds of circumstances in the overtime compensation laws.

Now what has happened? You would have thought that ended it. But, no, the administration has refused to comply with the wishes of the majority of both Houses of Congress, and I believe the majority of Americans. So we are faced with an Omnibus appropriations bill that radically changes laws that have been in place since the 1930s. I just think everybody needs to understand this. This is not a partisan statement. This is not a political claim. This will take away overtime protection from American workers, whether you are Democrat or Republican, an Independent or pay no attention to politics.

I don't think most experts believe that workers will work less. In fact, the productivity gains that have been occurring are largely because workers in America are actually working longer hours, not fewer hours. In fact, the General Accounting Office found that workers who already are not covered by the Fair Labor Standards Act protections are more than twice as likely to work overtime; three times as likely to work 50 to 60 hours per week.

This is going to have a particularly disadvantageous impact on Americans who live in high-cost areas such as New York City. When you look at what the new rules are and the way the administration has rubbed salt into these wounds by not only changing the rules but sending out circulars to employers to tell them how they can avoid even getting into a position where they might have to pay overtime, it is not a far reach to conclude, as have many experts who have looked at this, that we are seeing with this bill a direct cut in the take-home pay and the yearly income of people who work really hard and who will continue to work hard for less money.

Three of the groups that will be most impacted are police officers, nurses, and veterans. The International Union of Police Associations and its general counsel, who is widely recognized as one of the Nation's leading experts on the Fair Labor Standards Act, estimates that 50 percent of our police officers will lose their overtime provision if this regulation is implemented.

I don't look forward to the next orange alert in any community in our country where police officers are put on 12-hour shifts, maybe 16-hour shifts, where they are asked to work double- and triple-time shifts to protect us, and all of a sudden, no more overtime.

The same with nurses. I have an extraordinary admiration for nursing.

I know from many of the nurses with whom I work and speak on a regular



basis that they are already being forced to do a lot of overtime because of cost pressures on hospitals. They are being asked to do an extra shift. They come to the end of the week, and they are being asked to work weekends. Many nurses are concerned about the quality of their work, being under pressure when they have already put in a 40-hour, 50-hour, or 60-hour workweek. But now we are going to ask them to keep working and not pay them. I am sorry, I don't understand what reality our friends on the other side and on the other end of Pennsylvania Avenue live in. We are losing nurses at a rapid rate because the working conditions with mandatory overtime are already so difficult. The average age of the American nurse is 45. These are mostly women. But they are women and men with lots of responsibility, training, commitment, and devotion. They don't mind working hard, but they have families. They have their own health to worry about. All of a sudden they are going to be told their job depends on them putting in that extra time. But we are sorry, we changed the overtime rule.

Right now, nurses who do not have a 4-year degree could be denied overtime under these proposed rules if they have "experience in nursing." How absurd is that? Of course, they have experience in nursing. They are nurses.

It used to be if you had a professional degree above a certain level you were considered a professional, you worked for a salary, and you weren't going to get overtime. But a lot of LPNs and others, after they have worked a year or 2 years, all of a sudden have experience even though they don't have a 4-year degree. So now this administration is telling their employers to work them because they are now experienced. That is their equivalent.

The cynicism of this is breathtaking. It bothers me greatly to see this great body be part of such a fraud.

Look at the estimates. Two hundred and thirty-four thousand LPNs will lose overtime. You know that a lot of nurses are going to continue to walk away from nursing. It is hard enough if you are paid for these long, difficult hours. But not to be paid for them? I just think we are going to be exacerbating the nurse shortage and undermine the quality of care available to patients.

The final category I will mention is our veterans. We have heard a lot of rhetoric about veterans in the last couple of days, haven't we? I am very proud to represent hundreds of thousands of veterans. I am very proud of the men and women serving us in uniform today. Yet this bill takes away the overtime protections to which many veterans in the workforce are now entitled.

Right now, under the law as it is written before this regulation can go into effect, only workers with a 4-year degree in a professional field can be labeled professional, and, therefore, de-

nied overtime. The Bush administration, under this regulation, would do away with this requirement. They would allow training in the Armed Forces to substitute for a 4-year degree. I know we have an all-volunteer military. I am very proud of the young men and women who sign up to serve our country. I know when they are recruited they are told: Here is the training you can get and the additional education you can obtain in the Armed Forces. This is not only an opportunity to serve your country but to put you in a good position for the future when you get out of the military service if you do not make it a career. You will have tremendous opportunities because of these skills.

Now we are turning around and breaking faith with our veterans, too. We are basically saying: You know that training we gave you, that education you acquired in the military? Now it is going to count against you. You take a job where otherwise you would be entitled to overtime—say you become a police officer and an MP in the Army; you don't have a college degree, but you served as an MP. All of a sudden, guess what. You are not eligible for overtime anymore.

It is very hard to justify in a jobless recovery like the one we are allegedly in that we would make life harder for working Americans; that we would tell the police and firefighters and nurses and veterans and others, guess what. We are going to take money out of your pocket in order to satisfy employers who do not want to be fair to you.

We wouldn't have needed these laws if everybody lived by the golden rule, would we? If everybody got up every morning and said I am going to treat people the way I want to be treated, I am going to treat my employees the way I want to be treated, we would not have to have this law, or probably any other law. But we know, with human nature being what it is, that we have to have some protections for those people who are in less powerful positions. We are just tearing up that social contract right now.

There are many other provisions in this omnibus bill that either were voted against by this body and stuck in anyway or never considered. I am finding this an amazing experience being in the Senate. Everything that I read in civic books and that I thought was what happened in our legislative body is just being upended and thrown out the window.

Another provision slipped into the omnibus which was earlier rejected by this body on a bipartisan basis will delay the implementation of mandatory labeling of the country from which meat and vegetables are imported. I want to know where my food comes from. I would be happy if I could buy only food from New York because I would like to support my New York farmers. I would like to know whether that is a New York apple or a Chinese apple. Somebody else can go ahead and

buy the Chinese apple. I want to buy the New York apple. I sure want to know where the meat I eat comes from. That is what this body voted for.

But in response to pressure from a small group of the meat and food industry executives, the administration did the bidding of the special interests instead of the vast majority of Americans. Once again, why are we surprised? And they stuck language into this Omnibus appropriations that will prevent consumers like us from knowing where the food we purchase is grown, and they will overturn a law that is very important to the farmers I represent and to American farmers and producers around our country. It is stunning that this would be done at a time when we were really focused on our food supply, when we know we need to do whatever we can to protect our food from disease and possible terrorism.

The mad cow issue that arose a few weeks ago is something that has gotten everybody's attention focused on the quality of our food and the safety of our food.

The idea of a country-of-origin requirement was passed as part of the farm bill in 2002. Here it is 2004, and this administration wants to undo the will of the democratically elected majority of the Houses of Congress.

There are many more examples of what is wrong in this omnibus, whether it is reimposing the national television ownership cap that was already rejected in both Houses, making our media less diverse, more concentrated, and less responsive to local issues.

Senators MCCAIN and HOLLINGS held extensive hearings on this issue. They produced a Senate resolution to restore meaningful, cross-ownership limits on television stations and newspapers. It passed by a vote of 55 to 40. That was a bipartisan majority vote. The legislative branch did its job. We held the hearings, we got the evidence, we did the argument and debate, and we had the vote. It doesn't seem to matter to the folks on the other end of Pennsylvania Avenue. If it crosses one of their special interests, by George, we don't care about democracy. We don't care about majority votes. We don't care about bipartisanship. We are going to deliver to the people whom we think are on our side when it comes to special interests.

It is distressing and it is something about which I think every American should be concerned. We are undermining the checks and balances of our Constitution. We are undermining accountability. We are undermining the coequal branches of Government.

If all we wanted was a king, we would have put a king into the Constitution to do whatever the king wanted to do. What do we need a democracy for? Why do we need to elect people to come to the Senate to express their opinion, hold hearings, and have votes? Let us just cede all authority to the other end of Pennsylvania Avenue. They want

control of the executive branch. They want control of the congressional branch. They want control of the pork. Why don't we just all give up and go home? It doesn't seem to matter what we vote on. It doesn't seem to matter what the majority says. The administration calls the shots, and people in this body let them do it. It is astonishing to me.

Another example: We are diverting limited educational resources to an untested, unproven, private school voucher plan which was not included in the Senate-passed bill. I think, once again, we are doing something that has no support in this body and we are letting it happen because the administration wants it to happen.

We also have an across-the-board cut in this bill, not debated by the Senate, stuck into the bill at conference, taking away money from agencies of the Government, appropriations already signed into law, including the Department of Homeland Security.

I could go on and on. It is astonishing what happened under cover of conference. It is hard to justify a process that is so flawed, so antidemocratic—with a small "D"—so beholden to and in the pocket of special interests, so willing to buckle under and do the bidding of the administration, whether or not it is in the best interests or the long-term benefit of our Nation.

It is our responsibility to do the business of those people who sent us here. By ignoring the will of the majority, by turning our backs on the Senate and the House, we are making a mockery of our system.

I know very well that during the previous administration the other side of the aisle would be up in arms. And they should have been if something such as this had gone on, no doubt about it.

I hope we will continue to stand against this mockery of the democratic process and the undermining of our legislative responsibility.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. I have listened with interest to the Senator from New York and will respond to several of the things she said.

I notice the chairman of the Appropriations Committee in the Chamber. I do not wish to intrude on his time unduly because he is the real expert on this process and can explain why we are where we are far better than I can.

I do have personal reactions to several of the comments the Senator from New York has said. She talks about things that have not been passed by the Senate and gives two examples—country-of-origin labeling and vouchers—and says we are ignoring the will of this body.

But what she does not comment on and may not realize is that in both these instances, the House of Representatives took a diametrically opposed position to that which was taken by the Senate. The purpose of conference is to deal with that kind of a challenge.

I will talk about the country-of-origin labeling because I was personally involved in it. The House of Representatives said: Absolutely, we are going to kill this program. The Senate said: Absolutely, we have to keep this program. There is not a lot of room for negotiation between those two positions.

For her to say it is terrible, what came back from conference was not what the Senate passed and somehow we did it because the administration told us to do it ignores the fact that the House of Representatives has exactly the same amount of power under the Constitution as the Senate. And they took a very firm position.

What we came up with, in conference, and I was the one who suggested it so I have direct knowledge, was a compromise that said we will not take the House position and kill this program, but since the House will not take the Senate position and implement it immediately, let's simply delay the effective date to give us time to figure out a way to make it work, if it is possible to work.

I don't consider that under cover of darkness. I don't consider that a violation of what we learned in civics class about the way to resolve problems between the House and the Senate. I think it is a legitimate position that comes to a compromise between the House's firm statement and the Senate's firm statement and says we will keep the law, which is what the Senate wanted, but we will delay the implementation, which is not quite what the House wanted. I view that as a win for the Senate position.

I am a little bit troubled to have the Senator from New York say we have violated the spirit of the Constitution with this kind of a compromise and this kind of accommodation between the two.

I have said this before and undoubtedly will again. I learned from my father when he served in this body this truth: We legislate at the highest level at which we can obtain a majority. Many times the process of getting to a majority is not pretty. Many times things are done which in civics class people would get very upset about, but in order to get a majority to get the thing done, this is where we are.

This bill represents the highest accommodation of all the interests we can arrive at for which we could obtain a majority.

One other comment that I would like to make with respect to the Senator from New York and her constant repetition that all we did in this conference was buckle under to the will of the administration; all we did was accept the administration's position and over and over again; we ignored our responsibilities as the legislative branch and said whatever the king wants we will give him. This is the rhetoric we get.

I have not been here as long as many Members and certainly not as long as the chairman of the full committee

who will speak next but I have been here long enough to have been in a number of Appropriations Committee conferences, most of them under the previous administration, the Clinton administration to which she referred, and I tell my constituents, in every conference of the Appropriations Committee on which I have sat—and there are a number of them—when the Clinton administration was in power, the Clinton administration made its wishes very much known. And in every instance the veto threat that came out of the Clinton administration was, if you do not increase spending above the amount you are talking about in this bill, the President will veto it.

There were times when we gave in to that pressure from the administration. We felt it so necessary to pass the appropriations bills and fund the Government that we would grit our teeth and say, all right, we will, even though it was not adopted in either House we will, in fact, increase spending in order to avoid a veto threat.

The veto threats we have heard out of the Bush administration have been the other way. The veto threats out of the Bush administration are, these spending numbers are too high and we have to cut them down in the name of fiscal responsibility.

I make that point because one of the things being said in this political season is that the Republicans have given up on fiscal responsibility; the Republicans are responsible for the runaway spending. I have been there. I have been at the conference committees. I can assure all Members that this administration is no more active in the conference committees than the previous administration, and all of the pressure out of the previous administration was to increase the spending whereas the pressure out of this administration has been to try to get the spending under control. I simply want to get that information clearly on the record as we go into this political season.

With that, I yield the floor so we can hear from the other Senators.

Ms. COLLINS. Mr. President, I rise today to discuss recent progress regarding amendment 13 to the Northeast Groundfish fishery management plan.

The omnibus appropriations bill we are currently deliberating will pause the implementation of amendment 13 for 5 months. This pause was added at my request because of inequities in this fishery management plan that unfairly discriminates against Maine fishermen. Since I announced in November that I would seek to delay implementation of amendment 13, considerable progress has been made to address the inequities in it.

Last week, the New England Fishery Management Council's Groundfish Committee held an emergency meeting

to address these problems. The committee made excellent progress. Specifically, it forwarded a recommendation to the council regarding a minimum allocation of 10 "B" days-at-sea for all permit holders. This significant change will ensure that no fishermen are shut out of the fishery entirely. Further, the committee forwarded a recommendation to the full council advocating a decrease in the conservation tax for days-at-sea transfer. Both of these recommendations will soften the impact of amendment 13 on Maine's fishermen.

The groundfish committee also charged their advisors with identifying "B" fisheries in the Gulf of Maine. It is crucial that these fisheries are developed to ensure Maine's smaller vessels, which do not have the capacity to reach the grounds currently open, can utilize their "B" days-at-sea. Finally, the committee asked their advisory panel to examine the problem of steaming time, which has long worked to Maine's detriment.

I recently received a letter from David Borden, chairman of the New England Fishery Management Council, confirming that "all of the issues that [I] consider important to Maine fishermen are now being actively evaluated and considered by the New England Fishery Management Council." Chairman Borden goes on to assure me the language that I included in the omnibus, "provided the necessary focus for the fishery management process to address these issues on a timely basis, and that process is well underway." I very much appreciate the chairman's candor and his willingness to work with me to address the aspects of amendment 13 that disproportionately harm Maine fishermen.

It is clear that in the months since my provision was added to the omnibus, the New England Council has acted in good faith to meet the concerns of Maine fishermen. Given these developments, I am prepared to lift my objections to an implementation date of May 1, 2004 for amendment 13. I will work with my colleagues to examine ways to lift the funding restriction included in the omnibus. I do this in good faith, and ask for good faith in return. My continuing effort to lift this funding restriction is contingent on both the council and the conservation community continuing to actively address the concerns I and Maine's fishing community have raised.

I am pleased that my provision had its intended effect of focusing the council's attention on the legitimate concerns raised by the Maine fishing community. I am confident that the council will continue to work to improve amendment 13 for the benefit of all New England fishermen.

Mr. HATCH. Mr. President, I rise today to discuss the sections of the consolidated Appropriations bill, H.R. 2673, that pertain to funding for the Departments of Commerce, Justice, and State. I want to recognize the con-

ferees, especially CJS Appropriations Chairman GREGG and ranking minority member HOLLINGS for their hard work on this bill.

It has been just over 2 years since the horrific September 11 attack against our country. We must remain vigilant in fighting the threat of terrorism. Our priorities should reflect the need to ensure the security of our people. The Justice Department leads our Federal law enforcement efforts that are so critical to protecting our country.

Securing the safety and security of Americans at home and abroad should continue to be the number one priority in the Federal law enforcement budget. Such security requires providing Federal law enforcement agencies, as well as State and local law enforcement agencies, with the tools necessary to combat terrorism. Providing adequate funding for these tools is essential to law enforcement's ability to protect America. I am pleased that the Omnibus appropriations bill reflects this priority.

While we must continue to safeguard America from future terrorist attacks, we should, at the same time, exercise fiscal discipline in order to promote our economy. We face difficult budget decisions but I am optimistic that with the improving economy we can balance the need to fund fully the programs necessary to protect Americans with the continuing need to exercise the fiscal discipline that our constituents deserve.

I am especially pleased that approximately \$62 million will be appropriated to the Foreign Terrorist Tracking Task Force FTTTF. This independent agency is responsible for coordinating and sharing information among agencies which is crucial to preventing terrorist attacks. The FTTTF is tasked with an enormous responsibility—gathering information from and sharing intelligence with—the CIA, the FBI, the National Security Agency and the Departments of Justice, Homeland Security, Treasury, State and Defense. Breaking down the walls between our agencies is critical to our national security, and I applaud the increase in funding for the Foreign Terrorist Tracking Task Force.

While our Federal law enforcement agencies have focused on combating terrorism, they also carry the burden of investigating and prosecuting other significant crimes. I am pleased to see that the bill includes almost \$557 million for Interagency Drug Enforcement which reflects funding for the multiple Departments, including the Department of Homeland Security, the Department of Treasury, and the Department of Justice, which are responsible for cooperating and bringing together the expertise of each of the Federal agencies with the efforts of state and local law enforcement to combat major narcotics traffickers and money launderers. This represents a significant increase to assist law enforcement operations.

I am especially pleased that the Conferees accepted the House funding levels for the Drug Enforcement Administration, DEA at approximately \$2.2 billion rather than the Senate's level which would have severely hampered the DEA. At a time when the DEA is shouldering a greater burden in fighting drug trafficking, I commend the Senate for increasing the DEA's funding to make sure that our communities receive all the help they can to reduce the scourge of drugs.

I am also pleased to see that the bill funds the Juvenile Accountability Block Grant, JABG, program which was recently reauthorized as part of the "21st Century Department of Justice Appropriations Authorization Act," P.L. 107-273. Congress reformed the federal role in the nation's juvenile justice system by providing relief from burdensome federal mandates and authorizing block grant assistance to States and local governments, which includes accountability-based juvenile justice programs. The authorization act strengthened the Juvenile Accountability Incentive Block Grant program.

With the passage of Trade Promotion Authority in 2002, Congress set, as one of its priorities, the successful negotiation of free trade agreements. As many of my colleagues are aware, the burden of negotiating these agreements falls on the Office of the United States Trade Representative, USTR. I submit that in order for USTR to do its job, we must ensure that they have the adequate resources necessary to perform the job that we demand of the agency.

Let's examine some of the realities at USTR. One year prior to the passage of TPA, USTR's workload was comprised of two trade agreements. One year after the passage of TPA, USTR's has taken on more than five times its prior workload, negotiating nearly a dozen Free Trade Agreements and pursuing several dispute settlement talks.

And the complexities of the negotiations before and after the passage of TPA have changed. Under the mandates of TPA, through the course of negotiating any Free Trade Agreement, U.S. negotiators seek: strong Intellectual Property Rights protections; access to telecommunications markets; access to financial markets; strong biotechnology protections; increased access to the services markets; strong investment protections; reasonable labor protections; common sense environmental protections; access to the e-commerce market; to ensure the safety of imported food; and strong dispute settlement mechanisms that help to protect America's economic interests. This is no small feat.

I am pleased that the conferees accepted the House level of funding to this important agency which provided an additional \$5 million—bringing USTR's funding to \$41,994,000. This additional funding is consistent with the marked increase in the agency's workload and will help ensure that USTR will be able to adequately fulfill their Congressional mandate.

I was hoping to see language in the bill which would ask the General Accounting Office, GAO, to look into several issues that will be relevant in the preparation of the 2010 census. What I would have liked to see could have been as simple as the following: the potential cost of any 2010 Overseas Census; the use of emerging technologies, including the internet, in any overseas enumeration; the feasibility of using State or Federal systems for assigning Americans living outside of the United States for purposes of appointment of Representatives in Congress among the several states; and the different ways of determining some legal basis for whom should be counted.

These are important issues that need to be more fully explored. In my State of Utah, where some 14,000 Utah residents are serving an overseas mission for the Church of Jesus Christ of Latter Day Saints and are not counted in any census—this is an especially critical issue. I submit that these four issues are not only important for Utahns but for the nation as a whole. There are many citizens of this great Nation that are either temporarily living or working overseas that are not counted in the decennial census. The Congress needs to identify the best and most cost effective ways to ensure that every citizen is counted.

I would have also liked this bill to correct a provision enacted in Section 211 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999. That section was challenged before the WTO following its application in a U.S. lawsuit addressing the enforceability of a trade name confiscated by the Cuban government in 1960 without compensation to the owner. The court found the trademark to be unenforceable by the plaintiff entity, which had acquired the alleged rights to the mark from the Cuban government. Congress should bring the United States into compliance with the decision of the WTO Appellate Body in that case.

The WTO found in favor of the United States on the section 211 challenge in all respects but one: it concluded that section 211 was drafted in a manner that transgressed the national treatment and most-favored-nation obligations under the TRIPS agreement. At issue was the language of section 211 specifying that the Cuban Government, Cuban nationals and their non-U.S. successors are ineligible to own, and therefore enforce, confiscated trademarks. We should clarify that the prohibition on owning trademarks confiscated in Cuba applies to all nationals, not just Cuban nationals and their successors, thus removing the basis of the WTO's criticism.

While I urged the chairman and ranking Democratic member of the Appropriations Committee to look seriously at including this language in the bill to correct previous appropriations language, I do want to make it clear that it does not constitute a waiver of the

Judiciary Committee's jurisdiction over this or any related matter.

Again, I want to thank the Conferees for their efforts.

Mr. INHOFE. Mr. President, I would like to remark briefly on a matter of critical importance to me, related to one of the bills included in this omnibus, VA-HUD. The Senate Committee on Appropriations' Report on VA-HUD contains language directing the Agency for Toxic Substances and Disease Registry—ATSDR—to assess the lead levels at the Tar Creek Superfund site in Oklahoma, and to submit a report to Congress on this assessment no later than July 31, 2004. As a Senator from Oklahoma, and as the chairman of the Environment and Public Works Committee, I cannot emphasize enough the importance of this endeavor to more fully understand the elevated lead levels we're seeing in this community, particularly in children. As the chairman of the committee with jurisdiction over both Superfund and ATSDR, I would like to take this opportunity to elaborate on my expectations of ATSDR in connection with this directive: I am urging ATSDR, in collaboration with the Oklahoma State Health Department, to work to identify significant sources and pathways of exposure to lead that may be contributing to elevated blood lead levels in children at the Tar Creek Superfund site in Oklahoma.

Mr. LEAHY. Mr. President, I come to the floor today to express my disappointment with the Omnibus appropriations bill.

It is not without some reservation that I rise today to make this speech. As a member of the Appropriations Committee I know how hard it is to draft these bills each year. Senators on both sides of the aisle have worked long and hard to produce each of the seven bills that are wrapped into this package. Chairman STEVENS and Senator BYRD were tireless in their efforts to move these bills along and have tried to keep this process on track despite the difficult hand they were dealt.

Unfortunately this year, under the influence of the administration and the pressures of partisanship, the process broke down. It is now the middle of January, nearly four months into the fiscal year, and 11 out of 15 Cabinet-level departments are running on a temporary spending measure. This stopgap measure has already caused disruptions in services and cuts to many social programs.

We should not be in this situation. Had we considered these bills in regular order we would have passed most of them long ago. The foreign operations title was written in a bipartisan manner and every member of the conference committee—Democrat and Republican—signed the conference report.

I strongly support this portion of the omnibus, and I want to commend my friend from Kentucky, Senator McCONNELL, for working with me in such a bi-

partisan way to produce what I believe was probably the best, most balanced outcome we could have achieved.

Although the amount contained in the foreign operations conference report fell far short of the amount requested by the President—a fact which I find mystifying since the President's party controls both Houses of Congress—it is an improvement over the previous fiscal year. It contains several new initiatives, as well as additional funds for some very important programs.

I supported Senator DASCHLE's effort last December to pass the foreign operations bill independent of the omnibus. If we were given the opportunity to vote on the foreign operations portion of the omnibus by itself—and frankly I do not understand why we have not been given that opportunity—I would vote aye.

Instead the administration and congressional leadership used the pressure to pass these bills as a vehicle to move their agenda forward. Several provisions were added, and in some cases removed, to the package at the last minute and behind closed doors, sometimes in direct contradiction to votes taken on the Senate and House floors. We are now in a situation where the omnibus is mired down in debate over controversial issues unrelated to the underlying bill.

These are issues as serious as how much overtime our Nation's workers should be paid. The Bush Labor Department announced plans last March to overhaul the Federal rules on overtime pay. The new rules would redefine eligibility for overtime, adversely affecting nearly 8 million American workers who earn between \$22,100 and \$65,000 annually. I am troubled that so many working families in this country will no longer be entitled to time-and-a-half pay. And I find it disingenuous that the Labor Department is planning to include in the regulations a list of cost-cutting suggestions for businesses that will show them precisely how they can avoid paying overtime compensation to their employees.

On September 10 of last year I joined a bipartisan group of Senators in opposing the administration's overtime compensation changes. By a vote of 54 to 45 the Senate approved an amendment to the Labor-HHS appropriations bill to overturn the regulations for another year. The House joined this effort less than a month later when they instructed their conferees to support the Senate provision. Unfortunately the President threatened to veto the fiscal year 2004 Omnibus appropriations bill if it contained this provision. Late at night, without the consent of the full conference committee, congressional leaders relented and against the will of Congress the provisions were removed from the final bill.

The Labor Department now expects to have its regulations finalized by the end of March. And in testimony before

the Senate Labor Appropriations Committee yesterday the Secretary was unwilling to not only delay implementation of the regulations, but even to listen to the debate about how many workers will lose overtime pay because of the regulations.

Just 2 nights ago President Bush implored us to do more to help struggling, working families across this country. He said we should lower their taxes so they have more money to spend. He said we should implement new savings incentives so they have more money saved up. And he said we should implement new programs to promote family life so they will spend more quality time together. Unfortunately, the actions of this administration to reach into the pocketbooks of hard-working families—to take away their overtime pay and keep them apart for even longer hours—speak much louder than the President's words.

The will of the Senate was also thwarted when it came to regulating the safety of our Nation's food supply. Consumers have said, in large numbers, that they want basic information about the food they consume. A recent nationwide poll indicated that 82 percent of American consumers think food should be labeled with country-of-origin information. That is why Congress mandated country-of-origin labeling—otherwise known as COOL—as part of the recently passed farm bill. The language of the COOL law states that only beef born, raised, and slaughtered in the United States can be labeled a U.S. product. Only with the country-of-origin labeling law will consumers be afforded a choice about the origin of the food they purchase and consume. The recent discovery of a mad cow case in Washington State from a Canadian cow has made clear the need to implement COOL immediately.

Unfortunately, the Bush administration has stridently opposed COOL. Language was included in this bill that effectively kills the labeling law and denies consumers essential information about the meats, fruits and vegetables they purchase.

The trend of bucking popular sentiment continued when it came to the issue of FCC media ownership caps. On June 2 of last year the FCC issued a ruling that would have relaxed media ownership restrictions from the 35 percent cap to 45 percent. After public outrage and much debate, the House and Senate approved legislation reinstating a 35-percent limitation on FCC media ownership caps. Despite this the White House successfully lobbied for last-minute increase of a permanent cap at 39 percent.

This so-called "compromise" would only serve to the advantage of media conglomerates—several of whom are already in violation of the 35-percent cap and who would otherwise be required to divest some assets in order to comply with the rule. There is no evidence that a 39 percent cap will protect the diversity of voices, or foster the

competitive health of the information and entertainment industries. In fact, reasoned analysis suggests precisely the opposite. Unfortunately, Democrats were not in the room when this decision was made. The doors had been closed and communication had ceased.

I could go on. This mammoth bill includes a provision that will pave the way for contracting out thousands of Federal jobs. Bipartisan agreements were reached that would have provided basic protections for federal employees, yet these protections were dropped. Both the Senate and House voted on provisions that would have eased the restrictions on travel to Cuba, but this provision mysteriously disappeared in conference. Titles of the bill that were closed out during conference meetings were reopened after deals had been struck; compromises that were reached on a bipartisan basis were overturned later without consultation. This is not how we should be doing business. It is undemocratic. It is not how the American people expect us to represent them.

The omnibus provides over \$820 million in long overdue funds that are desperately needed by Federal agencies, including hard fought increases for veterans medical care and the fight against global aids. But it is packaged with tainted goods.

Today I will vote to invoke cloture on this bill. These provisions could be fixed if the will was there, but the other side of the aisle has made it clear that they will not negotiate. Delaying this bill any longer will only do more harm to our agencies and the people they serve. But I will vote no on final passage. I cannot support the omnibus as it is written. It is a flawed document in both policy and process.

I hope that over the next few months we can start to restore the spirit of compromise, bipartisanship and consultation that used to be commonplace in the appropriations process. Another year like this will do permanent damage to this institution. We deserve and expect better in the United States Senate.

Mrs. BOXER. Mr. President, there are many parts of the Omnibus appropriations bill that I support.

There is \$225 million in the bill to help prevent fires and erosion in southern California. It provides over \$1.5 billion in funding for the COPS program and other local law enforcement assistance. It funds all of our education programs, including \$1 billion for after-school programs, and a \$710 million increase in funding to help local schools educate disadvantaged students. It provides a \$1 billion increase in funding for health research. It includes a \$4.3 billion increase for veterans health care. And it includes many of my requests for funding for California projects.

I wish we had a true appropriations bill that contained these things and only these things. I could vote for that. But this bill contains much more than that.

Our efforts to increase funding for health research are undermined when this bill leaves us more vulnerable to mad cow disease. Our efforts to fund job programs are undermined when this bill takes away overtime pay from millions of hard-working Americans. Our efforts to fund law enforcement are undermined when this bill makes it harder for law enforcement to track down criminals who use guns. Our efforts to fund election reform measures are undermined when this bill allows media conglomerates to control more of the information the public receives.

If the Republicans had just let well enough alone, we would have had a good bill that I could have supported. But, I cannot support this bill.

Let me discuss each of these issues.

First, this bill allows the administration to take away the overtime rights of millions of workers. Last spring, the administration proposed regulations that strip some workers of their right to overtime protection. Both the Senate and House voted to reject this regulation. But, this bill allows it to go forward.

The result is that when President Bush signs this bill, millions of workers including police officers, firefighters, emergency workers, and nurses will lose their overtime pay. Overtime pay now accounts for 25 percent of the income of workers who work overtime. Without that pay—with this new regulation many working families will be poorer.

The new rule will also threaten job creation. Requiring employers to pay a premium for overtime work encourages employers to hire more workers instead of forcing their existing workers to work longer hours. And the longer hours that America's working parents would have to work without overtime protections are hours that the new rule would steal from families. With the stroke of a pen, parents will have to work without overtime pay, and they will be forced to be away from their families.

We have to make the economy work for working families. Stripping workers of overtime protections fails that test. This is a travesty against every American who believes in fair pay for work.

Second, this bill makes us more vulnerable to mad cow disease. The 2002 farm bill includes a provision requiring that food products be labeled by their country of origin. This not only promotes U.S. agriculture, it enables consumers to know if the food they are buying is safe and healthy. It allows consumers to determine where food is from and to make purchases for their families based on this information. It allows consumers to know which beef in the grocery store was from Canadian cattle and which beef was born, raised, and processed solely in the United States.

The Senate passed an amendment to the Agriculture appropriations bill endorsing country-of-origin labeling. But

this omnibus bill delays its implementation for 2 years.

The American people should not have to wait 2 years before they have the right to know that the food they are buying is safe and healthy. They should have that right, right now.

Third, the Omnibus appropriations bill would gut the Brady law by requiring the FBI to destroy gun buyer records within 24 hours of the sale of a weapon.

Right now, when someone buys a gun, an instant background check is conducted and then the FBI keeps that record for 90 days. Since many guns used in the commission of crimes are purchased soon before the crimes are committed, this 90-day database makes it easier for law enforcement to trace guns used in crimes and to find criminals.

This bill eliminates that database and makes it harder for our hard-working law enforcement officers to do their jobs and make our streets safer.

Finally, the omnibus bill allows a single company to own TV stations that reach 39 percent of the country. This comes after both the House and Senate voted to leave the limit where it is now at 35 percent.

In addition, this bill would permit more mergers between newspapers and TV stations in the same local markets.

This means that the door is opened to massive consolidation of the most important news outlets in local media markets. And that means few voices instead of many voices. It means that even fewer people—a handful of gigantic media companies—will be in control of the information the American public receives.

Groups as diverse as the National Rifle Association, the National Organization for Women, the National Council of Churches, Parents Television Council, Consumers Union, and the Leadership Conference on Civil Rights oppose changing the rules. In fact, the Senate and House voted not to change the rules. But the Omnibus appropriations bill defies the will of the Senate and House and provides a belated holiday gift to big corporations.

We can do better. We must do better. Until we do better, we should defeat this bill.

Mr. DODD. Mr. President, I rise to discuss briefly the fiscal year 2004 Omnibus appropriations bill passed today by the Senate.

When the Senate was debating this measure, there were two motions to invoke cloture on the conference agreement. I opposed both motions. I did so in the hope that the Senate would revisit and revise several issues about which I have deep concerns.

One issue is that the conference report allows the Labor Department to, in effect, deny overtime pay to approximately 8 million workers across our country. While both the House and the Senate opposed this policy by partisan majorities, that opposition was ignored by Republican conferees. Many workers

who now qualify for overtime pay would find their jobs reclassified as a managerial or professional position, thus making them ineligible for overtime pay if they work in excess of 40 hours. This change is significant because overtime pay can provide as much as 25 percent of a worker's annual income. Instead of working towards creating new jobs and helping working families and individuals, the legislation creates yet another obstacle for millions of Americans to provide for themselves and their families.

Second, the conference agreement delays the implementation of a mandate that requires country-of-origin labeling of meat. In an age where justified concerns are growing over the safety of our food supply—particularly beef products—I feel that it is important for our agricultural policies to include necessary information and safeguards for consumers. The issue of country of origin labeling on certain food items such as meats and produce is an effective way to address this issue providing consumers with a measure of control and choice in their food purchases.

Third, the conference agreement excludes Senate-passed and House-passed measures to reimpose a 35 percent national television ownership cap that the FCC rescinded in June 2003. Instead the conference agreement establishes a 39-percent cap. The FCC ruling and the conference language, in my view, could clear the way for further consolidation in the broadcast media industry that could potentially allow a small number of owners to control a large proportion of our country's news, information, and entertainment sources, thus threatening to hurt both consumers and our democracy.

Fourth, the conference agreement provides for the distribution of school vouchers to students in the District of Columbia public school system. Federally funded vouchers are bad policy for the District and for our Nation. Vouchers do not have a proven or substantial record of success. Students who receive vouchers have no guarantee that they will be accepted into the private school of their choice while parents have no means with which to know whether or not the private school is raising their child's achievement level. All we know for sure about vouchers is that they deprive public schools of vitally needed resources.

Finally, the conference agreement critically underfunds educational activities in the No Child Left Behind Act by \$8 billion and in title I by \$6 billion. By denying localities adequate federal funds with which to raise school standards, student achievement and infrastructure standards, we are denying millions of children and their families across the country the educational resources they need to succeed.

Regrettably, these provisions were neither revisited nor revised, and cloture was subsequently invoked.

When the conference agreement was before the Senate for final consider-

ation, I voted in favor of the bill. Despite the shortcomings mentioned above, I felt the legislation contained several important provisions that benefit both the country at large and the people of Connecticut. For instance, it contains \$1.5 billion for States to make technological upgrades to their election systems. It also contains \$1.2 billion in added resources for special education. In addition, it funds vital priorities in health care, law enforcement, and transportation.

On balance, I believe this conference agreement, while needlessly flawed, is worthy of support. I intend to continue to work to rectify its shortcomings.

Mr. LEVIN. Mr. President, it is difficult to oppose this bill because it funds many programs that I support and contains a number of provisions that I worked to have included. However, once again we are being asked to vote on legislation that does not reflect the will of the House and Senate. This bill cuts funding for important programs, while at the same time includes provisions not approved in either the House or Senate, while failing to include provisions passed by both chambers.

Manufacturing has been hit hard in this country. Of the 3 million private sector jobs lost during this Administration, the vast majority, about 2.6 million, are in manufacturing. This bill drastically cuts one of the few programs we have to spur manufacturing. This is intolerable. The Commerce Department's National Institute of Standards and Manufacturing Extension Partnership, MEP, program, which cofunds a nationwide system of manufacturing support centers to assist small and midsize manufacturers to modernize to compete in a demanding marketplace, is cut by 60 percent in this legislation.

Although the program was funded at \$105.9 million last year, the President requested an 88 percent cut in the program to only \$12.6 million in his fiscal year 2004 budget. The House approved \$39.6 million and the Senate \$106 million in their appropriations bills. This conference report adopts the House level of \$39.6 million, a 60 percent cut to the program. The President and the Republican-controlled House of Representatives didn't even compromise with the Senate, despite the support of 58 Senators pressing for a funding level of \$110 million. They are not willing to assist small and medium sized manufacturing companies who are facing strong import competition and job losses.

Further, this bill will deprive over 8 million workers of overtime pay. The administration proposed a regulation to end overtime pay for millions of working men and women. Although the House and Senate both voted to oppose this regulation, their will was ignored because of White House pressure and the language was dropped in conference. This omission will negatively impact such public servants as police



officers and firefighters, including our military personnel who return home to become police officers or firefighters.

Both the Senate and House versions of the fiscal year 2004 Commerce-Justice-State spending bill included language prohibiting the FCC from implementing its decision to allow a single company to own more TV stations in the same market. The current cap is 35 percent. Despite the expressed will of both houses, the bill before us allows more media concentration and raises the cap to 39 percent. Allowing this kind of media consolidation could be harmful to consumers.

Further, language in the bill mandates that the Justice Department destroy background check records for the purchase of guns within 24 hours of the gun purchase. Under current regulations, the Bureau of Alcohol, Tobacco, and Firearms can retain the records from gun purchases for up to 90 days. This 90-day period gives law enforcement the opportunity to review and audit gun purchase records for illegal activity and problems with the background check system. The provision requiring the destruction of records within 24 hours was inserted into the bill without a debate or discussion of its potential impact. It is incomprehensible that we are in a heightened state of alert to guard against terrorism yet we are not providing law enforcement with more than 24 hours to examine information on weapons' purchases.

Language in this bill will also postpone the country-of-origin labeling, COOL, rule that was previously enacted. The House bill would have delayed that provision for one year. This conference report contains a 2-year delay. Not only did the Senate strongly reject this provision previously, but, more importantly, this delay undermines efforts to ensure the safety of our nation's food supply. The recent mad cow incident in Washington underscored the importance of being able to trace the origin of agricultural products. If the infected cow had not been voluntarily marked as being of Canadian origin, we would not have been able to determine the origin of the disease in such an expeditious fashion. Making COOL mandatory will ensure that such incidents can be traced more quickly.

The omnibus bill also denies many struggling Americans much-needed support services. For example, Section 105 of the Labor-HHS portion of the bill will allow the government to rescind unspent, though already obligated, welfare-to-work funds. By instructing the Secretary of Labor to recapture "unexpended" funds rather than "unobligated" funds, Michigan and several other states could lose a significant amount of this important funding. Michigan is threatened with losing \$16 million that it has obligated in welfare-to-work funds for FY04. If Michigan loses these funds, Detroit alone will be unable to provide 6,000 welfare recipients with job search services,

education and training programs, and other employment-related services.

We need to protect our citizens from terrorism and crime, yet this bill fails to adequately fund the COPS program, an invaluable tool in making our streets and schools safer. To date, the COPS program has helped add thousands of police officers and school resource officers in Michigan. Unfortunately, this legislation cuts the COPS hiring program by \$80 million—a 40 percent cut from 2003 levels and a more than 60 percent cut from 2002 levels.

At a time when we are asking so much of our military, this legislation provides inadequate funding for our nation's veterans. This legislation cuts nearly \$2 billion from the budget passed by the Senate in the spring allocated \$63.77 billion for services at the Veterans Administration including health care, burial services and other commitments. This shortfall shortchanges our nation's veterans after we have made great demands on them and strong commitments to them.

This bill also fails our children by mandating a .59 percent across-the-board cut which would reduce funding for No Child Left Behind programs by over \$73 million, resulting in 24,000 fewer kids being served by title I. Overall, the Title I Education for the Disadvantaged Program would be \$6 billion below the level authorized by the No Child Left Behind Act that the President signed in January of 2002. This cut in funding would also reduce Head Start funding by \$40 million, resulting in 5,500 fewer kids attending Head Start.

I am also concerned about the private-school voucher program that this omnibus bill would create in the District of Columbia. This is a proposal that was stripped from the Senate's D.C. Appropriations bill, but squeaked through the House by just a couple of votes. I do not believe we should take our scarce taxpayer dollars away from public schools, where over 90 percent of our nation's children are educated, and divert them to private schools. Furthermore, in the No Child Left Behind Act, Public Law 107-110, Congress included strong accountability standards to demand better results from administrators, teachers, and students for all public schools. I believe we should concentrate on improving the educational level of all students at all DC public schools, rather than take some students out.

This bill severely underfunds Great Lakes and other environmental programs, highway construction projects, law enforcement programs and funding to our veterans. I cannot support this legislation as it has been brought to the floor on a "take it or leave it" basis, violating procedures which assure the Senate's input. I hope that we can work out some corrective legislation which will have the broad bipartisan support many of these important programs deserve.

• Mr. CHAMBLISS. Mr. President, I rise today in support of the conference

report to accompany the fiscal year 2004 Omnibus Appropriations bill, H.R. 2673. I would first like to thank the appropriators on both sides of the aisle, especially Chairman TED STEVENS and Ranking Member ROBERT BYRD, for their diligent efforts in crafting this daunting funding package, and particularly for their agreement on several provisions significant to the people of Georgia that will meet urgent needs in transportation, education, agriculture, and homeland security.

This body has an obligation to the American people to ensure the continuing operations of our government by annually appropriating needed funding. We also have the obligation to spend consistently within the budget restraints created by the budget resolution—the general agreement between Congress and the executive branch in terms of spending limits which this body adopted last April for fiscal year 2004. We have met this obligation since this bill adheres to that agreement.

The spending package before us funds a majority of the agencies and programs of the U.S. Government. Passing this omnibus appropriations bill today will allow us to increase our efforts in fighting terrorism; it will strengthen our state and local first responders with increased funding; it will provide additional medical care and other benefits to millions of veterans and address the needs of our Nation's schools and universities.

For example, the omnibus bill includes \$260 million for the Centers for Disease Control located in Atlanta for desperately needed building improvements. The CDC is home to some of the brightest and best scientists in the world and this money will contribute to the renovation of many dilapidated buildings in desperate need of repairs and modernization. This bill is also a very important to the State of Georgia. There are vital programs across the State that will receive necessary funding once this bill is passed and signed into law by the President.

I support the passage of this conference report to the fiscal year 2004 Omnibus Bill. Although an unforeseen medical emergency will not allow me to actually cast my vote today for cloture or passage of this conference report, I encourage my colleagues to support the passage of these measures. •

EMERGENCY STEEL LOAN GUARANTEE PROGRAM

Mr. BYRD. Mr. President, in 1999, I helped enact the Emergency Steel Loan Guarantee Program to give American steel companies in difficult financial circumstances ready access to capital to enable them to restructure their operations, improve their productivity, and ensure a future for their hard-working employees.

For more than 4 years, this program has successfully granted Federal loan guarantees to companies like Hannah Steel in Fairfield, AL, and Wheeling-Pittsburgh Steel Corporation in my home State of West Virginia. Without the benefit of these Federal loan guarantees, it is almost certain that these

companies would have gone out of business. Today, however, they are vibrant companies continuing to support thousands of workers, their families, and entire communities.

The fiscal year 2004 omnibus appropriations bill, has included a 2-year extension of the Emergency Steel Loan Guarantee Program, which otherwise would have expired on December 31, 2003. The extension was included, without objection, in the omnibus appropriations bill that passed the U.S. House of Representatives; it was strongly supported by the full Senate Appropriations Committee; and it is now awaiting final action in the fiscal year 2004 omnibus bill now pending before the Senate. A separate provision was included under Division B of the fiscal year 2004 omnibus directing the Department of Commerce to rescind \$100 million in prior year unobligated balances. It is my understanding that the provision was included in order for the CJS Subcommittee to meet their allocation.

Mr. HOLLINGS. The full committee ranking member's understanding of the circumstances and provision is correct.

Mr. BYRD. Mr. President, I understand and respect the very tough decisions the chairman and ranking member of the subcommittee had to make in order to meet their allocation, but now, I understand that the U.S. Commerce Department intends to use that provision to rescind \$17.7 million for the Emergency Steel Loan Guarantee Program even though they do not have the legal authority to do so.

Receiving reports that, only a few weeks ago, the U.S. Commerce Department was pursuing this particular rescission, I wrote to the Comptroller General of the United States, who heads the General Accounting Office and issues decisions in the area of Federal appropriations law. I wrote to the Comptroller General, David Walker, on December 22, 2003. I inquired as to whether the Commerce Department would have the legal authority to rescind funds from the Emergency Steel Loan Guarantee Program under the terms of H.R. 2673, the fiscal year 2004 omnibus appropriations bill. On January 15, 2004, I received a definitive response from the General Counsel of the GAO, which states that the U.S. Commerce Department is without legal authority to rescind the balance of unobligated funds from the Emergency Steel Loan Guarantee Program. The GAO stated that the unobligated funds for the steel loan program, by law, are available only to the Board of the Emergency Steel Loan Guarantee Program, and those funds are not available to the Commerce Department.

The exact words of the legal opinion that I have received from the GAO are as follows:

The Secretary of Commerce may not legally rescind \$17.711 million as planned from the unobligated balance of appropriated funds in the Emergency Steel Guarantee Loan Program to satisfy the rescission man-

date in the fiscal year 2004 omnibus appropriations bill.

The GAO legal opinion further states:

Accordingly, we conclude that the unobligated balance of the \$140 million appropriation from the 1999 Steel Act is not "available to the Department of Commerce" and thus would not be subject to the section 215 rescission. Thus, the Secretary of Commerce may not legally rescind \$17.711 million as planned from the unobligated balance of appropriated funds in the Emergency Steel Guarantee Loan Program.

So, I would ask my friend and colleague, Senator HOLLINGS, the ranking member of the Senate Appropriations Committee's Subcommittee on Commerce, Justice, State, and the Judiciary, if he agrees that the Commerce Department has no legal authority to rescind the unobligated balance of funds from the Emergency Steel Loan Guarantee Program in light of the legal opinion I have just obtained on this matter?

Mr. HOLLINGS. My response to my friend and the ranking member of the Senate Appropriations Committee is I absolutely agree the Commerce Department does not have the authority to rescind funds from the Emergency Steel Loan Guarantee Program.

Mr. President, it is clear. The Commerce Department has no legal authority to rescind these funds and should keep its hands off of the money in the Emergency Steel Loan Guarantee Program.

Mr. BYRD. Absolutely. Mr. President, I ask unanimous consent that my letter to the Comptroller General, David Walker, dated December 22, 2003, and the GAO legal opinion dated January 15, 2004, be printed in the RECORD.

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

U.S. SENATE,  
COMMITTEE ON APPROPRIATIONS,  
Washington, DC, December 22, 2003.

Hon. DAVID M. WALKER,  
Comptroller General, U.S. General Accounting  
Office, Washington, DC.

DEAR MR. WALKER: With this letter, I am seeking the view of the U.S. General Accounting Office on an issue related to the implementation of H.R. 2673, a bill making omnibus appropriations for FY 2004. Section 215 of Division B—Departments of Commerce, Justice and State of the bill, would direct the Department of Commerce to rescind \$100,000,000 of unobligated balances available to the Department of Commerce. In anticipation of enactment of H.R. 2673, the Department is preparing to rescind \$17,711,000 from unobligated balances from the Emergency Steel Loan Guarantee Program authorized by Public Law 106-51.

Public Law 106-51 (Section 101) established the Emergency Steel Loan Guarantee Board for purposes of administering a loan guarantee program. The Board is made up of three members, the Chairman of the Board of Governors of the Federal Reserve System, who serves as Chairman of the Emergency Steel Loan Guarantee Board, the Secretary of Commerce and the Chairman of the Securities and Exchange Commission. Section 101(f)(5) of the Act appropriated \$140,000,000 for the costs of the loans guaranteed by the Board. In addition, the Act (Section 101(j)) appropriated \$5,000,000 to the Department of

Commerce to administer the program. However, at issue is the Department's plan to rescind some of the \$52,000,000 of unobligated balances of budget authority made available to the Board under Section 101(f)(5) for guaranteeing the loans.

Section 215 of Division B of H.R. 2679 only would permit the Department of Commerce to rescind obligated balances available to the Department of Commerce. Section 101(f)(5) of P.L. 106-51 clearly appropriates funds to the Board, not to the Department of Commerce. The Secretary of Commerce is a minority member of the Board. The Chairman of the Board is the Chairman of the Board of Governors of the Federal Reserve System. Pursuant to P.L. 106-51, loan guarantee agreements with affected steel companies are signed by the Executive Director of the Board, not by the Secretary of Commerce.

I seek the legal opinion of the U.S. General Accounting Office on whether the Department of Commerce would have the authority under section 215 of Division B of H.R. 2673 to rescind unobligated balances that are available to the Emergency Steel Loan Guarantee Board under section 101(f)(5) of P.L. 106-51 for the purpose of guaranteeing loans.

With warmest wishes, I am

Sincerely yours,

ROBERT C. BYRD.

U.S. GENERAL ACCOUNTING OFFICE,  
Washington, DC, January 15, 2004.

Subject: Proposed Rescission by Department of Commerce of Unobligated Emergency Steel Guarantee Loan Program Appropriation

Hon. ROBERT C. BYRD,  
Ranking Minority Member, Committee on Appropriations, U.S. Senate.

DEAR SENATOR BYRD: This responds to your request of December 22, 2003, for our opinion on the Department of Commerce's (Department) plan to rescind \$17.711 million of the unobligated balance of amounts appropriated for the Emergency Steel Guarantee Loan Program (Program). The Department has indicated that it would draw on the unobligated balance of the Program's appropriation to help satisfy a \$100 million rescission that would be required by H.R. 2673, the bill making omnibus appropriations for fiscal year 2004, if enacted. You asked whether the unobligated balance of the Program's appropriation is available to the Department for that purpose. For the reasons provided below, we conclude that the Program's appropriation is not available to the Department for purposes of the \$100 million rescission.

#### BACKGROUND

In the findings section of the Emergency Steel Loan Guarantee Act of 1999 (Steel Act), Congress noted the loss of jobs and company bankruptcies in the steel industry as a consequence of increases in steel imports. Emergency Steel Loan Guarantee Act of 1999, Pub. L. No. 106-51, 101(b), 113 Stat. 252 (1999). Congress found that "a strong steel industry is necessary to the adequate defense preparedness of the United States" and that industry problems were causing a decline in the willingness of private institutions to loan money to U.S. steel companies. Id. Congress passed the Steel Act, which established the Emergency Steel Loan Guarantee Program, in order "to provide loan guarantee to qualified steel companies." Id. §101(d).

To administer the program, the Steel Act created a three-member Loan Guarantee Board comprised of the Secretary of Commerce, the Chairman of the Securities and Exchange Commission, and the Chairman of the Board of Governors of the Federal Reserve System. Pub. L. No. 106-51, §101(d), (e).

To fund the costs of the loan guarantees, the Steel Act appropriated \$140 million. Id. §101(f)(5) (“For the additional cost of the loans guaranteed under this subsection, included the costs of modifying the loans . . . , there is appropriated \$140,000,000 to remain available until expended.”) Also, the Steel Act provided the Department of Commerce with an administrative support role and appropriated \$5 million to the Department for that purpose. Id. §101(j) (“For necessary expenses to administer the Program, \$5,000,000 is appropriated to the Department of Commerce, to remain available until expended. . . .”)

The Commerce Department’s fiscal year 2004 appropriation, currently before the Senate, would include a rescission of \$100 million. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004, H.R. 2673, 108th Cong., Div. B, §215 (2003) (hereinafter Omnibus Bill) (“Of the unobligated balances available to the Department of Commerce from prior year appropriations with the exception of funds provided for coral reef activities, fisheries enforcement, the Ocean Health Initiative, land acquisition, and lab construction, \$100,000,000 are rescinded.”). Subject to the limitation that the rescission come from “unobligated balances available to the Department of Commerce from prior year appropriations,” the law would give the Secretary discretion to identify the sources of the rescission. Id. (“Provided, That within 30 days after the date of enactment of this section the Secretary of Commerce shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying the amount of each rescission made pursuant to this section.”).

#### DISCUSSION

At issue here is whether unobligated Program funds are “unobligated balances available to the Department of Commerce” for rescission. The language of the \$140 million appropriation itself does not identify to whom the appropriation was made, only the purpose of the appropriation. The Steel Act states, “there is appropriated \$140 million” for the costs of the loan guarantees that the Board approves. The issue for us is one of statutory construction: Is the Program’s \$140 million appropriation available to the Board or to the Department? In interpreting statutes, the Federal courts have developed a number of well-recognized conventions, which are also known as canons of statutory construction. One important canon is that words should be considered in the context of the entire statute. See *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 217 (2001); *United States Ass’n of Texas v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988). We apply that canon of statutory construction in this case.

The provisions in a statute should not be viewed in isolation but in the context of the entire statute. In 2001 in *United States v. Cleveland Indians Baseball Co.*, the Supreme Court stated that “it is, of course, true that statutory construction ‘is a holistic endeavor’ and that the meaning of a provision is ‘clarified by the remainder of the statutory scheme.’” 532 U.S. 200, 217. See also 2A Sutherland, *Statutes and Statutory Construction* §46:05, at 154 (6th ed. 2000) (“A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole.”). In our case law, we apply this canon of construction with equal vigor. See, e.g., *Matter of Jacobs COGEMA, LLC*, B-290125.2, B-290125.3, at 8, Dec. 18, 2002 (“In ascertaining the plain meaning of the

statute, we necessarily look to the particular statutory language at issue, as well as the language and design of the statute as a whole.”). See also B-286661, Jan. 19, 2001.

When the 1999 Steel Act created the Program, it specified that the Program was “to be administered by the Board.” Pub. L. No. 106-51, §101(d). The Steel Act gave the Board decision-making powers to “approve or deny each application for a guarantee.” Id. §101(e). At the same time, the Steel Act provided an appropriation to finance the costs of these guarantees; it said that “there is appropriated \$140,000,000 to remain available until expended.” Id. §101(f)(5).

Congress finances federal programs and activities by providing “budget authority.” Budget authority is a general term referring to various forms of authority provided by law to enter into financial obligations that will result in immediate or future outlays of government funds. See §3(2) of the Congressional Budget and Impoundment Control Act of 1974, 2 U.S.C. §622(2) and note, as amended by the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, §§13201(b) and 13211(a), 104 Stat. 1388, 1388-614, and 1388-620 (Nov. 5, 1990). An appropriation, such as the \$140 million one enacted for the Program, is one form of budget authority. Within the context of the 1999 Steel Act, only the Board has authority to incur an obligation against the \$140 million appropriation by committing the federal government to a loan guarantee. It is the Board who can approve applications for loan guarantees, and it is the Board’s approval of an application that financially obligates the United States. For this reason, we view the \$140 million appropriation as available to the Board, not to the Department. While the Secretary of Commerce, as a Board member, has a vote in whether to approve an application for a loan guarantee whose costs are charged to the \$140 million appropriation, the Secretary, by himself, cannot approve an application and cannot incur an obligation against the appropriation.

The Department asserts that the \$140 million is a Commerce Department appropriation because the Steel Act appropriated \$5 million to the Department to cover the costs of administrative support to the Program. Specifically, the Steel Act appropriated \$5 million to the Department “for necessary expenses to administer the Program.” Id. §101(j). The Department notes that historically Commerce, Treasury, and OMB have always treated the \$140 million as a Commerce appropriation. The Department performs all of the Board’s bookkeeping and provides other administrative support. The Department carries the Board’s staff on the Department’s payroll. Treasury, the Department says, has assigned the Program’s appropriation a Commerce Department account symbol, and OMB reports the Program’s activity as part of the Department’s budget.

We agree that the Department has an administrative role with regard to the Program’s appropriation; however, the Department’s argument is not persuasive when considered in the context of the Steel Act. The Department fails to recognize that while the Steel Act appropriated funds to the Department “for necessary expenses to administer the Program,” the word “administer,” when viewed in the context of the entire Steel Act, has a particular and very different meaning than its use earlier in the Steel Act when the Steel Act specifies that the Program “is to be administered by the Board.” In this regard, the Steel Act captioned the \$5 million appropriation, “Salaries and Administrative Expenses.” When contrasted with the very clear decision-making authority provided the Board to approve loan guarantee applications, it seems equally clear that the Steel

Act intended the Department to perform ministerial administrative tasks, such as recording obligations as a bookkeeper, and provided a specific appropriation to cover these expenses, whereas it intended the Board to perform decision-making “administrative” tasks, such as incurring obligations. The Department’s Treasury’s and OMB’s historical treatment of the Program’s appropriation that the Department finds relevant is consistent with the Department’s administrative support role.

Furthermore, the words Congress selected in sections 101(f) and 101(j), especially when viewed in the context of the Steel Act, support the conclusion that Congress made the \$140 million appropriation available to the Board and not to the Department of Commerce. In appropriating money for administrative support, Congress expressly appropriated the money to the Department: “\$5,000.00 is appropriated to the Department of Commerce, to remain available until expended.” Id. at 101(j) (emphasis added). Had the Congress intended the Program’s \$140 million appropriation, enacted in the same Steel Act, to be available to the Department as well, we would have expected the Congress to use the same phrasing as it did in enacting the \$5 million appropriation. The fact that the Congress chose not to use that phrasing for the \$140 million appropriation, especially when the Congress clearly said that the Program funded by that appropriation was to be administered by the Board, believes the Department’s assertion.

The Department makes three other arguments. First, the Department points out that in Division B, Title II of the omnibus bill, section 211 would provide extra funding for administrative support. Omnibus Bill, Div. B, §211, Section 211 would authorize the Secretary of Commerce to use \$2 million of the unobligated balance of the \$140 million appropriation to supplement the \$5 million previously appropriated for administrative support. The Department argues that Congress would not have made that money available to the Department had Congress not viewed the \$140 million as a Commerce Department appropriation. The Department offered no support for its argument, and we found no support for its argument in our review. As we explain in this letter, all indications are that the \$140 million is not available to the Department. In fact, regardless, of whether the appropriation is available to the Department, Congress still would need to act to make any amounts available for administrative support. The \$140 million appropriation, as enacted, is available only for the costs of the loan guarantees and not for administrative support. There is another appropriation, the \$5 million appropriation, that was enacted specifically for administrative support.

Second, the Department notes that last year, Congress enacted a rescission in the fiscal year 2003 omnibus appropriations act of the unobligated balance of the appropriation for the Emergency Oil and Gas Guaranteed Loan Program. This program was created at the same time, in the same public law, for similar purposes, and in a similar manner as the Steel Program. When the Oil and Gas Guaranteed Loan Program expired last year, Congress rescinded the remaining \$920,000 unobligated balance in that program. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2003, Pub. L. No. 108-7, Div. B, 117 Stat. 11, 106 (2003) (“Of the unobligated balances available [in the Emergency Oil and Gas Guaranteed Loan Program account] from prior year appropriations, \$920,000 are rescinded.”). The Department interpreted the 2003 rescission language as a direction to Commerce to rescind the money. The Department argues that the section 215

rescission in the Omnibus Bill is like the oil and gas rescission. In our view, the fact that in both instances it is the Department's responsibility to take appropriate action to accomplish the rescissions does not mean that the appropriations are available to the Department. Rather, the Department's responsibility is based on its statutory role to provide administrative support, such as book-keeping. Also, we note that Congress explicitly rescinded the oil and gas unobligated balance. That is not the case before us here.

Lastly, the Department finds support in the fact that section 215 in the Omnibus Bill specifically exempts from the \$100 million rescission "funds provided for coral reef activities, fisheries enforcement, the Ocean Health Initiative, land acquisition, and lab construction," but does not exempt the Program's appropriation. Omnibus Bill, Div. B, §215. Commerce asserts that this implies that the Program's noninclusion in this list means that the Program's funds are not exempt from, and thus subject to, the rescission. We are not persuaded. The \$140 million is not listed in the bill because it is not a Commerce appropriation, as are funds provided for coral reef activities, fisheries enforcement, the Ocean Health Initiative, land acquisition, and lab construction.

#### CONCLUSION

Accordingly, we conclude that the unobligated balance of the \$140 million appropriation from the 1999 Steel Act is not "available to the Department of Commerce" and thus would not be subject to the section 215 rescission. Thus, the Secretary of Commerce may not legally rescind \$17.711 million as planned from the unobligated balance of appropriated funds in the Emergency Steel Guarantee Loan Program to satisfy the rescission mandate in the fiscal year 2004 omnibus appropriations bill.

If you have any questions, please contact Susan A. Poling, Associate General Counsel, at 202-512-5644.

Sincerely yours,

ANTHONY H. GAMBOA,  
*General Counsel.*

#### ORGANIC AGRICULTURE

Mr. KOHL. Mr. President, I am very pleased that the conference agreement with regard to the fiscal year 2004 Agriculture Appropriations bill includes funding for important programs addressing organic agriculture. However, many of the important details regarding Congress' intent for the administration of USDA organic programs were enumerated in the House and Senate reports, without reiteration by the statement of managers.

As stated in the preface of the statement of managers:

[T]he House and Senate report language that is not changed by the conference is approved by the committee of conference. The statement of the managers, while repeating some report language for emphasis, does not intend to negate the language referred to above unless expressly provided herein.

Therefore, in keeping with this general rule, it seems appropriate to engage in a colloquy to assure that there is no confusion regarding congressional intent on the important USDA programs affecting organic agriculture.

First, as stated in the Senate report, \$1.5 million is provided for the National Organic Program, within the Agricultural Marketing Service account.

I would like to reiterate that it is my intent, as ranking member of the Agri-

culture Appropriations Subcommittee, that some of the increased funding provided for this important organic program at USDA be used to more fully comply with some of the requirements of the Organic Foods Production Act of 1990, the authorizing statute for this program. Consistent with the Senate report on this matter, part of this funding should be used to hire an Executive Director for the National Organic Standards Board, NOSB, to create an ongoing peer review panel to oversee the USDA accreditation process for organic certifiers, and to improve scientific technical support for the NOSB.

I would ask my colleague from Vermont, the ranking member of the Agriculture Subcommittee on Research, Nutrition, and General Legislation if he concurs with my comments on this matter?

Mr. LEAHY. As one who has worked a great deal in this area, I say to my friend from Wisconsin that I do agree with his comments and concerns on this matter, and believe his remarks are in keeping with the Senate report language on this matter, as well as the final conference agreement.

Mr. KOHL. I thank the Senator from Vermont.

In addition, as specified in the Economic Research Service section of the House report, \$500,000 is provided for the analysis and compilation of data related to organic production, marketing and trade. The Senate report further elaborates on this matter within the Agricultural Marketing Service section, and "encourages AMS to work with ERS, NASS and RMA on the collection of segregated data on the production and marketing of organic agricultural production and marketing, as directed in the 2002 Farm Bill. Specifically, data should be collected on prices, yields, acreage and production costs in the organic sector."

It is critically important that all USDA collection data agencies coordinate in the effective use of these funds to meet the requirements of the Organic Production and Market Data Initiative—Section 7407—of the Food Security and Rural Investment Act of 2002. However, I would like to add that it is my intention that the Senate report language be used to provide guidance to USDA in the use of the \$500,000 provided under the Economic Research Service account in the House report, and that ERS be the lead agency in coordinating this effort.

Again, I would ask my friend from Vermont, if he would concur with my comments regarding the organic data collection provisions of the AMS and ERS accounts of the Agriculture portion of this omnibus appropriations bill?

Mr. LEAHY. I do concur with the Senator from Wisconsin on his comments and concerns about the organic data collection and analysis provisions in the Agriculture portion of this omnibus appropriations bill.

#### SMALL ENGINES PROVISION

Mrs. FEINSTEIN. Mr. President, some of my constituents are asking questions about the meaning of the small engines provision included in the fiscal year 2004 omnibus appropriations conference report. They raise the question about whether subsection (c) applies only to "new" and "nonroad" spark-ignition engines smaller than 50 horsepower. That was my understanding. I ask my colleague from Missouri, Senator BOND, one of the authors of this provision, whether that was his intent?

Mr. BOND. I say to my colleague from California, Senator FEINSTEIN, that I intended this provision to apply only to the adoption or enforcement of standards or other requirements relating to "new" engines, not existing engines or "in-use" engines. Also, I have heard from other colleagues and stakeholders regarding their desire to address in-use engines. I did not intend that this new language to apply to voluntary State programs aimed at reducing emissions from existing engines such as the Texas Emission Reduction Plan.

Mrs. FEINSTEIN. I thank my colleague, and ask whether he intended the language to apply only to "nonroad" engines?

Mr. BOND. Yes, I believe the entire provision, including subsection (c), should apply to adoption or enforcement of standards or other requirements relating only to nonroad engines.

Mrs. FEINSTEIN. I thank my colleague. I ask him also about his intent of the provision to apply only to non-diesel engines.

Mr. BOND. Yes, I believe the entire provision, including subsection (c), should apply to adoption or enforcement of standards or other requirements relating only to nondiesel engines. I used the term spark-ignition to have that meaning.

Mrs. FEINSTEIN. I thank my colleague again. I ask him also about his intent of the provision to apply only to engines smaller than 50 horsepower.

Mr. BOND. Yes, I believe the entire provision should apply only to engines smaller than 50 horsepower and not engines larger than 50 horsepower. So, in summary, the intent of this provision is to apply to adoption or enforcement of standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower.

Mrs. FEINSTEIN. I thank my colleague for clarifying the intent of this provision here today.

#### CALIFORNIA WILDFIRES

Mrs. FEINSTEIN. Mr. President, I briefly engage the distinguished majority leader in a colloquy about an issue of great importance to me State. I am pleased that the legislation before us provides \$225 million in badly needed assistance to help the State of California recover from last autumn's devastating wildfires and to prevent a

similar tragedy in the future. Of this total made available, \$25 million is provided to compensate California's farmers who suffered losses in the fires.

The package of aid that I drafted contained language that would have deemed losses suffered in those fires to be the result of a natural disaster, raised the cap on payments for those losses under the Tree Assistance Program to \$200,000, and would have provided upfront payments under that program instead of reimbursements for replacement costs.

It is my understanding that a portion of the language was inadvertently left out of the final conference agreement that I had discussed with the majority leader and his staff. Is that the majority leader's understanding?

Mr. FRIST. The Senator is correct. As I am sure the Senator from California can appreciate, Senators and their staff were working under severe time constraints to finalize the conference report. In this difficult environment, the language the Senator refers to was not included in the final legislation. It is my understanding that under the extreme time constraints imposed on staff to file the legislation and the lateness of the hour when this issue was brought to the conference, staff were unable to include the language.

Mrs. FEINSTEIN. I thank the majority leader for that clarification. Those elements of the relief package are crucial to the recovery of agricultural producers in my state. Some of the disaster programs administered by the Department of Agriculture do not provide relief for losses due to arson. However, it is clear to me that the wildfires in California were a natural disaster. Those losses would not have been incurred, if not the drought conditions in high Santa Ana wind conditions. Additionally, as many of the losses were of high value specialty crops, an increased payment cap is needed for adequate recovery effort.

I would ask that the majority leader work with me to ensure that the administration address the intent of my omitted language, so that USDA can administer the relief as intended and the effected producers can recover their losses.

Mr. FRIST. I commend the Senator for her dedication and diligence on this issue. I will work with her to support the intent of her omitted language for the \$12.5 million funding provided in the legislation for the tree assistance program. I will discuss this issue with officials at USDA and it is my hope that the issues she has raised can be addressed by administrative action once the regulations are issued implementing this section of the legislation. However, if this is not possible due to statutory law, I commit to work with her to enact legislation that will address this unique problem of disaster assistance for producers of high value specialty orchards.

#### RURAL ECONOMIC DEVELOPMENT GRANT AND LOAN PROGRAM

Mr. HARKIN. Mr. President, I am very concerned that the Department of Agriculture has not been allocating funds built up in the account for the Rural Economic Development Grant and Loan Program called the "cushion of credit." Rather than providing these funds to local rural electric cooperatives and telephone cooperatives where they can be used to create jobs and improve the economy of rural America, a considerable sum has been built up. There has never been as large a sum unspent as we have seen over the past year. USDA needs to put this money to work as the law intends.

Mr. KOHL. The Senator from Iowa is correct. These are not appropriated funds, but money that has been paid to the Rural Utility Service by local REC and telephone cooperatives when they retire debt at an early stage. And, there has always been a presumption that the money would be made available on a timely basis for qualified proposals for economic development. The department should allocate these funds to qualified applications as quickly as possible.

Mr. BENNETT. I agree with the Senator from Iowa and my ranking member. There is a long history of the Rural Economic Development Grant and Loan Program being a very effective tool to provide capital for many worthy job creating projects. I concur that the Department should release the funds sitting in the cushion of credit account to qualified applications as quickly as possible.

#### POLIO ERADICATION

Mr. HARKIN. Mr. President, I rise today to thank the ranking member of the Foreign Operations Subcommittee, my distinguished colleague from Vermont, Senator LEAHY, for his support of the ongoing efforts to eradicate polio by 2005, and especially thank him for working to include language recommending \$30 million in the Senate report accompanying the FY 2004 Foreign Operations Appropriations bill.

The international effort to eradicate polio has made tremendous progress. Since the global initiative began in 1988, more than 3 million children in the developing world, who would otherwise have become paralyzed with polio, are walking because they have been immunized. The number of polio cases has fallen from an estimated 350,000 in 1988 to approximately 1,500 cases in 2002. The target date for the last case of polio is 2005. When the world is certified polio free, immunizations can cease and the U.S. will save \$350 million annually while the world will save at least \$1.5 billion.

The major partners in the global polio eradication effort have joined with national governments around the world in an unprecedented demonstration of commitment to this historic public health goal. As the initiative runs its course, total victory can only be guaranteed through continued and

unwavering commitment to the goal of a polio-free world.

It is my further understanding that the House report recommended not less than \$25 million for USAID's global polio eradication activities in FY 2004.

This is similar to last year, and the final disposition was \$27.5 million for polio eradication in FY 2003. My question to my friend from Vermont is how much does he expect USAID to allocate for these activities in FY 2004?

Mr. LEAHY. I want to recognize the Senator from Iowa for his leadership on this issue. He has been a champion of polio eradication and his efforts have paid off in the continuing U.S. support for the global polio eradication effort. As my friend has said, for FY 2004, like in prior years, the House and Senate Foreign Operations subcommittees recommended \$30 million and not less than \$25 million, respectively. It is my expectation that USAID will provide \$27.5 million in FY 2004. This is no time to reduce our support for this effort as we approach the finish line.

These funds will allow for accelerated polio eradication activities, improved surveillance for polio and other diseases, and support for cease-fires in conflict zones for National Immunization Days. The United States is the largest international donor for the Polio Eradication Initiative, and the success of this program should be a source of pride for all Americans.

Mr. HARKIN. I thank my friend from Vermont for this clarification and for his and the Appropriations Committee's efforts to reach the goal of a polio-free world.

Mrs. FEINSTEIN. Mr. President, I rise in favor of the FY04 Omnibus Appropriations Conference Report, despite major concerns I have with how this bill was put together and with a number of items in the bill.

Nevertheless, we are faced with an up or down vote. On balance, I believe that the bill is a net positive and I will support it.

The best you can say about this bill is that it is a mixed bag. There are items in the bill that are good for California and the Nation, but there are a number of harmful legislative provisions attached to the bill and on a number of issues the administration was allowed by the majority to override the will of the Senate.

For example, among the harmful provisions that I hope we can reverse is language which requires next-day destruction of background check records of sales where a gun buyer successfully clears a Brady background check and is permitted to purchase a firearm. I also look forward to the Senate taking action to prevent implementation of the administration's proposed rules on overtime compensation.

Before I talk further about the bill, I want to talk about the serious and wholly avoidable problems associated with the process by which we reached a final agreement on this package.

The ranking member of the Appropriations Committee and others are

correct in highlighting those issues. If for no other reason than that we should avoid them in the future.

Senator BYRD is correct when he says that adopting this conference report or facing a year long continuing resolution at FY03 levels are not the only paths out of this impasse.

If the majority leadership in the Senate and the House had chosen, we could have worked out the serious concerns that Senators of both parties have with this legislation. We all knew that there are only a handful of major issues.

However, the majority did not show any willingness to address overtime pay, country of origin labeling for meat products, media ownership rules, or outsourcing of Federal jobs.

Senator BYRD also eloquently laid out in his letter to the majority leader the instances in which the administration, at the eleventh hour, was permitted by the majority to prevail over the will of the Congress. I would like to quote what he wrote:

Several very controversial legislative riders were added at the last minute by the Bush White House. Disappointingly, the Republican Congressional Leadership, at the insistence of the White House, capitulated to changes that were not even contemplated when the bills were before the House of Representatives and the Senate.

Overriding the will of the Senate, the bipartisan overtime regulation prohibition, which passed the Senate by a vote of 54-45, was dropped. The resulting Bush administration plan would eliminate overtime pay protections for as many as 8 million American workers who currently are eligible for overtime pay. These hard-earned overtime dollars often make the difference between workers providing a better life for their families or just making ends meet.

Overriding the will of the Senate and at the behest of the cattle and food marketing industries, the Bush administration actively and officially supported language in the omnibus conference that would delay implementation of mandatory country-of-origin labeling of meat and meat products. Despite the potential danger to American consumers of any delay, the country-of-origin labeling for meat and meat products, enacted as part of the 2002 Farm Bill and scheduled to take effect this fiscal year, would be delayed by two years.

Overriding the will of the House and the Senate, the one-year limitation on the FCC media ownership rule was turned into a permanent cap at 39 percent. The practical effect of changes demanded by the White House is to protect Rupert Murdoch's Fox television network and CBS-Viacom from having to comply with the lower 35 percent ownership caps that conferees had included in the original conference report. The White House is boosting special corporate interests at the expense of the people's interest for balanced news and information.

Overriding the will of the House and Senate conferees, and again at the Bush administration's insistence, 400,000 Federal workers will lose job protections. During negotiations, Congressional Democrats and Republicans agreed to provide basic protections for federal employees whose jobs have been targeted by the Bush White House for privatization. Because of White House intransigence, those basic protections were dropped. What remains provides so many loopholes for the Bush administration to privatize Federal jobs that little protection is provided for

workers. The administration's policies encourage unfair treatment of dedicated public servants, many of whom are being forced into early retirement or the prospect of reduced benefits and lower pay.

At this point, the only choice we have is between this omnibus, which funds the Departments of Agriculture, Commerce, Justice, State, Labor, Health and Human Services, Veterans Affairs, Education, Housing and Urban Development, Transportation, and Treasury.

Under a year long continuing resolution, these departments would be funded at last year's levels. And as a result, major programs which benefit millions would be severely underfunded, and many needed projects, including hundreds in California, would receive no funding.

Indeed, there are a number of items in the bill of particular importance to me and to California that I would like to highlight: \$225 million for California wildfire relief and prevention; \$85 million for COPS grants for interoperable communications; A 5-year Pilot Program for school choice in Washington, DC; Increased NIH Funding; and Funding for Election Reform.

If the Omnibus were not to pass, then none of these programs would receive necessary funding.

As we all know, California suffered devastating wildfires last fall. These fires consumed a total of 738,158 acres, killed 23 people, and destroyed approximately 3,626 residences and 1,184 other structures.

And this is just the tip of the iceberg. In California, 8.5 million acres of Federal land are at the highest risk of catastrophic fire, so it is critical that we protect our forests and nearby communities and avert a similar catastrophe in the future.

That is why I am so pleased that Congressman JERRY LEWIS and I were able to secure \$225 million in emergency funding.

This funding will help prevent mudslides, provide relief for farmers whose crops were burned, and eliminate a million trees killed by the bark beetles.

This funding is critical to helping prevent future fires.

As we saw in November, trees killed by the bark beetle become kindling in a serious fire, and put homes and lives at risk.

Removing them is a necessary first step toward preventing fires like the ones we experienced from happening again.

The bill also includes \$85 million in grants to help first responders better communicate with each other in times of crisis.

In all too many jurisdictions, police, fire and emergency medical service personnel can't communicate with each other over the radio when an emergency occurs. This means slower response times, less coordination between agencies and lives lost.

To help remedy this problem, I sponsored an amendment to the emergency

spending bill passed last year, which provided \$109 million to improve the compatibility of first responders' communications systems.

Half of this funding would go to police departments and half would go to fire and emergency departments.

And in the Omnibus Appropriations bill there is \$85 million in additional COPS grants for interoperable communications for police.

There are about 2.5 million public safety first responders who operate in the United States today, stationed in some 18,000 law enforcement agencies, 26,000 fire departments and 6,000 rescue departments.

When I speak to representatives of these departments, they tell me that obtaining compatible communications systems is their No. 1 homeland security priority.

The need is certainly there. The recent Council on Foreign Relations Independent Task Force on Emergency Responders report on homeland security funding—entitled "Drastically Underfunded, Dangerously Unprepared"—determined that the minimum interoperable communications need over the next five fiscal years is \$6.8 billion.

As America continues to confront the threat of terrorism, it will be increasingly important to give our law enforcement, fire and emergency personnel the tools they need to respond to a possible terrorist attack effectively and safely.

This will allow fire, police and emergency medical services personnel to better communicate in times of crisis and will ultimately help save lives.

I am also pleased that the Omnibus Appropriations bill contains the \$40 million DC School Choice plan to provide educational scholarships for 2,000 low-income students in troubled public schools in Washington, DC.

Washington, DC, has the third highest per pupil spending in the Nation—\$10,852 a year goes to the education of each child. Yet, it has 15 failing schools and some of the lowest test scores in the country.

Before supporting Mayor Anthony Williams request for this 5 year pilot program, I thoroughly scrutinized the legislative language as it related to the constitutional safeguards, the criteria, the monitoring—and I believe the program which was ultimately agreed to is balanced, fair, and constitutionally sound.

To develop the best program we could and one that would stand a constitutional test, we made certain that the bill contained language that closely follows the Supreme Court decision in *Zelman v. Simmons-Harris* to help fortify it against legal challenges.

We helped ensure that the District would have a fair method of acceptance for students using vouchers in private and parochial schools and that there would be full accountability and sufficient oversight by Mayor Williams.

We made sure that the scholarship students would be given the same test



that their peers in public schools receive and that their test scores would be evaluated by an unbiased researcher.

No money is taken from the public schools. As a matter of fact, \$13 million in new money is provided to public schools and \$13 million in new funds is added for public charter schools.

As a result of this program, some 2,000 students from failing schools will have that opportunity for one of these scholarships over the next 5 years to go to the private school of their parents' choice.

This is a worthy trial.

This bill also includes an \$835 million increase in funding for the National Institutes of Health.

While this is less than the \$1.5 billion increase I sought on the Senate floor with Chairman SPECTER and ranking member HARKIN, the increase is essential to furthering the advances made by NIH particularly in the field of cancer research.

Working together, Congress and two Presidents successfully completed a doubling of the NIH budget over the past 5 years.

Although the fiscal year 2004 budget increase for NIH is smaller than I had hoped for, every dollar spent will yield health dividends for people.

Because of the mapping of the human genome and the advances in molecular biology, it is now possible to develop and target drugs to specific ailments and therefore to break frontiers, to cross barriers and make uncharted progress.

The NIH is the gold standard for the discovery of these new, targeted cancer drugs such as Gleevec which is used to treat patients with chronic myeloid leukemia.

It is my hope that we can press on even further with the progress made in the fiscal year 2005 so that NIH can move closer to funding the optimal percentage of grant applications it receives.

I am pleased that the Omnibus Appropriations Conference Report meets the Federal Government's commitments under the Help America Vote Act, HAVA, which reformed the way elections are administered.

While the President requested only \$500 million for HAVA implementation, the conference report provides \$1.5 billion for payments to States for the purpose of meeting Federal election standards established in the act.

Following enactment of this legislation, it is vital that these funds be quickly disbursed to the States and localities so that they may implement changes to voting systems in time for the 2004 Federal elections.

As I said before, beyond process, I have a number of serious problems with the substance of the bill, and I will work over the next year to try to fix them.

One of the most egregious provisions, buried in the bill at the behest of the gun lobby, is a provision which re-

quires next-day destruction of background check records of sales where a gun buyer successfully clears a Brady background check and is permitted to purchase a firearm.

Currently, records of criminal background checks are retained for up to 90 days in order to allow the Department of Justice to effectively identify, prevent, or prosecute attempted or completed illegal transactions.

The ability to retain a record of these transactions for up to 90 days allows law enforcement to audit the system to ensure its integrity and to correct errors that may have occurred—for instance, when a gun buyer is able to purchase a weapon when he should have been prevented from getting it.

If those records are destroyed in 24 hours, the ability to correct such mistakes is gone.

A July 2002 report by the General Accounting Office found that the 90-day retention of records allowed the FBI to investigate more than 200 purchases that were initially approved, but later found to have been sales to prohibited purchasers.

The Department of Justice will also lose the ability to adequately verify whether someone on the terrorist watch list has attempted to purchase a firearm, because the records will no longer exist.

According to the Washington Post, at least 12 and as many as 250 individuals on the terrorist watch list have attempted to buy firearms in recent months.

The bill would also prohibit ATF—from finalizing a proposed rule to require licensed gun dealers to conduct regular inventories of their firearms.

The purpose of the rule is to promote more timely reporting of missing and stolen firearms, in order to help ensure that firearms are not ending up in the wrong hands, as in the case of the rifle used in the DC-area sniper shootings last Fall.

Without such a requirement, gun dealers engaged in illegal sales can easily claim theft when their illegally-sold guns turn up in crime.

That may be what happened to the Bushmaster assault weapon used by John Muhammad in the DC-area sniper shootings.

Although Muhammad, a prohibited purchaser, acquired the weapon from a licensed gun dealer in Takoma, WA, many months earlier, the store reported the gun "stolen" only after investigators arrested Muhammad, recovered the gun, ran a trace, and contacted the store.

This provision should never have been put in this bill, and I will work to reverse it.

In addition, I have serious concerns about the impact of delaying country-of-origin labeling.

As we now know, mad cow disease entered the United States via a cow born in Canada. Had we had labeling in place, we could have more quickly traced the cow back to Canada.

Furthermore, polls show that 80-90 percent of Americans want their food to be labeled. In my home State of California, we have the "California Grown" program that promotes awareness, consumption and value of California agricultural products, helping the State's consumers enjoy the best of the California harvest.

All Americans deserve what Californians currently have: the opportunity to know where their food comes from, and to choose American-grown products should they wish.

Last year the White House proposed redefining the job descriptions of millions of workers and thus eliminate their right to Federal overtime protection. Left alone, these rules will go into effect this year.

The proposal could wipe out overtime pay protections and increase work hours for at least 8 million workers nationwide. This would result in huge pay cuts for many workers.

In my State of California, State law will protect most workers from the deleterious effects of this rule change. Unfortunately, public employees who are not covered by collective bargaining and some in the film industry could lose overtime protection if the administration's rule is implemented. And, although most workers in California will maintain their right to overtime through protections granted by State law, the rule change represents a movement in the wrong direction when it comes to enhancing worker protections.

For more than 65 years, we have maintained an appropriate balance between family life and work life by requiring employers to pay certain workers time-and-a-half when they work more than 40 hours in a single week.

This requirement has protected the 40-hour work week, which has been a hallmark of our economy for more than six decades.

Our workers are more productive than ever; yet, these new overtime rules will penalize those individuals who have literally built this Nation.

The men and women who will be most hurt by the rules will be the hourly workers that maintain our streets, ring up our groceries, and respond to our calls to 911.

Given the still high unemployment rate and the uncertainty still plaguing our economy, this is not the time to be making it harder for our hardest workers.

Rather, it is a time when we should be helping all workers achieve fairness in the workplace.

As I laid out, there are serious deficiencies in both the substance of and process by which this conference report was completed. That said, I believe that on balance the conference report is better for California and the Nation than the alternative and I will support it.

The PRESIDING OFFICER. The senior Senator from Alaska.

Mr. STEVENS. Mr. President, it is my understanding that the last 10 minutes before the 12 o'clock vote is reserved for the leaders.

The PRESIDING OFFICER. That is correct.

Mr. STEVENS. Mr. President, I have not been on the Appropriations Committee as long as Senator BYRD but I have been there for many years and I can state to the Senate that it is not the first time the Senate has been faced with the prospect of voting for a conference report which had deleted items that had been passed by both the House and the Senate.

I say, frankly, I have voted for the items that had been deleted. One of them was the overtime provision. One was modified and that is the one concerning ownership limitations under the jurisdiction of the FCC of over-the-air media.

In each instance, the reason for our yielding was the other provisions of the bill. We had provisions the House is violently opposed to which many Members on both sides of the aisle thought were absolutely necessary for their constituencies or for the Nation.

I bluntly state I believe the best thing we can do is get a bill that will not be vetoed. We were looking at this in December, hopefully trying to get it passed. We are looking at it today, and I fervently pray it will pass because I know the harm being done to a lot of people all over the country by these bills not having become law when they should have before October 1 of last year.

I will speak about one particular area that has been criticized substantially, and that is the Bering Sea Aleutian Islands crab rationalization plan.

This plan, which was recommended to us by the regional council, was created under the Magnuson-Stevens Act and accomplishes two primary objectives of immediate concern: First, conservation and management of the crab resource; and, second, ending the dead-ly and inefficient race for this fish.

All of the press attention and misinformation on processor quota share has effectively twisted a fishery management plan for one fishery in the Bering Sea into a national debate on the regional council process and the U.S. fishery policy.

I remind my colleagues that the rationale behind the Magnuson-Stevens Act was to allow the various regions to craft their own unique fishery management plans to answer the conservation and management goals of their localities. The crab rationalization plan is no different in this regard. The North Pacific Council recognized all components of the crab fishery as a balanced, connected system, rather than competing parts. The only difference with the crab plan is a procedural one. Congress specifically directed the North Pacific Council to develop a plan that balanced harvesters, processors, and communities. Now Congress must implement the council's proposal.

The North Pacific Council voted unanimously—11 to 0—to recommend this voluntary, what we call, three-pie cooperative that recognizes investments made by harvesters, processors, and communities. It is a product of extensive analysis with numerous opportunities for public comment, hundreds of hours of public testimony, and an open and transparent public debate by the council.

The Alaska communities that are dependent on the crab resource being processed in their plants all support the plan. The vast majority of opposition has come from a vocal minority that want to receive a better deal and environmental groups that do not want any form of rationalization and would like to lock up marine resources. The state of the Bering Sea crab fisheries is poor, and the crab plan developed through this regional council process needs to be implemented now.

Opponents of the crab rationalization plan raise concerns about anticompetitive effects and potential antitrust violations. The crab plan is not exempt from antitrust laws. It is not exempt from antitrust laws. In fact, the provision specifically states the Secretary may revoke any processor quota share held by a person found to have violated antitrust laws. The plan contemplates no private, anticompetitive action, and will be "actively supervised" by the council and the State of Alaska.

Despite the fact that the crab plan is not exempt from antitrust laws and will be reviewed by the council, which can make changes as needed, and there will be a mandatory information collection and review process developed by the Secretary of Commerce and the Department of Justice to determine whether any illegal or anticompetitive acts have occurred, opponents still point to an opinion letter by the Department of Justice that theorizes about "potential" anticompetitive abuses. Nowhere does the Department of Justice opinion letter state that individual processor quota shares violate antitrust laws.

The Department of Justice letter—it is an opinion letter—recommends that, what we call, IPQs not be used because they are economically inefficient. However, the Department of Justice admits it "did not consider factors outside the purview of antitrust laws such as the social goal of protecting jobs in historic fishing villages or balancing the regulatory effects evenly among harvesters and processors."

This is where the Department of Justice letter and most opponents of the crab plan miss the point entirely. The Magnuson-Stevens Act requires the regional councils to consider—and I quote again—"protecting jobs in historic fishing villages." This consideration required by law will always be economically inefficient.

Pursuant to national standard 8 under the Magnuson-Stevens Act:

Conservation and management measures shall take into account the importance of

fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

That is section 301(A)(8) of the Magnuson-Stevens Act.

The North Pacific Council's crab plan is completely consistent with the goals of the Magnuson-Stevens Act to provide for the sustained participation of remote coastal communities in the Bering Sea in the crab fishery and minimize adverse economic impacts on these communities.

I remind the Senate that half the coastline of the United States is off my State of Alaska. This council had an enormous problem to deal with, and it dealt with it unanimously.

Next, the opponents argue that the crab plan is precedent setting and will spread to other regional councils. This is a fishery management plan for only one fishery in the Bering Sea. In fact, the provision of the bill specifically provides that "a council or the Secretary may not consider or establish any program to allocate or issue an individual processing quota or processor share in any fishery of the United States other than the crab fisheries of the Bering Sea and Aleutian Islands." It would take another act of Congress to approve a similar plan.

This crab plan is not precedent setting. It is an extension of the efficiencies and successes achieved under the American Fisheries Act, which we call the AFA. However, where the AFA has a closed class of processors that can participate in the Bering Sea pollock fishery, the crab plan provides for an open class of processors and allows for new entrants in the processing sector.

Opponents of the crab plan have argued that processor quota share is not needed to make the fishery safer or to provide for protections for the communities. My suggestion is these individuals who make those comments should visit the Pribilof Islands 800 miles west of my home near Anchorage. The Pribilof Islands are located in the middle of the Bering Sea. Or they should visit Dutch Harbor in the middle of January when the crab fisheries are in full swing. They can come by my office and see a picture of a crab fishing boat in mid-January, with ice 5 or 6 inches on the deck and on the rigging.

The middle of January is a terrible time, but that is the time when this great crab resource must be harvested. These communities are dependent on this crab resource and have made substantial investments to process rapidly the product during the mad race for fish in the current derby-style fishery. That means there was a very short period of time in which the crab could be harvested, and all the boats rushed in from everywhere trying to see if they could catch a portion of that resource. These communities have become dependent upon the crab resource crossing their docks.

Now, the crab fishery is a unique one in that there is a very high dollar value for a small amount of resource that can be processed quickly. If the crab plan only provided for harvester-only quota share, it would ultimately result in a de facto processing quota for the exclusive group of boat owners that control the harvesting rights to the resource.

Currently, in the Bering Sea crab fishery there is a surplus of catcher-processor vessels and floating crab processors that can be leased or bought cheaply. This mobile processing capacity in combination with a harvester-only share would enable fishermen to form cooperatives and vertically integrate such that none of the crab resource would ever have to come to shore-side processors.

Substantial investments made by shore-based processors would be lost and communities such as Unalaska, Adak, St. Paul, St. George, Akutan, and King Cove would lose out on processing jobs, taxes, and associated revenues. The North Pacific Council understood this and developed a plan that recognized the commitments made by all sectors of this fishery and tied the resource to the communities that have historically processed the crab.

Safety will also be achieved by this crab plan; this point is irrefutable. The reality is, if we do not pass the crab plan in its entirety now, it will be many years, possibly even 10 years, before the council could develop another rationalization plan and fully implement it.

The North Pacific Council is developing other comprehensive rationalization programs for the Gulf of Alaska groundfish fisheries and will likely turn to the Bering Sea nonpollock groundfish fisheries after that. This council cannot simply stop work on these other programs and address crab rationalization again. It would be extremely unfair to those other fisheries and would result in those programs having to be completely redone because data and factors would inevitably change causing the council recommendations and considerations to be vastly different.

If the crab plan does not move forward in its entirety the deadly race for fish will continue.

I believe some harsh realities about the Bering Sea crab fishery will illustrate why we must implement this provision immediately. The Bering Sea/Aleutian Islands crab fishery is rated the most dangerous occupation in the United States. From 1990 to 2001, there were 61 fatalities and 25 vessels were lost; and in the recent October 2003 red king crab fishery, boats were lost and a person killed. This past October crab fishery was one of the worst weather-wise ever, with nearly constant gale force winds and huge ocean swells. Under the crab plan fishermen could have chosen to wait until the weather cleared to harvest the crab.

That is the main point. Instead of regulating the time within which a

crab must be caught, they regulate the catching of the crab and let the fishermen decide when it is safe to fish. Lives will be saved if we approve this plan.

Conditions are even more extreme during the winter crab fishery in the Bering Sea when it is almost always dark, extremely cold, and the seas send freezing ocean spray that ice down the crab vessels. I have a picture of that in my office. The derby-style fishery requires deckhands to work all day and all night, outside on icy decks, in rolling 10- to 20-foot seas, retrieving 700-pound steel pots, sorting crab and then dropping the pots in new places.

Obviously, this is very dangerous, but it is also very inefficient and damaging to the resource. The boats are racing to harvest the crab before the guideline harvest levels are reached, which requires them to pull their pots early not allowing them to "soak" longer, permitting younger crabs to escape. The result is the younger crabs are unnecessarily killed causing the stocks to suffer. We require the returning to the sea of the younger crabs. This plan will assist in implementing that requirement.

If we do not implement this provision lives will continue to be lost and the resource and the environment will suffer. The opposition of a vocal few that believe they deserve a better deal and environmental groups that want to turn the waters in the North Pacific into vast marine reserves or "no-take-zones" are behind the opposition to crab rationalization. Their attacks are shameful, self righteous, and disingenuous. We have an obligation to protect the crab resource in the Bering Sea and prevent any further loss of life in this fishery. This is exactly what crab rationalization will achieve and to argue anything else is just not true.

Three years ago Congress directed the North Pacific Fishery Management Council to analyze the management of the Bering Sea Crab fisheries and determine whether rationalization was necessary. The North Pacific Council completed its study and recommended a rationalization program that recognized the historical participation in the fishery of remote Alaska fishing communities, harvesters, and processors. The "Three-pie Voluntary Cooperative Program" developed by the North Pacific Council protects the resource and ends the dangerous race for fish. Section 801 of Title VIII-Alaskan Fisheries of the FY2004 Consolidated Appropriations conference report directs the Secretary to implement the North Pacific Council's crab rationalization program in its entirety.

Section 801 amends section 313 of the Magnuson-Stevens Fishery Conservation and Management Act by adding a new subsection 313(j). Paragraph 313(j)(1) directs the Secretary to approve and implement the North Pacific Council's rationalization program for the Bering Sea/Aleutian Islands crab fisheries, including all trailing amend-

ments. It also clarifies that the Secretary may approve and implement additional trailing amendments approved by the North Pacific Council. The Secretary must implement all parts of the crab rationalization program that were reported to Congress between June 2002 and April 2003, and all trailing amendments including those reported on May 6, 2003, no later than January 1, 2005. Any further amendments approved by the Council should be corrective in nature or address unforeseen problems with the overall functionality of the crab rationalization program. Primary elements of the Voluntary Three-pie Cooperative crab program that made three separate allocations, one to the harvest sector, one to the processing sector, and one to defined regions, should not change as this was the basis of understanding of how the crab fisheries would be rationalized in the Bering Sea and Aleutian Islands. It is imperative that the deadly and inefficient race for crab in the harsh winter months in the Bering Sea ends. Congress expects the Secretary to meet the statutory deadline of implementation of the rationalization program in time for the 2005 crab fisheries. Congress does not expect the Council to revisit particulars of the crab rationalization program that were part of the initial report to Congress in June of 2002, such as individual harvest shares, processing shares, the 90/10 split of "Class A" and "Class B" shares, regional share designations, voluntary harvester cooperatives, and community development quota allocations, to name a few.

Paragraph 313(j)(2) directs the Secretary to approve all parts of the North Pacific Council's crab program, including harvester quota, processor quota, and community protections. It also includes a non-severability clause that prevents a court from overruling only certain parts of the program. If any part of the program is found to violate the law, the entire program fails and the Bering Sea/Aleutian Islands crab fisheries will operate under their current open-access management scheme. It also prevents processors from improperly seeking crab deliveries harvested under a harvester's open-delivery quota.

Paragraph 313(j)(3) authorizes the North Pacific Council to recommend to the Secretary and necessary changes after implementation of the crab program to continue to meet conservation and management goals set out in the program for the Bering Sea/Aleutian Islands crab fisheries.

Paragraph 313(j)(4) specifies that the loan program defined under the crab rationalization program for captains and crew be authorized pursuant to relevant sections of Title XI of the Merchant Marine Act as amended for fisheries financing and capacity reduction and for direct loan obligations for fisheries financing and capacity reduction. The loan program for crab fishing vessel captains and crew members is to be a low interest loan program similar to

the loan program under the halibut and sablefish IFQ program.

Paragraph 313(j)(5) authorizes \$1,000,000 each year from funds available in the National Marine Fisheries Service account for Alaska fisheries activities to implement the program.

Paragraph 313(j)(6) specifies that the antitrust laws of the United States apply to the crab program. It requires the Secretary of Commerce to work with Department of Justice and the Federal Trade Commission to develop and implement a mandatory information collection and review process to monitor the crab program and ensure no anticompetitive acts occur among persons receiving individual processing quota. If any person receiving individual processor quota is found to have violated a provision of the antitrust laws the Secretary may revoke their processor quota share.

Paragraph 313(j)(7) requires individual processor quota share under the crab program to be considered a permit and subject to sections 307 (Prohibited Acts) and 308 and 309 (penalties and criminal offenses) of the Magnuson-Stevens Fishery Conservation and Management Act. It specifies that, like individual fishing quota, issuance of individual processor quota share does not confer any compensation right if it is revoked or limited, and does not create title or other interest in or to any fish before purchase from a harvester.

Paragraph 313(j)(8) specifies that the restriction on the collection of economic data in section 303(d)(7) of the Magnuson-Stevens Act will not apply for any processor that receives individual processing quota under the crab program. In addition, the restriction on the confidentiality of information in section 402(b)(1) will not apply when the information is used to determine eligibility or verify history for individual processing quota. This is consistent with the exception to the confidentiality of information requirement under the Magnuson-Stevens Act for verifying catch under an individual fishing quota program.

Paragraph 313(j)(9) specifies that sections 308 (civil penalties and permit sanctions), 310 (civil forfeitures), and 311 (enforcement) of the Magnuson-Stevens Act will apply to the processing facilities and fish products of any person holding individual processing quota. In addition, to ensure compliance with the crab program it may be necessary for the Secretary to inspect a processor's facilities, therefore facilities owned or controlled by a person holding individual processing quota will be subject to the prohibited acts of section 307(1) subparagraphs (D), (E) and (L) of the Magnuson-Stevens Act.

The North Pacific Council is recognized for developing novel and innovative approaches to conservation and management of the abundant fisheries in the North Pacific. The "Three-pie Voluntary Cooperative Program" for rationalizing the Bering Sea and Aleutian Islands crab fisheries is another

example of that creativity. It is the product of three years of public meetings and discussion by industry sectors, citizens and affected communities, two years of discussion and development by the North Pacific Council and its Advisory Panel, and nearly two years of extensive and thorough analysis by Council staff, with technical assistance from the National Marine Fisheries Service, Alaska Department of Fish and Game, and independent economists and fisheries consultants.

The Council meticulously constructed the crab rationalization program to achieve bold conservation and management goals for the resource; but also considered the very unique reality of a high value, capital intensive, high risk fishery that is prosecuted entirely in the distant waters of the Bering Sea and Aleutian Islands. The Council has done a great job crafting the Three-pie Voluntary Cooperative crab rationalization program and it is expected to implement the program in its entirety, including all trailing amendments, as reported to Congress in June of 2002. The Council should not revisit the particulars of the crab program, but should continue to work with the Commerce Department to ensure that the crab program is implemented in its entirety in time for the 2005 winter crab fisheries.

The Magnuson-Stevens Act requires fishery management plans and amendments to provide for the sustained participation of communities in the fisheries it had historically depended on for employment and economic opportunity. Small, isolated communities like St. Paul and St. George located on the Pribilof Islands, and Adak on the Aleutian chain have become dependent on the crab resource crossing their docks. This plan slows down the pace of the fishery, achieves efficiencies in harvesting the resource, manages and conserves the resource better, and helps decapitalize the fishery.

While there will inevitably be a degree of economic dislocation in the communities dependent on the revenues. The crab rationalization program addresses these concerns by tying the crab resource to the communities that historically processed the crab. Processor quota share is a form of community protection which maintains historical processing capacity in the communities. Processor quota share should remain in those unique, isolated communities like St. Paul, St. George, King Cove and Adak; communities completely dependent on the crab fishery, that do not benefit from multispecies processing and other economic opportunities. The North Pacific Council determined that for the crab fisheries, processor quota share was a necessary safeguard to protect the investments made by the processing sector and more importantly, to maintain the economic benefits in the communities that have historically depended on the resource.

Section 802 of Title VIII-Alaskan Fisheries directs the Secretary in consultation with the North Pacific Fishery Management Council to establish a pilot fisheries management program that recognizes the historic participation of fishing vessels and fish processors in the central Gulf of Alaska rockfish fishery. The provision delineates the years and types of rockfish that should be considered for a pilot rationalization program to allow for increased use and value in the fishery. The pilot rockfish program will expire when the North Pacific Council authorizes a comprehensive rationalization program for Gulf of Alaska Groundfish and implemented by the Secretary, or 2 years from the date of implementation, whichever is earlier. The pilot program contemplates new entrants into this fishery and provides a set-aside of up to 5 percent of the total allowable catch of such fishery for catcher vessels not eligible to participate in the program. In addition, the five percent that is available for new entrants must come into Kodiak, Alaska for processing and can be processed by processors that have not historically participated in the fishery. The North Pacific Council will establish catch limits for nonrockfish species and non-target rockfish species currently harvested along with pacific ocean perch, northern rockfish, and pelagic shelf rockfish, which should be based on historical harvesting of such bycatch species. The Gulf of Alaska rockfish pilot program should also recognize the historic fishing and processing participation of catcher-processors that have historically participated in this fishery, and should utilize the same years and species of fish considered under the provision.

The intent of the pilot program is to consider the historic participation of all of those that have been involved in the fishery. The Gulf of Alaska rockfish pilot program does not authorize individual processing quota share for processors in this fishery. The "historic participation of fish processors" under this pilot program should be considered pursuant to the cooperative model under the American Fisheries Act, or any other manner the North Pacific Council determines is appropriate. This provision in no way authorizes individual processor quota share for the comprehensive Gulf of Alaska groundfish rationalization program that the North Pacific Council is currently developing. This pilot program is intended to allow for better conservation and management of the central Gulf of Alaska rockfish and extend the work year for processing jobs in Kodiak.

Section 803 of Title VIII—Alaskan Fisheries directs the Aleutian Islands pollock allocation to the Aleut Corporation for economic development in Adak, Alaska. If the North Pacific Council opens the Aleutian pollock fishery, the allocation of pollock for economic development in Adak will be

restricted by the prohibited acts contemplated under section 307 of the Magnuson-Stevens Fishery Conservation and Management Act and subject to the penalties and sanctions under section 308 of the Act, including the forfeiture of any fish harvested or processed. Two classes of vessels may harvest this pollock allocation: vessels that are 60 feet or less in length overall and have a valid fishery endorsement can harvest the Aleutian pollock allocation and deliver it to Adak for processing; and vessels eligible to harvest pollock under section 208 of Title II of Division C of Public Law 105-277 are permitted to form partnerships with the Aleut Corporation to harvest the Aleutian Islands pollock allocation for economic development in Adak. Section 803 does not waive the requirements of the Magnuson-Stevens Act, Endangered Species Act, National Environmental Policy Act or any other federal laws. The North Pacific Council and NMFS should be cautious in implementing section 803(a) to ensure that any reopening of a directed Aleutian Islands pollock fishery is accomplished in full compliance with all applicable law, and without disrupting 2004 groundfish fisheries which have already commenced.

In an effort to gradually establish a small boat fleet in Adak, subsection (b) of section 803 provides that during the years 2004 through 2008, up to 25 percent of the Aleutian allocation may be harvested by vessels 60 feet or less in length overall. During the years 2009 through 2013, up to 50 percent of such allocation may be harvested by vessels 60 feet or less in length overall. After the year 2012, 50 percent of such allocation shall be harvested by vessels 60 feet or less in length overall, and 50 percent shall be harvested by vessels eligible under section 208 of Title II of Division C of Public Law 105-277. Establishing a small boat fleet will be critical for the economic diversification of Adak and the revenues generated from the use of the Aleutian Islands pollock allocation will allow for greater investment opportunities in this community. For purposes of implementing this section, section 206 of the American Fisheries Act (AFA) is redefined so that the allocations in section 206(b) of the AFA should only apply to the Bering Sea portion of the directed pollock fishery.

Subsection (c) of section 803 codifies one of the longest standing conservation and management measures of the North Pacific Fishery Management Council, the 2 million metric ton cap for groundfish in the Bering Sea. The optimum yield for groundfish in the Bering Sea and Aleutian Islands Management Area shall not exceed 2 million metric tons. Upon the recommendation of the North Pacific Council and approval of the Secretary of Commerce, and only if consistent with the conservation and management goals and requirements of the Magnuson-Stevens Fishery Conservation and

Management Act, the allocation of Aleutian pollock for economic development in Adak, may be in addition to the 2 million metric ton optimum yield. This treatment of the Aleutian Islands pollock allocation would only be during the 2004 through the 2008 fishing years, but only if harvests in excess of the cap do not result in overfishing and then only to the extent necessary to accommodate a directed pollock fishery in the Aleutian Islands and should not adversely affect the current participants in the Bering Sea pollock fishery in the near term. Eventually this pollock allocation will come under the combined optimum yield for all groundfish in the Bering Sea and Aleutian Islands 2 million metric ton cap by taking proportional reductions in the total allowable catches for each of the existing groundfish fisheries as necessary to accommodate the establishment of the Aleutian Island pollock fishery.

Subsection (d) of section 803 allows the North Pacific Fishery Management Council to recommend and the Secretary to approve an allocation of Aleutian Islands pollock to the Aleut Corporation for the purposes of economic development in Adak pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The North Pacific Council should consider pollock allocations given to the various groups that participate in the Community Development Quota program to recommend a reasonable amount of the Aleutian Islands pollock to the Aleut Corporation for purposes of economic development in Adak and in no case should this amount exceed 40,000 metric tons.

Nothing in this section requires the North Pacific Council to open the Aleutian Islands pollock fishery. The Council should not take any action in regards to this fishery which would require a new consultation under the current biological opinion or Endangered Species Act covering Steller sea lions.

Section 804 of Title VIII—Alaskan Fisheries prohibits any Regional Fishery Management Council or the Secretary from approving any fishery management plan or plan amendments to allocate or issue individual processing quota or processor share in any fishery of the United States other than the crab fisheries of the Bering Sea and Aleutian Islands.

In closing, I don't know of any time when we have tried to be bipartisan on a greater scale than in these seven bills in the omnibus bill. I personally have reviewed requests from Senators from both sides of the aisle. We have done our utmost to meet the most urgent needs in their States. We have talked to chairmen of the various committees and tried to work with them. In some instances the chairmen disagreed, but we have taken positions that are consistent with a majority of the committees in those instances.

I believe this is a good bill. The problem we face now in this cloture vote—

I hope all Senators will consider it—is we are in an election year. We must once again face 13 appropriations bills for 2005. If we do not approve this bill, this omnibus bill, we will have to turn and go back and try to do what we should have done by October 1 of last year. That will obviously impede consideration of 2005 bills and, in my judgment, would ultimately lead to a post-election session. I don't know how many other Senators have lived through post-election sessions that were contentious, but I believe one this year would be very contentious. I hope the Senate will set its goal not to be in session after the election this fall.

We have Members who are retiring. Some Members may be defeated. The object of getting done before the election is to put to rest the disputes in the Senate and go on to the Presidential election and give time after the Presidential election to get ready for the next two Congresses which will come under the term from 2005 to 2009.

I thank all members of the committee for their cooperation with me. I have enjoyed working with the minority leader, Senator DASCHLE, the assistant minority leader, Senator REID, as well as our leaders, Senator FRIST and Senator MCCONNELL, and with Members of the House.

This was a most difficult bill. It has been most difficult because of the fact we are at war. We are not only at war, but we created a new department which had to be funded and people had to be taken from the existing departments in order to staff that new department. We had to figure out the allocation of funds to this new department in a fair way that did not disturb the functions of the balance of these entities that were left in the former departments.

This Congress ought to congratulate itself for having reacted to the post-September 11, 2001 tragedy. We created a department which has made the United States safer, and we have funded the needs of our men and women in the Armed Forces who have answered the call of our country and our Commander in Chief.

I pray in this year 2004 we will not have any further disasters of that type, but the war on terrorism continues. A lot of the money that is in this bill goes to try to stave off further attacks on our people and historic objects in this country. We all are conscious of how much money that is taking. All you have to do is go through any airport to realize how life has changed since September 11, 2001. The money in this bill has been efficiently allocated. To the maximum extent possible, we have tried to deal with the requests of every Senator.

I see the minority leader now. He and I have talked at length about the COOL program, the country-of-origin labeling. I opposed that provision. We deleted it here in the Senate. Again, when we got to the conference, it was not possible to have the conference

complete without that provision in it. It was a judgment that we ought to get the bill to the Senate and get it approved and avoid a veto. I am not happy about that.

There are other provisions in this bill I am not happy about. But I can state to the Senate, in all, this bill is a good consensus. It is good for the country, and it will fund the agencies that need the money now. We could not fund this Government during a period of war that is going on in Iraq and our war on terrorism under a continuing resolution. I thank the minority leader for his statements the other day. The worst dream the chairman of the Appropriations Committee can have is the problem of facing up to whether the Deficiency Act will require shutting down the Government if we don't pass the bills. I hope and pray we will pass this bill today and avoid that contingency.

Mr. President, there are several provisions in the FY04 Omnibus Appropriations bill that merit further explanation.

The Transportation measure included \$8 million for runway lighting in Alaska. Of the funds made available, it is the Committee's expectation that \$3 million would be made available for laser technology in Girdwood, Alaska and Merrill Field in Anchorage, Alaska upon certification of the technology. I urge the FAA to act as quickly as possible to favorably approve the certification petition.

The Transportation bill included \$2.3 million for "trail and parking improvements" for the Seward multi-agency visitor center in Seward, AK. Those funds are also available, if necessary, for the acquisition and completion of the plaza between Washington Street and the beginning of the historic Iditarod Trail in the Park Service/Portico Group plan.

Both the VA-HUD bill and the Agriculture appropriations bill include funds for rural water and sewer improvements in rural Alaska. The VA-HUD bill directs that beginning in FY05, EPA must set aside 25 percent of the funds for hub communities and a priority list must be established that will remain in effect for three years. The Rural Development Administration should follow the same process so the funds can be administered together to reduce administrative overhead.

In the Energy-Water appropriations bill adopted earlier, questions have been raised concerning Congress' intention with respect to the Douglas Harbor. Congress provided \$3 million to the Corps of Engineers to construct the causeway and breakwaters at the harbor entrance. The Committee urges the corps to commence construction of that project during this construction season if at all feasible.

Funds were included in the Commerce, Justice, State section of the bill and earlier in the Interior appropriations bill concerning mass marking of fish that should be implemented to be

consistent with one another. Both bills fund mass marking of fish produced in federally funded hatcheries. Marking refers to modifying the appearance of an immature fish in a hatchery so that when it matures there is an external mark that identifies it as originating from a hatchery. Mass marking refers to marking all or a substantial proportion of the fish releases from a hatchery. By mass marking the hatchery fish, fishery management agencies can direct fishery harvests on marked hatchery production while avoiding unmarked fish that might come from a depleted or endangered stock.

However, fishery management agencies all along the Pacific coast, in both Canada and the United States rely on one type of marking as a basis for identifying different stocks of salmon and obtaining information on those stocks that is vital to conservation and management programs. To assure that the mass marking program does not interfere with this crucial scientific program, it is the committee's intent that mass marking programs supported by Federal funding will ensure that hatchery Chinook salmon that are marked by removing all or part of the adipose fin are also tagged with a microwave tag or alternatively mark the fish with some other mark. This will help preserve the validity of the existing stock identification data base while also realizing the objectives of the mass marking programs by enabling increased harvests of threatened or depleted stocks.

The Justice Department budget within the Commerce, Justice, State bill included \$12.5 million for internet safety for children. The committee urges the department to work with I-SAFE consistent with the Senate Report.

Mr. President, the significant number of Alaskans that are descendants of our original indigenous Indian, Eskimo, and Aleut inhabitants are a great source of pride and a unique part of our heritage. A majority of those Native Alaskans reside in one of more than 200 small rural villages.

Alaska is also unique in that, since the purchase of Alaska in 1867, Congress has adopted and implemented an Alaska Native policy that is different in a most important respect from the Native American policies that Congress has adopted and implemented in the "lower 48."

Congress created Native corporations and since statehood has required Alaska Natives to comply with the same criminal, civil, and regulatory enactments of the Alaska State Legislature to which all other Alaska residents are subject.

Like all citizens of my State, Alaska Natives participate in the development of those enactments by electing residents of the communities in which they live to serve in the Alaska State Legislature. In that regard, I am immensely proud that Alaska has a tradition of Native American involvement in the State political system that is

unrivaled by that of any other State. The first Alaska Native was elected to our territorial legislature in 1924. In 1959 ten Alaska Natives served in the first Alaska State Legislature. And today, 10 of the 60 members of the 23rd Alaska State Legislature are Alaska Natives.

During the Clinton administration, the Secretary of the Interior, his solicitor and Ada Deer, the Under Secretary of Indian Affairs, argued that there are more than two hundred sovereign tribal governments in Alaska. Many believe that policy was wrong, as a matter of law, while others assert that tribes have always existed. The provision in this bill creating a rural justice commission does not take sides in that dispute. Rather it seeks a practical solution to the issue of rural justice and law enforcement.

One of the more pressing problems we now face is the issue of Department of Justice grants that have been issued to Alaska Native tribes. These grants have been used to create tribal courts that in some instances may exceed their lawful jurisdiction and to hire tribal police who are not currently authorized to enforce State laws.

Since the Appropriations Committee reported S. 1585 to the Senate in September, I was contacted by a number of Alaska Native leaders who have expressed legitimate concern that the State of Alaska's and the Federal Government's criminal justice systems need to be configured in new and innovative ways in order to better meet the unique law enforcement challenges that we face throughout rural Alaska. In order to facilitate an analysis of, and a constructive dialogue regarding, that very important subject, at my request the conference committee that I co-chaired included section 112(a)(2) in title I of division B of the H.R. 2673 conference report. This provision establishes an Alaska Rural Justice and Law Enforcement Commission that will study the criminal justice system in rural Alaska and then submit recommendations to Congress and the Alaska State Legislature regarding ways in which those systems can be improved.

Also at my request, the conference committee include a new section 112(a)(1) which prohibits the Department of Justice from making grants to Alaska Native organizations that are located in communities that have fewer than twenty-five permanent Alaska Native residents, as well as communities that are located within the municipality of Anchorage or one of six designated boroughs. The purpose of section 112(a)(1) is to allow rural communities grants to continue during the fiscal year during which the Alaska Rural Justice and Law Enforcement Commission will be developing its recommendations.

I want to emphasize that the conference committee does not intend the enactment of section 112(a)(1) to express a view as to whether the 108th



Congress believes that either a prior Congress or the Secretary of the Interior, acting lawfully pursuant to authority he has been delegated by Congress, has created "federally recognized tribes" in Alaska. Nor does the conference committee intend the enactment of section 112(a)(1) to create "federally recognized tribes" in Alaska by implication. The amendment takes no position on the issues which are now pending before the courts.

I also note that when this provision was originally drafted, we hoped the bill would become law back in September. The deadlines established in the amendment reflected that hope. But now, in January 2004 those deadlines are unrealistic and unachievable. Therefore the Commission should have through this year to complete its work and issue recommendations.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, as I understand it, each leader has 5 minutes prior to the vote. I spoke early this morning. Let me again summarize my concerns.

I have heard others express the fact that on the country-of-origin labeling, we had one position in the Senate and the House had another, and that this represents a compromise. I will come back to that issue. I acknowledge that in the case of country-of-origin labeling, the House and Senate had two different positions. I would say, though, that on the issue of overtime, on the issue of media concentration in particular, both had rollcall votes cast in the House and in the Senate taking strong positions in opposition to what has now been presented to us in conference.

My earlier remarks expressed the deep concern for the institution when in conference there is an ability on the part of a few people to override the majority in both the House and Senate on issues as important as these. So I think we have to be concerned about democracy and about our Republic as occasions such as this arise. Maybe it is not unprecedented, but I don't care how unprecedented or precedented it may be, it is a bad practice. I believe it ought to be stopped.

I also expressed this morning my concern about media concentration. I will not elaborate, except to say I am troubled when not only the White House but those in the House who hold a different position can override the majorities in the House and Senate.

I am also concerned about the policy itself. Increased media concentration is not good for this country, and those who advocate and support the free enterprise system certainly would have to share that concern. We will say a lot more about that also in the future.

My two greatest concerns have to do with the overtime provision and country-of-origin labeling. For the life of me, I cannot understand why this body, this Congress, would ever want to take away the rights to overtime and make

the extraordinary statement today that we are not going to reward work, that people who work overtime, work hard and play by the rules, are actually going to be penalized for working hard and overtime in a week or a month.

I know of a lot of people who desperately need these resources to make ends meet, pay for groceries, for insurance, and the house payment. For us, as an official Government policy, to say, no, we are going to devise ways in which to deny you overtime pay for the first time in 70 years is abhorrent. It is just wrong.

I know I only have 5 minutes, so I will leave it at that. Simply again, I will reiterate how deeply concerned many of us are for this dramatic change in the way we look at rewarding work.

Finally, country-of-origin labeling. We have had an unfortunate set of circumstances in the last month right around Christmas; we had the first case of mad cow disease. The administration has done some things right, but, for the life of me, I cannot understand why they would not support an action already in law and a policy in 43 other countries—an action that simply says we have a right to know not only the contents of our food, not only the nutritional value of our food, but the origin of our food. We know the origin of everything else. Why is it so hard for us that we have to say we need 2 more years to study whether it makes sense for us to know the origin of our food?

The Japanese are saying: We are not going to give you 2 years. You are not going to export food to our country unless you can tell us where it came from. We are going to deny American exports so long as you cannot label them.

Again, the administration is saying that doesn't matter; we are for free trade; we just don't care whether the Japanese want us to label our food.

Some have suggested there ought to be a voluntary system. We have tried that. Give me a break. That will not work because it has not worked for years, decades, generations. We need a mandatory system.

I am out of time. I will simply say this, and I will use leader time for the additional time. I know there is a need to vote soon. These issues will not go away. We intend to come back with congressional review resolutions, amendments, freestanding bills, to Rule XIV bills on the calendar. We will come back on these. This is not the end but the beginning. We will not rest until this job is done.

I have indicated to my colleagues that I intended to make a unanimous consent request, as we have with some of these other provisions. I will do so at this time before I yield the floor.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of a concurrent resolution, which I shall send to the desk, correcting the enrollment of the omnibus conference report, striking

the language which delays the implementation of country-of-origin meat labeling regulations; that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. BENNETT. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, the time has come to move ahead and complete the unfinished work of the first session of the 108th Congress.

We have had good debate over the course of the morning and yesterday—in fact, this week. I have made it very clear as to the importance of this vote, the significance of the vote we will take in 4 or 5 minutes. If we fail to enact this legislation, we will do very clear things. We will curtail our efforts in the fight against terrorism; it won't be as effective. We will weaken funding for our food security system if we don't pass this legislation. We will not have as secure and as strong a system inspecting our food. We will create hardships for millions of veterans, which is unnecessary. That is what this vote, in part, is about. We would put at risk millions of lives of people who suffer from AIDS and the global effort to fight one of the most moral humanitarian and public health challenges of our time. We would be shortchanging the needs of our schools, our communities, our States, and needy and disadvantaged Americans.

There are people who have said this legislation spends too much. I will once again point out and stress what I mentioned 2 days ago. This bill abides by the spending limits agreed to by Congress and the executive branch, excluding those two emergency supplementals enacted last year for the conflicts in Iraq.

Appropriations spending authority will increase less than 3 percent between the year 2003 and 2004, with passage of this bill. The alternative to passing this bill is stark—a full-blown continuing resolution for the seven outstanding appropriations bills.

Compared to doing the right thing and passing this legislation, Senators do have to be reminded one more time that the alternative would mean title I and special education programs would be reduced by \$2 billion; the National Institutes of Health would be cut by \$1 billion; veterans medical care would be reduced by \$3.1 billion; highway funding would be reduced by \$2.2 billion; global HIV/AIDS funding would be reduced by nearly \$1 billion. That is what is at stake in this legislation.

The legislation doesn't please everybody. That is what much of the debate has been about over the last 48 hours. I recognize that, and I recognize that part of the legislative process is for us to come together and express our beliefs and wishes and have that debate and compromise.

Compromises are never going to please everybody. There are provisions in the bill I would have preferred to be different, but I have learned, especially over the course of the last year as majority leader, that you do the best you can. Compromise and negotiation are part of the legislative process.

I want to respond, as the Democratic leader made clear in his remarks this morning, the legislative process isn't over with this legislation. It is not over. This is another very important step that we have taken, but issues that have been expressed as issues of concern on the floor of the Senate will—and I understand that—be revisited again and again in our legislative process. The great thing about our legislative process is that people will have that opportunity.

It is time to move on the country's demand that we complete action on this bill and, thus, in closing, I do ask all my colleagues to vote for cloture and move America forward.

I yield the floor.

#### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the conference report to accompany H.R. 2673, a bill making appropriations for the Department of Agriculture and Related Agencies for fiscal year 2004, and for other purposes:

Bill Frist, Rick Santorum, George Allen, Robert F. Bennett, Jon Kyl, Ted Stevens, Kay Bailey Hutchison, Ben Nighthorse Campbell, Mitch McConnell, Judd Gregg, Orrin G. Hatch, John Cornyn, Christopher Bond, Saxby Chambliss, Sam Brownback, Larry E. Craig, Richard Shelby.

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 2673 shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Nebraska (Mr. HAGEL), are necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN), are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "nay".

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

The yeas and nays resulted—yeas 61, nays 32, as follows:

#### [Rollcall Vote No. 2 Leg.]

##### YEAS—61

Alexander	Dole	Miller
Allard	Enzi	Murkowski
Allen	Feinstein	Murray
Bennett	Fitzgerald	Nelson (NE)
Bingaman	Frist	Nickles
Bond	Graham (SC)	Reid
Breaux	Grassley	Roberts
Brownback	Gregg	Santorum
Bunning	Harkin	Schumer
Burns	Hatch	Sessions
Campbell	Hollings	Shelby
Carper	Hutchison	Smith
Chafee	Inhofe	Specter
Cochran	Inouye	Stevens
Coleman	Kyl	Sununu
Collins	Landrieu	Talent
Cornyn	Leahy	Thomas
Craig	Lott	Voinovich
Crapo	Lugar	Warner
Dayton	McConnell	
DeWine	Mikulski	

##### NAYS—32

Akaka	Dorgan	Lincoln
Bayh	Durbin	McCain
Biden	Ensign	Nelson (FL)
Boxer	Feingold	Pryor
Byrd	Graham (FL)	Reed
Cantwell	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Snowe
Corzine	Kohl	Stabenow
Daschle	Lautenberg	Wyden
Dodd	Levin	

##### NOT VOTING—7

Baucus	Edwards	Lieberman
Chambliss	Hagel	
Domenici	Kerry	

The PRESIDING OFFICER. On this vote the yeas are 61, the nays are 32. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Under the previous order, the question now is on the adoption of the conference report to accompany H.R. 2673.

Mr. FRIST. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second. The yeas and nays are ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Nebraska (Mr. HAGEL) are necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "nay."

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

The result was announced—yeas 65, nays 28, as follows:

#### [Rollcall Vote No. 3 Leg.]

##### YEAS—65

Akaka	Allen	Bingaman
Alexander	Bennett	Bond

Breaux	Fitzgerald	Murray
Brownback	Frist	Nelson (FL)
Bunning	Graham (SC)	Nelson (NE)
Burns	Grassley	Nickles
Campbell	Gregg	Pryor
Cantwell	Harkin	Reid
Carper	Hatch	Roberts
Chafee	Hollings	Santorum
Cochran	Hutchison	Schumer
Coleman	Inhofe	Sessions
Collins	Inouye	Shelby
Cornyn	Kyl	Smith
Craig	Landrieu	Specter
Crapo	Lincoln	Stevens
DeWine	Lott	Sununu
Dodd	Lugar	Talent
Dole	McConnell	Thomas
Durbin	Mikulski	Voinovich
Enzi	Miller	Warner
Feinstein	Murkowski	

##### NAYS—28

Allard	Dorgan	Levin
Bayh	Ensign	McCain
Biden	Feingold	Reed
Boxer	Graham (FL)	Rockefeller
Byrd	Jeffords	Sarbanes
Clinton	Johnson	Snowe
Conrad	Kennedy	Stabenow
Corzine	Kohl	Wyden
Daschle	Lautenberg	
Dayton	Leahy	

##### NOT VOTING—7

Baucus	Edwards	Lieberman
Chambliss	Hagel	
Domenici	Kerry	

The conference report was agreed to. Mr. MCCONNELL. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. ROCKEFELLER. Mr. President, today I voted against cloture and against the fiscal year 2004 Omnibus appropriations conference report because it does not fund West Virginia's priorities—short changing veteran's healthcare by about \$700 million and education by \$6 billion, as well as many other essential programs. I was also very concerned that provisions were added to the legislation at the insistence of the White House and over the will of both Houses of Congress to cut overtime pay for 8 million workers. Not long ago, the Senate and the House rejected this administration's Department of Labor regulation that would reduce the overtime pay of workers, and yet this bill includes just such a change.

The process that produced this bill was unfair and does not give Congress its due opportunity to protect the priorities of the citizens of our states. This kind of process means West Virginia loses its right to be properly represented.

Additionally, the will of Congress to implement stronger food safety provisions to require country-of-origin labeling for meat products has been ignored. This legislation delays action on such labeling for another two years; a troubling result given the concerns about mad cow disease.

In previous action, the House and Senate conferees agreed to provide basic protections for Federal employees targeted for privatization by the administration, yet this legislation guts such protection placing 400,000 Federal workers in jeopardy without protections.

What's more, this legislation included an across-the-board cut in all programs, and that is not a responsible budget practice. Such a cut means that 24,000 fewer children will be served by title I in their schools, 26,500 fewer veterans will get health care, and \$170 million will be lost for needed highway construction.

Under the process imposed in this must pass legislation, Senators have no chance to offer amendments or make changes. This is simply not right, and therefore, I vote no in protest. I vote no, to taking away the rights of West Virginians.

I understand that the votes are there to pass the underlying legislation to keep the government functioning and provide support to West Virginia projects. I agree that VA healthcare funding needs to be increased, but this bill falls far short. I agree with the \$1 billion increase for the Title I education program, but I also must point out that we are still \$6 billion short of the amount promised for the No Child Left Behind Act.

Again, my vote is a protest vote against the effort to rob West Virginia of its representation in the appropriations process and in opposition to the egregious provisions inserted into this legislation without bipartisan support, or full and fair discussion. I am pleased that after over 4 months, Federal funding is decided, but the process must be changed.

The PRESIDING OFFICER. The Senator from Kentucky.

#### PENSION FUNDING EQUITY ACT OF 2003

Mr. McCONNELL. Mr. President, pursuant to the order previously agreed to, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 3108, the pension bill.

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

Pursuant to the previous order, the Committee on Finance is discharged from further consideration of the measure and the clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3108) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I rise in support of this piece of legislation. I join the Senator from Iowa, the chairman of the Finance Committee, along with the senior Senator from the Democratic party on my committee, Mr. KENNEDY, and I believe Senator BAUCUS. We worked long and hard to address this issue—and it is a critical

issue—of how we make sure the pension system in this country, or especially relating to defined benefit pensions, is maintained in a viable and strong way.

The pension system in this country is, regrettably, in trouble. But the amendment being offered today is designed to restore stability to the pension system and give us the time to solve the broad, difficult problems facing the pension system.

Last week, when the Pension Benefit Guaranty Corporation released its annual report outlining record losses, Labor Secretary Chao put the issue in proper perspective when she said:

While PBGC [Pension Benefit Guaranty Corporation] is not in crisis—the agency has sufficient assets to meet its obligations for a number of years into the future—it is clear that the financial integrity of the federal pension insurance system is at risk. It is equally clear that comprehensive reform of the nation's pension funding rules must be enacted to strengthen the financial health of the defined benefit pension system.

Time is the key thing here. That is why we need to legislate today. The amendment gives critical players the time they need in the area of reform to accomplish the changes necessary to get through this period in front of us.

There is in this bill a temporary interest rate fix which gives Congress time to review all of the options and make the right decisions on funding, reporting, and many other issues facing the troubled pension system.

There is also in this bill something called the deficit reduction contribution relief area which gives airlines and steel companies the time they need to get their affairs in order after a unique and unusual period of pressure.

Further, there is reform in the area of the multiemployer pension system which will give relief to management and labor to get their agreements in order relative to collective bargaining in order to make sure those funds are solvent.

No one—Congress, employers, nor unions—is absolved of responsibility under this amendment. By granting time, we do not reduce—that should be stressed—anyone's debts nor allow anyone to avoid liability for debts they have voluntarily accepted.

What we do is provide the necessary breathing room so reforms and repayments are made in a responsible and manageable fashion and not under the threat of "the sky is falling" situations we confront today.

The amendment has essentially four elements, as I have outlined. First is reform of the 30-year Treasury note as being the vehicle by which we assess pension funding. Second is temporary relief for specific single-employer pension plans from deficit reduction contributions, such as airlines and steel. Third is a 2-year delay in the amortization of recent investment losses experienced by multiemployer pension plans and the imposition of significant improvements in the disclosure of information requirements of those plans to their participants, which is critical.

Turning to the interest rate fix issue, this is the key issue for me. I have spoken about this a number of times on this floor. In fact, back in May I said: Now is the time to address this. I guess "now" has become now. But the fact is, we have today a system where 30-year Treasury bond rates are required in the current pension law for funding purposes.

We will replace that with a conservative rate pegged to the high-quality bond corporate basket. The reason for this is that 30-year bonds essentially do not exist anymore so we have an artificial rate under which we were requiring companies and pension funds to be funded. The practical effect of that was that the bond rate was artificially low, which meant the return on these funds was artificially low and the funding requirements became, unfortunately, in real terms, extraordinarily high and inconsistent with what a realistic rate would be.

By shifting to a corporate basket of high yield corporate bonds, we will correct this problem, significantly improve the viability of the pension system, and allow the corporations, for a period of 2 years, to use this temporary fix. It is a temporary fix.

Two years is a risk, I admit. Whether or not we can put in place the necessary law changes and reach agreement between the various players that are involved at the table, including the unions, corporations, and the guaranteed fund is a question.

It is a short timeframe to resolve this issue. I would have preferred more time so we could be sure we would reach an accommodation and a timeframe that were realistic, but that is not what others wanted. It was not what we were able to accomplish. As we all know, legislating is sometimes the art of compromise, and in this instance that was the case.

So we have a 2-year hiatus using a basket of high yield corporate bonds as the new benchmark for funding. That will be positive relief, and it will mean, in practical terms, that funds which would have been artificially flowing into funding pension funds—and unnecessarily flowing into those funds as a result of having to use the low Treasury rate—will now be flowing into capital investment which translates directly into jobs. That is what this is about, protecting jobs and protecting pensions.

The second area is the deficit reduction contribution relief function. The amendment grants 2 years of relief to the airline and steel industries from mandatory deficit reduction contributions. Other companies may also apply to the Treasury Department for similar relief. Companies getting relief must remain current on their pension obligations and cannot increase the benefits that they create under their pension funds during this period.

Airlines are the main focus of the deficit reduction contribution relief. Airlines are the main focus because of