respect to health insurance and employment.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG (for himself and Mr. CORZINE):

S. 308. A bill to require that Homeland Security grants related to terrorism preparedness and prevention be awarded based strictly on an assessment of risk, threat, and vulnerabilities; to the Committee on Homeland Security and Governmental Affairs.

Mr. LAUTENBERG. Mr. President, I rise today to speak on a matter of great significance to our State and to many States across the country: protecting our homeland from another terrorist attack.

Everyone is aware of how difficult the fight is against terrorism, wherever it takes place in the world, and the number of casualties we have experienced in Iraq, that manifests itself in Afghanistan and different countries. But one place we ought to be looking at in terms of protecting ourselves from terror is in the United States. We should not be skimping on the costs or resources available for Homeland Security. My colleague Senator CORZINE and I today are introducing a bill to ensure that Federal Homeland Security funds get sent where they are needed most.

On September 11, 2001, 700 of the people who lost their lives were from New Jersey. On that terrible day, people of north Jersey could see the smoke rising from the World Trade Center. From my own home, I look directly at the World Trade Center. In my pre-Senate day, I was commissioner of the Port Authority of New York and New Jersey and had offices in the Trade Center and know what the hustle and bustle of life was there. Thousands and thousands of people were working in those two buildings, destroyed by a terrorist that went beyond the wildest imagination.

The New York-New Jersey region bore the brunt of those attacks on September 11. It continues to be the most at-risk area. We are not the only ones at risk. States such as Virginia, with their military installation, their ports, are also to be included, and a place of some threat, New Mexico, with Los Alamos, and Florida with its ports, and Texas with their ports. All of these States have to be on the alert all the time and need funds with which to protect themselves. So I hope we can all agree that homeland security funding ought to be targeted to those parts of the country most at risk of another terrorist attack.

Now, the 9/11 Commission agrees with this approach. They said:

Homeland security assistance should be based strictly—

''Strictly''—

on an assessment of risks and vulnerabilities.

They further say:

[F]ederal homeland security assistance should not remain a program for general revenue sharing.

I think we are all agreed they did a splendid job. This was a focal point for them. The 9/11 Commission reported homeland security money is too important to be caught up in porkbarrel politics. Unfortunately, our current homeland security funding is not based on risks and threats.

Under current law, 40 percent of all State homeland security grants, over $1 billion each year, are given out as revenue sharing. The system results in preposterous funding allocations.

For example, this year, New Jersey's homeland security grant was cut, reduced by 34 percent. I remind those who are listening, New Jersey lost 700 of its citizens. Our funding was cut despite the fact that we in New Jersey were under a code orange alert from August 1 to just after the election because of unspecified threats against the Prudential Building in Newark. The Prudential Building is a center of major financial activity and was highlighted as one of five locations that ought to be especially guarded. Yet the city of Newark saw its funding cut by 17 percent. Another high-risk urban area, Jersey City—which is directly across from where the Trade Centers were in New York, and where so much of the rescue activity was directed, with police from that area, emergency response people—Jersey City saw its funding cut 60 percent. That does not make sense.

The FBI has identified a 2-mile strip between the Port of Newark and Newark-Liberty International Airport as the most at-risk area in the entire country for a terrorist attack—a 2-mile stretch, highly visible. If you fly into Newark-Liberty Airport, you see the bustling port that we have there and the activity that goes on. It is an area, certainly, that would represent, in the FBI's view, one of the most appealing targets for terror. Yet the area's homeland security funding was cut. It defies sense.

The system is broken. That is why my colleague, Senator CORZINE, and I are introducing the Risk-Based Homeland Security Funding Act, to require that homeland security grants are allocated solely based on risk and threat to the area.

Our bill would take the 9/11 Commission's recommendations and turn them into law.

President Bush understands that risk and vulnerability must be the principal yardsticks for distributing homeland security funds. In the fiscal year 2006 budget just released, President Bush stated that homeland security funds need to be allocated on risks, threats, and vulnerabilities.

So I hope our colleagues will support the bill Senator CORZINE and I are introducing today. Our bill will set the gold standard for determining whether homeland security grants are being properly allocated. I ask my colleagues to think of this as a national interest, to make sure that none of the areas of high vulnerability are open to attack any more than we can possibly do to prevent it because any attack in these areas will have a ripple effect throughout the country. Again, these places are an invitation to the terrorists. As much as we hate them, we know these people are not fools. We know they plan these things. We know they look for the most vulnerable targets. And we should not permit those targets to go without the protection they fully deserve.

So I hope our colleagues will support this bill. It would turn the 9/11 Commission's recommendations into law.

I ask unanimous consent that the text of our bill be printed in the RECORD.

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

S. 308

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Risk-Based Homeland Security Funding Act''.

SEC. 2. FINDINGS.

Congress agrees with the recommendation on page 396 of the Final Report of the National Commission on Terrorist Attacks Upon the United States (commonly known as the ''9/11 Report''), which includes the following:

''Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities. . . . [F]ederal homeland security assistance should not remain a program for general revenue sharing. It should supplement state and local resources based on the risks or vulnerabilities that merit additional support. Congress should not use this money as a pork barrel.''.

SEC. 3. RISK-BASED HOMELAND SECURITY GRANT FUNDING.

(a) CRITERIA FOR AWARDING HOMELAND SECURITY GRANTS.—Except for grants awarded under any of the programs listed under section 4(b), all homeland security grants related to terrorism prevention and terrorism preparedness shall be awarded based strictly on an assessment of risk, threat, and vulnerabilities, as determined by the Secretary of Homeland Security.

(b) LIMITATION.—Except for grants awarded under any of the programs listed under section 4(b), none of the funds appropriated for Homeland Security grants may be used for general revenue sharing.

(c) CONFORMING AMENDMENT.—Section 1014(c)(3) of the USA PATRIOT ACT (42 U.S.C. 3714(c)(3)) is repealed.

SEC. 4. PRESERVATION OF PRE-9/11 GRANT PROGRAMS FOR TRADITION FIRST RESPONDER MISSIONS .

(a) SAVINGS PROVISION.—This Act shall not be construed to affect any authority to award grants under a Federal grant program listed under subsection (b), which existed on September 10, 2001, to enhance traditional missions of State and local law enforcement, firefighters, ports, emergency medical services, or public health missions.

(b) PROGRAMS EXCLUDED.—The programs referred to in subsection (a) are the following:

(1) The Firefighter Assistance Program authorized under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229).

(2) The Emergency Management Performance Grant Program and the Urban Search and Rescue Grant Program authorized under—

(A) title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 et seq.);

(B) the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106–74; 113 Stat. 1047 et seq.); and

(C) the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.).

(3) The Edward Byrne Memorial State and Local Law Enforcement Assistance Programs authorized under part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(4) The Public Safety and Community Policing (COPS ON THE BEAT) Grant Program authorized under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.).

(5) Grant programs under the Public Health Service Act (42 U.S.C. 201 et seq.) regarding preparedness for bioterrorism and other public health emergencies;

(6) The Emergency Response Assistance Program authorized under section 1412 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2312).

(7) Grant programs under the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 et seq.).

Mr. CORZINE. Mr. President, I rise today to join my colleague, Senator LAUTENBERG, in both support and the introduction of the Risk-Based Homeland Security Funding Act. I think this is simply urgent. It is fundamental to the recommendations of the 9/11 Commission, as Senator LAUTENBERG mentioned.

Quoting language that was in that Commission report:

Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities.

Quoting further:

[F]ederal homeland security assistance should not remain a program for general revenue sharing.

In fact, I believe we should relabel the bill. I had a little argument with my colleague from New Jersey. I think we ought to call it the Common Sense Homeland Security Act. It is only common sense. I think there is a consensus among all those who seriously contemplate this issue that we need to be smart and strategic about how we allocate our limited homeland security resources.

This is not a local issue, although people will often argue that we are trying to speak only from parochial interests. I think you have to think about this as protecting America where we are most vulnerable. It is a national issue.

Our economic assets are at stake. In New Jersey, that 2-mile stretch Senator LAUTENBERG spoke about in his comments has the Port of Newark, which is really what is often labeled the Port of New York. Mr. President, 80 percent of all of the incoming cargo containers that come into that east coast port are in Newark and Elizabeth. So you hear about the Port of New York and New Jersey. It is really the Port of New Jersey and Elizabeth. And that is in that 2-mile stretch.

Then on the other end of that 2-mile stretch is Liberty International or Newark Airport, which is, depending on which year and the number of flight landings, the third or fourth busiest airport in America—the busiest airport in the metropolitan region of New York and New Jersey.

In between, there are rail lines, chemical plants, oil refineries, all the economic assets that are important to the economic distribution of assets across the east coast.

It is incredible, as Senator LAUTENBERG talked about, that this particular area is seeing these cuts. Newark is getting cut 17 percent from 2004 to 2005, and, unbelievably, Jersey City is getting cut 64 percent, from $17 million down to about $6 million in homeland security, State, and local grants. It is very hard to justify. You look at your constituents and say we are talking about the threat-based allocation of risk, and we see these kinds of cuts given the kind of serious concerns that we have.

It is a national issue, it is not just a New Jersey issue because if that airport and that port come down, it has a major long-term impact on the economy of the Nation. It is important. I note, as Senator LAUTENBERG did, the Senator from Virginia has ports that have a major impact on more than just Virginia's economic well-being. The airports have more than just an economic impact on the individual State. We have to think about what the ripple impact is as we go forward. So we have to prioritize.

I am pleased the President cited almost the same language in his budget yesterday. Concentrating Federal funds for State and local homeland security assistance programs on the highest threats and vulnerabilities and needs is the Presidential goal. We need to translate that into specific legislative authority so we do not come up with formulas that are revenue sharing based.

Forty percent of the funds currently allocated are based on just equal allocation to the States. Nice idea, but we ought to do that in other areas, not with regard to homeland security where we ought to deal with the national economy, the national strategic interests of the country. So I hope we can take this act, this commonsensical approach, and implement it.

By the way, I also wonder why we are cutting 30 percent to our State and local communities. The first responders are the first line of defense in protecting the American people and in responding to these attacks. We certainly saw that in the 9/11 case.

I hope we can have a strong debate in Congress about how we are allocating within the expenditures we have with regard to homeland security. In my view, there is too much ignoring of the reality of the need to fund our local responders, making sure their communications equipment can talk to each other, making sure they have the kinds of equipment that would be able to respond, as was so heroically done by the people who responded to the 9/11 tragedy.

All this has to be put in the context of real-life experiences, though. And Senator LAUTENBERG talked about that. Seven hundred people in our community died. This is a hot issue in the State of New Jersey because it impacted families, and it still is very much a live part of their community. People want to see action. They want to see changes as we go forward. And they want to see us be particularly focused on those places where there are risks.

It is hard for New Jerseyans to understand when you put the city of Newark on the highest alert, singled out, along with New York City and Washington, DC, one day, and then get your homeland security funds cut by 20 percent or so 6 months later when the allocation comes out according to a formula, as apposed to thinking about where risks are. It is hard for the people not only in Newark, but we have Hamilton, NJ, which had a post office that was the site where all the anthrax letters were sent out. We had to shut it down. We spent $60 million cleaning up that post office, just like we had to clean up the Hart Building here in Washington.

And people say, I do not really understand why we are not concerned about what is going on with regard to risk in New Jersey when we have these kinds of practical realities: 700 of our citizens, orange alerts for Newark, Hamilton post office, and I could go on and on. There are a number of instances—Atlantic City, where the way the formula works is, if you are not a town of 225,000 people, you do not get considered for these grants. We have about 40,000 people in Atlantic City, but that does not take into account the people who come and visit there, which is about 100,000 on average a day; and then all the people who work there, which is about another 40,000. So you are getting up toward those numbers. And on peak days it can be 300,000 people. It is the second highest concentration of casinos in the country.

I think we need to bring common sense to where we are focusing homeland security dollars. I think that is what this act is about. I am thrilled that we have Michael Chertoff who is stepping in as the Secretary of the Department of Homeland Security. I do not think there is a smarter guy, a more objective, intellectually honest individual. I think he will push forward with commonsense approaches to allocation and recommendations.

Finally, this bill does not cover other programs. It does not include the COPS Program, fire grants, other things where you need to be reflective of the needs of general revenue sharing approaches. This is dealing with homeland security the same way we deal

with national security. There we identify what we think the threats are and apply the resources to match those needs.

We need to bring common sense to this. I hope my colleagues will support this legislation. It is very straightforward and a simple reflection of the 9/11 Commission Report, a reflection of the words the President put in his budget report. I think it is appropriate as to how we should move forward with regard to funding for homeland security allocations.

By Mr. DEMINT (for himself, Mr. SALAZAR, and Mr. ENSIGN):

S. 309. A bill to amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements; to the Committee on Finance.

Mr. DEMINT. Mr. President, I rise today to offer a bill that would update flexible spending arrangements, known as FSAs, to allow up to $500 of unused health benefits to be carried forward to next year's FSA or transferred to a health savings account.

Flexible spending arrangements allow employees to set aside money in an employer-established benefit plan that can be used on a tax-free basis to meet their out-of-pocket health care expenses during the year. However, under current law, any money remaining in the FSA at the end of the year must be returned to the employer.

Nearly 37 million private sector employees have access to an FSA. However, only 18 percent of eligible employees take advantage of the pretax health care spending provided by flexible spending arrangements. Many employees cite the fear of forfeiting unused funds as the primary reason why they elect not to participate in an FSA.

This use-it-or-lose-it rule does more, though, than discourage widespread participation. It can also lead to perverse incentives such as encouraging people to spend money on health care products and services that they do not necessarily need. In other words, at the end of the year, if there is money left in the account, the employee's incentive is to go out and get an extra pair of sunglasses or whatever it is and spend that money, and that in turn drives up demand and the price of health care for everybody.

The bill I am introducing today provides greater flexibility and consumer choice. The bill would allow up to $500 of unused funds at the end of the year to be carried forward in that flexible spending arrangement for use in the next year, or that employee could begin a new HSA, a health savings account, and put up to $500 into that health savings account.

I believe this bill will encourage greater participation in flexible spending arrangements and, to a lesser extent, participation in health savings account benefit plans. The Joint Committee on Taxation estimates that approximately 76 percent of current FSA participants will take advantage of the rollover option each year.

Through this legislation, we can expand access to health care for millions of Americans by making it easier for them to save for their health care costs. This bill would also reduce end-of-the-year excess spending and overuse of health care services, allowing FSA participants to benefit from the prudent use of their health care resources.

I am grateful to Senators SALAZAR and ENSIGN who have joined me as original cosponsors of this bill. They understand that reducing health costs and increasing access to health care are worthy goals that we should all support.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 309

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

SECTION 1. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be—

''(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

''(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2004.

By Mr. SMITH (for himself, Mrs. CLINTON, Ms. COLLINS, Mr. BINGAMAN, Ms. CANTWELL, Mr. COLEMAN, Mr. CORZINE, Ms. SNOWE, Mrs. FEINSTEIN, Ms. LANDRIEU, Mrs. MURRAY, Mr. DEWINE, Mr. BAYH, Mr. REED, Mr. KERRY, Mr. SCHUMER, Mr. DAYTON, Mr. WYDEN, Mrs. LINCOLN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. NELSON of Florida, Ms. STABENOW, Mr. JOHNSON, Mr. LEAHY, Mr. KENNEDY, Mr. FEINGOLD, and Mr. SARBANES):

S. 311. A bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low-income individuals infected with HIV; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to introduce the Early Treatment for HIV Act, ETHA, of 2005. Senator CLINTON joins me in introducing this bill, and I want to thank her for her steadfast support for people living with HIV. HIV knows no party affiliation, and I am pleased to say that ETHA cosponsors sit on both sides of the aisle.

Simply stated, ETHA gives States the opportunity to extend Medicaid coverage to low-income, HIV-positive individuals before they develop full-blown AIDS. Today, the unfortunate reality is that most patients must become disabled before they can qualify for Medicaid coverage. Nearly 50 percent of people living with AIDS who know their status lack ongoing access to treatment. In my home State of Oregon, there are approximately 4,500 persons living with HIV/AIDS. It is estimated that approximately 40 percent of these Oregonians are not receiving care for their HIV disease. Not being in care puts these people's own health at risk, and also makes them more infectious. We can do better, and we should do everything possible to ensure that all people living with HIV can get early, effective medical care.

Oregon's Ryan White funded AIDS Drug Assistance Program is nearing maximum enrollment and may need to wait list eligible clients in the near future. The fact of the matter is that safety net programs all over the country are running out of money, and are generally unable to cover all of the people who need assistance paying for their medical care. As other programs are failing, ETHA gives States another way to reach out to low-income, HIV-positive individuals.

With approximately 150 newly detected HIV infections in Oregon annually, my state desperately needs to provide early treatment to these individuals. It has been shown that current HIV treatments are very successful in delaying the progression from HIV infection to AIDS, and help improve the health and quality of life for millions of people living with the disease.

Studies conducted by Pricewaterhouse Cooper have found that providing early intervention care significantly delays the progression of HIV and is highly cost-effective. ETHA reduces by 60 percent the death rate of

persons living with HIV who received coverage under Medicaid. Disease progression is significantly slowed and health outcomes improved. Medicaid offsets alone reduce gross Medicaid costs by approximately 70 percent due to the prevention of avoidable high cost medical interventions. Research determined that over 5 years the true cost of ETHA is $55.2 million. Over 10 years, ETHA saves $31.7 million. It shows that preventing the health of people living with HIV, preventing opportunistic infections, and slowing the progression to AIDS, will save taxpayers dollars. Ultimately, its clear that in implementing ETHA, the United States will take an important step toward ensuring that all Americans living with HIV can get the medical care they need to stay healthy and productive for as long as possible.

Importantly, ETHA also offers States an enhanced Federal Medicaid match, which means more money for States that invest in treatments for HIV. This provision models the successful Breast and Cervical Cancer Treatment and Prevention Act of 2000, which allows States to provide early Medicaid intervention to women with breast and cervical cancer. Even in these difficult times, 45 States are now offering early Medicaid coverage to women with breast and cervical cancer. We can build upon this success by passing ETHA and extending similar early intervention treatments to people with HIV.

HIV/AIDS touches the lives of millions of people living in every State in the Union. Some get the proper medications, but too many do not. This is literally a life and death issue, and ETHA can help many more Americans enjoy long, healthy lives.

I want to thank Senators CLINTON, COLLINS, BINGAMAN, COLEMAN, CANTWELL, SNOWE, CORZINE, FEINSTEIN, MURRAY, WYDEN, DEWINE, BAYH, REED, KERRY, DAYTON, SCHUMER, LINCOLN, LIEBERMAN, MIKULSKI, NELSON, STABENOW, JOHNSON, SARBANES, LEAHY, KENNEDY, FEINGOLD and LAUTENBERG for joining us as cosponsors of ETHA. I also wish to thank all of the organizations around the country that have expressed support for this bill. I have received numerous support letters from those organizations, and I ask unanimous consent that those letters be printed in the RECORD. In particular, I want to thank the Human Rights Campaign, The AIDS Institute, ADAP Working Group and the Treatment Access Expansion Project, for helping bring so much attention to ETHA. I hope all of my colleagues will join us in supporting this critical, life-saving legislation.

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

AIDS ACTION,
Washington, DC, February 2, 2005.

Hon. GORDON SMITH,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SMITH: On behalf of the AIDS Action Council board of directors and our diverse, nationwide membership of community-based service providers and public health departments working with people living with or affected by HIV, I would like to thank you for introducing the Early Treatment for HIV Act (ETHA) with Senator Clinton and offer my strong support for this important piece of legislation.

As you know, ETHA is a means to eliminate barriers to early drug therapy and comprehensive care for people living with HIV. This important legislation would give States the option of allowing HIV positive people with low incomes to qualify for Medicaid coverage earlier in the course of their infection, permitting them to receive greater benefits from anti-retroviral therapy.

Access to pharmaceuticals and quality health services is vital for people living with HIV. Advancements in treatment and the development of anti-retroviral (ARV) therapy have enabled HIV positive individuals to lead longer and healthier lives. However, ARV therapy is often prohibitively expensive, costing approximately $10,000 to $12,000 annually, making it virtually impossible for low-income people, who are often uninsured or underinsured, to access these life-prolonging medications.

Current Federal treatment guidelines recommend the initiation of ARV therapy early in the course of HIV infection. With early initiation, the efficacy of ARV therapy increases, boosting the effectiveness of other available HIV drugs and staving off disability. Initiated early on, ARV therapy ultimately saves costs associated with delayed medical treatment. Unfortunately, many uninsured and underinsured people living with HIV cannot afford ARV therapy on their own. Further, Americans living with HIV do not qualify for Medicaid until they have received an AIDS diagnosis and are sick enough to meet Medicaid's categorical requirements for disability—a point at which it is too late for ARV treatment to be optimally effective. These barriers to early treatment must be eliminated so that low income people living with HIV can access the health care they need.

During this time of shrinking Federal budgets and economic downsizing, savings in Federal HIV programs, whether in mandatory or discretionary spending, are beneficial to all parties involved. By allowing HIV positive individuals to qualify for Medicaid earlier in the course of HIV infection, ETHA will create significant savings for the Federal Government in overall health care funding.

AIDS Action looks forward to working with you on passage of this bill. Together we can ensure that people living with HIV have access to the treatments and health services they need to stay healthy.

Sincerely,

MARSHA A. MARTIN,
Executive Director.

THE AIDS INSTITUTE,
Washington, DC, February 2, 2005.

Re the early treatment for HIV Act (ETHA).

Senator GORDON SMITH,
U.S. Senate,
Washington, DC.

DEAR SENATOR SMITH: The AIDS Institute applauds you for your continued leadership and commitment to those people living with HIV/AIDS in our country who are in need of lifesaving healthcare and treatment. While the HIV/AIDS epidemic in sub-Sahara Africa and other parts of the world often overshadow the epidemic in the United States, we must not forget about the approximately 900,000 people living in the U.S. who have HIV or AIDS.

Those infected with HIV are more likely to be low-income, and it disproportionately impacts certain populations, particularly minorities. In fact, the AIDS case rate per 100,000 population for African Americans was 9.5 times that of whites in 2003.

According to a recent Institute of Medicine report titled, ''Public Financing and Delivery of HIV/AIDS Care: Securing the Legacy of the Ryan White CARE Act'', 233,000 of the 463,070 people living with HIV in the U.S. who need antiretroviral treatment do not have ongoing access to this treatment. This does not include an additional 82,000 people who are infected but unaware of their HIV status and are in need of antiretroviral medications.

One reason why there are so many people lacking treatment is that under current law, Medicaid, which is the single largest public payer of HIV/AIDS care in the U.S., only covers those with full blown AIDS, not those with HIV.

The Early Treatment for HIV Act (ETHA), being re-introduced in this Congress under your leadership and Sen. Hillary Clinton, would correct an archaic mindset in the delivery of public health care. No longer would a Medicaid eligible person with HIV have to become disabled with AIDS to receive access to Medicaid provided care and treatment. Providing coverage to those with HIV can prevent them from developing AIDS, and allow them to live a productive life with their family and be a healthy contributing member of society.

ETHA would provide States the option of amending their Medicaid eligibility requirements to include uninsured and under-insured, pre-disabled poor and low-income people living with HIV. No State has to participate if they choose not to.

As all States have participated in the Breast and Cervical Cancer Prevention and Treatment Act, on which ETHA is modeled, we believe all States will opt to choose this approach in treating those with HIV. States will opt into this benefit not only because it is the medically and ethically right thing to do, but it is cost effective, as well.

A recent study prepared by PricewaterhouseCoopers found that if ETHA was enacted, over 10 years:

—the death rate for persons living with HIV on Medicaid would be reduced by 50 percent;

—there would be 35,000 more individuals having CD4 levels above 500 under ETHA versus the existing Medicaid system; and

—result in a savings of $31.7 million.

The AIDS Institute thanks you for your bipartisan leadership by introducing ''The Early Treatment for HIV Act of 2006''. It is the type of Medicaid reform that is critically needed to update the program to keep current with the Federal Government's guidelines for treating people with HIV.

We look forward to working with you and your colleagues as it moves to enactment.

Sincerely,

DR. A. GENE COPELLO,
Executive Director.

FEBRUARY 2, 2005.

Hon. GORDON SMITH,
404 Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SMITH: The American Academy of HIV Medicine is an independent organization of HIV Specialists and others dedicated to promoting excellence in HIV/AIDS care. As the largest independent organization of HIV frontline providers, our 2,000 members provide direct care to more than 340,000 HIV patients—more than two thirds of the patients in active treatment for HIV disease.

The Academy, particularly those HIV Specialists in the state of Oregon, would like to thank and commend you for co-sponsoring the Early Treatment for HIV Act (ETHA).

ETHA addresses a cruel irony in the current Medicaid system—that under current Medicaid rules people must become disabled by AIDS before they can receive access to Medicaid provided care and treatment that could have prevented them from becoming so ill in the first place. ETHA would bring Medicaid eligibility rules in line with the clinical standard of care for treating HIV disease. ETHA helps address the fact that increasingly, in many parts of the country, there are growing waiting lists for access to life-saving medications and limited to no access to comprehensive health care. Particularly in Oregon, we have been witness to difficulties in access to care for some of our patients, having endured a severe strain on our AIDS Drug Assistance Program (ADAP) for quite some time.

The Academy believes this legislation would allow HIV positive individuals access to the medical care that we recognize as vital towards postponing or avoiding the onset of AIDS and towards enormously increase the quality of life for people living with HIV disease.

As a provider at a public health clinic (the Multnomah County Health Department HIV clinic), I see patients from a 6 county area, with a growing number of uninsured. The difficulties in obtaining medication coverage have been growing monthly, and have become a major part of the 'medical care' we provide. A more equitable system of coverage and medication access would help tremendously, and allow us to focus on what we are trained to do. Thank you for your efforts in this area.

Sincerely,

MICHAEL S. MACVEIGH.
JAMES E. MCDONALD.
JOAN REEDER.
MARIA KOSMETATOS.

CASCADE AIDS PROJECT,
Portland, OR, February 1, 2005.

Senator GORDON SMITH,
U.S. Senate,
Washington, DC.

DEAR SENATOR SMITH: As you know, Cascade AIDS Project is the largest AIDS service organization in Oregon. For two decades we have served and advocated for people living with and at risk for HIV/AIDS. We strongly urge you to support the Early Treatment of HIV Act.

The Early Treatment for HIV Act will allow low-income individuals living with HIV to qualify for Medicaid coverage earlier in the course of their disease instead of waiting until they are disabled by full-blown AIDS.

Healthcare advocates have long been arguing that to treat an individual's illness at its earlier stages costs less than waiting until the individual is significantly disabled by further progression of the illness.

There are many Americans—those in the low income bracket and in underserved communities—who do not have access to drug treatment regimens because they have not progressed to fullblown AIDS. The ACT would make access to those drugs possible.

Medicaid is a lifeline to HIV care for roughly half of those living with AIDS, and 90% of all children living with AIDS. All Medicaid programs cover some prescription drugs, but with the improved drug therapy of today, it is crucial that individuals infected with HIV receive access to these drugs as soon as their conditions call for it.

Passage of the Early Treatment for HIV Act will save countless lives and must be viewed as a priority. We know that passage of the Act is the right thing to do.

Sincerely,

THOMAS BRUNER,
Executive Director.

TII-CANN,
Washington, DC, February 2, 2005.

Hon. GORDON SMITH,
U.S. Senate,
Washington, DC.

Subject: ETHA (The Early Treatment for HIV Act)

DEAR SENATOR SMITH: I wanted to express our appreciation and support for your introduction of ETHA in the 109th U.S. Congress together with Senator Clinton and the other original co-sponsors.

Having been working since day one on the ETHA process and having closely studied the potentially lifesaving—and cost savings—potentials of this bill we feel it's particularly crucial that this important legislation be passed into law as soon as possible.

The across the board potential cost savings inherent in providing early access to HIV treatment over 10 years are a compelling fiscally responsible story and of course treating sick Americans as soon as possible is simply the correct moral and ethical course of action for the world's most powerful country. The value of increasing life span and quality of life to tens of thousands of affected individuals, and their families, has a tremendous value to society at large, as well.

Once again we extend our thanks to you and Senator Clinton for your leadership and we look forward to helping this Important private and PublIc health legislation to work its way through our congressional process.

Sincerely,

WILLIAM E. ARNOLD,
CEO.

PROJECT INFORM,
San Francisco, CA, February 2, 2005.

Hon. GORDON SMITH,
U.S. Senate,
Washington, DC.

DEAR SENATOR SMITH: I am writing to thank you and Senator Clinton for introducing the Early Treatment for HIV Act. Project Inform, a national HIV/AIDS treatment information and advocacy organization serving 80,000 people nationwide, strongly supports this legislation.

This bill would allow, states to extend Medicaid coverage to pre-disabled people living with IV. It represents a breakthrough in assuring early access to care for thousands of low-income people living with HIV. Current HIV treatments are successfully delaying the progression from HIV infection to AIDS, thus improving the health and quality of life for many people living with the disease. However, without access to early intervention health care and treatment, these advances remain out of reach for many non-disabled, low-income people with HIV.

Project Inform is acutely aware of the need for early access to lifesaving medications and healthcare for people living with HIV/AIDS. Discretionary programs such as the AIDS Drug Assistance Program (ADAP) are simply unable to meet the growing need. If ETHA is passed and implemented by the states, a great burden will be lifted off these safety net programs and people living with the disease will be able to get the care and treatment needed to live longer, more productive lives.

A recent report by PricewaterhouseCoopers found that if ETHA is passed and implemented by the states, the death rate of people living with HIV on Medicaid would be cut in half over a ten-year period. It also revealed that over a ten-year period, ETHA would save money in the Medicaid program. It is a humane and cost-effective bill and I thank you again for your leadership in introducing it. Please let me know how Project Inform can help make it become law.

Sincerely,

RYAN CLARY,
Senior Policy Advocate.

PARTNERSHIP PROJECT,
Portland, OR, February 1, 2005.

Hon. GORDON SMITH,
U.S. Senate,
Washington, DC.

DEAR SENATOR SMITH: I am writing to thank you for introducing the Early Treatment for HIV Act with Senator Clinton, and to offer my strong support for this legislation.

This bill would allow states to extend Medicaid coverage to pre-disabled people living with HIV. It represents a breakthrough In assuring early access to care for thousands of low-income people living with HIV. Current HIV treatments are successfully delaying the progression from HIV infection to AIDS, thus improving the health and quality of life for many people living with the disease. However, without access to early intervention health care and treatment, these advances remain out of reach for many non-disabled, low-income people with HIV.

The more people who are on Medicaid the more the pressure will be relieved on ADAP, CareAssist, and other programs that serve Oregon residents.

A recent report by PricewaterhouseCoopers found that if ETHA Is passed and implemented by the states, the death rate of people living with HIV on Medicaid would be cut in half over a ten-year period. It also revealed that over a ten-year period, ETHA would save money in the Medicaid program. It is a humane and cost-effective bill and I thank you again for your leadership in introducing it. Please let me know how I can help make it become law.

Sincerely,

RICK STOLLER,
Clinical Manager.

NASTAD,
Washington, DC, February 2, 2005.

Hon. GORDON SMITH,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SMITH: On behalf of the National Alliance of State and Territorial AIDS Directors (NASTAD), I am writing to offer our support for the ''Early Treatment for HIV Act.'' NASTAD represents the nation's chief state and territorial health agency staff who are responsible for HIV/AIDS prevention, care and treatment programs funded by state and federal governments. This legislation would give states an important option in providing care and treatment services to low-income Americans living with HIV.

The Early Treatment for HIV Act (ETHA) would allow states to expand their Medicaid programs to cover HIV positive individuals, before they become disabled, without having to receive a waiver. NASTAD believes this legislation would allow HIV positive individuals to access the medical care that is widely recommended, can postpone or avoid the onset of AIDS, and can enormously increase the quality of life for people living with HIV.

State AIDS directors continue to develop innovative and cost-effective HIV/AIDS programs in the face of devastating state budget cuts and federal contributions that fail to keep up with need. ETHA provides a solution to states by increasing health care access for those living with HIV/AIDS. ETHA will also save states money in the long-run by treating HIV positive individuals earlier in the disease's progression and providing states with a federal match for the millions of dollars they are presently spending on HIV/AIDS care.

Thank you very much for your continued commitment to persons living with HIV/AIDS. I look forward to working with you to gain support for this important piece of legislation.

Sincerely,

JULIE M. SCOFIELD,
Executive Director.

AIDS FOUNDATION OF CHICAGO,
Chicago, IL, February 2, 2005.

Hon. GORDON SMITH,
U.S. Senate,
Washington DC.

DEAR SENATOR SMITH: I am writing to thank you for introducing the Early Treatment for HIV Act with Senator Clinton, and to offer the AIDS Foundation of Chicago's (AFC) strong support for this legislation.

Founded in 1985, the mission of AFC is to lead the fight against HIV/AIDS and improve the lives of people affected by the epidemic. In order to accomplish this, AFC collaborates with community organizations to develop and improve HIV/AIDS services; funds and coordinates prevention, care, and advocacy projects; and champion's effective, compassionate HIV/AIDS policy. AFC is the sole AIDS advocacy organization monitoring and responding to AIDS-related state legislation and public policy in Illinois.

This bill would allow states to extend Medicaid coverage to pre-disabled people living with HIV. It represents a breakthrough in assuring early access to care for thousands of low-income people living with HIV. Current HIV treatments are successfully delaying the progression from HIV infection to AIDS, thus improving the health and quality of life for many people living with the disease. However, without access to early intervention health care and treatment, these advances remain out of reach for many non-disabled, low-income people with HIV.

A recent report by PricewaterhouseCoopers found that if ETHA is passed and implemented by the states, the death rate of people living with HIV on Medicaid would be cut in half over a ten-year period. It also revealed that over a ten-year period, ETHA would save money in the Medicaid program. It is a humane and cost-effective bill and I thank you again for your leadership in introducing it. Please let me know how I can help make it become law.

Sincerely,

JIM PICKETT,
Director of Public Policy.

AIDS ACTION BALTIMORE, INC.,
Baltimore, MD, February 3, 2005.

Hon. GORDON SMITH,
U.S. Senate,
Washington, DC.

DEAR SENATOR SMITH: On behalf of AIDS Action Baltimore, Inc. (AAB) I am writing to thank you for introducing the Early Treatment for HIV Act with Senator CLINTON, and to offer my strong support for this legislation.

This bill would allow states to extend Medicaid coverage to pre-disabled people living with HIV. It represents a breakthrough in assuring early access to care for thousands of low-income people living with HIV. Current HIV treatments are successfully delaying the progression from HIV infection to AIDS, thus improving the health and quality of life for many people living with the disease. However, without access to early intervention health care and treatment, these advances remain out of reach for many non-disabled, low-income people with HIV.

AAB has been engaged in research advocacy and providing valuable medical, financial and emotional support to thousands of people with HIV infection since 1987. Access to care and treatment is of the utmost importance to someone living with HIV disease. Medicaid will not only help improve the quality of life for an individual with HIV disease by will also help to relieve pressure on the AIDS Drug Assistance Programs in all of our states.

A recent report by PricewaterhouseCoopers found that if ETHA is passed and implemented by the states, the death rate of people living with HIV on Medicaid would be cut in half over a ten-year period. It also revealed that over a ten-year peiod, ETHA would save money in the Medicaid program. It is a humane and cost-effective bill and I thank you again for your leadership in introducing it. Please let me know how I can help make it become law.

Sincerely,

LYNDA DEE,
Executive Director.

AIDS ACTION,
February 2, 2005.

Hon. GORDON SMITH,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SMITH: On behalf of the AIDS Action Council board of directors and our diverse, nationwide membership of community-based service providers and public health departments working with people living with or affected by HIV, I would like to thank you for introducing the Early Treatment for HIV Act (ETHA) with Senator Clinton and offer my strong support for this important piece of legislation.

As you know, ETHA is a means to eliminate barriers to early drug therapy and comprehensive care for people living with HIV. This important legislation would give states the option of allowing HIV positive people with low incomes to qualify for Medicaid coverage earlier in the course of their infection, permitting them to receive greater benefits from anti-retroviral therapy.

Access to pharmaceuticals and quality health services is vital for people living with HIV. Advancements in treatment and the development of anti-retroviral (ARV) therapy have enabled HIV positive individuals to lead longer and healthier lives. However, ARV therapy is often prohibitively expensive, costing approximately $10,000 to $12,000 annually, making it virtually impossible for low-income people, who are often uninsured or underinsured, to access these life-prolonging medications.

Current federal treatment guidelines recommend the initiation of ARV therapy early in the course of HIV infection. With early initiation, the efficacy of ARV therapy increases, boosting the effectiveness of other available HIV drugs and staving off disability. Initiated early on, ARV therapy ultimately saves costs associated with delayed medical treatment. Unfortunately, many uninsured and underinsured people living with HIV cannot afford ARV therapy on their own. Further, Americans living with HIV do not qualify for Medicaid until they have received an AIDS diagnosis and are sick enough to meet Medicaid's categorical requirements for disability—a point at which it is too late for ARV treatment to be optimally effective. These barriers to early treatment must be eliminated so that low income people living with HIV can access the health care they need.

During this time of shrinking federal budgets and economic downsizing, savings in federal HIV programs, whether in mandatory or discretionary spending, are beneficial to all parties involved. By allowing HIV positive individuals to qualify for Medicaid earlier in the course of HIV infection, ETHA will create significant savings for the federal government in overall health care funding.

AIDS Action looks forward to working with you on passage of this bill. Together we can ensure that people living with HIV have access to the treatments and health services they need to stay healthy.

Sincerely,

MARSHA A. MARTIN, DSW,
Executive Director.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 311

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Early Treatment for HIV Act of 2005''.

SEC. 2. OPTIONAL MEDICAID COVERAGE OF LOW-INCOME HIV-INFECTED INDIVIDUALS.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(10)(A)(ii)—

(A) by striking ''or'' at the end of subclause (XVII);

(B) by adding ''or'' at the end of subclause (XVIII); and

(C) by adding at the end the following:

''(XIX) who are described in subsection (cc) (relating to HIV-infected individuals);''; and

(2) by adding at the end the following:

''(cc) HIV-infected individuals described in this subsection are individuals not described in subsection (a)(10)(A)(i)—

''(1) who have HIV infection;

''(2) whose income (as determined under the State plan under this title with respect to disabled individuals) does not exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan; and

''(3) whose resources (as determined under the State plan under this title with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan.''.

(b) ENHANCED MATCH.—The first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by striking ''section 1902(a)(10)(A)(ii)(XVIII)'' and inserting ''subclause (XVIII) or (XIX) of section 1902(a)(10)(A)(ii)''.

(c) CONFORMING AMENDMENTS.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended in the matter preceding paragraph (1)—

(1) by striking ''or'' at the end of clause (xii);

(2) by adding ''or'' at the end of clause (xiii); and

(3) by inserting after clause (xiii) the following:

''(xiv) individuals described in section 1902(cc);''.

(d) EXEMPTION FROM FUNDING LIMITATION FOR TERRITORIES.—Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended by adding at the end the following:

''(3) DISREGARDING MEDICAL ASSISTANCE FOR OPTIONAL LOW-INCOME HIV-INFECTED INDIVIDUALS.—The limitations under subsection (f) and the previous provisions of this subsection shall not apply to amounts expended for medical assistance for individuals described in section 1902(cc) who are only eligible for such assistance on the basis of section 1902(a)(10)(A)(ii)(XIX).''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning on or after the date of

the enactment of this Act, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

By Mr. McCAIN (for himself, Ms. CANTWELL, and Mr. LEAHY):

S. 312. A bill to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service; to the Committee on Commerce, Science, and Transportation.

Mr. McCAIN. Mr. President, I rise today to introduce The Local Community Radio Act of 2005. This bill would allow the Federal Communications Commission (FCC) to license Low Power FM stations on third adjacent channels to full power stations without limitations and eliminate the requirement that the FCC perform further testing on the economic impact of Low Power FM radio. Additionally, the bill seeks to protect stations that provide radio reading services, which some have suggested are more susceptible to interference then other stations because they are carried on a subcarrier frequency. I am pleased to be joined in this effort by Senators LEAHY and CANTWELL who are co-sponsors of the bill. I thank them for their support. A similar bill was introduced in the 108th Congress and passed out of the Senate Committee on Commerce, Science, and Transportation.

In January 2000, the FCC launched Low Power FM radio service to ''enhance locally focused community-oriented radio broadcasting.'' Low Power FM stations are just that—low power radio stations on the FM band that generally reach an audience within a 3.5 mile radius of the station's transmitter. In rural areas, this signal may not reach many people, but it provides rural citizens with another media outlet—another voice in the market. In urban areas, this signal may reach hundreds of thousands of people and provide not just local content, but very specific neighborhood news and information.

Localism is increasingly important in today's changing media landscape. Rampant ownership consolidation has taken place in the radio industry since passage of the Telecommunications Act of 1996. Since that time, many Americans have complained that the large media conglomerates fail to serve local communities' interests and seem to use their local station license as a conduit to air national programming. Low Power FM was introduced, in part, to respond to such complaints.

Between May 1999 and May 2000, the Commission received over 3,400 applications for Low Power FM stations from non-commercial educational entities and community organizations. However, before the Commission could act on many of the applications for this new community service, broadcasters frightened legislators into halting the full implementation of Low Power FM. Broadcasters masqueraded their true concerns about competition from a real local radio broadcaster in thinly veiled claims of interference.

Due to the broadcasters' subterfuge, Congress added language to a 2000 appropriations bill requiring the FCC to hire an independent engineering firm to further study broadcasters' claims of interference. I am not happy to report that after spending almost two years and over 2 million dollars, the independent study revealed what the FCC and community groups had said all along: LPFM will do no harm to other broadcasters. Perhaps, we should send a bill to the National Association of Broadcasters.

That brings us to the future of Low Power FM. The FCC, as required by the appropriations language, reported the study's findings to Congress last February and recommended full implementation of Low Power FM. This bill simply follows the FCC's recommendation: begin licensing Low Power FM stations on third adjacent channels to full power stations without limitations. Additionally, the bill seeks to protect full power stations that provide radio reading services. It is estimated that about 1.1 million people in the U.S. are blind, and it is important to ensure this helpful radio reading service remains interference free.

The enactment of this bill will immediately make available a number of Low Power FM frequencies. By some estimates, Congress' legislation delaying the full implementation, which mostly affected metropolitan areas, led to the elimination of half the Low Power FM applications filed during 2000.

For example, Congress' action eliminated the LPFM slot in Fresno applied for by El Comite de los Pobres. The group had hoped to address the dearth of local programming for the Latino community by airing bilingual coverage of local issues. New Orleans' Music Business Institute's application was eliminated as well. The Music Business Institute teaches young people how to get into the music business. The Institute had planned to use the station to help start the musical careers of local artists, and to educate listeners about the city's jazz and blues musical heritage.

There are some wonderful LPFM stations that are up and running. A recent article published in The Nation called these stations, ''beacons of grassroots democracy.'' The article discussed WRFR in Rockland, Maine: ''Shunning the canned programming approach of Rockland's two Clear Channel stations, WRFR offers an array of local talent, tastes and interests, and was recently named Maine station of the year by a state music association. Although country music, a Maine favorite, is heavily represented, hardly any WRFR deejay restricts himself to a single era, genre or Top-40 play list.''

In 2000, the Southern Development Foundation established a Low Power FM station in Opelousas, Louisiana, which sponsors agriculture programs, leases land to farmers, raises money for scholarships for needy kids and helps citizens learn to read. The station director told a local community newsletter: ''You've got local radio stations that are owned by larger companies. There should be some programming concerning the music that is from here, and the people from here. But there's not.''

I ask the broadcasters to come clean and join us in promoting LPFM. More good radio brings about more radio listening—and that's good for all broadcasters. Therefore, in the interests of would-be new broadcasters, existing broadcasters, but most of all, the listening public, I urge the enactment of the Local Community Radio Act of 2005.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 312

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Local Community Radio Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The passage of the Telecommunications Act of 1996 led to increased ownership consolidation in the radio industry.

(2) At a hearing before the Senate Committee on Commerce, Science, and Transportation, on June 4, 2003, all 5 members of the Federal Communications Commission testified that there has been, in at least some local radio markets, too much consolidation.

(3) A commitment to localism—local operations, local research, local management, locally-originated programming, local artists, and local news and events—would bolster radio listening.

(4) Local communities have sought to launch radio stations to meet their local needs. However, due to the scarce amount of spectrum available and the high cost of buying and running a large station, many local communities are unable to establish a radio station.

(5) In 2003, the average cost to acquire a commercial radio station was more than $2,500,000.

(6) In January, 2000, the Federal Communications Commission authorized a new, affordable community radio service called ''low-power FM'' or ''LPFM'' to ''enhance locally focused community-oriented radio broadcasting''.

(7) Through the creation of LPFM, the Commission sought to ''create opportunities for new voices on the air waves and to allow local groups, including schools, churches, and other community-based organizations, to provide programming responsive to local community needs and interests''.

(8) The Commission made clear that the creation of LPFM would not compromise the integrity of the FM radio band by stating, ''We are committed to creating a low-power FM radio service only if it does not cause unacceptable interference to existing radio service.''.

(9) Currently, FM translator stations can operate on the second and third-adjacent channels to full power radio stations, up to an effective radiated power of 250 watts, pursuant to part 74 of title 47, Code of Federal

Regulations, using the very same transmitters that LPFM stations will use. The FCC based its LPFM rules on the actual performance of these translators that already operate without undue interference to FM stations. The actual interference record of these translators is far more useful than any results that further testing could yield.

(10) Small rural broadcasters were particularly concerned about a lengthy and costly interference complaint process. Therefore, in September, 2000, the Commission created a simple process to address interference complaints regarding LPFM stations on an expedited basis.

(11) In December, 2000, Congress delayed the full implementation of LPFM until an independent engineering study was completed and reviewed. This delay was due to some broadcasters' concerns that LPFM service would cause interference in the FM band.

(12) The delay prevented millions of Americans from having a locally operated, community based radio station in their neighborhood.

(13) Approximately 300 LPFM stations were allowed to proceed despite the congressional action. These stations are currently on the air and are run by local government agencies, groups promoting arts and education to immigrant and indigenous peoples, artists, schools, religious organizations, environmental groups, organizations promoting literacy, and many other civically-oriented organizations.

(14) After 2 years and the expenditure of $2,193,343 in taxpayer dollars to conduct this study, the broadcasters' concerns were demonstrated to be unsubstantiated.

SEC. 3. REPEAL OF PRIOR LAW.

Section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (Public Law 106-553; 114 Stat. 2762A–111), is repealed.

SEC. 4. MINIMUM DISTANCE SEPARATION REQUIREMENTS.

The Federal Communications Commission shall modify its rules to eliminate third-adjacent minimum distance separation requirements between—

(1) low-power FM stations; and

(2) full-service FM stations, FM translator stations, and FM booster stations.

SEC. 5. PROTECTION OF RADIO READING SERVICES.

The Federal Communications Commission shall retain its rules that provide third-adjacent channel protection for full-power noncommercial FM stations that broadcast radio reading services via a subcarrier frequency from potential low-power FM station interference.

SEC. 6. ENSURING AVAILABILITY OF SPECTRUM FOR LPFM STATIONS.

The Federal Communications Commission when licensing FM translator stations shall ensure—

(1) licenses are available to both FM translator stations and low-power FM stations; and

(2) that such decisions are made based on the needs of the local community.

Ms. CANTWELL. Mr. President, today, I am pleased to be joining with the Senator from Arizona, Mr. MCCAIN, and the Senator from Vermont, Mr. LEAHY, as a cosponsor of the Local Community Radio Act of 2005. This legislation is similar to the version of S. 2505, the Low Power Radio Act of 2004 that was introduced last Congress.

This bill removes once and for all the barriers keeping low power FM service from flourishing in communities of all sizes across the country, while protecting important radio reading services. Under the existing law, my State has only a handful of low power FM stations. If this bill becomes law, the Federal Communication Commission will be able to move forward and license additional low power FM stations to serve communities all across the State of Washington such as Bainbridge Island, Vashon Island and Auburn.

Let me review the history of this issue for the Senate. The Telecommunications Act of 1996 removed completely the ownership caps restricting the number of stations that any one company can own nationwide. The Act has led to an unprecedented level of consolidation and mergers in the U.S. radio industry. Additionally, within a local market, the rules allows ownership of up to eight radio stations, on a sliding scale, depending on total number of stations in the market.

Five years ago, the FCC adopted rules creating a new, low power FM radio service in response to public concerns that the increased consolidation of radio ownership weakened the local character of radio.

Low power FM stations serve the public interest by providing significantly greater opportunities for citizen involvement in broadcasting in communities across the country. Eligible licensees are non-profit, government or educational institutions, public safety or transportations services. No existing broadcasting licensee or media entity can have an ownership interest or any program or operating agreement with any low power FM stations.

In many media markets, the number of independent local voices has dropped significantly, replaced by giant corporations replicating formats and programming from across the country. Voice-tracking, a practice in which a DJ either pre-records part of a program for a local station or for a station out of the immediate market, is not a substitute for true localism.

With fewer independent outlets available for artists to get airplay for a given genre of music, particularly for newer acts, there is a perception in some quarters of the music industry that you need to resort to the reprehensible practices such as payola in order to be heard by the public.

During its proceeding on low power FM, the FCC conducted tests on the effects of these low power stations on full power FM broadcasts for various types of radio receivers. The FCC engineering reports concluded that low power FM signals would not cause interference with the signals to full power FM stations within their service areas. Based on the results of interference testing, LPFM stations were not required to protect stations three channels away from inference as is required for full power stations. These rules allowed radio frequencies for LPFM stations to become available in larger media markets where under the old rules of third adjacent channel separation, there was no space available for them on the crowded radio dial.

While the public reaction to low power FM was positive, the reaction of FM broadcasters, both commercial and non-commercial, was negative. Congress was convinced to add a rider to the 2001 Commerce, Justice, State appropriations law that effectively undid the provisions in the FCC rules, and once again required third adjacent channel separation. Congress also required the FCC to perform a study examining the impact on interference on the third adjacent channel.

Over two million dollars later, the results of the study validated the FCC's original analysis. Last year, I joined the Senator from Arizona, Mr. MCCAIN, and the Senator from Vermont, Mr. LEAHY, in sponsoring a bill that would have accepted the results of this latest engineering study to undo the 2001 appropriations rider. It also addressed specific concerns about protecting stations providing reading services over the radio frequencies to assist the blind. Under the Senator from Arizona's (Mr. MCCAIN) leadership, the Commerce Committee reported the low power FM bill out favorably with an amendment, but it did not come to a vote on the floor.

The time has come to move ahead with this proposal. The U.S. radio industry has experienced an unprecedented wave of consolidation and mergers since passage of the 1996 Telecommunications Act. The consolidation trend has raised barriers of both size and cost for new broadcasters. The legislation we introduce today allows new entrants into broadcasting activities and new voices on our public airwaves. I hope the Commerce Committee will again act quickly on this legislation.

Mr. LEAHY. Mr. President, I am pleased today to join Senators MCCAIN and CANTWELL in introducing important legislation to increase the number of frequencies available for low power radio stations in America. Low power stations serve their communities with broadcasting that reflects local needs and local preferences. In this way, low power FM offers a valuable counterpoint to nationwide media consolidation. As National Public Radio reported this morning, low power FM has a large following of listeners tired of hearing the same programming across the country. For this reason, I have been a strong supporter of low power FM for many years now. In fact, I recently urged FCC Chairman Powell to expedite licensing for new low power stations.

Unfortunately, for many years now the number of low power FM stations the FCC could license has been limited by unrealistic and unnecessary rules requiring these small stations to find available frequencies far from any full power broadcaster. Interference must be avoided if we are to make use of the

airwaves. The current rules, however, go beyond what is necessary to protect full power stations from interference and, instead, protect them from competition. This bill will reduce the unnecessary restrictions on low power FM stations.

Of course, the need for low power FM radio must be balanced against other important uses of nearby frequencies. I have worked hard to protect reading services for the blind, and this bill protects those services by retaining the third-adjacent rule where such services would be affected. In addition, this bill protects commercial broadcasters of all sizes from actual interference by leaving intact the FCC's expedited interference claim review procedures.

I look forward to working with all the parties involved to strengthen local broadcasting.

By Mr. LUGAR (for himself, Mr. DOMENICI, Mr. HAGEL, Mr. REED, Mr. BIDEN, Mr. LEVIN, Ms. COLLINS, Mr. MCCAIN, and Mr. OBAMA):

S. 313. A bill to improve authorities to address urgent nonproliferation crises and United States nonproliferation operations; to the Committee on Armed Services.

Mr. LUGAR. Mr. President, I rise to again introduce a bill that will strengthen U.S. nonproliferation efforts. It is supported by the Administration and several of my colleagues. This bill represents the fourth installment of Nunn-Lugar legislation that I have offered since 1991.

In that year, Sam Nunn and I authored the Nunn-Lugar Act, which established the Cooperative Threat Reduction Program. That program has provided U.S. funding and expertise to help the former Soviet Union safeguard and dismantle their enormous stockpiles of nuclear, chemical and biological weapons, means of delivery and related materials. In 1997, Senator Nunn and I were joined by Senator DOMENICI in introducing the Defense Against Weapons of Mass Destruction Act, which expanded Nunn-Lugar authorities in the former Soviet Union and provided WMD expertise to first responders in American cities. In 2003, Congress adopted the Nunn-Lugar Expansion Act, which authorized the Nunn-Lugar program to operate outside the former Soviet Union to address proliferation threats. The bill that I am introducing today would strengthen the Nunn-Lugar program and provide it with greater flexibility to address emerging threats.

To date, the Nunn-Lugar program has deactivated or destroyed: 6,564 nuclear warheads; 568 ICBMs; 477 ICBM silos; 17 ICBM mobile missile launchers; 142 bombers; 761 nuclear air-to-surface missiles; 420 submarine missile launchers; 543 submarine launched missiles; 28 nuclear submarines; and 194 nuclear test tunnels.

The Nunn-Lugar program also facilitated the removal of all nuclear weapons from Ukraine, Belarus and Kazakhstan. After the fall of the Soviet Union, these three nations emerged as the third, fourth, and eighth largest nuclear powers in the world. Today, all three are nuclear weapons free as a result of cooperative efforts under the Nunn-Lugar program. In addition, Nunn-Lugar is the primary tool through which the United States is working with Russian authorities to identify, safeguard and destroy Russia's massive chemical and biological warfare capacity.

These successes were never a foregone conclusion. Today, even after more than 12 years, creativity and constant vigilance are required to ensure that the Nunn-Lugar program is not encumbered by bureaucratic obstacles or undercut by political disagreements.

During Secretary Rice's confirmation hearing with the Senate Foreign Relations Committee on January 18, 2005, I asked Dr. Rice if she and the Administration supported this legislation, to which she responded ''Yes we do.'' Secretary Rice and President Bush have long argued that there needs to be maximum flexibility granted to the Administration to execute a global, focused and timely effort to fight proliferation. In view of the Administration's strong support for this bill, I look forward to working with the Armed Services Committee to enact it.

I have devoted much time and effort to overseeing and accelerating the Nunn-Lugar program. Uncounted individuals of great dedication serving on the ground in the former Soviet Union and in our government have made this program work. Nevertheless, from the beginning, we have encountered resistance to the Nunn-Lugar concept in both the United States and Russia. In our own country, opposition often has been motivated by false perceptions that Nunn-Lugar money is foreign assistance or by beliefs that Defense Department funds should only be spent on troops, weapons, or other war-fighting capabilities. Until recently, we also faced a general disinterest in non-proliferation that made gaining support for Nunn-Lugar funding and activities an annual struggle.

The attacks of September 11 changed the political discourse on this subject. We have turned a corner—the public, the media, and political candidates are paying more attention now. In a remarkable moment in the first presidential debate last year, both President Bush and his opponent agreed that the number one national security threat facing the United States was the prospect that weapons of mass destruction would fall into the hands of terrorists.

While the Administration has noted its support for this bill, the 9/11 Commission also weighed in last year with another important endorsement of the Nunn-Lugar program, saying that ''Preventing the proliferation of [weapons of mass destruction] warrants a maximum effort—by strengthening counter-proliferation efforts, expanding the Proliferation Security Initiative, and supporting the Cooperative Threat Reduction Program.'' The Report went on to say that ''Nunn-Lugar . . . is now in need of expansion, improvement and resources.''

My bill would underscore the bipartisan consensus on Nunn-Lugar by streamlining and accelerating Nunn-Lugar implementation. It would grant more flexibility to the President and the Secretary of Defense to undertake proliferation projects outside the former Soviet Union. It also would eliminate Congressionally-imposed conditions on Nunn-Lugar assistance that in the past have forced the suspension of time-sensitive nonproliferation projects. The purpose of the bill is to reduce bureaucratic red tape and friction within our government that hinder effective responses to nonproliferation opportunities and emergencies.

For example, recently Albania appealed for help in destroying 16 tons of chemical agent left over from the Cold War. Last August, I visited this remote storage facility. Nunn-Lugar officials are working closely with Albanian leaders to destroy this dangerous stockpile. But this experience also is illustrative of the need to reduce bureaucratic delays. The package of documents related to the mission took some 11 weeks to be finalized and readied for President Bush. From beginning to end, the bureaucratic process to authorize dismantlement of chemical weapons in Albania took more than three months. Fortunately, the situation in Albania was not a crisis, but we may not be able to afford these timelines in future nonproliferation emergencies.

As I said when I introduced this legislation during our November session last year, I wanted to have the benefit of the Administration's views and my colleagues' input. Since then, I am pleased that Senators DOMENICI, HAGEL, REED, BIDEN, LEVIN, COLLINS, MCCAIN and OBAMA have all signed on as co-sponsors. The Administration has now stated that they support this bill. I look forward to working in Congress to enact it.

By Mr. CORNYN:

S. 314. A bill to protect consumers, creditors, workers, pensioners, shareholders, and small businesses, by reforming the rules governing venue in bankruptcy cases to combat forum shopping by corporate debtors; to the Committee on the Judiciary.

Mr. CORNYN. Mr. President, I rise today to introduce the Fairness in Bankruptcy Litigation Act of 2005.

This legislation will provide much-needed protection—for consumers, creditors, workers, pensioners, shareholders, and small businesses—by reforming the rules governing venue in bankruptcy cases to combat forum shopping.

Quite simply, my bill will prevent corporate debtors from moving their

bankruptcy cases thousands of miles away from the communities and their workers who have the most at stake. And it will prevent bankrupt corporations from effectively selecting the judge in their own cases—because picking the judge isn't far off from picking the verdict.

This Act is a positive step for fairness, responsibility, and justice. It implements a major recommendation from the October 1997 National Bankruptcy Review Commission report, and earned the support of prominent bankruptcy law professors and practitioners nationwide. The bill is also supported by Texas Attorney General Greg Abbott (R) and former Massachusetts Attorney General Scott Harshbarger (D); Brady C. Williamson, who served as chairman of the National Bankruptcy Review Commission; and major national bankruptcy organizations like the National Association of Credit Management and the Commercial Law League of America.

With the introduction of this Act, this body will now have an opportunity to consider this growing crisis, which effects so many consumers and workers, just as we are about to examine the issue of comprehensive bankruptcy reform.

Sadly, our current bankruptcy venue law has become a target for enormous abuse. It's a problem that is well documented by academics, most recently in a comprehensive book published just last week by UCLA Law Professor Lynn M. LoPucki, as well as by Harvard Law Professor Elizabeth Warren, who served as the reporter for the National Bankruptcy Review Commission, and Professor Jay L. Westbrook of the University of Texas Law School.

I have personal experience with the worst kind of forum shopping. During my service to the State of Texas as Attorney General, I argued that the Enron Federal bankruptcy court proceedings should be litigated in Houston. That seemed like the common sense argument, of course—after all, Houston was where the majority of employees and others who were victimized by that corporate scandal called home.

Yet that's not where the case ended up. Instead, Enron was able to exploit a key loophole in bankruptcy law to maneuver their proceedings as far away from Houston as possible. They ended up in their desired forum in New York. See In re Enron Corp., 274 B.R. 327 (S.D.N.Y. Bankr. 2002).

Enron used the place of incorporation of one of its small subsidiaries in order to file a bankruptcy claim in New York, and then used that smaller claim as the basis for shifting all of its much larger bankruptcy proceedings into that same court. The company had 7,500 employees in the Houston headquarters, but they filed for bankruptcy in New York, where Enron had only 57 employees.

This kind of blatant forum shopping makes a mockery of our laws. The common-sense legislation that I've introduced today will combat such egregious forum shopping by requiring that corporate debtors file where their principal place of business or principal assets are located, rather than their state of incorporation, and forbidding parent companies from manipulating the venue by filing first through a subsidiary.

Bankruptcy venue abuse is not just bad for our legal system; it hurts America's consumers, creditors, workers, pensioners, shareholders, and small businesses. Under current law, corporate debtors effectively get to pick the court in which they will file for bankruptcy. As a result, creditors can be forced to litigate far away from the real-world location, where costs and inconveniences associated with travel are prohibitive.

This troubling loophole also serves to unfairly enable corporate debtors to evade their financial commitments. It badly disables consumers, creditors, workers, pensioners, shareholders, and small businesses from pursuing and receiving reasonable compensation from bankruptcy proceedings.

Current law allows debtors to forum shop and thereby to pick jurisdictions likely to rule in their favor. If debtors get to pick the jurisdiction, then bankruptcy judges have a disturbing incentive to compete with other bankruptcy courts for major bankruptcy cases, by tilting their rulings in favor of corporate debtors and their attorneys.

The examples are numerous. Here are three of the most prominent incidents: Polaroid. In October 2001, Boston-based Polaroid filed for bankruptcy in Delaware, listing assets at $1.9 billion. Polaroid's top executives claimed that the company was a ''melting ice cube,'' and arranged a hasty sale for $465 million to a single bidder. The court refused to hear testimony as to the true value of the company and closed the sale in only 70 days. The top executives went to work for the new buyer and received millions of dollars in stock. Meanwhile, disabled employees had their health-care coverage canceled. The so-called ''melting ice cube'' became profitable the day after the sale became final.

K-Mart. In January 2002, failed top executives delivered Michigan-based K-Mart to the bankruptcy court in Chicago, which reportedly had been actively soliciting large corporate debtors to file there. With a workforce of 225,000, K-Mart had more employees than any company that had ever filed bankrupt nationwide. The Chicago judge let the failed executives take tens of millions of dollars in bonuses, perks, and loan forgiveness. Bankruptcy lawyers also profited, pocketing nearly $140 million in legal fees. But some 43,000 creditors received only about ten cents on the dollar.

Worldcom. Worldcom perpetrated one of the biggest accounting frauds in history, inflating its income by $9 billion. Although based in Mississippi, Worldcom followed Enron into the New York bankruptcy court, where its managers received the same lenient treatment. No trustee was appointed; indeed, five months after the case was filed, the directors in office when the fraud occurred still constituted a majority of the board. They chose their own successors. A Top Worldcom executive used money taken from the company to build an exempt Texas homestead, and Worldcom took no action. That executive then used the homestead to buy his way out of his problems with the SEC. Meanwhile, creditors—mostly bondholders—lost $20 billion.

This is not the first time we have addressed this important issue. The House Judiciary Subcommittee on Commercial and Administrative Law held a hearing on July 21, 2004, entitled ''Administration of Large Business Bankruptcy Reorganizations: Has Competition for Big Cases Corrupted the Bankruptcy System?,'' and Congressman BRAD SHERMAN (D-CA) has previously led efforts to champion bankruptcy venue reform in the House. During the 107th Congress, Senator DURBIN introduced S. 2798, the Employee Abuse Prevention Act of 2002, joined by Senators KENNEDY, KERRY, LEAHY, and ROCKEFELLER, while Congressman WILLIAM D. DELAHUNT (D-MA) introduced the same bill in the House; section 205 of that legislation would have reformed bankruptcy venue law.

I believe we must take steps to respond to this important problem. The American people deserve better from our legal system. All bankruptcy cases deserve to be handled fairly and justly, and no corporate debtor should be allowed to escape responsibility by fleeing to another venue. It is high time that we take up this much-needed reform.

I ask unanimous consent that letters of support be printed in the RECORD.

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

ATTORNEY GENERAL OF TEXAS,
Austin, TX, February 2, 2005.

Re Fairness in Bankruptcy Litigation Act of 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: I support your important initiative to prohibit opportunistic forum shopping by corporate debtors.

As you know firsthand from your tenure as Attorney General of Texas during the State's involvement in the Enron bankruptcy proceedings, such unsavory court-shopping truly harms innumerable parties—large and small alike. Far too often, corporate debtors file for bankruptcy in a far-flung district solely because of their incorporation in the state where that district is located.

Your proposal to amend 28 U.S.C. §1408—the aptly named Fairness in Bankruptcy Litigation Act—would prevent this unseemly practice. As you know, bankruptcy forum shopping can adversely impact not just states and state agencies, but countless consumers, creditors, employees, pensioners, stockholders, and small businesses that are regularly thwarted from protecting their interests simply because the debtor filed in a distant forum.

The venue stratagems used by large law firms to maximize their professional fees, render far-away courts inaccessible to scores of unsecured creditors, and select compliant, debtor-friendly judges undermine the credibility of our nation's bankruptcy system. Indeed, after two years of public hearings, the National Bankruptcy Review Commission recommended that Congress overhaul the law to prevent forum shopping by large Chapter 11 debtors and their affiliates. I strongly support their recommendation and applaud you for bringing this urgent matter to the attention of the United State Senate.

Abusive forum shopping by corporate debtors harms Americans from all walks of life. It is time for this gamesmanship to stop. I commend your efforts to strengthen our bankruptcy system and safeguard the interests of ordinary Americans.

Sincerely,

GREG ABBOTT.

MURPHY, HESSE, TOOMEY & LEHANE, LLP, ATTORNEYS AT LAW,
Boston, MA, February 8, 2005.

Re Bankruptcy Venue Reform.

Senator JOHN CORNYN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR: I commend efforts, either through an amendment to the bankruptcy bill before Congress or through the separate vehicle being introduced by Senator Cornyn, to close a major jurisdictional loophole in the bankruptcy statutes which directly affects every investor, business competitor, creditor, consumer, union, and state Attorney General in this country. While forum shopping and court competition are having a direct, adverse effect on the governance and reorganization of large, public companies, investors are feeling that effect in their returns; employees and unions in the abrogation of collectively bargained contracts and economic security; competitors in the loss of a level playing field; consumers and creditors in the loss of basic rights; and Attorneys General in the loss of power to be heard and to protect the rights of constituents and state public policy.

For the past decade, most bankrupt large public companies have ''forum shopped'' their cases to the bankauptcy courts in Wilmington, Delaware and New York City. For a time, that was generally thought to be advantageous. But events in Enron and other cases have shown otherwise. The shopping benefited bankruptcy professionals who worked in those cases by enabling them to charge higher fees and by freeing them from some restrictions on conflicts of interest. The shopping also benefited executives of some of those companies by allowing them to hang onto their jobs longer and in some cases even be paid large ''retention bonuses.''

But the effect of forum shopping on the companies—and hence on the shareholders and bondholders who invested in them—has been decidedly negative. According to major studies and the empirical research of experts like Professor Lynn LoPucki of UCLA law school, companies reorganized in the Delaware and New York courts in the early and mid-1990s failed at a rate more than double the rate for companies reorganized in other courts. As other courts copied Delaware in an effort to staunch their outflow of cases, the failure rates for those courts' reorganizations skyrocketed to match Delaware's rates. To confirm a plan, the Bankruptcy Code requires that the court find that ''confirmation . . . is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor.'' But of the 43 largest public companies reorganized in U.S. Bankruptcy Courts from 1997 through 2000—the most recent period for which failure rates can be calculated—21 (49%) were back in bankruptcy within five years. Historically, the failure rates for big reorganization in non-competing courts have been below 10%.

Legislative action can address this problem in a common sense, fair, simple and direct way, by requiring bankrupt companies file in their local bankruptcy courts. By local courts, I mean the courts in the cities where the companies have their headquarters or their principal operations. This will free judges from the pressures to compete with other courts for cases, and enable them to return to the crucial function for which they were appointed: to protect shareholders, creditors, employees, suppliers, customers and the companies themselves during the brief but often frantic period between the failure of one corporate regime and its replacement with another. It will also ensure that these judges and courts hear from everyone affected and entitled to be heard—not only those who can afford to travel or appear in ''foreign'' courts, especially the public's lawyers, the Attorneys General. It is not a panacea for economic insecurity, and it changes no legal rights or duties or law. But it will cure a major inequity and a loophole utilized primarily to ''game'' the system. Enactment of this bill, or a similar legislative amendment, will enable us to say: ''We had a problem, and now we have fixed it.''

SCOTT HARSHBARGER.

COMMERCIAL LAW LEAGUE OF AMERICA®,
Chicago, IL, February 7, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: The Commercial Law League of America (''CLLA''), founded in 1895, is the Nation's oldest organization of attorneys and other experts in credit and finance actively engaged in the field of commercial law, bankruptcy and reorganization. Its membership exceeds 3,500 individuals. The CLLA has long been associated with the representation of creditor interests, while at the same time seeking fair, equitable and efficient administration of bankruptcy cases for all parties in interest.

The Bankruptcy Section of the CLLA is made up of approximately 1,100 bankruptcy lawyers and bankruptcy judges from virtually every State in the United States. Its members include practitioners with both small and large practices, who represent divergent interests in bankruptcy cases. The CLLA has testified on numerous occasions before Congress as experts in the bankruptcy and reorganization fields.

A principal concern of the CLLA is the need for an amendment requiring that the domicile and residence for venue of corporate debtors be conclusively presumed to be the location of the debtor's principal place of business without regard to the debtor's state of incorporation. Such a change would benefit creditors and prevent an unacceptable degree of forum shopping by debtors who are in search of a venue that will be friendly to their needs. More important, however, requiring that a corporate bankruptcy take place locally ensures that the distinct needs of the community are not overlooked.

Allowing the practice of forum shopping by debtors undermines the bankruptcy process and creates unwarranted competition among the courts. Before filing, the debtor is able to determine which courts have taken friendly views of the debtor's particular needs and select such a court with the intent of creating a disadvantage for creditors. Indeed, some corporate debtors have even commenced bankruptcy cases in preferred venues by strategically creating or using otherwise healthy subsidiaries to create a basis for filing in the intended court. Current law as written fosters these abuses.

The CLLA strongly supports passage of the Fairness in Bankruptcy Litigation Act of 2005 (the ''Act'') since the proposed legislation addresses these abuses. The Act will help to eliminate the forum shopping that skews the bankruptcy process and will foster greater local control over important business and community decisions. Although the Act may require some technical modifications to achieve and address the legislation's purported goals, its overall provisions and goals are well grounded and supported by the abuses taking place within the bankruptcy system.

Much has been said among members of Congress that bankruptcy reform is necessary to prevent what it perceives as abuse of the bankruptcy process. A venue provision that requires corporate bankruptcies to be filed at the principal place of business furthers that goal and for all these reasons we encourage the passage of the Act at the earliest opportunity.

Respectfully submitted,

MARY K. WHITMER,
President.
JAY L. WELFORD,
Co-Chair, National Governmental Affairs Committee.
PETER C. CALIFANO,
Chair, Legislative Committee, Bankruptcy Section.
ALAN I. NAHMIAS,
Chair, Bankruptcy Section.
JUDITH GREENSTONE MILLER,
Co-Chair, National Governmental Affairs Committee.

HARVARD LAW SCHOOL,
January 31, 2005.

Senator JOHN CORNYN,
617 Senate Hart Office Building,
Washington, DC.

DEAR SENATOR CORNYN: Since its inception, the central promise of the Federal bankruptcy system is that all creditors—large and small—have equal access to participate in the judicially-supervised liquidation or reorganization of the debtor. No bankruptcy will be run to benefit one group of creditors over another, or to permit the debtor to escape from close scrutiny after its financial collapse.

Unfortunately, that promise has been significantly eroded. Mega-companies and their counsel shop for courts that will render decisions that may favor the debtor, the attorneys or a small group of powerful creditors. These parties often file the bankruptcy petitions in locations far distant from most of the company's business and from most of its creditors, including its workers, retirees and local trade creditors who have made their own investments in the company.

Forum shopping creates an advantage for the insiders, while making it virtually impossible for small creditors to participate in the bankruptcy process. Employees, pensioners, trade creditors and others have claims that are important to them, but that are not large enough to justify millions of dollars in lawyers' fees or trips to distant locations. As a result, many of these smaller parties are shut out of the system. They literally cannot get to the courthouse.

Bankruptcy courts around the country are capable of handling the cases that come their way—large or small. The judges are smart and thoughtful, and the court personnel are dedicated and hard-working. No

single court in this country, regardless of its experience, should have an exclusive lock on dealing with big cases. No court has special powers or unique skills to deal with the questions of claims, property of the estate, financing, fraud, attorneys' fees and so on—issues that can arise in any case, regardless of size.

The current system of court shopping harms too many parties. Closing a loophole in the bankruptcy laws that permits this unseemly practice and forcing companies in trouble to subject themselves to the scrutiny of their local courts and local creditors is an important step toward strengthening the credibility of the bankruptcy system. The reform embodied in your proposal is real reform. If a company prospers in part because it draws on the strength of the community where it operates, that same community should be able to participate fully in its financial reorganization.

Very truly yours,

ELIZABETH WARREN,
Leo Gottlieb Professor of Law.

SCHOOL OF LAW,
THE UNIVERSITY OF TEXAS AT AUSTIN,
Austin, Texas, February 6, 2005.

Senator JOHN CORNYN,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR CORNYN: There is no single reform of our Chapter 11 system that is as important as ensuring an end to the forum shopping that has so distorted that system in recent years. The present venue rules are so loosely constructed that they permit any large public' company to file a Chapter 11 pretty much wherever it likes. Naturally, the management of companies in financial trouble and the professionals that advise them take advantage of those rules to choose the forum that will best serve their interests. Often that means a Chapter 11 filing in a courthouse far away from the company's home.

These rules permit the company's management to escape the close scrutiny of intensely interested local media and to avoid attendance at court hearings by employees, local suppliers, and others vitally interested in the case and knowledgeable about the company. They force smaller creditors to file claims from afar, claims that are often the subject of an arbitrary objection by the debtor that the distant creditor cannot afford to litigate. Conversely, creditors who received some payment before bankruptcy may be the subject of long-distance preference attacks that they cannot properly defend in a remote courthouse, especially if the amounts involved, although substantial, are not enough to justify the expense of a defense. Compounding the problem of expense is the creditor's lack of knowledge of lawyers in the distant forum and the risk, especially in Delaware, that in a big case most experienced local lawyers will already be committed to other clients. On top of these direct injuries to creditors, in cases where a trustee in bankruptcy is appointed, the administration of assets hundreds or thousands of miles removed from the trustee's home cannot be done efficiently and rarely can be done well.

These and other effects of forum shopping are inefficient and prejudicial. In addition, the present system imposes subtle pressures on bankruptcy judges and district judges, who cannot be unaware that their decisions as to venue will determine whether the community and the local bar will be greatly enriched by the administration of large bankruptcy cases. Despite the high degree of professionalism on our federal bench, it is not reasonable to expect that these pressures will have no effect.

Although I am expressing my own opinions and not speaking for the University or the Law School, I write as someone who has practiced, studied, taught, and written about bankruptcy law for over thirty years. Please let me know if I can provide further information that would be helpful to your work.

Respectfully,

JAY L. WESTBROOK,
BENNO C. SCHMIDT,
Chair of Business Law

UNIVERSITY OF CALIFORNIA,
LOS ANGELES, SCHOOL OF LAW,
Los Angeles, CA, January 31, 2005.

Senator JOHN CORNYN,
Hart Senate Office Bldg.,
Washington, DC.

DEAR SENATOR CORNYN: I write to thank you for your courage in proposing the Fairness in Bankruptcy Litigation Act of 2005. This legislation will not only provide protection for all parties to large, public company bankruptcies, it will also protect honest bankruptcy judges from the pressures arising from the necessity to compete for cases. My research suggests that by ending the necessity for the courts to compete for cases, this legislation will result in better reorganizations, the preservation of jobs, and higher returns to creditors and shareholders.

This is a difficult issue to present to the public, because it is both obscure and complex. Please be assured that I and many others appalled by the competition will do whatever we can to assist you.

Yours truly,

LYAN M. LOPUCKI

DEAR SENATOR CORNYN: I am writing to you to support your effort to pass a bill that would prevent corporations from shopping for the most favorable venue. The current practice has resulted in a ''race to the bottom'' as bankruptcy courts work hard to lure corporate bankruptcies to their courts.

I was a professor at the University of Missouri-Kansas City School of Law for almost 20 years. My own worst example is the case of Birch Telecom, a Kansas City-based company that filed in Delaware in 2002. After laying off a quarter of their employees—citizens of Missouri, Kansas, and Texas—Birch went into bankruptcy with a prepared plan (known as a ''pre-pack'') that included significant compensation for the very officers who had led the company into bankruptcy.

A bankruptcy judge from Texas, sitting by designation (because of the volume of cases being filed in Delaware) had the audacity to suggest that he might not approve the plan because of the compensation package. Before his words were out of his mouth, Birch Telecom's attorneys had appealed the reference of the case to that judge. The case was withdrawn, and a Delaware judge, who understood that the game is appeasing the corporate debtors, approved the plan 13 days later.

What possible chance do employees and local creditors have when a distant bankruptcy judge will rubber-stamp the company's every request, in a court too far away for them even to appear?

Congress says that it is trying to stop bankruptcy abuse. Venue shopping is the very worst example of bankruptcy abuse, and it affects the lives of thousands of ordinary Americans—employees and small businesses—every single day.

I wish you good luck in the passage of this important piece of legislation.

Sincerely,

CORINNE COOPER,
Professor Emerita of Law.

CREEL & MOORE, L.L.P.,
ATTORNEYS AND COUNSELORS,
Dallas, TX, February 4, 2005.

Re proposed bankruptcy legislation/venue.

Senator JOHN CORNYN,
Hart Senate Building, Washington, DC.

DEAR SENATOR CORNYN: One of the issues being discussed in connection with proposed bankruptcy legislation is in what venue or venues is it most appropriate for business debtors to initiate voluntary bankruptcy cases, where they conduct their daily business or where they were incorporated.

Because a corporation (or any other type of business organization) seeking bankruptcy relief should do so in a forum that is convenient for itself, its management, its employees and its creditors, Section 1408 of Title 28 of the U.S. Code should be amended to prohibit the right of a debtor corporation to file in the state of its incorporation unless it either has its principal place of business or its principal assets in that state.

The reason for requiring a debtor to seek relief in a bankruptcy court nearest to its actual place of operation is that, otherwise, the rights of the other parties are significantly and adversely affected because of the distance, delay and costs of dealing with a faraway court.

The practice that has developed over the years is that corporations, for example those created under the laws of Delaware, file in Delaware, far from their actual places of business, Texas for example, thus causing their management, employees and creditors to have the burden and expense of travel, to hire distant counsel with whom they have had no prior experience, or both, in order to protect their interests. Many times, at least from a creditor/employee perspective, the inconvenience and expense, when balanced against the probability of an insignificant recovery on a claim, is such that creditors/employees simply abandon their claims, a result which is contrary to the spirit and intent of the Bankruptcy Code.

As a bankruptcy practitioner for over 40 years and one who is active in various bankruptcy organizations, I urge you and your staff to consider the thoughts expressed in their letter.

As the grandfather of Richie Anderson who served as an intern on your staff last summer, I know, from his experience, that you will listen to the opinions of your constituents.

Yours very truly,

L. E. CREEL, III.

WINSTEAD,
February 4, 2005.

Re Bankruptcy Venue Reform
Hon. JOHN CORNYN,
U.S. Senate, Hart Senate Office Bldg.,
Washington, DC.

DEAR SENATOR CORNYN: I write in support of reform of the Bankruptcy Code's current venue provisions.

I am twenty-three year bankruptcy practitioner and head of the bankruptcy practice for our law firm, I additionally serve as Vice President (Business Bankruptcy) of the Bankruptcy Section of the State Bar of Texas and am national co-chair of the Unsecured Trade Creditors' Committee of the American Bankruptcy Institute. My practice, while focused in Texas, brings me before courts throughout the country—particularly those in Delaware and New York.

Practicing in Texas, I have personal experience with the unfortunate practice of companies and their counsel shopping for forums. Whether to escape the watchful eye of employees, creditors or the press, numerous companies from around the country have filed bankruptcy cases in the District of

Delaware or the Southern District of New York to obtain what they believed would be either favorable treatment or a venue for their bankruptcy cases which would in large measure frustrate the rights and interests of their creditors and employees. It is for these reasons, among others, that I strongly support a modification of the Bankruptcy Venue Statute and urge prompt action.

If I can be of any assistance to you, please do not hesitate to call upon me. Best regards.

Very truly yours,

BERRY D. SPEARS.

MUNSCH HARDT KOPF & HARR PC,
ATTORNEYS & COUNSELORS,
February 7, 2005.

Re Amendment to Section 1408 of Title 28, United States Code

Hon. JOHN CORNYN,
U.S. Senate, Hart Senate Office Bldg., Washington, DC.

DEAR SENATOR CORNYN: As a bankruptcy practitioner for some 25 years, I am writing to voice my support for an amendment to the venue provisions of Section 1408 of Title 28, United States Code. As has been well documented, the concept of ''forum shopping'' by significant Chapter 11 Debtors throughout the country has become an art form over the last few years. Certain jurisdictions now actively campaign to attract large, high-profile bankruptcy cases to their venue. It goes without saying that bankruptcy judges must become ''Debtor friendly'' in order to maintain the attractiveness of these venue options. Accordingly, decisions relating to the allowance of professional fees, conflicts and other critical bankruptcy issues have become disparate throughout the country.

An amendment to Section 1408, which limits the use of the state of incorporation to those instances where the Debtors' principal place of business or principal assets reside, will promote uniformity as well as removing some of the perceived inequities in the system. The public's perception of a fair and uniform bankruptcy system is paramount.

Thank you for your interest in this legislation.

Very truly yours,

RUSSELL L. MUNSCH.

FULBRIGHT & JAWORSKI, L.L.P.,
Houston, Texas, February 7, 2005.

Re bankruptcy venue reform.

Senator JOHN CORNYN,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR CORNYN: I write you to express my strong support for bankruptcy venue reform. By way of introduction, I have been a partner in the bankruptcy section of Fulbright & Jaworski since June 1, 2004. Prior to that, I served as a United States Bankruptcy Judge in Houston for almost 17 years, resigning as Chief Judge a day before I joined Fulbright.

Over the many years of my judicial career, I watched as many cases which should have been filed in Texas instead found their way to the dockets of courts in Delaware, New York, or some other distant jurisdiction. This migration of large cases is not unique to Texas and it represents a fundamental flaw in the perceived and actual fairness of the bankruptcy system. The ''little people'' (small creditors, former employees, etc.) in a large bankruptcy case are at once the most vulnerable economically and the parties least capable of participating in a distant forum.

I firmly feel the integrity of today's bankruptcy system requires that the rights of all involved be protected and that fair access to court be ensured. Bankruptcy venue reform would be a tremendous step toward rectifying these problems.

The opinions expressed in this letter are my own and not those of Fulbright & Jaworski or its clients. I appreciate your consideration of my concerns. If you should have any questions or need additional information or assistance from me, please do not hesitate to contact me.

Sincerely,

WILLIAM GREENDYKE.

JANUARY 31, 2005.

Senator JOHN CORNYN,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR CORNYN: On behalf of the National Association of Credit Management (NACM), I am writing to express the support of NACM National Board of Directors and the NACM membership for the Venue in Bankruptcy Cases bill scheduled to be introduced by Senator Cornyn. This important legislation would provide enormous relief to the thousands of business creditors, and most importantly to small business creditors whose interests are routinely impaired by a bankruptcy process that is long-overdue for change.

NACM is a 22,000-member trade association, representing the interests of corporate (commercial) credit executives. NACM was founded in 1896 and represents both American business credit professionals in all 50 states as well as business credit executives in more than 30 countries worldwide. NACM's mission is to ensure the constant improvement and enhancement of the business trade credit profession and process.

NACM's membership comprises all types of businesses: manufacturers, wholesalers, service industries, and financial institutions. NACM's members range in size from small businesses to a majority of the Fortune 500. NACM members make the daily decisions to extend unsecured, business and trade credit from one company to another. NACM members—the business credit executive—approve and provide billions of dollars each day in business and trade credit, which fuels this country's business economy.

This bill would provide much needed relief to businesses and—perhaps even more importantly—to small businesses. This bill would provide relief to the current practice of requesting a transfer of venue, which is both expensive and time consuming to both the debtor's estate and to creditors. Additionally, this bill would address any abuse that currently exists in the Code that encourages ''shopping'' cases into a ''friendly forum''.

Our membership stands ready to provide whatever level of support is needed to advance this important legislation. As the national organization representing the decision makers within the American economic model who drive commerce, we hope you will ensure that Congressional leadership will take action on this bill as expeditiously as possible.

We must provide immediate relief to the small business that simply cannot afford to wait any longer for bankruptcy reform from Congress.

Thank you for your consideration of our comments and please let us know what we can do to assist you in advancing this legislation.

Sincerely yours,

ROBIN SCHAUSELL, CAE,
President.

By Mr. FEINGOLD:

S. 315. A bill to amend the Internal Revenue Code of 1986 to provide that reimbursements for costs of using passenger automobiles for charitable and other organizations are excluded from gross income, and for other purposes; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, I am pleased to reintroduce legislation today that would increase the mileage reimbursement rate for volunteers.

Under current law, when volunteers use their cars for charitable purposes, the volunteers may be reimbursed up to 14 cents per mile for their donated services without triggering a tax consequence for either the organization or the volunteers. If the charitable organization reimburses any more than that, they are required to file an information return indicating the amount, and the volunteers must include the amount over 14 cents per mile in their taxable income. By contrast, the mileage reimbursement level currently permitted for businesses is 40.5 cents per mile.

We are asking volunteers and volunteer organizations to bear a greater burden of delivering essential services. But the 14 cents per mile limit is posing a very real hardship for charitable organizations and other nonprofit groups. I have heard from a number of people in Wisconsin on the need to increase this reimbursement limit.

A representative of one organization, the Portage County Department on Aging, explained just how important volunteer drivers are to their ability to provide services to seniors in that county. The Department on Aging reported that dozens of volunteer drivers delivered meals to homes and transported people to medical appointments, meal sites, and other essential services.

As many of my colleagues know, the senior meals program is one of the most vital services provided under the Older Americans Act, and ensuring that meals can be delivered to seniors or that seniors can be taken to meal sites is an essential part of that program. Unfortunately, Federal support for the senior nutrition programs has stagnated in recent years. This has increased pressure on local programs to leverage more volunteer services to make up for lagging Federal support. The 14 cents per mile reimbursement limit, though, increasingly poses a barrier to obtaining those contributions. Portage County reports that many of their volunteers cannot afford to offer their services under such a restriction. And if volunteers cannot be found, their services will have to be replaced by contracting with a provider, greatly increasing costs to the Department, costs that come directly out of the pot of funds available to pay for meals and other services.

And the same is true for thousands of other non-profit and charitable organizations that provide essential services to communities across our Nation.

By contrast, businesses do not face this restrictive mileage reimbursement limit. The comparable mileage rate for someone who works for a business is currently 40.5 cents per mile. This disparity means that a business hired to deliver the same meals delivered by

volunteers for Portage County may reimburse their employees over double the amount permitted the volunteer without a tax consequence.

This doesn't make sense. The 14 cents per mile volunteer reimbursement limit is badly outdated. According to the Congressional Research Service, Congress first set a reimbursement rate of 12 cents per mile as part of the Deficit Reduction Act of 1984, and did not increase it until 1997, when the level was raised slightly, to 14 cents per mile, as part of the Taxpayer Relief Act of 1997.

The bill I am introducing today is identical to a measure I introduced in the 107th Congress and the 108th Congress in nearly every respect. It raises the limit on volunteer mileage reimbursement to the level permitted to businesses. It is essentially the same provision passed by the Senate as part of a tax bill in 1999, and it is essentially the same provision that passed the Senate as part of the CARE Act.

At the time of the 1999 tax bill, the Joint Committee on Taxation (JCT) estimated that the mileage reimbursement provision would result in the loss of $1 million over the five-year fiscal period from 1999 to 2004. The revenue loss was so small that the JCT did not make the estimate on a year by year basis.

Though the revenue loss is small, it is vital that we do everything we can to move toward a balanced budget, and to that end I have included a provision to fully offset the cost of the measure and make it deficit neutral. That provision increases the criminal monetary penalties for individuals and corporations convicted of tax fraud. The provision passed the Senate in the 108th Congress as part of the JOBS bill, but was later dropped in conference and was not included in the final version of that bill.

I urge my colleagues to support this measure. It will help ensure charitable organizations can continue to attract the volunteers that play such a critical role in helping to deliver services and it will simplify the tax code both for nonprofit groups and the volunteers themselves.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 315

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

SECTION 1. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS EXCLUDED FROM GROSS INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139A the following new section:

''SEC. 139B. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS.

''(a) IN GENERAL.—Gross income of an individual does not include amounts received, from an organization described in section 170(c), as reimbursement of operating expenses with respect to use of a passenger automobile for the benefit of such organization. The preceding sentence shall apply only to the extent that such reimbursement would be deductible under this chapter if section 274(d) were applied—

''(1) by using the standard business mileage rate established under such section, and

''(2) as if the individual were an employee of an organization not described in section 170(c).

''(b) NO DOUBLE BENEFIT.—Subsection (a) shall not apply with respect to any expenses if the individual claims a deduction or credit for such expenses under any other provision of this title.

''(c) EXEMPTION FROM REPORTING REQUIREMENTS.—Section 6041 shall not apply with respect to reimbursements excluded from income under subsection (a).''.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 139A and inserting the following new item:

''Sec. 139B. Reimbursement for use of passenger automobile for charity.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 2. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 7206 of the Internal Revenue Code of 1986 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

(2) by adding at the end the following new subsection:

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 of the Internal Revenue Code of 1986 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 of such Code is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) of such Code (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

By Mr. FEINGOLD:

S. 316. A bill to limit authority to delay notice of search warrants; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I will reintroduce in the Senate the Reasonable Notice and Search Act. This bill is nearly identical to a bill I introduced in the 108th Congress, S. 1701. It addresses Section 213 of the USA-PATRIOT Act, the provision of that important statute passed in the wake of the 9/11 attacks that has caused perhaps the most concern among Members of Congress and the public. Section 213, sometimes referred to as the ''delayed notice search provision'' or the ''sneak and peek provision,'' authorizes the government in limited circumstances to conduct a search without immediately serving a search warrant on the owner or occupant of the premises that have been searched.

Prior to the PATRIOT Act, secret searches for physical evidence were performed in some jurisdictions under the authority of Court of Appeals decisions, but the Supreme Court never definitively ruled whether they were constitutional. Section 213 of the PATRIOT Act authorized delayed notice warrants in any case in which an ''adverse result'' would occur if the warrant were served before the search was executed. Adverse result was defined as including: 1. endangering the life or physical safety of an individual; 2. flight from prosecution; 3. destruction of or tampering with evidence; 4. intimidation of potential witnesses; or 5. otherwise seriously jeopardizing an investigation or unduly delaying a trial. This last catch-all category could apply in virtually any criminal case. In addition, while some courts had required the service of the warrant within a specified period of time, the PATRIOT Act simply required that the warrant specify that it would be served within a ''reasonable'' period of time after the search.

It is interesting to note that this provision of the PATRIOT Act was not limited to terrorism cases. In fact, before the PATRIOT Act passed, the FBI already had the authority to conduct secret searches of foreign terrorists and spies with no notice at all under the Foreign Intelligence Surveillance Act. Furthermore, the PATRIOT Act ''sneak and peek'' authority was not made subject to the sunset provision that will cause many of the new surveillance provisions of the act to expire at the end of this year unless Congress reenacts them. So Section 213 was pretty clearly a provision that the Department of Justice wanted regardless of the terrorism threat after 9/11.

Perhaps that is why this provision has caused such controversy since it was passed. In 2003, by a wide bipartisan margin, the House passed an amendment to the Commerce-Justice-

State appropriations bill offered by Representative Otter from Idaho, a Republican, to stop funding for delayed notice searches authorized under section 213. The size of the vote took the Department by surprise, and it immediately set out to defend the provision aggressively. Clearly, this is a power that the Department does not want to lose.

I raised concerns about the sneak and peek provision when it was included in the PATRIOT Act. I did not, and still do not, believe there had been adequate study and analysis of the justifications for these searches and the potential safeguards that might be included. I did not argue then, however, and I am not arguing now that there should be no delayed notice searches at all and that the provision should be repealed. I simply believe that this provision should be modified to protect against abuse. My bill will do four things to accomplish this.

First, my bill would narrow the circumstances in which a delayed notice warrant can be granted to the following: potential loss of life, flight from prosecution, destruction or tampering with evidence, or intimidation of potential witnesses. The ''catch-all provision'' in section 213, allowing a secret search when serving the warrant would ''seriously jeopardize an investigation or unduly delay a trial'' can too easily be turned into permission to do these searches whenever the government wants.

Second, I believe that any delayed notice warrant should provide for a specific and limited time period within which notice must be given—7 days. This is consistent with some of the pre-PATRIOT Act court decisions and will help to bring this provision in closer accord with the Fourth Amendment to the Constitution. Under my bill, prosecutors will be permitted to seek 7-day extensions if circumstances continue to warrant that the subject not be made aware of the search. But the default should be a week, unless a court is convinced that more time should be permitted.

Third, Section 213 should include a sunset provision so that it expires along with the other expanded surveillance provisions in Title II of the PATRIOT Act, at the end of 2005. This will allow Congress to determine if the balance between civil liberties and law enforcement has been correctly struck.

Finally, the bill requires a public report on the number of times that section 213 is used, the number of times that extensions are sought beyond the 7-day notice period, and the type of crimes being investigated with this power. This information will help the public and Congress evaluate the need for this authority and determine whether it should be retained or modified after the sunset.

These are reasonable and moderate changes to the law. They do not gut the provision. Rather, they recognize the growing and legitimate concern from across the political spectrum that this provision was passed in haste and presents the potential for abuse. They also send a message that Fourth Amendment rights have meaning and potential violations of those rights should be minimized if at all possible. I urge my colleagues to support this bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 316

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Reasonable Notice and Search Act''.

SEC. 2. LIMITATION ON AUTHORITY TO DELAY NOTICE OF SEARCH WARRANTS.

Section 3103a of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''may have an adverse result (as defined in section 2705)'' and inserting ''will endanger the life or physical safety of an individual, result in flight from prosecution, result in the destruction of or tampering with the evidence sought under the warrant, or result in intimidation of potential witnesses''; and

(B) in paragraph (3), by striking ''a reasonable period'' and all that follows and inserting ''7 calendar days, which period, upon application of the Attorney General, the Deputy Attorney General, or an Associate Attorney General, may thereafter be extended by the court for additional periods of up to 7 calendar days each if the court finds, for each application, reasonable cause to believe that notice of the execution of the warrant will endanger the life or physical safety of an individual, result in flight from prosecution, result in the destruction of or tampering with the evidence sought under the warrant, or result in intimidation of potential witnesses.''; and

(2) by adding at the end the following:

''(c) REPORTS.—

''(1) IN GENERAL.—On a semiannual basis, the Attorney General shall transmit to Congress and make public a report concerning all requests for delays of notice, and for extensions of delays of notice, with respect to warrants under subsection (b).

''(2) CONTENTS.—Each report under paragraph (1) shall include, with respect to the preceding 6-month period—

''(A) the total number of requests for delays of notice with respect to warrants under subsection (b);

''(B) the total number of such requests granted or denied;

''(C) for each request for delayed notice that was granted, the total number of applications for extensions of the delay of notice and the total number of such extensions granted or denied; and

''(D) on an aggregate basis, the nature of the crime being investigated for each request for delay of notice that was granted or denied.''.

SEC. 3. SUNSET ON DELAYED NOTICE AUTHORITY.

(a) PATRIOT ACT.—Section 224(a) of the USA PATRIOT Act of 2001 (Public Law 107–56; 115 Stat. 295) is amended by striking ''213,''.

(b) AMENDMENTS.—The amendments made by this Act shall sunset as provided in section 224 of the USA PATRIOT Act of 2001.

By Mr. FEINGOLD (for himself, Mr. AKAKA, Mr. BINGAMAN, Ms. CANTWELL, Mr. CORZINE, Mr. DAYTON, Mr. DURBIN, Mr. JEFFORDS, Mr. KENNEDY, and Mr. WYDEN):

S. 317. A bill to protect privacy by limiting the access of the Government to library, bookseller, and other personal records for foreign intelligence and counterintelligence purposes; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I will reintroduce the Library, Bookseller, and Personal Records Privacy Act. The bill is identical to the bill I introduced in the 108th Congress, S. 1507.

This bill would amend Sections 215 and 505 of the USA–PATRIOT Act to protect the privacy of law-abiding Americans. It would set reasonable limits on the Federal Government's access to library, bookseller, medical, and other sensitive, personal information under the Foreign Intelligence Surveillance Act (''FISA'') and related foreign intelligence authority.

I am pleased that several of my distinguished colleagues have joined me as original cosponsors of this important legislation.

Millions of Patriotic Americans love our country and support our military men and women in their difficult missions abroad, but worry about the fate of our Constitution here at home.

Much of our Nation's strength comes from our constitutional liberties and respect for the rule of law. That is what has kept us free for our two and a quarter century history. Our constitutional freedoms, our American values, are what make our country worth fighting for as we strive to win the war on terror.

Here at home, there is no question that the FBI needs ample resources and legal authority to prevent future acts of terrorism. But the PATRIOT Act went too far when it comes to the government's access to personal information about law abiding Americans.

Even though in the end I opposed the PATRIOT Act, there were many provisions that I did support. And even in those provisions I sought to amend when the bill was debated, there was often some change that I supported. For example, Congress was right to expand the category of business records that the FBI could obtain pursuant to the Foreign Intelligence Surveillance Act. Prior to the PATRIOT Act, the FBI could seek a court order to obtain only travel records—such as airline, hotel, and car rental records—and records maintained by storage facilities. The PATRIOT Act allows any business records to be subpoenaed. I don't quibble with that change.

But what my colleagues and I do find problematic—and an increasing number of Americans who value their privacy and First Amendment rights agree with us—is that the current law allows the FBI broad, almost unfettered access to personal information

about law-abiding Americans who have no connection to terrorism or spying.

Section 215 of the PATRIOT Act requires the FBI to show in an application to the court that the documents are ''sought for'' an international terrorism or foreign intelligence investigation. There is no requirement that the FBI make a showing of individualized suspicion that the documents relate to a suspected terrorist or spy.

In other words, under current law, the FBI could serve a subpoena on a library for all the borrowing records of its patrons or on a bookseller for the purchasing records of its customers simply by asserting that they want the records for a terrorism investigation.

Since the passage of the PATRIOT Act, librarians and booksellers have become increasingly concerned by the potential for abuse of this law. I was pleased to stand with the American Booksellers Association and the Free Expression Network over 2 years ago when we first started to raise these concerns.

Librarians and booksellers are concerned that under the PATRIOT Act, the FBI could seize records from libraries and booksellers in order to monitor what books Americans have purchased or borrowed, or who has used a library's or bookstore's internet computer stations, even if there is no evidence that the person is a terrorist or spy, or has any connection to a terrorist or spy.

These concerns are so strong that some librarians across the country have taken the unusual step of destroying records of patrons' book and computer use, as well as posting signs on computer stations warning patrons that whatever they read or access on the internet could be monitored by the federal government.

As a librarian in California said, ''We felt strongly that this had to be done. . . . The government has never had this kind of power before. It feels like Big Brother.''

And as the executive director of the American Library Association said, ''This law is dangerous. . . . I read murder mysteries—does that make me a murderer? I read spy stories—does that mean I'm a spy? There's no clear link between a person's intellectual pursuits and their actions.''

The American people do not know how many or what kind of requests Federal agents have made for library records under the PATRIOT Act. The Justice Department refuses to release that information to the public.

But in a survey released by the University of Illinois at Urbana-Champaign, about 550 libraries around the Nation reported having received requests from Federal or local law enforcement during the past year. About half of the libraries said they complied with the law enforcement request, and another half indicated that they had not.

Americans don't know much about these incidents, because the law also contains a provision that prohibits anyone who receives a subpoena from disclosing that fact to anyone.

In testimony before the Judiciary Committee, Attorney General Ashcroft stated that as of September 18, 2003, the Department of Justice had never used Section 215. The Department has not made that claim in public testimony since then, leading many to speculate that the provision has now been used. Whether it has been used once, or dozens of times, the problem with the section remains—it is too broad and does not permit adequate judicial supervision. There is a potential for overreaching that Congress must address.

David Schwartz, president of Harry W. Schwartz Bookshops, the oldest and largest independent bookseller in Milwaukee, summed up well the American values at stake when he said: ''The FBI already has significant subpoena powers to obtain records. There is no need for the government to invade a person's privacy in this way. This is a uniquely un-American tool, and it should be rejected. The books we read are a very private part of our lives. People could stop buying books, and they could be terrified into silence.''

I would not claim that we have reached the point where people in this country are afraid to buy books, but section 215 is a tool that is unnecessarily broad. And it raises the specter of indiscriminate government snooping into the private lives of innocent citizens, which is an unnecessary distraction from the serious law enforcement work that is needed to fight terrorism.

It is time to reconsider those provisions of the PATRIOT Act that are un-American and, frankly, unpatriotic.

But my concerns with the PATRIOT Act go beyond library and bookseller records. Under section 215 of the PATRIOT Act, the FBI could seek any records maintained by a business. These business records could contain sensitive, personal information—for example, medical records maintained by a doctor or hospital or credit records maintained by a credit agency. All the FBI would have to do is simply assert that the records are ''sought for'' its terrorism or foreign intelligence investigation.

Section 215 of the PATRIOT Act goes too far. Americans rightfully have a reasonable expectation of privacy in their library, bookstore, medical, financial, or other records containing personal information. Prudent safeguards are needed to protect these legitimate privacy interests.

The Library, Bookseller, and Personal Records Privacy Act is a reasonable solution. It would restore a pre-PATRIOT Act requirement that the FBI make a factual, individualized showing that the records sought pertain to a suspected terrorist or spy while leaving in place other PATRIOT Act expansions of this business records power.

My bill will not prevent the FBI from doing its job. It recognizes that the post-September 11 world is a different world. There are circumstances when the FBI should legitimately have access to library, bookseller, or other personal information.

I'd like to take a moment to explain how the safeguard in my bill would be applied. Suppose the FBI is conducting an investigation of an international terrorist organization. It has information that suspected members of the group live in a particular neighborhood. The FBI would like to obtain records from the library in the suspects' neighborhood. Under current law, the FBI could decide to ask the library for all records concerning anyone who has ever borrowed a book or used a computer, and what books were borrowed, simply by asserting that the documents are sought for a terrorism investigation. But under my bill, the FBI could not do so. The FBI would have to set forth specific and articulable facts giving reason to believe that the person to whom the records pertain is a suspected terrorist. The FBI could obtain only those library records—such as borrowing records or computer sign-in logs—that pertain to the suspected terrorists. The FBI could not obtain library records concerning individuals who are not suspected terrorists.

So, under my bill, the FBI can still obtain documents that it legitimately needs, but my bill would also protect the privacy of law-abiding Americans. I might add that if, as the Justice Department says, the FBI is using its PATRIOT Act powers in a responsible manner, does not seek the records of law-abiding Americans, and only seeks the records of suspected terrorists or suspected spies, then there is no reason for the Department to object to my bill.

The second part of my bill would address privacy concerns with another Federal law enforcement power expanded by the PATRIOT Act—the FBI's national security letter authority. The FBI does not need court approval to use this power.

My bill would amend section 505 of the PATRIOT Act. Part of this section relates to the production of records maintained by electronic communications providers. Libraries or bookstores with internet access for customers could be deemed ''electronic communication providers'' and therefore be subject to a request by the FBI under its NSL authority.

As I mentioned earlier, some librarians are so concerned about the potential for abuse by the FBI that they have taken matters into their own hands before the FBI knocks on their door. Some librarians have begun shredding on a daily basis sign-in logs and other documents relating to the public's use of library computer terminals to access the internet.

Again, safeguards are needed to ensure that any individual who accesses the internet at a library or bookstore does not automatically give up all expectations of privacy. Like the section

215 fix I've discussed, my bill would require an individualized showing by the FBI of how the records of internet usage maintained by a library or bookseller pertain to a suspected terrorist or spy.

Yes, the American people want the FBI to be focused on preventing terrorism. And, yes, it may make sense to make some changes to the law to allow the FBI access to the information that it needs to prevent terrorism. But we do not need to change the values that constitute who we are as a Nation in order to protect ourselves from terrorism. We can protect both our Nation and our privacy and civil liberties.

An increasing number of Americans are beginning to understand that the PATRIOT Act went too far. Four States and over 350 cities and counties across the country have now passed resolutions expressing opposition to the PATRIOT Act. And it's not just the Berkeleys and Madisons of this Nation, but other States and communities with strong conservative and libertarian values, such as Alaska and cities in Montana, that have passed such resolutions.

I have many concerns with the PATRIOT Act. I am not seeking to repeal it, in whole or in part. In this bill, my colleagues and I are only seeking to modify two provisions that pose serious potential for abuse.

The privacy of law-abiding Americans is at stake, along with their confidence in their government. Congress should act to protect our privacy and reassure our citizens. The Library, Bookseller, and Personal Records Privacy Act bill is a reasonable approach to do just that. I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 317

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Library, Bookseller, and Personal Records Privacy Act''.

SEC. 2. PRIVACY PROTECTIONS ON GOVERNMENT ACCESS TO LIBRARY, BOOKSELLER, AND OTHER PERSONAL RECORDS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) APPLICATIONS FOR ORDERS.—Subsection (b) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(3) shall specify that there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.''.

(b) ORDERS.—Subsection (c)(1) of that section is amended by striking ''finds'' and all that follows and inserting ''finds that—

''(A) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power; and

''(B) the application meets the other requirements of this section.''.

(c) OVERSIGHT OF REQUESTS FOR PRODUCTION OF RECORDS.—Section 502 of that Act (50 U.S.C. 1862) is amended—

(1) in subsection (a), by striking ''the Permanent'' and all that follows through ''the Senate'' and inserting ''the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate''; and

(2) in subsection (b), by striking ''On a semiannual basis,'' and all that follows through ''a report setting forth'' and inserting ''The report of the Attorney General to the Committees on the Judiciary of the House of Representatives and the Senate under subsection (a) shall set forth''.

SEC. 3. PRIVACY PROTECTIONS ON GOVERNMENT ACCESS TO INFORMATION ON COMPUTER USERS AT BOOKSELLERS AND LIBRARIES UNDER NATIONAL SECURITY AUTHORITY.

(a) IN GENERAL.—Section 2709 of title 18, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

''(e) RECORDS OF BOOKSELLERS AND LIBRARIES.—(1) When a request under this section is made to a bookseller or library, the certification required by subsection (b) shall also specify that there are specific and articulable facts giving reason to believe that the person or entity to whom the records pertain is a foreign power or an agent of a foreign power.

''(2) In this subsection:

''(A) The term 'bookseller' means a person or entity engaged in the sale, rental, or delivery of books, journals, magazines, or other similar forms of communication in print or digitally.

''(B) The term 'library' means a library (as that term is defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2))) whose services include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally to patrons for their use, review, examination, or circulation.

''(C) The terms 'foreign power' and 'agent of a foreign power' have the meaning given such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).''.

(b) SUNSET OF CERTAIN MODIFICATIONS ON ACCESS.—Section 224(a) of the USA PATRIOT ACT of 2001 (Public Law 107–56; 115 Stat. 295) is amended by inserting ''and section 505'' after ''by those sections)''.

By Mr. FEINGOLD:

S. 318. A bill to clarify conditions for the interceptions of computer trespass communications under the USA–PATRIOT Act; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I am pleased to introduce the Computer Trespass Clarification Act of 2005, which would amend and clarify section 217 of the USA–PATRIOT Act. This bill is virtually identical to a bill I introduced in the 108th Congress, S. 2783.

Section 217 of the PATRIOT Act addresses the interception of computer trespass communications. This bill would modify existing law to more accurately reflect the intent of the provision, and also protect against invasions of privacy.

Section 217 was designed to permit law enforcement to assist computer owners who are subject to denial of service attacks or other episodes of hacking. The original Department of Justice draft of the bill that later became the PATRIOT Act included this provision. A section by section analysis provided by the Department on September 19, 2001, stated the following: ''Current law may not allow victims of computer trespassing to request law enforcement assistance in monitoring unauthorized attacks as they occur. Because service providers often lack the expertise, equipment, or financial resources required to monitor attacks themselves as permitted under current law, they often have no way to exercise their rights to protect themselves from unauthorized attackers. Moreover, such attackers can target critical infrastructures and engage in cyberterrorism. To correct this problem, and help to protect national security, the proposed amendments to the wiretap statute would allow victims of computer attacks to authorize persons 'acting under color of law' to monitor trespassers on their computer systems in a narrow class of cases.''

I strongly supported the goal of giving computer system owners the ability to call in law enforcement to help defend themselves against hacking. Including such a provision in the PATRIOT Act made a lot of sense. Unfortunately, the drafters of the provision made it much broader than necessary, and refused to amend it at the time we debated the bill in 2001. As a result, the law now gives the government the authority to intercept communications by people using computers owned by others as long as they have engaged in some unauthorized activity on the computer, and the owner gives permission for the computer to be monitored—all without judicial approval.

Only people who have a ''contractual relationship'' with the owner allowing the use of a computer are exempt from the definition of a computer trespasser under section 217 of the PATRIOT Act. Many people—for example, college students, patrons of libraries, Internet cafes or airport business lounges, and guests at hotels—use computers owned by others with permission, but without a contractual relationship. They could end up being the subject of government snooping if the owner of the computer gives permission to law enforcement.

My bill would clarify that a computer trespasser is not someone who has permission to use a computer by the owner or operator of that computer. It would bring the existing computer trespass provision in line with the purpose of section 217 as expressed in the Department of Justice's initial explanation of the provision. Section 217 was intended to target only a narrow class of people: Unauthorized

cyberhackers. It was not intended to give the government the opportunity to engage in widespread surveillance of computer users without a warrant.

I should note that there is no specific evidence that the provision is being abused. But, of course, unless criminal charges are brought against someone as a result of such surveillance, there would never be any notice at all that the surveillance has taken place. The computer owner authorizes the surveillance, and the FBI carries it out. There is no warrant, no court proceeding, no opportunity even for the subject of the surveillance to challenge the assertion of the owner that some unauthorized use of the computer has occurred.

My bill would modify the computer trespass provision in the following ways to protect against abuse, while still maintaining its usefulness in cases of denial of service attacks and other forms of hacking.

First, it would require that the owner or operator of the protected computer authorizing the interception has been subject to ''an ongoing pattern of communications activity that threatens the integrity or operation of such computer.'' In other words, the owner has to be the target of some kind of hacking.

Second, the bill limits the length of warrantless surveillance to 96 hours. This is twice as long as is allowed for an emergency wiretap. With four days of surveillance, it should not be difficult for the government to gather sufficient evidence of wrongdoing to obtain a warrant if continued surveillance is necessary.

Finally, the bill would require the Attorney General to annually report on the use of Section 217 to the Senate and House Judiciary Committees. Section 217 is one of the provisions that is subject to the sunset provision in the PATRIOT Act and will expire at the end of 2005. We in the Congress need to do more oversight of the use of this and other provisions of PATRIOT Act in order to evaluate their effectiveness.

The computer trespass provision now in the law as a result of section 217 of the PATRIOT Act leaves open the possibility for significant and unnecessary invasions of privacy. The reasonable and modest changes to the provision contained in this bill preserve the usefulness of the provision for investigations of cyberhacking, but reduce the possibility of government abuse. We must continually seek to balance the need for effective tools to fight crime and terrorism against the civil liberties of our citizens. The Computer Trespass Clarification Act strikes the right balance, and I urge my colleagues to support it.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 318

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Computer Trespass Clarification Act of 2005''.

SEC. 2. AMENDMENTS TO TITLE 18.

(a) DEFINITIONS.—Section 2510(21)(B) of title 18, United States Code, is amended by—

(1) inserting ''or other'' after ''contractual''; and

(2) striking ''for access'' and inserting ''permitting access''.

(b) INTERCEPTION AND DISCLOSURE.—Section 2511(2)(i) of title 18, United States Code, is amended—

(1) in clause (I), by inserting after ''the owner or operator of the protected computer'' the following: ''is attempting to respond to communications activity that threatens the integrity or operation of such computer and requests assistance to protect rights and property of the owner or operator, and''; and

(2) in clause (IV), by inserting after ''interception'' the following: ''ceases as soon as the communications sought are obtained or after 96 hours, whichever is earlier, unless an interception order is obtained under this chapter, and''.

(c) REPORT.—The Attorney General shall, within 60 days of enactment and annually thereafter, report to the Committees on the Judiciary of the Senate and the House of Representatives on the use during the previous year of section 2511 of title 18, United States Code, relating to computer trespass provisions as amended by subsection (b).

By Mr. DOMENICI (for himself and Mr. KENNEDY):

S. 319. A bill to amend the Public Health Service Act to revise the amount of minimum allotments under the Projects for Assistance in Transition from Homelessness program; to the Committee on Health, Education, Labor, and Pensions.

Mr. DOMENICI. Mr. President, I rise today with my friend Senator KENNEDY to introduce a bill that will raise the minimum grant amounts given to States and territories under the PATH program. The PATH program provides services through formula grants of at least $300,000 to each State, the District of Columbia and Puerto Rico and $50,000 to eligible U.S. territories. Subject to available appropriations, this bill will raise the minimum allotments to $600,000 to each State and $100,000 to eligible US territories.

When the PATH program was established in fiscal year 1991 as a formula grant program, Congress appropriated $33 million. That amount has steadily increased over the years with Congress appropriating $55 million this past year. However, despite these increases, States and territories such as New Mexico that have rural and frontier populations, have not received an increase in their PATH funds. Under the formula, as it currently exists, many states and territories will never receive an increase to their PATH program, even with increasing demand and inflation. This problem is occurring in my home State of New Mexico as well as twenty-five other States and territories throughout the United States.

The PATH program is authorized under the Public Health Service Act and it funds community-based outreach, mental health, substance abuse, case management and other support services, as well as a limited set of housing services for people who are homeless and have serious mental illnesses. Program services are provided in a variety of different settings, including clinic sites, shelter-based clinics, and mobile units. In addition, the PATH program takes health care services to locations where homeless individuals are found, such as streets, parks, and soup kitchens.

PATH services are a key element in the plan to end chronic homelessness. Every night, an estimated 600,000 people are homeless in America. Of these, about one-third are single adults with serious mental illnesses. I have worked closely with organizations in New Mexico such as Albuquerque Health Care for the Homeless and I have seen first hand the difficulties faced by the more than 15,000 homeless people in New Mexico, 35 percent of who are chronically mentally ill or mentally incapacitated.

PATH is a proven program that has been very successful in moving people out of homelessness. PATH has been reviewed by the Office of Management and Budget and has scored significantly high marks in meeting program goals and objectives. Unquestionably, homelessness is not just an urban issue. Rural and frontier communities face unique challenges in serving PATH eligible persons and the PATH program funding mechanisms must account for these differences.

Thank you and I look forward to working with my colleague Senator KENNEDY on this important issue.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 319

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

SECTION 1. MINIMUM ALLOTMENTS UNDER THE PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS PROGRAM.

Section 524 of the Public Health Service Act (42 U.S.C. 290cc–24) is amended to read as follows:

''SEC. 524. DETERMINATION OF AMOUNT OF ALLOTMENT.

''(a) DETERMINATION UNDER FORMULA.—Subject to subsection (b), the allotment required in section 521 for a State for a fiscal year is the product of—

''(1) an amount equal to the amount appropriated under section 535 for the fiscal year; and

''(2) a percentage equal to the quotient of—

''(A) an amount equal to the population living in urbanized areas of the State involved, as indicated by the most recent data collected by the Bureau of the Census; and

''(B) an amount equal to the population living in urbanized areas of the United States, as indicated by the sum of the respective amounts determined for the States under subparagraph (A).

''(b) MINIMUM ALLOTMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), the allotment for a State under section 521 for a fiscal year shall, at a minimum, be the greater of—

''(A) the amount the State received under section 521 in fiscal year 2005; and

''(B) $600,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and $100,000 for each of Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''(2) CONDITION.—If the funds appropriated in any fiscal year under section 535 are insufficient to ensure that States receive a minimum allotment in accordance with paragraph (1), then—

''(A) no State shall receive less than the amount they received in fiscal year 2005; and

''(B) any funds remaining after amounts are provided under subparagraph (A) shall be used to meet the requirement of paragraph (1)(B), to the maximum extent possible.''.

By Mr. ALLARD:

S. 320. A bill to require the Secretary of the Army to carry out a pilot on compatible use buffers on real property bordering Fort Carson, Colorado, and for other purposes; to the Committee on Armed Services.

Mr. ALLARD. Mr. President, I rise today to introduce the Fort Carson Conservation Act of 2005 and take a moment to explain why this legislation is critical to our national security.

Since World War II, hundreds of thousands of soldiers at Fort Carson have trained in relative isolation. With few current residents nearby, the Army has been using Fort Carson's ranges for large-scale training exercises, weapons testing and live fire. This training often occurs at night, a vital capability given the Army's preference to conduct military operations in darkness.

The 140,000 acre Army installation and training facility was once miles from Colorado Springs and Pueblo. As both cities grow closer to the base's fence line, Fort Carson is facing constraints on its training flexibility, impacting military readiness. The issue of training at the post is particularly relevant considering nearly 15,000 soldiers based at Fort Carson have been deployed or are currently employed to Iraq.

The situation is not getting better. Over the last two decades, real estate and industrial development along Colorado's front range has exploded. Hundreds of thousands of people have moved to the Centennial State and settled along the 1–25 corridor. I remember the days when it was possible to drive for miles along the eastern foothills of the Rocky Mountains and encounter few if any residential areas. Today, there seems to be development all along Colorado's front range.

Yet, military readiness at the post is not the only thing at risk. The post's fragile prairie habitat is also in danger. Fort Carson has always prided itself on its conservation of the public trust. Mountain Post has a special office just to ensure environmental compliance and protect the post's biodiversity. The mountain plover, the black-tailed prairie dog, the Arkansas River feverfew, and the Pueblo goldenweed are among the many rare species protected at Fort Carson.

Over the last 3 years Fort Carson has partnered with the Nature Conservancy on a unique plan to address the rising encroachment concerns. This forward-thinking plan calls for the purchase of conservation easements of lands south and southeast of the base for a small number of willing sellers.

If implemented, I believe the plan will preserve the military utility of key Fort Carson training areas while conserving important short grass prairie at a landscape scale, along with the ranching community that sustains it. As much as 82,000 acres of uninhibited, precious prairie would be protected, including four globally rare plant species.

The Army fully supports this plan and has consistently described it as its number one priority under the service's Compatible Use Buffer program. This plan also enjoys widespread support from the local community, including the Colorado Springs Chamber of Commerce. The Colorado Department of Transportation, the Great Outdoors of Colorado, and the Nature Conservancy all support the plan as well.

I believe we need to act now to protect unique training facilities like those at Fort Carson before it is too late. This program makes sense for the soldiers training at Fort Carson who require an isolated environment to conduct their maneuvers. This program makes sense for the environment.

This plan makes too much sense for Congress to pass up. That is why I am introducing the Fort Carson Conservation Act. I am pleased that Congressman JOEL HEFLEY is introducing this landmark legislation in the House of Representatives today as well.

The Fort Carson Conservation Act of 2005 would require the Secretary of the Army to carry out a pilot project that creates a buffer zone out of the property bordering Fort Carson. The objective of this pilot would be to demonstrate the feasibility and effectiveness of utilizing conservation easements and leases to limit enroachment and preserve the environment.

Under the pilot project, the Secretary of the Army would enter into agreements with one or more willing sellers to purchase conservation easements. These agreements would be founded on the authority already provided in section 2684a of title 10 of the United States Code. The pilot project would expire when either the project is completed or within 5 years.

From my perspective, this pilot project is only the beginning. By working closely with the Army and the other military services, the Nature Conservancy has planted the seed for the expansion of this project. I strongly support the Conservancy's effort and believe that key military installations like Fort Bragg, Camp Lejeune, Fort Huachuca, Fort Stewart, and Eglin Air Force Base will soon be in a position to benefit from this proactive conservation effort.

Mr. President, it is a little known secret that the Department of Defense is one of the best stewards of our environment. Almost 350 endangered and threatened species live on military bases across the country—that is more than are found on land managed by the National Park Service, the Fish and Wildlife Service, and the Bureau of Land Management. In an era of rapid growth and urban development, military training areas have become, in many respects, the last refuge for many endangered species.

Creating natural buffer zones that protect fragile habitat and ensure our military readiness is a win-win proposal. It is the right thing to do for the environment. It is the right thing to do for our Nation's Armed Forces. I urge my colleagues to support the Fort Carson Conservation Act.

Thank you for the opportunity to speak on this important matter.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 320

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fort Carson Conservation Act of 2005''.

SEC. 2. PILOT PROJECT ON COMPATIBLE USE BUFFERS ON REAL PROPERTY BORDERING FORT CARSON, COLORADO.

(a) IN GENERAL.—The Secretary of the Army shall carry out a pilot project at Fort Carson, Colorado, for purposes of evaluating the feasibility and effectiveness of utilizing conservation easements and leases granted by one or more willing sources to limit development and preserve habitat on real property in the vicinity of or ecologically related to military installations in the United States.

(b) PROCEDURES.—

(1) PHASES.—The Secretary shall carry out the pilot project in four phases, as specified in the Fort Carson Army Compatible Use Buffer Project.

(2) LEASE AND EASEMENT AGREEMENTS.—Under the pilot project, the Secretary shall enter into agreements with one or more eligible entities who are willing to do so to purchase from the entity or entities one or more conservation easements, or to lease from the entity or entities one or more conservation leases, on real property in the vicinity of or ecologically related to Fort Carson for the purposes of—

(A) limiting any development or use of the property that would be incompatible with the current and anticipated future missions of Fort Carson; or

(B) preserving habitat on the property in a manner that—

(i) is compatible with environmental requirements; and

(ii) may eliminate or reduce current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on Fort Carson.

(3) ENCROACHMENTS AND OTHER CONSTRAINTS ON USE.—In entering into agreements under the pilot project, the Secretary may, subject to the provisions of this section, utilize the authority for agreements under this subsection to limit encroachments and other constraints on military training, testing, and operations under section 2684a of title 10, United States Code.

(4) RELATIONSHIP TO CURRENT USE PLAN.—Any agreement entered into under the pilot project shall be compatible with the Fort Carson Army Compatible Use Buffer Project.

(c) EXPIRATION.—The authority of the Secretary to enter into agreements under the pilot project shall expire on the earlier of—

(1) the date of the completion of phase IV of the Fort Carson Army Compatible Use Buffer Project; or

(2) the date that is five years after the date of the enactment of this Act.

(d) DEFINITIONS.—In this section:

(1) The term ''Fort Carson Army Compatible Use Buffer Project'' means the Fort Carson Army Compatible Use Buffer Project, a plan to use conservation easements and leases on property in the vicinity of or ecologically related to Fort Carson to create a land buffer to accommodate current and future missions at Fort Carson while conserving sensitive natural resources.

(2) The term ''eligible entity'' means any of the following:

(A) A State or political subdivision of a State.

(B) A private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary.

(e) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated to the Department of Defense for fiscal year 2006 for the Department of Defense, for expenses not otherwise provided for, for operation and maintenance for Defense-wide activities in the amount of $30,000,000, to be available for the pilot project.

(2) AVAILABILITY WITHOUT FISCAL YEAR LIMITATION.—Funds authorized to be appropriated by paragraph (1) shall be available without fiscal year limitation.

By Ms. SNOWE (for herself, Mr. KOHL, Mr. ROCKEFELLER, and Ms. LANDRIEU):

S. 321. A bill to provide more child support money to families leaving welfare, to simplify the rules governing the assignment and distribution of child support collected by States on behalf of children, to improve the collection of child support, and for other purposes; to the Committee on Finance.

Mr. KOHL. Mr. President, I rise today in strong support of the Child Support Distribution Act 2005, which Senator SNOWE and I introduced today. I want to thank Senator SNOWE for her hard work and dedication to this important issue and am proud to have worked with her for many years on this legislation. And I'd like to thank Senators ROCKEFELLER and LANDRIEU for their cosponsorship and support.

Senator SNOWE and I have worked, both separately and in tandem, on issues related to child support for more than ten years. On many occasions, we've come close to seeing the positive changes contained in this legislation enacted. In 2000, a House version of this bill passed by an overwhelming bipartisan vote of 405 to 18. In the 108th Congress, our legislation was included in the TANF Reauthorization bill that passed out of the Senate Finance Committee with bipartisan support. This year, S. 6, which was introduced by Senator SANTORUM, and is supported by Majority Leader FRIST and Senators MCCONNELL and HUTCHISON, contains child support provisions that are almost based entirely on the legislation we're discussing today.

This legislation consistently receives bipartisan support because it takes a common sense approach to child support. By passing through more child support funds directly to low-income families, rather than sending it to the federal government, non-custodial parents are more likely pay, and families see a huge benefit from the additional income.

Currently, approximately 60 percent of poor children who live with their mothers and whose fathers live outside the home do not receive child support. Though there are a variety of reasons why non-custodial parents may not be paying support for then children, many don't pay because the system actually discourages them from doing so.

Under current law, $2.1 billion in child support is retained every year by the State and Federal Governments as repayment for welfare benefits—rather than delivered to the children to whom it is owed. Fifty-six percent of that amount is for families who have left welfare. Since the money doesn't benefit their kids, fathers are discouraged from paying support. And mothers have no incentive to push for payment since the support doesn't go to them.

The current rules withhold a key source of income for low-income families that could help them maintain self-sufficiency. According to the Center for Law and Social Policy, child support constitutes 16 percent of family income for low-income households that receive it. For families who leave welfare, this number almost doubles. A Washington State study of families leaving welfare with regular child support payments found that these families found work faster and kept jobs longer, compared to families without steady child support income.

It's time for Congress to change this system and encourage States to distribute more child support to families. My home State of Wisconsin has been a leader in this practice, which has benefited thousands of working families. In 1997, I worked with my State to institute an innovative program of passing through child support payments directly to families. An evaluation of the Wisconsin program clearly shows that when child support payments are delivered to families, non-custodial parents are more apt to pay, and to pay more. In addition, Wisconsin has found that, overall, this policy does not increase government costs. That makes sense because ''passing through'' support payments to families means they have more of their own resources, and are less apt to depend on public help to meet other needs such as food, transportation or child care.

We now have a key opportunity to encourage all States to follow Wisconsin's example. This legislation gives States options and strong incentives to send more child support directly to families who are working their way off—or are already off—public assistance. Not only will this create the right incentives for non-custodial parents to pay, but it will also simplify the job for States, who currently face an administrative nightmare in following the complicated rules of the current system.

This legislation finally brings the Child Support Enforcement program into the post-welfare reform era, shifting its focus from recovering welfare costs to increasing child support to families so they can sustain work and maintain self-sufficiency. After all, it's only fair that if we are asking parents to move off welfare, stay off welfare, and take financial responsibility for their families, then we in Congress must make sure that child support payments actually go to the families to whom they are owed and who are working so hard to succeed.

It is time for Congress to make this change. It's time that we finally make child support meaningful for families, and make sure that children get the support they need and deserve.

Mr. JEFFORDS (for himself, Mr. LEAHY, Mrs. CLINTON, and Mr. SCHUMER):

S. 322. A bill to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. JEFFORDS. Mr. President, I am very pleased to introduce the Champlain Valley National Heritage Act of 2005. I am joined by Senator LEAHY and Senators SCHUMER and CLINTON of New York. This bill will establish a National Heritage Partnership within the Champlain Valley. Passage of this bill will culminate a process to enhance the incredible cultural resources of the Champlain Valley.

The Champlain Valley of Vermont and New York has one of the richest and most intact collections of historic resources in the United States. Fort Ticonderoga still stands where it has for centuries, at the scene of numerous battles critical to the birth of our nation. Revolutionary gunboats have recently been found fully intact on the bottom of Lake Champlain. Our cemeteries are the permanent resting place for great explorers, soldiers and sailors. The United States and Canada would not exist today but for events that occurred in this region.

We in Vermont and New York take great pride in our history. We preserve it, honor it and show it off to visitors from around the world. These visitors

are also very important to our economy. Tourism is among the most important industries in this region and has much potential for growth.

The Champlain Valley Heritage Partnership will bring together more than one hundred local groups working to preserve and promote our heritage.

This project has taken many years for me to bring to the point of introducing legislation. This has been time well spent working at the grass-roots level to develop a framework to direct federal resources to where it will do the most good. I am confident that we have found the best model. This will be a true partnership that supports each member but does not impose any new federal requirements.

The Champlain Valley National Heritage Partnership will preserve our historic resources, interpret and teach about the events that shaped our nation and will be an engine for economic growth. I am hopeful that this bill, which was passed unanimously by the Senate last year, will become law during this Congress.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 322

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Champlain Valley National Heritage Partnership Act of 2005''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Champlain Valley and its extensive cultural and natural resources have played a significant role in the history of the United States and the individual States of Vermont and New York;

(2) archaeological evidence indicates that the Champlain Valley has been inhabited by humans since the last retreat of the glaciers, with the Native Americans living in the area at the time of European discovery being primarily of Iroquois and Algonquin descent;

(3) the linked waterways of the Champlain Valley, including the Richelieu River in Canada, played a unique and significant role in the establishment and development of the United States and Canada through several distinct eras, including—

(A) the era of European exploration, during which Samuel de Champlain and other explorers used the waterways as a means of access through the wilderness;

(B) the era of military campaigns, including highly significant military campaigns of the French and Indian War, the American Revolution, and the War of 1812; and

(C) the era of maritime commerce, during which canals boats, schooners, and steamships formed the backbone of commercial transportation for the region;

(4) those unique and significant eras are best described by the theme ''The Making of Nations and Corridors of Commerce'';

(5) the artifacts and structures associated with those eras are unusually well-preserved;

(6) the Champlain Valley is recognized as having one of the richest collections of historical resources in North America;

(7) the history and cultural heritage of the Champlain Valley are shared with Canada and the Province of Quebec;

(8) there are benefits in celebrating and promoting this mutual heritage;

(9) tourism is among the most important industries in the Champlain Valley, and heritage tourism in particular plays a significant role in the economy of the Champlain Valley;

(10) it is important to enhance heritage tourism in the Champlain Valley while ensuring that increased visitation will not impair the historical and cultural resources of the region;

(11) according to the 1999 report of the National Park Service entitled ''Champlain Valley Heritage Corridor Project'', ''the Champlain Valley contains resources and represents a theme 'The Making of Nations and Corridors of Commerce', that is of outstanding importance in U.S. history''; and

(12) it is in the interest of the United States to preserve and interpret the historical and cultural resources of the Champlain Valley for the education and benefit of present and future generations.

(b) PURPOSES.—The purposes of this Act are—

(1) to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York to recognize the importance of the historical, cultural, and recreational resources of the Champlain Valley region to the United States;

(2) to assist the State of Vermont and New York, including units of local government and nongovernmental organizations in the States, in preserving, protecting, and interpreting those resources for the benefit of the people of the United States;

(3) to use those resources and the theme ''The Making of Nations and Corridors of Commerce'' to—

(A) revitalize the economy of communities in the Champlain Valley; and

(B) generate and sustain increased levels of tourism in the Champlain Valley;

(4) to encourage—

(A) partnerships among State and local governments and nongovernmental organizations in the United States; and

(B) collaboration with Canada and the Province of Quebec to—

(i) interpret and promote the history of the waterways of the Champlain Valley region;

(ii) form stronger bonds between the United States and Canada; and

(iii) promote the international aspects of the Champlain Valley region; and

(5) to provide financial and technical assistance for the purposes described in paragraphs (1) through (4).

SEC. 3. DEFINITIONS.

In this Act:

(1) HERITAGE PARTNERSHIP.—The term ''Heritage Partnership'' means the Champlain Valley National Heritage Partnership established by section 4(a).

(2) MANAGEMENT ENTITY.—The term ''management entity'' means the Lake Champlain Basin Program.

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan developed under section 4(b)(B)(i).

(4) REGION.—

(A) IN GENERAL.—The term ''region'' means any area or community in 1 of the States in which a physical, cultural, or historical resource that represents the theme is located.

(B) INCLUSIONS.—The term ''region'' includes

(i) the linked navigable waterways of—

(I) Lake Champlain;

(II) Lake George;

(III) the Champlain Canal; and

(IV) the portion of the Upper Hudson River extending south to Saratoga;

(ii) portions of Grand Isle, Franklin, Chittenden, Addison, Rutland, and Bennington Counties in the State of Vermont; and

(iii) portions of Clinton, Essex, Warren, Saratoga and Washington Counties in the State of New York.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) STATE.—the term ''State'' means—

(A) the State of Vermont; and

(B) the State of New York.

(7) THEME.—The term ''theme'' means the theme ''The Making of Nations and Corridors of Commerce'', as the term is used in the 1999 report of the National Park Service entitled ''Champlain Valley Heritage Corridor Project'', that describes the periods of international conflict and maritime commerce during which the region played a unique and significant role in the development of the United States and Canada.

SEC. 4. HERITAGE PARTNERSHIP.

(a) ESTABLISHMENT.—There is established in the regional the Champlain Valley National Heritage Partnership.

(b) MANAGEMENT ENTITY.—

(1) DUTIES.—

(A) IN GENERAL.—The management entity shall implement the Act.

(B) MANAGEMENT PLAN.—

(i) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall develop a management plan for the Heritage Partnership.

(ii) EXISTING PLAN.—Pending the completion and approval of the management plan, the management entity may implement the provisions of this Act based on its federally authorized plan ''Opportunities for Action, an Evolving Plan For Lake Champlain''.

(iii) CONTENTS.—The management plan shall include—

(I) recommendations for funding, managing, and developing the Heritage Partnership;

(II) a description of activities to be carried out by public and private organizations to protect the resources of the Heritage Partnership;

(III) a list of specific, potential sources of funding for the protection, management, and development of the Heritage Partnership;

(IV) an assessment of the organizational capacity of the management entity to achieve the goals for implementation; and

(V) recommendations of ways in which to encourage collaboration with Canada and the Province of Quebec in implementing this Act.

(iv) CONSIDERATIONS.—In developing the management plan under clause (i), the management entity shall take into consideration existing Federal, State, and local plans relating to the region.

(v) SUBMISSION TO SECRETARY FOR APPROVAL.—

(I) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall submit the management plan to the Secretary for approval.

(II) EFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date specified in paragraph (I), the Secretary shall not provide any additional funding under this Act until a management plan for the Heritage Partnership is submitted to the Secretary.

(vi) APPROVAL.—Not later than 90 days after receiving the management plan submitted under subparagraph (V)(I), the Secretary, in consultation with the States, shall approve or disapprove the management plan.

(vii) ACTION FOLLOWING DISAPPROVAL.—

(I) GENERAL.—If the Secretary disapproves a management plan under subparagraph (vi), the Secretary shall—

(aa) advise the management entity in writing of the reasons for the disapproval;

(bb) make recommendations for revisions to the management plan; and

(cc) allow the management entity to submit to the Secretary revisions to the management plan.

(II) DEADLINE FOR APPROVAL OF REVISION.—Not later than 90 days after the date on which a revision is submitted under subparagraph (vii)(I)(cc), the Secretary shall approve or disapprove the revision.

(viii) AMENDMENT.—

(I) IN GENERAL.—After approval by the Secretary of the management plan, the management entity shall periodically—

(aa) review the management plan; and

(bb) submit to the Secretary, for review and approval by the Secretary, the recommendations of the management entity for any amendments to the management plan that the management entity considers to be appropriate.

(II) EXPENDITURE OF FUNDS.—No funds made available under this Act shall be used to implement any amendment proposed by the management entity under subparagraph (viii)(1) until the Secretary approves the amendments.

(2) PARTNERSHIPS.—

(A) IN GENERAL.—In carrying out this Act, the management entity may enter into partnerships with—

(i) the States, including units of local governments in the States;

(ii) nongovernmental organizations;

(iii) Indian Tribes; and

(iv) other persons in the Heritage Partnership.

(B) GRANTS.—Subject to the availability of funds, the management entity may provide grants to partners under subparagraph (A) to assist in implementing this Act.

(3) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds made available under this Act to acquire real property or any interest in real property.

(c) ASSISTANCE FROM SECRETARY.—To carry out the purposes of this Act, the Secretary may provide technical and financial assistance to the management entity.

SEC. 5. EFFECT.

Nothing in this Act—

(1) grants powers of zoning or land use to the management entity;

(2) modifies, enlarges, or diminishes the authority of the Federal Government or a State or local government to manage or regulate any use of land under any law (including regulations); or

(3) obstructs or limits private business development activities or resource development activities.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act not more than a total of $10,000,000, of which not more than $1,000,000 may be made available for any fiscal year.

(b) NON-FEDERAL SHARE.—The non-Federal share of the cost of any activities carried out using Federal funds made available under subsection (a) not be less than 50 percent.

SEC. 7. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this Act terminates on the date that is 15 years after the date of enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 43—DESIGNATING THE FIRST DAY OF APRIL 2005 AS ''NATIONAL ASBESTOS AWARENESS DAY''

Mr. REID submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 43

Whereas deadly asbestos fibers are invisible and cannot be smelled or tasted;

Whereas when airborne fibers are inhaled or swallowed, the damage is permanent and irreversible;

Whereas these fibers can cause mesothelioma, asbestosis, lung cancer, and pleural diseases;

Whereas asbestos-related diseases can take 10 to 50 years to present themselves;

Whereas the expected survival rate of those diagnosed with mesothelioma is between 6 and 24 months;

Whereas little is known about late stage treatment and there is no cure for asbestos-related diseases;

Whereas early detection of asbestos-related diseases would give patients increased treatment options and often improve their prognosis;

Whereas asbestos is a toxic and dangerous substance and must be disposed of properly;

Whereas nearly half of the more than 1,000 screened firefighters, police officers, rescue workers, and volunteers who responded to the World Trade Center attacks on September 11, 2001, have new and persistent respiratory problems;

Whereas the industry groups with the highest incidence rates of asbestos-related diseases, based on 2000 to 2002 figures, were shipyard workers, vehicle body builders (including rail vehicles), pipefitters, carpenters and electricians, construction (including insulation work and stripping), extraction, energy and water supply, and manufacturing;

Whereas the United States imports more than 30,000,000 pounds of asbestos used in products throughout the Nation;

Whereas asbestos-related diseases kill 10,000 people in the United States each year, and the numbers are increasing;

Whereas asbestos exposure is responsible for 1 in every 125 deaths of men over the age of 50;

Whereas safety and prevention will reduce asbestos exposure and asbestos-related diseases;

Whereas asbestos has been the largest single cause of occupational cancer;

Whereas asbestos is still a hazard for 1,300,000 workers in the United States;

Whereas asbestos-related deaths have greatly increased in the last 20 years and are expected to continue to increase;

Whereas 30 percent of all asbestos-related disease victims were exposed to asbestos on naval ships and in shipyards;

Whereas asbestos was used in the construction of virtually all office buildings, public schools, and homes built before 1975; and

Whereas the establishment of a ''National Asbestos Awareness Day'' would raise public awareness about the prevalence of asbestos-related diseases and the dangers of asbestos exposure: Now, therefore, be it

Resolved, That the Senate designates the first day of April 2005 as ''National Asbestos Awareness Day''.

Mr. REID. Mr. President, I am submitting a resolution today to designate April 1 of this year as ''National Asbestos Awareness Day.''

I submitted this resolution toward the end of the last Congress and the Senate did not have a chance to act on it. I submit it again today because strengthening public awareness about the danger of asbestos exposure could save thousands of lives.

Scientists have shown that inhalation of asbestos fibers can cause several serious diseases that might not show up for years after exposure. These diseases include lung cancer and asbestosis, the progressive scarring of the lungs by asbestos fibers causing respiratory distress, as well as malignant mesothelioma, a form of cancer for which asbestos exposure is the only known cause.

Over the next decade, more than 100,000 U.S. citizens will die of asbestos-related diseases. That is approximately 30 people per day—and it means one person will die in the time it takes us to act on this resolution.

Asbestos not only kills thousands of Americans every year. It also causes pain and suffering, tears families apart, and adds to the costs of our health care system.

I have been touched by the stories of Americans affected by asbestos-related diseases.

Last fall, I received a phone call from my brother, Don, who told me that a long-time family friend, Harold Hansen, had died from mesothelioma. Harold was a wonderful friend and family man. He hadn't worked directly with asbestos in his lifetime, but he had been unwittingly exposed—and that exposure took his life.

Alan Reinstein was diagnosed with mesothelioma on June 16, 2003, and soon after underwent radical surgery to remove his entire lung, pericardium, diaphragm, and other affected parts of his body. He continues to courageously fight this deadly illness, and each day he must face the fear that the cancer might return.

Despite his illness, Alan is a lucky man because he has a loving wife, Linda, and family that give him strength. Linda Reinstein couldn't sit by and watch her husband suffer, knowing that thousands of others had also been afflicted. So she founded the Asbestos Disease Awareness Organization to educate the public and the medical community about diseases caused by asbestos exposure.

I have received many letters from Nevadans who have family members with asbestos-related diseases. Eleanor Shook, from my home town of Searchlight, NV, lost her husband Chuck to mesothelioma. He had been repeatedly exposed to asbestos while at work. Two months after his diagnosis, he passed away—no cure, no treatment, no reprieve. There is a hole in that family where Chuck once stood.

I also received a letter from Jack Holmes a former school teacher from Las Vegas, who wrote: ''I am dying. I have malignant mesothelioma . . . I can expect extreme pain and suffering before I die.''

I also heard from Robert Wright of Henderson, NV, who was exposed to asbestos while serving in the United