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Senator Dianne Feinstein

of California

Statement by Senator Dianne Feinstein on the Omnibus Appropriations Act January 22, 2004

Washington, DC – The U.S. Senate today approved an Omnibus Appropriations bill for fiscal year 2004, which included \$225 million for relief from the recent California wildfires and funding to help prevent future fire catastrophes.

The bill also provides \$85 million to help provide interoperable communications systems for police, firefighters and other first responders to natural disasters and terrorist attacks. And it contains the *\$40 million DC School Choice plan to provide educational scholarships for 2,000 low-income students in troubled public schools in Washington, DC.*

“There are serious deficiencies in both the substance of and the process by which this Conference Report was completed,” Senator Feinstein said in her floor statement. **“That said, I believe that on balance the Conference Report is better for California and the Nation than the alternative and I will support it.”**

The following is the entire floor statement entered into the Congressional Record by Senator Dianne Feinstein (D-Calif.) who voted for the bill despite some major concerns, especially about the lack of an overtime protection measure.

“Mr. President, I rise in favor of the FY04 Omnibus Appropriations Conference Report, despite major concerns I have with how this bill was put together and with a number of items in the bill. Nevertheless, we are faced with an up or down vote. On balance, I believe that the bill is a net positive and I will support it.

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

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

The Process

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

Ranking Member of the Appropriations Committee and others are correct in highlighting those issues. If for no other reason than that we should avoid them in the future.

Senator Byrd is correct when he says that adopting this Conference Report or facing a year long Continuing Resolution at FY03 levels are not the only paths out of this impasse.

If the majority leadership in the Senate and the House had chosen, we could have worked out the serious concerns that Senators of both parties have with this legislation. We all knew that there are only a handful of major issues. However, the Majority did not show any willingness to address overtime pay, county of origin labeling for meat products, media ownership rules, or outsourcing of federal jobs.

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

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

- Overriding the will of the Senate, the bipartisan overtime regulation prohibition, which passed the Senate by a vote of 54-45, was dropped. The resulting Bush Administration plan would eliminate overtime pay protections for as many as 8 million American workers who currently are eligible for overtime pay. These hard-earned overtime dollars often make the difference between workers providing a better life for their families or just making ends meet.
- Overriding the will of the Senate and at the behest of the cattle and food marketing industries, the Bush Administration actively and officially supported language in the omnibus conference that would delay implementation of mandatory Country-of-Origin labeling of meat and meat products. Despite the potential danger to American consumers of any delay, the Country-of-Origin labeling for meat and meat products, enacted as part of the 2002 Farm Bill and scheduled to take effect this fiscal year, would be delayed by two years.
- Overriding the will of the House and the Senate, the one-year limitation on the FCC media ownership rule was turned into a permanent cap at 39%. The practical effect of changes demanded by the White House is to protect Rupert Murdoch's Fox television network and CBS-Viacom from having to comply with the lower 35% ownership caps that conferees had included in the original conference report. The White House is boosting special corporate interests at the expense of the people's interest for balanced news and information.
- Overriding the will of the House and Senate conferees, and again at the Bush Administration's insistence, 400,000 federal workers will lose job protections. During negotiations, Congressional Democrats and Republicans agreed to provide basic protections for federal employees whose jobs have been targeted by the Bush White House for privatization. Because of White House intransigence, those basic protections were dropped. What remains provides so many loopholes for the Bush Administration to privatize federal jobs that little protection is provided for workers. The Administration's policies encourage

unfair treatment of dedicated public servants, many of whom are being forced into early retirement or the prospect of reduced benefits and lower pay."

The Omnibus

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

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

Indeed, there are a number of items in the bill of particular importance to me and to California that I would like to highlight:

- **\$225 million for California wildfire relief and prevention;**
- **\$85 million for COPS grants for interoperable communications;**
- **A 5-year Pilot Program for school choice in Washington, DC;**
- **Increased NIH Funding; and**
- **Funding for Election Reform.**

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

Wildfires

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

And this is just the tip of the iceberg. In California, 8.5 million acres of federal land are at the highest risk of catastrophic fire, so it is critical that we protect our forests and nearby communities and avert a similar catastrophe in the future. That is why I am so pleased that Congressman Jerry Lewis and I were able to secure \$225 million in emergency funding.

This funding will help prevent mudslides, provide relief for farmers whose crops were burned, and eliminate a million trees killed by the bark beetles. This funding is critical to helping prevent future fires. As we saw in November, trees killed by the bark beetle become kindling in a serious fire, and put homes and lives at risk.

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

Interoperability

The bill also includes \$85 million in grants to help first responders better communicate with each other in times of crisis. In all too many jurisdictions, police, fire and emergency medical service personnel can't communicate with each other over the radio when an emergency occurs. This means slower response times, less coordination between agencies and lives lost.

To help remedy this problem, I sponsored an amendment to the emergency spending bill passed last year, which provided \$109 million to improve the compatibility of first responders' communications systems. Half of this funding would go to police departments and half would go to fire and emergency departments.

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

There are about 2.5 million public safety first responders who operate in the United States today, stationed in some 18,000 law enforcement agencies, 26,000 fire departments and 6,000 rescue departments. When I speak to representatives of these departments, they tell me that obtaining compatible communications systems is their No. 1 homeland security priority.

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

As America continues to confront the threat of terrorism, it will be increasingly important to give our law enforcement, fire and emergency personnel the tools they need to respond to a possible terrorist attack effectively and safely. This will allow fire, police and emergency medical services personnel to better communicate in times of crisis and will ultimately help save lives.

DC School Choice

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

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

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

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

We helped ensure that the District would have a fair method of acceptance for students using vouchers in private and parochial schools and that there would be full accountability and sufficient oversight by Mayor Williams. We made sure that the scholarship students would be given the same test that their peers in public schools receive and that their test scores would be evaluated by an unbiased researcher.

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

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

NIH Funding

This bill also includes an \$835 million increase in funding for the National Institutes of Health. While this is less than the \$1.5 billion increase I sought on the Senate floor with Chairman Specter and Ranking Member Harkin, the increase is essential to furthering the advances made by NIH particularly in the field of cancer research.

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

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

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

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

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

Election Funding

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

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

Following enactment of this legislation, it is vital that these funds be quickly disbursed to the states and localities so that they may implement changes to voting systems in time for the 2004 federal elections. As I said before, beyond process, I have a number of serious problems with the substance of the bill, and I will work over the next year to try to fix them.

Gun Purchaser Background Checks

One of the most egregious provisions, buried in the bill at the behest of the gun lobby, is a provision which requires next-day destruction of background check records of sales where a gun buyer successfully clears a Brady background check and is permitted to purchase a firearm.

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

The ability to retain a record of these transactions for up to 90 -days allows law enforcement to audit the system to ensure its integrity and to correct errors that may have occurred – for instance, when a gun buyer is able to purchase a weapon when he should have been prevented from getting it. If those records are destroyed in 24 hours, the ability to correct such mistakes is gone.

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

The Department of Justice will also lose the ability to adequately verify whether someone on the terrorist watch list has attempted to purchase a firearm, because the records will no longer exist. According to the *Washington Post*, at least 12 and as many as 250 individuals on the terrorist watch list have attempted to buy firearms in recent months.

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

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

Without such a requirement, gun dealers engaged in illegal sales can easily claim theft when their illegally-sold guns turn up in crime. That may be what happened to the Bushmaster assault weapon used by John Muhammad in the DC-area sniper shootings.

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

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

Country of Origin Labeling

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

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

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

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

Overtime

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

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

In my state of California, state law will protect most workers from the deleterious effects of this rule change. Unfortunately, public employees who are not covered by collective bargaining and some in the film industry could lose overtime protection if the Administration's rule is implemented.

And, although most workers in California will maintain their right to overtime through protections granted by state law, the rule change represents a movement in the wrong direction when it comes to enhancing worker protections.

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

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

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

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

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

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

Conclusion

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