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**S.2030**

**Title:** A bill to amend the Federal Rules of Civil Procedure, relating to counsel for witnesses in grand jury proceedings, and for other purposes.

**Sponsor:** [Sen Bumpers, Dale](#) [AR] (introduced 5/4/1998)      [Cosponsors](#) (9)

**Latest Major Action:** 5/4/1998 Referred to Senate committee. Status: Read twice and referred to the Committee on Judiciary.

Jump to: [Summary](#), [Major Actions](#), [All Actions](#), [Titles](#), [Cosponsors](#), [Committees](#), [Related Bill Details](#), [Amendments](#)

**SUMMARY AS OF:**

5/4/1998--Introduced.

Grand Jury Due Process Act - Amends rule 6 of the Federal Rules of Criminal Procedure to allow: (1) each witness subpoenaed to appear and testify before a grand jury in a district court, or to produce books, papers, documents, or other objects before that grand jury, to be allowed the assistance of counsel during such time as the witness is questioned in the grand jury room; and (2) counsel for such a witness to be retained by the witness (or, in the case of a witness who is determined by the court to be financially unable to obtain counsel, directs that counsel be appointed).

Allows such counsel to be present in the grand jury room only during the questioning of the witness and only to advise the witness. Prohibits such counsel from: (1) addressing the Government attorney or any grand juror or otherwise participating in the grand jury proceedings; and (2) representing more than one client in such a proceeding if the exercise of counsel's independent judgment on behalf of one or both clients will be, or is likely to be, adversely affected by the representation of another client.

Authorizes the court, upon determining that counsel retained by or appointed for such witness has violated such provisions, or as necessary to ensure that grand jury activities are not unduly delayed or impeded, to: (1) remove the counsel and either appoint new counsel or order the witness to obtain new counsel; and (2) order separate representation of the witnesses at issue, under specified circumstances.

Directs that, upon service of any subpoena requiring any witness to testify or produce information at any proceeding before a grand jury impaneled before a district court, the witness be given adequate and reasonable notice of the right to the presence of counsel in the grand jury room.

**MAJOR ACTIONS:**

\*\*\*NONE\*\*\*

**ALL ACTIONS:** ([Floor Actions/Congressional Record Page References](#))

**5/4/1998:**

Introductory remarks on measure. (CR [S4206-4207](#))

**5/4/1998:**

Read twice and referred to the Committee on Judiciary.

**7/10/1998:**

Introductory remarks on measure. (CR [S7955-7956](#))

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**TITLE(S):** (*italics indicate a title for a portion of a bill*)

\*\*\*NONE\*\*\*

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**COSPONSORS(9), ALPHABETICAL** [followed by Cosponsors withdrawn]: (Sort: [by date](#))

[Sen Bingaman, Jeff](#) [NM] - 6/4/1998

[Sen Bryan, Richard H.](#) [NV] - 5/7/1998

[Sen Conrad, Kent](#) [ND] - 5/7/1998

[Sen Daschle, Thomas A.](#) [SD] - 5/7/1998

[Sen Harkin, Tom](#) [IA] - 5/7/1998

[Sen Hollings, Ernest F.](#) [SC] - 6/11/1998

[Sen Leahy, Patrick J.](#) [VT] - 5/7/1998

[Sen Levin, Carl](#) [MI] - 5/7/1998

[Sen Torricelli, Robert G.](#) [NJ] - 5/7/1998

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**COMMITTEE(S):**

**Committee/Subcommittee: Activity:**

[Senate Judiciary](#)

Referral, In Committee

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**RELATED BILL DETAILS:**

\*\*\*NONE\*\*\*

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**AMENDMENT(S):**

\*\*\*NONE\*\*\*

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## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS (Senate - May 04, 1998)

### THE GRAND JURY DUE PROCESS ACT

Mr. BUMPERS. Madam President, I am today introducing legislation which will remedy a longstanding injustice in our criminal justice system by granting to grand jury witnesses the right to the presence of counsel when testifying before the grand jury.

In our legal system, the right to counsel is fundamental. Every person, no matter how guilty or innocent, deserves to have an advocate. So fundamental is this right to counsel that it was recognized by the founders and enshrined in the sixth amendment to the Constitution. Along with the right to an impartial jury, public trial, and the right to confront witnesses, it is a universal element of fundamental fairness recognized by every civilized system of justice. Lawyers may never be popular, said William Shakespeare in Henry VI, Act III Scene II: 'The first we do, let's kill all the lawyers.'

But lawyers are a necessity. No one in his right mind wants to confront the judicial system without the benefit of a lawyer.

The Anglo-American criminal justice system has given us more freedom and better justice than any country in the history of civilization. The rights of American citizens evolved over centuries of English and American history are now enshrined in the Bill of Rights and are the standards of freedom and liberty all over the world.

We must not allow those rights to be eroded. No American would claim that our system is perfect, nor do I so claim. I am convinced beyond a doubt that our system has serious flaws, one of which most people are probably not even aware and many might find hard to believe in this day and age. A witness summoned before a grand jury has no right to the presence of his lawyer in the grand jury room. Depriving anybody of the right to counsel is fundamentally wrong. No person should be required to face any part of the criminal justice system without the presence of his or her lawyer if he or she chooses.

Think of it this way. Police have absolutely no right to question an arrestee without his lawyer in the room unless the individual waives that right. The police even have a constitutional duty under the Miranda decision to advise people of their rights to a lawyer, even though anybody who has watched television in the last 35 years ought to know that they are entitled to a lawyer. If the police fail to observe this constitutional requirement, the statement by the accused is inadmissible in court.

But when an ordinary citizen is called before a grand jury, no lawyer--no lawyers are allowed to be present. The prosecutor and the grand jury have the unlimited ability to question the witness, who is not even under arrest, without an attorney present. This gross inconsistency can only be described as Byzantine, an anachronism.

I have never been one to say that criminal defendants have too many rights. They have no more than the Constitution entitles them. In this instance, however, a criminal defendant has more rights than the average ordinary citizen called before a grand jury. A criminal defendant cannot be questioned without a lawyer present, and he or she may invoke his or her right not to testify under the fifth amendment privilege against self-incrimination.

But a witness, a witness in the grand jury room who may later become a target under criminal investigation, has no such rights. He or she must testify fully and truthfully, no matter how burdensome or embarrassing or impertinent or irrelevant the questions may be, and without the assistance of counsel. The rules of evidence which normally require that questions be relevant and material do not apply in the grand jury room. On the contrary, so-called 'fishing expeditions' have become commonplace. No matter how irrelevant or outrageous the questions, the witness must answer.

Madam President, I ask you or any American to consider whether, if you or your son or daughter were served a subpoena to testify before the grand jury on a criminal case, even though the grand jury is supposedly investigating somebody else, would you want the right to have your own lawyer in the room? Would you feel the process was a fair one if you were told that you were not legally entitled to have a lawyer present? What if you or your loved one were called before the grand jury for a second, third, or fourth time? Would you begin to feel that you might be under suspicion for something? And would you feel comfortable answering endless questions without your lawyer present?

The grand jury is the only circumstance I can imagine in life where a free person does not have a complete legal right to hire a lawyer and have that lawyer accompany him in any kind of proceeding. No matter how serious the matter under consideration, no matter what the question--from the most

complex matter of tax accounting to the most personal, intimate family concerns--no matter how hazy your recollection might be, you have no right to a lawyer before the grand jury. The grand jury room is the one and only room in the courthouse, the very temple of justice, where the proceeding is entirely one-sided.

Under existing law, there could be a sign on the grand jury room saying, 'No lawyers allowed.' The Government has as many lawyers as the Treasury can pay. The witness has zero. Notwithstanding that he or she may be there against his or her will, notwithstanding the power of the grand jury and the prosecutor to indict, a witness before a grand jury is defenseless. He or she has no friend in the room. Surely, nobody feels so alone as a grand jury witness, knowing that the weight of the Federal criminal justice system rests on his or her every word. Give the wrong answer, you can be accused of perjury, obstruction of justice, or any other of a number of crimes. If you refuse to answer, you can go directly to jail without benefit of a trial, being held in contempt.

Madam President, I ask you to consider, What kind of atmosphere is created in this one-sided proceeding? Is it one of fairness or is it one of intimidation? Bear in mind that there is no limit on the number of times a person may be called to testify before the same grand jury. In recent news reports--we have all read them--some people have been called to testify for the fifth or sixth time--no lawyer allowed--before the same grand jury. If you were in this position, or a member of your family were, how would you feel about being called for the sixth time to testify without your lawyer present? Would you feel threatened or intimidated? And this kind of proceeding not only does not provide justice and fairness, it doesn't even provide the appearance of justice and fairness, which is essential if citizens are to have confidence in our criminal justice system.

This system needs changing. The bill I am introducing is a modest proposal to give some balance to a very unlevel playing field. The main purpose of the original grand jury was probably helping in the collection of taxes. These ancient roots precede even the right to jury trial, because in the earliest times, trial was by ordeal. The accused was required to put his hand in boiling water or was tested by drowning. Needless to say, there weren't very many acquittals.

The grand jury has always symbolized the power of the criminal justice system to bring any person before the bar of justice. No one is beyond the power of the grand jury to seek evidence and to indict if there is probable cause to believe that a crime has been committed. Even before the right to trial by jury was secured, English grand juries had power to investigate and to accuse. Composed of ordinary citizens, grand juries had the power to compel any person to appear and give testimony or evidence. Historically, the grand jury was a guarantor of liberty--a guarantor of liberty.

The courts have often stated that the grand jury has a dual function. Listen to this. The courts have said that the grand jury has a dual function, 'to clear the innocent, no less than to bring to trial those who may be guilty.' The grand juries exist 'as a means of protecting the citizen against unfounded accusation, whether it comes from the government, or be prompted by partisan passion or private enmity.'

We just saw what private enmity is when somebody tried to set up Howard Baker in a tax fraud case.

The Founding Fathers so respected the institution that they enshrined the right to indictment by a grand jury in the sixth amendment to the Constitution. Here it is:

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No person shall be held to answer for a capital, or otherwise infamous crime, [and that has been interpreted many times to mean a felony] unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger \* \* \*.

That is amendment 5 to the Constitution. The grand jury should be both a sword and a shield, a powerful tool in the hands of prosecutors and a defender of liberty by protecting against meritless or overzealous prosecutions.

In colonial America, a grand jury in Boston helped signal the beginning of the end of colonial government when the jurors refused the Government's request to indict the Stamp Act rioters. In modern times, however, the grand jury has become almost exclusively a sword and not a shield. Examples of the grand jury as a shield are hard to come by. In short, we have allowed the protection intended by the founders to take a 180-degree turn.

The Supreme Court has conceded that the grand jury does not always serve its intended purpose of protecting the innocent. This is what the Supreme Court said in *U.S. v. Dionisio*:

The grand jury may not always serve its historic role as a protective bulwark standing solidly between the ordinary citizen and an overzealous prosecutor.

Those were the words of Justice Douglas. Douglas said in dissent in that case--he was much more explicit:

It is, indeed, common knowledge that the grand jury, having been conceived as a bulwark

between the citizen and the government, is now a tool of the Executive.

Despite its ancient origins, the grand jury remains one of the most controversial aspects of our judiciary system. Most States have abandoned or abolished grand juries in favor of the filing of information by prosecutors. That is the way we do it in my home State of Arkansas. Many would argue that the grand jury is an anachronism which costs more than it is worth. In one of the most famous critiques of the institution, the Chief Judge of the State of New York stated that most grand juries would `indict a ham sandwich' if the prosecutor requested it.

While some have argued for eliminating the grand jury, I am not one to second-guess the wisdom of our Founding Fathers. Rather, I believe we should make the system work as intended--as a protector of freedom--by reforming the grand jury system so as to ensure due process of law for all concerned.

In the 1970s, there was considerable debate in Congress over the merits of the grand jury following revelations of abuses of the system under the Nixon administration. There has been no serious congressional debate over the grand jury system for over 10 years. The time for that debate has come.

Over 30 years ago, the Supreme Court said in *Gideon v. Wainwright* that counsel must be appointed for those who cannot afford a lawyer before any criminal trial in which a prison sentence may result.

The bill I am introducing today is a logical extension of the sixth amendment to the Constitution, as well as the fifth amendment's promise of due process of law. Granted, a witness before a grand jury is not under immediate threat of indictment, but most of them are there against their will, and they are certainly looking over the abyss.

Let me emphasize that my bill, although a departure from historical practice, is still a modest proposal. This bill would not in any way change criminal procedure except for allowing a witness' lawyer to be present in the grand jury room. The lawyer would not be allowed to speak to the jury or to examine witnesses. He or she would be able to advise his or her client and no more.

Allowing the mere presence of a witness' lawyer will in no way disrupt or slow the grand jury proceedings. What it might do is to deter a prosecutor from doing something improper simply because he knows there is no other lawyer watching. It may give a witness some comfort to be able to ask his or her lawyer for advice before answering a complex question. That right is provided today, but the witness has to go outside the courtroom to see his or her counselor because the counsel is not allowed in the grand jury room.

My bill will thus allow for grand juries to operate more smoothly and efficiently, reducing the need to stop proceedings so the witness can go out of the room and talk to his or her lawyer.

This bill goes to the very reason lawyers exist. It may give the public more confidence that the proceedings are fair and balanced at a time when public confidence in the judicial system is about as low as it has ever been. If any of these purposes are met, my legislation will have served a noble purpose.

Mr. President, I hope that all Senators will take note of this bill and that they will support it. It will be referred to the Judiciary Committee, and I hope that the committee will schedule hearings very promptly.

I ask unanimous consent that the bill be printed in the **Record**.

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

### **S. 2030**

*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 `Grand Jury Due Process Act'.

#### SEC. 2. GRAND JURIES.

(a) **In General:** Rule 6 of the Federal Rules of Criminal Procedure is amended--

(1) in subdivision (d), by inserting `and counsel for that witness (as provided in subdivision (h))' after `under examination'; and

(2) by adding at the end the following:

`(h) **Counsel for Grand Jury Witnesses:**

`(1) **In general:**

`(A) **Right of assistance:** Each witness subpoenaed to appear and testify before a grand jury in a district court, or to produce books, papers, documents, or other objects before that grand jury, shall be allowed the assistance of counsel during such time as the witness is questioned in the grand jury room.

`(B) **Retention or appointment:** Counsel for a witness described in subparagraph (A)--

`(i) may be retained by the witness; or

`(ii) in the case of a witness who is determined by the court to be financially unable to obtain counsel, shall be appointed as provided in section 3006A of title 18, United States Code.

`(2) **Powers and duties of counsel:** A counsel retained by or appointed for a witness under paragraph (1)--

`(A) shall be allowed to be present in the grand jury room only during the questioning of the witness and only to advise the witness;

`(B) shall not be permitted to address the attorney for the government or any grand juror, or otherwise participate in the proceedings before the grand jury; and

`(C) shall not represent more than 1 client in a grand jury proceeding, if the exercise of the independent judgment of the counsel on behalf of 1 or both clients will be, or is likely to be, adversely affected by the representation of another client.

`(3) **Powers of the court:**

`(A) **In general:** If the court determines that counsel retained by or appointed for a witness under this subdivision has violated paragraph (2), or that such action is necessary to ensure that the activities of the grand jury are not unduly delayed or impeded, the court may--

`(i) remove the counsel and either appoint new counsel or order the witness to obtain new counsel; and

`(ii) with respect to a violation of paragraph (2)(C), order separate representation of the witnesses at issue, giving appropriate weight to the right of each witness to counsel of his or her own choosing.

`(B) **No effect on other sanctions:** Nothing in this paragraph shall be construed to affect the contempt powers of the court or the power of the court to impose other appropriate sanctions.

`(4) **Notice:** Upon service of any subpoena requiring any witness to testify or produce information at any proceeding before a grand jury impaneled before a district court, the witness shall be given adequate and reasonable notice of the right to the presence of counsel in the grand jury room, as provided in this subdivision.'

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## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS (Senate - July 10, 1998)

### GRAND JURY REFORM ACT OF 1998

Mr. BUMPERS. Mr. President, recently I introduced S. 2030, the Grand Jury Due Process Act, to provide witnesses who are subpoenaed by federal grand juries with a right to the presence of counsel in the grand jury room. I am today introducing more comprehensive grand jury reform legislation which will remedy several major flaws in the grand jury system which today undermine the fairness of America's judicial system.

Criminal justice must provide for more than swift and sure punishment. It must ensure fairness and due process to the accused as well as to witnesses and victims of crime. In the majority of cases, our courts provide a greater measure of justice than any other system known to man. Yet our system remains far from perfect.

Of all aspects of America's criminal justice system, the grand jury has become the weakest link in ensuring due process of law. It is telling that most States have discarded grand juries entirely. Yet, the Federal Government is constrained by the fifth amendment constitutional requirement for grand juries, so we have to find ways to make the grand jury system work better.

The legislation I am introducing makes five critical grand jury reforms:

First, it directs the district courts to give basic legal instructions to the grand jurors at the time they begin their work. These instructions will include basic legal principles--the power to call witnesses, the power to investigate, and the power to indict on whatever charges the grand jury deems appropriate. No one would disagree with these basic instructions, but they are not required in the present grand jury system. Instead, grand jurors are told only as much about the law as the prosecutor chooses to tell them. My bill will change that.

Second, this bill gives grand jury witnesses the right to be accompanied by counsel in the grand jury room. This section is virtually identical to S. 2030 which I have already introduced. It also requires that a witness subpoenaed to testify before a grand jury be advised of his right to be accompanied by counsel, of the privilege against self-incrimination and other basic rights when the subpoena is issued.

Third, this bill strengthens enforcement of the existing rule on grand jury secrecy, which is a matter of first importance to the integrity of the justice system. News reports indicate that grand jury secrecy is now being violated on a regular basis.

Fourth, this bill mandates that prosecutors disclose to the grand jury any substantial evidence they possess which indicates that the accused is not, or may not be, guilty. While this may seem elementary to most Americans, it is contrary to a Supreme Court decision, *United States v. Williams*--a very recent decision--which held that the prosecutor has no

such constitutional obligation.

Fifth and finally, this bill entitles a defendant to a transcript of the grand jury testimony of all witnesses who are called against him at trial. This is a matter of basic fairness. Anyone charged with a crime should have a right to know what a witness against him has told the grand jury. Knowing the witness's prior testimony is the essence of the right of cross-examination enshrined in the confrontation clause of the sixth amendment.

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## **BACKGROUND**

Grand juries have enormous power and they offer few protections to those who are called as witnesses or who are subject to investigation. Under the fifth amendment to the Constitution, Federal felony prosecutions must include indictment by a grand jury. This provision was intended to protect citizens against prosecutions which are without merit or which are politically motivated. The Founding Fathers had plenty of experience with prosecutorial misconduct by the English crown. That is the reason they inserted the grand jury into the Constitution. The Grand Jury was to be a bulwark against a tyrannical government.

My own observations of grand juries go back to my years as a small town defense lawyer, but they are reinforced by present day cases and news reports. Too often, I have seen criminal prosecutions which should never have been brought, or witnesses who have been abused by prosecutors. Recently, newspapers are filled with stories of secret grand jury testimony--often attributed to prosecution sources--and of witnesses who have been called back to testify a fourth or fifth or sixth time before the same grand jury. Many of these witnesses are obviously not criminals, at least in a reasonable person's understanding of the word.

To understand today's grand jury system, you must understand history. The grand jury, Mr. President, is one of the common law's most ancient institutions. Its roots go back even further than Magna Carta. In 1166, King Henry II proclaimed the Assize of Clarendon which required that 12 `lawful men' out of every hundred be sworn to tell whether they knew of any crimes committed in their towns. In these early days, grand juries operated mostly on the personal

knowledge of the grand jurors.

The grand jury then, like today, only had power to accuse. In those days, trial was by ordeal. The accused either had his hand placed in boiling water or was bound and thrown into a lake. If he survived without injury, this was an acquittal. It was not until the 13th Century that our English forbearers secured the right to a trial by jury.

Trial by ordeal was supposedly abolished long ago, but I wonder whether many of today's grand jury witnesses might dispute this.

In English and American history up until the time of the Constitution, grand juries were a bulwark of freedom which stood between oppressive government and the individual. Grand juries often disagreed with English and colonial judges who were in service to the Crown. These feuds helped define both the power of the grand jury and the liberties of free people. For example, grand jurors in colonial Massachusetts adamantly refused demands by the Crown to indict the colonists who had participated in the Stamp Act riots.

Unhappily, the grand jury's role as defender of liberty, has changed dramatically for the

worse over the years. Too often, the grand jury has become an arm of the executive branch and a rubber stamp for the prosecutor. In modern times, the Supreme Court has held that a grand jury may call witnesses to satisfy the mere suspicion that a crime may have been committed.

Grand juries have been judged so superfluous by the states that about half of them decided long ago to eliminate grand juries and allow criminal charges to be brought directly by prosecutors.

The chief judge of the State of New York remarked several years ago that most grand juries would indict 'a ham sandwich' if the prosecutor so requested. A recent Supreme Court decision, *United States v. Williams*, the Court has held that the District Courts have no supervisory power over grand juries, and that grand juries are not even part of the judiciary. I disagree strenuously with Justice Scalia's conclusions in the *Williams* case. If grand juries are not accountable to the courts, then who are they accountable to?

## **INSTRUCTIONS OF LAW**

Under present Federal law, grand jurors receive no instructions on the law except for whatever the prosecutor may choose to tell them. This bill will provide for the District Court which empanels the grand jury to give some very basic legal instructions to the jurors before they begin their work. Included among these are the grand jury's duty to inquire into criminal offenses that have been committed in the jurisdiction; the right to call and interrogate witnesses; the right to request production of documents, including exculpatory evidence; the necessity of finding credible evidence of each element of the crime before returning an indictment; the right to ask the prosecutor to draft indictments for charges other than those originally presented; the obligations of grand jury secrecy; and such other rights and duties as the court deems appropriate.

Mr. President, there is no good reason why these instructions should not be given. These rules of law are universally accepted. It makes no sense for the grand jury not to be told what its legal powers and duties are, and I cannot imagine that this provision would be disputed.

## **RIGHT TO COUNSEL**

Mr. President, as I indicated before, the institution of the grand jury goes back more than 800 years in Anglo-American legal history. but it was not until 1963 that the Supreme Court held in *Gideon v. Wainwright* that a man may not be sent to prison without having had a lawyer at trial. Under *Gideon*, a person unable to pay for a lawyer must have counsel appointed to represent him, or else the requirement of due process of law has not been met.

In 1964, the Court held in *Miranda v. Arizona* that criminal defendants must be advised by the police of their right to counsel and of the Fifth Amendment privilege against self-incrimination. These rights are basic American freedoms which are the hallmarks of due process of law. And nobody today would take us back to the old days when those rules were not in effect.

Our ideas of due process have changed for the better over the centuries. One legal tradition which has not changed, however, is the lack of counsel before the grand jury. A witness who is not a criminal defendant but who is legally summoned to testify by the grand jury may not have his lawyer in the room. This rule of law is perverse to say the least in that it gives criminals, or accused criminals, more rights than innocent people.

A criminal defendant today has greater rights than an ordinary, unaccused witness testifying before a grand jury. The Federal Rule of Criminal Procedure which prohibits the presence of counsel for a witness is an anachronism, and it will be changed by this bill, as well as by S. 2030 which I previously introduced.

## **EXCULPATORY EVIDENCE**

Even with a lawyer for the witness present, the grand jury will always be a one-sided affair in which only the prosecutor presents evidence. My bill will not change that. The prosecutor will naturally present only the evidence most favorable to the government. The Supreme Court has held that a prosecutor has no constitutional obligation to present the grand jury with any exculpatory evidence. This case, *United States v. Williams*, was a 5-4 decision written by Justice Scalia and as I said, in my opinion, it could not be more wrong.

If due process of law means anything at all, it means that both sides of a case must be heard. How can due process permit the government to withhold evidence which might prevent the indictment from even being issued?

My bill today reverses *United States v. Williams* by amending the Rules of Criminal Procedure to require that prosecutors present the grand jury any substantial evidence which directly negates the guilt of the accused.

This bill will not make the grand jury a `mini-trial' since the accused will not be able to present evidence or to cross-examine. But the Government will be required to tell the grand jury, before it decides to indict, of substantial evidence against guilt. Due process of law requires no less.

those who are not guilty. It is no answer to say that evidence of innocence can be considered at trial, and the jury will correct mistakes of the grand jury. If the Government has evidence which--if it were shown to be the grand jury--would lead the grand jury not to indict, the government must share that evidence with those who have power to indict. *U.S. v. Williams* is a gross misreading of due process which cries out for correction.

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## **GRAND JURY SECRECY**

Mr. President, the secrecy of grand jury proceedings is a matter of fundamental importance which is already clearly required by Rule 6(e) of the Federal Rules. Yet the rule is flouted on almost a regular basis. Weekly, if not daily, the newspapers have carried stories about the several Independent Counsels' investigations which begin, `Sources close to the investigation report \* \* \*' Every time the law regarding grand jury secrecy is violated, a fair and impartial trial is impossible.

Grand jury secrecy is as ancient as the institution itself. Without it, our judicial system would degenerate into a horrific state. An indictment is already tantamount to guilt in the opinion of most people. At the same time, the grand jurors must be insulated from outside pressure which might influence their decisions to indict or not. Grand jury secrecy is necessary for the protection of both witnesses and grand jurors.

The grand jury hears all kinds of testimony--some true, some scurrilous. Many things said to the grand jury may be incredibly damaging to people if they are revealed. Since the accused and his lawyer are not in the room, there is no safeguard of cross-examination. False testimony can easily go undiscovered until trial, which is one reason grand jury

secrecy is so important.

If the public learns that a witness has made some horrendous accusation, it will be cold comfort that the grand jury later decides not to believe the testimony and not to indict.

More than one witness has lost his life when it was learned that he had testified against a leader of organized crime or a murderer. Grand jury secrecy can literally be a matter of life and death. Its importance to law enforcement and the cause of justice cannot be overstated.

At the same time, a witness who has testified before a grand jury is perfectly free, if he so chooses, to go on television and tell the world what he or she has testified to.

Present law places responsibility for enforcing grand jury secrecy on the prosecutor. If a member of the prosecution staff is leaking to the press, this is the clearest conflict of interest. Asking any prosecutor to investigate his own conduct is an obvious conflict of interest. Yet that is what present law provides.

Mr. President, the way to resolve this problem is to place authority for investigating violations of grand jury secrecy on the District Court which empaneled the grand jury in the first place. My bill does exactly that by giving the Court power to appoint an investigator or counsel if necessary to determine the source of leaks. It should be the exceptional case where such action will be necessary.

The existence of the possibility of an independent investigation should be enough to deter any prosecutor from breaching grand jury secrecy.

Mr. President, the public's confidence in law enforcement, in the courts, and in the administration of justice for all Americans has taken a beating in recent years. Time and again, we have seen misconduct by police and prosecutors, as well as jury verdicts and court judgments that seem to defy reason and common sense. This Congress has an extraordinary opportunity to restore public confidence in the judicial system. Almost every point in this bill is long-standing policy supported by the American Bar Association. I believe the public and the bar will widely support these changes, and I hope my colleagues will move swiftly to enact this bill into law.

Mr. President, I yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Virginia.

Mr. WARNER. Thank you.

I listened with great interest to my colleague's presentation of his bill, and it is quite interesting. You have never ceased in this institution to take on some of the toughest challenges.

Mr. BUMPERS. Thank you.

Mr. WARNER. I foresee some tough hills to climb within this legislation before it is through. But anyway, you are the man to do it if it is to be done. I cannot pass judgment at this time, but having been a prosecutor and having spent some time myself in this area, it is quite interesting.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the text of the Grand Jury

Reform Act, which I am introducing today, be printed in the **Record**.

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

### **S. 2289**

*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 `Grand Jury Reform Act of 1998'.

#### SEC. 2. GRAND JURIES.

(a) **In General:** Rule 6 of the Federal Rules of Criminal Procedure is amended--

(1) in subdivision (a), by adding at the end the following:

`(3) **Instruction on rights, responsibilities, and duties:** Upon impaneling a grand jury, the court shall instruct and charge the grand jury on the rights, responsibilities, and duties of the grand jury under this rule, including--

`(A) the duty to inquire into criminal offenses that are alleged to have been committed within the jurisdiction;

`(B) the right to call and interrogate witnesses;

`(C) the right to request production of a book, paper, document, or other object, including exculpatory evidence;

`(D) the necessity of finding credible evidence of each material element of the crime charged before returning a true bill;

`(E) the right to request that the attorney for the government draft indictments for charges other than those originally requested by that attorney;

`(F) the obligation of secrecy under subdivision (e)(2); and

`(G) such other rights, responsibilities, and duties as the court determines to be appropriate.';

(2) in subdivision (d), by inserting `and counsel for that witness (as provided in subdivision (i))' after `under examination';

(3) in subdivision (e)(2), by adding at the end the following: `The court shall have the authority to investigate any violation of this paragraph, including the authority to appoint counsel to investigate and report to the court regarding any such violation.'; and

(4) by adding at the end the following:

`(h) **Notice to Witnesses:** Upon service of any subpoena requiring any witness to testify or produce information at any proceeding before a grand jury impaneled before a district court, the witness shall be given adequate and reasonable notice of--

`(1) his or her right to counsel, as provided in subdivision (i);

`(2) his or her privilege against self-incrimination;

- ` (3) the subject matter of the grand jury investigation;
- ` (4) whether his or her own conduct is under investigation by the grand jury;
- ` (5) the criminal statute, the violation of which is under consideration by the grand jury, if such statute is known at the time of issuance of the subpoena;
- ` (6) his or her rights regarding immunity; and
- ` (7) any other rights and privileges which the court deems necessary or appropriate.
- ` (i) **Counsel for Grand Jury Witnesses:**
  - ` (1) **In general:**
    - ` (A) **Right of assistance:** Each witness subpoenaed to appear and testify before a grand jury in a district court, or to produce books, papers, documents, or other objects before that grand jury, shall be allowed the assistance of counsel during such time as the witness is questioned in the grand jury room.
    - ` (B) **Retention or appointment:** Counsel for a witness described in subparagraph (A)--
      - ` (i) may be retained by the witness; or
      - ` (ii) in the case of a witness who is determined by the court to be financially unable to obtain counsel, shall be appointed as provided in section 3006A of title 18, United States Code.
  - ` (2) **Powers and duties of counsel:** A counsel retained by or appointed for a witness under paragraph (1)--
    - ` (A) shall be allowed to be present in the grand jury room only during the questioning of the witness and only to advise the witness; and
    - ` (B) shall not be permitted to address any grand juror, or otherwise participate in the proceedings before the grand jury.
  - ` (3) **Powers of the court:**
    - ` (A) **In general:** If the court determines that counsel retained by or appointed for a witness under this subdivision has violated paragraph (2), or that such action is necessary to ensure that the activities of the grand jury are not unduly delayed or impeded, the court may remove the counsel and either appoint new counsel or order the witness to obtain new counsel.
    - ` (B) **No effect on other sanctions:** Nothing in this paragraph shall be construed to affect the contempt powers of the court or the power of the court to impose other appropriate sanctions.
    - ` (j) **Exculpatory Evidence:** An attorney for the government shall disclose to the grand jury any substantial evidence of which that attorney has knowledge that directly negates the guilt of the accused. Failure to disclose such evidence may be the basis for a motion to dismiss the indictment, if the court determines that the evidence might reasonably be expected to lead the grand jury not to indict.
  - ` (k) **Availability of Grand Jury Transcripts and Other Statements:**
    - ` (1) **In general:** Subject to paragraph (2), not later than 10 days before trial (unless the court shall for good cause determine otherwise), and after the return of an indictment or

the filing of any information, a defendant shall, upon request, and as the court determines to be reasonable, be entitled to examine and duplicate a transcript or electronic recording of--

` (A) the grand jury testimony of all witnesses to be called at trial;

` (B) all statements relating to the defendant's case made to the grand jury by the court, the attorney for the government, or a special attorney;

` (C) all grand jury testimony or evidence which in any manner could be considered exculpatory; and

` (D) all other grand jury testimony or evidence that is determined by the court to be material to the defense.

` (2) **Exception:** The court may refuse to allow a defendant to examine and duplicate a transcript or electronic recording of any testimony, statement, or evidence described in paragraph (1), if the court determines that such examination or duplication would endanger any witness.'

(b) **Conforming Amendments:** Section 3500(e) of title 18, United States Code, is amended--

(1) in paragraph (1), by adding `or' at the end;

(2) in paragraph (2), by striking ` , or' and inserting a period; and

(3) by striking paragraph (3).

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S 2030 IS

105th CONGRESS

2d Session

**S. 2030**

To amend the Federal Rules of Civil Procedure, relating to counsel for witnesses in grand jury proceedings, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**

**May 4, 1998**

Mr. BUMPERS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

**A BILL**

To amend the Federal Rules of Civil Procedure, relating to counsel for witnesses in grand jury proceedings, and for other purposes.

*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 'Grand Jury Due Process Act'.

**SEC. 2. GRAND JURIES.**

(a) IN GENERAL- Rule 6 of the Federal Rules of Criminal Procedure is amended--

(1) in subdivision (d), by inserting 'and counsel for that witness (as provided in subdivision (h))' after 'under examination'; and

(2) by adding at the end the following:

'(h) COUNSEL FOR GRAND JURY WITNESSES-

'(1) IN GENERAL-

'(A) RIGHT OF ASSISTANCE- Each witness subpoenaed to appear and testify before a grand jury in a district court, or to produce books, papers, documents, or other objects before that grand jury, shall be allowed the assistance of counsel during such time as the

witness is questioned in the grand jury room.

` (B) RETENTION OR APPOINTMENT- Counsel for a witness described in subparagraph (A)--

` (i) may be retained by the witness; or

` (ii) in the case of a witness who is determined by the court to be financially unable to obtain counsel, shall be appointed as provided in section 3006A of title 18, United States Code.

` (2) POWERS AND DUTIES OF COUNSEL- A counsel retained by or appointed for a witness under paragraph (1)--

` (A) shall be allowed to be present in the grand jury room only during the questioning of the witness and only to advise the witness;

` (B) shall not be permitted to address the attorney for the government or any grand juror, or otherwise participate in the proceedings before the grand jury; and

` (C) shall not represent more than 1 client in a grand jury proceeding, if the exercise of the independent judgment of the counsel on behalf of 1 or both clients will be, or is likely to be, adversely affected by the representation of another client.

` (3) POWERS OF THE COURT-

` (A) IN GENERAL- If the court determines that counsel retained by or appointed for a witness under this subdivision has violated paragraph (2), or that such action is necessary to ensure that the activities of the grand jury are not unduly delayed or impeded, the court may--

` (i) remove the counsel and either appoint new counsel or order the witness to obtain new counsel; and

` (ii) with respect to a violation of paragraph (2)(C), order separate representation of the witnesses at issue, giving appropriate weight to the right of each witness to counsel of his or her own choosing.

` (B) NO EFFECT ON OTHER SANCTIONS- Nothing in this paragraph shall be construed to affect the contempt powers of the court or the power of the court to impose other appropriate sanctions.

` (4) NOTICE- Upon service of any subpoena requiring any witness to testify or produce information at any proceeding before a grand jury impaneled before a district court, the witness shall be given adequate and reasonable notice of the right to the presence of counsel in the grand jury room, as provided in this subdivision.'

**BUMPERS AMENDMENT NO. 3243 (Senate - July 21, 1998)**

[Page: S8683]

Mr. BUMPERS proposed an amendment to the bill, S. 2260, supra; follows:  
At the appropriate place in title II of the bill, insert the following:

**SEC. 2XX. GRAND JURY RIGHT TO COUNSEL.**

(a) **In General:** Rule 6 of the Federal Rules of Criminal Procedure is amended--

(1) in subdivision (d), by inserting `and counsel for that witness (as provided in subdivision (h))' after `under examination'; and

(2) by adding at the end the following:

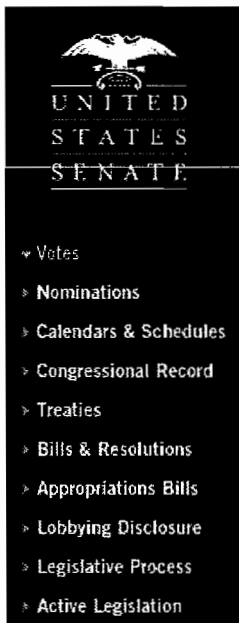
`(h) **Counsel for Grand Jury Witnesses:**

`(1) **In general:**

`(A) **Right of assistance:** Each witness subpoenaed to appear and testify before a grand jury in a district court, or to produce books, papers, documents, or other objects before that grand jury, shall be allowed the assistance of counsel during such time as the witness is questioned in the grand jury room.'

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*END*



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**Vote Summary**

**Question:** On the Amendment (Bumpers Amdt No. 3243, as modified )

**Vote Number:** 218    **Vote Date:** July 22, 1998, 09:40 AM

**Required For Majority:** 1/2    **Vote Result:** Amendment Rejected

**Amendment Number:** S.Amdt. 3243 to S. 2260 (Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 )

**Statement of Purpose:** To amend the Federal Rules of Criminal Procedure, relating to counsel for witnesses in grand jury proceedings, and for other purposes.

<b>Vote Counts:</b>	YEAs	41
	NAYs	59

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**Alphabetical by Senator Name**

Abraham (R-MI), <b>Nay</b>	Feingold (D-WI), <b>Yea</b>	Lugar (R-IN), <b>Nay</b>
Akaka (D-HI), <b>Yea</b>	Feinstein (D-CA), <b>Nay</b>	Mack (R-FL), <b>Yea</b>
Allard (R-CO), <b>Nay</b>	Ford (D-KY), <b>Yea</b>	McCain (R-AZ), <b>Nay</b>
Ashcroft (R-MO), <b>Nay</b>	Frist (R-TN), <b>Nay</b>	McConnell (R-KY), <b>Nay</b>
Baucus (D-MT), <b>Yea</b>	Glenn (D-OH), <b>Yea</b>	Mikulski (D-MD), <b>Yea</b>
Bennett (R-UT), <b>Nay</b>	Gorton (R-WA), <b>Nay</b>	Moseley-Braun (D-IL), <b>Yea</b>
Biden (D-DE), <b>Nay</b>	Graham (D-FL), <b>Yea</b>	Moynihan (D-NY), <b>Nay</b>
Bingaman (D-NM), <b>Yea</b>	Gramm (R-TX), <b>Nay</b>	Murkowski (R-AK), <b>Nay</b>
Bond (R-MO), <b>Nay</b>	Grams (R-MN), <b>Nay</b>	Murray (D-WA), <b>Yea</b>
Boxer (D-CA), <b>Yea</b>	Grassley (R-IA), <b>Nay</b>	Nickles (R-OK), <b>Nay</b>
Breaux (D-LA), <b>Yea</b>	Gregg (R-NH), <b>Nay</b>	Reed (D-RI), <b>Yea</b>
Brownback (R-KS), <b>Nay</b>	Hagel (R-NE), <b>Nay</b>	Reid (D-NV), <b>Nay</b>
Bryan (D-NV), <b>Yea</b>	Harkin (D-IA), <b>Yea</b>	Robb (D-VA), <b>Yea</b>
Bumpers (D-AR), <b>Yea</b>	Hatch (R-UT), <b>Nay</b>	Roberts (R-KS), <b>Nay</b>
Burns (R-MT), <b>Nay</b>	Helms (R-NC), <b>Nay</b>	Rockefeller (D-WV), <b>Yea</b>
Byrd (D-WV), <b>Nay</b>	Hollings (D-SC), <b>Yea</b>	Roth (R-DE), <b>Nay</b>
Campbell (R-CO), <b>Nay</b>	Hutchinson (R-AR), <b>Nay</b>	Santorum (R-PA), <b>Nay</b>
Chafee (R-RI), <b>Nay</b>	Hutchison (R-TX), <b>Yea</b>	Sarbanes (D-MD), <b>Yea</b>
Cleland (D-GA), <b>Yea</b>	Inhofe (R-OK), <b>Nay</b>	Sessions (R-AL), <b>Nay</b>
Coats (R-IN), <b>Nay</b>	Inouye (D-HI), <b>Yea</b>	Shelby (R-AL), <b>Nay</b>
Cochran (R-MS), <b>Nay</b>	Jeffords (R-VT), <b>Nay</b>	Smith (R-NH), <b>Nay</b>
Collins (R-ME), <b>Nay</b>	Johnson (D-SD), <b>Yea</b>	Smith (R-OR), <b>Nay</b>
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Coverdell (R-GA), <b>Nay</b>	Kennedy (D-MA), <b>Yea</b>	Specter (R-PA), <b>Yea</b>
Craig (R-ID), <b>Nay</b>	Kerrey (D-NE), <b>Yea</b>	Stevens (R-AK), <b>Nay</b>
D'Amato (R-NY), <b>Nay</b>	Kerry (D-MA), <b>Yea</b>	Thomas (R-WY), <b>Nay</b>
Daschle (D-SD), <b>Yea</b>	Kohl (D-WI), <b>Nay</b>	Thompson (R-TN), <b>Nay</b>
DeWine (R-OH), <b>Nay</b>	Kyl (R-AZ), <b>Nay</b>	Thurmond (R-SC), <b>Nay</b>
Dodd (D-CT), <b>Yea</b>	Landrieu (D-LA), <b>Yea</b>	Torricelli (D-NJ), <b>Yea</b>
Domenici (R-NM), <b>Nay</b>	Lautenberg (D-NJ), <b>Yea</b>	Warner (R-VA), <b>Nay</b>
Dorgan (D-ND), <b>Yea</b>	Leahy (D-VT), <b>Yea</b>	Wellstone (D-MN), <b>Yea</b>
Durbin (D-IL), <b>Yea</b>	Levin (D-MI), <b>Yea</b>	Wyden (D-OR), <b>Yea</b>
Enzi (R-WY), <b>Nay</b>	Lieberman (D-CT), <b>Nay</b>	
Faircloth (R-NC), <b>Nay</b>	Lott (R-MS), <b>Nay</b>	

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**NAYs --59**

Abraham (R-MI)	Faircloth (R-NC)	McCain (R-AZ)
Allard (R-CO)	Feinstein (D-CA)	McConnell (R-KY)
Ashcroft (R-MO)	Frist (R-TN)	Moynihan (D-NY)
Bennett (R-UT)	Gorton (R-WA)	Murkowski (R-AK)
Biden (D-DE)	Gramm (R-TX)	Nickles (R-OK)
Bond (R-MO)	Grams (R-MN)	Reid (D-NV)
Brownback (R-KS)	Grassley (R-IA)	Roberts (R-KS)
Burns (R-MT)	Gregg (R-NH)	Roth (R-DE)
Byrd (D-WV)	Hagel (R-NE)	Santorum (R-PA)
Campbell (R-CO)	Hatch (R-UT)	Sessions (R-AL)
Chafee (R-RI)	Helms (R-NC)	Shelby (R-AL)
Coats (R-IN)	Hutchinson (R-AR)	Smith (R-NH)
Cochran (R-MS)	Inhofe (R-OK)	Smith (R-OR)
Collins (R-ME)	Jeffords (R-VT)	Snowe (R-ME)
Coverdell (R-GA)	Kempthorne (R-ID)	Stevens (R-AK)
Craig (R-ID)	Kohl (D-WI)	Thomas (R-WY)
D'Amato (R-NY)	Kyl (R-AZ)	Thompson (R-TN)
DeWine (R-OH)	Lieberman (D-CT)	Thurmond (R-SC)
Domenici (R-NM)	Lott (R-MS)	Warner (R-VA)
Enzi (R-WY)	Lugar (R-IN)	

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<b>Alaska:</b>	Murkowski (R-AK), <b>Nay</b>	Stevens (R-AK), <b>Nay</b>
<b>Arizona:</b>	Kyl (R-AZ), <b>Nay</b>	McCain (R-AZ), <b>Nay</b>
<b>Arkansas:</b>	Bumpers (D-AR), <b>Yea</b>	Hutchinson (R-AR), <b>Nay</b>
<b>California:</b>	Boxer (D-CA), <b>Yea</b>	Feinstein (D-CA), <b>Nay</b>
<b>Colorado:</b>	Allard (R-CO), <b>Nay</b>	Campbell (R-CO), <b>Nay</b>
<b>Connecticut:</b>	Dodd (D-CT), <b>Yea</b>	Lieberman (D-CT), <b>Nay</b>
<b>Delaware:</b>	Biden (D-DE), <b>Nay</b>	Roth (R-DE), <b>Nay</b>
<b>Florida:</b>	Graham (D-FL), <b>Yea</b>	Mack (R-FL), <b>Yea</b>
<b>Georgia:</b>	Cleland (D-GA), <b>Yea</b>	Coverdell (R-GA), <b>Nay</b>
<b>Hawaii:</b>	Akaka (D-HI), <b>Yea</b>	Inouye (D-HI), <b>Yea</b>
<b>Idaho:</b>	Craig (R-ID), <b>Nay</b>	Kempthorne (R-ID), <b>Nay</b>
<b>Illinois:</b>	Durbin (D-IL), <b>Yea</b>	Moseley-Braun (D-IL), <b>Yea</b>
<b>Indiana:</b>	Coats (R-IN), <b>Nay</b>	Lugar (R-IN), <b>Nay</b>
<b>Iowa:</b>	Grassley (R-IA), <b>Nay</b>	Harkin (D-IA), <b>Yea</b>
<b>Kansas:</b>	Brownback (R-KS), <b>Nay</b>	Roberts (R-KS), <b>Nay</b>
<b>Kentucky:</b>	Ford (D-KY), <b>Yea</b>	McConnell (R-KY), <b>Nay</b>
<b>Louisiana:</b>	Breaux (D-LA), <b>Yea</b>	Landrieu (D-LA), <b>Yea</b>
<b>Maine:</b>	Collins (R-ME), <b>Nay</b>	Snowe (R-ME), <b>Nay</b>
<b>Maryland:</b>	Mikulski (D-MD), <b>Yea</b>	Sarbanes (D-MD), <b>Yea</b>
<b>Massachusetts:</b>	Kennedy (D-MA), <b>Yea</b>	Kerry (D-MA), <b>Yea</b>
<b>Michigan:</b>	Abraham (R-MI), <b>Nay</b>	Levin (D-MI), <b>Yea</b>
<b>Minnesota:</b>	Grams (R-MN), <b>Nay</b>	Wellstone (D-MN), <b>Yea</b>
<b>Mississippi:</b>	Cochran (R-MS), <b>Nay</b>	Lott (R-MS), <b>Nay</b>
<b>Missouri:</b>	Ashcroft (R-MO), <b>Nay</b>	Bond (R-MO), <b>Nay</b>
<b>Montana:</b>	Baucus (D-MT), <b>Yea</b>	Burns (R-MT), <b>Nay</b>
<b>Nebraska:</b>	Hagel (R-NE), <b>Nay</b>	Kerrey (D-NE), <b>Yea</b>
<b>Nevada:</b>	Bryan (D-NV), <b>Yea</b>	Reid (D-NV), <b>Nay</b>
<b>New Hampshire:</b>	Gregg (R-NH), <b>Nay</b>	Smith (R-NH), <b>Nay</b>

<b>New Jersey:</b>	Lautenberg (D-NJ), <b>Yea</b>	Torricelli (D-NJ), <b>Yea</b>
<b>New Mexico:</b>	Bingaman (D-NM), <b>Yea</b>	Domenici (R-NM), <b>Nay</b>
<b>New York:</b>	D'Amato (R-NY), <b>Nay</b>	Moynihan (D-NY), <b>Nay</b>
<b>North Carolina:</b>	Faircloth (R-NC), <b>Nay</b>	Helms (R-NC), <b>Nay</b>
<b>North Dakota:</b>	Conrad (D-ND), <b>Yea</b>	Dorgan (D-ND), <b>Yea</b>
<b>Ohio:</b>	DeWine (R-OH), <b>Nay</b>	Glenn (D-OH), <b>Yea</b>
<b>Oklahoma:</b>	Inhofe (R-OK), <b>Nay</b>	Nickles (R-OK), <b>Nay</b>
<b>Oregon:</b>	Smith (R-OR), <b>Nay</b>	Wyden (D-OR), <b>Yea</b>
<b>Pennsylvania:</b>	Sanorum (R-PA), <b>Nay</b>	Specter (R-PA), <b>Yea</b>
<b>Rhode Island:</b>	Chafee (R-RI), <b>Nay</b>	Reed (D-RI), <b>Yea</b>
<b>South Carolina:</b>	Hollings (D-SC), <b>Yea</b>	Thurmond (R-SC), <b>Nay</b>
<b>South Dakota:</b>	Daschle (D-SD), <b>Yea</b>	Johnson (D-SD), <b>Yea</b>
<b>Tennessee:</b>	Frist (R-TN), <b>Nay</b>	Thompson (R-TN), <b>Nay</b>
<b>Texas:</b>	Gramm (R-TX), <b>Nay</b>	Hutchison (R-TX), <b>Yea</b>
<b>Utah:</b>	Bennett (R-UT), <b>Nay</b>	Hatch (R-UT), <b>Nay</b>
<b>Vermont:</b>	Jeffords (R-VT), <b>Nay</b>	Leahy (D-VT), <b>Yea</b>
<b>Virginia:</b>	Robb (D-VA), <b>Yea</b>	Warner (R-VA), <b>Nay</b>
<b>Washington:</b>	Gorton (R-WA), <b>Nay</b>	Murray (D-WA), <b>Yea</b>
<b>West Virginia:</b>	Byrd (D-WV), <b>Nay</b>	Rockefeller (D-WV), <b>Yea</b>
<b>Wisconsin:</b>	Feingold (D-WI), <b>Yea</b>	Kohl (D-WI), <b>Nay</b>
<b>Wyoming:</b>	Enzi (R-WY), <b>Nay</b>	Thomas (R-WY), <b>Nay</b>

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