

Congressional Record
May 11, 2005

**TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS--Continued -- (Senate -
May 11, 2005)**

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Mr. FRIST. Mr. President, due to the recess, I ask unanimous consent that notwithstanding rule XXII, all first-degree amendments to the highway bill must be filed at the desk no later than 2 p.m.

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

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. INHOFE. Mr. President, regular order.

AMENDMENT NO. 606 TO AMENDMENT NO. 605

The PRESIDING OFFICER. The clerk will report the amendment that was sent up just before the recess.

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The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. **CORZINE**], for himself, and Mr. *Lautenberg*, proposes an amendment numbered 606.

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

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

The amendment is as follows:

(Purpose: To establish the effect of a section of the United States Code relating to the letting of contracts on individual contributions to political campaigns, and to require the Secretary of Transportation to consider State laws that limit political contributions to be in accordance with competitive procurement requirements)

After section 1703, insert the following:

SEC. 17__ . LETTING OF CONTRACTS.

Section 112 of title 23, United States Code, is amended by adding at the end the following:

“(g) *Effect of Section.*--Nothing in this section prohibits a State from enacting a law or issuing an order that limits the amount that an individual that is a party to a contract with a State agency under this section may contribute to a political campaign.”.

At the end of subtitle G in title I, add the following:

SEC. 17__ . DUTIES OF THE SECRETARY OF TRANSPORTATION.

Section 5323(h) of title 49, United States Code, is amended--

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(2) by striking “A grant or loan” and inserting the following:

“(1) **IN GENERAL.**--A grant or loan”; and

(3) by adding at the end the following:

“(2) **PROCUREMENT REQUIREMENTS.**--The enactment of a law or issuance of an order by a State that limits the amount of money that may be contributed to a political campaign by an individual doing business with a grantee shall be considered to be in accordance with Federal competitive procurement requirements.”.

Mr. INHOFE. May I inquire of the Senator about how long he will be taking for his opening remarks?

Mr. CORZINE. I thank the Senator from Oklahoma for his courtesy. I suspect that my statement will be somewhere in the neighborhood of 10 minutes and Senator *Lautenberg* an additional 5 minutes.

Mr. INHOFE. I ask unanimous consent that at the completion of the remarks of the senior Senator from New Jersey, the junior Senator be recognized.

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

The Senator from New Jersey is recognized.

Mr. CORZINE. Mr. President, I once again thank the Senator from Oklahoma.

Before I begin, I echo the remarks of the majority leader and minority leader congratulating and thanking the members of the Capitol Police for their efforts in protecting all of us, which they so ably do day in and day out. It is a testimony to their forethought that we were so efficiently able to move from the Capitol and protect folks. We are blessed with their efforts. I also thank the Sergeant at Arms and the Secretary of the Senate for their efforts and look forward to saying “thank you” personally to all of the individuals involved.

I think I have asked that the pending amendment be set aside and we move to amendment No. 606, if I am not mistaken. Is that correct?

The PRESIDING OFFICER (Mr. *Isakson*). Amendment No. 606 is the pending question.

Mr. CORZINE. Mr. President, I rise today with my colleague, Senator *Lautenberg*, who will be joining me in a minute, to offer an amendment to the SAFETEA Act, S. 732. Our amendment addresses a serious problem where Federal highway and mass transit contracts are awarded by States, those situations where Federal money and State money are intermixed in contracting administered by the State. These contracts are often or can be influenced, either by perception or reality, by political contributions. The Government contracting issue I am speaking of is commonly known as "pay to play."

To address this issue in situations where States administer these contracts with both Federal and State money or where Federal money is administered by the State, Senator *Lautenberg* and I are offering this amendment to allow States to set contracting rules that limit campaign contributions by contracting providers. This is something that has been in Federal law for over 50 years where there are straight Federal contracts. Unfortunately, there have been far too many cases across the country where in these circumstances businesses have made contributions to public officials or campaign committees and then expected to influence the awarding of Government contracts. It is not an attractive situation.

Last year, two Governors lost their careers in public service due to pay-to-play scandals in their States.

Other high-profile instances of pay-to-play corruption have occurred across the Nation, particularly in my home State where, on a bipartisan basis, our State legislators and Governors have reacted. But this is not unique to New Jersey. It has gone from New Jersey to California, from Philadelphia to Los Angeles and beyond. The problem is widespread and needs to be addressed.

Corrupt practices of pay-to-play have serious implications for the public. They have the effect of limiting competition in many ways because those who give political contributions then get the edge on those who might want to compete to do the business. They often reduce the quality of infrastructure projects--I will talk about a couple of situations that we see, particularly in my home State--and they lower the confidence of the public in elected officials and in public service in general.

Finally, and most important--this certainly is the case in my State--they raise the cost of doing business for the government and ultimately to the taxpayer.

This practice is often more like legalized bribery than I think any of us would like to admit, and it results in a corruption tax that all citizens end up bearing. So I think there is a reason to make sure that we act.

I regret to say this disease has really impacted my State of New Jersey. It is something that, unfortunately, has infected both sides of the aisle in the State, both parties. It really needs to be addressed.

Just last month, dozens of local public officials--and I mean dozens, both Democrats and Republicans in one of our counties--were indicted for soliciting or taking bribes from people doing business with their towns, and it was often in conjunction with political contributions. Sadly, New Jersey taxpayers have been hit with this hidden corruption tax, higher costs of doing business in our State, and I think it needs to be moved against.

Our Governor, with bipartisan support in both Houses, was able to institute a serious pay-to-play ban that requires that any political contribution be less than \$300 from anyone who wants to do business with the State. It is a straightforward, easy situation.

Honestly, time after time we have had the public trust broken in this contracting procedure, where Federal and State funds have been misused. We had a motor vehicle inspection contract where there was only one bidder. It was a cost-plus contract that ended up being over \$200 million above cost. It ended up costing the Federal Government and the State a lot more than was necessary. Again, it is a corruption tax. We have had other places--the EZ-Pass toll collection system--where politically favored vendors were able to win no-bid contracts. It seems to me we need to make sure we put competition on a level playing field. That is what this amendment is all about.

Fortunately, New Jersey and several other States, as I suggested, have, on a bipartisan basis, addressed this issue. It is about contracting law, however, not campaign finance. It is setting the rules for who has the ability to bid. Unfortunately, the Department of Transportation recently informed the State of New Jersey that these commonsense limits may not apply to highway or mass transit contracts that use Federal funds. The Department of Transportation argued that it might limit competition when, in fact, I do not understand how limiting the amount of a campaign contribution has anything to do with whether someone is going to qualify to participate in a contracting bid. The State is now seeking an injunction in the Federal courts and there will be all kinds of litigation about this over a period of time. Whether it gets overruled or not, I think it is appropriate to institute the possibility that, if a State legislature wants to take the stand that they

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would like to set rules for contracting, on contracts they administer, they have the ability to do it.

I think this is important, both for promoting competition but also for ensuring that there is clarity and confidence in the public bidding process, not only in my State but in a number of other States which have also bought into these kinds of rules. It is really a cross-section across the country in various places.

I have here a series of States--Illinois, Kentucky, Ohio, West Virginia, South Carolina--a number of places. These are States, as shown in the light green, that already have bills before their State legislatures. There are an enormous number of local jurisdictions that have also done it: Los Angeles, San Francisco, Oakland, Chicago--24 jurisdictions in my own State of New Jersey.

We think this is an important States rights issue. We should be able to enact laws that fight corruption without interference from the Federal Government. I hope we will look at this in a context that we want to make sure that what would work in those individual States is actually attended to.

Banning pay-to-play is consistent with current Federal practice when it is only Federal contracts that are being awarded. The Government already bans pay-to-play for Federal contracts that are awarded directly.

The Securities and Exchange Commission, along with a municipal rulemaking board, prevents pay-to-play when Government bond issues are at stake--again, a contracting issue, not a campaign contribution rule. In fact, I was instrumental and involved in this as an employer on Wall Street 10 years ago, to ban contributions from bond underwriters because it interfered too regularly with the overall process.

We think we can make a difference. These rules have worked when they have been instituted. They certainly have in the bond underwriting business, and they have Federal rules. The Federal Government is refusing to allow States such as New Jersey to enact similar contract reforms. I think this is an important step going forward.

I want to clarify something about this amendment. We are not establishing a Federal pay-to-play rule in Federal highway contracting. Some of the opponents would have you believe that. Those rules are already set by the Federal Government. It is merely respecting the rights of the State to establish and maintain their own State contracting practices. It only impacts contributions to State-level candidates, not Federal-level candidates. Federal campaign finance laws are in no way affected.

This commonsense measure has the support of a number of groups that work to protect the integrity of government spending: Public Citizen, Common Cause, the Brennan Center for Justice.

I ask unanimous consent to have letters of endorsement from these groups printed in the **RECORD**.

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

THE CAMPAIGN LEGAL CENTER,

Washington, DC, May 5, 2005.

Re Safe-TEA/TEA-LU Highway Bill and the Government Contracting Reform Amendment

DEAR SENATOR: The Campaign Legal Center strongly urges you to support the Government Contracting Reform Amendment to the Safe-TEA/TEA-LU Highway Bill, which protects the right of states to enact and enforce ``pay to play" laws.

For more than 50 years federal law has prohibited political contributions to federal candidates from federal government contractors. In recent years, state and local governments around the nation have followed Congress' lead by enacting similar ``pay to play" laws to protect the integrity of the procurement process.

The right of states to enact and enforce ``pay to play" laws has recently come under threat. Late in 2004, the Federal Highway Administration determined that a New Jersey State Executive Order limiting the size of political contributions from government contractors to state candidates

violates federal law competitive bidding requirements, established by 23 U.S.C. §112, for state highway construction contracts involving federal funds.

This Federal Highway Administration action affects not only New Jersey, but also threatens enforcement of similar "pay to play" laws in Kentucky, Ohio, South Carolina and West Virginia. Further, the Highway Administration action curtails the right of other states around the nation to enact their own "pay to play" laws.

The Government Contracting Reform Amendment sponsored by Senators Corzine and Lautenberg amends 23 U.S.C. §112, which establishes the competitive bidding requirement for contracts involving federal highway funds, to state that "Nothing in this section prohibits a State from enacting a law or issuing an order that limits the amount that an individual that is a party to a contract with a State agency under this section may contribute to a political campaign."

Similarly, the Government Contracting Reform Amendment amends 49 U.S.C. §5323, which establishes general provisions for the award of contracts involving mass transportation funds, to make clear that state "pay to play" laws "shall be considered to be in accordance with Federal competitive procurement requirements."

State laws restricting political contributions from government contractors are consistent with, and advance the purposes of, the federal law contracting requirements for highway and transit funds. Competitive bidding requirements, and reasonable restrictions on contributions from contractors who do business with the government, both advance the government's interest in avoiding real and apparent political corruption and preserving the integrity of the contracting process.

We urge you to support the Corzine-Lautenberg Government Contracting Reform Amendment to the pending Safe-TEA/TEA-LU Highway Bill, to protect states' rights to enact and enforce "pay to play" laws.

Sincerely,

Meredith McGehee,

Paul S. Ryan.

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BRENNAN CENTER FOR JUSTICE

AT NYU SCHOOL OF LAW,

New York, NY, April 27, 2005.

Re Safe-TEA Act of 2005 and the Corzine pay-to-play amendment

*U.S. Senate,
Washington, DC.*

DEAR SENATORS: I write on behalf of The Brennan Center for Justice to support Senator Jon Corzine's "pay-to-play" reform protection amendment to S. 732, the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005." Since its inception in 1995, the Center's Democracy Program has been working in the area of campaign finance reform on federal, state, and local levels. We believe that the amendment is important for ensuring that states maintain the flexibility to choose effective tools for protecting the integrity of government contracting.

Systems for government contract bidding have long sought to satisfy the laudable and compatible goals of contracting with low-cost and ethical bidders. For example, current federal law regarding state transportation projects that use federal money provides that "[c]ontracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility." 23 U.S.C. §112(b)(1) (emphasis added). Federal law expressly charges the state transportation department with establishing the criteria of responsibility. 23 C.F.R. §635.114(a).

Several recent scandals regarding government contracting in New Jersey prompted New Jersey to establish a criterion of responsibility for government contracting, which prohibited the state from contracting with an entity that has contributed to a candidate for or holder of the office of Governor, or to any State or county political party committee, within certain time frames. See New Jersey Executive Order 134 (September 22, 2004). The executive order explicitly stated that "the growing infusion of funds donated by business entities into the political process at all level of government has generated widespread cynicism among the public that special interest groups are 'buying' favors from elected officeholders." *Id.* Courts have recognized that contributions from government contractors present a severe risk of engendering corruption or the appearance of corruption, and thus have generally upheld "pay to play" contribution bans. See, e.g., *Blount v. SEC*, 61 F.3d 938,944-48 (D.C. Cir. 1995) (upholding constitutionality of SEC regulations that prohibit municipal finance underwriters from making campaign contributions to politicians who award government underwriting contracts); *Casino Ass'n of Louisiana v. State*, 820 So. 2d 494 (La. 2002), cert. denied, 529 U.S. 1109 (2003) (upholding ban on contributions from riverboat and land-based casinos); *Gwinn v. State Ethics Comm'n*, 426 S.E.2d 890 (Ga. 1993) (upholding ban on contributions by insurance companies to candidates for Commissioner of Insurance).

The FHA's position could also undermine the FHA's goal of awarding contracts only to responsible bidders and may risk actual, or the appearance of, corruption in the process of choosing bidders. Without rules prohibiting "pay to play" arrangements, states may deem entities "responsible" not because they have displayed any objective characteristics of responsibility, but rather because they have made contributions to government officials. Federal ethical standards should provide a floor beneath which a state may not go, but federal law should not be used to restrict a state from implementing stricter ethical standards that it deems necessary to protect the integrity of its government.

Senator Corzine's amendment proposes that a provision be added to the Safe-Tea Act of 2005 stating that "[n]othing in this section may be construed to prohibit a state from enacting a law or issuing an order that limits the amount of money an individual, who is doing business with a state agency for a federal-aid highway project, may contribute to a political campaign." For all the reasons discussed above, we urge you to adopt the amendment to ensure that federal highway

funding provisions are not wrongly interpreted to permit interference with state efforts to both prevent corruption or the appearance thereof and restore public confidence in its government.

Sincerely,
SUZANNE NOVAK.

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Public Citizen, Common Cause, Public Campaign, Democracy 21, Center for Civic Responsibility,

April 28, 2005.
Re Safe-TEA Act of 2005 and the Corzine pay-to-play amendment.

DEAR SENATOR: Next week you will be considering the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005" (Safe-TEA Act). Public Citizen, Common Cause, Democracy 21, Public Campaign and the Center for Civic Responsibility urge the Senate to adopt the Corzine "pay-to-play" amendment to the bill respecting states' rights to address the problem of corruption in government contracting.

Sen. Jon Corzine's amendment proposes that a sentence be included in the Safe-TEA Act, as was done in the House version of the bill, allowing states to implement a very narrow and limited reform of government contracting procedures: restricting potential government contractors from making large campaign contributions while negotiating a government contract to those responsible for awarding the contract.

Known as "pay-to-play," many state and local governments are being burdened by the all-too-common practice of a business entity making campaign contributions to a public official with the hope of gaining a lucrative government contract. This practice of attempting to skew the awarding of government contracts in favor of large campaign contributors has taken a serious toll on public confidence in state and local governments across the nation.

Last year, two governors in one week--Gov. George Ryan of Illinois (once considered for a Nobel Peace Prize) and Gov. John Rowland of Connecticut--lost their careers in public service due to pay-to-play scandals. A trial is currently underway in the City of Philadelphia concerning corruption charges in the awarding of government contracts with some members of Mayor John Street's administration. Similar scandals have recently racked California, Hawaii, New Jersey, and the City of Los Angeles.

Unfortunately, the Federal Highway Administration (FHWA) has decided to make it difficult, if not impossible, for states to address this serious problem. For example, the FHWA has decided to punish New Jersey for reforming its contracting system by withholding federal highway funds from the state. We believe you will agree with us that this federal intervention is unjustified and counterproductive. That is why we urge you to support language that makes clear that states have the right to ensure that their contracting procedures conform to the highest ethical standards and offer the best value for taxpayers.

New Jersey Gov. Richard Codey reluctantly suspended the state's pay-to-play rules for competitive bid contracts pending the outcome of a court challenge to the FHWA decision. [New Jersey v. Mineta] "This is a temporary measure forced on us by the federal government," Codey

said. "I am not happy about it. In making this necessary, the federal government is dead wrong, but I cannot jeopardize nearly \$1 billion in federal transportation funds."

The FHWA has placed itself in the odd position of imposing its preference for a disclosure-only regime on states and localities that have decided a stronger pay-to-play policy is necessary to address their problems of corruption in government contracting. As the FHWA memorandum opines: "... the disclosure of lobbying and political contribution efforts for the year preceding a contract bid is a reasonable means to meet the DOT's Common Rule requirement that the city assure that its contract award system performs without conflict of interest. This is distinct from a provision that actually excludes those making otherwise legal contributions from competing for a contract."2\

Many state, local and non-governmental jurisdictions strongly disagree with the FHWA: disclosure is necessary but not sufficient to end actual or apparent corruption in government contracting. Instead, New Jersey and four other states, the federal government and the Securities and Exchange Commission, along with dozens of local jurisdictions, have opted for a narrowly-tailored system of contribution restrictions on government contractors, in addition to disclosure requirements, as a more effective means to curtail pay-to-play abuses.

Sen. Corzine has introduced the pay-to-play protection amendment before you this week, which would add to the Safe-TEA Act: "Nothing in this section prohibits a State from enacting a law or issuing an order that limits the amount that an individual that is a party to a contract with a State agency under this section may contribute to a political campaign."

Pay-to-play restrictions are far from draconian measures. They are a narrow remedy that focus exclusively on a specific problem. Pay-to-play restrictions are easy for the business community to live with--the SEC's Rule G-37 championed by former SEC Chair Arthur Levitt, which served as a role model for New Jersey's pay-to-play policy, has not resulted in draining the pool of bond bidders--and pay-to-play restrictions are limited in scope and constitutional.

The Federal Highway Administration may believe it knows better than the states how to address their problems of actual and perceived corruption in government contracting, but the FHWA has not yet had to suffer the consequences of corruption scandals that the states have faced. The Senate should join the House and include this amendment to the Safe-TEA Act of 2005 allowing the states the authority to assure their citizens that contracts are awarded on merit.

For more information, please contact Craig Holman, Public Citizen, at 202-454-5182.

Respectfully Submitted.

Mr. CORZINE. Mr. President, I also want to note the House of Representatives included a similar measure in its version of the Transportation bill. It was a bipartisan amendment sponsored by New Jersey colleagues, **FRANK LOBIONDO**, a Republican, and **BILL PASCARELL**, a Democrat. This was passed unanimously, the same language, by the House.

In my view, this is an imperative step to allow States to have better control and more transparency and honesty in their contracting processes. I think it will move to save money for our States and put in place a greater sense of credibility for the public when it deals with its oversight of public contracting. I think we owe the taxpayers this, and I urge my colleagues to

support the Corzine-Lautenberg amendment. We should join the House, in my view, in instituting this ability for States to control their own contracting process.

I yield the floor.

I understand my colleague, Senator *Lautenberg*, along with our other colleagues who left the Senate at the time of the recess, will be returning to speak to this amendment. I will yield the floor, but I would appreciate it if we could reserve the right of Senator *Lautenberg*, upon his arrival, to come back and be next on the queue to speak.

The PRESIDING OFFICER. Is the Senator asking unanimous consent in a formal request?

Is there objection to the Senator's request to allow Senator *Lautenberg* the ability to speak when he returns to the Capitol?

Mr. BOND. I would amend that request to say, when I am finished speaking, Senator *Lautenberg* may speak.

The PRESIDING OFFICER. Is there objection? Is there objection to the request as modified? Without objection, it is so ordered.

The Senator from Missouri.

Mr. BOND. Mr. President, there are a number of things that need to be cleared up as we consider this amendment. First, the Senator from New Jersey has mentioned that several States have their own pay-to-play restrictions. But according to the Federal Highway Administration, those States are ones that are restricting contributions where there are not competitive bids. They are talking about no-bid contracts.

I do not doubt that New Jersey has had problems with no-bid contracts. I will leave it to my colleagues to discuss some of those problems. What we are talking about is changing the competitive bid system so that one State

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can opt out of a mandate that the Federal Government has imposed. That mandate is, when using Federal aid to highway dollars, you have to bid it competitively because when we as national taxpayers are funding projects, then we have a right to see that they are done on a competitive-bid basis, to make sure that the Federal taxpayers get the best bargain for their money.

The name of my colleague, the other Senator from New Jersey, is attached to the amendment. I find it interesting that his reputation is one of sanctioning and penalizing States that do not conform to Federal laws, so it was alarming to me to see this amendment from the New Jersey Senators that will exempt them from complying with Federal regulations. In my State there are a lot of things our chosen Representatives, the people who serve Missouri in the Missouri General Assembly, choose not to do. There are various mandates that impose burdens on our State that will limit its ability to get funds. If we are going down the road of exempting our States from mandates of the Federal Government on Federal highway aid dollars, I think the Missouri General Assembly and the Missouri Governor would pass along to me quite a number of mandates they wish to have taken off of their backs.

We just passed another mandate to take \$900 million out of the highway trust fund to pay for storm water improvements for local governments. I think that is an unfortunate mandate; it was adopted by a very close vote. I hope we will be able to revisit it. But when you start exempting a State from the competitive bid contracts to allow them to impose their own campaign finance laws through the Federal highway aid system, that, to me, does not seem to be a proper use of the Federal highway tax dollars. We have a right to expect that we get the best bargain for the money and that is through competitive bids.

This amendment, as I read it, limits competition and changes the current Federal process. Political contributions have absolutely no effect on the selection of Federal aid highway projects because, unless otherwise approved by the Secretary, construction projects are awarded only on the basis of the lowest responsive bid that meets the established criteria, based on the State's department of transportation engineering estimates.

Very simply put, unless the Secretary of Transportation waives it, you have to take what the State Department of transportation has put together in its request for bids, and make the best bid complying with that, that is responsive, at the lowest price.

That does not offer opportunities for corruption. There may be people in New Jersey and other States who find other ways to corrupt the system. I do not deny that. I think they should be punished. But there is no reason, in my view, to repeal the competitive bid standards. If States want to regulate their State projects by limiting competition, by all means, they should be free to do it.

If it is a State contract, States can put in anything they want. There are other States, as I mentioned earlier, that currently have pay-to-play laws in place, but there are four States that have pay-to-play laws, two of which--Ohio and South Carolina--only apply to no-bid contracts having no effect on highway and transit projects because these are let under the competitive low-bid method.

I believe the Senators from New Jersey think they are being singled out by the Federal Highway Administration as Kentucky and West Virginia have similar pay-to-play laws--but both Kentucky and West Virginia have exceptions to their provisions. Kentucky excludes contracts awarded competitively on the basis of the lowest and best bid, while West Virginia's exception is the restriction that only applies during negotiation and performance of the contract.

These provisions are clearly different from what the Senators from New Jersey seek for their State. To open the process in other States, we do not need to have Federal aid highway dollars used as a means of changing campaign finance laws or changing the competitive bid process which gives us the best bid on the projects that are funded with Federal dollars.

I don't want to see State laws preempting Federal laws, but if we are going to go down that road, as I said, I have a number of amendments, and I would certainly ask support for all the areas that Missouri wants to exempt from some of the mandates, many of which I think are unnecessary from the Federal Highway Administration laws.

At this point, I urge my colleagues not to support this amendment because it provides a very different standard which New Jersey is attempting to use in its award of competitive-bid contracts.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. If I might ask the Senator from Missouri, if he has read the New Jersey legislation, in no way by my reading of that legislation does it supersede the competitive bidding requirement.

Mr. INHOFE. Will the Senator yield?

Mr. CORZINE. Yes.

Mr. INHOFE. Mr. President, I ask unanimous consent, notwithstanding rule XXII, all first-degree amendments to the highway bill must be filed at the desk no later than 3 o'clock. We are extending it from 2 o'clock to 3 o'clock because of the evacuation.

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

Mr. CORZINE. I see the Senator from Missouri is no longer in the Senate, but I make very clear the amendment Senator *Lautenberg* and I are proposing in no way undermines the standard that there need be competitive bids in the Federal highway funds or in Federal funds that mix both State and Federal dollars.

This is about contracting rules that would encourage competition, not discourage competition. I believe if we were put side to side with Kentucky and West Virginia, we would find the New Jersey contracting rules are parallel. We would find this is one of the reasons the House unanimously agreed to this because it is an additional step that in no way undermines the standards that exist by the Federal Government.

Again, it reflects the desires of the State legislature and the Governor to have stronger, stricter rules on contracts administered by the State.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I start by commending the chairman of the Environment and Public Works Committee for his work on behalf of getting the funding raised for the Transportation bill.

It is critical. There is not a State that would not like to see more money for highways, transit or whatever else they do--perhaps even for long-distance rail service.

The manager of the bill, the chairman of the committee, had to wrestle with not only his conscience, but colleagues who felt differently. There were over 20 "no" votes. I wonder if those Senators would forgo the extra money that resulted from the increase in the size of the bill. Perhaps that could be polled.

I thank my colleague, Senator *Corzine*, for generating this amendment which I share in sponsoring to ensure integrity in highway contracting. My friend and colleague from New Jersey has always fought against corruption in public activities and contracting. I am proud to stand and

fight alongside him to make sure every State has the right to make choices about how it conducts its campaign financing laws and how it looks to better management of the process so corruption is avoided. That is what this is about.

One has to look at the bill. It is relatively simple. Frankly, I thought it would be something that could be accepted on its face by unanimous consent. There is no punitive measure in here.

I understand our colleague from Missouri said I was big on sanctions. How right he is. I am big on sanctions. We raised the drinking age to 21. When our colleague, Senator *Dole*, was the Secretary of Transportation under President Reagan, we sanctioned States who did not put that into law.

Guess what the outcome is. Twenty thousand young people have been saved over the last 21 years. That is what the sanctions did. Would it be better to not have sanctions and have the freedom for the teens to get on the highway and kill themselves? I don't think so. It

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worked.

We tried the carrot. But there were not enough carrots to take care of it, so we had to use the stick. That is what you do. That is what the red lights are for. It is a stick. It says: Do not cross over when traffic is going the other way, et cetera.

We are a nation of laws. That is what the structure of our society is. There are sanctions against those who would try to buy a gun permit when they are spousal abusers. There are sanctions. They go to prison. Yes, I like that kind of sanction.

When we look at what we are trying to do, unfortunately, the U.S. Chamber of Commerce says it should not happen, it reduces competition. Nothing could be further from the truth because now the little guys who, in their judgment, make a campaign contribution--we foster that notion around here: Contribute if you can. Contribute even if you cannot, we sometimes say. But it happens. Money flows. So we say to some small contractor or some attorney or some engineer who has a two-person business: Well, maybe there is an exemption for small business. But, on balance, they are saying the smaller companies cannot make a contribution because then they would be barred from competing. Competing with the big guys? It is outrageous.

So this amendment fixes a problem in Federal highway law that actually prevents States from taking effective steps to curb contracting abuses.

Earlier this year, the Federal Highway Administration withheld some \$250 million in highway funding from the State of New Jersey. It had already been allocated. What happened? We had to change the law. We had to open a loophole so people could contribute, even though our Governor at the time and the legislature agreed: No, we should not permit it. I am not defending it. I am saying I defend States rights. And many of the people here, particularly our friends on the other side, defend States rights. I think the State ought to be able to decide whether it wants to clean up the campaign finance laws.

Spokesmen for the FHWA said a State contracting rule designed to prevent actual and potential corruption was "inconsistent" with current Federal law. I do not know where they get that one.

What had New Jersey done? The State had simply banned certain large political contributions by recipient of State contracts. Its mission was to ensure fairness and transparency in the contracting process, and our State ought to be commended for it. Instead, New Jersey was punished for exercising its own judgment. The Governor signed it. The legislature passed it, the Governor signed it, and it became law. Why cannot we do that?

The relevant Federal law, section 112 of the highway title, calls for competitive bidding. The administration has taken the strict view that if some bidders are excluded, that could limit competition. Would we say that in the vetting of a company's executive leader, if he had a criminal past and they did not make a contribution, it would be all right? No, it certainly would not be all right for that company to start doing State business. But the fact is, if the playing field is tilted toward one company, there is no true competition. Maybe the big guys can afford to do that. They can rule the roost. But that is what our State wants to protect against.

States should not have to choose between receiving Federal highway dollars they need and restoring public confidence in the Government contracting process. What an anomaly we had here a little while ago. We had people voting to increase highway spending when it is threatened that the President is going to veto it, and we are way over the limit the White House proposed for the highway bill. Seventy some Senators said: Oh, yes? Impose limits? Well, we are not going to stick with your limits. We are going to raise the limits because our States need bridges and highway fixing and investments in transportation. That is what we want--70 some Senators. So it was not all Democrats. It was a mix.

It is hypocritical to continue to prohibit States from taking effective measures to maintain the integrity of their contracting process. Federal law already prohibits political contributions from Federal Government contractors. So why shouldn't States be allowed to do it, if they want to--one State by itself, any State that wants to do it? This amendment simply allows States to enact similar reforms when they so choose.

The House of Representatives has already approved a similar provision in its version of the transportation bill. I ask my colleagues to support this amendment to promote good Government, to promote competition. It is a vote for States rights, and a vote against corruption in public contracting.

Once again, I commend my colleague from New Jersey, Senator *Corzine*, for his initiative.

With that, I yield the floor.

The Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, I thank the distinguished chairman for his good work in moving this bill along. This is legislation that is long overdue. It is time that we move forward to vote so we can get help to these highway departments across this country, particularly in States such as mine, Northern States, where we are going to lose the construction season if we don't get something done, get a bill passed, and get a permanent authorization in place.

I speak in opposition to the pay-to-play amendment that has been offered to the Transportation bill.

For my colleagues who might not be aware of this issue, the Acting Governor of New Jersey issued an executive order last September which blocks anyone who makes political contributions to state officials, candidates or parties in excess of \$300 from bidding on any contract for services, material, supplies or equipment or to acquire, sell or lease any land or Federal building where the value of the contract exceeds \$17,500.

While it is clearly New Jersey's prerogative to institute such pay-to-play laws when it comes to State contracting, this New Jersey executive order effectively violated the free and open competition provisions governing Federal Aid Highway and Transit Contracting and went much further than pay-to-play laws in other States.

It's my understanding that New Jersey's Acting Governor, Richard Codey, issued this executive order in response to corruption and kick-backs that were uncovered with respect to no-bid State contracts.

Seeing that almost all of the contracts that occur under the Federal Highway and Transit programs are based on sealed low-bid contracts, the Senate should not adopt this amendment because it would undo the existing uniform rules that all States must follow when it comes to Federal contracting.

Congress has specifically stated in past highway and transit authorizations that we should encourage fair and open competition.

Congress should encourage competition by cultivating the broadest group of competent qualified contractors to do the work. We want to ensure that we are getting the best work done for the best price.

The low bid system was used to build our interstate system and National Highway System. It provides the highest quality product at the lowest possible price through competition. It should be maintained and strengthened, not weakened by adopting the amendment by the Senator from New Jersey.

Soon after New Jersey's Acting Governor issued his Executive Order last year, the U.S. Department of Transportation was forced to withhold a portion of New Jersey's transportation funding because the State was not complying with Federal contracting requirements--this was done after the U.S. Department of Transportation attempted to work this issue out with New Jersey Officials.

Soon thereafter, the New Jersey legislature stepped in and passed a bill on March 22, 2005 that excludes Federal aid highway funding from the Governor's previous pay-to-play executive order--thereby restoring New Jersey's Federal transportation funding.

I share the Senator from New Jersey's concern about illegal activity when it comes to no-bid contracting. However, there is nothing that currently prohibits states from taking action to prosecute those responsible for such illegal activities.

Further, since the current low-bid sealed contracting process used on Federal transportation contracts protects against instances of corruption or impropriety, and the fact that the New Jersey legislature has ensured that its pay-to-play regulations don't impact Federal transportation

contracts, I'm a little puzzled why this amendment is needed--unless of course the Senator from New Jersey is seeking to change the existing Federal contracting process.

Federal contracting law already includes a process for the exclusion of contractors who have acted illegally--and the Federal Government also has a debarment process that prohibits contractors who have committed fraud or bribery from bidding on future contracts.

Because the State of New Jersey is currently suing the U.S. Department of Transportation in Federal district court concerning the previous withholding of Federal transportation funds, now is not the time for the Senate to weigh-in on this matter. The Senate should allow the court to hear the case on its merits.

My colleagues will also be interested to know that the Senate Environment and Public Works Committee rejected this amendment when we marked up the transportation bill on March 16.

The U.S. Department of Transportation has informed me that there has not been one single case of kick-backs or corruption with regard to low-bid Federal aid highway contracts in New Jersey.

Most importantly, the U.S. Department of Transportation opposes this amendment and has informed me that the Corzine Amendment would create an unmanageable patchwork of local restrictions and requirements when Federal aid funds are used on a project.

I urge my colleagues to vote against this amendment and to allow the Federal Highway Administration and those State governments that are so interested in getting a highway bill put into place to enable them to address the critical transportation needs this country faces, to get this highway bill passed and defeat this amendment.

I yield back the remainder of my time.

Mr. INHOFE. Mr. President, first, I agree with the comments of the Senator from South Dakota. He has dramatically shortened my speech against the Corzine amendment because he said some things I would have said. I emphasize that the problem is not with sealed bids, it is with no bids. It could be that they have unique problems in New Jersey, but I would not want those problems that are there to encumber what we are trying to do in States such as Oklahoma and New Hampshire and South Dakota. There had been abuses that are pretty well known in New Jersey.

An example is the case of the law firm of DeCotiis, FitzPatrick, Cole & Wisler, which has reportedly thrived by exploiting a system that encourages politicians to reward their political contributors with State contracts that are no-bid contracts--not low-bid but no-bid contracts.

The Record, a New Jersey paper which did an extensive investigation into this DeCotiis firm and their relationship to public officials, stated in a December 2003 article that:

A sweeping review of DeCotiis's work for towns and public agencies shows how high rollers in this pay-to-play sweepstakes reap huge returns from investments in the right politicians. In a study of DeCotiis's legal bills for towns and public agencies across New Jersey, as well as interviews with dozens of elected officials, the Record has found that the DeCotiis firm billed at

least 128 government entities for nearly \$26.6 million during the 2 1/2 -year period starting January of 2001. From Alpine to Atlantic City, in 15 of New Jersey's 21 counties, and in many departments of State government, DeCotiis's lawyers are charging the taxpayers for contracts that, under Jersey law, can be awarded without competitive bidding.

I have other examples of corrupt kinds of dealings, but I believe my point has been made that here the issue is with no-bid contracts, not sealed-bid contracts.

I question, also, the constitutionality of something in terms of the first amendment, but that has not even been discussed.

There could be a problem. I would be sympathetic to the problem and perhaps the Senator from New Jersey will be holding a position in the not too distant future where he can deal directly with some of the problems that are within the State of New Jersey but are not all over the country.

So I join my colleague from South Dakota in urging the defeat of the

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amendment, and at the appropriate time I plan to move to table the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I appreciate the comments. I can understand the point of view if the bipartisan legislation from the State of New Jersey would in any way interfere with low-bid, sealed contracts on Federal projects. I would not be in favor of this, either. No-bid contracts should not be an accepted way of doing business in government. At least from the legal advice and understanding that I have of the New Jersey legislation, it does the opposite. It requires that it would conform both to Federal regulations and adds the additional element that there be restrictions on those participating who have contributed more than \$300 in a contract that is over \$17,500.

Practically speaking, the reality is that the Department of Transportation, and Republican and Democratic administrations in New Jersey--and I suspect this can very well be the case in other places--sets specifications. Those who both lobby and contribute often arrange those specifications, so there are situations where those who have the ability to participate in the bidding contracts are limited and those specifications are written in a way that gives a bias to the contracting exercise. All this legislation that the State of New Jersey is asking for, its States rights ability to impose, are supplemental to the rules and regulations that the Department of Transportation is taking, and I believe it will protect the public and enhance the confidence for the State of New Jersey.

It is not an imposition on any other State. They do not impose these pay-to-play rules. It has no impact on another State. We are only asking for the ability of the State of New Jersey to put down the rules that the State legislature, on a bipartisan basis, believes will lead to lower costs and greater transparency to the bidding process.

I understand there is a difference of view, but I feel strongly about it and ask my colleagues to consider the fact that this is a supplemental and in no way undermines Federal regulations, does

not impose this standard on any other State, and does go a long way toward dealing with concerns that people on both sides of the aisle in my State believe are undermining public trust and raising the cost to the Federal Government and the State government in doing business in our State.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I appreciate the comments, even though I disagree with them, of the Senator from New Jersey. I know he is sincere. I know there is a problem and he is trying to correct the problem and there is an honest difference of opinion.

I ask unanimous consent that a letter from the U.S. Chamber of Commerce opposing the Corzine amendment, a letter from the American Road & Transportation Builders Association opposing the Lautenberg-Corzine amendment, and also a letter from the Transportation Construction Coalition, which is, I believe, almost every labor union in the United States, be printed in the **RECORD**.

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

CHAMBER OF COMMERCE OF THE

UNITED STATES OF AMERICA,

Washington, DC, May 10, 2005.

Hon. **DANIEL AKAKA**,

U.S. Senate,

Washington, DC.

DEAR SENATOR AKAKA: As the Senate continues debate on H.R. 3, the reauthorization of the Transportation Equity Act for the 21st Century (TEA-21), the U.S. Chamber of Commerce strongly opposes an amendment by Senators John Corzine (D-NJ) and Frank Lautenberg (D-NJ) that attempts to change federal competitive highway and transit contracting rules.

For over 25 years, federal law has forbidden states from implementing "pay-to-play" provisions for state highway and transit construction contracts (23 USC §112). Federal highway and transit contracts are awarded in an open-bid environment, and it is unnecessary to have an individual state attempt to change these federal contracting rules.

In November 2004, the state of New Jersey passed an executive order with language that included federal highway and transit contracting in the state's "pay-to-play" provisions. On January 21, 2005, the U.S. District Court for New Jersey ruled against the state and reaffirmed the federal statute, which led to New Jersey's final "pay-to-play" law continuing the longstanding exemption of "pay-to-play" for federal competitive highway and transit contracting.

Supporting the Corzine/Lautenberg amendment would adversely affect the ability of business leaders to support candidates, and thus, undermine the importance of allowing business executives and their employees the ability to legally participate in the political process, while other groups would not be impacted.

The U.S. Chamber of Commerce will consider using votes on or in relation to this issue for inclusion in our annual "How They Voted" ratings. The U.S. Chamber of Commerce is the world's largest business federation representing more than three million companies and organizations of every size, sector and region.

Sincerely,
R. BRUCE JOSTEN.

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AMERICAN ROAD & TRANSPORTATION

BUILDERS ASSOCIATION,

Washington, DC, May 9, 2005.

DEAR SENATOR: As the Senate continues debate on H.R. 3, the federal surface transportation program reauthorization bill, the American Road & Transportation Builders Association (ARTB) urges you to oppose an amendment by Senator **FRANK LAUTENBERG** that would modify federal transportation procurement standards to allow states to penalize transportation construction firms that participate in the political process.

The Lautenberg amendment would allow states to preclude individuals who have made financial campaign contributions to state and local officials from competing for federal-aid highway and transit construction work. By excluding individuals who exercise their right to participate in the political process, the amendment would contradict the open competitive bid system of procurement that has been a hallmark of the federal transportation programs for almost 50 years. Under this system, contracts are awarded to the lowest qualified bidder. Political contributions, or the lack thereof, have no role in the awards outcome.

An ARTBA analysis of Federal Highway Administration (FHWA) bid data for the period 1958 to 2003 found that winning highway contractor bids on federally-funded projects have averaged 6.7 percent below the government's own internal cost estimates for the advertised jobs. In total over the 45-year period, the winning contractor bids have come in \$22.8 billion under estimated cost.

This analysis proves that the low-bid system works in the public interest. It also shows that highway contractors have been giving the public outstanding value for their tax dollars. Transportation construction industry contractors routinely build highways and bridges that meet exact government specifications for materials, quality, durability and environmental protection for substantially less than the government expects to pay.

Consequently, we urge you to protect the integrity of the open competition, low-bid system for transportation construction work and oppose the Lautenberg amendment to H.R. 3.

Sincerely,

T. Peter Ruane,
President & CEO.

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TRANSPORTATION CONSTRUCTION

COALITION,

May 9, 2005.

DEAR SENATOR: The 28 national associations and construction unions of the Transportation Construction Coalition (TCC) urge you to oppose the Lautenberg amendment to H.R. 3, the highway and transit program reauthorization bill. The Lautenberg amendment would restrict competition for federal highway and transit work and apply a nationwide solution to a state-specific issue.

The Lautenberg amendment would allow states to prevent companies from performing federal-aid highway and transit work funded by this bill if they made legal contributions to state and local elected officials. The amendment is based on a New Jersey law that significantly limits competition for transportation construction work by blocking any individual that made political contributions of more than \$300 from bidding on any contract that exceeds \$17,500.

The "pay to play" laws of other states typically focus only on no-bid contracts. The New Jersey version, however, applies to a much broader class of projects. Highway and transit projects are typically procured using the lowest competitive bid method, which requires an objective and public evaluation of sealed bids.

Congress has specifically stated in past highway and transit reauthorization bills that states should encourage fair and open competition. States accomplish this objective by cultivating the broadest group of competent qualified applicants to perform transportation construction work and by excluding companies that have acted illegally. The low bid system was used to build the nation's highway system and provides the highest quality product at the lowest possible price.

We urge you to oppose the Lautenberg amendment to H.R. 3. The amendment would significantly undermine the federal commitment to the competitive bid system.

Mr. INHOFE. Mr. President, I move to table the Corzine amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

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There appears to be a sufficient second.

The question is on agreeing to the motion.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Minnesota (Mr. **COLEMAN**), and the Senator from New Mexico (Mr. **DOMENICI**).

Further, if present and voting, the Senator from Minnesota (Mr. **COLEMAN**) would have voted "yea."

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. **DAYTON**), is necessarily absent.

The result was announced--yeas 57, nays 40, as follows:

[Rollcall Vote No. 119 Leg.]

YEAS--57

Alexander

Allard

Allen

Baucus

Bennett

Bond

Brownback

Bunning

Burns

Burr

Byrd

Chambliss

Coburn

Cochran

Conrad

Cornyn

Craig

Crapo

DeMint

DeWine

Dole

Dorgan

Ensign

Enzi

Frist

Graham

Grassley

Hagel

Hatch

Hutchison

Inhofe

Isakson

Jeffords

Kyl

Landrieu

Lott

Lugar

Martinez

McConnell

Murkowski

Murray

Nelson (NE)

Reid (NV)

Roberts

Santorum

Sessions

Shelby

Smith

Specter

Stevens

Sununu

Talent

Thomas

Thune

Vitter

Voinovich

Warner

NAYS--40

Akaka

Bayh

Biden

Bingaman

Boxer

Cantwell

Carper

Chafee

Clinton

Collins

Corzine

Dodd

Durbin

Feingold

Feinstein

Gregg

Harkin

Inouye

Johnson

Kennedy

Kerry

Kohl

Lautenberg

Leahy

Levin

Lieberman

Lincoln

McCain

Mikulski

Nelson (FL)

Obama

Pryor

Reed (RI)

Rockefeller

Salazar

Sarbanes

Schumer

Snowe

Stabenow

Wyden

NOT VOTING--3

Coleman

Dayton

Domenici

The motion was agreed to.