Some years ago, the Congress established a Yellow Ribbon Program which is doing a good job, and the goal of that program is to educate people who come home from Iraq and Afghanistan about the services available to them. But we have not yet funded the kind of strong outreach effort that I believe we need where we are literally sending people out to National Guard families, especially maybe in rural areas, and making them understand that their problems are not unique, that there are services available to help them.

So outreach is the word here. We do it in Vermont in a very informal way, just person to person.

This amendment is $20 million, and the offset comes from the $126 billion in funds in title IX of the bill. It does not cut any one particular account. This $20 million represents a fraction of 1 percent of the entire title.

So the issue here is that we have a serious problem with PTSD and TBI. I think it is terribly important that we do everything we can on a personal level to reach out to the families to get them the services they need. But, once again, you can have the greatest service in the world—I know we are trying. The Department of Defense is trying its best—but those services don't mean anything if veterans don't access them. So the goal is to get people into the services.

I would very much appreciate support for the Sanders-Dorgan amendment which will be coming up in a while.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 2583 TO H.R. 3326

Mr. TESTER. Mr. President, later today the Senate will vote on the McCain amendment No. 2583. This amendment would terminate funding for research and development of the Army's full-scale hypersonic test facility known as the MARIAH hypersonic wind tunnel.

The MARIAH Hypersonic Wind Tunnel Program is under development in Butte, MT. It is the Nation's only program to develop the wind tunnel technology required to test and evaluate new hypersonic missiles, space access vehicles, and other advanced propulsion technology, technology the Air Force says we will need.

MARIAH will be the first true air hypersonic wind tunnel program. The program has met its technical milestones and has not encountered significant setbacks. In fact, the Army Aviation Missile Command has given this project high marks. Here is what the Army has said:

> This research has shown great potential to be used in a missile test facility and is the only technology shown to have any possibility of meeting the requirement for a Missile Scale Hypersonic Wind Tunnel.

The Army has asked the MARIAH Program to provide testing capabilities at speeds of up to Mach 12. This is the next generation of hypersonic flight, something that has never been done before. To get to that capability, cutting-edge research and technologies are required.

The program already has provided very real and discernible benefits to both the scientific community as well as our armed services. There is no other facility in the world capable of meeting the performance requirements at Mach 8 and above.

According to a 2000 Air Force Science Advisory Board report, this type of testing will be needed for space access vehicles, global reach aircraft, and missiles that require air-breathing propulsion to reach speeds above Mach 8.

The MARIAH project has worked with Princeton University and Lawrence Livermore and Sandia National Laboratories to develop technologies and computer modeling that exists nowhere else in the world.

The team has achieved world records by reaching test pressures of over 200,000 psi.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TESTER. I ask unanimous consent for additional time.

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

It also has developed one of the most powerful electron beams in the world.

Working with Sandia National Labs, MARIAH has developed a 1-megawatt electron beam to boost the energy supply needed to generate the enormous pressures required in a wind tunnel of this caliber.

It is the most powerful electron beam in the world, and its benefits can be applied well beyond this project to include shipboard missile defense, large-scale sterilization of food, mail and other items that could have a biohazard or bioweapon contaminant.

In conjunction with Princeton University, MARIAH has successfully developed three-dimensional computational fluid dynamic computer models capable of simulating the previously unexplored physics necessary for the Mach 8 and above conditions.

This is groundbreaking research that must be done before any missile, rocket or aircraft can be tested at hypsersonic speeds.

Why does this matter? Why do we care about hypersonic capabilities?

The answer is foreign competition and foreign capabilities.

We know that Russia, China, and others are aggressively developing a new type of missile that is believed to be too fast for U.S. missile defense systems that are either planned or in use.

In particular, the India-Russia joint venture BrahMos is now engaged in laboratory testing of supersonic cruise and antiship missiles capable of speeds in excess of Mach 5.

According to the Air Force Research Labs' report of April 2009 entitled ''Ballistic and Cruise Missile Threats'':

> Russian officials claim a new class of hypersonic vehicle is being developed to allow Russian strategic missiles to penetrate missile defense systems.

That report is referring to comments made by the commander of the Russian rocket forces who said last December that ''By 2015 to 2020 the Russian strategic rocket forces will have new complete missile systems . . . capable of carrying out any tasks, including in conditions where an enemy uses anti-missile defense measures.'' This is a direct reference to hypersonic capabilities.

And yet some have said our military does not need this technology.

But when it comes to figuring out how to defeat this potential threat, I believe we should look into the future, not look back at reports that are 5 or 10 years old.

This project is about seeing a potential threat to our national defense looming on the horizon and finding a way to defeat it. It is vital to our national security.

I urge my colleagues to reject the McCain amendment.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2010

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3326, which the clerk will report.

The assistant legislative clerk read as follows:

> A bill (H.R. 3326) making appropriations for the Department of Defense for the fiscal year ending September 30, 2010, and for other purposes.

Pending:

Coburn amendment No. 2565, to ensure transparency and accountability by providing that each Member of Congress and the Secretary of Defense has the ability to review $1,500,000,000 in taxpayer funds allocated to the National Guard and Reserve components of the Armed Forces.

Barrasso amendment No. 2567, to prohibit the use of funds for the Center on Climate Change and National Security of the Central Intelligence Agency.

Franken amendment No. 2588, to prohibit the use of funds for any Federal contract with Halliburton Company, KBR, Inc., any of their subsidiaries or affiliates, or any other contracting party if such contractor or a subcontractor at any tier under such contract requires that employees or independent contractors sign mandatory arbitration clauses regarding certain claims.

Franken (for Bond/Leahy) amendment No. 2596, to limit the early retirement of tactical aircraft.

Franken (for Coburn) amendment No. 2566, to restore $166,000,000 for the Armed Forces to prepare for and conduct combat operations, by eliminating low-priority congressionally directed spending items for all operations and maintenance accounts.

Sanders/Dorgan amendment No. 2601, to make available from Overseas Contingency Operations $20,000,000 for outreach and reintegration services under the Yellow Ribbon Reintegration Program.

Lieberman modified amendment No. 2616, relating to the two-stage ground-based interceptor missile.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Am I correct to assume that the first 30 minutes has been equally divided?

The PRESIDING OFFICER. The Senator is correct.

Mr. INOUYE. I yield myself 10 minutes.

At the beginning of the year, the chairman of the House Appropriations Committee and I announced earmark reforms that go far beyond the transparency requirements enacted in 2007.

These reforms include a requirement for Members to post their earmark requests on their Web sites, make substantial reductions in the number and amount of earmarks compared to prior years' appropriations bills, and early and prompt committee announcements on which projects are funded in each of the annual appropriations bills.

There has never been as much transparency in the earmark process as there is today. In most cases, the public has had several months to review their elected Representatives' requests for funding. The bill on the floor today has 200 fewer projects and $300 million less in funding for Member projects than last year's bill.

I believe this is a considerable improvement to how Congress does its business.

As chairman of the Appropriations Committee, I welcome any constructive suggestions on how to improve the operations and efficiency of the ways in which the committee accomplishes its vital work.

However, those suggestions should not compromise the constitutional principle that the power of the purse is invested in the Congress, and not the executive.

We must retain the checks and balances and keep the Congress and the executive as separate and co-equal branches of government.

That is why I must oppose the amendment offered by the Senator from Arizona. It purports to increase transparency of congressional earmarks by subjecting all of them to full and open competition.

In reality, it exempts congressional priorities from the normal, lawful process of how the Department of Defense purchases equipment, engages services, and develops new technologies.

For example, we have included a number of earmarks for which the Department has negotiated contracts already in place. These contracts were negotiated in full compliance with the law.

Simply because Congress added funds to accelerate important programs, such as the TB–33 towed sonar array, handheld radios for Special Operations Command, advanced radars for the F–15 fighter, and virtual interactive training equipment for National Guard units around the country, the McCain amendment would require a new competition to take place.

This would disrupt important programs, delay procurement of valuable equipment, and cost the taxpayer more money.

The McCain amendment also disregards the fact that sometimes the Pentagon gets it wrong. There are many programs which are now in use on the battlefield that would not be there if the Defense Department's views had prevailed years ago.

Congress directed funds to the Predator unmanned aerial vehicle, lifesaving Chitosan bandages, and the V–22—programs that would not exist if Congress had not directed funds to those specific purposes.

I ask my colleagues, What do they suppose would have happened to those programs if the Pentagon's bureaucracy had put these programs through the redtape required by the McCain amendment? Would the Predator be attacking our enemies in Afghanistan and Iraq? Or might it still be an exquisite, complex system that remains on the drawing board year after year?

Ultimately the McCain amendment establishes two sets of acquisition laws: one for items requested by the President, which may be subject to full and open, limited or no competition at all; and another set of rules for items added by the Congress.

The amendment rests on the faulty assumption that the Defense Department is unable to conduct oversight on congressionally directed spending, and that earmarks do not serve valid military purposes.

In 2008, the Inspector General of the Department of Defense reviewed 219 earmarks from the fiscal year 2007 Defense Appropriations Act.

The Inspector General determined:

> The DOD personnel we interviewed and the respondents to our data call said that DOD performs oversight of earmarks identical to the oversight of other expenditures.

Furthermore, of the 219 earmarks that were reviewed by the Inspector General, all but 4 were found to ''advance the primary mission and goals of the Department of Defense.''

None of these four earmarks is contained in this year's bill. Even if they were, none of them would be competed under the McCain amendment because each of those earmarks was awarded to a nonprofit institution.

Due to these shortcomings in the amendment which has been offered, I have proposed an alternative amendment.

My amendment insures that each earmark added by Congress to benefit a for-profit entity shall be subject to the very same acquisition regulations that apply to items requested by the President in his annual budget request. This proposal applies the rules of the road equally to Congress and the President.

The amendment I propose also contains the standard exceptions to competition, including small business setasides. The McCain amendment, on the other hand, would eliminate these standard exemptions to competition for earmarks that support small businesses, minority-owned businesses, women-owned businesses, and service-connected disabled veteran-owned businesses.

My amendment is a reasonable and fair approach to balancing the acquisition rules as they apply to congressional spending items and items requested by the President. It insures that all spending items that are funded in this bill, regardless of who proposed them, are subject to the same rules for competition. I urge my colleagues to support my amendment and oppose the McCain amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the distinguished chairman of our committee, Senator INOUYE, for his leadership and the bipartisan way he has gone about managing his responsibilities as chairman of the Defense Appropriations Subcommittee. The committee has carefully reviewed the President's budget request in public hearings, calling before the committee representatives of the various service departments and also opening the opportunity for any outside interest to come to talk about what our needs are. In my judgment it has been a very careful, prudent, and workmanlike way to approach this very solemn and important responsibility. So he has brought us to where we are today, scheduled a vote, finally, on final passage later today, providing funding for our national security agencies, the Department of Defense, the men and women who have volunteered to put themselves in harm's way, to wear the uniform of our country and to defend our country against aggression here and abroad.

The Department is currently being funded by a continuing resolution. Although forcing the Department to operate under a temporary resolution is not a very good way to provide funding for a department charged with protecting our national security interests, it is the best we could do. I applaud the leadership of Senator INOUYE for bringing a bill before us that will cover the entire Department of Defense for the remainder of the fiscal year, and for working with our counterparts in the House to begin resolving differences between the two bodies so that a bill can soon be presented to the President for signature.

There has been much discussion about earmarks. The chairman raised the issue. Later this afternoon we will vote on an earmark-related amendment or two. There are those who have been striving to inject additional earmark reforms and other ways of doing business. We think we have carefully reviewed all the requests for spending,

all of the provisions that permit spending in this bill, to be sure they are warranted, justified, in the national interest, and is not there only to serve some special interest or private interest of a Member of Congress.

Congress has worked, the House and Senate together, to improve and make significant changes in the process, adding procedures to facilitate the closest possible scrutiny of congressionally directed spending. In addition, the Appropriations Committee has gone beyond those requirements and imposed additional disclosure requirements and limitations on earmarking. But I am not going to support any suggested changes that will take away from the Congress or diminish the power of the Congress specifically to carry out its responsibilities under the Constitution to direct spending.

The committee has recommended, and the Senate has acted in its wisdom to approve or reject certain provisions of the bill. We have entertained all amendments. There is no closed rule. There is no specified number of amendments. There is no prohibition against any amendment of any Senator. So anyone who has a problem with this bill or any provision has had a right to say what it is, offer a change in the way of an amendment, and to have the Senate vote on it. That is the way we conduct business in the Senate on earmarks. It is an open process.

There is nothing in the procurement history of the Department of Defense to support the notion that the Department has been infallible in cost effectively procuring solutions for our Defense Department needs, and doing so in a fair, open, and evenhanded manner. The inspector general and GAO reports are replete with examples of poor judgment in Defense Department activities having nothing to do with congressionally directed spending. The GAO has upheld protests in recent years in which the Department did not perform its acquisition responsibilities in a lawful and appropriate manner.

So there are a lot of checks and balances that are at work in the process, and I think we have to remind ourselves how thorough and diligent many people are in assuring that the things that are approved in this bill serve the public interest, not just the private interests or whims of Members of Congress.

We have increased funding for the requirement that the Department of Defense identified over the summer for Mine Resistant Ambush Protected vehicles for our men and women serving in Afghanistan. We have imposed new requirements to help protect our soldiers in uniform and on the battlefield. We have included an additional $1.2 billion for the MRAP program, and it is above what the administration has requested. I think we have acted responsibly, and I strongly defend the decision the committee has made on this subject. I have no doubt including funding for the procurement of these additional vehicles will save American lives.

Congressionally directed defense initiatives should be subject to the closest scrutiny of the Appropriations Committee, and of the legislative process as a whole including the authorizing procedure which precedes the appropriations process. The activities of the Department of Defense were carefully scrutinized by the Armed Services Committee, which shares responsibilities for making these decisions, as well as the Appropriations Committee. But I do not think Members of this body should feel ashamed or embarrassed to promote the passage of this bill. It is a good bill. It enhances our national security, and it supports the efforts we are making to protect the security interests of this great country.

I thank the Senate for allowing me to make these comments and the distinguished Senator from Hawaii for being an active, responsible partner in the development of this legislation.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I thank my distinguished colleague from Mississippi, the vice chairman of this committee, for his generous remarks.

I would like to point out to the Senate, this bill represents thousands of manhours of study, of research, of discussion, of debate. It contains spending of $636.6 billion. It is a huge amount. We take our vows and responsibilities very seriously. It might be interesting to note that this measure—this huge measure—was passed by the Appropriations Committee by a vote of 30 to 0. It is a bipartisan bill. It was passed unanimously. These things do not happen every day, Mr. President. It demonstrates and I think it illustrates what bipartisanship can do, what work can do, and what investigation can do.

Senator COCHRAN and I are proud to present this measure to the Senate, to our colleagues, and we hope it will be passed accordingly.

Mr. President, I would like to take this opportunity to discuss the Defense Subcommittee's recommendations regarding the fiscal year 2010 missile defense programs. This bill supports the administration's request, stays at the authorized funding levels, and, most importantly, recommends changes that augment programs that this Congress has been championing year after year.

The committee strongly supports the near-term missile defense programs, including ground-based missile defense, Aegis sea-based missile defense, and theater high altitude area defense. The committee added funding to the budget request in order to enhance each of these initiatives and ensure that the administration remains focused on these programs that are supporting the warfighter today.

The committee provides an additional $50 million above the budget request for the ground-based missile defense, GMD, program. After the administration submitted its budget for GMD, the Department of Defense approved a new integrated master test plan for the Missile Defense Agency, MDA. This plan requires seven additional ground-based interceptors that were not part of the budget request.

The Department informed the committee that additional funding was needed to sustain the production line in fiscal year 2010 in order to avoid costs associated with reconstituting the line in future years. The committee agreed with the Department and increased the funding.

This bill also provides funds above the budget request that will support the administration's new missile defense architecture in Europe. I strongly endorse the new plan. This new approach will enhance the protection of our allies in Europe, U.S. forces and their families deployed abroad, and the U.S. homeland from ballistic missile attack sooner than the previous program.

Some of my colleagues have stated that we are cancelling missile defense in Europe. Those indictments are simply inaccurate. Earlier this month, Secretary Gates responded to those types of criticisms as ''either misinformed or misrepresenting the reality of what we are doing.'' I would have to agree with him.

Under the prior administration's approach, the missile defense system would not be capable of protecting against Iranian missiles until at least 2017. Under the new plan, the more threatened areas of Europe and the U.S. forces stationed there will have protection by the end of 2011. Given Iran's brazen missile tests late last month and its recent disclosure of a new, secret uranium enrichment facility, we need to get the right capability fielded sooner.

The 10 interceptors that would have been emplaced in Poland under the previous plan were only capable of engaging five ballistic missiles from Iran. Any number greater than five overwhelmed the proposed system, thereby rendering the U.S. homeland, U.S. allies and partners, as well as our deployed troops and their families, vulnerable. Furthermore, these interceptors are not effective against short- and medium-range missiles that are proliferating around the world.

The system proposed under the new plan is more robust. It will provide the U.S. and its allies with the protection necessary to counter today's real ballistic missile threats. The new plan is more responsive to the increasingly pervasive short- and medium-range missile threat and is adaptable to respond to longer range threats in the future.

The new architecture focuses on using the proven standard Missile–3 on Aegis ships and on the land together with additional sensor capability to provide more effective protection for ourselves and our allies.

I am pleased to say that the Defense appropriations bill provides over $130

million in additional funding to support this new initiative:

The current inventory of SM–3 missiles is woefully inadequate to outfit the fleet of Aegis ballistic missile defense ships. The committee adds nearly $60 million to procure an additional 6 SM–3 interceptors to ensure that more missiles are available. This funding will bring production capacity up to the current level.

The bill adds over $40 million to begin procurement of an additional TPY–2 radar that could be deployed to Southern Europe. This is precisely what the new plan calls for. The additional sensor coverage will support protection of our European allies and deployed forces. It will also enhance the defense of the United States since it can provide early and precise tracking data for the U.S. ground-based interceptors emplaced in Alaska and California.

Finally, the committee provides an additional $35 million to continue development of SM–3 interceptors. This increased funding will accelerate the future upgrades of SM–3. These advancements are intended to increase the range and lethality of the SM–3 missiles on Aegis ships and the land-based component of the new European architecture. This is a critical component to counter the threat of Iranian longer range missiles in the future.

In order to stay at the authorized level for missile defense, while at the same time adding funds to robustly support the near-term missile defense programs and the new European missile defense plan, the committee had to make difficult trade-offs.

The committee reduced programs that are technically challenging and uncertain to show promise for years to come.

The committee also reduced funds that were not needed in fiscal year 2010. For instance, several of my colleagues have expressed concern that this bill reduces funding for tests and targets by $150 million. Our committee strongly supports a robust test program for missile defense, but we do not support funding that cannot be executed next year. The committee reduced funds that are premature for fiscal year 2010 and will not be required until later years. Let me explain.

In fiscal year 2009, the Congress appropriated nearly $920 million for test and targets. According to data provided by the Missile Defense Agency, as of August 31, they have only spent $360 million of those funds. This means that the Agency will carry forward into fiscal year 2010 about $560 million.

The fiscal year 2010 request for test and targets is nearly $970 million, a $50 million increase over last year's funding.

The committee believes that a $150 million reduction will not impact the testing program in fiscal year 2010. With the unexpended funds from fiscal year 2009 and this committee's recommendation for fiscal year 2010, MDA will have over $1.3 billion for testing purposes.

Furthermore, some of my colleagues will say that the reduction in the test and target budget line will stop testing of the two-stage ground-based interceptor that was intended for Poland under the prior administration's plan. That is simply not the case. Nowhere in this bill does the committee deny funding for the two-stage interceptor tests.

Indeed, the bulk of funding for these two tests is not in the test and target line of the budget request. Most of the funds for these tests are being carried forward from fiscal year 2009 for the European third site and are included in the $50.5 million request in fiscal year 2010 for the European capability.

Let me close by saying that this bill responsibly and robustly funds the missile defense programs that Congress has supported for years. It provides additional funding for GMD, Aegis and TPY–2 radars. It provides funding that is strongly aligned with the administration's new plan for missile defense in Europe. I strongly urge my colleagues to support the committee's recommendation.

I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 2588

Mr. SESSIONS. Mr. President, I would like to speak about the Franken amendment if it is OK with the bill managers.

The amendment would impose the will of Congress on private individuals and companies in a retroactive fashion, in validating employment contracts without due process of law. It is a political amendment, really at bottom, representing sort of a political attack directed at Halliburton, which is politically a matter of sensitivity.

Notwithstanding, the Congress should not be involved in writing or rewriting private contracts. That is just not how we should handle matters in the Senate, certainly without a lot of thought and care, and without the support or at least the opinion of the Department of Defense.

Senator FRANKEN offered this amendment because he apparently does not like the fact there are arbitration agreements in employment contracts. I would suggest that is common all over America today.

The Supreme Court of the United States has already resolved that arbitration agreements contained in employment contracts are not only valid but in most instances beneficial. In most instances, arbitration is considered to be beneficial. In fact, employees tend to win more arbitration disputes than they do lawsuits in court. So I think that is a matter we should consider.

This is what Justice Kennedy on the Supreme Court wrote in Adams v. Circuit City:

> Arbitration agreements allow parties to avoid the cost of litigation, a benefit that may be of particular importance in employment litigation, which often involves smaller sums of money than disputes concerning commercial contracts.

So I believe that instead of eliminating arbitration, we should probably be looking for ways to utilize mediation and arbitration more in these kinds of disputes.

Indeed, in a recent JAMS article published in June of 2009, entitled ''Arbitrators Less Prone to Grant Dispositive Motions Than Courts,'' the author made the following points:

> [A]rbitrators are generally much more reluctant than courts to grant dispositive motions—

That is, to wipe out a lawsuit altogether—

> whether they are motions to dismiss a complaint or arbitration demand, or motions for summary judgment. Indeed, the rules of most major arbitration providers are silent about whether an arbitrator may entertain dispositive motions.

It goes on to say:

> While courts have held that arbitrators have the inherent power to grant dispositive motions, the lack of explicit rules on the issue reflects the hesitance that most arbitrators feel in granting dispositive motions without a fact hearing.

It goes on to say:

> There are at least three institutional reasons, which also highlight some of the advantages of arbitration:

The article says:

> First, while every litigant is entitled to appeal the grant of a dispositive motion in federal or state court, a final decision in arbitration is subject to far less review. Moreover, appellant court review of such a grant is de novo, with the allegations or evidence, as the case may be, read in the light most favorable to the plaintiff. In addition, to the extent that the trial court has interpreted the law, the reviewing court is free to interpret and apply the law differently.

Basically, they are saying a person who has filed a complaint about their employment termination or agreement has a better shake of getting to court and having their matter heard than if they had filed a lawsuit because the strict rules of summary judgment often toss a lot of these lawsuits at an early stage.

It goes on to say:

> The second difference between courts and arbitrators that explains why courts are more likely to grant motions to dismiss [an employee's lawsuit] is a differing level of concern about discovery. In the U.S. Supreme Court's recent decision in Twombly, for instance, ''the Court placed heavy emphasis on the 'sprawling, costly, and hugely time-consuming' discovery that would ensue in permitting a bare allegation of an antitrust conspiracy to survive a motion to dismiss, and expressed concern that such discovery'' will push cost-conscious defendants

to settle even anemic cases. Discovery is much more limited in arbitrations and, thus, a denial of a motion to dismiss is less likely to result in such extensive discovery.

Finally, some commentators and judges have noted that the pressure of the increasing caseload that federal and state courts have seen over the last two decades makes the courts more tempted to dispose of cases on a motion, instead of after a trial on the merits. . . . [arbitrators have] reacted in precisely the opposite way—by constricting, not expanding, the use of dispositive motions.

In effect, allowing more cases to be fully heard.

There is no doubt that contracts are a property right. We do not have any allegations that the contracts Senator FRANKEN is trying to invalidate were imposed on employees or that fraud or coercion was involved in creating them.

To invalidate these contracts would violate not only the due process rights of employers but the employees as well. Employees could, indeed, benefit from arbitration rather than having to go to Federal court. The Congress is in no position to determine whether an employee negotiated for additional compensation in exchange for signing an arbitration agreement——

The PRESIDING OFFICER. The minority time has expired.

Mr. SESSIONS. Mr. President, I ask unanimous consent to have one additional moment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I would conclude by saying that I do believe this is an important issue; that the Department of Defense is not asking for this. It is a reaction to some specific event, I assume, that has not justified changing Federal law. Arbitration in itself can be better for employees than filing an expensive lawsuit in Federal court. I believe we ought to at least dig into the issue far more in depth than we have before we up and pass such legislation as this.

I thank the Chair and yield the floor.

Mr. FRANKEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii controls the time.

Mr. INOUYE. I yield.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. FRANKEN. Mr. President, article I, section 8 of our Constitution gives Congress the power to spend money for the welfare of our citizens. Because of this, Chief Justice Rehnquist wrote:

Congress may attach conditions on the receipt of Federal funds, and has repeatedly employed that power to further broad policy objectives.

That is why Congress could pass laws cutting off highway funds to States which didn't raise their drinking age to 21. That is why this whole bill is full of limitations on contractors—what bonuses they can give and what kinds of health care they can offer. The spending power is a broad power, and my amendment is well within it.

But don't take my word for it. I asked three of our Nation's top constitutional scholars—Akhil Amar, Laurence Tribe, and Erwin Chemerinsky, authorities regularly cited by everyone from Justice Scalia to Justice Stevens—what they thought about this amendment. Let me read their joint conclusion from this letter, which I ask unanimous consent to have printed in the RECORD:

Congress' power of the purse is expansive. S.A. 2588 falls squarely within its purview, and clearly does not infringe any constitutional prohibition.

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

DEAR MEMBERS OF THE UNITED STATES SENATE: Pursuant to a request from Senator Franken, we have reviewed his pending amendment (S.A. 2588) to the Department of Defense Appropriations Act of 2010 (H.R. 3326). Senator Franken invited us to consider whether any aspect of this amendment could arguably be found unconstitutional. We are confident that S.A. 2588 is well within the bounds of Congress' power under the Spending Clause. We are also confident that it raises no separate constitutional concerns.

The Constitution empowers Congress to "pay the Debts and provide for the common Defence and general Welfare of the United States." Art. I, §8, cl. 1. As Chief Justice Rehnquist wrote in *South Carolina* v. *Dole*, 483 U.S. 203, 206 (1987), "[i]ncident to this power, Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power 'to further broad policy objectives[.]' " In South Carolina v. Dole, for example, the Supreme Court upheld the National Minimum Drinking Age Act, a law that limited federal highway funds to states that did not adopt a minimum drinking age of twenty-one. This amendment is precisely the kind of "general welfare" legislation that the Spending Clause, as interpreted by South Carolina v. Dole, would permit.

Of course, the Spending Clause does not permit actions that are barred by other provisions of the Constitution. See, e.g., *Buckley* v. *Valeo*, 424 U.S. 1, 91 (1976) (per curiam). A review of the proposed measure reveals no such barriers.

This measure could conceivably impair government performance on certain federal contracts. The Contracts Clause of the Constitution, however, which prohibits passage of any "Law impairing the Obligation of Contracts," explicitly and exclusively applies to the states, not the federal government. See Art. I, 10, cl. 1 ("No State shall . . ."). Hence, the Contracts Clause could not provide the basis for a constitutional challenge to this amendment.

Similarly, S.A. 2588 is not remotely a Bill of Attainder. Instead of naming or describing a specific group of entities to be covered, the amendment erects a "generically applicable rule" for de-funding: the practice of requiring mandatory arbitration of certain claims. See *United States* v. *Brown*, 381 U.S. 437, 450 (1965). Moreover, denial of federal funding to an entity that declines to bring itself into compliance with purely prospective funding guidelines is a far cry from the punitive conduct that the Bill of Attainder clause was written to prohibit. If anything, while the "distinguishing feature of a Bill of Attainder is the substitution of a legislative for a judicial determination of guilt," this amendment empowers the courts as the only fora for the resolution of certain claims. *De Veau* v. *Braisted*, 363 U.S. 144, 160 (1960).

The Ex Post Facto Clause is also unavailing. Independent of the fact that the restriction of funding in S.A. 2588 is conditioned on present or future conduct, it is long-settled that the Ex Post Facto Clause applies exclusively to criminal penalties. See *Calder* v. *Bull*, 3 U.S. 386 (1798).

Nor could it be plausibly argued that S.A. 2588 effects an unconstitutional "regulatory taking" without just compensation under the Fifth Amendment Takings Clause. The Takings Clause addresses only the physical seizure of private property and the regulatory destruction of particularly identifiable property rights or interests—air rights, mining rights, intellectual property, and the like. While a plurality of the Supreme Court has once voted to strike down federal legislation under the Takings Clause even where the statute did not seize any identifiable piece of private property or render worthless any particular property interest, it has done so only where the law in question imposed a "substantial and particularly far reaching" retroactive monetary liability that unforeseeably brought about a "considerable financial burden." *Eastern Enterprises* v. *Appel*, 524 U.S. 498, 529–537 (1998). S.A. 2588, in contrast, is entirely unrelated to property, imposes no financial liability, and is in any event of purely prospective effect. Moreover, this measure cannot be said to impose on a narrowly targeted group burdens that in "justice and fairness," *Andrus* v. *Allard*, 444 U.S. 51, 65 (1979), ought to be borne by the public as a whole—the singular vice of takings of private property without "just compensation."

Someone unfamiliar with the jurisprudence of the past six decades might also allege that S.A. 2588 would violate substantive due process. However, the post-Lochner Supreme Court has consistently and wisely expressed an unwillingness to invalidate economic legislation on any such basis so long as it is at least arguably rational. See, e.g., *Ferguson* v. *Skrupa*, 372 U.S. 726, 731 (1963). In fact, the Supreme Court in the post–1937 era has invalidated economic legislation on the basis of substantive due process only where the legislature has acted in an indisputably "arbitrary and irrational" manner. *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). This amendment does not even remotely fall within that narrow prohibition.

Congress' power of the purse is expansive. S.A. 2588 falls squarely within its purview, and clearly does not infringe any constitutional prohibition.

Respectfully submitted,

AKHIL REED AMAR,
Sterling Professor of Law, Yale Law School.

ERWIN CHEMERINSKY,
Founding Dean, University of California at Irvine School of Law.

LAURENCE H. TRIBE,
Carl M. Loeb University Professor, Harvard Law School.

Mr. FRANKEN. Mr. President, I also asked the Congressional Research Service, Congress's nonpartisan research arm, to take a look. They also did not find any cause for constitutional concern.

Senator SESSIONS says my amendment violates the due process clause. But as Professors Amar, Chemerinsky, and Tribe explain in their letter, the Supreme Court hasn't struck down economic laws on these grounds since 1937—unless the legislation is "arbitrary and irrational." Their conclusion: "This amendment does not even

remotely fall within that narrow prohibition.''

Let me be clear. This amendment does not single out any contractor. The text of the amendment does not list a single contractor by name, and if you read the amendment, you would know it. This amendment would defund any contractor who refused to give the victims of rape and discrimination their day in court.

Let me tell my colleagues how I think this amendment does speak to the Constitution. The Constitution gives everybody the right to due process of law. Today, defense contractors are using fine print in their contracts to deny women such as Jamie Leigh Jones their day in court. But it is not just Jamie Leigh Jones. This isn't about one instance, as Senator SESSIONS said. This is about many women across this country who have been victims of sexual assault and rape in Iraq and who have been hired by contractors and who have been forced to arbitrate by contractors. So women are not given their day in court. Instead, they are forcing them behind the closed doors of arbitration where the Federal Rules of Evidence don't apply, where decisions are binding and secret, and where decisions are issued by a private arbitrator often paid by the company itself.

This amendment does not seek to eliminate arbitration. It seeks to eliminate arbitration in cases of rape and sexual assault. The victim's——

The PRESIDING OFFICER. The majority time has expired.

Mr. FRANKEN. I ask unanimous consent for another 20 seconds.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRANKEN. Mr. President, the victims of rape and discrimination deserve their day in court. Congress plainly has the constitutional power to make that happen. I ask my colleagues to vote in support of my amendment.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 2567 offered by the Senator from Wyoming, Mr. BARRASSO.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2566

Mr. COBURN. Mr. President, later we are going to vote on an amendment I have that is a prohibition on taking earmarked money from the operation and maintenance account of our armed services. Operation and maintenance—not procurement, not research, but operation and maintenance. The very key thing that funds the ability of our warfighters and our Defense Department to do what they do is being used to pay for some very good projects, some not very good projects, most of which all are parochial; in other words, directed toward State benefit, through the operation and maintenance account.

Last year, I would remind my colleagues, the Navy ran out of operation and maintenance money. We had to supplement it. Why did we supplement it? Because we took their money last year and put it into earmarks instead of giving the Navy what it needed. I would remind the people listening to these words that when we do a supplemental, we charge the money to our kids and our grandkids. We don't have to live within the budget parameters.

So as we vote for this, earmark is another question. The question is: Where do you take the money when you go to earmark? When we take it from the very things that support, equip, and protect the people who are defending this country, and we put them at risk by not having the amount of dollars that are necessary for that, I think we are sending a terrible signal not just to the American people but to our troops that our parochial desires are more important than their well-being.

When the amendment comes up, I will defer saying anything else so we can move on. But the American people need to know. This is a couple hundred million bucks that is going to be taken away from the very necessary things they need. There are a couple of other gimmicks in here that actually lessen that account that allow for other things to be done in terms of not looking into inflation correctly, but we will pass on those amendments. But the fact is we ought not be playing games with the money that goes to protect our troops.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. TESTER). Without objection, it is so ordered.

AMENDMENT NO. 2567

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate, equally divided, on the Barrasso amendment No. 2567.

The Senator from Wyoming is recognized.

Mr. BARRASSO. Mr. President, my amendment is simple. It prevents the Central Intelligence Agency from using any funds from the fiscal year 2010 Defense Appropriations bill to create or operate a center on climate change and national security.

To me, this center is redundant to activity already conducted by the CIA and other Federal agencies. There is no reason to create an additional center to do work already being done.

We don't need to duplicate the work of others. Leave the task of gathering and analyzing climate change information to the agencies that do that work. Let them pass that information on to the analysts at the CIA to incorporate it into their assessments.

The experts at the CIA should focus work on foreign intelligence gathering to prevent the next terrorist attack. That is what they are trained and equipped to do.

I urge adoption of the amendment.

Mr. BOND. Mr. President, I rise today to express my support for the amendment, introduced by Senator BARRASSO, to strike the funding for the Central Intelligence Agency's Center on Climate Change and National Security. Climate change and the role of the intelligence community has been the subject of many lively discussions before the Select Committee on Intelligence.

As the vice chairman of this committee, I have worked with the chairman, Senator DIANNE FEINSTEIN, to resolve many issues of importance to the intelligence community. Unfortunately, on this issue of climate change, I have and will continue to disagree respectfully with the chairman.

I recognize that many Members on both sides of the aisle have strong beliefs about global climate change, its causes, and its possible consequences. Regardless of how you come down on this issue, however, our intelligence agencies are not the appropriate venue for dealing with it.

Members who support the creation of this center at CIA have cited the national security implications of global climate change. I agree that global climate change could have national and global security implications and that elements of the U.S. Government and private sector should be studying it, but the intelligence community is not one of those elements. Other government entities, such as the Environmental Protection Agency and the National Oceanic and Atmospheric Administration, are far better suited to study this issue.

The intelligence community is not a think tank. Its job, put simply, is to steal secrets and provide analysis of those secrets. There are no secrets to steal or to analyze when studying current weather patterns and estimating the geopolitical effects of an event 20 or more years in the future as this new CIA center would be asked to do.

The Senate Intelligence Committee is constantly reminded by various commissions, and the intelligence community itself, that our Nation's intelligence analysts are overtasked, overworked, and do not have adequate time to devote to long-term assessments, even on the important countries and issues they currently cover on a daily basis, such as terrorism, proliferation, Iran, Iraq, and China.

To those who support this center, I would ask a simple question: As we

face continued threats in Afghanistan, Iraq, and Iran, which analysts are going to be pulled from their current responsibilities to analyze the implications of climate change? Adequately covering all of the geopolitical implications of global climate change would require analysis on dozens of countries by analysts who are familiar with some or all of those countries. In short, it would require drawing on a substantial part of our analytic corp.

Can we really afford to have these analysts redirected from their current responsibilities to work on global climate change, especially when our nation is at war? I strongly doubt that terrorist leaders or rogue nations will stop plotting against us while our analysts take time off to ponder the potential implications of global climate change.

Through my many discussions with Senator FEINSTEIN, I am familiar with the motivation for this center. While I will vote in favor of Senator BARRASSO's amendment, I would be willing to work with Senator FEINSTEIN and others to find alternative avenues to obtain the information being sought through this center.

The bottom line is this—at a time when our Nation is fighting wars on two fronts, terrorists continue to plot attacks on our homeland, and the threat of proliferation grows, we cannot afford for our overtaxed intelligence agencies to take time off to ponder climate change.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, I rise in opposition to the Barrasso amendment.

The mission of the CIA's Center for Climate Change and National Security is fully consistent with that of the intelligence community.

Creating this center does not require any additional CIA resources. It rearranges ongoing programs within the CIA so that existing funding can be more prudently spent.

The work of this center will not divert resources from other missions. It will not divert case officers or the tasking of satellites.

This center will continue in the traditional role of the intelligence community to support policymakers on national security issues related to climate change.

Therefore, I urge my colleagues to oppose this amendment.

I yield the floor.

Mr. BARRASSO. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

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

The result was announced—yeas 38, nays 60, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—38

Alexander	DeMint	Lugar
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Risch
Bunning	Gregg	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Voinovich
Cornyn	Kyl	Wicker
Crapo	LeMieux	

NAYS—60

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Cantwell	Klobuchar	Schumer
Cardin	Kohl	Shaheen
Carper	Landrieu	Snowe
Casey	Lautenberg	Stabenow
Collins	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NOT VOTING—2

Byrd	Specter

The amendment (No. 2567) was rejected.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. I move to table the motion to reconsider.

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

The Senator from Oklahoma is recognized.

AMENDMENT NO. 2618, AS MODIFIED

Mr. INHOFE. I ask unanimous consent to call up amendment No. 2618. I send a modification to the desk for its consideration. It would not require a rollcall vote.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. INHOFE] proposes an amendment numbered 2618, as modified.

The amendment is as follows:

(Purpose: To ensure sustainment, readiness, and acquisition of ammunition for all United States military services in order to meet long term peacetime and wartime requirements)

On page 245, between lines 8 and 9, insert the following:

SEC. 8104. None of the funds appropriated or otherwise made available by this Act may be used by the Secretary of the Army to transfer by sale, lease, loan, or donation government-owned ammunition production equipment or facilities to a private ammunitions manufacturer until 60 days after the Secretary submits a certification to the congressional defense committees that the transfer will not increase the cost of ammunition procurement or negatively impact national security, military readiness, government ammunition production or the United States ammunition production industrial base. The certification shall include, the Secretary of the Army's assessment of the following:

(1) A cost-benefit risk analysis for converting government-owned ammunition production equipment or facilities to private ammunition manufacturers, including cost-savings comparisons.

(2) A projection of the impact on the ammunition production industrial base in the United States of converting such equipment or facilities to private ammunition manufacturers.

(3) A projection of the capability to meet current and future ammunition production requirements by both government-owned and private ammunition manufacturers, as well as a combination of the two sources of production assets.

(4) Potential impact on national security and military readiness.

Mr. INHOFE. Mr. President, back in August of 2008 there was a directive that we should try to privatize as many of the Army Corps as possible. All this does is say, before any more are privatized, the Army should have to certify that—two things—it would not increase the cost or negatively impact national security. It has been cleared on both sides. I urge its adoption.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2618), as modified, was agreed to.

Mr. COCHRAN. I move to table the motion to reconsider.

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

Mr. COCHRAN. I thank the Chair.

AMENDMENT NO. 2588

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 2588, offered by the Senator from Minnesota, Mr. FRANKEN.

The Senator from Minnesota is recognized.

Mr. FRANKEN. Mr. President, when she was 19, Jamie Leigh Jones was drugged, gang-raped, and locked in a shipping container while working for KBR in Iraq. She tried to sue, but KBR pointed to the fine print in her contract and forced her into arbitration. Jamie Leigh, who came to Washington for this vote, has spent 3 years fighting just to get her day in court.

This is not just Jamie Leigh's story. It is the story of Mary Kineston of Ohio, Pamela Jones of Texas, and women around this country.

Fifty-eight groups across this country have taken a stand by supporting my amendment. As the National Alliance to End Sexual Violence said:

Asking a victim to enter arbitration with someone who raped her, or with a company that wouldn't protect her, is outrageous.

I agree. Victims of sexual assault and discrimination at least deserve their day in court. My amendment would make sure all military contractors, not just KBR, give victims that basic right.

I urge you to support this amendment.

Mr. NELSON of Florida. Mr. President, in December 2007, I became involved in an issue that I continue to work on today. The issue is our government's failure to prosecute multiple incidents of sexual assault against American civilians working alongside our military in Iraq and Afghanistan.

After surviving sometimes brutal attacks, these civilians too often found themselves in a legal blackhole. No one could tell them how to report the crime. No one knew who should investigate, putting precious time and evidence at risk. And perhaps worst of all, no one could guarantee their personal safety. Their attackers, meanwhile, usually fell outside the Uniform Code of Military Justice, UCMJ, the legal code that our men and women in uniform must obey, and beyond the effective reach of our criminal laws.

Over the last 2 years, I have been in frequent contact with the Departments of Defense, State, and Justice to ascertain the scope of this problem. Although these agencies have, on the whole, cooperated with my requests, I am not satisfied that we have a full picture of the number of sexual assaults perpetrated against Americans—contractors and military—in Iraq and Afghanistan. Nor do I believe that the respective departments have clear policies in place to address crimes committed by and against U.S. contractors serving in the war zones.

In April 2008, I chaired a hearing in the Foreign Relations Committee that included harrowing testimony from Mary Beth Kineston and Dawn Leamon, who were former civilian contractors for Kellogg Brown & Root, better known as KBR, which is a former subsidiary of Halliburton. These patriots testified that they were sexually assaulted while working for KBR in Iraq. In written testimony submitted to the committee, another woman, Jamie Leigh Jones, wrote of being drugged and gang-raped by her coworkers, also while working for KBR in Iraq. When she reported the crime to her superiors, Ms. Jones was locked in a shipping container. Not until her father was able to contact Congressman TED POE was Ms. Jones rescued from captivity.

When similar crimes are committed within the United States, on a permanent military base, or at one of our embassies overseas, the authority and responsibility to prosecute these crimes is clear. Yet because these crimes were committed abroad and the victims were civilians, their stories never see the light of day. There is no jury, no public record and no transcript.

Additionally, in many cases the victims' employer has moved for such cases to be heard in private arbitration. At the hearing, Dawn Leamon stated that there was an arbitration clause in the employment agreement she signed, and that KBR used that clause to prevent her from seeking justice in a court of law. These arbitration clauses, which have become all too common, protect the companies from accountability when a crime occurs.

In response to the hearing and testimony of these courageous women, I offered an amendment in mark-up of the 2009 National Defense Authorization Act that later became law, Public Law 110–417. That amendment required government contractors to report crimes committed by or against employees in Iraq or Afghanistan to the appropriate U.S. government authorities. The law now requires contractors to have in place resources to assist victims and witnesses of crimes, so that there is a place to go for help. I also attempted to include a provision that would prevent contractors from requiring employees to enter into mandatory arbitration contracts.

I am pleased that Senator FRANKEN has taken an interest in this important issue, and I am cosponsoring the Franken amendment, Senate amendment No. 2588, which denies funding to Department of Defense contractors who continue to use mandatory arbitration clauses to force sexual assault victims into arbitration. If adopted, this important amendment would close the legal loophole that prevents the victims of sexual assault from getting the justice they deserve. It is my hope that justice for these women will encourage reform to the entire system.

I encourage my colleagues to join us in unanimously adopting this amendment. It is my hope that such a showing of support will urge its adoption in the final conference bill. It is imperative that this provision become law.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, first of all, with regard to this lawsuit, although it took some time, the court, the Fifth Circuit, has ruled that this matter is not arbitrable and this lady is entitled to a court trial because it goes outside normal employment matters.

The Department of Defense let me know to oppose this amendment. There are a number of reasons: because it goes far beyond the issue raised by my colleague from Minnesota. It eliminates arbitration for any claim under title VII of the Civil Rights Act, any claim resulting from negligent hiring, negligent supervision or retention of an employee—virtually any employment dispute that is now resolvable under arbitration, which the U.S. Supreme Court has said is good. Statistics show that employees get final judgment and actually win more cases under arbitration than they do going to the expense of a Federal court trial.

I think we should listen to the Department of Defense and vote no on this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

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

The result was announced—yeas 68, nays 30, as follows:

[Rollcall Vote No. 308 Leg.]

YEAS—68

Akaka	Grassley	Mikulski
Baucus	Hagan	Murkowski
Bayh	Harkin	Murray
Begich	Hatch	Nelson (NE)
Bennet	Hutchison	Nelson (FL)
Bennett	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Cantwell	Klobuchar	Schumer
Cardin	Kohl	Shaheen
Carper	Landrieu	Snowe
Casey	Lautenberg	Stabenow
Collins	LeMieux	Tester
Conrad	Leahy	Udall (CO)
Dodd	Levin	Udall (NM)
Dorgan	Lieberman	Voinovich
Durbin	Lincoln	Warner
Feingold	Lugar	Webb
Feinstein	McCaskill	Whitehouse
Franken	Menendez	Wyden
Gillibrand	Merkley	

NAYS—30

Alexander	Cornyn	Kyl
Barrasso	Crapo	McCain
Bond	DeMint	McConnell
Brownback	Ensign	Risch
Bunning	Enzi	Roberts
Burr	Graham	Sessions
Chambliss	Gregg	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Wicker

NOT VOTING—2

Byrd	Specter

The amendment (No. 2588) was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote.

Mr. BOND. I move to lay that motion upon the table.

The motion to lay upon the table was agreed to.

AMENDMENT NO. 2596

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided, prior to a vote in relation to amendment No. 2596 offered by the Senator from Missouri, Mr. BOND.

Mr. BOND. Mr. President, the January report of the Governmental Accountability Office said the Air Force had a couple of major challenges in sustaining the air sovereignty alert capabilities; that is, the air structure that keeps our homeland safe.

They say the Air Force has not developed plans because it is focused on other priorities. Retiring these planes would result in a lack of aircraft to meet the vital ASA mission. And 16 of the 18 sites across the Nation are manned by Air National Guard.

Senator LEAHY and I, as cochairs, have introduced this amendment, which is supported by the Guard, which says that we do not retire any more

fourth-generation aircraft until the Secretary tells the Congress how it is going to ensure the capability of the ASA mission.

Mr. LEAHY. Mr. President, I rise in support of the amendment offered by Senator BOND to temporarily suspend the retirement of tactical aircraft by the U.S. Air Force.

For months, Senator BOND and I as co-chairs of the Senate National Guard Caucus have repeatedly questioned Air Force and Department of Defense leadership about what it was doing to address a looming shortfall in available aircraft for Air National Guard Units. The Air Force acknowledges this issue and I know has spent a great deal of time studying options on how to address the shortfall.

But, after numerous requests at hearings and briefings for a concrete plan, at the start of the fiscal year 2010 fiscal year today, we still do not have a plan.

That is why Senator BOND and I have proposed an amendment that temporarily suspends the retirement of tactical aircraft until the Secretary of the Air Force provides Congress with a roadmap that resolves the looming tactical aircraft shortfall.

I hope this amendment prompts the Air Force to conclude its deliberations so that our National Guard and Reserves never get to point where there are units that have the best trained pilots and technicians in the world but there are no aircraft on the tarmac.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. I have no opposition to this amendment, nor am I aware of anyone on our side who opposes this. I am prepared for a voice vote.

Mr. BOND. Mr. President, there may be a request for a vote on this side.

There is objection on this side to having a voice vote.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the amendment. The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

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

The result was announced—yeas 91, nays 7, as follows:

[Rollcall Vote No. 309 Leg.]

YEAS—91

Akaka	Brownback	Corker
Alexander	Bunning	Cornyn
Barrasso	Burr	Crapo
Baucus	Burris	DeMint
Bayh	Cantwell	Dodd
Begich	Cardin	Dorgan
Bennet	Carper	Durbin
Bennett	Casey	Ensign
Bingaman	Chambliss	Enzi
Bond	Cochran	Feingold
Boxer	Collins	Feinstein
Brown	Conrad	Franken
Gillibrand	Levin	Sanders
Grassley	Lieberman	Schumer
Hagan	Lincoln	Shaheen
Harkin	Lugar	Shelby
Hatch	McCaskill	Snowe
Hutchison	McConnell	Stabenow
Inhofe	Menendez	Tester
Inouye	Merkley	Thune
Isakson	Mikulski	Udall (CO)
Johnson	Murkowski	Udall (NM)
Kaufman	Murray	Vitter
Kerry	Nelson (NE)	Voinovich
Kirk	Nelson (FL)	Warner
Klobuchar	Pryor	Webb
Kohl	Reed	Whitehouse
Landrieu	Reid	Wicker
Lautenberg	Risch	Wyden
LeMieux	Roberts	
Leahy	Rockefeller	

NAYS—7

Coburn	Johanns	Sessions
Graham	Kyl	
Gregg	McCain	

NOT VOTING—2

Byrd	Specter

The amendment (No. 2596) was agreed to.

Mr. INOUYE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2565

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 2565 offered by the Senator from Oklahoma, Mr. COBURN.

The Senator from Oklahoma.

Mr. COBURN. This is a simple amendment. I am appreciative of the fact that the National Guard and Army Reserve will get additional funds. All the amendment says is, run that by the Defense Department. They don't get to approve it or disapprove it, but they ought to get to see it. And so should we. Every one of us has National Guard units. Many of us have Army Reserve units. Why should we not have access to information as to how they will spend the money? It is about transparency. The American people ought to see how they will spend the money. I want to see how it will be spent in Oklahoma. All Senators should be able to see how it is spent. The Secretary of Defense will not be able to stop it. It only says he is knowledgeable and responsible, when utilizing those forces overseas, for their deployment and equipment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, the Coburn amendment, which would impose an additional layer of bureaucracy to the National Guard and Reserve's spending decisions, is unnecessary and burdensome. This proposal mandates a new component of review and assessment in a process where a high level of accountability already exists.

As is already required by law, the Assistant Secretary of Defense for Reserve Affairs sends reports to Congress, including the four committees which oversee defense spending.

These reports explain, in detail, how the various Reserve component chiefs have determined to spend the funds provided.

The Guard plays a unique role in our country; they defend us here at home and, as has been the case all too often in recent years, they fight for us abroad. This special status directly effects the Guard's spending priorities, and in recent years they have focused on buying ''dual use'' equipment that is good for both foreign war and for domestic missions.

Based on this reality, it is important that Congress maintain the Reserve component chief's level of influence so they can spend funds based on their most urgent requirements and unique needs.

Finally, creating statutory requirement for an additional ''thorough review,'' involving the Secretary of Defense and other officials, will likely delay access to these funds. At a time when our Guard is called upon more frequently at home and is being relied upon so heavily in Iraq and Afghanistan, to risk underresourcing them and not providing the full support of Congress is irresponsible and negligent.

I call upon my colleagues to support the Guard and Reserves and reject this amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 2565.

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

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

The result was announced—yeas 28, nays 70, as follows:

[Rollcall Vote No. 310 Leg.]

YEAS—28

Barrasso	Enzi	McCaskill
Bunning	Graham	McConnell
Burr	Gregg	Murkowski
Carper	Hatch	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Thune
Collins	Johanns	Vitter
Corker	Kyl	Wicker
DeMint	LeMieux	
Ensign	McCain	

NAYS—70

Akaka	Dorgan	Lieberman
Alexander	Durbin	Lincoln
Baucus	Feingold	Lugar
Bayh	Feinstein	Menendez
Begich	Franken	Merkley
Bennet	Gillibrand	Mikulski
Bennett	Grassley	Murray
Bingaman	Hagan	Nelson (NE)
Bond	Harkin	Nelson (FL)
Boxer	Hutchison	Pryor
Brown	Inouye	Reed
Brownback	Johnson	Reid
Burris	Kaufman	Risch
Cantwell	Kerry	Roberts
Cardin	Kirk	Rockefeller
Casey	Klobuchar	Sanders
Cochran	Kohl	Schumer
Conrad	Landrieu	Shaheen
Cornyn	Lautenberg	Snowe
Crapo	Leahy	Stabenow
Dodd	Levin	Tester

Udall (CO)	Warner	Wyden
Udall (NM)	Webb	
Voinovich	Whitehouse	

NOT VOTING—2

Byrd	Specter

The amendment (No. 2565) was rejected.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table. The motion to lay on the table was agreed to.

AMENDMENT NO. 2566

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes equally divided prior to a vote in relation to amendment No. 2566, offered by the Senator from Oklahoma, Mr. COBURN.

The Senator from Oklahoma.

Mr. COBURN. Mr. President, I spoke earlier on this amendment and will yield my time to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, this is a pretty simple amendment. It prohibits the spending of $165 million on earmarks. We would free up $165 million and return it to the general pool of operation and maintenance funding. So it is very clear the administration, on the operation and maintenance account, says the bill cuts the O&M account, and this restores some of it.

I again would like to point out that operation and maintenance is one of the most critical aspects of our defense of this Nation. This amendment simply prohibits expenditures on any earmarks in the operation and maintenance account.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, the Senator from Oklahoma has proposed an amendment to strip the Defense bill of the earmarks in the O&M appropriations. As I have said previously, the Defense Subcommittee reviews the entire budget and adjusts funds based on that review. Funds in the O&M budget are not reduced with the intent to fund earmarks.

Earmarks in O&M provide additional funds to repair facilities and enhance security on our military bases, augment maintenance efforts, and equip our military members with personal protection devices.

During this debate, the Senator from Oklahoma has spoken about his concerns to provide adequate funding for the National Guard. I share that concern. I would point out that if this amendment is adopted, it would decrease funding in excess of $75 million provided by this subcommittee to National Guard units in nearly 20 States.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. INOUYE. I hope my colleagues will vote against it.

Mr. COBURN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

The result was announced—yeas 25, nays 73, as follows:

[Rollcall Vote No. 311 Leg.]

YEAS—25

Barrasso	Ensign	Lugar
Bayh	Enzi	McCain
Bunning	Feingold	McCaskill
Burr	Grassley	Risch
Chambliss	Inhofe	Sessions
Coburn	Isakson	Thune
Cornyn	Johanns	Vitter
Crapo	Kyl	
DeMint	LeMieux	

NAYS—73

Akaka	Gillibrand	Murray
Alexander	Graham	Nelson (NE)
Baucus	Gregg	Nelson (FL)
Begich	Hagan	Pryor
Bennet	Harkin	Reed
Bennett	Hatch	Reid
Bingaman	Hutchison	Roberts
Bond	Inouye	Rockefeller
Boxer	Johnson	Sanders
Brown	Kaufman	Schumer
Brownback	Kerry	Shaheen
Burris	Kirk	Shelby
Cantwell	Klobuchar	Snowe
Cardin	Kohl	Stabenow
Carper	Landrieu	Tester
Casey	Lautenberg	Udall (CO)
Cochran	Leahy	Udall (NM)
Collins	Levin	Voinovich
Conrad	Lieberman	Warner
Corker	Lincoln	Webb
Dodd	McConnell	Whitehouse
Dorgan	Menendez	Wicker
Durbin	Merkley	Wyden
Feinstein	Mikulski	
Franken	Murkowski	

NOT VOTING—2

Byrd	Specter

The amendment (No. 2566) was rejected.

Mr. INOUYE. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

AMENDMENT NO. 2601

Mr. SANDERS. Mr. President, my amendment is supported by Senators DORGAN and LEAHY, the National Guard Association, the U.S. Air Force Association, and the U.S. Army and Reserve Officers Association.

This is a simple amendment. Many of the men and women are coming home from Iraq and Afghanistan with PTSD and TBI. While the DOD and the Veterans' Administration have done a good job in providing services to the men and women, not everybody is accessing the services.

This amendment provides $20 million for outreach efforts so that State by State we can send people out to talk to them and make sure they understand the facilities that are there and available to them to help them with PTSD and TBI.

My understanding is that this amendment has been accepted. I thank the chairman and the ranking member.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, there is no opposition to the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2601) was agreed to.

Mr. INOUYE. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATOR BAUCUS'S 11,000TH VOTE

Mr. REID. Mr. President, if I can have the attention of the Senate, I had a chance to go to Montana with Senator BAUCUS. I had never been there. Nevada is a huge State area-wise, but Montana is twice as big as Nevada. We are the seventh largest State and Montana is the fourth largest. I can remember flying in that airplane and thinking it is unbelievable how big that State is. Well, that is kind of like MAX BAUCUS. He always does things in the form of a marathon. As I have indicated, Montana is the fourth largest State in the Union. It is called Big Sky Country, and it is. It is such a beautiful State.

The first time MAX ran statewide, he walked the State of Montana—820 miles he walked. I was always very satisfied that I was a marathoner, but I talked to BAUCUS, and, of course, he has run more of them than I have and faster than I have. I dropped the subject quickly when I learned he isn't satisfied with a marathon that is 26¼ miles. He runs 50 miles. That shows the grit this man has. During one of his 50-milers, at 8 miles he fell very hard. He hit his head. There was blood all over. But he got up and ran another 42 miles in that race. He had hurt himself. A few weeks later, he had to be hospitalized as a result of that injury he suffered falling down. So it is pretty easy to understand why this marathon he has been involved in with health care has been fairly simple compared to some in which he has been involved.

I am here to congratulate MAX BAUCUS on the next vote, which will be his 11,000th vote in the Senate. He has had a distinguished career in the House and in the Senate. He has been chairman of the Environment and Public Works Committee and is now chairman of the Finance Committee.

I have such great respect for Senator BAUCUS. There are a lot of career highlights, and I could list a lot of them. But for me, the most significant thing he did is not a bill you will see in the archives; it is his having stepped forward at a time when nobody thought it could be done, and in the face such opposition, he helped stop the privatization of Social Security. That was done by a lot of people, but it could never have been done without MAX BAUCUS.

The people of Montana love MAX BAUCUS because they know he is a marathoner, he is a man of strength and courage, and he understands the State of Montana.

It is hard for me to articulate the relationship I have with Senator BAUCUS. It is a relationship I prize. He is my friend and my confidant. He has a very tough job running the Finance Committee. Every big issue that comes before the Senate winds up in the Finance Committee because we have to figure out a way to pay for it. He runs that committee with an iron hand. We all know how tough he can be on that committee, but we also know how fair he can be. I learned that working on the Children's Health Insurance Program. That was a bipartisan piece of legislation. As a result of the work he did on that committee, we have more than 14 million children now who are able to participate in that program who would not have been able to do so otherwise. It was done on a bipartisan basis.

I join with everybody here in congratulating MAX BAUCUS, who is, to me, what a Senator should be. He understands the significance of being a Senator, the significance of representing his State, and in the process he has become a great U.S. Senator.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I say congratulations from this side of the aisle to the distinguished Senator from Montana on his 11,000th vote, which he is about to cast. The majority leader pointed out his great physical prowess in running these marathons. As he also indicated, presiding over the Finance Committee in the last few weeks has certainly qualified him for another long run.

For over 30 years, Senator BAUCUS has represented Montana in the State legislature, in the U.S. House of Representatives, and in the U.S. Senate. He grew up on his great-grandfather's ranch, and he has always fought hard for the people of the Big Sky State. He has had a simple message: Montana comes first. He has fought to strengthen our Nation's transportation infrastructure. As we have seen over the past couple of weeks, he has a pretty strong work ethic, which should not surprise any of us for a guy who, as the majority leader pointed out, walked across the entire length of Montana.

Senator BAUCUS has given three decades of dedicated service and has kept his pledge to put Montana first. I join the majority leader in congratulating him on his 11,000th vote.

(Applause.)

The PRESIDING OFFICER. The junior Senator from Montana is recognized.

Mr. TESTER. Mr. President, I wish to add a few comments to those of the majority leader and the Republican leader.

I say to MAX BAUCUS, congratulations on your 11,000th vote. You have done such a great job over the many years you have served the people of the great State of Montana—me being one of those.

I give MAX a bad time, saying when he came to the Senate, I was just a child. Well, when he came to the Senate, he was just a child too. I have a lot of respect for this man.

Folks say MAX is a lucky guy, and he is. But he creates that luck with hard work. He works very hard not only for the people of Montana but for this Nation.

I thank you, MAX. Congratulations, and all the best.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, as the Member of the Senate who has worked closely with Senator BAUCUS over the last 10 years—either he has been chairman of the committee or I have been—I congratulate him on this 11,000th vote. But more important, I thank him for the close working relationship we have had, which I think people back home in our respective States probably don't observe, which is that there is a great deal of bipartisanship that goes on in Congress. I think Senator BAUCUS and I have established a close working relationship that refutes that everything in Washington is political. I thank him for that close working relationship and, more importantly, I thank him for putting up with a lot of problems I have created for him.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I am very honored by all the comments of the majority leader, who is a good friend; Senator MCCONNELL; my good friend JON TESTER; and the Senator from Iowa, Mr. GRASSLEY. I am also honored to have served in this body.

Everyone here cares a lot about public service and about people. We are all here because we care. I very much appreciate working with all of you. There are a lot of characters here, different personalities. The bottom line is that everybody is here for their State and the Nation.

I feel as if I am the luckiest guy in the world. I think this is the best job one could have. I have 900,000 of the world's greatest bosses, the people of Montana. They are terrific and wonderful. I am just a hired hand working for them.

Combined with all of you and all the staff here, you are all people here who care about our great country. I thank you very much. I could not be more touched and appreciative. Thank you.

(Applause.)

AMENDMENT NO. 2580

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided, prior to a vote in relation to amendment No. 2580 to be offered by the Senator from Arizona, Mr. MCCAIN.

The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 2580.

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

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

The amendment is as follows:

(Purpose: To strike amounts available for procurement of C–17 aircraft in excess of the amount requested by the President in the budget for fiscal year 2010)

At the appropriate place, insert the following:

SEC. ____. The amount appropriated by title III under the heading ''AIRCRAFT PROCUREMENT, AIR FORCE'' is hereby reduced by $2,500,000,000, the amount equal to the amount by which the amount available under that heading for the procurement of C–17 aircraft exceeds the amount requested by the President in the budget for the Department of Defense for fiscal year 2010 for the procurement of such aircraft.

Mr. MCCAIN. Mr. President, President Eisenhower warned us about the military-industrial complex. Well, we don't have to worry about the military anymore; it is now just the industrial complex and the lobbyists.

This amendment strikes the $2.5 billion for 10 C–17 aircraft. Again, it used to be the military-industrial complex; now it is the industrial complex. The President, the Secretary of Defense, the Chairman of the Joint Chiefs, the Chief of Staff and Secretary of the Air Force, the commander of U.S. Transportation Command, and the chairmen and ranking members of the Senate and House Armed Services Committees have all agreed with the Secretary of Defense, who says that the ''205 C–17s in the force and on order, together with the existing fleet of C–5 aircraft, are sufficient to meet the Department's future airlift needs—even under the most stressing situations.''

Mr. President, the spending goes on, the beat goes on, and at some time the American people are going to say ''enough.''

Mr. DODD. Mr. President, it may feel like Ground Hog Day for some of us. We soundly defeated a similar amendment proposed by the Senator from Arizona last week, by a vote of 34–64. The reasons are clear, and have remained unchanged.

The C–17 has proven its worth to our troops in Iraq and Afghanistan, to our taxpayers that foot the bill, and to the workers that labor day in and day out to provide our military with these critical planes. Our need for these planes is not shrinking—in fact, it is growing. Since the last formal assessment of our military's airlift requirements 4 years ago, our forces have been expanded by 92,000 troops. Our overseas commitments have dramatically increased, resulting in many C–17s flying nearly double the flight hours that were planned for. Why? Because the C–17 is the most versatile and capable airlift plane in our arsenal.

Despite these facts, the Senator from Arizona insists that we extend the life

of our 40-year-old C–5 fleet, at a high cost to our taxpayer. Over the administration's objections, he coauthorized a bill recently that was approved by this body that actually prohibits the military from retiring C–5s. According to the Air Force, the C–5B has already reached 147 percent of planned life expectancy. This is a fleet we must begin to replace.

I urge my colleagues to join me in defeating amendment No. 2580, for the sake of our troops, our taxpayers, and America's workers.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I rise to oppose this amendment which seeks to eliminate funding on the C–17. I am certain the Senate is aware that Vice Chairman COCHRAN and I proposed and the committee unanimously accepted our recommendation to reallocate $2.5 billion to procure 10 additional C–17s.

Last week, the Senate voted overwhelmingly to defeat the Senator's amendment which would have deleted funding for the C–17 program. I believe the sense of the Senate is very clear. Continuing with the C–17 program is a high priority. It is a critical national security enabler, providing the airlift our forces need for today's fight and for years to come.

I oppose the amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2580.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

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

The result was announced—yeas 30, nays 68, as follows:

[Rollcall Vote No. 312 Leg.]

YEAS—30

Alexander	Feingold	McCain
Barrasso	Franken	McConnell
Bennet	Gregg	Merkley
Cardin	Kaufman	Sanders
Carper	Klobuchar	Sessions
Coburn	Kohl	Thune
Conrad	Kyl	Udall (CO)
Corker	LeMieux	Voinovich
Dorgan	Levin	Warner
Enzi	Lugar	Webb

NAYS—68

Akaka	Cantwell	Graham
Baucus	Casey	Grassley
Bayh	Chambliss	Hagan
Begich	Cochran	Harkin
Bennett	Collins	Hatch
Bingaman	Cornyn	Hutchison
Bond	Crapo	Inhofe
Boxer	DeMint	Inouye
Brown	Dodd	Isakson
Brownback	Durbin	Johanns
Bunning	Ensign	Johnson
Burr	Feinstein	Kerry
Burris	Gillibrand	Kirk
Landrieu	Nelson (NE)	Shelby
Lautenberg	Nelson (FL)	Snowe
Leahy	Pryor	Stabenow
Lieberman	Reed	Tester
Lincoln	Reid	Udall (NM)
McCaskill	Risch	Vitter
Menendez	Roberts	Whitehouse
Mikulski	Rockefeller	Wicker
Murkowski	Schumer	Wyden
Murray	Shaheen	

NOT VOTING—2

Byrd	Specter

The amendment (No. 2580), was rejected.

AMENDMENT NO. 2623

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 2623, to be offered by the Senator from Hawaii, Mr. INOUYE. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, the McCain amendment rests on the assumption that congressional earmarks are for special treatment in awarding these contracts. But DOD's own inspector general concluded that the Department conducts identical oversight on earmarks and items funded in the President's budget. The McCain amendment also eliminates small business set-asides for earmarks. These set-asides benefit minority-owned, women-owned, disabled-veteran-owned businesses.

My amendment applies competitive contracting to earmarks for for-profit entities on the same basis as items in the President's budget, and protects funding for small businesses. The items funded by Congress or the President ought to be awarded using the same rules of the road.

I urge Senators to support my amendment.

The amendment is No. 2623. I call that up.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Hawaii [Mr. INOUYE] proposes an amendment numbered 2623.

Mr. INOUYE. I ask further reading be dispensed with.

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

The amendment is as follows:

(Purpose: To provide full and open competition for congressionally directed spending items)

At the appropriate place, insert the following:

SEC. ____. (a) NATURE OF FULL AND OPEN COMPETITION FOR CONGRESSIONALLY DIRECTED SPENDING ITEMS.—Each congressionally directed spending item specified in this Act or the report accompanying this Act that is intended for award to a for-profit entity shall be subject to acquisition regulations for full and open competition on the same basis as each spending item intended for a for-profit entity that is contained in the budget request of the President.

(b) EXCEPTIONS.—Subsection (a) shall not apply to any contract awarded—

(1) by a means that is required by Federal statute, including for a purchase made under a mandated preferential program;

(2) pursuant to the Small Business Act (15 U.S.C. 631 et seq.); or

(3) in an amount less than the simplified acquisition threshold described in section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)).

(c) CONGRESSIONALLY DIRECTED SPENDING ITEM DEFINED.—In this section, the term ''congressionally directed spending item'' means the following:

(1) A congressionally directed spending item, as defined in rule XLIV of the Standing Rules of the Senate.

(2) A congressional earmark for purposes of rule XXI of the House of Representatives.

The PRESIDING OFFICER. Who yields time in opposition?

The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, the side-by-side here is to basically neuter the intent of my amendment, which calls for competition for earmarks that are intended for for-profit companies. That is all it is, pure and simple. It is very well known how jealously the appropriators guard their earmarking, pork-barreling projects. My amendment, which is a side-by-side, would say we just put earmarks up for competition. The amendment of Senator INOUYE will gut that provision.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

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

The result was announced—yeas 77, nays 21, as follows:

[Rollcall Vote No. 313 Leg.]

YEAS—77

Akaka	Franken	Mikulski
Alexander	Gillibrand	Murkowski
Baucus	Gregg	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Hatch	Pryor
Bennett	Hutchison	Reed
Bingaman	Inhofe	Reid
Bond	Inouye	Roberts
Boxer	Isakson	Rockefeller
Brown	Johnson	Sanders
Brownback	Kaufman	Schumer
Burris	Kerry	Shaheen
Cantwell	Kirk	Shelby
Cardin	Klobuchar	Snowe
Carper	Kohl	Stabenow
Casey	Landrieu	Tester
Chambliss	Lautenberg	Udall (CO)
Cochran	Leahy	Udall (NM)
Collins	Levin	Voinovich
Conrad	Lieberman	Warner
Cornyn	Lincoln	Webb
Dodd	Lugar	Whitehouse
Dorgan	McConnell	Wicker
Durbin	Menendez	Wyden
Feinstein	Merkley	

NAYS—21

Barrasso	Burr	Corker
Bunning	Coburn	Crapo

DeMint	Grassley	McCaskill
Ensign	Johanns	Risch
Enzi	Kyl	Sessions
Feingold	LeMieux	Thune
Graham	McCain	Vitter

NOT VOTING—2

Byrd	Specter

The amendment (No. 2623) was agreed to.

AMENDMENT NO. 2560

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote on amendment No. 2560 offered by the Senator from Arizona.

The clerk will report.

The bill clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 2560.

The amendment is as follows:

AMENDMENT NO. 2560

(Purpose: To require that earmarks for for-profit entities be subject to full and open competition)

At the appropriate place, insert the following:

SEC. _____. Any specific project contained in the Joint Explanatory statement accompanying this Act that is considered a congressional earmark for purposes of clause 9 of rule XXI of the Rules of the House of Representatives or a congressionally directed spending item as defined in rule XLIV of the Standing Rules of the Senate, when intended to be awarded to a for-profit entity, shall be awarded under full and open competition.

Mr. MCCAIN. I ask for a voice vote on this amendment.

Mr. COCHRAN. Mr. President, I urge the Senate to oppose amendment No. 2560 offered by the Senator from Arizona.

This amendment would require all congressionally directed spending items to be competed but would allow items requested by the President to be executed with limited or no competition.

In practice, this amendment would create separate acquisition criteria for items funded in the bill. It does not allow for traditional exceptions to the competitive process for such programs as small business set-asides, socially and disadvantaged firms, or women-owned businesses.

I urge my colleagues to vote ''no'' on the McCain amendment.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, the McCain amendment purports to save tax dollars by requiring competition for earmarks for all businesses. However, it should be noted that if this amendment passes, small businesses would have to be competed against the big companies; women businesses will have to be competed; business by small Indian companies, Native Americans, will have to be competed, and disabled veterans. We have a choice here.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2560) was rejected.

AMENDMENT NO. 2583

The PRESIDING OFFICER. The next amendment is amendment No. 2583 from the Senator from Arizona.

The clerk will report.

The bill clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 2583.

The amendment is as follows:

AMENDMENT NO. 2583

(Purpose: To strike funding for the MARIAH Hypersonic Wind Tunnel Development Program)

At the appropriate place, insert the following:

SEC. ____. (a) MARIAH HYPERSONIC WIND TUNNEL DEVELOPMENT PROGRAM.—The amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY'' is hereby reduced by $9,500,000, with the amount of the reduction to be allocated to amounts available for the MARIAH Hypersonic Wind Tunnel Development Program.

Mr. MCCAIN. Mr. President, this would strike an unrequested $9.5 million earmark for a hypersonic wind tunnel research project called MARIAH. It is up to now some $90 million has been spent; nothing to show for it.

It is an Army program and here is what the Army says:

There are no current operational requirements for a hypersonic missile program within the Army. No Army missions currently require flight technologies. The Army does not have the need for a hypersonic wind tunnel.

It is hard to be more clear than that. So let's have the pork barrelers vote for it again.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. Mr. President, the Air Force Material Command said last year that:

Hypersonic military and commercial flight vehicles, including space asset vehicles, global research, and missile defense systems, are envisioned future needs.

We are talking about the future, we are not talking about the past. The United States lacks capability to adequately test hypersonic propulsion. The MARIAH Project will fix that gap in research and development.

Russia, China, and others are aggressively developing a new type of missile that is believed to be too fast for the U.S. missile defense. India and Russia have a joint venture engaged in laboratory testing of supersonic cruise missiles capable of speeds beyond Mach V.

The fact is, folks, we need to look at the future. We need to look at what is going to happen in the next 5 or 10 years. MARIAH is about seeing a potential threat to our national defense that is on the horizon and finding a way to defeat it.

I would encourage you to vote against the McCain amendment. It is vital to our national security to defeat this amendment.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

Mr. KYL. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a subject second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

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

The result was announced—yeas 43, nays 55, as follows:

[Rollcall Vote No. 314 Leg.]

YEAS—43

Alexander	DeMint	McCain
Barrasso	Ensign	McCaskill
Bayh	Enzi	McConnell
Bennett	Feingold	Murkowski
Bond	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Collins	Johanns	Voinovich
Corker	Kyl	Wicker
Cornyn	LeMieux	
Crapo	Lugar	

NAYS—55

Akaka	Hagan	Nelson (NE)
Baucus	Harkin	Nelson (FL)
Begich	Inouye	Pryor
Bennet	Johnson	Reed
Bingaman	Kaufman	Reid
Boxer	Kerry	Rockefeller
Brown	Kirk	Sanders
Burris	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Stabenow
Carper	Lautenberg	Tester
Casey	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Dodd	Lieberman	Warner
Dorgan	Lincoln	Webb
Durbin	Menendez	Whitehouse
Feinstein	Merkley	Wyden
Franken	Mikulski	
Gillibrand	Murray	

NOT VOTING—2

Byrd	Specter

The amendment (No. 2583) was rejected.

Mr. COCHRAN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2616, AS MODIFIED

The PRESIDING OFFICER. We will now proceed to 2 minutes equally divided on the Lieberman amendment, No. 2616, as modified.

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, on behalf of my cosponsor, Senator SESSIONS, I want to speak briefly on the amendment, and then we will withdraw our request for a rollcall. The chairman and ranking member have agreed to accept the amendment on a voice vote.

To put this as simplistically and briefly as I can, as we all know, the administration has decided to terminate the ground-based midcourse ballistic missile defense system that was to go in Poland and the Czech Republic and substitute for it the so-called SM–3 system, an alternative system, to provide defense from missiles that are of short and medium range that would be fired from Iran, to protect our allies in Europe and the Middle East. Senator SESSIONS and I have been concerned that in

doing so, we have put ourselves in a position where we do not have the guarantee of an adequate defense for that day and the next decade when Iran will have completed its development of a long-range missile, an intercontinental ballistic missile that it could fire at the United States.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The time of the Senator has expired.

Mr. LIEBERMAN. Mr. President, you were too happy telling me that. I ask unanimous consent for an additional 30 seconds.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LIEBERMAN. I thank the Chair.

Bottom line, we have developed a ground-based intercepter that was to go in Poland. We have it. It is ready to be tested. The alternative the administration is proposing to give the United States of America, our homeland, protection from a missile fired from Iran is basically on paper. If it is fully developed, it will give us protection.

But Senator SESSIONS and I offer this amendment to make sure we set money aside so we continue to test the ground-based intercepter as a hedge against a failure of this alternative system, to be ready to protect the United States of America. That is why we offer this amendment, why I thank the leadership of the committee for being willing to accept it, and why I hope it will remain in conference when the bill returns to the Senate.

I thank the Chair.

Mr. HATCH. Mr. President, today I rise in strong support of Senator LIEBERMAN's and Senator SESSIONS' amendment No. 2616 which will provide $151 million for the research and development of the two-stage ground-based interceptor missile.

I have always believed in having a plan B. Throughout my life I have learned the colloquial wisdom found in the saying ''do not put all your eggs in one basket'' has great merit.

In fact, in its most simplistic form, our Nation's strategic deterrent has been based upon the principle that you always need a backup plan. Specifically, for over 45 years our Nation's ultimate security guarantee for ourselves and our allies has been our Nation's nuclear triad composed of intercontinental ballistic missiles, bombers and submarine-launched intercontinental ballistic missiles. The idea was simple: If one leg of our defense system was knocked out or somehow rendered inoperable, the two other legs would maintain a more then credible deterrent.

Times have changed. But the continuing need for the triad was recently reaffirmed by Dr. James Schlesinger who was one of the principal members of the recently published final report of the Congressional Commission on the Strategic Posture of the United States.

However, the events of September 11 only underscored a new threat phenomena that is referred to in military circles as the asymmetric threat. Simply put, an asymmetric threat is the tactics which are used by our new adversaries, such as terrorists and rogue regimes, to counterbalance our Nation's traditional strengths in conventional warfare. The example which is seared in the mind of each American was the hijacking and crashing of civilian airliners on September 11.

Asymmetric threats are not just limited to terrorist activity and those nations which support it. It is also found in those nations which are developing ever more sophisticated ballistic missiles and even the ultimate weapon, the nuclear bomb.

But the asymmetric threat that I wish to discuss today is Iran's ballistic missile program. Though the President argues the Iranians are a decade away from deploying an intercontinental ballistic missile, this was not what our military experts were telling us just a few months ago. Specifically, the Air Force's National Air and Space Intelligence Center published an unclassified version of its Ballistic and Cruise Missile Threat report in April 2009—just 5 months ago—that ''Iran has an ambitious ballistic missile and space launch development programs and, with sufficient foreign assistance, Iran could develop and test an Intercontinental Ballistic Missile capable of reaching the United States by 2015.''

The report goes on to say ''in late 2008 and early 2009 it launched the Safir, a multi-stage space launch vehicle, that can serve as a test bed for long-range ballistic missile technologies. The [Iranian] 2009 test successfully placed a satellite in orbit.''

These conclusions are supported by the testimony of General Craddock, who while still Commander of U.S. European Command stated this March that ''Iran already possesses ballistic missiles that can reach parts of Europe and is developing missiles that can reach most of Europe . . . By 2015 Iran may also deploy an Intercontinental Ballistic Missile capable of reaching all of Europe and parts of the U.S.''

These are serious assessments and no doubt the President has good reason to believe the threat has changed and therefore made the decision to drop plans to deploy our ground-based midcourse interceptor, called GBI, to Europe. However, I am also mindful of the point the distinguished Senator from Connecticut made when he introduced his amendment. He astutely reminded the Senate that in 1998 the North Koreans tested their long range Taepodong missile just 7 days after our intelligence community concluded that North Korea was 3 years away from having that capability.

Which brings us back to the question: should we have a plan B?

We did until 2 weeks ago.

That plan B was to deploy a European-based GBI system to intercept intercontinental ballistic missiles fired from the Middle East at the United States and our European allies. According to the Bush administration this system was scheduled to be completed by 2013—2 years before our intelligence estimates, until recently, believed Iran would have an intercontinental ballistic missile.

However, under the new strategy, which relies on the continued development of the SM–3 missile, we and our allies must wait until 2018 to have a similar capability as planned by the previous administration and offered by the GBI in 2013. We also must remember the 2018 SM–3 deployment date can only be reached if everything goes according to plan—an all too rare occurrence in modern weapons development.

Not much of a plan B when one remembers that Iran has received extensive outside assistance in developing their ballistic missiles. For example, the National Intelligence Center concluded the Iranian Shahab–3, which has a range of 1,200 miles is based on the North Korean No Dong missile. In addition, Anthony Cordesman and Martin Kleiber in their 2007 book titled ''Iran's Military Forces and Warfighting Capabilities'' wrote that as early as October 1997 ''Russia began training Iranian engineers on missile production for the Shahab–3.'' The authors also pointed out that allegations have been made that various Chinese companies had assisted in Shahab–3s final development.

This, of course, begs the question what other outside assistance could the Iranians receive which could speed their development of an intercontinental ballistic missile?

That is why Senator LIEBERMAN and Senator SESSIONS' amendment is so important. It provides us with a plan B. It continues the deployment of a two-stage GBI. This is not a pie-in-the-sky plan. Our Nation has already deployed a three-stage GBI in Alaska and California and until 10 months ago the Department of Defense believed the two-stage system could be deployed by 2013.

Therefore, I urge my colleagues to support the Lieberman-Sessions amendment to provide funding for a plan B which could provide us with capabilities to intercept Middle East ICBMs launched against our interests and allies years before the President's plan.

The PRESIDING OFFICER. Who yields time in opposition?

If all time is yielded back, the question is on agreeing to the amendment, as modified.

The amendment (No. 2616), as modified, was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Hawaii.

AMENDMENT NO. 2605

Mr. INOUYE. Mr. President, I ask unanimous consent that amendment No. 2605 be called up.

The PRESIDING OFFICER. Without objection, the clerk will report.

The bill clerk read as follows:

The Senator from Hawaii [Mr. INOUYE], for Mr. BINGAMAN, for himself and Mr. UDALL of New Mexico, proposes an amendment numbered 2605.

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

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

The amendment is as follows:

(Purpose: To make available from Research, Development, Test, and Evaluation, Air Force, $5,000,000 to carry out evaluations and analyses of certain laser systems)

At the appropriate place, insert the following:

SEC. ____. (a) AMOUNT FOR EVALUATIONS OF CERTAIN LASER SYSTEMS.—Of the amount appropriated or otherwise made available by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE'' and available for Advanced Weapons Technology (PE# 0603605F), up to $5,000,000 may be available to carry out the evaluations and analyses required by subsection (b).

(b) EVALUATIONS AND ANALYSES OF CERTAIN LASER SYSTEMS.—The Secretary of Defense shall, in a manner consistent with the October 8, 2008, report of the Air Force Scientific Advisory Board entitled ''Airborne Tactical Laser (ATL) Feasibility for Gunship Operations''—

(1) carry out additional enhanced user evaluations of the Advanced Tactical Laser system on a variety of instrumented targets; and

(2) enter into an agreement with a federally funded research and development center under which the center shall—

(A) conduct an analysis of the feasibility of integrating solid state laser systems onto C–130, B–1, and F–35 aircraft platforms to provide close air support; and

(B) estimate the cost per unit of such laser systems and the cost of operating and maintaining each such platform with such laser systems.

Mr. INOUYE. Mr. President, this amendment has been cleared by both sides. I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 2605) was agreed to.

HMMWV FUNDING

Mr. DURBIN. Mr. President, I wish to engage my colleague, Senator INOUYE, the chairman of the Appropriations Committee, in a colloquy.

I would first like to thank Senator INOUYE and Senator COCHRAN for their hard work in developing the fiscal year 2010 Department of Defense appropriations bill.

As the chairman knows, the budget amendment submitted by the White House in August 2009 reduced the proposed spending for high mobility multipurpose wheeled vehicle, HMMWV, from the initial request level by $375 million, leaving less than $1.2 billion in the program in fiscal year 2010. This year's reduction is in addition to a $162 million reduction taken in the fiscal year 2009 supplemental appropriations bill.

HMMWVs provide enhanced protection for our troops and are much more mobile and versatile than older models of the vehicle. There are still extensive requirements for HMMWVs throughout all the Services because the vehicle operates as a platform for numerous systems that perform multiple missions.

The National Guard still has a majority of the older HMMWVs that cannot meet current military, homeland security, or State disaster missions. Recently, the Adjutants General reported that by fiscal year 2011, 63 percent of their HMMWV fleet will be over 20 years old.

These critical military vehicles also provide high-paying manufacturing jobs in the heart of the Midwest. The HMMWV supports over 1,600 suppliers across 40 States—the majority of which are located in Illinois, Indiana, Ohio, and Michigan. These are skilled automotive workers and suppliers that have faced serious job losses over the last 2 years.

I am concerned that repeated funding reductions could erode the manufacturing base for this critical military vehicle and adversely affect our country's manufacturing capacity.

I would encourage the chairman to closely consider this situation as we move to a conference committee with the House.

Mr. INOUYE. I fully understand the Senator's concerns and support funding to meet our Nation's requirements for the HMMWV fleet. The HMMWV has proven its value over the years deployed in combat, in training at home and in homeland defense missions. I can assure you that we will carefully consider these factors as the fiscal year 2010 bill is completed.

Mr. FEINGOLD. Mr. President, I would like to address the growing interest in the Army's recent contract award to the Oshkosh Corporation for the family of medium tactical vehicles, which is currently being reviewed by the Government Accountability Office, GAO. A number of my colleagues in Congress have expressed their concern about the contract. They have registered their concern and desire for greater oversight on the floor of the Senate, as well as with the Department of Defense and GAO.

I have long called for greater congressional oversight of the defense acquisitions process. Our acquisitions process is broken and costs are spiraling out of control. This has undermined our ability to provide the equipment our troops need when they need it. We must have full and fair competition in order to contain costs and ensure proper performance of defense contractors. To this end, I was a strong supporter of enacting the Weapons Systems Acquisition Reform Act earlier this year.

However, I am concerned about the manner and timing of my colleagues' statements on this issue. The GAO is currently conducting an independent review of the contract. Congress should not be doing anything to foreclose or prejudice the GAO process, which would both undermine the GAO's independence and set a bad precedent for future protests. I am afraid that some of the public statements that have been made during the ongoing review, as well as letters to the GAO, may exceed Congress' proper role and could have the effect of undermining GAO's independence.

I, for one, am delighted that a company in my home State with a strong track record of providing vehicles to the military was awarded the contract. Wisconsinites take justifiable pride in the high-quality trucks and other products that Oshkosh Corporation designs and builds. I understand that some Members of Congress would have preferred a different outcome, and I respect that. But we must all recognize that the needs of the men and women of our armed services come first. The Armed Forces are best equipped to make decisions about their acquisition needs, as they have the expertise and experience needed to make decisions about the equipment needs of our troops. We should not try to substitute our judgments for those of experts in our military and at the GAO. I strongly urge my colleagues to refrain from passing judgment on the contract until we all have the opportunity to review the GAO's expert analysis. There should not be any room for politics in the acquisition process—our goal is to get the best product for the taxpayers' dollars.

Mr. DODD. Mr. President, I would like to take a moment to discuss a very important amendment that was adopted by the Senate. This amendment, which I was proud to cosponsor, expresses the sense of the Senate that the joint surveillance target attack radar system, known as Joint STARS, is one of the most effective and heavily tasked intelligence, surveillance, and reconnaissance assets in our Air Force. These aircraft provide critical imagery of tens of thousands of square miles to our troops every day, helping to protect the lives of our troops who are protecting our country so bravely overseas.

The Joint STARS fleet, although only 17 aircraft in size, has demonstrated immeasurable success in Iraq and Afghanistan. So far, they have flown over 55,000 combat hours, tracking the location and movement of enemy troops and discovering hundreds of improvised explosive devices. These aircraft consistently provide our troops on the ground with critical intelligence that helps them prepare for their missions in enemy territory.

The Joint STARS fleet has been protecting our troops for decades, and with that service has incurred expected wear and tear. With no aircraft being designed to replace them, it is absolutely critical that we provide the military with the funds they need to keep up with their heavy deployment cycles. These aircraft are in dire need

of new engines, which are now more than 40 years old. Failure to do so will cost the taxpayer billions of dollars in maintenance and operating costs. According to Air Force estimates, however, replacing the engines will pay for itself within 8 years. This is the only sensible solution.

Workers in Norwalk, CT, have been working on the radar for this aircraft for years. This unique technology provides overall images of the battle space, ensuring our troops receive the most complete and accurate intelligence possible, from camouflaged insurgent camps and enemy vehicles to incoming cruise missiles. It is an incredible product which lends itself to some of the most industrious and dedicated workers in the field. There are hundreds of workers across the country like those in Norwalk that labor day in and day out to ensure that the Joint STARS fleet is able to continue to protect our brave men and women in uniform.

Our troops cannot afford a lapse in the critical surveillance capability provided by our Joint STARS fleet. Our warfighters depend on this cutting edge technology every day, and we must ensure that we do not deny our troops the intelligence they need to successfully and safely execute their missions overseas.

Mr. REID. Mr. President, I rise in support of the passage of H.R. 3326, the fiscal year 2010 Defense appropriations bill.

The legislation before us will fund critical priorities in the Department of Defense designed to protect our Nation from current threats and develop cutting-edge warfighting technologies for the future. It will provide the essential resources, equipment, and support for the nearly 200,000 military servicemembers now serving in Iraq and Afghanistan. And it will fund more than $89 million in projects to create jobs in Nevada and help support Nevada's role in keeping our country safe.

During the course of the Senate's debate on this bill, we considered an amendment relating to U.S. operations in Afghanistan. The Obama administration is currently in the midst of an extremely important examination of our strategy in Afghanistan.

Getting that strategy right is critical. To make sure we have the right strategy, the President has rightly undertaken consultation with a wide range of military, civilian, and intelligence community officials, as well as with Members of Congress.

The amendment we considered was an attempt to cut off those discussions, to force the President's hand. This amendment was the wrong approach at the wrong time.

Right now, there are hundreds of servicemembers and civilians from my home State of Nevada serving courageously in Afghanistan. Many of these troops have been serving in the military since the 9–11 terrorist attacks on our country.

These troops have, in many cases, been deployed overseas three, four, and sometimes even five times. That means 3, 4, or more years that they have been taken away from their families and loved ones during the last 8 years.

Many of them have missed the births of their children, or their babies' first steps. Many have been pulled away from their civilian jobs, and have taken significant pay cuts. And, unfortunately, many troops in Nevada and throughout the Nation have made the ultimate sacrifice in service to our mission in Afghanistan.

We owe these troops a rigorous and deliberative debate on the proper strategy in Afghanistan. We owe it to them to make sure we have examined every possible option so that we give them the best chance to win and to stay out of harm's way. To rush this process is to undercut the President's effort to protect to accomplish these objectives.

Unfortunately, a number of Senators have sought to do just that. They have called for military commanders to begin testifying about our strategy in Afghanistan before that strategy is set by the Commander in Chief. That approach is a blatant attempt to force the President's hand, to circumvent the rigorous, deliberative review that a decision of this magnitude demands. It would short-circuit the administration's review of our Afghanistan strategy, and it would cut many important voices out of the picture. Our troops and our national security cannot afford such a rash step.

Now, I agree that GEN Stanley McChrystal, Commander of U.S. Forces in Afghanistan, should testify to Congress about our strategy in Afghanistan. But, as his counterpart, GEN David Petraeus, did when this Chamber was debating our strategy in Iraq, I think it is appropriate for that testimony to occur after his Commander in Chief has arrived at a decision.

In the last several days, I have had the opportunity to meet with Secretary of Defense Robert Gates and GEN Jim Jones, the President's National Security Adviser, to discuss the questions now facing us on Afghanistan. Today, I had the opportunity, along with several of my colleagues, to have a similar discussion with the President.

All three of these officials have made it clear that they are in the midst of a vigorous, healthy discussion in which military commanders, including General Petraeus and General McChrystal, have key seats at the table. They are working through a disciplined and deliberate process in which they will determine a strategy that will best advance the security interests of the United States and then determine the appropriate resources to allocate in implementing that strategy.

Talking about changes in troop levels or other resources before we have worked out the right strategy simply puts the cart before the horse. Now is not the time for such an irresponsible approach. Now is the time for all the best minds on the administration's national security team to take a hard look at our policy in Afghanistan, free from politics and other interference, and make sure we get it right.

As we move forward in this debate, my foremost priority will be to ensure that, no matter what the strategy, the brave servicemembers from Nevada and across America who are serving in Afghanistan have the support and resources they need to succeed in their mission. I am confident that the bill before us today takes an important step toward that goal, and I urge my colleagues to support it.

The PRESIDING OFFICER. Under the previous order, the committee-reported substitute, as amended, is agreed to and the motion to reconsider is considered made and laid upon the table.

The question is on the engrossment of the committee amendment in the nature of a substitute, as amended, and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

Mr. COCHRAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The result was announced—yeas 93, nays 7, as follows:

[Rollcall Vote No. 315 Leg.]

YEAS—93

Akaka	Feinstein	Merkley
Alexander	Franken	Mikulski
Baucus	Gillibrand	Murkowski
Bayh	Grassley	Murray
Begich	Gregg	Nelson (NE)
Bennet	Hagan	Nelson (FL)
Bennett	Harkin	Pryor
Bingaman	Hatch	Reed
Bond	Hutchison	Reid
Boxer	Inhofe	Risch
Brown	Inouye	Roberts
Brownback	Isakson	Rockefeller
Bunning	Johanns	Sanders
Burr	Johnson	Schumer
Burris	Kaufman	Sessions
Byrd	Kerry	Shaheen
Cantwell	Kirk	Shelby
Cardin	Klobuchar	Snowe
Carper	Kohl	Specter
Casey	Kyl	Stabenow
Chambliss	Landrieu	Tester
Cochran	Lautenberg	Thune
Collins	LeMieux	Udall (CO)
Conrad	Leahy	Udall (NM)
Corker	Levin	Vitter
Cornyn	Lieberman	Voinovich
Crapo	Lincoln	Warner
Dodd	Lugar	Webb
Dorgan	McCaskill	Whitehouse
Durbin	McConnell	Wicker
Ensign	Menendez	Wyden

NAYS—7

Barrasso	Enzi	McCain
Coburn	Feingold	
DeMint	Graham	

The bill (H.R. 3326), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. INOUYE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendments, requests a conference with the House on the disagreeing votes of the two Houses, and the Chair is authorized to appoint the following conferees on the part of the Senate:

The Presiding Officer appointed Mr. INOUYE, Mr. BYRD, Mr. LEAHY, Mr. HARKIN, Mr. DORGAN, Mr. DURBIN, Mrs. FEINSTEIN, Ms. MIKULSKI, Mr. KOHL, Mrs. MURRAY, Mr. SPECTER, Mr. COCHRAN, Mr. BOND, Mr. MCCONNELL, Mr. SHELBY, Mr. GREGG, Mrs. HUTCHISON, Mr. BENNETT, and Mr. BROWNBACK, conferees on the part of the Senate.

The PRESIDING OFFICER. The Senator from Hawaii.

MORNING BUSINESS

Mr. INOUYE. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

DELAWARE ARMY NATIONAL GUARD

Mr. KAUFMAN. Mr. President, I rise today to welcome home the Delaware Army National Guard's 261st Tactical Signal Brigade from Iraq. Just over 1 year ago, on October 2, 2008, 110 brave citizen soldiers left behind their families in the great State of Delaware to serve their country with honor in Iraq. Nearly 1 year later, on September 30, 2009, all 110 members of the 261st returned to Dover Air Force Base to be reunited with their families.

I am extremely grateful that each member of the 261st has returned safely to Delaware, and I offer them my deep gratitude, respect, and admiration for their service. I know I speak for all Delawareans when I say just how proud I am of their contributions in Iraq.

Under the leadership of the Delaware National Guard Adjutant General, MAJ Frank Vavala, the 261st trained for 1 year to prepare for their deployment. Under the command of BG Scott Chambers they served with distinction at Camp Victory in Baghdad. I had the privilege of visiting the 261st in April and then again in September during my two visits to Iraq. I was enormously proud to see the tremendous work they were doing, and I was honored to spend time with these inspiring men and women from Delaware during my trip.

While in Iraq, the 261st played a critical role as the first National Guard unit to maintain and administer the communications network. They also ran the Baghdad Signal University which trained Iraqi nationals in communication skills. During each visit, I was impressed by the professionalism and the commitment of the members of the 261st. There is no question that their unique skill set and unwavering commitment greatly contributed to the U.S. mission in Iraq.

As we see progress in infrastructure and security in Iraq, it is due in no small part to the efforts of the Delaware National Guard. The 261st worked tirelessly to share their expertise and knowledge with their Iraqi counterparts, expanding the Iraqi capacity to manage their own communications networks and systems. The families of the Guard can rest assured knowing that despite their great sacrifice over the past year and the difficulties they faced in being separated from their loved ones, the 261st left Iraq a better place because of their service.

The volunteers of the 261st are part of a proud and historic Delaware tradition. For decades, the 261st has served its country with great honor and distinction. Since 1924, it has deployed in times of need, first, as a part of the Delaware National Guard 261st Coast Artillery Battalion. The 261st was activated again on January 27, 1941, to participate in coastal defense operations during World War II. Since then, the mission of the 261st has evolved from defending the homeland to a broader global mission, such as that in Iraq, where it played a vital role in building communication networks and engaging in information operations.

We are truly fortunate as a nation to have so many dedicated volunteers willing to serve on the front lines defending our interests at home and abroad, and I am especially grateful to the 261st for their courageous service.

As we welcome this unit home from Delaware, we also send our prayers for the safe return of all of those serving our Nation in Afghanistan and Iraq.

Mr. President, I yield the floor.

VOTE EXPLANATION

Mr. UDALL of Colorado. Mr. President, due to family-related reasons, I was unable to cast a vote for rollcall vote No. 306, the nomination of Thomas Perez to be Assistant Attorney General, Civil Rights Division, Department of Justice. Had I been present, I would have voted ''yea'' to confirm the nominee.

SOUTHGATE VOLUNTEER FIRE DEPARTMENT CELEBRATES ITS CENTENNIAL

Mr. MCCONNELL. Mr. President, I would like to congratulate the Southgate Volunteer Fire Department for celebrating its centennial this October. Over the past century, the Southgate Volunteer Fire Department has been comprised of numerous men and women who have dedicated their lives to serving their community.

The record of excellence at Southgate Volunteer Fire Department has made all the difference in reaching this glorious milestone in its history. This year the department won its fourth State Fire Olympics; the State Fire Olympics hosts five different events that test the skills of firefighters and explorer teams. The extensive 3,000 hours spent per year on training has no doubt aided in the achievements made by the department. The Southgate Volunteer Fire Department became one of the first in Campbell County to develop life squads, and it has also been recognized as one of the first in Kentucky to carry semiautomatic external defibrillators.

The strength and dedication of the department was tested at the Beverly Hills Supper Club Fire in May of 1977, surely the most difficult day in its 100-year history. The Southgate Volunteer Fire Department was at the forefront of that firefighting effort and was aided by another 500 firefighters from throughout Kentucky, Indiana, and Ohio. There were 3,800 people rescued from the fire that night, all because of the valor and dedication shown by these heroes.

The department's current chief, John Beatsch, manages 75 members of the Southgate Volunteer Fire Department, and in 2004 and 2005 the Southgate Volunteer Fire Department boasted the induction of two previous chiefs into the Firefighters Hall of Fame. Early in 2000, with aid from the State, the department received a new administration office, sleeping quarters, new dress and work uniforms, and two new semiautomatic external defibrillators.

The foundation of excellence that began 100 years ago still stands as the volunteers of this brave department have dedicated their lives to protecting their community. I am confident that tradition will continue on for the next 100 years as the Southgate Volunteer Fire Department continues to keep the people of Kentucky safe. I know all of my colleagues join me in congratulating the men and women of the Southgate Volunteer Fire Department for their service and their heroism.

HONORING OUR ARMED FORCES

CAPTAIN BENJAMIN SKLAVER

Mr. DODD. Mr. President, it is with a heavy heart that I rise today to honor the memory of U.S. Army Reserve CAPT Benjamin Sklaver, who was killed on October 2, when his patrol came under attack in Muscheh, Afghanistan. He was 32 years old.

Captain Sklaver personified the values and qualities of a U.S. Army officer, and dedicated himself to improving his country and helping those most in need, both in uniform and as a private citizen. As a U.S. Army captain, Benjamin Sklaver distinguished himself as a capable and talented leader; and as an employee of the CDC and