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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O Merciful God, creator of humanity, You are the father of all. Equip our lawmakers for today's tasks. Give them wisdom and understanding so that their priorities will reflect Your purposes. Give them patience and skill so that their words will have persuasive power. Give them respect and civility so that Your presence will be felt in this Chamber.

We thank You for Your presence in our world and for the official cessation of hostilities in one area of our planet. Guided by Your presence, put into the hearts of our lawmakers Your concern for the lost, the lonely, and the least in our Nation and world.

We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUYE).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 15, 2011.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. TOM UDALL thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Following leader remarks, we will be in a period of morning business for 1 hour. The Republicans will control the first half and the majority will control the final half.

Following morning business, the Senate will be in executive session, as the order of last night indicates, to consider the nomination of Morgan Christen of Alaska to be a U.S. circuit judge for the Ninth Circuit. There will be 30 minutes of debate on that nomination. At a time to be determined later today, there will be a vote on confirmation of that nomination.

We are almost certain we are going to consider today the Department of Defense authorization conference report. The issue is how much time people may need, but I think we can work that out very quickly.

RESOLVING THE ISSUES

Mr. REID. Mr. President, the Republican leader and I have done enough back and forth, staking out our positions, and our positions are fairly clear to the American people. What we are going to try to do during the next few hours is work toward resolving some of the outstanding issues.

I just had a very comfortable conversation with Senator INOUYE and his Appropriations chief of staff Charlie Houy, along with my chief of staff David Krone, and I think we have made pretty clear the issues that relate to the omnibus. I think, according to Senator INOUYE, those issues should be resolvable. We have a few issues that are still outstanding, but they are small in number.

The House is suggesting moving forward on an individual bill. I think that would be a mistake. I think what we should do is the conference report, and I think that is the direction we are headed. There are a couple of issues we have to still work out with the White House, but I am in touch with them also.

On the payroll tax and unemployment tax extenders and SGR, the Republican leader and I have been in discussion on that issue. We hope we can come up with something that would get us out of here at a reasonable time in the next few days.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

RESOLVING THE ISSUES

Mr. MCCONNELL. Mr. President, I might just echo the remarks of the majority leader. We have been in useful discussions about how to wrap up the session. He has covered the two major issues that remain. We hope to be able to pass a combination of appropriations bills, and we are working hard to figure out a way to resolve the remaining differences on the payroll tax extension and the related issues that are important to both sides. We are confident and optimistic we will be able to resolve both on a bipartisan basis.

Mr. REID. Would the Chair announce the business of the day.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business for 1 hour with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the final half.

The Senator from Wyoming.

Mr. BARRASSO. Mr. President, are we in a quorum call?

The ACTING PRESIDENT pro tempore. The Senate is currently in session.

A SECOND OPINION

Mr. BARRASSO. Mr. President, I come to the Senate floor today, as I have just about every week since the health care law was passed, to give a doctor's second opinion about the health care law. I do that because I practice medicine in Casper, WY, as an orthopedic surgeon, taking care of families from all across our State, and I have significant concerns about the health care law as it was passed, the way it was passed, and what was included in the law.

So I come to the floor today because the American people continue to see one news story after another uncovering another error in the health care law, another mistake in the health care law, another glitch in the health care law. Call it what you will, we continue to see more of the health care law's unintended consequences—something that those who voted for it didn't foresee as happening—and we are also seeing another one of the President's broken promises.

I come to share with the American people concerns I have as more and more of these things come forward because hard-working individuals and families all across the Nation realize this health care law was not passed for someone such as them. What people asked for, the reason we went through the discussion and the debate had to do with the fact that people wanted the care they need, from the doctor they want, at a cost they can afford.

When I say people all across the country realize the health care law was not passed for someone such as them, and it was passed for someone else, that is the reason I come to the floor to talk specifically about something called the Early Retiree Reinsurance Program, which is part of the health care law.

On Friday, December 9—1 week ago—the Department of Health and Human Services announced its plan to shut down the Early Retiree Reinsurance Program at the end of this month—shut it down.

Remember, President Obama and Washington Democrats touted their early retiree program. They touted that as one of the health care law's early—they called it an early deliverable, something that would be there immediately. The health care law's supporters said this early retiree program would act, they said, as a bridge. They said the program would help employers maintain health insurance coverage for retirees over the age of 55 but not yet eligible for Medicare. They said this program would help people keep their insurance plan until the new health insurance exchanges were up and running in 2014.

It is only 2011 now, and they are trying to talk about a bridge to 2014. It quickly became clear the program was intended to be a bailout—a bailout—for companies with a large number of union employees.

On October 31 of this year—Halloween day—the senior Senator from my home State of Wyoming, the ranking member of the Senate Health, Education, Labor, and Pensions Committee, MIKE ENZI, released a report. That Halloween day report is a report the Senator asked for. It was a report he asked the Government Accountability Office to conduct, specifically looking into the early retiree program's implementation.

This is why the report is so scary: The GAO, the Government Accountability Office, said through the end of September of 2011, the administration had already spent more than half the $5 billion allocation—more than half already spent by September of 2011.

Let's fast forward to December 14, 2011. We are talking about yesterday. The House Energy and Commerce Committee released updated information about the early retiree program's spending. As of last Friday, December 9, 2011, the Obama administration—the people in charge of this bill, the people who wanted it, passed it, said it would work—said: Oh, we have now spent over $4.5 billion of the $5 billion budget—91 percent of the total early retiree program budget. It was supposed to last through 2014, and 91 percent of it is gone. The budget should have lasted 1,300 days. Instead, this administration drained the money—taxpayers' money, hard-earned dollars—in just 579 days.

The early retiree program has run out of money so fast that it is going to be forced to close 2 years early. The administration has said it is no longer going to pay out claims submitted after December 31 of this year.

The health care law's supporters promised the early retiree program would stay in place through January 1st of 2014. What we have is another broken promise. Just a little over a month after the GAO report was released, we are now finding out this administration spent more than $4.5 billion of the total $5 billion allocation that was supposed to last until 2014.

How did this administration—one that claims to be fiscally responsible, one that claims to be accountable, one that claims to be open—how did this administration allow this program to run out of money years ahead of schedule? It went broke because certain corporations and union-affiliated organizations rushed to grab a taxpayer bailout.

It is astonishing that the health care law's supporters forced the American taxpayers to foot the bill to keep private companies' and unions' health insurance benefit promises to their workers. Most Americans would be shocked and outraged to learn the administration did not even require companies to disclose their earnings in order to get the early retiree program funding.

Let me repeat that. The Department of Health and Human Services chose to not mandate that employers prove—prove—they needed funding from the early retiree program before approving the applications and then sending them—those corporations and those union plans—taxpayer dollars. The Department of Health and Human Services said: No. Here is your money.

News reports indicate small businesses asked the administration to set up a review process to stop government entities and unions from consuming all this early retiree program money. According to the GAO report, the administration refused. They decided to distribute early retiree subsidies on a first come, first served basis.

The GAO findings and the House Energy and Commerce Committee report suggest the Obama administration used the Early Retiree Reinsurance Program to reward its political allies. These two reports suggest this administration did so by directing most of the program's resources to plans serving unionized auto and government workers.

This is based on the administration's own data: Based on the administration's data, nearly half of the entire $5 billion program will be spent on just 20 entities. It is fascinating that the most money of all—the most money of all—went to the United Auto Workers Retiree Medical Benefits Trust. So how much did the United Auto Workers need? They took over $387 million.

Administration officials said the reason they are giving away the taxpayers' money so fast is because the program is so popular. Spending money fast does not mean this government and this administration is spending taxpayer dollars wisely.

Similar to so many parts of the health care law, the early retiree program just throws money at a problem rather than trying to fix it. We could have worked together in Congress. We could have worked together to help our Nation's early retirees have better access to health insurance. We could have done it by enacting meaningful health care reform—health care reform that actually lowers the cost of medical care.

Remember, that is what the President promised. That is what he promised in a joint session of Congress. He stood there, and he said under his plan the cost of health insurance would actually go down. He used the term ''about $2,500 per family per year.'' That is what he promised; that the cost of health insurance for American families would go down by $2,500 a year.

What are families at home seeing? They continue to see the cost of their health insurance go up—and go up a lot. The President and Washington Democrats squandered their chance to enact real health care reform, and they did that the moment they decided to ram a very partisan health care law through Congress and ignore the cries of the American people—people at home who said: Stop. Do not do this.

Now the American people are seeing, once again, the consequences of those actions by this President and the Democratically controlled Congress, seeing that the consequences are ones they, the American people, continue to have to pay for.

It is time to repeal the President's health care law. We need to get back to patient-centered care, the care people need, from the doctor they want, at a cost they can afford.

At this point, I continue to come to the floor because I continue to believe this health care law is bad for patients, it is bad for providers—the nurses and doctors who take care of those patients—and it is terrible for the American taxpayers. That is why, as I go home every weekend and talk to people around my home State, they say: This was not passed for me. This was a law passed for somebody else. It is why seniors on Medicare know $500 billion under the health care law was taken from Medicare, not to save Medicare but to start a whole new government program for other people. It is why the popularity of this health care law actually continues to go down—and it is less popular today than it was the day it was passed.

It is time to repeal the President's health care law and replace it with health care proposals to help Americans get the care they need, from the doctor they want, at a cost they can afford.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PAYROLL TAX CUT EXTENSION

Mr. CASEY. Mr. President, I rise this morning to talk about an issue that the American people expect us to take action on, and that is to provide another extension of the payroll tax cut we put into place in 2010.

I want to provide a little bit of background by way of recent history. We started this debate a number of weeks ago when I proposed legislation which would do the following—this is a brief summary. But here is what I proposed: that we would not only continue the payroll tax cut for workers, but that we would enlarge it, make it a bigger cut. So instead of having the payroll tax cut for employees across the country that would amount to $1,000, as we did last year—that was the right thing to do last year as part of the larger bill—I thought we should go further and cut the payroll tax in half for workers across America.

What we are talking about here is 160 million American workers. This is not some small matter. This is a major issue for the American people and for those 160 million families in America. That is what I proposed on the employee side; instead of cutting it to the level we did last year, we cut it even more—cut it in half.

Then I added to that a provision for business so that you would have businesses across the United States, 98 percent of them, also get their payroll taxes cut in half as well. So you have employees and employers getting a cut of their payroll tax obligations in half. I added a third element, which would be a credit, so that if you are a business and you add to your payroll, meaning you hire someone, you increase wages, you somehow increase your payroll, you could get not just a cut in your payroll tax as applies to those new employees or wages, you would have a full cut. In other words, you would pay zero, zero payroll tax if you added to your bottom line.

What you have here is three elements in legislation that would not only help 160 million workers but would help most of the businesses in America. I put into the legislation a provision that says if we are going to do all of this, we need to pay for it. We had a full series of ways to pay for it. One of those was, of course, the provision of the surtax on individuals with incomes above—the key word is ''above''—$1 million. So if you are making $1 million, that entire million dollars was tax free; not a dime of surtax until you went above it. We had it at 2.2 percent. We had a vote on it. It was rejected by the other side. I said: Well, okay, let's come together. We will work with the other side, our leadership, and take into consideration some of the concerns the other side raised, trying to be reasonable, trying to compromise and come together.

What we did is we reduced the surtax substantially to 1.9 percent, a big cut, a big reduction in the level of the surtax. As I said, I wanted to have a payroll tax cut for businesses across America. The other side did not want that, for whatever reason. The other side did not want to cut payroll taxes for business. I do not understand that, but that is what they wanted. They wanted that out of the bill. So that was out of the bill. The surtax was reduced. We are at the point where we are talking mostly about expanding and extending—I should say extending first, extending and hopefully expanding the payroll tax cut that we put in place last year for workers, 160 million workers, and as we cut it in half, $1,500 in the take-home pay of workers, $1,500 in your pocket, so you would not have, absent this action, as last year, $1,000 dollars in your pocket in take-home pay, because of the action we took last year.

Here we are now, all of these days later, several weeks now of debating this issue. For whatever reason, the other side does not want to have a vote on a measure the House passed. I do not understand that. I realize the votes are not there, but I think it is very important that we move forward and come to an agreement on a very fundamental issue for the American people.

They know, as well as everyone here knows, this is not in dispute, it is a fact, that if we pass a payroll tax cut for 160 million Americans, the impact on the economy will be seismic, substantial—you can pick your word—it will have a huge positive impact on our economy.

The corollary to that is if we do not do this, it will have a very adverse, negative impact on gross domestic product and on jobs. So if you want to reduce the number of jobs created in America in 2012—I do not know anyone who wants to do that, but if that is what you want to do, not taking action is a way to do that.

We hear phrases in Washington all of the time: Job killer. Not passing a payroll tax cut extension for 160 million Americans is a job killer, without a doubt.

Anyone who is credible in this town knows that. This is something the American people want us to do. They are tired of the finger-pointing and whining and the politics of Washington. They want us to get this done. We should get it done—if we are doing the right thing—today or tomorrow, but we have some people who are playing games.

I hope our friends on the other side of the aisle, who talk a lot about tax cuts and a lot about helping folks through this recession, will vote with us to cut the payroll tax and end this long debate that doesn't make much sense. We have a lot of other issues to debate, but this should not be one of them because we have been working on this for weeks.

The American people understand what this is about. This is about take-home pay. This isn't a complicated issue. We are either going to put more money in their pockets or we are not. It is very simple. We believe, on this side of the aisle—and I think the overwhelming majority of Americans believe this—that if workers have more take-home pay in their pockets, the impact on the economy will be very positive.

We had Mark Zandi do some analysis. He is a great economist who has provided data and information for people on both sides of the aisle for a long time. He is a very credible, capable economist. Our staff asked him to look at the impact just on Pennsylvania—just one State but a big State, and I think it is reflective of the country in a lot of ways. The basic analysis was, if we don't pass the payroll tax cut for workers, what happens in Pennsylvania? The impact in 2012 would be a loss of just shy of 20,000 jobs, roughly 19,500 jobs. This is in a State where we need to create a lot more jobs. But we know that in 2011—the year is not over—the most recent number of jobs added in Pennsylvania in the last year was over 50,000. I believe we can come to a number like that in 2012.

If we don't pass the payroll tax cut for those 160 million workers, in a State such as Pennsylvania the effect is that we lose 20,000 jobs. You can do the math and extrapolate from that to indicate what would happen to the country. So in a State where we had a net gain of more than 50,000 jobs last year, we are talking about not putting in place a tax cut policy, and that would cut that job gain a little less than half. So instead of creating 50,000 jobs, you would create 40 percent less. That doesn't make any sense under anyone's analysis about what we should be doing.

It is critically important that we take steps in the next few days—I hope in the next few hours—to finally pass a payroll tax cut and to also make sure we don't harm the economy as well by failing to take action on unemployment insurance. Again, unemployment insurance is not just for that worker and his or her family to get back on their feet after they lost their job through no fault of their own, it also has a positive impact on the economy. You spend a buck on unemployment insurance, and you get back almost two bucks—$1.90. Whether it is $1.50 or $1.90, we know that if you spend a dollar, all of us get in return something much more substantial than that dollar we put in.

We need to do both of these things, take both of these actions for the larger economy. This isn't about one group benefiting and another group not. Both of these actions—reducing the payroll tax for workers and unemployment insurance—will have a substantial impact on everybody. It will help the economy for the American people.

In the payroll tax cut, there is a particular significant group of Americans who would be most positively impacted; that is, those 160 million American workers. I believe most folks out there who are in the holiday shopping season—maybe they are finished shopping or maybe they are still making purchases—would like the peace of mind to know they can spend a little extra for that gift for a loved one, and maybe they can have a little more peace of mind knowing that the economy is still in difficult shape but that their own lives—and so many people are leading lives of struggle and sacrifice and anxiety about the future. But this is one step we can take—passing the payroll tax cut—that would give them some peace of mind that moving into 2012 they will have more dollars in their pockets. I hope it will be $1,500, but at least we should do what we did last year and make sure those 160 million workers in America have as much as $1,000, on average, in their pockets. That would be good for that worker and his or her family, the community, and all of us because it would help kick-start, jump-start economic growth and job creation when we badly need that in the midst of a still very difficult recession.

Mr. President, we are going to keep on this, keep pushing, and keep making sure the American people know what is at stake. For those 160 million Americans who are waiting for us to take action, as well as what is at stake for the larger economy, if we do this—pass the payroll tax cut—and if we do the right thing on extending unemployment insurance, we can move into 2012 with some confidence, while being aware it is still difficult, that the economy will grow a little more, jobs will be created at a higher rate, and we can have some confidence that we can end 2012 with a stronger economy than we had at the end of this year.

I hope our friends will come across the aisle, so to speak, and work with us to get this done because the American people are tired of the politics and the fighting. They want us to come together on a new payroll tax cut for 2012. We can do it, they support it, and we should get this done.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TAX CUTS AND UNEMPLOYMENT

Mr. DURBIN. Mr. President, we are all in the holiday spirit, at least partially, knowing that our families and the people we love are waiting for us back home and around the country to celebrate this once-a-year holiday occurrence. But we know we can't leave. We can't leave Washington until we get our job done.

The job we have to do is to be mindful of important measures that need to be enacted into law before any of us can leave this town with a clear conscience. One is the payroll tax. Currently, those working—160 million Americans—get a 2-percent reduction in the payroll tax every pay period. For the average family in Illinois—making about $53,000 a year—the amount that payroll tax deduction has been calculated to be is somewhere in the range of $1,000 a year. Now, that means about $100 a month for families who are working and enjoying this payroll tax cut.

I know what is happening with that money. It is being spent, and spent quickly, by many working families who have a job but are struggling from paycheck to paycheck. If gasoline prices go up, if utility bills are higher than expected, then the amount they thought they had put away as a reserve quickly vanishes. Particularly at the holiday season, when kids need warm clothes, when they need to keep the house warm for the family, and they are trying to put a few things under the Christmas tree, that $100 is more than just a small amount. It could mean a lot to a family, and it is going to expire. On January 1 it goes away.

As of January 1, these working families will see their paychecks reduced by about $100 a month, on average. Now, Members of Congress—Members of the Senate—may not feel that, but a lot of working families will. We cannot leave Washington in good conscience without extending the payroll tax cut.

President Obama has been talking about this for 3 months. He has taken his case to the American people—first to Congress then to the American people. He has gone from State to State, community to community, and identified what this payroll tax cut means to individual families. Then he has spoken to America and said it is more than just being compassionate to those who are struggling, it is an important part of restoring economic growth in America. Money that is given in payroll tax cuts to working families is spent and respent in salaries for those who work at the shops and businesses that provide goods and services where working families do their work.

So the payroll tax cut is more than helpful to individual families; it is good for the overall economy to reduce our unemployment. That is why we cannot leave without enacting it. We have come up with what I consider to be a responsible, thoughtful way to pay for it. We impose a surtax on those making over $1 million a year, but we exempt the first $1 million in income they receive.

So if a person is being paid $20,000 a week—that is what a millionaire would make each year—their taxes don't go up. But for the next $1 million they make, there is a surtax of a few percentage points. I think that is reasonable. I think people who are comfortable and well off and, frankly, lucky to be living in this country should be willing to sacrifice a little to help working families.

We could only find one Republican Senator who would join us in this effort to put a higher tax on the wealthiest in America to help working families across America—only one. We need more. It takes 60 votes in the Senate.

We have a nominal majority in the Senate on the Democratic side with 53, but it takes 60 to do anything of great controversy, and this is one that is controversial. We could only get Senator COLLINS of Maine who would step over and join us in this bipartisan effort. We are searching for other ways to do this, with the understanding that it has to be done. The payroll tax cut has to be done.

But let me say there is another part to this that I think is equally important; that is, maintaining unemployment benefits for the millions across America who are out of work. This recession has gone on for a long period of time. People are unemployed for longer periods than they ever imagined. In fact, there are four unemployed people for every available job.

As I visit the centers where people are struggling to make their resumes more timely and to respond to classified ads and requests from those who would like to hire, I find these people working day in and day out in an effort to try to find a job. They are serious about it.

Those who would dismiss them and say, as long as they are receiving unemployment benefits, they are going to be too lazy to look don't know what that life is like. They do not understand what these people go through.

When I meet with unemployed people who have been out of work for some period of time, the first question I ask is, What has happened to your health insurance? Overwhelmingly, the answer is, Gone; no health insurance protection for my family because I lost my job, and my job brought me my health insurance protection. That is the reality.

When I saw the bill that came over from the Republican side this week, it troubled me. There are two provisions in there that I think are mindless and, frankly, don't reflect the reality of what people face in this recession. One of them would authorize the States to give drug tests to people who are unemployed before they can get unemployment benefits.

Is there a notion somewhere that people are not applying for work because they are addicted to drugs? I haven't seen any evidence of that. This plays into the thought process these people aren't really trying because they do not want to try. I don't buy that. I think that kind of attitude reflects the fact that those who support it and sponsor it never sit down to talk to these people and to their families and understand what they are going through.

There is an element that I think hasn't been spoken of much but should be. What happens to a family when the major breadwinner is out of work for 3 months, 6 months, a year or more? It turns out that some of the problems may not be anticipated by some Members of Congress or the Senate that should be.

I received a letter from Lanesia Hoskins, wife and mother of three, from the south side of Chicago. She wrote that her husband Theodis Hoskins, who has a college degree, had been out of work for more than 2 years. His unemployment insurance had run out, and Mrs. Hoskins had just started a second job to help support their family. She wrote, ''My body is tired and I often feel weak.''

This is how Mrs. Hoskins described her husband's job search in an economy where there are still five job seekers for every available job:

> My husband has stood in long lines at the job fairs located at Chicago State University, St. Sabina Church, and for the Ford plant in Chicago. He has stood out in these hot lines just to have people inside the building take his resume and say, 'apply online.' What a waste and how humiliating after having news cameras expose your current situation with no results.

She went on to say:

> He has applied for state jobs, federal jobs, temp jobs, and gone through city agencies and has not had any results. Interview after interview. This is humiliating for a man who used to take two buses and two trains to get to work from the Southside of Chicago to Rosemont, Illinois.

Mrs. Hoskins said she could never understand politicians who say that people like her husband were ''lazy and did not want to get up and find a job because they are getting unemployment checks.''

She asked:

> How could they make such a statement about a man who had steady employment and good benefits? Who wants to collect an unemployment check and not have benefits for their family?
>
> We have a modest home, one automobile, and we do not live above our means. We are trying to keep things together, but it is difficult.

She closed her letter with a request:

> Can you please get this message across to the politicians?

Like so many American families, the Hoskins family lost a lot of ground financially while Theodis Hoskins was out of work.

Fortunately, there is a happy postscript to this family's story.

After more than 2 years of looking, Mr. Hoskins found a job. He is working about 23 hours a week at a Costco store in Chicago and he is grateful for the work.

The last thing the Hoskins family needs now is to lose $1,000 in income next year. Yet that is what will happen if Republicans refuse to extend the payroll tax cut for working families.

The Hoskins family and 160 million other working Americans will lose an average of $1,000 in income next year if Republicans insist on killing the payroll tax cut, which expires at the end of this month.

This past summer, working families in America suffered their biggest loss in wealth in more than 2 years. At the same time, corporations raised their cash stockpiles to record levels.

Our Republican friends say all the time that businesses need certainty. You know what businesses need even more than certainty? Customers.

Continuing the payroll tax cut puts money into the hands of consumers who are likely to spend that money. That is how you jump start an economy that is driven by consumer spending—not by giving bigger tax breaks to individuals and corporations that are already sitting on record amounts of cash.

We also need to maintain unemployment benefits for workers who have lost their jobs through no fault of their own, have exhausted all of their state unemployment benefits and still can't find work.

Mr. President, there are a lot of holiday traditions we look forward to. This new holiday tradition our Republican colleagues have started—threatening to cut off unemployment benefits—isn't one of them.

For the second holiday season in a row, unemployed workers and their families are being threatened with an imminent cutoff of federal unemployment benefits.

If Republicans refuse to maintain unemployment benefits, 2 million Americans will lose their jobless benefits by the end of February.

The Congressional Budget Office analyzed 11 different steps Congress could take to stimulate the economy. The most efficient short-term economic stimulus by far is extending unemployment benefits.

Every dollar we spend on unemployment generates $1.90 in economic activity. That is a 90 percent return on investment. Nothing else comes close.

According to the U.S. Census, emergency unemployment benefits kept 3.2 million Americans from slipping into poverty last year.

If the extended benefits aren't renewed, economist warn, economic growth next year could slow by up to a half-percentage point.

Some of our Republican colleagues who want to end the payroll tax cut for working families say they are concerned about the budget deficit.

We also have a serious jobs deficit in America.

They may be handing out million-dollar bonuses again on Wall Street and corporations are sitting on record amounts of cash. But there are still five job seekers for every available job in America.

Here is a sobering statistic. In the recoveries from the previous three recessions, the longest average length of unemployment was 21 weeks; that was in July 1983.

The average length of unemployment for this last recession, the Great Recession, is about 41 weeks—nearly twice the previous record.

That is the longest average unemployment since the government started keeping records in 1948.

Federal Reserve Chairman Ben Bernanke calls long-term unemployment a ''national crisis.''

He is right. The idea that we would abruptly end unemployment benefits for millions of Americans in the midst

of this national crisis is hard to believe.

Not since the Great Depression have so many Americans been out of work for so long.

When I talk to people in my state who are running food pantries and emergency shelters, they all tell me the same thing. They have never seen so many families struggling so hard for so long.

Go to an emergency food pantry and you will see America's ''new poor'': families who were solidly middle class just a few years ago, who are now having to ask for help for the first time in their lives.

It may start with a job loss. As weeks without a paycheck stretches into months, many families find themselves in financial free fall. They may lose their homes.

The inability to support one's family financially very often leads to feelings of shame and fear, which can lead to isolation, which makes it even harder to find work.

According to the Centers for Disease Control, an estimated 6.6 percent of Americans were ''clinically depressed'' in 2001 and 2002. By last year, that percentage had increased to 9 percent—an almost 50 percent increase in 8 years.

Last year, the John J. Heldrich Center for Workforce Development at Rutgers University in New Jersey released a comprehensive study of the emotional and mental health consequences of long-term unemployment on individuals.

The title of the study is, ''The Anguish of Unemployment.''

Overwhelming majorities of the survey's respondents said they feel or have experienced anxiety, helplessness, depression, and stress after being without a job.

Many said they have experienced sleeping problems and strained relationships and have avoided social situations as a result of their job loss.

Carl Van Horn, a professor of public policy and economics at Rutgers and head of the Heldrich Center said that America faces ''a silent mental health epidemic'' as jobless Americans face the financial, emotional, and social consequences of being unemployed.

One of the respondents in the Rutgers survey said:

> The lack of income and loss of health benefits hurts greatly, but losing the ability to provide for my wife and myself is killing me emotionally.

Children are especially sensitive to the effects of unemployment in the family. They pick up on their parents' stress and are more likely to suffer from poorer school performance and low self-esteem.

One recent study found that children in families with an unemployed parent were 15 percent more likely to repeat a grade in school.

In extreme cases, people who are emotionally fragile and overwhelmed may see suicide as the only way out of their troubles.

A study released last April by the Centers for Disease Control shows that suicide rates rise and fall with the economy.

It is the first study to examine the relationships between age-specific suicide rates and the economy.

It found that suicide rates rose to an all-time high during the Great Depression, fell during the expansionary period following World War II, rose again during the oil crisis of the early 1970s and the double-dip recession of the early eighties, and fell to its lowest level ever during the booming nineties.

It also found the strongest link between business cycles and suicide among people in prime working ages, 25 to 64 years old.

It is too soon to know for certain whether we will see another increase in suicide as the result of the Great Recession that started in 2007, because government figures lag. But a preliminary estimate by the CDC shows that suicide ticked up slightly in 2009, becoming the 10th leading cause of death in the United States.

It is important to stress: It is never just one factor that drives people to suicide, and most people who suffer terrible losses never even think about suicide. But for those who are already emotionally vulnerable, this time of unprecedented longterm unemployment can be very dangerous.

One more measure: Between 2004 and 2010 calls to the National Suicide Prevention Lifeline increased 72 percent. Last year, almost 40 percent of calls to the hotline involved people with financial and unemployment concerns.

The Atlantic magazine recently asked readers to share the one thing people didn't understand or appreciate about looking for work. The responses poured in.

One reader wrote:

> For those of us prone to depression, the job search can amount to a heroic effort.

Another wrote:

> Possibly the worst thing about being unemployed is having to suffer through the pundit and the politician classes gassing on interminably about what it's like to be unemployed, what kind of people are unemployed and how they think and act, when none of them knows or understands one damn thing about it, nor do they even want to. Get down here on the ground, and try to go a year on $350 a week with no hope in sight, and then tell us why the lazy unemployed just need a good swift kick to get the country moving again.

Still another wrote:

> I am over the bruises to my ego . . . The worst thing though is the impact on my kids. We were making $120K plus two years ago. Now, about $35K. Lost the house. Thankfully still in the same school. That said, the kids went from being respectably comfortable in their cohort to being comfortable if tattered (used clothes, battered rental, same old car, no summer trips, etc.). Thank God they are still young (just started third grade) but we're not having any sleepovers here no matter how much they ask. I am afraid for the social impact on them. They are so upbeat, so enthusiastic. They don't know we're in a ditch. It would break my heart if they figured that out.

Yet another wrote:

> Unemployment dehumanizes the real person. They lose the essence of their identity and value. To become a number, a label, a resume, a failure, a defect, unproductive, desperate, wishful, delusional, depressed, poor and separated from respectful society. Being unemployed is to be silently disrespected. On a par with being homeless, mentally ill or addicted.

The website Unemployed-friends.com is another place you can hear the stories of unemployed Americans who are trying to hang on.

One person wrote:

> Living in constant fear and feeling helpless to do anything about it is bound to take its toll. I really feel like I am going to have heart attack. Severe chest pains, shortness of breath, heartburn, but it has been going on for months and I'm still here. By the way, no doctor will see me without money for tests up front. I've already had the consult and that almost broke me.

Another wrote:

> Another rejection notice from Lowe's today. Second time they've rejected me with the automated rejection notice—this time for ''seasonal plumbing department associate.'' . . . I am willing to go from a 17-year professional to working doing anything I can. Retail, washing cars, pumping gas, flipping burgers . . . be it whatever. I cannot even land that!!!!!.

This is what one woman posted at 1 o'clock in the morning:

> I'm so tired. I have no more fight left in me. I am a tough NY girl but this recession has sucked the life out of me. . . . I've exhausted all resources, borrowed from everyone, lost most of everything including my pride and self esteem. I feel like nothing, a total zero, non-productive person. . . . I fully expect to look in the mirror one day and see no reflection. I am fading away, becoming irrelevant. How will I ever recover?

Peter Kramer is a professor of psychiatry at Brown University and the author of two best-selling books, ''Listening to Prozac'' and ''Against Depression.''

In a recent op-ed in The New York Times, he wrote:

> I began my psychiatry residency at a community mental health center. The director liked to put trainees in their place. He'd trade any of us, he said, for a good employment counselor. Medication and psychotherapy were fine, but they worked better if a patient had a job. . . . There is no substitute for the structure, support and meaning that jobs offer.

He went on to say that if Congress wants to do something about this silent mental health crisis that is hurting so many Americans, the best thing we can do is work with the President to pass programs that will get Americans back to work.

I couldn't agree more and I urge our Republicans colleagues to do just that.

In the meantime, at the very least, we need to maintain unemployment benefits for people who have lost jobs and are still looking and continue the payroll tax cut so that families that are working aren't hit next year with a $1,000 tax increase.

ORDER OF PROCEDURE

Mr. DURBIN. Mr. President, I ask unanimous consent that upon the use

or yielding back of time on the Christen nomination and the resumption of legislative session, Senator MCCAIN be recognized for up to 30 minutes as if in morning business; that following Senator MCCAIN's remarks, the Senate proceed to the consideration of the conference report to accompany H.R. 1540, the Department of Defense authorization bill; that there be up to 3 hours of debate, equally divided between the two leaders or their designees; that the Senate proceed to vote on adoption of the conference report at a time to be determined by the majority leader after consultation with the Republican leader; further, that no motions be in order to the conference report other than budget points of order and the applicable motions to waive; and, finally, that upon disposition of the conference report, the Senate proceed to the consideration of H. Con. Res. 92, a concurrent resolution to correct the enrollment of H.R. 1540; the concurrent resolution be agreed to; and the motion to reconsider be considered made and laid upon the table.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The majority leader.

Mr. REID. Mr. President, I appreciate the courtesy of my friend, the assistant leader.

I wish to tell all the Members of the Senate that we will probably have a series of votes around 4 o'clock this afternoon.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF MORGAN CHRISTEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Morgan Christen, of Alaska, to be United States Circuit Judge for the Ninth Circuit.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I see both Senators from Alaska on the Senate floor, and I beg their indulgence. I will continue for about 5 minutes, first on the nomination of Justice Morgan Christen of Alaska to fill one of the four vacancies on the Court of Appeals for the Ninth Circuit, a judicial emergency vacancy.

This nominee is eminently well qualified and should be confirmed. Senator MURKOWSKI and Senator BEGICH have worked very hard to get this nominee through, and I thank both of them. Today, we will take a step toward addressing a serious vacancy crisis in the busiest Federal appeals court in the country. I would hope, before we adjourn, that we could get the other 16 judges who have come out of the Judiciary Committee unanimously—every Democrat and every Republican voting for them—that are on the calendar. I would hope before we adjourn we could get those done.

Mr. President, I thank the majority leader for scheduling today's vote. It should not have taken more than 3 months to obtain Republican consent to consider the nomination of Justice Christen after it was reported unanimously by the Judiciary Committee on September 8. Her nomination has the strong support of both of Alaska's Senators, Republican Senator LISA MURKOWSKI and Democratic Senator MARK BEGICH, who introduced Justice Christen to the Judiciary Committee at her hearing on July 13. Several Republican leaders from Alaska also wrote to the Judiciary Committee to express their support, including former Alaska State Senator Arliss Sturgulewski, and Walt Monegan, the former Alaska commissioner for public safety appointed by then-Governor Sarah Palin. Connecticut State Representative Lile Gibbons, a Republican, has also written to the committee to express her support.

Justice Christen is the kind of qualified, consensus nominee who in past years would have been considered and confirmed by the Senate within days of being reported unanimously by the Judiciary Committee, not stuck for months unnecessarily on the Senate calendar. She is an experienced jurist who has served on Alaska's highest court for the past 3 years. She was nominated to that position by then-Governor Sarah Palin, and she is the second woman in Alaska's history to serve on its supreme court. Justice Christen previously served for 7 years as a judge on the Superior Court for Alaska's Third Judicial District, 3 of those years as the presiding judge. She worked in private practice for 13 years in Anchorage, clerked for Judge Brian Shortell of the Alaska Superior Court, and has demonstrated a deep commitment to her community throughout her career. Once she is confirmed, Justice Christen will be the first woman from Alaska to serve on the U.S. Court of Appeals for the Ninth Circuit.

The unexplained Republican delay in consenting to consider her nomination has caused unnecessary delays in filling judicial emergency vacancies on the Ninth Circuit, the busiest Federal circuit court in the country. Sixty-one million Americans live in the jurisdiction served by the Ninth Circuit. At a time when judges on that circuit are being called upon to handle double the caseload of the other Federal circuit courts, the Senate should have expedited the consideration of Justice Christen's nomination, not needlessly slowed it down. The chief judge of the Ninth Circuit, Judge Alex Kozinski, a Reagan appointee, along with the members of the Judicial Council of the Ninth Circuit, have written to the Senate emphasizing the Ninth Circuit's ''desperate need for judges,'' urging the Senate to ''act on judicial nominees without delay,'' and concluding that they ''fear that the public will suffer unless our vacancies are filled very promptly.''

The judicial emergency vacancies on the Ninth Circuit are harming litigants by creating unnecessary and costly delays. The Administrative Office of U.S. Courts reports that it takes nearly 5 months longer for the Ninth Circuit to issue an opinion after an appeal is filed, compared to all other circuits. The Ninth Circuit's backlog of pending cases far exceeds other Federal courts. As of March 2011, the Ninth Circuit had 13,913 cases pending before it. The second closest—the Sixth Circuit—had 5,231 cases pending.

If caseloads were really a concern of Republican Senators, as they contended when they filibustered the nomination last week of Caitlin Halligan to the DC Circuit, they would not have delayed Justice Christen's nomination to fill a judicial emergency vacancy for over 3 months. If caseloads were really a concern, Senate Republicans would consent to move forward to confirm Judge Jacqueline Nguyen of California, another well-qualified nominee, to fill a judicial emergency vacancy on the Ninth Circuit. Her nomination was also reported unanimously by the Judiciary Committee and needs only a final up-or-down vote by the Senate. Judge Nguyen is nominated to fill the judicial emergency vacancy that remains after the Republican filibuster of Goodwin Liu. I hope the Senate will be allowed to take up and confirm her nomination to finally fill that vacancy before the Senate concludes its work for the year.

I also hope we can continue to make progress early in the New Year by considering two nominations to the Ninth Circuit now pending before the Judiciary Committee. Earlier this week we held a hearing with Paul Watford of California, nominated to fill yet another judicial emergency vacancy on the Ninth Circuit. I would have included another nominee to the Ninth Circuit at that hearing, Justice Andrew Hurwitz of Arizona, who has the support of Senator KYL, but committee Republicans were not ready to proceed on that nomination. I hope both can be considered and confirmed early next year.

The Senate should act to address the continuing crisis in judicial vacancies that affects not only the Ninth Circuit but Federal courts around the country. It is now December 15, with only days left in the Senate's 2011 session. There is no time to further delay votes on the other 20 judicial nominations now pending on the Senate calendar and awaiting a final vote. Sixteen of these nominations, in addition to that of

Justice Christen, were reported unanimously by the Judiciary Committee. Many were reported last summer and early in the fall. At a time when nearly 1 in 10 Federal judgeships remains vacant, further delays are damaging. Judicial vacancies have remained at or above 80 for over 2½ years. This hurts the millions of Americans who live in those districts and circuits and rely on our Federal courts.

We should not repeat the mistakes of last year, when the Senate Republican leadership held back its consent at the end of the year to consideration of 19 judicial nominations that had been reported by the Judiciary Committee and were ready for final Senate action. That was an abusive exercise in unnecessary delay that I believe was without precedent with respect to such consensus nominees. It took us until June of this year, halfway into 2011, to consider and confirm 17 of the nominations that could and should have been considered before the end of 2010.

In contrast, Democratic Senators proceeded to up-or-down votes on all 100 of President Bush's judicial nominations reported by the Judiciary Committee during his first 2 years in office, and all 100 were confirmed before the end of the 107th Congress.

Before we adjourn this year, there is no reason the Senate cannot at least consider the other 16 judicial nominees reported unanimously by the Committee this session, who are by any measure consensus nominees. I hope we do not see a repeat of the damaging decision by Senate Republican leadership at the end of last year to refuse to agree to votes on those nominations.

With vacancies continuing at harmfully high levels, we cannot afford to repeat these unnecessary and damaging delays. There is no reason we cannot make significant progress during the days left in this session and consider all of the consensus nominations now pending on the Senate calendar. That is what we did at the end of President Reagan's third year in office and President George H.W. Bush's third year in office, when no judicial nominations were left pending on the Senate Calendar. That is what we did at the end of the 1995 session, President Clinton's third year in office, when only a single nomination was left pending on the Senate calendar. That is, in fact, also what we did at the end of President George W. Bush's third year. Although nine judicial nominations were left on the calendar, they were among the most controversial, extreme, and ideological of President Bush's nominees. They had previously been debated extensively by the Senate. The standard then was that noncontroversial judicial nominees reported by the Judiciary Committee got Senate action before the end of the year. That is the standard we should follow this year. If we do, another 16 judges will be confirmed.

Chief Justice Roberts, the Attorney General, and the White House counsel have all spoken about the serious problems created by persistent judicial vacancies. More than 160 million Americans live in districts or circuits that have a judicial vacancy that could be filled today if Senate Republicans would just agree to vote on the nominations now pending on the Senate calendar. The Senate should act to bring an end to the harm caused by delays in overburdened courts. The Republican Senate leadership should consent to votes on the qualified, consensus candidates nominated to fill these judicial vacancies before the Senate adjourns for the year. Their consideration should not be unnecessarily delayed until next spring.

DEFENSE AUTHORIZATION

Mr. LEAHY. Mr. President, again, with the indulgence of my colleagues, if I might, just for a moment, call to the attention of my colleagues the several provisions of the Defense authorization bill we are going to consider for final passage today. These provisions will have a major impact on our defense structure and performance in the years to come. These reforms were previously included in a bill I introduced with Senator LINDSEY GRAHAM in May, S. 1025, which Senator GRAHAM and I nicknamed ''Guard Empowerment II.''

As cochair with Senator GRAHAM of the Senate National Guard Caucus, I am pleased to report that the most important of these Guard empowerment reforms are included in the final version of the Defense authorization bill. They include a provision that will make the Chief of the National Guard Bureau a statutory member of the Joint Chiefs of Staff. The Joint Chiefs—our highest military policy council—has not added a member since 1978—and I remember that because I voted for it—when the Commandant of the Marine Corps was finally added as a full participant.

This is truly a historic day for the National Guard and for all the Guard does for our Nation. One might ask: Why now? Why is this change so important? Our Guard has been bravely serving in near constant rotation with Active-Duty Forces overseas for the last decade. Each of us has gone to Afghanistan or Iraq and seen our Guard serving. At the same time, these Guard troops have been the military's first responders at home. The Pentagon hasn't caught up with the institutional changes that have to accompany this. It is a whole different world for the National Guard today than what it was 20 years ago.

In fact, after all the National Guard has done over the past 10 years, we are hearing rumors the Air Force is already planning serious cuts to its Guard and Reserve components. General Schwartz, Air Force Chief of Staff, announced:

> We're going to get smaller. Active duty, Guard, and Reserve—we're going to get smaller together.

I question the logic of an across-the-board cut. I hope most of us would. That is why we have to have a Guard Chief on the Joint Chiefs of Staff to provide a vital voice, perhaps a dissenting voice, when it is needed most.

When I look at the Vermont Guard, it demonstrates why these kinds of cuts don't make sense. The Vermont Guard deployed nearly 1,500 troops to Afghanistan last year. Before that, the Vermont Guard deployed to Iraq during one of its most violent periods and made unspeakable sacrifices for this country. I know because I went to the funerals of Vermont Guard members and because we are such a small State, many times everybody knew the person who had died.

The Vermont Air Guard flew more than 100 consecutive days of air missions over New York City and Washington after the attacks of September 11 around the clock. If we properly man, train, and equip our State Guards, our military leaders will find them the peer of any Active-Duty unit. In fact, the Vermont Air Guard is one of the first three units to be considered to receive the F–35 Joint Strike Fighter. And not only will the service Chiefs find their reserve components ready to serve when called, they will find them a lot less expensive.

The Defense bill also includes several other provisions of our Guard empowerment bill. It reinstates the three-star Vice Chief of the Guard Bureau, it institutes the recommendations on Federal-State military integration offered by the Council of Governors, it includes a limited authorization of the State Partnership Program, it mandates the consideration of Guard generals for certain vacant positions at U.S. Northern Command, and on and on.

I think it is going to lay the groundwork for further collaboration between the Armed Services Committee, the Appropriations Committee, and the Senate National Guard Caucus. Our National Guard is a superb 21st-century military organization, but it has been trapped in a 20th-century Pentagon bureaucracy.

These reforms will help clear away the cobwebs.

It shows what happens when Democrats and Republicans work together. Sometimes it is not noted in the press, but a lot gets done around here when Democrats and Republicans work together. Senator GRAHAM and I introduced a bill in May that has more than 70 cosponsors from both parties. We have accomplished a lot for our Guard with this bill, again, by having Democrats and Republicans work together. There is more to be done, but what a great start.

As I have said about Democrats and Republicans working together, I have to applaud the two Senators from Alaska. Because of their hard work, we have this nominee before us, and that is something every one of us should take pride in, the way the two have worked together.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. BEGICH. Mr. President, first I want to comment on the work the Senator from Vermont has done with regard to the Guard. It affects us in Alaska a great deal, and I want to thank him for all of the hard work he has done.

In regard to the nomination today, again the chairman of the Judiciary Committee, Senator LEAHY, has done an incredible job bringing so many judges to the floor. I come to the floor today in strong support of the nomination of Morgan Christen to fill a vacancy on the Ninth Circuit Court of Appeals.

I have known Morgan for years and am continually impressed with her keen legal mind, her outstanding record of public service, and her ability to carve plenty of time out of her schedule for her extensive volunteer work.

For decades, Morgan has been recognized by her peers as one of the finest attorneys and judges in Alaska. She is currently one of the five justices on our State supreme court. I am confident she will continue to be a fair and impartial judge as a member of the Ninth Circuit.

Justice Christen was born and raised in Washington State and excelled at the Golden Gate School of Law where she earned her J.D. in 1986. Right after graduating from law school, Morgan came to my State to clerk for the Alaska Superior Court. As many people do, once she got a taste of Alaska, she decided to stay and raise her family.

Morgan worked for one of the finest law firms in Anchorage and quickly became a partner. In 2001, Morgan was appointed to the Anchorage Superior Court by my former boss, Gov. Tony Knowles. The Anchorage Superior Court is an important one in my State, handling criminal cases, family law, and even civil matters. As she always does, Morgan did an excellent job in the court.

Before long, she became the presiding judge at Alaska's Third Judicial District, the busiest court in Alaska. As a presiding judge, she supervised over 40 judicial officers and 13 court locations.

When I was mayor of Anchorage, our city was fighting against youth gangs, who were committing serious offenses and pushing up the crime rates in our community. Anchorage has an unusual judicial system and arrangement with the State. The city police provide basic law enforcement, but the State of Alaska runs the court and the corrections system. I worked closely with Judge Christen across municipal and State lines to crack down on these gangs and make Anchorage streets safer. I found her to be an energetic innovator who is sensitive to the broad cultural diversity of our State. In 2009, she was elevated to the highest court in the State, the Alaska Supreme Court.

In addition to Justice Christen's impressive record of public service on Alaska's State courts, she also finds time to be one of the most prolific volunteers in our State. Her volunteer resume is pages long. If there is a volunteer organization in Alaska, more than likely Morgan has probably worked on it, with it, or served on the board. She is a member of the Rotary Club, the YWCA, the Alaska Community Foundation, the Athena Society. She has been on the board of directors of the United Way of Alaska. She has also been on the board of directors of Big Brothers and Big Sisters of Alaska, and the Rasmussen Foundation. In 2004, Morgan and her husband Jim were jointly recognized as Outstanding Alaska Philanthropists of the Year—truly an impressive honor.

I am proud to support such an outstanding Alaskan to sit on the Ninth Circuit Court of Appeals, and I want to urge all of my Senate colleagues to support her nomination as well.

Justice Christen has bipartisan support. She received the unanimous support of every member of the Senate Judiciary Committee in September. In Alaska, she was elevated once by a Democratic Governor and once by a Republican Governor. The American Bar Association has recognized her legal capability and rated her as ''unanimously well qualified'' to serve as a judge on the Ninth Circuit.

Morgan is one of the greatest legal minds and one of the most caring individuals Alaska has to offer. I am honored to support her for this position and honored to count her as a friend. I strongly urge every Member of this body to confirm her nomination to the Ninth Circuit.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, I too rise in support of Morgan Christen, the nominee who is before us today, and I add my thanks to the chairman of the Judiciary Committee and, in fact, the entire Judiciary Committee, for their work in advancing not only Judge Christen as she has moved forward through the process, but it was several weeks ago that we were pleased to move through this body the nomination of Judge Sharon Gleason.

I think it is worthy of note that Alaska in the past month now has moved forward two extraordinary women jurists who will work to serve us in an incredible way. If there is any regret I have, it is that such exceptional women are being taken from our State judiciary system and moved on to other positions, so there is a loss there. We are going to have to work to fill those back benches. But I am very pleased today to speak in support of Morgan Christen, a justice of the Alaskan Supreme Court who has been nominated to serve on the Ninth Circuit U.S. Court of Appeals.

This is a historic nomination. Only two Alaskans have had an opportunity to serve on the Ninth Circuit, and both of those judges were, somewhat predictably, men. The first Alaskan to serve was Robert Boochever, who was appointed by President Clinton. Judge Boochever accepted senior status in 1986, and we were saddened when he passed away on October 9, 2011, at the age of 94. The second on the Ninth Circuit was Andrew J. Kleinfeld, who accepted senior status on June 12 of last year. Justice Christen has been nominated to fill the vacancy created when Justice Kleinfeld took senior status. That vacancy has existed now for 18 months, which should concern all of us, given the heavy workload that faces the Ninth Circuit. That said, it often takes a little bit of time to get the best, and there is no doubt in my mind that when President Obama selected Morgan Christen for the Ninth Circuit, he selected the best.

I have known Justice Christen for almost 25 years now. We graduated from law school at about the same time. We both clerked for the Alaska court system at the same time and we have kept in touch over the years. I have come to know Morgan, her husband Jim, and her family.

Morgan Christen is an experienced, very well-rounded attorney. She is an exceptionally well-rounded jurist with experience on the trial and the appellate bench. She is an individual with a keen intellect and an impeccable reputation for integrity. She is highly regarded across the ideological spectrum in Alaska as a judge who keeps politics and ideology off the bench.

Given the bruising nomination battles that have taken place here in the Senate over the past few years, a few of our colleagues might be inclined to challenge the notion that there is any such thing as a nonideological, nonpolitical judicial nominee. But in response, I would simply note that Morgan Christen was elected to serve on the Alaska Superior Court by Gov. Tony Knowles, a very well-known Democrat. She was then later selected to serve on the Alaska Supreme Court by Sarah Palin, our very well-known Republican Governor. Under Alaska's nonpolitical judicial selection process, she was vetted by the Alaska Judicial Council before her selection to the superior court in 2001, and once again prior to standing for retention election in 2004. Justice Christen was then vetted for yet a third time before her selection to the Alaska Supreme Court in 2009. In each case, she secured high marks from Alaska's very diverse legal community. In fact, she was ranked the top candidate for the supreme court position in a scientifically conducted study of Alaskan attorneys.

I have appreciated that Justice Christen has been mindful of the separation of powers throughout her judicial career, and mindful of the fact that her personal views have no bearing when it is time to determine the rule of law. I know we can expect her to continue in that vein when she moves on to the Federal bench.

Morgan Christen was educated at the University of Washington and Golden Gate University School of Law. She

spent portions of her undergraduate years studying in England, Switzerland, and China. Following law school, she clerked on the Alaska Superior Court and then entered private practice in the Anchorage office of Preston Gates & Ellis. As a private practice attorney, she represented the State of Alaska in the litigation that followed the 1989 Exxon Valdez oil spill.

As a member of the superior court bench, she served as the presiding judge of the Third Judicial District there in Anchorage which, as was noted, is the busiest judicial district in the State of Alaska. She held that position for 4 years. As a supreme court justice, she is deeply engaged in community outreach. In fact, she won the Alaska Supreme Court Community Outreach Award back in 2008. She also holds the Light of Hope Award for work on behalf of Alaska's children. I think her voluntarism has been acknowledged and highlighted. Not only does she meet the demands of a busy bench practice, but also takes the time, with her family, to be very engaged in our community.

I inquired with some of my friends, former colleagues on the Alaska bar, about her reputation in anticipation of my comments today. One Alaskan stated:

> Morgan is extraordinarily talented and is well respected by her peers. She constantly brings justice and fairness to her professional and personal life. Friends and colleagues across the country have savored her wild raspberry jam.

I have yet to have the opportunity to savor her wild raspberry jam. I do a pretty mean raspberry jam myself, so I think we are going to have to trade and see. But it is yet one more aspect about this pretty amazing woman I wanted to share today.

Another colleague stated, very simply, that she is a calm, thoughtful, and strong woman. Good words.

In closing, let me simply say that Morgan Christen is more than just a good judge; she is a good person. Justice will be well served by her confirmation to the Ninth Circuit U.S. Court of Appeals. I urge my colleagues to support this nomination with enthusiasm, as I do.

Mr. President, I yield the floor.

Mr. GRASSLEY. Mr. President, today the Senate is expected to confirm an additional judicial nominee. With this vote, we will have confirmed 62 article III nominees during this Congress. More than half of these have been for vacancies designated as judicial emergencies. That is real progress. Over 72 percent of President Obama's judicial nominees have been confirmed.

Morgan Christen is nominated to be U.S. circuit judge for the Ninth Circuit. Justice Christen received her B.A. from the University of Washington in 1983, and her J.D. from Golden Gate University Law School in 1986. After graduating from law school, she clerked for the Hon. Brian Shortell on the Alaska Superior Court in Anchorage.

In 1987 she was hired at Preston Gates & Ellis LLP, working as an associate until 1992. She was a partner in the firm from 1993 to 2002. At that firm she was a general civil litigator, primarily representing plaintiffs. She began by assisting with large litigation projects. One of her most notable early matters involved serving on the liability team representing the State of Alaska in its claims for compensation arising from the Exxon Valdez oilspill. After the State settled its liability claim in 1991, she defended claims brought by individuals who argued the State's response to the spill was inadequate.

By the time Justice Christen became a partner in 1993, she had developed a practice in Jones Act personal injury claims and was lead counsel in a case in the U.S. Court of Claims representing the parents of an infant who died after receiving a childhood vaccination. She also served as lead counsel on four aviation fatality cases between 1993 and 1999, representing the estate of an FAA employee who was killed in a mid-air collision, the estate of a pilot killed during a catastrophic engine failure and in-flight failure, among others. She has also served as the lead counsel in the Equal Pay Act and represented a fuel barge line in several commercial disputes. Finally, from 1999 to 2001 over half of her practice was devoted to defending two physician practice groups in a Federal Medicaid fraud investigation and related False Claims Act case, and assisting with the defense of a class action antitrust case brought against purchasers of salmon harvested in Alaska.

In 2001 she was appointed to the Alaska Superior Court, where she served from January 9, 2002, until her elevation to the supreme court in 2009. The superior court is the court of general jurisdiction in Alaska. As a superior court judge, her docket was comprised entirely of civil cases. From 2005 to 2009 she served as presiding judge of the Third Judicial District of the Superior Court. In this position she supervised approximately 40 judicial officers in 13 court locations.

Justice Christen was appointed to the Alaska Supreme Court on March 4, 2009, and has been a member of that court from April 6, 2009, to the present. She was nominated for that seat by the Alaska Judicial Council, composed by three members of the bar, three members of the public appointed by Governors, and the chief justice. She was then selected from a slate of two nominees by Governor Sarah Palin.

The American Bar Association Standing Committee on the Federal Judiciary has rated Justice Christen with a unanimous ''well qualified'' rating.

Mr. LEAHY. Mr. President, how much time is remaining on the judgeship?

The PRESIDING OFFICER. On the Republican side, there is 7 minutes 16 seconds; on the Democratic side, 3 minutes 52 seconds.

Mr. LEAHY. Mr. President, I want to reiterate what I said before about Senator MURKOWSKI and Senator BEGICH for their support of this woman for the Ninth Circuit. I appreciate the work they have done on this nomination. I also appreciate the personal comments the senior Senator from Alaska made, going back to her law school days. I think sometimes we forget that these judicial nominees are real people and they have a real life and are a real part of the community. So I appreciate that.

I yield back the remainder of the time on our side.

Ms. MIKULSKI. Mr. President, I yield back all the time on the Republican side.

The ACTING PRESIDENT pro tempore. All time is yielded back.

LEGISLATIVE SESSION

THE PRESIDING OFFICER (Mr. BROWN of Ohio). Under the previous order, the Senate will resume legislative session.

The Senator from Arizona, Senator MCCAIN, is recognized for 30 minutes.

THE MILITARY-INDUSTRIAL-CONGRESSIONAL COMPLEX

Mr. MCCAIN. Mr. President, shortly we will begin debate on the conference report of the Defense authorization bill, the 50th year the Congress of the United States has authorized the equipment, the programs, and all that is necessary to defend this Nation's security.

I want to talk today about a very important aspect of our national security, and that is the problem we are having with out-of-control spending which has, in its own way, endangered our national security as almost any threat that we face. It is unsustainable, it is unacceptable, and it is a stain on our Nation's honor.

Fifty years ago, on January 17, 1961, Dwight David Eisenhower bid farewell to the Nation as the President of the United States. At the heart of his farewell address was a warning, one keenly insightful in its sense how, in a way new to the American experience, an immense military establishment and large arms industry had developed in the 20th century post-war period. While acknowledging the need for a strong national defense, President Eisenhower called for the American people to understand the grave implications of this new aggregation of political and industrial power. In particular he warned:

> In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.

The 50th anniversary of President Eisenhower's address gives us an opportunity to carefully consider have we considered President Eisenhower's admonition. Regrettably and categorically the answer is no. In fact, the

military-industrial complex has become much worse than President Eisenhower originally envisioned. It has evolved to capture Congress. So the phenomenon should now rightly be called the military-industrial-congressional complex.

On July 16, 2009, in a speech to the Economic Club of Chicago, then-Secretary Gates described the military-industrial-congressional complex in this way:

> First, there is the Congress, which is understandably concerned . . . about protecting jobs in certain states and congressional districts. There is the defense and aerospace industry, which has an obvious financial stake in the survival and growth of these programs. And there is the institutional military itself—within the Pentagon, and as expressed through an influential network of retired generals and admirals. . . .

One aspect of the military-industrial-congressional complex I have focused on considerably over the last few years is its role in congressional earmarks, congressional pet projects, unwanted by the administration but amounting to billions of dollars annually that frequently take on a life of their own in a way that continues to waste taxpayer resources for years and sometimes decades. In the military-industrial-congressional complex, earmarks are the currency of corruption.

Another manifestation of the military-industrial-congressional complex I have called attention to is the revolving door that exists between the Pentagon and the defense industry. In 1969, then-Senator William Proxmire said this about the revolving door in the context of defense procurement:

> The easy movement of high-ranking military officers into jobs with major defense contractors and the reverse movement of top executives in major defense contractors into high Pentagon jobs is solid evidence of the military-industrial complex in operation. It is a real threat to the public interest because it increases the chances of abuse. . . . How hard a bargain will officers involved in procurement planning or specifications drive when they are one or two years from retirement and have the example to look at over 2,000 fellow officers doing well on the outside after retirement?

Probably the most recently publicized example of the revolving door between the Department of Defense and private industry and the prevalence of the military-industrial-congressional complex in the Department's planning and procurement processes is its mentorship program. In its most recent story in a series exposing this program, USA Today reported that the Air Force allowed a retired general officer who was then serving as an executive in the Boeing Company to participate as a mentor in a war game involving the aerial refueling tanker that Boeing was at the same time competing to build for the Air Force under a multibillion dollar procurement program. Over the last 2 years, I have exercised keen oversight of the mentorship program, which I understand has been essentially shut down under the weight of newly promulgated public disclosure requirements. In other words, former general and flag officers serving as Department mentors prefer to exit the program rather than publicly disclose their corporate affiliations and compensation.

I ask unanimous consent my most recent investigative letter on the issue be printed in the RECORD.

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

(See exhibit 1.)

Mr. MCCAIN. The aspect of the military-industrial-congressional complex I would like to focus on relates to how the Pentagon buys its very largest weapons systems. That covers the top 100 or so of the Defense Department's weapons procurement programs into which taxpayers have invested to date about $1.7 trillion. In particular, I would like to focus on how the military-industrial-congressional complex has kept even some of the most poorly performing programs funded, siphoning off precious resources even while they go over budget, face years of schedule delays, and fail to deliver promised capability to the war fighter.

To be clear, the military-industrial-congressional complex does not cause programs to fail, but it does help create poorly conceived programs, programs that are so fundamentally unsound that they are doomed to be poorly executed. It does help keep them alive long after they should have been ended or restructured.

By ''poorly conceived,'' I mean major programs that are allowed to begin, despite having insufficiently defined requirements, unrealistic cost or schedule estimates, immature technology or too much manufacturing and integration risk or unrealistic performance expectations.

By ''poorly executed,'' I am referring to programs that poorly perform because of, among other things, unanticipated design, engineering, manufacturing or technology problems. These sorts of programs should never have been started to begin with or should have been significantly restructured or terminated at the end of the day. Yet through the influence of the military-industrial-congressional complex, they are allowed to enter the defense procurement process and to persist, often under the guise of a concurrent development acquisition strategy and executed under cost-plus contracts.

Specifically, the military-industrial-congressional complex helps ensure that poorly conceived programs get on rails and stay there with production money when they are supposed to be still in development. For industry and many of their sponsors in the Pentagon and on the Hill, that is desirable because it is far more difficult to restructure or terminate a production program, even one that is performing poorly, than one that is in development. In the military-industrial-congressional complex, if excessive concurrency is a drug, then the cost-plus contracts used to facilitate it are its delivery vehicles.

Over the last decade or so, what I have described has resulted in a massive windfall for industry. But for the taxpayer and the war fighter, it has been an absolute recipe for disaster.

With the Federal budget deficit having hit $1.3 trillion for the 2011 budget year and facing the fact that the defense budget will likely not grow to any significant extent in the near term, we in Congress must be mindful of how the military-industrial-congressional complex can negatively affect decisions to buy and keep major weapons systems.

How does the military-industrial-congressional complex help create problem programs and keep them going long after they should have been canceled or restructured? A review of some of the problems with the original Air Force tanker lease deal is instructive. From that first attempt by the Air Force to replace its aging airborne tanker aircraft, which started nearly a decade ago, we now know, very early in the planning of a major defense acquisition program, senior officials from industry and the relevant services work with senior Members of Congress to ensure that the economic and therefore political benefits of the programs would be distributed widely among key congressional States or districts. That ensures long-term political buy-in and support.

How much could the military-industrial-congressional complex's negative influence ultimately cost taxpayers? Once again, consider the original tanker lease deal as just one example.

That deal would have had new aerial refueling aircraft developed under a cost-plus contract, which exposes the taxpayer to and protects the contractor from the negative impacts of cost overruns and schedule delays. Once developed, those new tanker aircraft were supposed to be leased—leased, not bought outright—from a sole-source contractor, as provided under a multibillion dollar earmark stuck in a defense appropriations bill, without having been vetted by the administration or reviewed by the relevant congressional oversight committees.

That unusual acquisition strategy was based on a case that the Air Force presented at that time, which the deal's congressional sponsor roundly endorsed, that the legacy fleet of tankers needed to be replaced urgently. Needless to say, that case was proven false. There can be no doubt that the original tanker lease deal was a classic creation of the military-industrial-congressional complex.

When we compare the likely costs of the sole-source tanker lease with the costs of the recently concluded tanker competition, which calls for fixed-price development and a purchase under full and open competition, the difference is dramatic. According to recent analysis by the Department of Defense, the original tanker lease deal would have, over the lifecycle of the aircraft, cost

taxpayers billions of dollars more for a less-capable airplane. Those billions that could have been lost under the original tanker lease deal are effectively the cost associated with the military-industrial-congressional complex when it is allowed to run unchecked and unchallenged, and they are, particularly in the current fiscal environment, utterly unsustainable.

The lesson of the original tanker lease deal is that the powerful combination of interests that comprise the military-industrial-congressional complex can be strong enough to both give birth to procurement programs that should never have been started in the first place and nurture programs that should have been killed or fundamentally restructured early on to the grave detriment of the taxpayer and our service men and women.

While over the last couple years former Secretary Gates ended some of the most poorly performing major programs in the defense enterprise, the situation remains serious. The new national military strategy calls the growing national debt a ''significant security risk,'' and as the Government Accountability Office noted in its March 2011 report, since 2008, the total acquisition costs of the Pentagon's major defense acquisitions programs in its current portfolio has increased by $135 billion, about half of which is attributed to pure cost growth and the other half due to cuts in the intended number of weapons we plan to buy.

It should not come as a surprise that as a result, about half the Pentagon's very largest weapons procurement programs exceed cost-performance goals agreed to by the Pentagon, the Office of Management and Budget, and the Government Accountability Office. In fact, the Government Accountability Office's March report found that about one-third of all major weapons systems since 1997 have had cost overruns of as much as 50 percent over their original projections.

Noting that ''the costs of developing and buying weapons have historically been, on average, 20 to 30 percent higher'' than Pentagon estimates, the Congressional Budget Office recently projected that in addition to health care, higher costs for weapons systems will increase the Pentagon budget by about $40 billion over the next 5 years.

Congress and current leadership at the Department of Defense have tried to attack these problems, but they have not been successful in changing the prevailing culture yet.

For example: After several attempts to change the Pentagon's buying approach—which, as CBO noted rarely, if ever, correctly predicts how much a program will likely cost—the Weapons Systems Acquisition Reform Act of 2009 created the Office of Cost Assessment and Program Evaluation to analyze the cost of new programs and why they fail. It also required the Pentagon to keep closer tabs on technology maturity and emphasized testing new weapons before they entered production.

As a result of that act, some newer major programs are not making the mistake of relying on overly optimistic cost estimates provided by the contractor or staking too much production money too early—before critical technologies, design drawings, and manufacturing processes have stabilized and matured. But even this new law will be judged well only if the Pentagon can demonstrate some success with its largest acquisition programs, even those that went into development before the law's enactment.

The F–35 Lightning II Joint Strike Fighter Program is a good example of one such program. Last week I spoke at length about this program, so today I will keep my remarks about it brief. Currently, the F–35 is the Pentagon's largest weapons procurement program. It was originally intended as a revolutionary, affordable solution to the Navy, Marine Corps, and Air Force's tactical aviation needs for the future. With three different versions of the aircraft for each service and commonality in design among those versions, the Pentagon sold this program as a fifth generation strike fighter that would—more so than any other major defense procurement program—be cost effectively developed, procured, operated, and supported.

According to the Pentagon, the program ''was structured from the beginning to be a model of acquisition reform.'' This has not been the case.

When the program was first launched, the Pentagon planned to buy over 3,000 Joint Strike Fighters, but the development effort was performed so poorly that we can now only afford to buy 2,457. Given recent delays in restructuring rules, that number could go down further. To date, the total cost to buy all of the aircraft as intended has grown by about $150 billion to $385 billion. The cost of each Joint Strike Fighter is now 80 percent over the original baseline estimate, and that is expected to increase. It would be hard to buy a car at 80 percent over the original sticker price without looking for major tradeoffs.

Currently, the Joint Strike Fighter costs an average of about $133 million each, and that is without an engine. We have invested about $56 billion in R&D costs in this project through fiscal year 2010.

Over the nearly 10-year life of the F–35 program, Congress has authorized and appropriated funds for 135 of these aircraft. But as of today, the program has delivered just 20 flying aircraft with most of them being used for testing. Early production aircraft just started to be delivered a few months ago—3 years late.

The main problem with the program has been this: Before the Pentagon went all in on the F–35 program, it never understood the risk associated with developing and integrating the F–35's critical technologies and manufacturing each version of the plane, much less how much money and time would be needed to overcome these risks. So ever since the Pentagon awarded Lockheed Martin a contract to develop the Joint Strike Fighter contract in 2001, and despite having signed several follow-on contracts for blocks of production aircraft, the program has effectively been stuck in development. Experts call what the Pentagon has been trying to do ''concurrent development.'' I call it a mess.

Using a concurrent development strategy to procure high-risk weapon systems that promise generational leaps in capability when, one, their underlying design is unstable; two, the risks associated with developing their critical technologies and integration are not fully known; and, three, their manufacturing processes are immature is a very bad idea. Trying to do this under cost-plus contracts is a recipe for disaster.

In July 2011, the Department revealed that the cost for the first three lots of early production aircraft amounting to 28 aircraft bought under cost-plus contracts exceeded by about $1 billion the original estimate of about $7 billion. The Department also indicated that the taxpayers' share of this overrun amounted to $771 million. The program's prime contractor would absorb approximately $283 million. By the way, that program's prime contractor, Lockheed Martin, declared record profits of $3 billion last year.

Moreover, just a few days ago, the Department indicated the cost of the fourth lot of the early production aircraft bought for the first time in the program's history under a fixed-price-type contract may be as high as 10 percent over that contract's $3.46 billion target cost. This is a $350 million overrun with only about 40 percent of that work completed to date. This suggests the costs of the program have still not been contained despite 2 years of concentrated effort by the Pentagon to bring costs under control.

Just last week the executive officer of the Joint Strike Fighter Program indicated in a media interview that the Joint Strike Fighter Program needs to slow down production and deliveries of the aircraft. He attributed this to the need to open the aircraft and install fixes to numerous structural cracks in ''hot spots'' that the program has discovered in the plane over the last year or so. He estimated the work needed to remedy these cracks could add an additional $3 million to $5 million per aircraft.

From these comments, I understand the overlap between development and production, called ''concurrency,'' that persists in the program is still too great to assure taxpayers they will not have to continue paying for costly redesigns or retrofits due to discoveries late in production.

My frustration—and, more importantly, the taxpayers' frustration—

with the chronic failure of this program to deliver required combat capability on time and on schedule cannot be overstated. This frustration is conveyed well in a provision in the conference report accompanying the Fiscal Year 2012 National Defense Authorization Act that would require that the sixth lot of early production aircraft be procured on a firm fixed-price basis. Apparently, the fixed-price contract used for the fourth lot, which provides the overruns between a ''target cost'' and ''ceiling price'' be shared between the government and prime contractor is failing to incentivize the contractor to control its costs, so tougher measures are warranted. We should all hope they work.

Another example is the Marine Corps' Expeditionary Fighting Vehicle, the EFV. The Marine Corps and General Dynamics originally promised that the EFV was going to be the most advanced and operationally effective amphibious assault vehicle ever produced. It was originally designed to be an over-the-horizon platform to protect the Navy ships from mines and shore-based missiles and maximize our flexibility and the enemy's difficulty in planning a defense.

The EFV was intended to be capable of being launched from a ship up to 25 miles away from shore and speed to a landing zone at 25 knots. Once ashore, the EFV would then be able to travel at speeds equal to those of the Abrams tank. The Marines were originally supposed to buy over 1,000 of these vehicles, which were to be initially operable by 2010, at a total cost of $7.3 billion. Needless to say, things did not turn out that way.

Prototypes of the EFV were tested and were about 1,900 pounds too heavy and blew past original cost estimates for research and development. Testing also revealed significant problems in terms of limited visibility, excessive noise, breakdowns in the loading system of the 30-millimeter gun, and concerns about the hull's vulnerability to IED attacks.

From its start in 1996 to about 2007, the Marine Corps and General Dynamics said, ''Don't worry.'' But at the end of the day, the program's cost rose by 55 percent to over $14 billion, and initial capability was pushed back to 2016. At the start of this year, the cost of each EFV was expected to be as much as $23 million, and the estimated cost to operate and maintain the vehicle went up with the increase in that price.

The Commandant of the Marine Corps estimated that the EFV would consume over 90 percent of the Marine Corps' total ground combat vehicle budget. Against that backdrop, former Secretary Gates and the Commandant called for this program to be terminated. Unfortunately, the taxpayers had invested about $3 billion and the Marine Corps had waited 15 years for an improved amphibious vehicle that simply became too costly to buy.

Another example of a legacy acquisition program in trouble is the V–22 Osprey. Inspired by the failure to rescue hostages from Iran in 1980, the V–22 was originally designed to be a revolution in vertical takeoff aircraft. It was intended to improve, beyond anything currently in the arsenal, the ability of the Marine Corps' and our Special Forces' capability to get in, get out, and resupply from long range at high speeds in hostile landing zones.

What we ended up with has been great expectations and enormous costs. Since it was first deployed, the Marine Corps' version of the V–22 has had a mission-capable rate in the middle to high 60-percent range as compared to the latest version of the Army's heavy-lift helicopters, the CH–47s, which had readiness rates in the high eighties to low nineties. During its recent deployment in Afghanistan, in fact, the V–22's engine saw a service life of just above 200 hours, well short of the 500 to 600 hours that the program's managers originally estimated. That has caused the cost-per-flying hour to more than double to over $10,000 an hour as compared to about $4,600 per hour for the much older CH–46 it was intended to replace or about $2,600 per hour for a new, modern MH–60 Blackhawk helicopter.

When it is not being repaired, the V–22 performs its missions impressively, but the sustainment cost of keeping the V–22 flying is eating up the Marine Corps' budget and causing aircraft maintainers to work much harder than should be required for a brandnew aircraft. While the V–22 program was supposed to cost just over $39 billion, independent estimates are that it will come in at $56 billion, a 43-percent increase.

Mr. President, I ask unanimous consent for 10 additional minutes.

The PRESIDING OFFICER. Is there objection? Without objection, so ordered.

Mr. McCAIN. The price per aircraft has risen by 186 percent from $42.8 million to $122.5 million. You will notice this hybrid helicopter airplane's unit cost is approaching that of the troubled F–35 priced at about $133 million a copy, as I mentioned earlier. But the budget-strapped Marine Corps may have to afford both of them.

Recently, the Marine Corps conceded that over the last 3 years, the lifetime cost of operating its V–22 aircraft had increased 64 percent to $121.5 billion.

I want to talk about military space procurement for a minute. They are among the most notorious for chronically performing poorly.

The Space-Based Infrared System program is a particularly good example. It has been a problem since its inception in 1996. In fact, 5 years into the program—in 2001—an independent review cited the program as ''too immature to enter the system design and development phase'' and observed that the program was based on faulty and overly optimistic assumptions with respect to, among other things, ''management stability and the level of understanding requirements.''

That was 2001, when it was determined that total program costs could exceed $2 billion—a 70-percent increase in cost. And, here we are today, 10 years later, and the system has still not achieved its objectives. In fact, it was just launched, for the first time, recently, on May 7, 2011.

Originally estimated to cost $2.4 billion, it is now expected to cost nearly $16 billion, roughly 7 times the initial estimate.

The Defense Department reported to Congress recently that the next pair of these satellites built by Lockheed Martin could cost $438 million more than previously estimated and could be delivered a year late. Many of the space programs are facing these same kinds of overruns.

In the area of military space procurement, the Air Force's Advanced Extremely High Frequency satellite is worth mentioning. This system of satellites is supposed to replenish the existing Milstar system with more robust and secure communication capabilities for strategic and tactical warfighters. While the first of six of these was launched in August 2010, glitches with its thruster delayed the satellite from reaching its planned orbit by more than a year and significantly affected when the other two satellites will launch. In connection with how the prime contractor, Lockheed Martin Space Systems, has performed on this program, the Air Force penalized Lockheed Martin by reducing its award fee under the contract by $15 million.

One space acquisition program I have focused on is the Evolved Expendable Launch Vehicle Program. Largely because of lack of competition and the Department's reliance on a sole incumbent provider, by some estimates EELV's costs may increase by more than 50 percent over the next 5 years.

I don't want to overlook the Army. Among all services the Army has had the poorest record of pumping billions of dollars into weapons systems that were never deployed. A recent Army study indicated that since 1995, almost 40 percent of research dollars the Army spent did not result in the procurement of any product. The Army spent at least $32 billion on development, testing, and evaluation of 22 weapons programs that were later canceled—almost a third of its budget for creating new weapons. Every year since 1995, the Army has spent $1 billion on doomed programs. Since 2004, canceled Army programs have consumed between $3.3 billion and $3.8 billion. This represents an average of 35 to 45 percent of the Army's annual budget for development, testing, and engineering when factoring in the cancellation of the hugely expensive Future Combat Systems Program.

This brings us right to the FCS Program. To say that this program was a spectacular, shameful failure would not do it justice. First envisioned in 1999 by then-Army Chief of Staff GEN Eric Shinseki, FCS was intended to be a revolution in capability—the centerpiece in the Army's effort to transform

itself into a lighter, more modular, and more deployable fighting force. Originally and erroneously executed under a type of contract more fitting for smaller programs, the FCS was supposed to develop 18 manned and unmanned ground systems, including sensors, robots, UAVs, and vehicles, all connected by a complicated mobile electronic network. When work began on this program in 2000, the Army estimated that the first combat units would be equipped by 2011 and that all the Army's ground combat formations would be equipped by 2032. The Army initially estimated the entire effort would cost about $160 billion.

By 2006, independent cost estimators at the Pentagon pegged total procurement costs at upwards of $300 billion. And, from there, with the assistance of a fundamentally flawed fee structure that was not focused on objective results, FCS total costs kept growing. To make a long story short, in April 2009, then-Secretary Gates terminated most of the program and the problem.

While the Army has had its problems, the Navy's Littoral Combat Ship is another example of a fundamentally flawed acquisition process. Originally conceived by former Chief of Naval Operations Vern Clark as a revolutionary, new, affordable class of surface combatant—about the size of a light frigate or Coast Guard cutter—the LCS was to be able to conduct shallow-water and near-shore operations.

The first two LCS contracts set the cost of the sea frame at $188 million each. After spiking to over $730 million, the cost is now about $400 million per hull. In December of 2010, the Pentagon's chief tester gave LCS poor performance ratings, saying that ''LCS is not expected to be survivable in terms of maintaining a mission capability in a hostile combat environment.''

I continue to be very troubled by the Navy's decision late last year to set aside then-pending competition and award contracts to each of the bidders on this program.

The F–22 raptor program. The F–22 was supposed to maintain air superiority in the face of the Soviet threat during the Cold War. The F–22 obtained full operational capability 20 years later, well after the Soviet Union dissolved. When it finally emerged from its extended testing and development phase, the F–22 was recognized as a very capable tactical fighter, probably the best in the world for some time to come. But plagued with development and technical issues that caused the costs of buying to go through the roof, not only was the F–22 20 years in the making, but the process has proved so costly that the Pentagon could ultimately afford only 187 of the planes rather than the 750 it originally planned to buy. To make a long story short, the F–22 has not flown in combat since its inception.

The DDG–1000 Zumwalt Class Destroyer was supposed to cost $1.1 billion each. It is now expected to cost $3.5 billion each.

The Airborne Laser effort is to be canceled. The fantastic story of the VH–71 new Presidential Helicopter Replacement Program was canceled only after it became more expensive than a full-size 747.

What can we do?

I know it is time for us to get on with the Defense authorization bill.

We need to have transparency. We need to have accountability. We have to use competition to encourage industry to produce desired outcomes and better incentivize the acquisition workforce to do more with less. We have to do a lot of things. We have clearly failed to abide by the warning President Eisenhower issued in his speech 50 years ago, but I do find some comfort that times of fiscal restraint and austerity can drive desired change, even in the face of daunting systemic obstacles such as the military-industrial-congressional complex. We must do better.

Mr. President, I yield the floor. I thank my friend from Michigan for his indulgence.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, December 1, 2011.

Hon. LEON PANETTA,
Secretary of Defense,
Pentagon, Washington, DC.

DEAR SECRETARY PANETTA: I was very troubled to read recently in USA Today that the Air Force allowed a retired general officer who was then-serving as an executive in The Boeing Company to participate as a ''mentor'' in a war game involving the aerial refueling tanker that Boeing was at the same time competing to build for the Air Force under a multibillion dollar procurement program. This, in my view, warrants serious inquiry.

According to the article, the retired general officer previously served as the chief of U.S. Transportation Command and Air Force Mobility Command, which would have given him keen insight into the Air Force's plans to replace its aerial refueling tanker fleet. It appears that what this mentor did for the Air Force in this case directly related to one of Boeing's largest potential contracts with the Air Force. This makes the story particularly alarming. No less disturbing is that the Air Force apparently withheld publicly disclosing this information from a Freedom of Information Act (FOIA) request for approximately two years.

This latest revelation plainly validates my concerns that I conveyed last year about the potential for conflicts-of-interests associated with military mentor programs. It is also another example of the revolving door between the Department and private industry and the prevalence of the military-industrial complex in the Department's planning and procurement processes, which has plagued the Air Force's attempts to replace its aerial refueling tanker fleet from day-one.

Although there appears to be general comfort that the contract for the KC–46A was awarded properly and that the contracting strategy for the development of these tankers is viable, whether any misconduct somehow biased the program at its inception towards a particular outcome must be taken very seriously.

With this in mind, please answer the following questions.

1. After the individual cited in the article, retired Lieutenant General Charles Robertson, retired from the Air Force, during what period of time did he serve as an advisor, consultant or mentor, or in any other similar capacity, to the Air Force?

2. Describe, with specificity, General Robertson's duties, responsibilities and activities while serving in the foregoing capacity during this period.

3. Identify, with specificity, what project(s) General Robertson served on in the foregoing capacity, including but not limited to, as a mentor.

4. Describe, with specificity, what relationship these projects had with any program or process in which Boeing had a direct or indirect interest.

5. Describe, with specificity, the activity cited in the article described above (i.e., a ''war game'') and what relationship, if any, that this activity had with the pending Air Force program to replace its aerial refueling tanker fleet.

6. Describe what was happening with the Air Force's program to replace its aerial refueling tanker fleet while the foregoing activity was conducted.

7. What direct or indirect input or influence did General Robertson have in the outcome of the activity for which he was serving as a mentor (or in any similar capacity) or the overall program or process that this activity was intended to support?

8. How much per year and in total compensation was General Robertson paid for his service as an advisor, consultant or mentor, or in any other similar capacity, to the Air Force?

9. Please provide a copy of his employment contract(s) with the Air Force for his service in the foregoing capacity.

10. Explain why it reportedly took two years to provide the information described above where this information was responsive to a properly presented FOIA request.

11. What is the current status or the Department of Defense's mentor program?

12. If the program is still extant at all, what controls are in place today that will ensure against conflicts-of-interests and the appearance of impropriety by its participants?

Thank you for your cooperation and your attention to this serious matter.

Sincerely,

JOHN MCCAIN,
Ranking Member.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 1540, which the clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1540), to authorize appropriations for fiscal year 2012 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, having met, after full and free conference, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

(The conference report is printed in the House proceedings of the RECORD of December 12, 2011.)

The PRESIDING OFFICER. There will be up to 3 hours of debate equally divided between the leaders or their designees.

The Senator from Michigan.

Mr. LEVIN. Mr. President, I yield myself 20 minutes.

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

Mr. LEVIN. Mr. President, on behalf of the Senate Armed Services Committee, I am pleased to bring to the Senate the conference report on H.R. 1540, the National Defense Authorization Act for fiscal year 2012. This conference report, which was signed by all 26 Senate conferees, contains many provisions that are of critical importance to our troops. This will be the 50th consecutive year in which a National Defense Authorization Act has been enacted into law.

I thank all of the members and staff of the Senate Armed Services Committee—and especially our subcommittee chairs and our ranking members—for the hard work they have done to get us to this stage. Every year we take on tough issues and we work through them on a bipartisan basis, consistent with the traditions of our committee. This year was a particularly difficult one because of the severely condensed timeline for floor consideration and conference on the bill.

I particularly thank my friend Senator MCCAIN, our ranking minority member, for his strong support throughout the process. I know both of us thank the chairman and ranking member of the House Armed Services Committee, BUCK MCKEON and ADAM SMITH, for their commitment to this bill and to the men and women of our Armed Forces.

The conference report we bring to the floor today authorizes $662 billion for national defense programs. While it authorizes $27 billion less than the President's budget request and $43 billion less than the amount appropriated for fiscal year 2011, I am confident this conference report, nonetheless, provides adequate support for the men and women of the Armed Forces and their families and provides them with the means they need to accomplish their missions.

This conference report contains many important provisions that will improve the quality of life of our men and women in uniform. It will provide needed support and assistance to our troops on the battlefield. It will make the investments we need to meet the challenges of the 21st century, and it will provide for needed reforms in the management of the Department of Defense.

I ask unanimous consent that a list of some of the more significant provisions be printed in the RECORD at the close of my remarks.

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

(See exhibit 1.)

Mr. LEVIN. Probably the most discussed provision in the conference report is the provision relative to military detention for foreign al-Qaida terrorists. This provision was written to be doubly sure there is no interference with civilian interrogations and other law enforcement activities and to ensure that the President has the flexibility he needs to use the most appropriate tools in each case. The bill as passed in the Senate addressed this issue by including language that: No. 1, left it to the President to adopt procedures to determine who is a foreign al-Qaida terrorist and therefore subject to presumed military detention; No. 2, required that those procedures not interfere with ongoing intelligence, surveillance, or interrogations by civilian law enforcement; No. 3, left it to the executive branch to determine whether a military detainee who will be tried is tried by a civilian court or a military court; and No. 4, gave the executive branch broad waiver authority.

The conference report retains that language and adds additional assurances that there will be no interference with civilian interrogations or other law enforcement activities. In particular, the conferees added language that says the following:

> Nothing in this section shall be construed to affect the existing criminal enforcement and national security authorities of the Federal Bureau of Investigation or any other domestic law enforcement agency with respect to a covered person, regardless of whether such covered person is held in military custody.

It also modifies the waiver language to give the President, rather than the Secretary of Defense, the authority to waive the requirements of the provision.

Under the provision in the conference report, law enforcement agencies are not restrained in apprehending suspects or conducting any investigations or interrogations. If a suspect is apprehended and is in law enforcement custody, the suspect can be investigated and interrogated in accordance with existing procedures. If and when a determination is made that a suspect is a foreign al-Qaida terrorist, that person would be slated for transfer to military custody under rules written by the executive branch. Again, however, any ongoing interrogations are not to be interrupted, and the President also has a waiver authority. If the suspect is transferred to military custody, all existing law enforcement and national security tools remain available to the FBI and other law enforcement agencies, and even if the suspect is held in military custody, it would be up to the Attorney General, after consulting with the Secretary of Defense and the Director of National Intelligence, to determine whether the suspect will be tried in Federal court or before a military commission. The bill provides the Attorney General with broad discretion to ensure that whatever consultation is conducted does not impede operational judgments that may need to be made to pursue investigative leads, effect arrests or file charges.

The language in the Senate bill and in the conference report is intended to preserve the operational flexibility of law enforcement and national security professionals in the executive branch. Nothing in the language limits the President as to when he can waive the provision or for whom he can waive it.

For example, he is not required to wait for a coverage determination to be made before deciding to waive the requirements of the provision. Similarly, he is not precluded from waiving the provision with regard to more than one individual at a time—for example, with regard to a group of conspirators or potential codefendants.

In short, the waiver language in the conference report is broad enough to reflect circumstances in which it is in the national security interests of the United States for a President to waive the requirements of the provision with respect to a category of covered persons, if he so determines, in order to preserve the flexibility of counterterrorism professionals and operators to take expeditious action.

With the exception of those assurances, the detainee provisions in the conference report are largely unchanged from the provisions in the bill that was approved by the Senate on a 93-to-7 vote just 2 weeks ago. Those who say we have written into law a new authority to detain American citizens until the end of hostilities are wrong. Neither the Senate bill nor the conference report establishes new authority to detain American citizens—or anybody else.

The issue of indefinite detention arises from the capture of an enemy combatant at war. According to the law of war, an enemy combatant may be held until the end of hostilities. Can an American citizen be held as an enemy combatant? According to the law of war, an enemy combatant may be held until the end of hostilities. But, again, can an American citizen be held as an enemy combatant? I believe that if an American citizen joins a foreign army or a hostile force such as al-Qaida that has declared war and organized a war against us and attacks us, that person can be captured and detained as an enemy combatant under the law of war.

In 2004, the Supreme Court held in the Hamdi case that ''there is no bar to this Nation's holding one of its own citizens as an enemy combatant.''

The Court cited with approval its holding in the Quirin case, in which an earlier court held that ''citizens who associate themselves with the military arm of the enemy government, and with its aid, guidance and direction enter this country bent on hostile acts, are enemy belligerents within the meaning of . . . the law of war.''

But despite that view of mine, which I clearly expressed on the Senate floor a couple weeks ago, neither the Senate bill nor the conference report takes a position on this issue. Both the Senate bill and the conference report include

the language of the Feinstein amendment, which we drafted together and passed 99 to 1. That amendment leaves this issue to the executive branch and the courts by providing the following:

Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.

The more difficult issue for me—and I believe it goes to the heart of the concern of the detention policy—is the kind of war we are in with al-Qaida, and that issue is when does the detention end? In other words, when are the hostilities over? In this kind of nontraditional war, we are not likely to sign a peace treaty or receive a formal surrender or even reach an agreement on a cease-fire.

Under these circumstances, it is appropriate for us to provide greater procedural rights to enemy detainees than we might in a more traditional war. We have done so in this conference report. The conference report, for instance, requires periodic reviews of detainee cases in accordance with an executive order issued earlier this year to determine whether detainees pose a continuing threat or safely can be released. Under the conference report, enemy combatants who will be held in long-term military detention are told, for the first time, they will get a military judge and a military lawyer for their status determination.

The conference report includes many other important provisions.

It includes new sanctions against the financial sector of Iran, including the Central Bank of Iran. These sanctions would, among other actions, require foreign financial institutions to choose between maintaining ties with the U.S. financial system or doing business with the Central Bank of Iran.

It includes provisions addressing the problem of counterfeit parts that can undermine the performance of military weapons systems and endanger our men and women in uniform. This is one of the most important additional provisions we have in our bill; that is, the provisions relative to these counterfeit parts that are flooding our defense system with electronic parts that are counterfeited and come mainly from China. We were able to identify approximately 1,800 cases of suspect counterfeit electronic parts, covering more than 1 million individual parts, with most of them, again, coming from China. This conference report includes comprehensive reforms to keep counterfeit electronic parts out of the defense supply chain and provides proper accountability when suspect parts make it through that chain.

In particular, the conference report relative to this subject does the following:

It clarifies acquisition rules to ensure that the cost of replacement and rework that is required by the use of suspect counterfeit parts is paid by the contractor, not by the taxpayer.

It requires the Department of Defense and Department of Defense suppliers to purchase electronic parts from manufacturers and their authorized dealers or from trusted, certified suppliers.

It requires Department of Defense officials and Department of Defense contractors that become aware of counterfeit parts in the supply chain to provide written notification to the government.

It requires the Department of Defense and its largest contractors to establish systems and procedures to detect and avoid counterfeit parts.

It requires the Secretary of Homeland Security to consult with the Secretary of Defense on the sources of counterfeit electronic parts in the military supply chain and establish a risk-based program of enhanced inspection of imported electronic parts.

It authorizes Customs to share information from electronic parts inspected at the border with manufacturers to help determine whether the parts are counterfeit.

It strengthens criminal penalties for counterfeiting military goods or services.

We are very grateful for the support of Members of this body for that provision.

Relative to the strengthening of criminal penalties, I wish to add our thanks to Senator WHITEHOUSE for his work on this subject, for his provisions relative to additional criminal penalties for counterfeiting military goods that are a part of this bill, and they are a very important part.

The conference report requires sound planning—this is another provision of this bill—and justification before we spend more money on troop realignment from Okinawa to Guam and on tour normalization in Korea. Those provisions follow detailed oversight that Senators WEBB, MCCAIN, and I have conducted.

On some other provisions: The conference report requires that the next lot of F–35 aircraft—lot 6—and all subsequent aircraft, be purchased under fixed-price contracts, with the contractor assuming full responsibility for any costs above the target cost specified in the contract.

Our conference report fences 75 percent of the money available for the Medium Extended Air Defense System—MEADS—until the Secretary of Defense submits a detailed plan to use those funds to close out the program or pay contract termination costs.

The conference report includes Senator LANDRIEU's bill to extend the Small Business Innovative Research—SBIR—Program for an additional 6 years. It has been about 6 years since we reauthorized this vitally important program, which provides a huge benefit to our small businesses so they can effectively participate in research programs that are funded by the Federal Government. In the defense arena, SBIR has successfully invested in innovative research and technologies that have contributed significantly to the expansion of the defense industrial base and the development of new military capabilities.

As to Pakistan, the conference report limits to 40 percent the amount of the Pakistan Counterinsurgency Capability Fund that can be obligated until the Secretary of Defense provides Congress with a strategy on the use of the fund and on enhancing Pakistan's efforts to counter the threat of improvised explosive devices, those IEDs which kill so many of our troops and so many civilians.

Finally, the Department of Defense has informed us it does not need an exemption from section 526 of the Energy Independence and Security Act of 2007 because that section does not apply to purchases at market prices from generally available fuel supplies and does not preclude the Department from purchasing any fuel it needs or expects to purchase in the foreseeable future.

We are in the final stages of withdrawing our combat troops from Iraq, but we continue to have almost 100,000 U.S. soldiers, sailors, airmen, and marines on the ground in Afghanistan. While there are issues on which we may disagree, we all know we must provide our troops the support they need as long as they remain in harm's way. The enactment of this conference report will improve the quality of life for our men and women in uniform. It will give them the tools they need to remain the most effective fighting force in the world. Most important of all, it will send an important message that we as a nation stand behind our troops and we deeply appreciate their service.

In conclusion, I would, once again, thank Senator MCCAIN, all our Members, and our majority and minority staff, led by Rick DeBobes and Dave Morriss, for their hard work on this bill. We could not have done this without them.

I ask unanimous consent that a full list of our majority and minority staff, who gave so much of themselves and their families, be printed in the RECORD.

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

SENATE ARMED SERVICES COMMITTEE STAFF

Richard D. DeBobes, Staff Director; David M. Morriss, Minority Staff Director; Adam J. Barker, Professional Staff Member; June M. Borowski, Printing and Documents Clerk; Leah C. Brewer, Nominations and Hearings Clerk; Christian D. Brose, Professional Staff Member; Joseph M. Bryan, Professional Staff Member; Pablo E. Carrillo, Minority Investigative Counsel; Jonathan D. Clark, Counsel; Ilona R. Cohen, Counsel; Christine E. Cowart, Chief Clerk; Jonathan S. Epstein, Counsel; Gabriella E. Fahrer, Counsel; Richard W. Fieldhouse, Professional Staff Member; Creighton Greene, Professional Staff Member; Ozge Guzelsu, Counsel; John Heath, Jr., Minority Investigative Counsel.

Gary J. Howard, Systems Administrator; Paul C. Hutton IV, Professional Staff Member; Jessica L. Kingston, Research Assistant;

Jennifer R. Knowles, Staff Assistant; Michael J. Kuiken, Professional Staff Member; Kathleen A. Kulenkampff, Staff Assistant; Mary J. Kyle, Legislative Clerk; Gerald J. Leeling, Counsel; Daniel A. Lerner, Professional Staff Member; Peter K. Levine, General Counsel; Gregory R. Lilly, Executive Assistant for the Minority; Hannah I. Lloyd, Staff Assistant; Mariah K. McNamara, Staff Assistant; Jason W. Maroney, Counsel; Thomas K. McConnell, Professional Staff Member; William G. P. Monahan, Counsel; Lucian L. Niemeyer, Professional Staff Member.

Michael J. Noblet, Professional Staff Member; Bryan D. Parker, Minority Investigative Counsel; Christopher J. Paul, Professional Staff Member; Cindy Pearson, Assistant Chief Clerk and Security Manager; Roy F. Phillips, Professional Staff Member; John H. Quirk V, Professional Staff Member; Robie I. Samanta Roy, Professional Staff Member; Brian F. Sebold, Staff Assistant; Russell L. Shaffer, Counsel; Michael J. Sistak, Research Assistant; Travis E. Smith, Special Assistant; William K. Sutey, Professional Staff Member; Diana G. Tabler, Professional Staff Member; Mary Louise Wagner, Professional Staff Member; Barry C. Walker, Security Officer; Richard F. Walsh, Minority Counsel; Bradley S. Watson, Staff Assistant; Breon N. Wells, Staff Assistant.

Mr. LEVIN. I yield the floor.

EXHIBIT 1

SELECTED HIGHLIGHTS OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012

—Authorizes a 1.6 percent across-the-board pay raise for all uniformed military personnel and extend over 30 types of bonuses and special pays aimed at encouraging enlistment, reenlistment, and continued service by active-duty and reserve military personnel;

—Extends authorities needed to fairly compensate civilian employees and highly qualified experts who are assigned to work overseas in support of contingency operations;

—Clarifies provisions of the Uniform Code of Military Justice relating to the offenses of rape, sexual assault, and other sexual misconduct to address constitutional deficiencies in the existing law;

—Extends the authority of U.S. Special Operations Forces to provide support to regular forces, irregular forces, and individuals aiding U.S. special operations to combat terrorism;

—Freezes the Department's spending on contract services at fiscal year 2010 levels, to ensure that cost reductions and savings are spread across all components of the DOD workforce;

—Authorizes the Department to void a contract in Afghanistan, if the contractor or its employees are determined to be actively working with the enemy to oppose U.S. forces in that country;

—Implements cost-saving programs to address rapidly escalating costs for the operation and support of weapon systems, including costs incurred as a result of corrosion; and

—Enhances the role of the National Guard by including the Chief of the National Guard Bureau as a member of the Joint Chiefs of Staff.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Madam President, I fully support the conference report and the national defense authorization bill for fiscal year 2012. This is the 50th year the Congress will pass this, and I am now confident this bill will be signed into law by the President of the United States.

It is an important piece of legislation. I appreciate the participation of all Members, as we went through this bill in a relatively short period of time. There certainly was a lot of participation by almost every Member.

I am most appreciative, of course, of Senator LEVIN, whom I have had the honor of serving with for many years. Quite often we have spirited discussions on various issues, but my admiration and appreciation for his leadership is very large. He is a man of incredible patience—a quality some accuse me of lacking, I think correctly.

Senator LEVIN and his staff and our staff work very closely together throughout the year as we bring forth this Defense authorization bill. Obviously this bill provides for defense policy guidance and funding that is vital to our national security, provides the clearest indication to our men and women in uniform that the Congress cares about them and their families.

In testament to the importance of this legislation, as I mentioned, we have passed a defense authorization bill every year since 1961.

Let me remind my colleagues of the hard work that went into this bill. The bill is a product of 11 months of legislative effort in the Senate, 71 hearings and meetings on the full range of national security priorities. We reported our bill out of the committee with a 26-to-0 vote. We debated nearly 40 hours, disposed of 139 amendments, and the bill was overwhelmingly passed 93 to 7. After Senate passage on December 1, our staffs have worked around the clock for 9 days to put this together.

As Senator LEVIN mentioned, it authorizes $662.4 billion for national defense, which is $26.6 billion less than the President's request. It authorizes $530 billion for the base budget for the Department of Defense, and it goes on. We authorize a 6-percent increase in funding over last year's request for our special operations forces, who play a lead role in counterterrorism operations. We authorize over $2.4 billion to counter improvised explosive device activities. The IEDs still plague the men and women who are serving in Afghanistan.

Let me also mention some noteworthy provisions in this legislation.

The conference report includes strong, unambiguous language that recognizes that the war on terror extends to us at home and that we must address it as such. The language the Senate adopted regarding detainees recognizes both that we must treat enemy combatants who seek to do us harm as such and that we must be able to gain as much information from such individuals as possible regarding their plans to wage war against our citizens—I want to emphasize—without violating the rules of war, without violating the Geneva Conventions, without engaging in torture or waterboarding or any of the kinds of techniques that have stained America's honor in the 21st century.

I strongly believe the detainee provisions in the bill are constitutional and in no way infringe upon the rights of law-abiding Americans. Unfortunately, rarely in my time have I seen legislation so consistently misunderstood and misrepresented as these detainee provisions. The hyperbole used by both the left and the right regarding this language is false and misleading.

Let me be clear. The language in this bill will not affect any Americans engaging in the pursuits of their constitutional rights. The language does recognize that those people who seek to wage war against the United States will be stopped, and we will use all ethical, moral, and legal methods to do so.

I am very pleased that the administration has finally recognized that the language we have adopted merits the President's signature and will soon be signed into law. While we have made some technical changes to the detainee provisions, they remain substantially the same as passed by the Senate Armed Services Committee.

The Congress, in strong bipartisan majorities, especially in the Committee on Armed Services, is deeply concerned by the administration's flawed handling of detainees in the fight against terrorism.

It was Congress that took up this vital national security issue and drafted all the versions of these provisions and led the negotiations on all of the major compromises. Yes, we listened to the administration's concerns, as we should, and we took many of them into account. Unfortunately, the administration has fought these provisions every step of the way. They tried to have these provisions stripped from the Senate bill as a condition for bringing it to the floor for debate. When that did not work, they tried to have these provisions dropped from the bill through amendments on the floor. When that did not work, they urged the conferees to drop these provisions in conference or at least water them down into nothingness. Again and again, the administration failed. So for them now to try to claim credit for these provisions flies in the face of the historical record. Facts are stubborn, and when it comes to these detainee provisions, the fact is this: Congress has led and defined the debate, and the administration has finally conceded to that reality.

Let's establish once again what these detainee provisions do and do not do.

They would, among other things, reaffirm the military's existing authority to detain individuals captured in the course of hostilities conducted pursuant to the authorization of the use of military force.

The ''authority to detain provision'' in the conference report confirms that nothing in this section of the bill should be ''construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.'' There could be nothing clearer than that statement.

This confirmation of the intent of the bill was inserted as a result of floor debate and negotiations with the Senator from California, Mrs. FEINSTEIN, to make absolutely clear what Chairman LEVIN and I and members of the committee who have supported this legislation have said throughout—that this provision does not and is not intended to change the existing state of the law with regard to detention of U.S. citizens. This section simply restates the authority to detain what has already been upheld by the Federal courts. We are not expanding or limiting the authority to detain as established by the 2001 authorization for the use of military force.

The conference report also includes a provision requiring military detention for foreign al-Qaida terrorists who attack the United States—something this administration has been not only hesitant but completely unwilling to even consider until this legislation highlighted the inconsistency between claiming the authority to kill an al-Qaida member with drones overseas but not being willing to hold a captured al-Qaida member in military custody in the United States, even in a situation where the al-Qaida terrorist had penetrated our defenses and had carried out or attempted an attack inside the United States.

The authority to hold al-Qaida members in military custody, while completely consistent with the law of war that applies to enemy combatants, is not a straitjacket but is as flexible as the President desires to make it.

While we in Congress have given the President a statutory authority to use military custody for al-Qaida members as a tool to ensure that we are able to obtain timely, actionable intelligence, the President can exercise a broad national security waiver to this requirement—a broad national security waiver. Most important, this provision requiring military detention explicitly excludes U.S. citizens and lawful resident aliens.

The military custody provision in the final compromise authorizes the transfer of any detainee to civilian custody for trial in civilian court and leaves it up to the President to establish procedures for determining how and when persons determined to be subject to military custody would be transferred. The provision adopted in the conference report requires that such determination must not interfere with ongoing intelligence, surveillance, or interrogation operations.

All of this flexibility was added to the bill even before we began negotiations with the White House to make it clear that the intent of the Senate's provisions was not to tie the administration's hands but to give them additional means to defeat the most serious type of threat from al-Qaida to our country. The result of these Senate modifications to the original form of the provisions ensures that the executive branch has complete flexibility in how it first determines and then how it applies military custody for al-Qaida members who are captured after having attacked the United States or while planning or attempting such an attack.

Moreover, after meeting with FBI Director Robert Mueller, the Senate conferees added language in conference in response to his concerns about the impact on FBI operations confirming that nothing in this provision may be ''construed to affect the existing criminal enforcement and national security authorities of the Federal Bureau of Investigation, or any other domestic law enforcement agency, with regard to a covered person, regardless whether such covered person is held in military custody.''

It is the intent of the Senate conferees, in agreement with House colleagues on a bipartisan basis, that the FBI continue to execute the full range of its investigative and counterterrorism responsibilities and that any shift to military custody will be an administrative measure that does not limit in any way the FBI's authority.

I acknowledge that these issues were very controversial with some Members. These provisions were debated extensively—as thoroughly as any matter I have seen in recent memory—but I believe we have addressed in a positive way and have been responsive to concerns raised by the administration. Indeed, the Senate made changes both on the floor and during conference to ensure that the intent of the provisions was fully understood by the administration and others even before negotiations over the final form of the text began.

In many ways, as Chairman LEVIN has pointed out in many of his public statements and speeches on these detainee provisions, rarely has such misinformation, speculation, and outright misrepresentation been greater over what a bill actually does compared to what some from the left and right claim it does than has been the case with these detainee provisions. Whether 2012 campaign politics played a role in the characterization of these provisions or whether this was simply a case of not fully understanding the intent of the authors of these provisions I will leave to others to decide.

I point out again that I think my friend from Michigan Senator LEVIN displayed a great deal of courage in formulating what he thought was best for our Nation's security.

Regardless of the motivation that may have colored the debate until now, I believe that, by any responsible reading, these provisions will not impair the flexibility of the President or national security officials in protecting the United States and its citizens. The military custody provision, which has been the focus of much of this debate, provides flexibility to use either a civilian track or a military track for custody and eventual trial and leaves the details of implementation in the hands of the executive branch, as it is appropriate to do so. It preserves the current state of the law as it applies to the rights of U.S. citizens and lawful resident aliens.

In terms of FBI authority to conduct investigations and interrogations, as well as use other instruments of the investigative and criminal process, these provisions preserve all of the FBI's role and authority under existing law.

The conference report also includes, virtually unchanged, the Senate provision requiring a plan to normalize U.S. defense cooperation with Georgia and the sale of defensive weapons. U.S. defense cooperation with the Republic of Georgia has been stalled ever since Russia invaded that country 3 years ago. While there has been slow and minor progress to enable Georgia's armed forces to deploy to Afghanistan—which they have done in greater numbers than most of our NATO allies—precious little has been done to strengthen Georgia's ability to defend its government, people, and territory.

This provision would require the Secretary of Defense, in consultation with the Secretary of State, to develop a plan for the normalization of our defense cooperation with Georgia, especially the reestablishment of U.S. sales of defensive weapons. It puts the Congress on record as demanding a more normal U.S. defense relationship with Georgia, particularly on defensive arms sales.

The conference report includes a strong and important provision to sanction the Central Bank of Iran, to curtail Iran's ability to buy and sell petroleum through its Central Bank, and to prevent foreign financial institutions that deal with the Central Bank of Iran from continuing their access to the U.S. financial system. This provision, which was adopted on the Senate floor by a vote of 100 to 0, and the attempted assassination of the Saudi Ambassador here in Washington, DC, had a very positive and forceful effect on this bill being enacted by the Senate. This provision would force foreign financial institutions to make an important choice: Do they want to deal with the U.S. economy or with Iran's Central Bank?

The Treasury Department urged the conferees to make a series of changes to this provision, some of which would have narrowed its scope and weakened

it. We rejected that course of action. We made some minor technical changes but kept the provision as the authors, Senators MENENDEZ and KIRK, intended. The conferees did, however, provide the Treasury Department the ability to more effectively implement this legislation by imposing strict conditions on foreign financial institutions that maintain ties to the Central Bank of Iran.

The conference report directs the Secretary of Defense to pause further spending on Guam in support of the relocation of 8,500 U.S. marines from Okinawa until Congress and the administration have had an opportunity to review and assess the impact of an estimated $20 billion spending initiative on Guam in the context of the full range of our national interests in the Pacific region. This pause will allow Congress to ensure that the taxpayer funds invested in overseas military force posture and basing will afford us the best opportunity to continue our strong alliances in the region, while pursuing new arrangements with emerging partners that support security and economic development.

The final agreed-upon provision includes a requirement for an independent study to offer views and suggestions from a range of regional experts on current and emerging U.S. national security interests in the Pacific and options for the realignment of U.S. military forces in the region. The conference report would restrict the use of $33 million in operation and maintenance funds for items on Guam that do not directly support military requirements, such as civilian schoolbuses, the construction of museums, and mental health facilities.

This provision should not be interpreted as a lack of U.S. commitment to realignment. The President has stated that we are shifting a lot of our attention to the Pacific region, and we understand the importance of the Pacific region in the 21st century.

Finally, the conference report includes a provision to require that the contract for the sixth slot of ''low-rate initial production'' for the Joint Strike Fighter be executed on a firm fixed-price basis. The Pentagon has thus far failed to incentivize the prime contractor to control costs. So a tougher measure, as embodied in the report, is warranted.

While I would have preferred the original Senate position that would have made the fixed-price requirement apply to the fifth lot currently being negotiated, I strongly support this provision. The chairman and I are committed to a close monitoring of this weapons system. We understand its importance. We also understand that the kinds of cost overruns that have characterized this system cannot be continued.

I am gratified that there are no earmarks in this bill. Unfortunately, it still contains over $1.4 billion in spending that was never requested by the President or by our military and civilian leaders in the Pentagon. Examples of funding authorized by this conference report include $255 million for additional M–1 tank upgrades the Army didn't want in order to keep the M–1 production line hot despite no compelling need to upgrade more tanks at this time; $325 million for Army National Guard and Reserve equipment not requested by the Army; $8.5 million for an Air Force R&D program called the Metals Affordability Initiative that the Air Force didn't consider a high enough priority to fund; $30 million for an industrial base innovation fund that the Pentagon didn't ask for; $200 million for the Rapid Innovation Program—created by Congress in last year's Defense authorization bill—that the Pentagon never asked for and which has about $439 million in funds left over from last year it hasn't figured out how to spend.

The bottom line is this: Congress will pump over $1.4 billion into things the Pentagon never requested and didn't think were a priority. The American taxpayers are not fooled by this exercise, and they have long ago lost patience with it. For all the many good things this conference report did, we still fell short of providing only the most essential needs and priorities of the Department of Defense as identified by our civilian and military leaders. A total of $1.4 billion is real money and could make an enormous difference to many Americans if properly applied to real priorities.

Those criticisms aside, as we look forward to the holidays ahead, I want all Senators to think about whom this report is really for—the men and women of our Armed Forces, who have served our Nation so bravely and so selflessly during the past 10 years of war. We owe it to them to pass this bill to demonstrate our support for them and the burden they carry for all of us and to show in a concrete way that the American people and the Congress stand with them and appreciate what they do for us. Passing this bill is really the very least we can do for so many who are willing to give all they have to defend us and our great country.

Finally, I thank Chairman LEVIN and Chairman MCKEON and Ranking Member SMITH for their dedication and cooperation in getting through the conference in a rapid but comprehensive and collegial manner. It is an honor to work with Senator LEVIN on such an important cause for the American people and for our men and women serving around the world in the Department of Defense, who risk their lives for us every day. They deserve positive action and your vote on this conference report.

I urge my colleagues to vote for the conference report of the fiscal year 2012 national defense authorization bill.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I spoke at some length before, but I want to repeat one sentiment in the statement that has to do with Senator MCCAIN and his staff. The way in which he and our staff work together is in the finest tradition of this body. Our committee has had that reputation. It is a well-earned, well-deserved reputation that we are able to work on a bipartisan basis.

Senator MCCAIN continues in a great tradition on the Republican side, and I would hope I strive at least to do the same on our side. We have had some great leaders of our committee over the decades, and Senator MCCAIN is one of those leaders in that tradition, and I want to say what a great pleasure it is to work with him.

I know our staffs work beautifully together, and we are grateful for that. The Senator was right in pointing out who we are doing this for—it is the men and women in uniform—but we couldn't do that without our great staffs, and I know he joins me, and has already in his statement, in a tribute to our staffs.

Mr. MCCAIN. Madam President, I say to my friend from Michigan, I guess in our many years together we have seen the ups and downs and back and forth, but during our more than a quarter of a century of service we have always seen the bill coming to fruition and we have carried on in that tradition.

I wish also to point out to my colleagues, in a rather drab and dreary landscape of gridlock and acrimony, it is kind of nice to show that every once in a while there is a little ray of sunshine. So I hope we have been able to provide it for our colleagues, and I look forward to a unanimous, if not near unanimous, vote on the part of this body.

I hope if there are other colleagues who wish to come and speak on the bill—I know we have planned a colloquy on a provision of the bill concerning depots—so, hopefully, our colleagues who are very concerned about that issue might want to arrange to come to the floor so we can dispose of that.

I don't know of any other except, I think, Senator UDALL, who wishes to come.

Mr. LEVIN. I think one on our side.

While we are talking about rays of lightness, we thank Senator HAGAN, our Presiding Officer, who is a member of our committee. She provides a ray of light—one of the many rays of light on our committee. I see her presiding and smiling over this effort, and I wanted to acknowledge that she is an important part of it and to recognize her contribution as well.

Mr. MCCAIN. I happen to know for a fact that Senator HAGAN is a strong defender of the men and women who serve her State, which has a very large military presence. I know they are very appreciative of her advocacy and service.

Before we get too hokey around here, maybe we should suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SECTION 1022

Mr. LEVIN. Mr. President, section 1022(d) of the conference report states that ''nothing in this section shall be construed to affect the existing criminal enforcement and national security authorities of the Federal Bureau of Investigation or any other domestic law enforcement agency with regard to a covered person, regardless whether such covered person is held in military custody.'' Would the Senator agree with me that this language is intended to ensure that the provision does not interfere with ongoing civilian interrogations and other law enforcement activities and that the President has the flexibility he needs to decide on the most appropriate law enforcement and intelligence tools for each individual case?

Mr. MCCAIN. Yes. That was the intention of the provision we wrote in committee, and it has been clarified by the addition of subsection (d). The statement of managers specifically states that the law enforcement and national security tools that are not affected by the provision include, but are not limited to, grand jury subpoenas, national security letters, and actions pursuant to the Foreign Intelligence Surveillance Act.

Mr. LEVIN. Section 1022 applies only to a person who is ''a member of, or part of, al-Qaeda or an associated force that acts in coordination with or pursuant to the direction of al-Qaeda.'' The statement of managers states that this language intentionally excluded the Taliban. Would the Senator agree with me that the requirements of section 1022—including the transfer restrictions applicable under that provision—do not apply to individuals detained by our forces in Afghanistan?

Mr. MCCAIN. Yes. Our forces in Afghanistan can continue to transfer detainees to the host nation in accordance with existing agreements. This provision does not apply to battlefield transfers in—Afghanistan.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, for the benefit of my colleagues, there is a bit of interesting news today. When the demonstrations began in Moscow, I tweeted—I am a big believer in tweets—and said, ''Dear Vlad, the Arab Spring is coming to a neighborhood near you.''

Apparently, Mr. Putin was not amused, because an Associated Press headline read: ''Putin rejects any redo of fraud-tainted vote.'' The article also mentioned he was apparently on a program where he answered some questions. To quote the article:

> The harsh comments and his insistence that the December 4 election was valid will likely fuel anger and may draw even bigger crowds of protest later this month.
>
> Putin also lashed out at U.S. Senator John McCain, who had goaded him with a Twitter post saying ''the Arab Spring is coming to a neighborhood near you.''

Quoting Putin now, the article continues:

> ''He has the blood of peaceful civilians on his hands, and he can't live without the kind of disgusting, repulsive scenes like the killing of Gadhafi,'' Putin said, referring to McCain's role as a combat pilot and prisoner of war in Vietnam.

He went on to say:

> ''Mr. McCain was captured and they kept him not just in prison, but in a pit for several years,'' he said. ''Anyone (in his place) would go nuts.''

I know my friend from Michigan may think there is some veracity to the last sentence from Putin's comments, but I would mention that, in the context of the National Defense bill, in my view, the reset with Russia has not gone as we had hoped and it is an argument for some missile defense provisions in this bill in particular.

I think the reason why Mr. Putin reacted in the way he did is that I believe he has been shaken, as he should have been, by the massive demonstrations that have taken place in Moscow and other cities in Russia. It will be very interesting on December 24 to see how large or whether there will be demonstrations concerning a government that in many ways has turned into a cryptocracy, and the abuse of human rights, including the case of Mr. Magnitsky, who died in prison; and Mr. Khodorkovsky, who was again sentenced to more time in prison, and what Mr. Khodorkovsky and others have described as a death sentence.

These are very interesting times in which we live, and the world is a very interesting place. I think it argues for the United States of America to maintain its defenses, as we have in the consideration of this bill.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I had not seen those remarks of Mr. Putin, but referring to his last comment, read by Senator MCCAIN, I guess people would go nuts in the setting Senator MCCAIN found himself in the Vietnam war. He probably is perhaps, only in that line, accurate that most people, indeed, could not have survived that experience. I know Senator MCCAIN does not raise this matter, but those of us who work with him appreciate all he has done for this country and for this body. I wish we had a chance to straighten out Mr. Putin about Senator MCCAIN. I don't think we will have that opportunity, but maybe his own people will do so in a free election someday.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HAGAN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mrs. HAGAN. Mr. President, I ask unanimous consent that all time in the quorum call be divided equally.

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

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

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

DEPOT PROVISIONS

Mr. LEVIN. Mr. President, I now ask unanimous consent that the following Senators be recognized for up to 4 minutes each to address the depot provisions in the bill, and at the end of their remarks Senator MCCAIN and I be recognized to address the same issue. This was the order we were given. They may want to change it: Senator SESSIONS, Senator CHAMBLISS, Senator INHOFE, Senator SHAHEEN, Senator AYOTTE, and Senator HAGAN.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, let me thank the chairman of the committee. I appreciate the opportunity to have this colloquy because something has happened that shouldn't have happened. It happened over on the House side, and we had no control over it.

While I support and will vote for the fiscal year 2012 Defense authorization bill, this is the third year in a row we have bypassed the formal conference process. I am pleased we finished the bill, but this broken process allows for abuse, and we have certainly had some abuse that I will allude to here. If the proper procedure had been followed, some of these problems would not have happened.

On December 3, the House Armed Services Committee staff inserted new language into the conference that would impact how DOD maintains its ships, maintains its aircraft, maintains its ground vehicles—private and public—impacting thousands of jobs in a number of States. That was December 3. It wasn't until the morning of December 7 that I, along with several other Senators, were shown the new language. That was just 6½ hours before we were to have our first conference. We were going to be asked to support the new language without a full vetting from the concerned Members' offices or from the depots and shipyards, arsenals, the Shipbuilders Council of America, the Virginia Ship Repair Association, and all of the rest of these stakeholders and those who were concerned. That was November 7.

Then on November 9, 2 days later, I, along with Senators CHAMBLISS, SESSIONS, AYOTTE, COLLINS, HAGAN, and SHAHEEN sent a letter to Chairman LEVIN and Chairman MCKEON from the House and ranking members MCCAIN and SMITH opposing the new House Armed Services Committee language and asked that it not be included in the conference.

That was on December 9. We assumed they dropped the language, but they didn't. The new language was put in the bill at the insistence of staff, apparently, from all we can determine. Several Members of the Senate complained that the new language was not in either the House or the Senate bill, so it should not have been able to be dropped in.

They took the position that this was just a clarification of language that was already in, when in fact that wasn't the case because the new language was a complete and comprehensive rewrite of depot language contained in the original House bill. Stakeholders were not included in drafting the language. Senators were not included. Nobody knew.

The problem we had at that point—that was done on December 9. We were all committed to passing out the bill at that time, and many of the House Members had already signed the conference report. Then there was a rollcall vote, so they all disappeared. So our choice was to go back and open up everything again and nobody wanted to do that.

So we had language contained in the Senate bill, but it was dropped out in conference. That language specifically called for DOD to provide their inputs by March 1, 2012, on a recent study on the capability and efficiency of the depots before—and I emphasize this—before any change in legislation because the study alone does not provide Congress with a comprehensive view. This is what we requested.

I thank Senators LEVIN and MCCAIN for their support of this colloquy. I wish we had time to take care of this in conference, but I hope that by doing this we can slow down the implementation of the new language contained in the bill until the Senate has had time to fully vet these changes.

I certainly don't blame Chairman MCKEON. His staff told him—because he stated this in the meeting—his staff told him the new language was fully vetted, but it was not, and we were not contacted. So the process is wrong. I have to say this is the first time in my 8 years in the House on the House Armed Services Committee and my 17 years in the Senate that I have seen anything such as this happen. I hope we can delay implementing these changes until we in the Senate can be heard. That is what this colloquy is all about.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I wish to thank the chairman for his willingness to enter into this colloquy. We had a discussion, as Senator INHOFE said, during the conference meeting last week in which it now is apparent that the process through which the depot language was inserted was not proper. Senator LEVIN has been very up front and straight forward with us, and I appreciate his willingness to do this today. I know the chairman has already acknowledged there are problems, and I appreciate his commitment to not only discuss it today but to revisit these issues as soon as the next Senate session convenes and address this issue through a truly inclusive process during which all Members and stakeholders can express their views.

Clearly, there was a process problem related to how these provisions wound up in the bill, and I think we can all agree that for issues that are as central to so many Members as the definitions of ''depot maintenance'' and ''core,'' the process needs to be inclusive and extensive and both Houses of Congress need to be equally involved. That simply did not happen in this case.

Specifically, related to the substance of the provisions, I am extremely concerned the rewrite of the 10 USC 2464 ''core'' statute replaces all references to ''core logistics'' functions in the original statute with ''depot maintenance and repair'' functions. This basically redefines ''core'' to be depot maintenance only, to exclude other logistics functions such as supply chain management and product support. This does constitute a very significant change, and I would argue that it is exactly in these areas of logistics functions beyond simple depot maintenance where the government has the greatest interest in protecting their own capabilities. Yet the bill defines these activities out of the core definition. This could very easily result in the government's ability to employ and therefore maintain expertise in areas such as program management, supply chain management, and product support management atrophying.

I have no doubt that private industry applauds this change because they would be the ones to presumably pick up this work. However, we should not kid ourselves into thinking industry would be cheaper. If the government loses this or any other depot-related capability, they will have an extremely hard time rebuilding that expertise, and this will only incentivize industry to charge more for their efforts. This is clearly a problem and one of the issues we need to address next year.

Secondly, the waiver in the 2464 rewrite is much broader than previously and allows for a waiver for military equipment that is not an enduring element of the national defense strategy. Perhaps this could make sense at some level if we knew what this meant, but we don't. What an ''enduring element of the national defense strategy'' is has never been defined; hence, we will be at the mercy of the subjective interpretation of the Department of Defense. That is not the way it should be, and we need to fix that.

The current ''core'' waiver in 2464 is much narrower and more defined. The presumption and philosophy in the current waiver is that work, other than work on commercial items, will be considered core, and only considered not core when it is clear it no longer needs to be. The committee's rewrite changes that presumption based on new standards which are unclear.

In addition to the two specific issues I have raised, there may be other unintended consequences to these changes of which we are unaware since we have had limited time, as Senator INHOFE said, to vet them and are just now receiving feedback from some of the stakeholders.

During the chairman's remarks and in response, I would appreciate his commitment to revisit these issues as soon as we can next year. I encourage DOD to go slowly in implementing any changes since there is a good chance we will make additional changes next year. I appreciate as well his commitment to include a legislative package in next year's national defense authorization bill that gets it right.

Again, I thank both Senator LEVIN and Senator MCCAIN for allowing us to address this issue and for their willingness to cooperate as we move forward next year to clear this matter up.

The PRESIDING OFFICER. The Senator from North Carolina.

Mrs. HAGAN. Mr. President, I wish to thank the chairman and the ranking member for allowing this colloquy to take place. I also wish to state that I believe the Senator from Oklahoma laid out a little bit of the groundwork of what we are discussing now.

I rise to discuss the depot maintenance issues associated with the House-adopted language in the conference. We must avoid doing anything that may upset the existing balance between DOD's internal depots, logistic centers, arsenals and specialty facilities, and the industrial base. The House-adopted provision can disrupt that delicate balance and have unintended consequences. We just don't know who may be impacted. We need time to get this right, and we need to ensure a transparent process in which all stakeholders can make their position known to Members of Congress.

The sensitivity associated with maintenance workload is at an all-time high. Disrupting the balance of depot-level maintenance comes at a time when our economy is struggling and when DOD is consolidating depot source-of-repair work for current and emerging weapons systems. Additionally, prematurely disrupting the readiness of our weapons systems fleet is not an option, especially with the operational tempo of our military.

It is critically important to preserve the capability and competencies of DOD's internal depot-level maintenance facilities while also sustaining the defense industrial base in order to

preserve our technological advantages and readiness on the battlefield. Both face considerable challenges within a fiscally constrained environment. Both the depots and the defense industrial base are reshaping and restructuring their operations in anticipation of this.

As our military said, ''It's one team, one fight.'' The research, development, and manufacturing communities within DOD, as well as in our universities, small businesses, and large corporations, are essential partners in our national security. That being said, we need to acknowledge the fragile nature of DOD's depot-level maintenance facilities and the defense supply chain within a heavily consolidated defense industrial sector. Our country simply cannot lose skilled manufacturing research and development expertise to global competitors.

Congress needs to do our due diligence to address the concerns of DOD's internal base involving maintenance, repair, and overhaul of the military equipment. At the same time, we need to facilitate public-private partnerships and healthy competition that will be mutually beneficial to the Department and the industrial base.

I know my colleagues are concerned about the impact this language may have in their States. I wish to highlight Fleet Readiness Center-East in North Carolina. Reducing FRC-East's workload is not an option. It would negatively impact the quality and cost-effective maintenance and logistics support for Navy and Marine Corps aviation. The operational readiness and availability of deployable Navy and Marine Corps aircraft would be undermined without preserving FRC-East's capabilities.

I certainly understand the incredible pressure the chairman and the ranking member were under trying to resolve hundreds of issues in conference over a very short period of time, and I certainly do appreciate their willingness to engage members of the committee and other interested stakeholders in a more comprehensive process next year so we can be sure we get this right.

Thank you, Mr. President. I yield the floor to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I appreciate and share the comments made by the distinguished Senator from North Carolina. I believe it is important. Having come here 15 years ago and having confronted the question of depots and how they operate, I was surprised to learn the intensity of the feelings and the difficulty of the issue.

We worked on it for some time, and for the most part, it has been quiet under Senator LEVIN and Senator WARNER. We kind of worked out how this thing should be handled. I thought things were rocking along well and have been very disappointed that the House Members have taken an initiative at a point where we were told it was too late to make any changes in the process. That alters that understanding, and I am not comfortable with it.

I feel I have engaged in these issues. We have a depot in my State, and we should have given it better consideration. I do not believe it is correct, the language as it is. I do believe we need to make changes. So it is a concern that the delicate balance created by the current definition of ''core depot-level maintenance'' between government facilities and industry could be altered and at risk.

We have all worked on this issue for a number of years. We have a more efficient and productive model today than we had when I first came here because of a lot of hard work and intense effort. So that is a problem for me.

Another troubling element of this new definition is the potential treatment of commercial items. The notion that perhaps an engine or other major assembly of a major end item such as a tank or aircraft could be considered a commercial item and not part of our depot core mission is very problematic and would be contrary to the way we have been operating for many years.

I would like to point out that because of the hasty way this language came into the bill, we do not know the second- and third-level effects of this language. That in itself is another reason to make sure we get the policy right in a very deliberative and collaborative process.

I hope we have a solution that will work. I say to Chairman LEVIN and Senator MCCAIN, the ranking member, I appreciate your willingness to work to correct the error in the process—and I believe there was a process error—and to ensure that due diligence is done as we work to codify the definition of ''core depot-level maintenance.''

So I look forward to your leadership in conducting subcommittee hearings, full committee hearings, working sessions, and whatever it takes to make sure we get the language right before we get to the markup and consideration of the fiscal year 2013 National Defense Authorization Act.

I will conclude by saying we had some very important issues to deal with in the Defense bill. A lot of them were very difficult. Under Chairman LEVIN's leadership and Senator MCCAIN, we either reached an agreement or reached an agreement not to agree, and moved the bill forward. I think it is over 50 years now that this bill has moved forward every year. I think it is something to be proud of.

The only real controversy that came out of it is this depot matter. So it sort of went against the way we felt we should operate, the way that has resulted in settlements of disputed issues and moving the bill forward. For that reason, I think it is appropriate we ask that this issue be redealt with next year.

I yield the floor.

Ms. COLLINS. Mr. President, I would like to voice my concerns regarding two provisions included in the conference report, sections 321 and 327. These provisions constitute a major rewrite of depot policies and laws.

These sections have not been sufficiently vetted. They could potentially hurt competition in acquisition programs, harm our public depots, and cause unintended consequences that could significantly affect not only depots, but also the private sector industrial base and the thousands of employees in both sectors.

In February, the Logistics Management Institute, LMI, delivered a report to Congress making recommendations to modify the depot statutes. Both Armed Services Committees asked DOD to offer input on the LMI study, but the Department did not do so.

The Senate held DOD to account in the committee report accompanying this very bill, which states:

> The committee is concerned that a lack of Department of Defense input regarding the findings and recommendations of the LMI study does not provide Congress with a comprehensive view prior to enacting legislation that could have unintended consequences.

But even without DOD input, the House went ahead and included changes to depot provisions when it passed its bill in May.

The Senate-passed bill also included a provision to prohibit any change to the definition of depot maintenance until after the Defense Business Board conducted its own study as well.

Given the concern identified by the Senate Armed Services Committee and the requests for additional fact-based analysis, you can imagine my alarm when I learned that such a rewrite was being considered for inclusion in the conference report.

What surprised me even more was that the proposed rewrite differed significantly even from the provision in the original House-passed bill.

The Senator from Oklahoma, Senator INHOFE, and I voiced our concerns about this in a meeting of the conferees. After that, six Senators and I sent a letter to the leadership of both committees warning of the unintended consequences of including these provisions in the conference report. I ask unanimous consent to have our letter printed in the RECORD.

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

U.S. SENATE,
Washington, DC, December 9, 2011.

Hon. CARL LEVIN,
Chairman, Senate Armed Services Committee, Washington, DC.

Hon. JOHN MCCAIN,
Ranking Member, Senate Armed Services Committee, Washington, DC.

DEAR CHAIRMAN LEVIN AND RANKING MEMBER MCCAIN: As conferees to the Fiscal Year 2012 National Defense Authorization Act Conference, we write to voice our concerns with the HASC proposal regarding Sections 321 and 322 of the House bill. While we appreciate the attempt to improve the depot and shipyard related statutes, none of our offices were advised or consulted regarding these last minute changes being proposed by the

HASC or consulted during the last several months as these provisions were apparently being crafted.

Only a few conferees received the new proposed language on December 7th, but we are all now being asked to support new language that will have far reaching implications on aviation depots, shipyards, arsenals, and ammunition plants across the United States. It is inappropriate to attempt legislative changes that could affect more than 100,000 jobs, public and private, across the United States without careful vetting and ensuring there will be no unintended consequences.

While we support improvements to operations at our depots, shipyards, arsenals, and ammunition plants, the HASC proposed changes to the definitions of depot level maintenance could have profound and enduring negative consequences to the industrial base and ultimately the readiness of our force. Given the lack of transparency and abbreviated conference timeline, we request that you not include Sections 321 and 322 of the House bill in the FY12 NDAA Conference Report. We further recommend that we begin to work together as soon as possible regarding the possibility of incorporating a more thoroughly considered version of this language in the Fiscal Year 2013 NDAA.

Thank you for your consideration in this matter. A similar letter has been sent to Chairman McKeon and Ranking Member Smith.

Respectfully,

JAMES M. INHOFE.
JEFF SESSIONS.
SUSAN COLLINS.
JEANNE SHAHEEN.
KAY HAGAN.
SAXBY CHAMBLISS.
KELLY AYOTTE.

Ms. COLLINS. The two provisions raise a number of unanswered questions, questions that remain unanswered by the advocates of these provisions, and which could lead to significant consequences for public and private sector components of the industrial base. Let me share two examples.

First, the provision expands the definition of depot maintenance to include the installation of modifications and upgrades to end-items—a measure potentially harmful to competition.

There is a concern that the Army may be required by this provision to direct work related to the Modernized Expanded Capacity Vehicle, MECV, program to the public sector without a full and open competition allowing experienced private entities to bid.

It is my view that the MECV is much more than a modification to a weapon system because it is an acquisition program. I understand this view is shared by the Army, which has consistently said the source selection for the MECV will be full, open, and fair.

Those who have invested in this program deserve to know that this language does not restrict competition or introduce, in any way, an incentive to favor the public or the private sector as it relates to acquisition programs, and the MECV program in particular.

While depot maintenance work is an important component of both the public and private sector industrial base, Congress has consistently supported a strong core requirement at the depots for national security reasons. For example, vital submarine overhauls, refueling, and maintenance work are performed at the Portsmouth Naval Shipyard in Kittery, ME.

It is unclear if the ramifications of the conference report will lead to work flowing away from our public depots, thus jeopardizing the government's core repair capability.

I would ask the chairman to closely reevaluate these provisions to ensure that the two concerns I described, as well as the concerns of other interested Senators, are fully addressed.

This process should allow Members adequate time to reach out to interested parties and a committee hearing to understand the ramifications of these legislative changes to the defense industrial base.

I would also ask the chairman to commit to modifying or repealing these provisions, if necessary, in next year's NDAA.

I would also ask the chairman to ensure that any future proposals pertaining to these sensitive issues be addressed in a more inclusive and deliberate manner.

Finally, given the uncertainty and confusion surrounding these critical depot issues, I would hope that the Department of Defense would exercise much care and refrain from making dramatic changes in its policies.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I come to the floor to echo the comments and concerns we have heard in the last few minutes from my colleagues on the Armed Services Committee regarding this House-inserted language on our Nation's military depots, arsenals, and shipyards.

I wish to begin by saying to Chairman LEVIN how much I appreciate his assurances, as well as those of Ranking Member MCCAIN, and Chairman MCKEON and Ranking Member SMITH in the House, that there are no intended changes to the current law under this language. I think that is very important for us to say to our constituents so they are reassured.

I also appreciate Chairman LEVIN's commitment to examine this issue closely in the coming year to prevent any unintended consequences that this language might have on our Nation's industrial repair facilities, including the Portsmouth Naval Shipyard, which my home State of New Hampshire shares with Maine and which is very important to us in the Northeast and I think to our military capabilities.

With that said, I have to say I share the concern that has been expressed about the manner in which this language was inserted. While I understand that the House has been working on this issue for some time, including holding roundtable discussions at the National Defense University, I believe there is much more that should have been done.

On Friday, December 9, my staff was made aware that this language from the House could be included in the final NDAA report—a measure we have all been working on for the past 11 months. So along with six other members of the committee, I signed a letter that very day—so 1 week ago tomorrow—indicating our concerns and frustration over including such language without adequate Senate review or input. Despite the concerns expressed in our letter, the language was included.

On such an important issue as this, usually we have had a very collaborative, transparent process in our committee, on the Senate side anyway, and I appreciate that. I think that has been one of the reasons for the great success of Senator LEVIN and Ranking Member MCCAIN in being able to get a bill out year after year on which there has been consensus agreement.

Unfortunately, that did not happen with respect to this language. As such, we now face a situation where the committee will need to spend a significant amount of time examining the language and its implementation over the next year to ensure no changes result.

The reason we as a nation maintain the 50–50 rule—where all maintenance work is split between the public and private sectors—is to ensure that in times of conflict, the Federal Government will have the critical capabilities necessary to repair our Nation's combat equipment.

Advanced technical repair work, such as the work done on nuclear submarines at the Portsmouth Naval Shipyard, requires highly skilled and specialized technicians. Any changes to the way we structure workload for these facilities has to be closely examined and should include input from the individual stakeholders who understand this issue best.

Generations of Americans have invested significant resources in our Nation's military to ensure our men and women in uniform have the most advanced equipment in the world to keep us safe.

I say to the chairman of the committee, I very much appreciate your assurance that we will continue to take a close look at this issue, including holding a hearing next year, if necessary. So I thank the Senator very much for his cooperation to work with us.

With that, I yield the floor.

The PRESIDING OFFICER. The junior Senator from New Hampshire.

Ms. AYOTTE. Mr. President, I would like to join in the comments of my colleague from New Hampshire and the concerns she has expressed, along with my other colleagues who serve on the Armed Services Committee.

But, first of all, I thank Chairman LEVIN and Ranking Member MCCAIN again for their tremendous leadership on the Defense authorization bill. We have conducted a tremendous amount of work in a short period of time, continuing the long-running, proud tradition of the Senate Armed Services

Committee of professionalism and bipartisanship in support of our troops and our national security.

This is a bill of which we can be proud. In a time of war, this bill supports the men and women of our Armed Forces and their families and authorizes the equipment, training, and resources our servicemembers need to complete their missions.

While I am very proud of this bill and pleased that many of my provisions to reduce wasteful spending and maintain military readiness have been included in the final conference report, I also share the concerns of my colleague from New Hampshire, Senator SHAHEEN, and other colleagues who serve on the Senate Armed Services Committee—both substantive and procedural concerns—regarding the depot provisions, sections 321 and 327, that were included by the House in the conference report.

When we were informed of this significant language—only last week—I joined a bipartisan group of Senators, including my colleague JEANNE SHAHEEN, to express our concern and our opposition to including the depot provisions in the final Defense bill.

As ranking member of the Senate Armed Services Readiness Subcommittee—which has oversight over depots, shipyards, arsenals, and ammunition plants—I am troubled that such a significant rewrite of depot statutes was hastily included in the final bill without consulting with key stakeholders and without conducting more complete analysis involving the Senate.

In the coming years, as we ask the Department of Defense to do more with less, the role of our depots and shipyards will become even more important. This is certainly true for our four public shipyards, including the Portsmouth Naval Shipyard, where many of my constituents work on a daily basis to sustain the world's best submarine force.

I share the pride my colleague from New Hampshire Senator SHAHEEN and my colleague from Maine Senator COLLINS feel about the Portsmouth Naval Shipyard. Portsmouth conducts maintenance on the Los Angeles- and Virginia-class submarines. In fact, Portsmouth has led the way for the entire Navy with the first-in-class maintenance availability on the USS Virginia.

While I am troubled by the process through which the depot provisions were included in the conference report, I am encouraged that both Chairman LEVIN and Ranking Member MCCAIN have expressed similar concerns and have committed to addressing these concerns in the coming months.

This process should include an inclusive and thorough vetting of the provisions to ensure we understand all the ramifications of what was included by the House.

As ranking member of the Readiness Subcommittee, I plan to propose to Chairman MCCASKILL that we hold a hearing on these depot provisions at the earliest opportunity next year.

The capabilities of our depots and shipyards and their role in sustaining military readiness are too important to hastily adopt such potentially far-reaching provisions.

Let me conclude by again thanking my colleagues on the Senate Armed Services Committee. Despite the partisanship that often characterizes Washington, it is encouraging to see that bipartisanship continues to prevail in the Senate Armed Services Committee. That is largely due to the leadership of Chairman LEVIN and Ranking Member MCCAIN.

I am proud of this bill, and I look forward to it becoming law in the coming days.

I thank my colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I join the chairman in the acknowledgment that many Members of the Senate have concerns with both the process and substance of the changes adopted in the Defense authorization conference report regarding statutes for depot activities in the Department of Defense. The protection of a core logistics capability within the Department has been a very controversial issue for many years, as the Department's depot enterprise employs over 77,000 personnel with an annual operating budget exceeding $30 billion. As we draw down from two wars which have consumed so much in resources and equipment, there will be much concern and debate about the continued workload and jobs at depots, shipyards, and arsenals, particularly in light of declining defense budgets.

I agree this debate and deliberation should have included all interested parties. While I support legislation that would have the clear intent of improving the effectiveness and efficiency of the Department's industrial activities, I was not and am not in support of moving forward on changes that have not been addressed with all members of the committee. The concerns expressed to us by Senator INHOFE, Senator CHAMBLISS, Senator COLLINS, Senator AYOTTE, Senator SHAHEEN, and others need to be reviewed in an open and transparent process.

As to the substance of the concerns, from what I can tell, there are opinions on the impact of these two provisions on both sides of the issue—from private industry and from the depots and their government civilian workers and unions.

I am aware some are very concerned that the changes in the conference report will upset the balance currently maintained between public and private performance of these activities, which could affect readiness. Changes to the definition of depot-level maintenance and repair have the potential to result in the shift of workload at shipyards. Changes to this provision should not be construed to restrict competition or to create any incentive to favor the public or the private sector as it relates to acquisition programs.

The narrowing of the statutes from core logistics to corps depot-level maintenance could be interpreted as congressional intent to eliminate the identification of core activities in the defense supply chain affecting arsenals and ammunition plants.

On the other hand, the inclusion of an expansive waiver provided to the Secretary of Defense to waive core requirements is very unsettling for every depot activity. Such a waiver could move significant amounts of depot work to the private sector.

Revisions to the definitions of ''commercial items'' to be exempted from core determinations could have an immediate detrimental impact to those depots that work on commercially available items of equipment, such as engines and transmissions of ground combat vehicles.

So many depots that do this sort of work are concerned about the impact. I agree we need to fully understand the impacts, real and unintended, from the implementation of these provisions. We will need to work closely with the Department of Defense to ensure that whatever changes or repeals we make are in the best interests of our military with the priority placed on readiness as well as efficiency of operations and fiscal responsibility.

I support the chairman and commit to giving this issue focused attention in the year ahead to ensure the measures taken in this year's bill are the right outcome for the Department of Defense and the taxpayers.

I yield the floor.

The PRESIDING OFFICER (Mr. SANDERS). The Senator from Michigan.

Mr. LEVIN. Mr. President, I appreciate and I understand the Senators' concerns about this issue as they have been expressed here this afternoon. I also very much appreciate their understanding relative to the extremely short period for conference this year where we worked through hundreds of provisions with our House colleagues in about a week, a process that usually takes a month or more.

While I am proud of what we were able to accomplish in this bill as a whole, it was probably likely that some language would need more consideration because of the time constraints we were operating under. Before I continue, I want to state my appreciation to the Members who spoke here this afternoon and members of the Armed Services Committee. They make major contributions to this committee.

I listened carefully to what our colleagues have had to say about the depot maintenance issue. I believe their concerns are substantive and merit careful consideration from the Armed Services Committee. This is an issue that was brought to our conference in the House bill.

The depot maintenance provisions that were approved by the House last

May arose out of a congressionally mandated independent review of the statutes, regulations, and policies guiding depot maintenance performance and reporting. The House conferees then proposed modifications to their own provisions based on the results of a series of discussions with stakeholders held throughout the summer at the National Defense University. We were told this process was comprehensive, that all stakeholders were invited, and that the resulting recommendations were widely accepted by all interested parties.

In particular, we understood the Department of Defense, private industry, and the House Depot Caucus had reached consensus on the revised House language. While those statements were made in good faith, it turns out they were not accurate. A number of key players, including stakeholders in government, private industry, and labor, did not participate in the process at National Defense University and were apparently unaware of the results.

Senators with a strong interest in the issue were not aware of the modified House language that was presented in our conference until it was too late to consider changes. I am aware that the depot maintenance issue has long been a sensitive one to our Nation and to many of our Members, and that the precise words in these provisions matter. The existing statutes, regulations, and practices have served to sustain both core logistics capabilities and the defense industrial base over the last decade, so any changes need to be fully understood.

I understand there are a number of unanswered questions about the provisions in the conference report that could have significant effects. For example, first, the new language substitutes the term ''core depot level maintenance'' for the existing term ''core logistics.'' Does this change impact National Guard readiness, sustainment maintenance sites, and other DOD facilities that are not depots? Does the change impact requirements for supply chain management and other logistics functions that are not performed by depots?

Second, the new language changes the wording regarding modifications in the definition of core depot level maintenance. Does this change impact planned public-private competitions for modifications and upgrades programs? Does the change preserve the distinction between modifications and upgrades on the one hand and acquisition programs on the other? Is this an expansion of core functions that will be required to be performed in the public sector with an adverse impact on the defense industrial base?

Third, the new language changes the wording of the exclusion for commercial items. Is this a change to the existing exclusion or merely a recodification? Will it impact maintenance requirements for commercial derivative aircraft and other major defense systems that are based on commercial technology?

Fourth, the new language includes a waiver rather than an exemption from core requirements for nuclear aircraft carriers. Will the new language result in any change in requirements for the maintenance and modifications of nuclear aircraft carriers?

Fifth, the new language includes the authority to waive core requirements for any weapons system that is ''not an enduring element of the national defense strategy,'' rather than an exclusion for a workload that is ''no longer required for national defense reasons.'' Does this new language mean something different from the existing language? If so, will it change the balance of work between the depots and the private sector?

I am committed to have the Armed Services Committee revisit the modifications to the depot maintenance laws included in this conference report and to give full consideration to the concerns our Members have raised. Over the coming months we will engage with interested Members and their staffs to review the language in detail. Together we will reach out to interested parties through a process that will include a full committee hearing if we determine one is needed. We will then take action to repeal or modify anything that needs to be repealed or modified in these provisions during our consideration of next year's National Defense Authorization Act. Many of my colleagues heard Chairman BUCK MCKEON make a similar commitment at our final conference meeting.

During the next year, while this review process is underway, I join my colleagues in urging the Department of Defense to proceed with caution in implementing this legislation. In particular, I urge the Department to make as little change as possible in the status quo with regard to these functions during the next year. It would be unfortunate if the Department were to change significant functions from one form of performance to another this year only to be required to change the decision again the year later.

Our objective has always been and always will be to ensure the Nation's depot maintenance system is structured and supported in a manner that efficiently and effectively provides for the readiness of our Armed Forces and our national security. I know this is a critically important issue. I look forward to working with Senators over the next year to take the steps we have discussed here today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, let me speak to some of the provisions of the National Defense Authorization Act especially concerning nuclear modernization and the implementation of the New START treaty. This is in the context of the omnibus appropriations bills that we will consider later this week, which appear to include funding reductions from the President's request for nuclear weapons modernization activities for the year 2012.

Earlier this year I introduced the New START Implementation Act because other Senators and I believed it is necessary that the Congress codify the agreement made between the President and Congress regarding the commitment to the modernization of our nuclear deterrent. Indeed, it is fair to say the Senate's support for the ratification of New START was contingent on modernization of the remaining nuclear arsenal.

One of the critical features of that legislation was the link between funding of the administration's 10-year nuclear modernization program to any U.S. nuclear force reductions in a given year. The language that appeared in the House-passed version of the Defense bill was good policy because it limited the reductions in warheads the United States otherwise would make pursuant to the New START treaty if Congress failed to provide the funding prescribed each year under the so-called 1251 modernization plan. In other words, warhead reductions were based on adequate funding.

The House language would also prohibit reduction of the nuclear stockpile hedge of nondeployed warheads until after we completed construction of the key nuclear facilities necessary to regain our production capacity. The reason for that, of course, is we have a hedge or a stockpile of these weapons that exists in the event we would need them since we do not have a production capacity right now to replace them. Until that capacity is created, probably in about a decade, we will need to continue to maintain that hedge capability.

The language that appears in the conference report now before us removes this explicit linkage, which I think is very unfortunate. The NDAA conference report addresses these concerns in some ways, though not as strongly as we originally intended. Here is what the compromise in the bill provides: First, in any year in which modernization is not fully funded, the President must report to Congress how he intends to address the shortfall and whether as a result of the shortfall it is still in the national interest to remain a party to the New START treaty. For the first time, the President will be compelled to detail his plans for U.S. nuclear force reductions over the next 5 years, which will provide Congress an opportunity to evaluate whether these reductions are in the national interest. This second provision is an important addition. Third, in any year in which the President seeks reductions in the nuclear stockpile, he must first seek from the Commander of U.S. Strategic Command a net assessment on the reductions, which, of course, puts the Commander of STRATCOM in a crucial position, and to provide that assessment to Congress unchanged. And, finally, the President must provide to

Congress any changes to the Nation's nuclear war plan and provide access to certain Members of Congress to these plans.

These are all important provisions, but without the House language, the possibility remains that we will draw down our warheads under START without adequate funding to ensure our remaining stockpile meets our requirements. As I said, this is quite unfortunate.

Let's recall why this modernization of our nuclear weapon program was necessary. The modernization program was painstakingly worked out, first within the Department of Defense, and the Department of Energy, our national laboratories, and then between the administration and Senators at the time of the New START treaty. It resulted in a 10-year $200 billion work plan to renovate our national laboratories, to extend the life of our nuclear weapons, to maintain their safety, the security and effectiveness of those warheads, and to sustain the modernization of the triad of our nuclear delivery systems, the ICBMs, bombers, and nuclear submarine force.

The plan was updated last November after a very thorough review by the Department of Defense and the Department of Energy, bringing the total 10-year funding figure to about $213 billion. There was little disagreement at the time about the need to modernize our nuclear facilities or about this amount which represented the cost over the 10-year period.

Indeed, between fiscal year 2005 and fiscal year 2010, the National Nuclear Security Administration, or NNSA, had lost about 20 percent of its purchasing power due to funding cuts. This, without the changes recommended in the 1251 report, would have been devastating to its modernization plan. Incredibly, funding for stockpile surveillance activities—these are activities which are necessary for the President to annually certify the safety and effectiveness of our nuclear warheads and bombs—had declined by 27 percent during this period of time. In other words, our ability to actually even understand what was going on in these weapons and determine whether changes had to be made was being degraded substantially. The situation was so dire that in February 2010, Vice President BIDEN gave a major address on the subject at the National Defense University and penned an op-ed in the Wall Street Journal that stressed:

> The slow but steady decline in support for our nuclear stockpile and infrastructure—

And then noting that again—

> For almost a decade, our laboratories and facilities have been underfunded and undervalued.

He concluded by observing that "Even in a time of tough budget decisions, these are investments we must make for our security."

Secretary of Defense Gates had earlier drawn attention to the neglect of our nuclear weapon complex. In 2008 he said, "To be blunt, there is absolutely no way we can maintain a credible deterrent and reduce the numbers of weapons in our stockpile without either resorting to testing our stockpile or pursuing a modernization program."

Of course, we have not resumed testing, which meant our only alternative was this modernization program which we then all agreed to. What is the linkage between modernization and the reductions in warheads called for under the START treaty? Well, it is pretty clear. As the President's National Security Advisor wrote to me in April of 2010, "Support for the nuclear complex is fully consistent with and, indeed, an enabler of the nuclear reductions we seek to implement—a direct connection, in other words.

So critical was the need to reverse the decline in our nuclear weapon enterprise that the Senate included in its resolution of ratification for the New START treaty a condition No. 9, which stated:

> The United States is committed to proceeding with a robust stockpile stewardship program, and to maintaining and modernizing the nuclear weapon production capabilities and capacities that will ensure the safety, reliability, and performance of the United States nuclear arsenal at the New START Treaty levels and meet requirements for hedging against possible international developments or technical problems.

The condition also stipulated that if appropriations are enacted that fail to meet the requirements set forth in the President's 10-year plan, then the President must tell Congress how he proposes to remedy the resource shortfall and whether the United States should remain a party to the treaty in light of such funding shortfalls.

That commitment to modernization was made explicit by the chairman and ranking members of the Senate Appropriations Committee and its Energy and Water Development Subcommittee, who wrote to the President on December 6, 2010, to express support for "ratification of the New START treaty and full funding for the modernization of our nuclear weapons arsenal, as outlined by your updated report that was mandated by section 1251 of the Defense Authorization Act for Fiscal Year 2010."

Despite this commitment, we are now faced with a reduction of some $400 million below the President's $7.6 billion request for nuclear weapon activity. It depends on the outcome of the appropriations process, but based upon the bill that was filed in the House last night, this appears to be the amount of reduction.

Senior officials from our national labs, the Department of Defense, and NNSA have all warned that cuts of this magnitude will delay construction activities for critical nuclear processing facilities, postpone critical life extension programs for our nuclear warheads, and could jeopardize our ability to certify the nuclear stockpile without testing.

In the words of Defense Secretary Panetta:

> I think it's tremendously shortsighted if they reduce the funds that are absolutely essential for modernization. . . . If we aren't staying ahead of it, we jeopardize the security of this country. So for that reason, I certainly would oppose any reductions with regards to the funding for [modernization].

Likewise, General Kehler, the commander of U.S. Strategic Command, told Congress that, due to the impending NNSA budget cuts, "we've got some near-term issues that will impact us in terms of life-extension programs for aging weapons."

What are life extension programs? These are the ways in which we can take the nuclear warheads that need working and extend their life by refurbishing them or replacing some of the components and doing other things that generally the scientists understand are critical to maintain the safety, the surety, and the reliability of those weapons over the period of time in which they are needed.

We all understand that the appropriations committees were under immense budget pressures, especially after the Budget Control Act of 2011. Full funding for nuclear modernization, though, was a priority brought about by this Nation's pledge, made in the New START treaty, to reduce the levels of U.S.-deployed nuclear weapons. As such, it should have superseded other budgetary considerations. It should have been fully funded.

Few things are more important than ensuring that our Nation's nuclear deterrent is effective and reliable, especially as those forces are reduced to lower levels by the START treaty arms control agreement. Indeed, this was the view of the House and Senate Armed Services Committees, which fully authorized the President's request for nuclear modernization.

Senior DOD officials worked to secure adequate funding for the President's 10-year commitment to nuclear modernization. Among other things, the President submitted the budget that requested the full amount of funding called for in the 1251 report, and the Department initially transferred $8.3 billion in budget authority to NNSA for weapons activities over a 5-year period, which, unfortunately, is not fully reflected in the fiscal year 2012 Energy and Water appropriations bills.

In this case, the customer, the Department of Defense, was so concerned that the Energy Department could do this work that it transferred its own budget authority to accomplish it. Yet some of that money was drained away for other purposes.

Some of the $400 million shortfall could possibly be mitigated, however, if the Secretary of Defense exercises the transfer authority that is going to be granted in this fiscal year 2012 Defense authorization bill to transfer up to $125 million to NNSA for weapons activities. This is a very small amount of money for four critical top priorities identified by the Department of Defense; therefore, if it can find the

funds, it can utilize the transfer authority that has been granted in this legislation and get that money to the NNSA to do the work that is absolutely critical next year. I will be working with the Department of Defense and my colleagues in Congress to ensure that this happens.

I express my appreciation to the chairman and ranking members of the committees and the conference committee who saw to it that this language to allow the Defense Department to transfer these funds was included.

Finally, let me mention what the consequences of the $400 million reduction could mean in the future. First, it could send a message to OMB that Congress no longer considers itself bound to the 10-year modernization funding plan. This would be a huge mistake; it would be wrong. OMB then might direct less funding in the future for nuclear weapons in fiscal 2013 and following years than originally prescribed in the 1251 plan, which would be very wrong. But the problem is that any divergence between what was deemed necessary over the next 10 years and what is actually appropriated by Congress will continue to grow—maybe to the point where it becomes difficult to certify on an annual basis that the nuclear stockpile is safe, reliable, and effective.

Referring to such reductions, NNSA Administrator Tom D'Agostino reported this to Congress on November 2:

> This is the work to make sure these technologies are the ones that allow us to certify the stockpile on an annual basis without underground testing. Reductions in these areas will have a direct impact on the President today in the ability to certify the stockpile without underground testing.

For those who remain so opposed to underground testing, you cannot have it both ways. You cannot both oppose underground testing and prevent the Department from getting the money it needs to modernize the stockpile. We have to do one or the other. We are now $400 million below where we need to be.

A second impact: Life extension programs for nuclear warheads, already facing very tight schedules because of the delays over the years, would be further delayed and exacerbated. Warheads that are not refurbished in time are not going to be available for deployment. This would have serious consequences for the readiness of our nuclear deterrent at a future date, which, of course, could have serious implications for the credibility of our nuclear guarantees to our allies and partners.

Third, the revitalization of nuclear labs—including expensive but very necessary construction projects—will be further delayed, and, of course, costs will go up even more. Funding for science will be curtailed to support higher priority programs, thus starving the labs of important innovation and perhaps hampering recruitment of the scientists and engineers necessary to maintain the long-term viability of the nuclear weapons complex.

Fourth, this funding reduction will trigger the reporting requirement contained in Condition 9 of the New START resolution of ratification, requiring the President to explain the impact of the resource shortfall on the safety, reliability, and performance of our nuclear forces. We know what that report is going to say. It is serious. The President must also propose how he plans to resource the shortfall and, in light of the shortfall, whether and why it remains in the national interest of the United States to remain a party to New START. As a result, Members of Congress may seek to ensure, through annual defense authorization legislation, that any future New START-mandated reductions in the nuclear stockpile are tied to successful execution of the planned modernization program.

Finally, this funding reduction, which could well be a precursor to further cuts in the future, will dampen the enthusiasm of Senators to agree to any future arms control agreement. Senators who voted for New START on the basis of the 10-year modernization program will not be so easily swayed by such promises in the future.

I look forward to taking up and voting on the Defense authorization conference report. It has a lot of good things in it and some things that aren't as good. This report, as I said, is not as strong as was the House language, but it will contain some important provisions the Congress will try to enforce to ensure that the modernization of our nuclear weapons continues on schedule for the next 10 years, which is something that is critical to our future national security.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. Mr. President, I rise to speak on the National Defense Authorization Act conference report we will be voting on later today.

First, I wish to acknowledge that Chairman LEVIN and Ranking Member MCCAIN have worked tirelessly to craft the Defense authorization bill to provide our Armed Forces with the equipment and services they need to keep us safe. I thank them, their staffs, and all my colleagues for their diligence and dedication to this important work.

I also come to the floor because I want to share, as I have over the last few weeks, the concerns that many Americans—and especially the people I represent in Colorado—have expressed over the last few weeks about the detainee provisions that have been included in the Defense authorization bill. I wish to make it clear that I still have very strong concerns about these provisions, especially because they have been presented as a solution to alleged gaps that exist in our counterterrorism policy.

It is my strong belief that our military men and women, law enforcement officials, and counterterrorism professionals have done an outstanding job since 9/11 to keep our Nation safe. For 10 years we have killed, captured, and prosecuted terrorists, and I believe—in fact, I know—our system has been successful.

The professionals whom I just mentioned, who are in charge of waging this battle to keep us safe, agree that the detainee provisions are of real concern. That includes the Secretary of Defense, the Director of National Intelligence, and the Directors of both the FBI and CIA.

In speaking to these same concerns that I continue to hold, along with the people just mentioned, the administration has stated:

> We have spent 10 years, since September 11, 2001, breaking down the walls between intelligence, military, and law enforcement professionals; Congress should not now rebuild those walls and unnecessarily make the job of preventing terrorist attacks more difficult.

I know many agree, especially Coloradans, who have contacted me in very impressive and large numbers. They believe, as I do, that these detention provisions could endanger our national security and that we ought to take a hard look at where we are heading.

I strongly objected to these detention provisions back in the summer when the Armed Services Committee first considered them. In fact, I was the only member of the committee who cast a ''no'' vote during the committee markup. I felt a little lonely at that point in time, but I think my judgment has been recognized by the outpouring of concern about where we may be headed.

Let me talk about what they do. The provisions could authorize the indefinite military detention of American citizens who are suspected of involvement in terrorism, without charge, even those captured in the United States. The point I have tried to make over and over again is that this concerns each and every one of us. If these provisions deny American citizens their due process rights under a nebulous, new set of directives, it would not only make us less safe, but it would serve as an unprecedented threat to our constitutional liberties.

Senator GRAHAM, my friend from South Carolina, has stated that if an American citizen takes up arms against the United States, he or she could be treated as an enemy combatant. I agree. However, the dangerous part of that proposition is as follows: How do we go about determining who those individuals are? No matter how serious the charge may be, the Constitution requires us to provide our citizens with due process before they are incarcerated—especially indefinite incarceration. If we start labeling our citizens as enemies of the United States without any due process, I think we will have done real damage to our system of justice in our country, which is admired all over the world.

My colleagues and I all agree that we have to take every action necessary to keep our Nation safe. But what separates us—what makes America exceptional—is that even in our darkest

hours, we ensure that our constitution prevails.

We do ourselves a grave disservice by allowing for any citizen to be locked up indefinitely without trial, no matter how serious the charges against them. Doing so may make us feel safer, it may be politically expedient, but we risk losing the principles of justice and liberty that have kept our Republic strong, and it does, frankly, nothing to make us safer. No terrorist, no weapon, no physical threat is powerful enough to destroy who we are as a people, and that is why we have to remain diligent in ensuring we hold true to the principles that make our country great.

I took note of this very principle in a powerful piece written by two retired four-star Marine Corps generals, General Krulak and General Hoar.

Mr. President, I ask unanimous consent to have printed in the RECORD the article written by these two generals.

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

[From the New York Times, Dec. 12, 2011]

GUANTÁNAMO FOREVER?

(By Charles C. Krulak and Joseph P. Hoar)

In his inaugural address, President Obama called on us to ''reject as false the choice between our safety and our ideals.'' We agree. Now, to protect both, he must veto the National Defense Authorization Act that Congress is expected to pass this week.

HOBBLING THE FIGHT AGAINST TERRORISM

This budget bill—which can be vetoed without cutting financing for our troops—is both misguided and unnecessary: the president already has the power and flexibility to effectively fight terrorism.

One provision would authorize the military to indefinitely detain without charge people suspected of involvement with terrorism, including United States citizens apprehended on American soil. Due process would be a thing of the past. Some claim that this provision would merely codify existing practice. Current law empowers the military to detain people caught on the battlefield, but this provision would expand the battlefield to include the United States—and hand Osama bin Laden an unearned victory long after his well-earned demise.

A second provision would mandate military custody for most terrorism suspects. It would force on the military responsibilities it hasn't sought. This would violate not only the spirit of the post-Reconstruction act limiting the use of the armed forces for domestic law enforcement but also our trust with service members, who enlist believing that they will never be asked to turn their weapons on fellow Americans. It would sideline the work of the F.B.I. and local law enforcement agencies in domestic counterterrorism. These agencies have collected invaluable intelligence because the criminal justice system—unlike indefinite military detention—gives suspects incentives to cooperate.

Mandatory military custody would reduce, if not eliminate, the role of federal courts in terrorism cases. Since 9/11, the shaky, untested military commissions have convicted only six people on terror-related charges, compared with more than 400 in the civilian courts.

A third provision would further extend a ban on transfers from Guantánamo, ensuring that this morally, and financially expensive symbol of detainee abuse will remain open well into the future. Not only would this bolster Al Qaeda's recruiting efforts, it also would make it nearly impossible to transfer 88 men (of the 171 held there) who have been cleared for release. We should be moving to shut Guantánamo, not extend it.

Having served various administrations, we know that politicians of both parties love this country and want to keep it safe. But right now some in Congress are all too willing to undermine our ideals in the name of fighting terrorism. They should remember that American ideals are assets, not liabilities.

Mr. UDALL of Colorado. Mr. President, these generals put it right to the point we all need to hear: Our ideals are assets, not liabilities. In that spirit, interestingly enough, we had a very robust debate about these detention provisions, and it bolstered my faith we could continue to have great and substantive debates in this body. Because of the concerns that were raised and serious questions that were presented about the provisions, we were able to secure some improvements that may reduce some of the grave concerns I have outlined here.

I see my good friend from Illinois, who I know is going to speak and who shares some of my concerns, so let me touch on a couple of the adjustments that have been made.

Senator FEINSTEIN's amendment clarified that detainee provisions are not to be interpreted ''to affect existing law or authorities relating to the detention of United States citizens.''

I was a member of the conference committee on this bill, and during the conference committee negotiations resulted in a clarification that was made to ensure these provisions are not to be interpreted to ''affect the existing criminal enforcement and national security authorities of the FBI or any other domestic law enforcement agency.'' These were helpful changes and, hopefully, will prevent the undermining of our constitutional liberties and the disruption of domestic counterterrorism efforts.

However, while I was pleased my colleagues were willing to acknowledge the language presented serious problems and left many questions unanswered, I still remain concerned about the detention provisions. Making changes to the law that have serious ramifications for our Constitution and our national security deserve serious thought and deliberation. Yet to this day we have not had a single hearing on these matters. Hearings would allow us to understand and mitigate the concerns of national security experts such as FBI Director Mueller. Director Mueller testified yesterday in front of the Senate Judiciary Committee and said that because of the requirements of this language, ''the possibility looms that we will lose opportunities to obtain cooperation from the persons in the past that we've been fairly successful in gaining.''

One of our primary goals in these cases is to gain actionable intelligence, and the FBI is very good—in fact, they are unbelievably good—at using a variety of techniques to gather the information we need—techniques, by the way, that fit within the Bill of Rights and the Uniform Code of Military Justice. Some of my colleagues believe that intelligence will be lost if a suspect receives a Miranda warning, but now we may be jeopardizing entire cases by adding new layers of bureaucracy and questionable legal processes.

These detention provisions, even as they are amended, will present numerous constitutional questions that the courts will inevitably have to resolve, and the provisions will present logistical problems that our national security experts will have to wade through. It sure feels to me as though these changes are being forced on an already nimble and effective counterterrorism community against their warnings, and I remain unconvinced of their benefit. I continue to believe the best course of action would be to separate these detention provisions from the Defense authorization bill so we can take our time, speak to experts in the field, and make sure we are effectively balancing our counterterrorism needs and the constitutional freedoms of American citizens. Most importantly, we need to understand and we need to ensure we are not damaging our national security. That is why I made it clear in signing the conference report that I do not support the two flawed detention provisions, sections 1021 and 1022.

All of that said, the Senate has a solemn obligation to our men and women in uniform to pass a Defense Authorization Act. As a proud member of the Senate Armed Services Committee, I understand the importance of this bill for our military and for their families, and while I continue to have serious reservations about the detention provisions and sought to separate them from the Defense authorization bill, we face a single vote on the entirety of the Defense bill, which includes the amended detention provisions. That is not how I wanted to proceed, but that is the choice in front of us.

For those who joined me in voicing opposition to the detention provisions, I thank you. We fought to ensure that the rights of American citizens are not trampled with ease, and we joined the counterterrorism community to demand the full use of existing tools to fight the enemy. We showed that such a debate was worth having and secured revisions to the language that will now help us continue the important work of ensuring that both our Constitution and our national security remain protected.

Although I intend to vote for final passage of the conference bill, I want to make clear I do not fully support the bill. I sincerely believe this debate is not over and there is much work left to do. Over the coming months and years, as a member of the Senate Armed Services Committee, I intend to hold this administration, and any further administration, accountable in

the implementation of these provisions.

I will also push the Congress to conduct the maximum amount of oversight possible as it relates to these provisions. We must apply a heightened level of scrutiny to ensure that what passes the Senate today does not deny U.S. citizens their due process rights and does not impede our counterterrorism efforts by hamstringing our military, the FBI, the CIA, or others who keep us safe. If these provisions stray in any way from that standard, I will be the first to demand hearings and changes to the law.

In conclusion, I believe we owe it to our men and women in uniform to pass a Defense authorization bill, but we also owe the American people a full and honest debate about our national security strategy that keeps us both safe and protects this document—the Constitution—we all have taken an oath to uphold.

With that, I yield the floor.

Mr. BINGAMAN. Mr. President, I rise today in strong opposition to several sections of the fiscal year 2012 Department of Defense authorization bill relating to detainees.

I have serious concerns regarding the detention provisions included in the final conference report. When this legislation was being discussed in the Senate, the Secretary of Defense, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation clearly stated that these provisions would undermine the ability of the government to bring suspected terrorists to justice. The language in the bill also raises significant issues regarding civil liberties, including the applicability of the indefinite detention provision to American citizens.

Section 1021 of the conference report provides the U.S. military with the authority to indefinitely detain, without trial, an individual suspected of involvement in hostilities against the United States. The ability to detain the person without charges could last until the ''end of hostilities''—a completely undefined period of time considering that we are confronting a long-term conflict with groups, such as al-Qaida, who will never sign a peace treaty ending the hostilities.

The final language does include an amendment offered by Senator FEINSTEIN that states that the provision should not be construed as affecting existing law with respect to the detention of U.S. citizens, but this language simply restates that the law is what the law is. The problem is that the law is unsettled. If Congress is going to enact provisions authorizing the indefinite detention of a person without a trial, frankly, I believe the sensible approach is to be very clear about whether or not it is the intent of Congress to include American citizens within this category.

Another problematic provision is section 1022, which mandates that the military detain suspected members of al-Qaida, including those captured within the United States. As I previously mentioned, military and Federal law enforcement officials have argued that this provision will hamper their ability to bring suspected terrorists to justice by limiting the flexibility of civilian law enforcement and creating a completely new and untested framework for dealing with suspected terrorists.

Proponents of this provision have argued that this section will not interfere with the ability of civilian law enforcement to do their job. They point to the fact that the President may waive the requirement and that the President must draft procedures within 60 days to mitigate any problems associated with implementing this section.

First, with regard to the waiver, if civilian law enforcement agents capture a suspected terrorist, the need to obtain a Presidential waiver for continued civilian detention could disrupt interrogations and intelligence gathering. Second, if there is an acknowledgement that the statute could interfere with Federal law enforcement's ability to interrogate and prosecute a suspected terrorist, it would seem more appropriate to just address the underlying problems with the statute rather than task the administration with coming up with procedures to deal with these shortfalls.

Just yesterday, the Director of the FBI, Robert Mueller, in testimony before the Senate Judiciary Committee, stated that the revised language did not fully address his concerns about the negative impact the military detention provision would have in interfering with the work of investigators.

The bottom line is that this section muddies the water and is completely unnecessary. The administration already has the discretion to prosecute foreign terrorists in civilian court or in military tribunals. We should maintain this flexibility to ensure the government is able to aggressively pursue terrorists in the forum that is the most effective in each specific case.

Lastly, I would like to briefly comment on the various provisions in the conference report aimed at limiting the ability of the administration to close the detention facility in Guantanamo Bay. It has been about 10 years since the Bush administration established the facility and its closure is long overdue.

As a recent article by Scott Shane of the New York Times pointed out, the government spends around $800,000 a year to house each of the 171 remaining prisoners at the military facility at Guantanamo. This is despite the fact that our Federal prison system has a strong record of safely holding individuals convicted of terrorism-related offenses—there are currently 362 of these individuals within the custody of the Bureau of Prisons.

Mr. President, I ask unanimous consent that the article be printed in the CONGRESSIONAL RECORD following my remarks.

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

(See exhibit 1.)

Mr. BINGAMAN. It is unfortunate that Congress continues to put in place restrictions preventing the transfer of inmates and the closure of the facility. I believe our Nation's handling of detainees will not be viewed kindly by history, and I look forward to the day we are able to close this regrettable chapter.

I supported an amendment offered by Senator MARK UDALL to remove all of the detainee provisions from the Senate bill. Unfortunately, the measure was not adopted. It was my hope that these matters would be dealt with as the legislative process moved forward, and I am disappointed that efforts to adequately address these concerns were unsuccessful. I will continue to support efforts to revise these provisions as Congress discusses detainee matters in the future.

EXHIBIT 1

[From the New York Times, Dec. 10, 2011]

BEYOND GUANTÁNAMO, A WEB OF PRISONS FOR TERRORISM INMATES

(By Scott Shane)

WASHINGTON.—It is the other Guantánamo, an archipelago of federal prisons that stretches across the country, hidden away on back roads. Today, it houses far more men convicted in terrorism cases than the shrunken population of the prison in Cuba that has generated so much debate.

An aggressive prosecution strategy, aimed at prevention as much as punishment, has sent away scores of people. They serve long sentences, often in restrictive, Muslim-majority units, under intensive monitoring by prison officers. Their world is spare.

Among them is Ismail Royer, serving 20 years for helping friends go to an extremist training camp in Pakistan. In a letter from the highest-security prison in the United States, Mr. Royer describes his remarkable neighbors at twice-a-week outdoor exercise sessions, each prisoner alone in his own wire cage under the Colorado sky. ''That's really the only interaction I have with other inmates,'' he wrote from the federal Supermax, 100 miles south of Denver.

There is Richard Reid, the shoe bomber, Mr. Royer wrote. Terry Nichols, who conspired to blow up the Oklahoma City federal building. Ahmed Ressam, the would-be ''millennium bomber,'' who plotted to attack Los Angeles International Airport. And Eric Rudolph, who bombed abortion clinics and the 1996 Summer Olympics in Atlanta.

In recent weeks, Congress has reignited an old debate, with some arguing that only military justice is appropriate for terrorist suspects. But military tribunals have proved excruciatingly slow and imprisonment at Guantánamo hugely costly—$800,000 per inmate a year, compared with $25,000 in federal prison.

The criminal justice system, meanwhile, has absorbed the surge of terrorism cases since 2001 without calamity, and without the international criticism that Guantánamo has attracted for holding prisoners without trial. A decade after the Sept. 11 attacks, an examination of how the prisons have handled the challenge of extremist violence reveals some striking facts:

—Big numbers. Today, 171 prisoners remain at Guantánamo. As of Oct. 1, the federal Bureau of Prisons reported that it was holding 362 people convicted in terrorism-related cases, 269 with what the bureau calls a

connection to international terrorism—up from just 50 in 2000. An additional 93 inmates have a connection to domestic terrorism.

—Lengthy sentences. Terrorists who plotted to massacre Americans are likely to die in prison. Faisal Shahzad, who tried to set off a car bomb in Times Square in 2010, is serving a sentence of life without parole at the Supermax, as are Zacarias Moussaoui, a Qaeda operative arrested in 2001, and Mr. Reid, the shoe bomber, among others. But many inmates whose conduct fell far short of outright terrorism are serving sentences of a decade or more, the result of a calculated prevention strategy to sideline radicals well before they could initiate deadly plots.

—Special units. Since 2006, the Bureau of Prisons has moved many of those convicted in terrorism cases to two special units that severely restrict visits and phone calls. But in creating what are Muslim-dominated units, prison officials have inadvertently fostered a sense of solidarity and defiance, and set off a long-running legal dispute over limits on group prayer. Officials have warned in court filings about the danger of radicalization, but the Bureau of Prisons has nothing comparable to the deradicalization programs instituted in many countries.

—Quiet releases. More than 300 prisoners have completed their sentences and been freed since 2001. Their convictions involved not outright violence but ''material support'' for a terrorist group; financial or document fraud; weapons violations; and a range of other crimes. About half are foreign citizens and were deported; the Americans have blended into communities around the country, refusing news media interviews and avoiding attention.

—Rare recidivism. By contrast with the record at Guantánamo, where the Defense Department says that about 25 percent of those released are known or suspected of subsequently joining militant groups, it appears extraordinarily rare for the federal prison inmates with past terrorist ties to plot violence after their release. The government keeps a close eye on them: prison intelligence officers report regularly to the Justice Department on visitors, letters and phone calls of inmates linked to terrorism. Before the prisoners are freed, F.B.I. agents typically interview them, and probation officers track them for years.

Both the Obama administration and Republicans in Congress often cite the threat of homegrown terrorism. But the Bureau of Prisons has proven remarkably resistant to outside scrutiny of the inmates it houses, who might offer a unique window on the problem.

In 2009, a group of scholars proposed interviewing people imprisoned in terrorism cases about how they took that path. The Department of Homeland Security approved the proposal and offered financing. But the Bureau of Prisons refused to grant access, saying the project would require too much staff time.

''There's a huge national debate about how dangerous these people are,'' said Gary LaFree, director of a national terrorism study center at the University of Maryland, who was lead author of the proposal. ''I just think, as a citizen, somebody ought to be studying this.''

The Bureau of Prisons would not make any officials available for an interview with The New York Times, and wardens at three prisons refused to permit a reporter to visit inmates. But e-mails and letters from inmates give a rare, if narrow, look at their hidden world.

PAYING THE PRICE

Consider the case of Randall Todd Royer, 38, a Missouri-born Muslim convert who goes by Ismail. Before 9/11, he was a young Islamic activist with the Council on American-Islamic Relations and the Muslim American Society, meeting with members of Congress and visiting the Clinton White House.

Today he is nearly eight years into a 20-year prison sentence. He pleaded guilty in 2004 to helping several American friends go to a training camp for Lashkar-e-Taiba, an extremist group fighting Indian rule in Kashmir. The organization was later designated a terrorist group by the United States—and is blamed for the Mumbai massacre in 2008—but prosecutors maintained in 2004 that the friends intended to go on to Afghanistan and fight American troops alongside the Taliban.

Mr. Royer had fought briefly with the Bosnian Muslims against their Serbian neighbors in the mid-1990s, when NATO, too, backed the Bosnians. He trained at a Lashkar-e-Taiba camp himself. And in 2001, he was stopped by Virginia police with an AK–47 and ammunition in his car.

But he adamantly denies that he would ever scheme to kill Americans, and there is no evidence that he did so. Before sentencing, he wrote the judge a 30-page letter admitting, ''I crossed the line and, in my ignorance and phenomenally poor judgment, broke the law.'' In grand jury testimony, he expressed regret about not objecting during a meeting, just after the Sept. 11 attacks, in which his friends discussed joining the Taliban.

''Unfortunately, I didn't come out and clearly say that's not what any of us should be about,'' he said.

Prosecutors call Mr. Royer ''an inveterate liar'' in court papers in another case, asserting that he has given contradictory accounts of the meeting after Sept. 11. Mr. Royer says he has been truthful.

Whatever the facts, he is paying the price. His 20-year sentence was the statutory minimum under a 2004 plea deal he reluctantly took, fearing that a trial might end in a life term. His wife divorced him and remarried; he has seen his four young children only through glass since 2006, when the Bureau of Prisons moved him to a restrictive new unit in Indiana for inmates with the terrorism label. After an altercation with another inmate who he said was bullying others, he was moved in 2010 to the Supermax in Colorado.

He is barred from using e-mail and permitted only three 15-minute phone calls a month—recently increased from two, a move that Mr. Royer hopes may portend his being moved to a prison closer to his children. His letters are reflective, sometimes self-critical, frequently dropping allusions to his omnivorous reading. His flirtation with violent Islam and his incarceration, he says, have not poisoned him against his own country.

''You asked what I think of the U.S.; that is an extraordinarily complex question,'' Mr. Royer wrote in one letter consisting of 27 pages of neat handwriting. ''I can say I was born in Missouri, I love that land and its people, I love the Mississippi, I love my family and my cousins, I love my Germanic ethnic heritage and people, I love the English language, I love the American people—my people.

He said he believed some American foreign policy positions had been ''needlessly antagonistic'' but added, ''Nothing the U.S. did justified the 9/11 attacks.''

Mr. Royer rejected the notion that the United States was at war with Islam. ''Conflict between the U.S. and Muslims is neither inevitable nor beneficial or in anyone's interest,'' he wrote. ''Actually, I suppose it is in the interest of fanatics on both sides, but their interests run counter to everyone else's.'' He added an erudite footnote: '''Les extrémités se touchent' (the extremes meet)—Blaise Pascal.''

He expressed frustration that the Bureau of Prisons appears to view him as an extremist, despite what he describes as his campaign against extremism in discussions with other inmates and prison sermons at Friday Prayer, ''which they surely have recordings of.''

''I have gotten into vehement debates, not to mention civil conversations, with other inmates from the day I was arrested until today, about the dangers and evils of extremism and terrorism,'' Mr. Royer wrote in a yearlong correspondence with a reporter. ''Can they not figure out who I am?''

A SCORCHED-EARTH APPROACH

In 2004, prosecutors believed they knew who Mr. Royer was: one of a group of young Virginians under the influence of a radical cleric, Ali al-Timimi, whose members played paintball to practice for jihad and were on a path toward extremist violence. After Sept. 11, federal prosecutors took a scorched-earth approach to any crime with even a hint of a terrorism connection, and judges and juries went along.

In the Virginia jihad case, for instance, prosecutors used the Neutrality Act, a little-used law dating to 1794 that prohibits Americans from fighting against a nation at peace with the United States. Prosecutors combined that law with weapons statutes that impose a mandatory minimum sentence in a strategy to get the longest prison terms, with breaks for some defendants who cooperated, said Paul J. McNulty, then the United States attorney overseeing the case.

''We were doing all we could to prevent the next attack,'' Mr. McNulty said.

''It was a deterrence strategy and a show of strength,'' said Karen J. Greenberg, a law professor at Fordham University who has overseen the most thorough independent analysis of terrorism prosecutions. ''The attitude of the government was: Every step you take toward terrorism, no matter how small, will be punished severely.''

About 40 percent of terrorism cases since the Sept. 11 attacks have relied on informants, by the count of the Center on Law and Security at New York University, which Ms. Greenberg headed until earlier this year. In such cases, the F.B.I. has trolled for radicals and then tested whether they were willing to plot mayhem—again, a preemptive strategy intended to ferret out potential terrorists. But in some cases prosecutors have been accused of overreaching.

Yassin M. Aref, for instance, was a Kurdish immigrant from Iraq and the imam of an Albany mosque when he agreed to serve as witness to a loan between an acquaintance and another man, actually an informant posing as a supporter of a Pakistani terrorist group, Jaish-e-Muhammad. The ostensible purpose of the loan was to buy a missile to kill the Pakistani ambassador to the United Nations. Mr. Aref's involvement was peripheral—but he was convicted of conspiring to aid a terrorist group and got a 15-year sentence.

That was a typical punishment, according to the Center on Law and Security, which has studied the issue. Of 204 people charged with what it calls serious jihadist crimes since the Sept. 11 attacks, 87 percent were convicted and got an average sentence of 14 years, according to a September report from the center.

Federal officials say the government's zero-tolerance approach to any conduct touching on terrorism is an important reason there has been no repeat of Sept. 11. Lengthy sentences for marginal offenders have been criticized by some rights advocates as deeply unfair—but they have sent an unmistakable message to young men drawn to the rhetoric of violent jihad.

The strategy has also sent scores of Muslim men to federal prisons.

SPECIAL UNITS

After news reports in 2006 that three men imprisoned in the 1993 World Trade Center bombing had sent letters to a Spanish terrorist cell, the Bureau of Prisons created two special wards, called Communication Management Units, or C.M.U.'s. The units, which opened at federal prisons in Terre Haute, Ind., in 2006 and Marion, Ill., in 2008, have set off litigation and controversy, chiefly because critics say they impose especially restrictive rules on Muslim inmates, who are in the majority.

The C.M.U.'s? You mean the Muslim Management Units?'' said Ibrahim Hooper, a spokesman for the Council on American-Islamic Relations.

The units currently hold about 80 inmates. The rules for visitors—who are allowed no physical contact with inmates—and the strict monitoring of mail, e-mail and phone calls are intended both to prevent inmates from radicalizing others and to rule out plotting from behind bars.

A Bureau of Prisons spokeswoman, Traci L. Billingsley, said in an e-mail that the units were not created for any religious group but were ''necessary to ensure the safety, security and orderly operation of correctional facilities, and protection of the public.''

An unintended consequence of creating the C.M.U.'s is a continuing conflict between Muslim inmates and guards, mainly over the inmates' demand for collective prayer beyond the authorized hourlong group prayer on Fridays. The clash is described in hundreds of pages of court filings in a lawsuit. In one affidavit, a prison official in Terre Haute describes ''signs of radicalization'' in the unit, saying one inmate's language showed ''defiance to authority, and a sense of being incarcerated because of Islam.''

One 2010 written protest obtained by The New York Times, listing grievances ranging from the no-contact visiting rules to guards ''mocking, disrespecting and disrupting'' Friday Prayer, was signed by 17 Muslim prisoners in the Terre Haute Communication Management Unit. They included members of the so-called Virginia jihad case of which Mr. Royer was part; the Lackawanna Six, Buffalo-area Yemeni Americans who traveled to a Qaeda camp in Afghanistan; Kevin James, who formed a radical Muslim group in prison and plotted to attack military facilities in Los Angeles; and John Walker Lindh, the so-called American Taliban.

An affidavit signed by Mr. Lindh, who is serving 20 years after admitting to fighting for the Taliban, complained that a correctional officer greeted male Muslim inmates with ''Good morning, ladies.'' (''No ladies were in the area,'' Mr. Lindh writes.) Prison officials say in court papers that Mr. Lindh has repeatedly challenged guards and violated rules.

Unlike those at the Supermax, inmates in the segregated units have access to e-mail, and some were willing to answer questions. Mr. Lindh, whose father, Frank Lindh, said his son believed the news media falsely labeled him a terrorist, was not. In reply to a reporter's letter requesting an interview, he sent only a photocopy of the sole of a tennis shoe. Since shoe bottoms are considered offensive in many cultures, his answer appeared to be an emphatic no.

There is some evidence that the Bureau of Prisons has assigned Muslims with no clear terrorist connection to the C.M.U.'s. Avon Twitty, a Muslim who spent 27 years in prison for a 1982 street murder, was sent to the Terre Haute unit in 2007. When he challenged the assignment, he was told in writing that he was a ''member of an international terrorist organization,'' though no organization was named and there appears to be no public evidence for the assertion.

Mr. Twitty, working for a home improvement company and teaching at a Washington mosque since his release in January, said he believed the real reason was to quash his complaints about what he believed were miscalculations of time off for good behavior for numerous inmates. ''They had to shut me up,'' he said.

Another former inmate at the Marion C.M.U., Andy Stepanian, an animal rights activist, said a guard once told him he was ''a balancer''—a non-Muslim placed in the unit to rebut claims of religious bias. Mr. Stepanian said the creation of the predominantly Muslim units could backfire, adding to the feeling that Islam is under attack.

''I think it's a fair assessment that these men will leave with a more intensified belief that the U.S. is at war with Islam,'' said Mr. Stepanian, 33, who now works for a Princeton publisher. ''The place reeked of it,'' he said, describing clashes over restrictions on prayer and some guards' hostility to Islam.

Yet Mr. Stepanian also said he found the ''family atmosphere'' and camaraderie of inmates at the unit a welcome change from the threatening tone of his previous medium-security prison, where he said prisoners without a gang to protect them were ''food for the sharks.'' When he arrived at the C.M.U., he said, he found on his bed a pair of shower slippers and a bag of non-animal-based food that Muslim inmates had collected after hearing a vegan was joining the unit.

He was wary. ''I thought they were trying to indoctrinate me,'' he said. ''They never tried.'' The consensus of the inmates, he said, ''was that 9/11 was not Islam.'' ''These guys were not lunatics,'' he said. ''They wanted to be back with their families.''

REFLECTION

It may be too early to judge recidivism for those imprisoned in terrorism cases after Sept. 11; those who are already out are mostly defendants whose crimes were less serious or who cooperated with the authorities. Justice Department officials and outside experts could identify only a handful of cases in which released inmates had been rearrested, a rate of relapse far below that for most federal inmates or for Guantánamo releases.

For example, Mohammed Mansour Jabarah, a Kuwaiti Canadian who plotted with Al Qaeda to attack American embassies in Singapore and Manila, pleaded guilty in 2002 and began to work as an F.B.I. informant. But F.B.I. agents soon discovered he was secretly plotting to kill them—and he was sentenced to life in prison.

Nearly all of these ex-convicts, however, lie low and steer clear of militancy, often under the watchful eye of family, mosque and community, lawyers and advocates say. A dozen former inmates declined to be interviewed, saying that to be associated publicly with a terrorism case could derail new jobs and lives. As for Mr. Royer, he is approaching only the midpoint of his 20-year sentence.

Did he get what he deserved? Chris Heffelfinger, a terrorism analyst and author of ''Radical Islam in America,'' did a detailed study of the Virginia jihad case, and concluded that Mr. Royer's sentence was perhaps double what his crime merited. But he said the prosecution was warranted and probably prevented at least some of the men Mr. Royer assisted from joining the Taliban.

''I think a strong law enforcement response to cases like this is appropriate nine times out of 10,'' Mr. Heffelfinger said. Mr. Royer himself, in his long presentencing letter to Judge Leonie M. Brinkema, said he understood why he had been arrested. ''I realize that the government has a legitimate interest in protecting the public from terrorism,'' he wrote, ''and that in this post-9/11 environment, it must take all reasonable precautions.''

Today, Mr. Royer's only battle is to serve out his sentence in a less restrictive prison nearer his children. In what he called in a letter ''a heroic sacrifice,'' his parents, Ray and Nancy Royer, moved from Missouri to Virginia to be close to their son's children, now aged 8 to 12.

''I found it necessary to be a surrogate father,'' said Ray Royer, 70, a commercial photographer by trade, in an interview at the retirement community outside Washington where he and his wife now live. When his son, who still goes by Randy in the family, converted to Islam at the age of 18, his parents did not object. Later, when he headed to Bosnia, they chalked it up to his active social conscience. ''Religion is a personal thing,'' the elder Mr. Royer said. ''He'd never been in trouble.''

Ray Royer was at his son's Virginia apartment in 2003 when the F.B.I. knocked at 5 a.m., put him in handcuffs and took him away. Now, years later, he alternates between defending his son and expressing dismay at what Randy got himself into.

''He did help his buddies get to L.E.T.,'' or Lashkar-e-Taiba, the Pakistani militant group later designated as a terrorist organization. ''He admitted to it. He should pay the price.'' Still, he added, ''maybe he deserved five years or so. Not 20.''

Ray Royer sat at his home computer one recent evening, looking through a folder called ''Randy Pics''—photographs tracing his son's life from childhood, to fatherhood, to prison.

''He loved his family,'' the father said of his son. ''Why would he put this cause ahead of his family? I still don't really know what happened. I'm still trying to figure it out.''

Mr. WHITEHOUSE. Mr. President, I rise today to highlight important provisions of the National Defense Authorization Act conference report that will counter the serious and growing problem of counterfeit goods entering the military supply chain.

Section 818 of the conference report, which includes these provisions, reflects the leadership of Chairman LEVIN and Ranking Member MCCAIN of the Senate Armed Services Committee. I applaud their work to keep counterfeit parts out of the military supply chain. As I have said before, our Nation asks a lot of our troops. In return, we must give them the best possible equipment to fulfill their vital missions and come home safely. We must ensure the proper performance of weapon systems, body armor, aircraft parts, and countless other mission-critical products. Section 818 goes a long way toward protecting our troops from the dangers of counterfeit parts and the decreased combat effectiveness they cause.

I am particularly glad that section 818 includes a provision I introduced to increase criminal penalties for trafficking in counterfeit military goods. That provision, introduced as the Combating Military Counterfeits Act of 2011, S. 1228, was reported without objection by the Senate Judiciary Committee. It was cosponsored by Senators GRAHAM, LEAHY, MCCAIN, COONS, KYL, BLUMENTHAL, HATCH, KLOBUCHAR, and SCHUMER. I was very grateful that Chairman LEVIN and Ranking Member

MCCAIN included it in their anticounterfeiting amendment to the NDAA, and I greatly appreciate their leadership in ensuring that the provision remained in the conference report. I would also particularly like to thank Chairman LAMAR SMITH of the House Judiciary Committee, who introduced comparable language in the House. It was a pleasure working with him on the language included in section 818(h). I am very grateful that he was able to clear the provision on the House side, thereby enabling its inclusion in the conference report.

Prosecutors will be able to employ section 818(h) to deter criminals from trafficking in military counterfeits. This will help protect our national security and the safety of our troops. The U.S. Sentencing Commission also has a role to play. It should update relevant sentencing guidelines to ensure that they reflect the seriousness of these reprehensible crimes. I would particularly note that the Obama administration has called for an increase of the minimum base offense level for trafficking in counterfeit military goods to 14. I trust that the Sentencing Commission will give this recommendation substantial weight when it reconsiders the guidelines in light of the changes section 818(h) makes to the Criminal Code. As the administration has explained, a minimum offense level of 14 for trafficking in counterfeit military products would mean that a first-time offender with no criminal history would face at least a 10- to 16-month guideline range without any other aggravated conduct, after taking into account a reduction for acceptance of responsibility. Such penalties should be the bare minimum for offenses that put our troops' safety at risk.

I also would like to highlight a second provision within section 818 of the conference report. Our colleagues on the Finance and Judiciary Committees have been working diligently to clarify that Customs and Border Protection agents can share sufficient information with trademark holders to ensure that counterfeit products are stopped at the border. Chairman LEAHY, for example, amended his PROTECT IP Act to that end. Section 818(g) includes comparable language, and I applaud the conferees for recognizing the importance of this provision. It reaffirms the executive branch's authority to share necessary information with rights holders without fear of violating the Trade Secrets Act. It thereby will enable Customs and Border Protection to fulfill its responsibility to stop military counterfeits at the border. Under this provision, they will be able to share the same photographs and samples they currently share but with the serial numbers and other identifying information shown, not redacted. This simple change in practice should be implemented immediately, without the delay of unnecessary regulatory processes. Now is the time to protect our troops from the risk of dangerous counterfeit military parts entering our fighter jets, weapons, ships, and countless other mission-critical products.

I am glad to have the opportunity to vote in favor of these important provisions. I look forward to the future reduction in the number of dangerous counterfeit military products that are currently putting our troops' safety at risk and reducing combat effectiveness.

Mr. KERRY. Mr. President, I am voting to pass the conference report for the National Defense Authorization Act for Fiscal Year 2012, NDAA.

This is not a perfect piece of legislation. But it contains important hard-fought provisions that I am unwilling to jeopardize or risk denying to the brave men and women defending our Nation, and their families. Specifically, this bill represents the year's last opportunity to pass a 1.6 percent across-the-board pay raise for our men and women in the military. The bill also includes a bipartisan provision Senator COLLINS and I have been working on for over a year to get passed: an effort to protect victims of sexual assault in the military. As a veteran, I have been deeply troubled by what Senator COLLINS and our colleague in the House, Representative TSONGAS, have heard about the alarming incidences of sexual assault in the military—which is why we worked so hard through this bill to strengthen support for sexual assault prevention, legal protection for victims of sexual assault, and assistance for victims.

There are, however, problems with this bill which still concern me. When the bill was on the floor, I fought for amendments that would have stripped troubling detainee provisions out of the bill entirely. I also voted for other amendments that would have significantly narrowed the scope of the detainee provisions. Unfortunately, notwithstanding my votes, those amendments were not adopted by the Senate. The conferees, with our urging, and with the President's veto threat, made some progress in improving that part of the bill. I commend the conferees for working to address concerns of mine and many other Senators, senior administration officials, and the public over the detention-related provisions in the NDAA. While the provisions in the conference report are an improvement over their counterparts in the bill that the Senate passed last week, we need to continue to examine detention law and policy to ensure that the treatment of detainees is consistent with our national security and with core American values.

The progress made in conference on the detention-related provisions is significant enough that I am comfortable voting for the bill, and the White House has lifted its veto threat. Specifically, the conference report includes several changes to the detainee provisions, including a new paragraph that clearly states that nothing in the bill ''shall be construed to affect the existing criminal enforcement and national security authorities of the Federal Bureau of Investigation or any other domestic law enforcement agency,'' provisions that give the President additional discretion over implementation, and a transfer of the waiver authority from the Secretary of Defense to the President. In its totality, these changes led the White House to state that the ''the language does not challenge or constrain the President's ability to collect intelligence, incapacitate dangerous terrorists, and protect the American people, and the President's senior advisors will not recommend a veto.''

Given all this, as well as the fact that the detention-related provisions of the bill have been improved from a civil liberties perspective, and in light of the other urgent priorities contained in the overall bill, I am voting in favor of the conference report.

Mr. HARKIN. Mr. President, as a U.S. Senator, I have no greater responsibility than to work to ensure our Nation's security. In that regard, I believe our Armed Forces must have all the tools they need to keep our country safe. That is why I support the vast majority of the provisions in the National Defense Authorization Act.

The bill takes some small steps towards reining in runaway defense spending, which has nearly doubled in the past decade. This bill authorizes $26.6 billion less than requested at the beginning of the year, providing more than enough to defend our interests, while chipping away at the Pentagon's nonstop growth. It also lays the groundwork for reevaluating outdated Cold War-era overseas deployments in Europe and the Pacific that are both costly and increasingly unnecessary.

All of these provisions I support and believe are important. However, because I believe this bill infringes on critical constitutional values, I must oppose final passage. I believe we can do a better job of protecting our national security without compromising these important values.

This Nation has long been a beacon of liberty and a champion of rights throughout the world. Yet, since 9/11, in the name of security, we have repeatedly betrayed our highest principles. The past administration believed it could eavesdrop on Americans without a warrant or court order. It utilized interrogation techniques long considered immoral, ineffective, and illegal, regardless of laws and treaties. And, it intentionally sought to put detainees beyond the rule of law. Thankfully, the current administration has ended the worst abuses of these practices, despite the efforts of some of my colleagues to stymie these efforts.

However, I am deeply concerned that the conference report continues us on a dangerous path, which sacrifices long-held and durable principles at the altar of fear and short-term expediency.

To begin, this bill fails to make clear that under no circumstance can an American citizen be detained indefinitely without trial. I simply do not

believe that a person should be seized on American soil and indefinitely detained without charges and without due process of law.

Second, it mandates, for the first time, that non-American terrorist suspects arrested in the United States will be detained by the military rather than civilian law enforcement. Throughout our history, there has been a clear divide between our military—which fights wars abroad—and law enforcement in the United States, and that divide has worked. For example, since 9/11, over 400 terrorists have been successfully convicted in article III, not military, courts. For persons in this country, it is a dangerous precedent to not only authorize but actually require military custody.

Finally, the bill would make it much more difficult to close the detention center at Guantanamo Bay. There simply is no compelling reason to keep the facility open and not to bring these detainees to maximum security facilities within the United States. The detention center is a recruiting tool for those who wish to cause us harm and been a stain on our Nation's honor. I agree with former Secretary of State Colin Powell, who said that ''we have shaken the belief that the world had in America's justice system by keeping [the detention center at Guantanamo Bay] open. We don't need it and it's causing us far more damage than any good we get for it.''

In the immediate aftermath of 9/11, the administration declared a broad and open-ended ''war on terror.'' I have always considered this a flawed description of the challenge that confronted us after the 9/11 attacks. After all ''terror'' is an endlessly broad and vague term. And a ''war on terror'' is a war that can never end because terrorism and terrorists will always be with us. Because of the never-ending nature of this so-called war on terror, it offers a rationale for restricting civil liberties indefinitely. This is not healthy for our democracy or for our ability to inspire other countries to abide by democratic principles.

Mr. President, we will not overcome terrorism with secret prisons, with torture, with degrading treatment, with individuals denied basic rights; rather, we shall overcome it by staying true to our highest values and by insisting on legal safeguards that are the very basis of our system of government and freedom. Today is the 220th anniversary of the ratification of the Bill of Rights. The values embodied in that remarkable document have bound our Republic together for over 200 years and can bind us for 200 more if we hold them close.

Mr. LEAHY. Mr. President, the Senate today will pass the National Defense Authorization Act for the coming fiscal year. This vote is historic as Congress has enacted a national defense authorization act every year for the past half century. I commend the Senate for maintaining this steadfast support for our armed services, but this legislation will be remembered for reasons both bad and good. I regret the decision of the House and Senate conferees to include unnecessary and potentially harmful provisions related to the detention of terrorist suspects. However, I strongly support measures in the conference report that will empower the National Guard within the Department of Defense, enhance protections for military victims of sexual violence, increase transparency by limiting unnecessary exclusions from the Freedom of Information Act, improve mental health outreach to members of the National Guard and Reserves, and make many other changes to strengthen our national defense and take care of our men and women in uniform.

I continue to strongly oppose the detention related provisions in this conference report, which I believe are unwise and unnecessary. These provisions undermine our Nation's fundamental principles of due process and civil liberties and inject operational uncertainty into our counterterrorism efforts in a way that I believe harms our national security.

I strongly oppose section 1021 of this conference report, which statutorily authorizes indefinite detention. I am fundamentally opposed to indefinite detention and certainly when the detainee is a U.S. citizen held without charge. Indefinite detention contradicts the most basic principles of law that I subscribed to when I was a prosecutor, and it severely weakens our credibility when we criticize other governments for engaging in similar conduct.

Supporters of this measure will argue that this language simply codifies the status quo. That is not good enough. I am not satisfied with the status quo. Under no circumstances should the United States of America have a policy of indefinite detention. I fought against Bush administration policies that left us in the situation we face now, with indefinite detention being the de facto administration policy. And I strongly opposed President Obama's executive Order on detention when it was announced last March because it contemplated, if not outright endorsed, indefinite detention.

This is not a partisan issue for me. I have opposed indefinite detention no matter which party holds the keys to the jailhouse. I fought to preserve habeas corpus review for those detained at Guantanamo Bay because I believe that the United States must uphold the principles of due process and should only deprive a person of their liberty subject to judicial review.

Today, I joined Senator FEINSTEIN, Senator LEE, and others to introduce a bill titled the Due Process Guarantee Act. This bill will make clear that neither an authorization to use military force nor a declaration of war confer unfettered authority to the executive branch to hold Americans in indefinite detention. In the 2004 Supreme Court opinion in Hamdi v. Rumsfeld, Justice Sandra Day O'Connor stated unequivocally: ''We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.'' It is stunning to me that sponsors of the underlying Senate bill argued for the indefinite detention of U.S. citizens at Guantanamo Bay. We must make clear that our laws do not stand for such a proposition. We are a nation of laws, and we must adhere vigilantly to the principles of our Constitution. I urge all Senators to support this bipartisan effort to protect American values and cosponsor the Due Process Guarantee Act.

I am also deeply troubled by the mandatory military detention requirements included in section 1022 of this conference report. In the fight against al-Qaida and other terrorist threats, we should give our intelligence, military, and law enforcement professionals all the tools they need, not limit those tools. But limiting them is exactly what this conference report does. Secretary Panetta has stated unequivocally that ''[t]his provision restrains the Executive Branch's options to utilize, in a swift and flexible fashion, all the counterterrorism tools that are now legally available.'' Requiring terrorism suspects to be held only in military custody and limiting the available options in the field is unwise and unnecessary.

Supporters of the conference report claim that concerns about the mandatory military detention section are ''red herrings.'' They claim that they have modified the legislation in ways that give the President the flexibility he needs to apply the provisions without impeding investigations or undermining operations in the field. The changes are totally inadequate. The Statement of Administration Position, SAP, calls the mandatory military detention section ''unnecessary, untested, and legally controversial.'' The SAP goes on to state that ''applying this military custody requirement to individuals inside the United States . . . would raise serious and unsettled legal questions and would be inconsistent with the fundamental American principle that our military does not patrol our streets.''

Some supporters of the conference report also claim that the national security waiver provision is ''a mile wide'' and provides the administration with sufficient flexibility. The intelligence professionals who work every day to keep our Nation safe disagree. The Director of National Intelligence, James R. Clapper, wrote to Senator FEINSTEIN that the ''detention provisions, even with the proposed waivers, would introduce unnecessary rigidity at a time when our intelligence, military, and law enforcement professionals are working more closely than ever to defend our nation effectively and quickly from terrorist attacks.''

As chairman of the Judiciary Committee, I am particularly concerned

that this provision fails to acknowledge or appreciate the vital role that law enforcement and the courts play in our counterterrorism efforts. In light of the hundreds of successful prosecutions of terrorism defendants in Federal courts, why would we want to remove this option from the table? As Jeh Johnson, the Pentagon's top lawyer, said recently, the Federal courts are ''well equipped to handle the prosecution of dangerous domestic and international terrorists,'' and ''the military is not the only answer.'' I could not agree more.

The implementation procedures required in the legislation are simply not enough to alleviate the potential for problems in the field. As Secretary Panetta stated in his recent letter to Senator LEVIN, this provision may ''needlessly complicate efforts by frontline law enforcement professionals to collect critical intelligence concerning operations and activities within the United States.'' No one in the military, intelligence community, or law enforcement has asked for this provision, and rather than strengthening our national security, it makes us less safe.

During floor debate over the Senate bill, FBI Director Mueller wrote that the mandatory military provision would adversely affect the Bureau's ability to conduct counterterrorism investigations and inject ''a substantial element of uncertainty'' into its operations. He argued that the provision fails to take into account ''the reality of a counterterrorism investigation.'' The conference report modified the mandatory military detention section to preserve the existing law enforcement and national security authorities of the FBI, but the effect of that new language remains unclear. At our Judiciary Committee hearing on December 14, the FBI Director stated that the modified text ''does not give me a clear path to certainty as to what is going to happen when arrests are made in a particular case.'' The FBI Director is particularly concerned with how the legislation will affect the Bureau's ability to gain the cooperation of suspects. The FBI has a long and successful track record in the cultivation and use of cooperating witnesses. But as Director Muller stated, ''The possibility looms that we will lose opportunities to obtain cooperation from the persons in the past that we've been fairly successful in gaining.'' I cannot understand why the authors of this conference continue to insist upon language that will undermine the FBI in its use of this critical counterterrorism authority.

The language in the detention subtitle of this conference report is the product of a process that has lacked transparency from the start. These measures directly affect law enforcement, detention, and terrorism matters that have traditionally been subject to the jurisdiction of the Senate Judiciary Committee and the Senate Select Committee on Intelligence, but neither committee was consulted about these provisions in July when the legislation was first considered by the Armed Services Committee, nor was either committee consulted earlier this month when it was modified. I also can see no reason why these provisions were rushed through the committee without the input of the Defense Department and Federal intelligence and law enforcement agencies that will be directly affected if this language is enacted. On issues of such national significance, the American people deserve an open and transparent process.

Supporters of the detention provisions in the conference report continue to argue that such measures are needed because, they claim, ''we are a nation at war.'' That does not mean that we should be a nation without laws or a nation that does not adhere to the principles of our Constitution. We should prosecute those who commit crimes and terrorist acts and sentence them to long terms in prison. The Department of Justice has prosecuted more than 440 terrorists since September 11, 2001. We have a very strong record and nothing to fear from choosing a course that upholds American values and the rule of law. That is why I also oppose some of onerous funding and certification restrictions that make it virtually impossible to transfer individuals out of Guantanamo or to prosecute individuals detained there in Federal courts.

I also strongly oppose section 1029 of the conference report, which requires the Attorney General to consult with the Director of National Intelligence and Secretary of Defense before seeking an indictment of certain terrorism suspects. This provision was not considered or debated by the Senate and certainly not by the Senate Judiciary Committee, which I chair. I oppose this provision because it needlessly undermines the authority of the Attorney General and is an unprecedented infringement on the prosecutorial independence of the Department of Justice.

Regrettably, the detention language in this conference report remains fundamentally flawed. The detainee provisions will codify a practice of indefinite detention that has no place in the justice system of any democracy. They will cause further damage to our reputation as a nation that respects the fundamental right of due process, harm the efforts of intelligence and law enforcement officials in the field, and may limit their ability to track down terrorists and bring them to justice. My support for the Defense bill should not be construed as support for its detention provisions, which I oppose in the strongest possible terms.

Instead, my support for the bill reflects the inclusion of the National Guard Empowerment Act, a bill I drafted with Senator LINDSEY GRAHAM, as an amendment to its underlying text. The Guard empowerment provisions have been understandably overshadowed by the debate on other, more contentious provisions in the bill, but I nevertheless believe that these provisions will set the stage for dramatic changes to our military force structure in the years to come.

Beginning in May, a new national security consensus quietly formed in Congress around an issue at the core of our national security. Seventy-one senators from both parties steadily added their support to S. 1025, the bill that Senator GRAHAM and I called Guard Empowerment II. The provisions of our bill built upon the first Guard empowerment bill that I introduced with Senator Kit Bond of Missouri. That measure became law in 2008 and elevated the Chief of the National Guard Bureau to the rank of four-star general. This year's bill had as its headlining provision an effort to make the Chief a statutory member of the Joint Chiefs of Staff. Despite the vociferous opposition of Active component generals in the Pentagon—including all six sitting Joint Chiefs of Staff—a bipartisan congressional consensus formed around S. 1025 and Guard empowerment. I was pleased that the Senate included its provisions in our version of the National Defense Authorization Act late last month and that the conferees retained a majority of those provisions in the conference report.

The new consensus on the National Guard comes as the budget debates of this Congress have fractured the Cold War national security consensus of the last half century. While those fractures were an inevitable outcome of the end of the Soviet empire, what will replace the Cold War consensus remains unclear. Some Members of Congress argue for diplomatic and military retrenchment from every corner of the globe back to Fortress America. Others believe that we must expand, not shrink, our international footprint. Yet nearly everyone agrees that budgetary factors must mean a change in the way the Pentagon does business—and that change cannot wait.

The seeds of that change were sown a decade ago. In the days and weeks following 9/11, the former ''strategic reserve'' became, of necessity, fully operational. The National Guard and Reserve components, once a Cold War failsafe, were called into regular rotation in the wars in Iraq and Afghanistan. Our country simply could not field the forces we needed without calling on the Guard and Reserve. Simultaneously, America experienced domestic disasters on an unprecedented scale. In each situation, the President called on the National Guard as the military first responders to help citizens in need. Today, the metamorphosis from a strategic reserve to an operational reserve is complete.

Yet entrenched bureaucratic interests still resist what most Americans now accept as an accomplished fact. The Joint Chiefs fought our efforts to bring the Chief of the Guard Bureau into the ''Tank'' not because they misunderstand the value of the Guard and

Reserve, but precisely because they fear that value proposition may threaten the size and budget of their Active components in the years to come.

Nevertheless the Active component must shrink, both as a consequence of our current budgetary reality and to reflect the constitutional vision the Framers had of a small standing Army augmented by a larger cadre of citizen soldiers. Simultaneously, the Guard and Reserve must grow so that those cuts to the Active force can be quickly and easily reversed if the circumstances demand it. Just a year ago, no one predicted our operations to oust Muammar Qadhafi. In a world where military needs change day by day, we must not hollow out the force. To avoid that outcome in a period of austere budgets, we must depend more and more on the National Guard and Reserve.

To that end, the conferees included section 512 in this Defense bill which adds the Chief of the National Guard Bureau to the Joint Chiefs of Staff. It also reinforces the duties and responsibilities of the Chief as listed in 10 U.S.C. § 10502 in accordance with the listing of responsibilities of the Chief already in that section. This provision is historic and will dramatically improve the advice that the President and Secretary of Defense receive on matters of national security and the defense budget.

Section 511, ''Leadership of the National Guard Bureau,'' reestablishes the Vice Chief of the National Guard Bureau as a lieutenant general and excludes the positions of the Chief and the Vice Chief of the National Guard Bureau from limitations on the number of general and flag officers in the Department of Defense. Reinstating the Deputy position at the National Guard Bureau will give the Chief flexibility at a time when he sorely needs it and providing a third star for the position will give it more institutional clout.

Section 515 implements the outcomes of a negotiation between the Council of Governors and the Department of Defense by authorizing the President to order the Federal Reserve component to Active Duty to provide assistance in response to a major disaster or emergency. In addition to authorizing a Reserve forces callup for domestic disasters and emergencies, it codifies the dual-status title 10 and title 32 commander as the usual and customary command relationship for military operations inside the United States, a key victory for Federal-State integration of military command and control.

Section 518, ''Consideration of Reserve Component Officers for Appointment to Certain Command Positions,'' is a modified version of a provision of S. 1025 which would have reserved the positions of commander, Army North, and commander, Air Force North, for National Guard officers with an emphasis on the consideration of current and former adjutants general. Instead, the section requires that Guard and Reserve officers be considered for these positions whenever they are vacant.

Section 1085, ''Use of State Partnership Program Funds for Certain Purposes,'' includes a limited authorization of the State Partnership Program which is the major vehicle for the National Guard of the States to participate in international security assistance and capacity building missions at the request of the State Department chief of mission and geographic combatant commander.

Last but certainly not least, section 1080A, ''Report on Costs of Units of the Reserve Components and the Active Components of the Armed Forces,'' institutes the ''similar unit'' cost report proposed by S. 1025 with some added detail and while retaining the Comptroller General evaluation of the Department's report. That last requirement is important to keep the Department of Defense honest in its assumptions and analysis leading to conclusions about the relative cost of Active and Reserve units.

The Reserve component cost report will undergird efforts by the Senate National Guard Caucus in the years to come. While it has long been common knowledge that the National Guard and Reserves are cheaper to maintain in dwell than Active-Duty Forces, the report will prove that colloquial wisdom and bolster the arguments of the Congress in a future push to reduce the size of the Active component as we draw down from Iraq and Afghanistan while growing the size of the Reserve components.

I am also pleased that the conferees included my language to narrow the Freedom of Information Act, FOIA, exemption in the bill for Department of Defense critical infrastructure security information. This improvement adds a public interest balancing test requiring that the Secretary of Defense consider whether the public interest in the disclosure of this information outweighs the government's need to withhold the information when evaluating FOIA requests. The addition of this measure to the National Defense Authorization Act will help ensure that FOIA remains a viable tool for access to Department of Defense information that impacts the health and safety of the American public.

As I said at the outset, this National Defense Authorization Act will be remembered both for changing our process of detaining and prosecuting suspected terrorists and for empowering the National Guard. I continue to oppose the changes the act will make to our counterterrorism legal regime. But I nevertheless support how the act will improve the sourcing and fielding of military forces in the years to come. I will look to fix the former and further improve the latter in future legislation.

Mr. COONS. Mr. President, today I rise to express my deep concern that the 2012 National Department of Defense Authorization Act provisions pertaining to detainee treatment fail to strike the appropriate, important balance between national security, due process, and civil liberties. Sections 1021, 1022, and 1023 are the latest in a series of legislative proposals that provide ever-narrowing latitude for dealing with terrorism suspects, whether in the U.S. or abroad.

I am concerned, that these provisions take us one small, but significant, step down the road towards a state in which ordinary citizens live in fear of the military, rather than the free society that has marked this great nation since the Bill of Rights was ratified 220 years ago, in 1791.

The new detention authorities thrust upon our military in this bill are an assault on our civil liberties and do not belong on our books. They were not requested by the Pentagon, in fact they have been resisted by the President, the Secretary of Defense, the Attorney General, and the directors of National Intelligence and the FBI. They do not make us safer and, to the contrary, they will create dangerous confusion within our national security community.

Under these sections, a terrorism suspect must be remanded to U.S. military custody, even when that suspect presents no imminent threat to public safety and is being held under suspicion of committing a U.S. crime. The suspect may be held indefinitely. Indeed, if the suspect is transferred to Guantanamo, it may be a practical reality that the suspect must be held indefinitely, thanks to the onerous certification requirements contained in Section 1023. If not sent to Guantanamo, the suspect may be rendered to a foreign power, where he may be subject to coercive interrogation, torture, or death. Or, the individual may simply remain in custody of our own military, waiting for the cessation of an endless conflict against an idea.

As my colleagues from Vermont and Oregon, from Colorado and California, have already said so eloquently, these provisions reflect an unfortunate and unwise shift away from the current law, in which the criminal justice system is presumed to be sufficient for those who commit crimes on U.S. soil. No system is perfect, but the federal criminal justice system is considered by many around the world to be the gold standard for fairness, transparency and reliability. Since 9/11, the civilian criminal process has been successful in securing convictions and lengthy sentences against hundreds of terrorism suspects.

This is compared to just six convictions in military tribunals, and two of these individuals are walking free today. A third, Ibrahim al Qosi, was convicted of being a Taliban fighter. Under his sentence of 2 years, he would be due to be released next summer. But when he serves his sentence, he likely will not be released. Instead, he will be detained until our undefined hostilities against Islamic extremism and terrorism conclude. In other words, he

will be detained indefinitely. Criminal process like this is little better than no process at all. It ought to be reserved for the rarest cases where the civilian criminal justice system is not suitable. It should not be made the new standard.

If we are going to short-circuit the criminal justice system, we ought to at least have good reason to do so. At a minimum, I would expect the President, the Attorney General, the Secretary of Defense, or the Director of National Intelligence to make the case that military custody is the only way to appropriately handle terrorists. But that is not what happened here. No one is calling for these new powers. They are being thrust upon our military.

President Obama has said that these provisions will hinder his ability to prosecute the campaign against terrorists. The Attorney General and the Director of National Intelligence have said that these provisions threaten to undermine the collection of intelligence from suspected terrorists.

They don't want these authorities.

The military does not want them either. The Secretary of Defense has said that the provisions will unnecessarily complicate its core mission of protecting our nation and projecting military force abroad. These provisions do not make sense as a matter of defense policy, and, because the meaning of some of the key terms is deliberately unclear, we can not even predict the precise impact that they will have.

In the best-case scenario, we will end up in a situation with minor changes to an existing detainee policy that has already proven to inspire and sustain this and the next generation of extremists who wish to destroy this country. In the worst-case scenario, we make several significant changes that hinder our ability to find and destroy this current generation of extremists.

I do not accept the underlying assumption of these unnecessary new provisions that the threat the United States faces is one that can be defended by more guns, taller walls, and deeper holes that we ''disappear'' people into. In fact, defense from the threats of today and tomorrow called ''asymmetric'' because they do not attempt to meet us on the battlefield with equal capabilities requires a new paradigm, the concept of defense in depth. To address asymmetric threats, including networks of extremists determined to carry out acts of terrorism, law enforcement and the Defense Department must work cooperatively to protect U.S. interests using their respective strengths in authorities and levels of response.

Instead of strengthening our ability to confront asymmetric threats, these unwelcome new authorities reinforce the philosophy that the military is the only preeminent institution of national security, with law enforcement relegated to a limited support role. That may have been an appropriate philosophy for the world in 1961, but it did not help us in 2001, and will not help us in 2021. These new authorities do nothing to change that and will not make us any safer. The only effective comprehensive model for national security is one that strengthens both our law enforcement and military to fight threats within their respective areas of expertise.

Another deeply concerning aspect of the detainee provisions in the Defense Authorization bill is what they say about the ability of the military to detain U.S. citizens. Section 1021 expands the 2001 Authorization of the Use of Military Force to include the authority to detain and hold indefinitely any person, even a U.S. citizen, if the military suspects that such a person has supported any force associated with al-Qaeda.

While I believe it acceptable for lethal military actions to be taken against U.S. citizens abroad who have clearly taken up arms against this Nation, I am concerned about the slow but steady creep of the military into areas that traditionally have been reserved for civilian law enforcement. Testifying yesterday before the Judiciary Committee, FBI Director Robert Mueller said he has serious concerns about the potential future ramifications of introducing military forces into the criminal justice process.

At the local level, it is often difficult to distinguish whether an individual in possession of bomb-making components is a hardened terrorist coordinating with al-Qaeda; is a troubled, dangerous, but affiliated teenager; or is completely innocent of any crime at all. In the rush to ''repel borders'' at the early stages of investigations, mistakes will be made. We need to make sure that these mistakes do not overrun the constitutional protections we all enjoy as Americans.

It is true, as supporters of these provisions have argued, that Section 1021 contains a limitation that the authorization of force does not include the right to hold citizens in violations of their constitutional rights. That is some comfort, but not enough. As I sat in the presiding chair during debate over this bill, I heard my colleagues argue that we are in a time of war and that, during times of war, U.S. citizens have no constitutional protections against being treated as a prisoner of war. Even if there was broad agreement about the constitutional protections citizens enjoy against extrajudicial killing or indefinite detention, who will enforce them? Under this bill, that task would seem to be left to the President and to the military. Were my life or liberty at stake, I would want the benefit of an independent judiciary. So, too, I think would the vast majority of my fellow citizens.

Mr. President, we are in conflict against terrorists. I do not doubt or dispute that. But this is not the first time that has been the case. During the beginning part of the last century, anarchists committed a string of bombings, usually targeting police officers or civilians. In 1901, an anarchist assassinated President McKinley. In the First Red Scare during the early part of the century, a plot was uncovered to bomb 36 leaders of government and industry. During the 1960s and 70s, the Weather Underground declared as its mission to overthrow the U.S. government. Members planted bombs in the Capitol, the Department of State and the Pentagon.

Each of these threats, and others, has before placed an existential fear in the minds of Americans. We have not always acted well. The Sedition Act of 1918, the internment of Japanese Americans during the Second World War, and the House Un-American Activities Committee and Hollywood blacklisting following the war are three notable examples of action, taken in the face of severe threat, which now the vast majority of Americans look back upon with deep regret.

As technology has advanced, so has the ability of the government to reach into our lives, whether through unseen drones and hidden electronic surveillance, omnipresent cameras and advanced facial recognition programs, or unfettered access to our telephone and Internet records.

The advance of technology, however, is not justification for the retreat of liberty, especially not when we have at our disposal a criminal justice system that is up to the task of keeping us safe.

I plan to vote for the Conference Report of the National Defense Authorization Act because I agree with much of what is within it. During a time of war, we cannot allow our military to go unauthorized. We cannot allow our troops to go unpaid. The NDAA provides oversight of and spending limitations for the military. It elevates the head of the National Guard to the Joint Chiefs level, which is necessary to ensure that military leadership adequately considers the unique reserve capacity role now filled by the Guard. The bill will also begin to address the inability of Customs and Border Patrol agents to share information necessary to identify military and other counterfeits at our borders.

Though we were not able to remove the dangerous and counterproductive provisions contained in Sections 1021, 1022 and 1023 from the NDAA today, we are not done trying. I will continue to work with my colleagues to ensure that we maintain the balance between security and liberty.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent that the time for debate on the conference report to accompany H.R. 1540 be extended until 4 p.m., with all other provisions of the previous order remaining in effect; further, that at 4 p.m., the Senate proceed to a vote on the adoption of the conference report; that upon the disposition of the conference report and H.

Con. Res. 92, the Senate resume executive session and the consideration of the Christen nomination, as provided under the previous order.

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

Mr. DURBIN. Mr. President, with this agreement, there will be two votes at 4 p.m. The first will be on the adoption of the Defense authorization conference report and the second vote on the confirmation of the nomination of Morgan Christen to be U.S. Circuit Judge for the Ninth Circuit.

Mr. President, I rise today to discuss the National Defense Authorization Act conference report now pending before the Senate.

I thank my colleague from Colorado, Senator UDALL, as well as my colleague from California, Senator FEINSTEIN, for engaging in a spirited and important—perhaps historic—debate during the consideration of this authorization bill on the floor of the Senate. I especially thank Senator FEINSTEIN. It was a pleasure to work with her to insert language which I think moved us closer to a position she and I both share concerning the language in this important bill.

I have the highest respect for the chairman and the ranking member of this committee, Senators LEVIN and MCCAIN, who have worked diligently and hard on a bill which has become a hallmark of congressional activity each and every year, particularly in the Senate. It takes a special effort for them to produce an authorization bill of this complexity and challenge. They do it without fail and they do it in a bipartisan fashion.

For those critics of Congress—and there are many—who look at this bill, you can see the best of the Senate in terms of the effort and the professionalism these two gentlemen apply, along with the entire committee, in bringing this bill to the floor.

This bill does a number of good things for our troops and for my home State of Illinois, and I am thankful to the chairman and the ranking member for those provisions. There is important language about public-private partnerships regarding the U.S. Army that will have special value at the Rock Island Arsenal, where some of the most dedicated and competent civilian individuals continue to serve this country's national security, meeting the highest levels of standards and conduct and performance. They will have a chance to continue to do that work, and it is important they continue to have that chance in this weak economy when so many people are struggling to find jobs.

The legislation provides the Chief of the National Guard with an equal seat at the table with the Joint Chiefs of Staff to ensure the needs of our brave Army and Air National Guard personnel are heard at the highest levels. It makes it easier for reserve units to access mental health services by providing that access during drill weekends. It also provides our men and women in uniform with a much deserved pay increase, which is imperative in light of their heroic service and the state of our economy today.

I must say, though, there are provisions within this bill which still concern me relative to the treatment and detention of terrorism suspects.

First, we need to agree on the starting point, and the starting point should be clear on both sides of the aisle. There are those who threaten the United States, those who would use terrorist tactics to kill innocent people, as they did on 9/11. We are fortunate, through the good leadership of President George W. Bush and President Obama, that we have been spared another attack since 9/11, but vigilance is required if we are to continue to keep this country safe. That is a bipartisan mission. It is shared by every Member of Congress, regardless of their political affiliation.

We salute the men and women in uniform, first, for all the work and bravery they have put into that effort, but quickly behind them we will add so many others in our law enforcement community; for example, those individuals at every level—Federal, State and local—who are engaged in keeping America safe. We salute the executive branch in its entirety, including the Department of Homeland Security, the White House, the National Security Advisors, and all of those who have made this a successful effort.

The obvious question we have to ask ourselves is this: If for 10 years we have been safe as a nation, why is this bill changing the way we detain and treat terrorism suspects?

I will tell you there has been an ongoing effort by several members of this committee and Senate to change the basic approach to dealing with terrorism, to create a presumption that terrorist suspects would be treated first subject to military detention and their cases then considered before military tribunals.

This, in and of itself, is not a bad idea. It could be right, under certain circumstances, but it does raise a question: If to this point in time we have been able to keep America safe using the Department of Justice, law enforcement, and the courts of our land, together with military tribunals, why are we changing?

The record is pretty clear. Since 9/11, more than 400 terrorism suspects have been successfully prosecuted in the courts of America. These are individuals who have been subjected to FBI investigation, they have been read their Miranda rights, they have been tried in our courts in the same manner as those accused of crimes are tried every single day, and they have been found guilty—400 of them—during the same interval that 6—6—have been tried by military tribunals.

Overwhelmingly, our criminal court system has been successful in keeping America safe, but that is not good enough for many Members of the Senate. They are still bound and determined to push more of them into the military tribunal system for no good reason. These people who have been tried successfully when accused of terrorism have been safely incarcerated in the Federal penitentiaries across America, including in my home State of Illinois at the Marion Federal Prison. Not one suggestion has been made that the communities surrounding these prisons nor the prisoners themselves are under any threat. What we have instead is this presumption that isn't borne by the facts or by our experience.

I voted for the Senate version of this bill with the hope that the Members of the Senate and House who were negotiating the final bill would remove some of the detainee provisions that concern me. I want to acknowledge that the conference committee did make some positive changes. But I continue to have serious concerns because provisions in the bill would limit the flexibility of any President in combatting terrorism, create uncertainty for law enforcement, intelligence, and defense officials regarding how they handle suspected terrorists, and raise serious constitutional concerns.

I am especially concerned about section 1022 in the conference report. This provision would, for the first time in American history, require our military to take custody of certain terrorism suspects in the United States. Our most senior defense and intelligence officials have raised serious concerns about this provision. FBI Director Robert Mueller strongly objects to the military custody requirement. For those who need reminding, Robert Mueller served as a Federal judge in California and was appointed to this position as head of the FBI by Republican President George W. Bush. He has been retained in that office by Democratic President Barack Obama. I believe he is a consummate professional who has dedicated his life, at least in the last 10 years-plus, to keeping America safe. I trust his judgment. I respect his integrity.

In a letter to the Senate, Director Mueller says the bill will ''inhibit our ability to convince covered arrestees to cooperate immediately, and provide criminal intelligence.''

He was asked after the conference report whether the changes absolved any of his concerns, and he said he was still concerned. I will go to that in a moment. Director Mueller concluded that the provision I am raising ''introduces a substantial element of uncertainty as to what procedures are to be followed in the course of a terrorism investigation in the United States.''

Considering the source of this concern, the Director of the Federal Bureau of Investigation who has been responsible ultimately for the successful prosecution of 400 suspected terrorists, we should take his concerns to heart.

The Justice Department, which then prosecutes terrorism suspects, shares

Director Mueller's concerns. Here is what they said:

Rather than provide new tools and flexibility for FBI operators and our intelligence professionals, this legislation creates new procedures and paperwork for FBI agents, intelligence lawyers and counter-terrorism prosecutors who have conducted hundreds of successful terrorism investigations and prevented numerous attacks inside this country over the past decade.

The supporters of this legislation have responded to these concerns by pointing to the fact that the bill allows the Secretary of Defense to waive the military custody requirement. But the Justice Department says the administrative burdens of obtaining a waiver could hinder ongoing counterterrorism operations. Here is how they explained it:

While the legislation proposes a waiver in certain circumstances to address these concerns, this proposal inserts confusion and bureaucracy when FBI agents and counter-terrorism prosecutors are making split-second decisions. In a rapidly developing situation—like that involving Najibullah Zazi traveling to New York in September 2009 to bomb the subway system—they need to be completely focused on incapacitating the terrorist suspect and gathering critical intelligence about his plans.

The authors of this legislation say they made changes to the military custody requirement to respond to these concerns raised by Director Mueller and the Department of Justice. But in my view, these changes don't go nearly far enough. They continue to create uncertainty and impose administrative burdens on our counterterrorism professionals whom we depend on to keep us safe.

The changes in the legislation do not change the fundamental premise. They create a presumption that a terrorism suspect arrested in the United States should be transferred to military custody, despite the fact—despite the fact—that the Federal Bureau of Investigation has kept America safe since 9/11.

I am not alone in my feelings. This morning, an editorial in the Washington Post said:

[These provisions]—while less extreme—are still unnecessary and unwise. . . . [L]awmakers have . . . introduced confusion in the form of directives that threaten to bollix up law enforcement and military personnel when they most need to be decisive.

Why in the world would we create uncertainty and bureaucracy when, with every second that ticks away, American lives can be in danger?

Just yesterday in the Senate Judiciary Committee, FBI Director Robert Mueller testified he is still deeply concerned about section 1022, despite the changes made in this conference report. Here is what Director Mueller said:

Given the statute the way it is now, it does not give me a clear path to certainty as to what is going to happen when arrests are made in a particular case. The possibility looms that we will lose opportunities to obtain cooperation from the persons in the past that we've been fairly successful in gaining.

That, in and of itself, should give pause to every member of the Senate. When we consider this objection from the Director of the Federal Bureau of Investigation, the lead official charged with combatting terrorism in the United States, shouldn't we take Director Mueller's concerns to heart? Do we want the FBI to have uncertainty the next time they stop and detain a suspected terrorist in the United States?

I want to address another provision, section 1021. I was very concerned that the original version of the legislation would, for the first time in history, authorize indefinite detention in the United States. But we have agreed, on a bipartisan basis, to include language in the bill offered by Senator FEINSTEIN that makes it clear this bill does not change existing detention authority in any way. What it means is, the Supreme Court will make the decision who can and cannot be detained indefinitely without trial, not the Senate.

I believe the Constitution does not authorize indefinite detention in the United States. Some of my colleagues see it differently. They claim the Hamdi decision upheld indefinite detention. It didn't. Hamdi was captured in Afghanistan, not in the United States. Justice O'Connor, the author of the opinion, carefully stated the Hamdi decision was limited to ''individuals who fought against the United States in Afghanistan as part of the Taliban.''

Some of my colleagues also cited the Padilla case, claiming it is a precedent for the indefinite detention of U.S. citizens captured in the United States. But look at what happened in the Padilla case. Padilla is a U.S. citizen who was placed in U.S. custody. The Fourth Circuit Court of Appeals, one of the most conservative in the land, upheld his military detention. But then, before the Supreme Court had the chance to review the Fourth Circuit's decision, George W. Bush's administration transferred him out of military custody, prosecuting him in an article III criminal court. To this day, the Supreme Court has never ruled on the question of whether it is constitutional to indefinitely detain a U.S. citizen captured in the United States. That decision must be decided by the Supreme Court, not by the Senate, thanks to the Feinstein amendment.

I support the inclusion of the Feinstein amendment in this bill. I continue to believe there is no need for this provision overall and that it should have been removed.

I also continue to oppose provisions in the conference report that limit the administration's ability to close the Guantanamo Bay detention facility. Section 1027 of this legislation provides that no detainee held at Guantanamo can be transferred to the United States even for the purpose of holding him incarcerated for the rest of his life in a Federal supermaximum security facility.

There is absolutely no reason for this prohibition. Section 1026 of this legislation provides clearly that the government may not construct or modify any facility in the United States for the purpose of holding a Guantanamo Bay detainee.

Let me bring this closer to home. We have offered for sale in the State of Illinois a prison built by our State that has not been used or opened in its entirety. The Federal Bureau of Prisons has stated they are interested in purchasing it because of the overcrowded conditions in many Federal prisons. We would, of course, like to see that done—not just for the revenue that would come to the State of Illinois but because it would create jobs in my State.

In the course of deliberating it, controversy arose as to whether Guantanamo detainees would be placed in this prison. Initially, the administration said they would, and I supported them. But ultimately it became clear that there was opposition to going forward with this purchase of the Illinois prison if there was any likelihood Guantanamo detainees would be incarcerated at this prison. We have now made it clear—and I wish to make it clear for the record—that despite my personal views on this issue, I believe the law is clear that the Thomson Prison, once under Federal jurisdiction, will not house Guantanamo detainees. That has been a stated policy. It is now going to be a matter of law in this Defense authorization. Regardless of my personal feelings on the subject, it is the governing law, and I will not try to change the situation of Thomson in any way as long as I serve in the Senate when it comes to this important issue.

Unfortunately, some of my colleagues—whom I disagree with—are determined to keep Guantanamo open at all costs. I disagree. When we consider the expense of detention at Guantanamo and the reputation of that facility, I believe the President was right, initially, when he talked about the fact that we needed to, at some point, bring detention at Guantanamo to a close. My feelings are not only shared by the President but also by GEN Colin Powell; former Republican Secretaries of State James Baker, Henry Kissinger, and Condoleezza Rice; former Defense Secretary Robert Gates; ADM Mike Mullen; and, GEN David Petraeus.

There is great irony here. For 8 long years during the previous Republican administration, Republicans on the floor argued time and again that it was inappropriate—some said even unconstitutional—for Congress to ask basic questions about the Bush administration's policies on issues such as Iraq, torture, waterboarding, and warrantless wiretapping. Time and again, we were told Congress should defer to President Bush, our Commander in Chief. Let me give one example.

My friend Senator LINDSEY GRAHAM of South Carolina, on September 19, 2007, said:

The last thing we need in any war is to have the ability of 535 people who are worried about the next election to be able to micromanage how you fight the war. This is not only micromanagement, this is a constitutional shift of power.

With a Democratic President, obviously some of my colleagues have had a change of heart. They think it is not only appropriate but urgent for Congress to limit this President's authority to combat terrorism, despite the success we have had since 9/11 under President Bush and President Obama keeping America safe. This is a clear political double standard. It is unnecessary. Look at the track record.

Since 9/11, our counterterrorism professionals have prevented another attack on the United States, and more than 400 terrorists have successfully been prosecuted and convicted in Federal courts. Here are just a few of them: Umar Faruk Abdulmutallab, the Underwear Bomber; Ramzi Yousef, the mastermind of the 1993 World Trade Center bombing; Omar Abdel-Rahman, the so-called Blind Sheik; the 20th 9/11 hijacker, Zacarias Moussaoui; and Richard Reid, the Shoe Bomber—all prosecuted in the criminal courts of this land successfully and safely incarcerated in our Federal prisons. Something which many on the other side refuse to acknowledge, and argue is impossible, has, in fact, happened over and over again over 400 times.

Why do we want to change this system when it is working so well to keep America safe?

The fact that these detainee provisions have caused so many disagreements and such heated debate demonstrates the danger of enacting them into law. We shouldn't impose this kind of uncertainty on law enforcement, defense, and intelligence who are working to protect America. We should not limit the flexibility of the administration to respond to suspected terrorists in the most effective way, and we should not raise serious constitutional questions by requiring the military to detain people in the United States.

I have a letter from the Agents Association of the Federal Bureau of Investigation, dated December 7, 2011, raising many of the same issues which I have raised. I will say we contacted the Agents Association after the conference and asked them their reaction, and they said they still stood behind their statements of December 7, 2011. I ask unanimous consent to have printed in the RECORD this letter.

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

FEDERAL BUREAU OF INVESTIGATION AGENTS ASSOCIATION,
Arlington, VA, December 7, 2011.

Hon. CARL LEVIN,
Chairman, Senate Armed Services Committee, Washington, DC.
Hon. JOHN MCCAIN,
Ranking Member, Senate Armed Services Committee, Washington, DC.
Hon. HOWARD P. MCKEON,
Chairman, House Armed Services Committee, Washington, DC.
Hon. ADAM SMITH,
Ranking Member, House Armed Services Committee, Washington, DC.

DEAR CHAIRMEN AND RANKING MEMBERS: On behalf of the more than 12,000 active duty and retired FBI Agents who are members of the FBI Agents Association (''FBIAA''), I write today to express our concerns about Section 1032 of S. 1867, the National Defense Authorization Act for Fiscal Year 2012. Section 1032 requires that persons detained in connection with incidents of terrorism be held in military custody and leaves critical operational details unresolved. Like many in the federal law enforcement and intelligence communities, the FBIAA is concerned that this language undermines the ability of our counterterrorism experts to conduct effective investigations, Accordingly, we urge the conferees working to reconcile H.R. 1540 and S. 1867 through the conference process to reject Section 1032.

Section 1032 establishes a presumption for military custody for individuals detained in connection with acts of terrorism against the United States. While Section 1032 includes some exceptions and waivers to the military custody requirement, they are limited in scope and could create additional layers of bureaucracy at critical points in our investigations. Injecting this level of uncertainty and delay into terrorism investigations could undermine law enforcement effectiveness. To truly fight terrorism, all of the nation's law enforcement assets should be deployed and enabled to act nimbly. This can only be accomplished if our laws preserve flexibility and prevent unnecessary bureaucracy from hampering law enforcement activities.

As part of the nation's counterterrorism strategy, FBI Agents work in the United States and abroad as an integral part of the intelligence-gathering and interrogation process. These interrogations are often instrumental in obtaining information that is essential to efforts to thwart subsequent acts of terror. The interrogation of detained persons, however, must be adapted to each specific individual and circumstance in order to be effective. Obtaining cooperation or information requires a mix of patience, leverage, and relationship-building that is inconsistent with the language in Section 1032, which under a presumption of military custody would require a waiver early in the process. FBI Agents already work closely with the military and prosecutors to conduct effective investigations, and interjecting a requirement to obtain waivers from the Secretary of Defense, while well-intentioned, risks delays and miscommunications that would not serve the goal of conducting effective investigations,

The FBIAA shares the goal of enacting and adopting policies that protect Americans from terrorism, and we appreciate the difficult task before the conferees working to reconcile H.R. 1540 and S. 1867. To this end, we urge the rejection of any language that risks unnecessarily limiting the flexibility that is essential to adapting our investigations to the circumstances of each investigation. In the interest of national security, please reject Section 1032 in the final National Defense Authorization Act for Fiscal Year 2012. If you have any questions or would like to discuss the FBIAA's views on this issue, please do not hesitate to contact me.

Sincerely,

KONRAD MOTYKA,
President.

Mr. DURBIN. Mr. President, I have a press report that was released today relative to the testimony of Director Robert Mueller of the FBI, which I referenced in my speech. So that his statement will be reported more fully at this point, I ask unanimous consent to have printed in the RECORD the press report from Politico.

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

[From www.politico.com, Dec. 14, 2011]

ON NATIONAL DEFENSE AUTHORIZATION ACT, ROBERT MUELLER NOT SATISFIED

(By Josh Gerstein)

FBI Director Robert Mueller said Wednesday said he remains concerned that a defense bill containing provisions about military custody for terrorism suspects could interfere with the FBI's ability to investigate terrorist incidents and interrogate those believed responsible.

On Monday, a House-Senate conference committee announced a revised version of the National Defense Authorization Act that lawmakers said addressed many of the concerns that led White House officials to threaten a veto. However, at a Senate Judiciary Committee hearing Wednesday morning, Mueller said he remains worried about aspects of the bill.

''The drafters of the statute went some distance to resolving the issue related to our authority but the language did not really fully address my concerns. . . .'' Mueller said during questioning by Sen. Dianne Feinstein (D-Calif.), who opposes the detainee-related language in the bill. ''I was satisfied with part of it with regard to the authority, I still have concerns and uncertainties that are raised by the statute.''

Mueller said he fears that the legislation would muddle the roles of the FBI and the military.

The bill ''talks about not interrupting interrogations, which is good but gaining cooperation is something different than continuing an interrogation,'' Mueller said. ''My concern is that . . . you don't want to have FBI and military showing up at the scene at the same time on a covered person (under the law], or with a covered person there may be some uncovered persons there, with some uncertainty as to who has the role and who's going to do what.''

Mueller said later that he worries confusion caused by the legislation could affect the FBI's ability to build rapport with suspects.

''Given the statute the way it is now, it does not give me a clear path to certainty as to what is going to happen when arrests are made in a particular case. And the facts are gray as they often are at that point,'' the FBI director said under questioning by Sen. Chris Coons (D–Del.) ''The possibility looms that we will lose opportunities to obtain cooperation from the persons in the past that we've been fairly successful in gaining.''

Backers of the defense bill say it will improve intelligence collection by making military custody the default for certain terrorism suspects. President Barack Obama has established civilian custody and courts as the default for terrorism cases, with the option to direct them to military commissions when the Justice and Defense departments deem it appropriate.

Since the conference bill was unveiled Monday, the White House has been mute about whether the changes to the bill are enough to win Obama's signature or whether he plans to carry through with the veto threat.

Mr. DURBIN. I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Illinois for his very eloquent remarks; also, the Senator from Colorado, Mr. UDALL, whom I had the pleasure of hearing from my office. I think they have encapsulated the situation we find ourselves in very well.

Mr. President, I wish to follow up on the detention authorities in the Defense Authorization bill and announce that today I am introducing legislation to clearly state that citizens apprehended in the United States shall not be indefinitely detained by the military.

This new legislation is called the Due Process Guarantee Act of 2011. I am joined by Senator LEAHY, the chairman of the Judiciary Committee, to which this bill will go, Senator LEE, a member of that committee, Senator KIRK, Senator MARK UDALL, Senator PAUL, Senator COONS, and Senator GILLIBRAND. I thank them for being original cosponsors of this bipartisan legislation.

In sum, the Due Process Guarantee Act we are introducing will add to another major law called the Non-Detention Act of 1971, which clearly stated:

No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an act of Congress.

The new legislation we intend to introduce will amend this Non-Detention Act to provide clearly that no military authorization authorizes the indefinite detention without charge or trial of U.S. citizens who are apprehended domestically. It also codifies a ''clear statement rule'' that requires Congress to expressly authorize detention authority when it comes to U.S. citizens and lawful permanent residents for all military authorizations and similar authorities.

We cannot limit the actions of future Congresses, but we can provide that if they intend to limit the fundamental rights of U.S. citizens, they must say so clearly and explicitly.

I am very pleased to add that Senator DURBIN will also cosponsor this legislation.

Lawful permanent residents are included in this bill we will introduce because they have the same due process protections as citizens under the Constitution. In this bill, the protections for citizens and lawful permanent residents is limited to those ''apprehended in the United States,'' excluding citizens who take up arms against the United States on a foreign battlefield.

I strongly believe constitutional due process requires that U.S. citizens apprehended in the United States should never be held in indefinite detention. That is what this legislation would accomplish, so I look forward to working with my colleagues, especially Chairman LEAHY on the Judiciary Committee, to move this bill forward.

I note the Senator from Illinois, Senator KIRK, is on the floor of the Senate to speak about this bill as well.

Our current approach to handling these suspects in Federal criminal courts has produced a strong record of success since the 9/11 attacks. We would be wise to follow the saying, ''If it ain't broke, don't fix it.''

Our system is not broken. We thwarted attempted terrorist acts. We have captured terrorists, interrogated them, retrieved actionable intelligence from them, prosecuted them, and locked them up for lengthy sentences—in most cases for the rest of their lives.

Both Senator UDALL and Senator DURBIN pointed out Director Mueller's testimony before the Judiciary Committee yesterday. This is relevant because it had been said that the Director of the FBI was satisfied with the language of the conference report of the Defense authorization bill. When Director Mueller was asked the question yesterday, Are you satisfied with the language, in so many words, he said, not quite. To quote him, Director Mueller said:

Given the statute the way it is now, it doesn't give me a clear path to certainty as to what is going to happen when arrests are made in a particular case.

He warned:

The possibility looms that we will lose opportunities to obtain cooperation from the persons in the past that we've been fairly successful in gaining.

I am concerned about how these provisions will be implemented once they are enacted into law, so I will be watching carefully to ensure that they do not jeopardize our national security.

Finally, I want to explain, as the sponsor of the Feinstein compromise amendment, No. 1456, that the Defense authorization bill should not be read to authorize indefinite detention of U.S. citizens captured inside the United States or abroad, lawful resident aliens of the United States captured inside our country or abroad, or any other persons who are captured or arrested in the United States.

On page 655 of the conference report, the compromise amendment, No. 1456, that passed the Senate by a vote of 99 to 1, reads this way, and this is in the conference report of the Defense authorization bill:

Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, or lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.

What does this mean? This means we have agreed to preserve current law for the three groups specified, as interpreted by our Federal courts, and to leave to the courts the difficult questions of who may be detained by the military, for how long, and under what circumstances.

And the Due Process Guarantee Act will clarify that citizens and lawful permanents cannot be detained without charge or trial if they are apprehended domestically.

I interpret current law to permit the detention of U.S. citizens as ''enemy combatants,'' consistent with the laws of war, only in the very narrow circumstance of a citizen who has taken an active part in hostilities against the United States and is captured outside the United States in an area of ''active combat operations,'' such as the battlefields of Afghanistan. This was the Supreme Court's narrow holding in Hamdi v. Rumsfeld in 2004.

I am sorry to say that Hamdi has been mischaracterized in this body. Whether Congress should grant the President more expansive powers of detention or act to curtail the powers identified by the Supreme Court in Hamdi is a question that Congress will continue to debate in the future. And we introduced the Due Process Guarantee Act to help clarify current law: that citizens and lawful permanents cannot be detained without charge or trial if they are apprehended domestically.

I would like to point out the errors in the legal analysis by those who would interpret current law, or this Defense Authorization Act, to authorize the indefinite detention of U.S. citizens without charge or trial, irrespective of where they are captured or under what circumstances.

Let's turn to the Supreme Court's 2004 opinion in Hamdi v. Rumsfeld, which has been incorrectly cited by others for the proposition that the 2001 AUMF permits indefinite detention of American citizens regardless of where they are captured.

Hamdi involved a U.S. citizen, Yaser Esam Hamdi, who took up arms on behalf of the Taliban and was captured on the battlefield in Afghanistan and turned over to U.S. forces. The Supreme Court's opinion in that case was a muddled decision by a four-vote plurality that recognized the power of the government to detain U.S. citizens captured in such circumstances as ''enemy combatants'' for some period, but otherwise repudiated the government's broad assertions of executive authority to detain citizens without charge or trial.

In particular, the Court limited its holding to citizens captured in an area of ''active combat operations'' and concluded that even in those circumstances, the U.S. Constitution and the due process clause guarantees U.S. citizens certain rights, including the ability to challenge their enemy combatant status before an impartial judge. The plurality's opinion stated:

It [the Government] has made clear, however, for the purposes of this case, the ''enemy combatant'' that it [the Government] is seeking to detain is an individual who, it alleges, was ''part of or supporting forces hostile to the United States or coalition partners'' in Afghanistan, and who ''engaged in an armed conflict against the

United States'' there. Brief for Respondents 3.

That was all a quote from the plurality opinion, and it continues:

We therefore answer only the narrow question before us: whether the detention of citizens falling within that definition is authorized.

The opinion goes on to say at page 517:

We conclude that the AUMF is explicit congressional authorization for the detention of individuals—

And here it is—

in the narrow category we describe. . . . And the narrow category they describe is one who is part of forces hostile to the U.S. on the battlefield of Afghanistan. Indeed, the plurality later emphasized that it was discussing a citizen captured on the battlefield. In responding to Justice Scalia's dissenting opinion, the plurality opinion says:

Justice Scalia largely ignores the context of this case: a United States citizen captured in a foreign combat zone.

The plurality italicized and emphasized the word ''foreign'' in that sentence.

Thus, to the extent the Hamdi case permits the government to detain a U.S. citizen until the end of hostilities, it does so only under a very limited set of circumstances; namely, citizens taking an active part in hostilities who are captured in Afghanistan and who are afforded certain due process protections, at a minimum.

It is also worth noting that amid lingering legal uncertainty regarding whether the government had the authority to detain Hamdi, the Government—this was the Bush administration—saw this and released Hamdi to Saudi Arabia on the condition that he relinquish his U.S. citizenship.

As a result, I don't regard the Supreme Court's decision in Hamdi as providing any compelling support for broad assertions of legal authority to detain U.S. citizens without trial. Certainly, the case provides no support for the indefinite detention of citizens captured inside the United States.

Let me go back to something. In 1971, the Congress passed, and Richard Nixon signed into law, a Non-Detention Act to preclude this very possibility. That act was intended in large measure to put the wrongs of Japanese internment during World War right. It provides simply:

No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an act of Congress.

I very much agree with the Second Circuit Court of Appeals, which held in the case of Padilla v. Rumsfeld that:

[W]e conclude that clear congressional authorization is required for detentions of American citizens on American soil because . . . the Non-Detention Act . . . prohibits such detentions absent specific congressional authorization.

The Second Circuit went on to say that the 2001 AUMF ''is not such an authorization and no exception to [the Non-Detention Act] otherwise exists.''

The Fourth Circuit came to a different conclusion when it took up Padilla's case, but its analysis turned entirely on disputed claims that ''Padilla associated with forces hostile to the U.S. Government in Afghanistan'' and, ''like Hamdi,'' and this is a quote, ''Padilla took up arms against United States forces in that country in the same way and to the same extent as did Hamdi.''

To help resolve this apparent dispute between the circuits, I believe we need to pass the Due Process Guarantee Act that my cosponsors and I are introducing today.

I would like to add Senator BILL NELSON of Florida as a cosponsor.

The PRESIDING OFFICER (Mrs. MCCASKILL). Without objection, it is so ordered.

Mrs. FEINSTEIN. This is important. We spent about half a day on this floor discussing this with Senator LEVIN, with Senator MCCAIN, in the cloakroom with Senators LEE and PAUL, as well as with a whole host of staff both from the Armed Services Committee as well as the Intelligence and Judiciary Committees. Here is the conclusion: I, and many of my colleagues and legal scholars, believe neither the AUMF nor the provisions of the National Defense Authorization Act that we are considering today constitute such an express authorization to detain American citizens.

As I previously mentioned, I sponsored compromise amendment No. 1456 to the Defense bill when it passed the Senate and that amendment has now become section 1021(e) of the conference report specifically to prevent misrepresentations from providing Congressional intent to support the detention of Americans.

Ex parte Quirin is a 1942 Supreme Court case that upheld the jurisdiction of a U.S. military tribunal that tried several German saboteurs captured inside the United States during World War II and brought to stand trial before the hastily convened military tribunal.

One of the saboteurs, Herbert Hans Haupt, was a U.S. citizen. However, the question at issue in Quirin was not whether a U.S. citizen captured inside the United States could be held indefinitely under the laws of war without trial, but rather, whether such an individual could be held in detention for a matter of weeks pending trial by military commission.

Haupt was, in fact, tried, convicted and sentenced to death within weeks after his capture. Moreover, the Quirin opinion predates the Geneva Conventions, a milestone of rather substantial significance in the development of the law of war, and the decision also predates the Non-Detention Act of 1971.

As Justice Scalia said in his dissent in Hamdi: ''[Quirin] was not [the Supreme] Court's finest hour.''

The only recent case of a U.S. citizen captured inside the United States and held as an enemy combatant under the law of war is that of Jose Padilla.

However, amid considerable legal controversy regarding the legality of his detention, Padilla was ultimately transferred out of military custody and tried and convicted in a civilian court.

Padilla, a U.S. citizen, was arrested in Chicago on May 8, 2002 on suspicion of plotting a dirty bomb attack in the United States. He was initially detained pursuant to a material witness warrant based on the 9/11 terrorist attacks.

On June 9, 2002, two days before a Federal judge was to rule on the validity of continuing to hold Padilla under the material witness warrant, President Bush designated him an ''enemy combatant'' and transferred him to a military prison in South Carolina for detention pursuant to the law of war without charge or trial.

Padilla subsequently filed a petition for a writ of habeas corpus in Federal court challenging the legality of his continued detention and an extended series of appeals ensued.

Facing an impending Supreme Court challenge and mounting public criticism for holding a U.S. citizen arrested inside the U.S. as an enemy combatant, President Bush ordered Padilla transferred to civilian custody to face criminal conspiracy and material support for terrorism charges in Federal court. The criminal charges against Padilla were not, however, related to Padilla's alleged involvement in a dirty bomb plot, which had been the basis for his prior detention as an enemy combatant.

Padilla was subsequently convicted and sentenced to 17 years in prison. That 17-year sentence has since been vacated and is under reconsideration. Thus, the Padilla case is at best inconclusive as to the President's authority to detain a citizen captured inside the United States as an ''enemy combatant.'' More likely, it evidences the folly of such overreaching assertions of Executive power.

Despite my longstanding opposition to the detention provisions in this bill, I will be voting yes on this important legislation. The main reason I support the defense authorization bill is because it ensures our troops deployed around the world—especially those in Afghanistan—have the equipment, resources, and training they need to defend this Nation.

I wish to sum up by quoting Justice Sandra Day O'Connor, writing for the plurality in Hamdi. Here is what she wrote:

As critical as the Government's interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat.

This is what Senator KIRK, Senator LEE, Senator PAUL, and those of us on the Democratic side who have worked on this truly believe. What about the person captured on the corner who looks a certain way, who gets picked up and put into detention? Does that

person have the right to a charge and to a trial? Our system of due process and the Constitution of the United States say, simply, yes.

I look forward to working with my colleagues to pass the due process guarantee bill.

I wish to defer to the distinguished Senator from Illinois, Senator KIRK.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. KIRK. Madam President, I wish to rise in support of the Feinstein-Leahy-Lee legislation. We are taking up the Defense authorization bill with the controversial provisions in it, somewhat protected already by the Feinstein language. But this legislation locks in a fundamental truth that I think is important for our country, and that is as a U.S. citizen inside the territory of the United States, you have inalienable rights under our Declaration of Independence. We are protected pursuant to the U.S. Constitution.

Our Constitution says all crimes, and prosecution thereof, shall be pursuant to a grand jury indictment. There is no exception in the Constitution for that. The Constitution grants a U.S. citizen a trial in the State in which the crime was committed, I think clearly envisioning a civilian trial. We, as Americans, have a right to a speedy trial, not indefinite detention.

We as Americans have a right to a jury of our peers, which I would argue is not enlisted or military personnel sitting in a jury. You cannot search our persons or our places of business or homes without probable cause under the Bill of Rights. You cannot be deprived of your freedom or your property without due process of law, and that, I would say, is not indefinite detention. All due process guarantees under law are granted to you by the 14th amendment. I would actually argue that no statute and no Senate and no House can take these rights away from you.

It is very important to pass this legislation to prevent needless litigation against constitutional rights, which I regard already as your birthright as an American citizen. It is very important to talk about what the Feinstein legislation does and does not do. I think it is very narrowly crafted to defend the rights of American citizens and resident aliens inside the United States. We agree that aliens who are engaged or captured on foreign battlefields can be subjected to rough justice, battlefield outcomes, or detention and prosecution by the U.S. military.

We even agree that a U.S. citizen such as Anwar al-Awlaki, who took up arms against the United States from his terrorist base, Yemen, is then the proper subject of U.S. military action, and he received that proper attention. Illegal aliens, even inside the United States—we are not engaging on that subject. If they are part of jihad or other warfare against the United States, they can be subjected to military jurisdiction. But with regard to U.S. citizens and resident aliens on U.S. soil, I would argue that the entire point of the Department of Defense is to defend our constitutional rights and to make sure they are honored. If you read the Constitution—and I would urge all Members in this battle to reread it; it is only 5,000 words long—you will see that the rights provided are without qualification and are part of your birthright.

What is the first thing a U.S. Senator, a Member of Congress, or the President does? They swear an oath to the Constitution of the United States. What is the first act any American or resident alien joining the U.S. military does? They don't swear allegiance to a President or a leader or a territory; they swear allegiance to the U.S. Constitution, and that is the mission which they are undertaking to protect.

We see a number of cases cited—as I noted, Ex parte Quirin, the German spy, or U.S. nationals who landed in Long Island and were summarily executed under U.S. military justice. I would say at least they were part of a foreign military and trained in that mission and trying to carry out that mission when that rough justice was put in place.

With regard to Jose Padilla, he was a U.S. citizen—sometimes when I was at the State Department, people would ask me who our Ambassador to Puerto Rico was. Puerto Rico is part of the United States. He was a full member of the country, with U.S. citizenship. He was arrested at O'Hare Airport, but pursuant to executive action was immediately taken into military custody and held in a brig. I regard all of his constitutional rights were then violated. In the subsequent litigation, I think eventually the Bush administration realized they were about to lose this case, which is why they kicked him back into civilian court.

In the Hamdi case, which is so often cited, even there we at least had a foreign connection, foreign training as part of another battlefield. What we are talking about here is very narrow, to make sure at the very least that you, as a U.S. citizen in U.S. territory, are not going to be subjected to indefinite military detention and military justice, that all of your constitutional rights are adhered to.

I would simply ask this—also as a reserve naval officer—what U.S. military officer wants the duty to roll in, for example, to Peoria, IL, and arrest an American citizen for actions that citizen has only done in the United States, not connected to a foreign military or training, and then to put that person through military detention and justice? I would say for the long-term interest of the U.S. military and to protect the U.S. military, we do not want to give that mission to our Armed Forces. A point of common sense should prevail here as well.

We spend billions of dollars on the Department of Homeland Security, which is fully under the fourth and sixth amendments of our constitutional protection. We have an extraordinarily able FBI, ATF, DEA, et cetera, the whole panoply of Federal law enforcement, which, quite properly, is not under the administration of the Pentagon but is instead under the administration of the Department of Justice. We have a vast array of State and local law enforcement all dedicated to protecting the United States but, most importantly, to uphold the very oaths they also take in their first minute as law enforcement officers to protect the U.S. Constitution.

So on this day that we pass the NDAA, which has a murky provision regarding this—somewhat protected by the Feinstein legislation—it is very important for us then to rally behind the further legislative protections here. I think this is strong, bipartisan legislation. I commend Senator FEINSTEIN, Chairman LEAHY, and Senator LEE for bringing it forward. No. 1, this will help protect the U.S. military from missions that it should not undertake. No. 2, we will make sure there is clear delineation between the Department of Justice, Homeland Security, and its whole panoply of agencies, and our military, which protects our rights from threat overseas. But, most importantly, No. 3, to defend the U.S. Constitution, your birthright as an American citizen to have these rights to make sure we do not subject any U.S. citizen apprehended inside the United States to indefinite detention under U.S. military authority, knowing they have inalienable birthrights that were granted to them by the U.S. Constitution.

With that, I commend the Chair.

Mr. KIRK. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. The Senator from Illinois.

Mr. KIRK. Madam President, we have two other provisions that are in the National Defense Authorization Act that I want to briefly mention.

First, we have a modified Brooks amendment in the conference report that says if there is any plan to deliver classified missile defense data to the Russians, the administration has to have a 60-day clock expire and then certify to the Congress that none of this data could end up in the hands of third parties, particularly the Iranians or Syrians. I wish to put the administration on notice that that certification probably cannot be made. Dmitry Rogozin, the lead negotiator on the missile defense for their government, has a close and continuing relationship with Iran. He is going to Iran next month. When we see the intelligence sharing and cooperation on

missiles and on other weaponry, but especially discussions about a second nuclear reactor in Iran, I think we should all realize that any classified data on U.S. missile defense going to the Russians would be given to the Iranians.

Remember, in missile combat between enemies of the United States and ourselves, everything would be over potentially in a matter of hours. If the Russians accomplish by diplomacy what they have failed to do by espionage, which is getting critical details of U.S. missile defense, and especially missile defenses of Poland and other key allies, we give only a few minutes to a few hours to the U.S. commander to be able to diagnose the problem, understand how he has been penetrated or fooled, and to correct that. I think that weakens the defenses of the United States significantly.

I had a hold on the nominee for the U.S. Ambassador to Moscow, Michael McFaul. Because of the passage of the modified Brooks amendment and a written letter of assurances given to me by the administration, I have now lifted that hold. I will be supporting his nomination also because he will be good in working with the opposition and human rights communities in Russia.

But I think everyone is now on notice that we should not move forward with any plan to provide classified missile defense data to Russia because it will be shared with the Islamic Republic of Iran, and that is one of the principal threats for which the U.S. and NATO missile defenses are arrayed against.

A second provision which is in the National Defense Authorization Act concerns Iran itself. Senator MENENDEZ and I teamed up on an amendment that also says: If you do business with the Central Bank of Iran, you may not do business with the United States. But we provided critical flexibility to the administration. The amendment is not imposed for weeks, if not months, and two critical waivers are put in the amendment which say, No. 1, if we find a critical shortage in oil markets because of Iran's leading role, sanctions could be delayed if not suspended. Also, there is a general national security waiver put in if something unexpected happens. But, in general, the rule goes forward that we are moving forward on a comprehensive plan to collapse the Central Bank of Iran.

Despite Secretary Geithner opposing the Menendez-Kirk amendment, this body voted 100 to 0 to support that amendment because we know of the International Atomic Energy Agency's report that they may be getting close to having enough fissile material for a nuclear weapon. We know of Iran's support for Hezbollah and Hamas. We know of their oppression of minorities, especially 330,000 Baha'is, who have been prohibited from contracting with the Iranian Government. Kids are not allowed to be in university. We even know of one poor Iranian actress who was sentenced to 90 lashes, later suspended, for simply appearing in an Australian film without a head dress.

The time for action on Iran is now. With the passage of the National Defense Authorization Act and the signature that we now expect from the President, a set of clocks begins, 60- and 180-day clocks. I will be teaming with Senator MENENDEZ and others—in fact, with the entire U.S. Senate that supported this—to make sure we have the toughest action possible to collapse the Central Bank of Iran, which the Treasury Department noted is the central money launderer for that government to support terror and nuclear proliferation.

With that, I yield the floor. Actually, I yield to my colleague from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Ms. AYOTTE. Madam President, I rise today in support of the National Defense Authorization Act. In particular, I wish to speak briefly about the detainee provisions contained in the conference report.

I have spoken many times over the last few months about this issue, but due to the importance of these issues—and I think because of some of the unfortunate mischaracterizations we have heard about the bipartisan compromise that passed this body already overwhelmingly and came out of the Armed Services Committee overwhelmingly—I wanted to come to the floor to make some closing points on this.

I would like to start with this proposition: No member of al-Qaida, no terrorist, should ever hear the words ''you have the right to remain silent.'' That fundamental principle is at the heart of the issue we confronted in the Armed Services Committee in addressing the detainee provisions that are contained within the Defense authorization report. The central issue is, how do we best gather intelligence to protect our country from future attacks?

It is common sense that if we tell a terrorist they have the right to remain silent, they may exercise that right. What if they do so and they have additional information about future attacks on our country or, as in the case of the so-called Underwear Bomber—which, unfortunately, in my view, has been cited by some of my colleagues as a success—if that event had been part of a series of events such as the events that occurred on 9/11 where we were attacked on our own soil, what would we have lost? After 50 minutes, the so-called Christmas Bomber was told he had the right to remain silent and he exercised that right and we did not get to question him again until 5 weeks later, after law enforcement officials tracked down his parents in another country and convinced him to cooperate. That is not a good policy to gather intelligence to protect our country, and that is at the heart of what we are trying to address on a bipartisan basis in the Defense authorization bill.

We have to ask ourselves: The events of 9/11, were they acts of war or were they a crime against our country? I firmly believe we are at war with members of al-Qaida; that what happened on September 11 was an attack against the United States of America. Innocent Americans were killed not because of what they did but because of what we believe in and what we stand for as a country.

So when I hear some of my colleagues suggest there are problems with the detainee compromise that was achieved on a bipartisan basis in this body—because we have basically said, if a foreign member of al-Qaida comes to the United States of America, seeks to commit another 9/11 against us, seeks to attack our country or its citizens, that the presumption will be military custody. That those provisions are misguided in some way deeply troubles me. If this wasn't an act of war, then I don't know what is. We need to make sure we treat enemies of our country for who they are and make sure they are not read their Miranda rights.

So in this bipartisan compromise we said there is a category of individuals—members of al-Qaida or associated groups—who want to come to America to attack us or our allies and for whom, yes, there is a presumption of military custody. That way they don't have to be read their Miranda rights or be provided the rights of our civilian system.

We also address the administration's concerns by giving them a national security waiver, by allowing our law enforcement officials the flexibility to come up with the procedures on how to implement the provisions of this bill.

I wish to address what I heard from FBI Director Mueller yesterday, just to be clear on the record, because yesterday FBI Director Mueller raised concerns about these detention provisions saying there is a possibility that looms that we will lose opportunities to obtain cooperation from individuals we have been able to obtain cooperation from in the past.

Well, I am concerned because when FBI Director Mueller came to a group of us, including the chairman of the Armed Services Committee and Ranking Member MCCAIN, he raised operational concerns about this provision, and we said we want to address those concerns. So in the final conference report there is language that was given to us by the FBI to address their operational concerns. It was included in this bill without a comma changed.

So it makes me concerned when we put their language in to address their concerns, saying nothing in this section shall be construed to affect the existing criminal enforcement and national security authorities of the Federal Bureau of Investigation or any other domestic law enforcement agency with respect to a covered person regardless of whether such covered person is held in military custody.

So I say to Director Mueller: We put your language in directly, and it makes

me concerned when I hear, in my view, what are political viewpoints rather than what is the reality of what is in this bill, which will allow the FBI to continue its work and will allow for us to hold in military custody those who are seeking to attack our country and will ensure that Miranda rights do not have to be given if that is the best investigative way to go forward to protect our country.

I see my colleague, the Senator from South Carolina, on the floor. I wish to ask him a question about the bill and the detainee provisions, particularly about the authorization for the use of military force. I have heard some people on the floor of the Senate—including the Senator from Colorado, the Senator from Illinois, and the Senator from California—express concerns about the fact that this bill reaffirms the authority of the President of the United States to detain an American citizen who has joined with al-Qaida and who has, as a member of al-Qaida or an associated force, joined arms against our country and sought to kill Americans.

I wish to ask the Senator from South Carolina about this provision and why it is important for our country.

Mr. GRAHAM. I thank the Senator from New Hampshire who has been a great leader on this issue.

Let me just tell my colleagues what drives my thinking. I think we are at war—I don't think it, I believe it. I hope my colleagues believe it too, and I know America is part of the battlefield because the enemy would like to destroy our country.

If we capture an al-Qaida operative overseas, does anybody in this body suggest that we should give them a lawyer or read them their rights? In World War II, if we had captured a Nazi soldier overseas and started saying they had the right to remain silent and we would give them a lawyer, even though Miranda didn't exist at the time, people would have run us out of town.

So if we believe we can kill an American citizen who has joined al-Qaida—the Awlaki case, where the President of the United States made an executive decision under the rule of the law, not through a court decision, to target an American citizen who had aligned themselves with the enemy—then if we can kill them, which is pretty indefinite, why can't we capture and hold them?

Now, that would be the dumbest thing in the history of the world for a nation to say: We all acknowledge the executive branch's power to target an American citizen who has aligned themselves with the enemy. We can kill them overseas, we can capture them overseas, we can interrogate them about what they know about future attacks, but when they get here we have to treat them as a common criminal.

I think what we share, I say to the Senator from New Hampshire, is that we think al-Qaida operatives, citizens or not, are not common criminals. We think they are crazy people, warriors, bent on our destruction, who would blow themselves up just as quickly as they would blow you up, and they don't care if they blow themselves up. The only reason the Christmas Day Bomber didn't kill a bunch of people is because his shoe didn't go off. The only reason the Times Square Bomber didn't kill a bunch of people is because the bomb didn't go off.

If you are an American citizen and you want to help al-Qaida kill Americans and destroy your own country, here is what is coming your way. If you happen to be listening to this debate, please understand the law as it is today and as it is going to be after this bill is passed: We are at war. The authorization to use military force passed by the Congress right after the attacks against this Nation designates al-Qaida as a military threat, not a common criminal threat, so we apply the law of war. There are two legal systems at play: domestic criminal law that well serves us as a nation to deal with crime—even the worst person, the worst child abuser gets a lawyer and is presumed innocent. Believe it or not, war criminals get lawyers and are presumed innocent.

I am proud of both systems, but the law enforcement model doesn't allow us to hold someone for a period of time to gather intelligence. Under the law enforcement model, once we capture someone, we have to start reading them their rights and providing them with a lawyer. Under the law of war model, we can hold someone who is part of the enemy force and gather intelligence.

This is not the first war where American citizens have sided with the enemy. In the In re Quirin case, a World War II case where American citizens aided Nazi saboteurs, here is what the Court said: There is no bar to the Nation holding one of its own citizens as an enemy combatant. That has been the law for decades.

So if it made sense to hold an American citizen who was helping the Nazis under military authority because they were helping a military enemy of the Nation to gather intelligence, why in the world wouldn't it make sense to hold somebody who has joined with al-Qaida to gather intelligence about the next attack?

Let me give an example of what we may face. Homegrown terrorism is on the rise. The Internet is out there. It is a good thing and a bad thing. But the idea of people getting radicalized and turning against their own country is a growing threat.

So the likelihood in the future of someone getting radicalized—an American citizen here at home going to Pakistan, getting educated in one of these extremist madrassas, coming back home, getting off the plane at Dulles Airport, coming down to the Mall and starting to shoot American citizens and tourists alike—is very real.

What this legislation does is it says from the Congress's point of view we recognize the person who is aligned with al-Qaida is not a common criminal, that we expressly authorize the indefinite detention of someone who has joined al-Qaida operations.

Why is that important? Don't you think most Americans, I say to the Senator, would be offended if after the person who went on a rampage in the Capital to kill American citizens, to kill people in America, was captured, we could not question them about: Is there somebody else coming? We would have to say: You have the right to remain silent. Here is your lawyer.

What we should do with that person who went to Pakistan and got radicalized and wants to come back and kill us all is hold them in military custody, as we have done in every other war, and find out all we can about future attacks and what they know. Because we are not fighting a crime; we are fighting a war. That has been the law, according to the Supreme Court, for decades, and all we are doing in Congress is saying, statutorily: We recognize the authority of this President and every other President to hold an enemy combatant for intelligence-gathering purposes indefinitely, whether they are captured at home or abroad, because that only makes logical sense. The idea of criminalizing the war and not being able to gather intelligence will put our country at risk.

Let me say this about the system: No one can be held as an enemy combatant under the law we have constructed without having their day in Federal court. So do not worry about going to a tea party or a moveon.org rally or an Occupy Wall Street rally and somebody holding you as a political prisoner under this law. The only people who can be held under military custody for an indefinite period are ones who have been found to have associated with al-Qaida in an overt way, and the government has to prove that to a Federal judge. If the Federal judge does not believe the government has made their case, the person is released. If the Federal judge says to the U.S. Government: You have convinced me that the person in front of me is cooperating and has joined al-Qaida and is overtly engaged in hostilities against the United States. I hereby authorize to you to hold that person to gather intelligence, how long can you hold them? As long as it takes to make us safe.

Here is what the law does. Every year, the person being held as an enemy combatant has an annual review process where the experts in our government look at the threat this person possesses, whether we have more intelligence to be attained, and there is a legal process to review ongoing detention.

Here is what some of my colleagues would say: Wait a minute. You cannot

do that. We are going to say, as a Member of Congress, that at an artificial date you have to let that person go or try them? A lot of these cases will be based on intelligence that may not go to an article III court. We may have to compromise our national security. We can prove to a judge they are a member of al-Qaida, but we are not going to take them to the criminal court because that is not in our national security interest.

The key fact is, no one is held as an enemy combatant without judicial review. Once you are determined to be an enemy combatant, then we are going to apply the law of war, as we have for 200 years. The law of war says: No nation has to let an enemy prisoner go or prosecute them—because we are not fighting a crime; we are fighting a war.

If you are an al-Qaida operative, you could get killed, even if you are an American citizen, by assisting the enemy at home or abroad. So do not join al-Qaida because you could lose your life. If you do get captured, you can be held indefinitely under the law of war because you have committed an act of war.

Ms. AYOTTE. Would the Senator from South Carolina yield for a question?

Mr. GRAHAM. I am pleased to.

Ms. AYOTTE. Isn't it true that included within the Defense authorization language in the detainee provisions is that:

> Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.

In other words, what is the law today—as you just described it—we are reaffirming in this bill. But we are not adding or subtracting from the President's authority that he has, as the Commander-in-Chief of our country, to protect our country against members of al-Qaida.

Mr. GRAHAM. The Senator is correct.

But here is what we are doing. Here is what LINDSEY GRAHAM is doing, and CARL LEVIN, and an overwhelming number of the Members of this body are about to do. We are about to pass a defense authorization bill that increases military pay, that has a lot of great things. But we are about to say as a Congress: We believe we are at war, and we reject the idea—the Libertarian idea; who are great Americans—that if you get to America somehow, it is no longer a war.

I think the Libertarians agree that if you catch an al-Qaida operative, including an American citizen, overseas, we do not have to read them their rights, and we do not have to give them a lawyer. But somehow, the perverse logic is, if they make it to America to attack us, whether they are a citizen or not, somehow they get a special deal.

All of us who are voting for this bill say that is crazy; we are at war. For no other war has that been the case. If you would have suggested in 1942 that the American citizen helping the Nazis commit sabotage against the United States had a special status and could not be treated in the fashion of a military threat to the country, they would have run you out of town.

So we are 10 years out from the attacks of 9/11, and here is what we are rejecting: We are rejecting the criminalization of the war, but we are doing it in a smart way. We are not telling the executive branch they have to go into a law-of-war detention system. We are just saying that is available to them. We are not telling the executive branch they have to try people in military commissions. We are just saying to them that is available for noncitizens. What we are telling the executive branch is that we believe we are at war, and that narrow group of people—thank God it is a narrow group—who join al-Qaida do not have special privileges when it comes to destroying our homeland; that if they make it to America, the closer they get to us, the more tools we should have available to protect ourselves.

So we are on record—at least I am and I think the body as a whole. Senator LEVIN has been terrific. The administration has been great to work with. Finally, after 10 years, the Congress of the United States, through this legislation, is going to make the simple statement, simple proposition that under the law of war, you can be held as an enemy combatant indefinitely to protect this Nation. Because when you join al-Qaida—the enemy of us all—we are not worried about whether we are going to prosecute you right away. We are worried about what you know about the next attack coming.

Let me tell you why we need this flexibility. The Christmas Day Bomber—the bomb did not go off, thank God; it was just luck—was read his Miranda rights within 45 minutes. Five weeks later, his parents convinced him to cooperate. What we are suggesting is there is another way that has been used in other wars, that the U.S. intelligence community, law enforcement community, and military have an option available to them.

We could grab this person who has just tried to blow up an airplane over Detroit—American citizen or not—and we can hold them without telling them they have a right to a lawyer and reading them their Miranda rights. Because we are trying to find out is another airplane coming and what do they know about the enemy and what were they up to and where did they train.

If we take that option off the table, we will have diminished our national security. We will have overturned what every other time of war has been about. We would be the first Congress in the history of the country to reject the idea that we can hold someone who is collaborating with the enemy under the law of war. Let's reverse this. This is the first time in history people have said on the floor of the Senate: We reject the Supreme Court holdings that allow the American Government to hold someone as an enemy combatant when they have joined the enemy forces at home or abroad.

So those of us who are voting for this, we are saying we accept the proposition that if you join al-Qaida, you can be killed, you can be captured, you can be interrogated. I am willing to accept the heat for making that decision. Because if we cannot kill them and we cannot capture them and we cannot interrogate them, we have made a huge mistake because these people hate us. They hate who we are. They hate what we stand for. They would kill us all if they could. They are out there, and some of them are among us who have the title of ''American citizen.''

But let me tell you about that title. Not only does it have rights, it has responsibilities. Our courts have said there is nothing in our law or our Constitution that prevents us from holding one of our own when they join the enemy. Because when they join the enemy, they have not committed a crime; they have turned on the rest of us, and they should accept the consequences of being at war with America. Being at war with America is something they should fear, and if they do not fear being at war with America, we have made a huge mistake.

I believe in due process. No one is going to prison without a Federal judge's oversight. No one stays in prison indefinitely without an annual review. But, my God, we are not going to arbitrarily say: You have to go. You have to be let go because of the passage of time and we are not going to criminalize this war—because it is a war.

As sure as I am standing here talking today, we are going to be wrong once. We have to be right every time, I say to the Senator. We have been lucky, and our men and women in uniform and our intelligence community and our FBI agents are doing a wonderful job. They are working night and day to protect us. The threats are growing. They are not lessening. There will come a day, I am sad to say, when we are going to get hit again. But when that day comes, we are going to make sure we have the tools to deal with it in terms of what it is: an act of war. We are going to have the tools available to this country to rein in the consequences because we are going to have the tools available to find out where is the next attack coming from.

We are not going to criminalize the war. We are going to fight it within our values. We are going to provide robust due process. But we are going to acknowledge as a body in Congress that our Chief Executive and those men and women in uniform, law enforcement agents, CIA agents—that they have our blessing to do their job, and we are going to acknowledge that they have the tools available in this war that were available to other like people in other wars.

Ladies and gentlemen, if there was ever a war where it was important to know what the enemy was up to and hit them before they hit us, it is this war. They could care less about losing their lives. The only way we will be safe is to gather intelligence, and we cannot gather intelligence, in my view, by locking down America to ''Dragnet'' standards. This is not a TV show. This is a real-world event that changes as I speak.

To Senator LEVIN, to Senator AYOTTE, and to all those who have tried to create a compromise to enjoy bipartisan support—to the administration—thank you all. To the critics, some of your criticism has been unfounded. But you have the right to be a critic. You live in the State called ''Live Free or Die.''

Let me remind everybody, being a critic and being able to speak your mind sometimes means people have to die.

What I am——

The PRESIDING OFFICER. The time for the Senator from New Hampshire has expired.

Mr. GRAHAM. Madam President, could I ask for 30 seconds?

The PRESIDING OFFICER. Is there any objection?

Mr. LEVIN. Madam President, reserving the right to object—and I, of course, will not—how much time is left before our vote?

The PRESIDING OFFICER. One minute.

Mr. GRAHAM. I will do this in 15 seconds.

Mr. LEVIN. If the Senator will save me 30 seconds, I would appreciate it.

Mr. GRAHAM. Absolutely.

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

Mr. GRAHAM. This idea of civil liberties and the American way of life—if we do not fight for it, we are going to lose it. We are under siege and we are under attack. So let's fight back within our values. This bill allows us to fight back, and I am very proud of the product.

I thank Senator LEVIN for being such a good leader for the Nation at a time when we need good leaders.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, let me first thank Senators GRAHAM and AYOTTE for their contributions this afternoon and long before this afternoon on this subject.

The best answer to some of the criticism we have heard this afternoon—the FBI has been successful. Why change it?—read the law, read the conference report.

> Nothing in this section shall be construed to affect the existing criminal enforcement and national security authorities of the Federal Bureau of Investigation. . . .

It is flatout explicit in the law.

Something else we have heard: We are doing something for the first time—long-term custody for American citizens. Read the conference report:

> Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens. . . .

I urge people to read our conference reports read the Senate bill, before they accept some of the arguments which have been made against this conference report.

Madam President, I ask unanimous consent that the statement of the Press Secretary for the President that was issued yesterday on behalf of the President be printed in the RECORD, including this line:

> [W]e have concluded that the language does not—

The language in the conference report—

challenge or constrain the President's ability to collect telling intelligence, incapacitate dangerous terrorists, and protect the American people—

And the key words for many people—

> and the President's senior advisors will not recommend a veto.

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

STATEMENT FROM THE PRESS SECRETARY ON THE NDAA BILL

We have been clear that ''any bill that challenges or contrains the President's critical authorities to collect intelligence, incapacitate dangerous terrorists, and protect the Nation would prompt the President's senior advisers to recommend a veto.'' After intensive engagement by senior administration officials and the President himself, the Administration has succeeded in prompting the authors of the detainee provisions to make several important changes, including the removal of problematic provisions. While we remain concerned about the uncertainty that this law will create for our counterterrorism professionals, the most recent changes give the President additional discretion in determining how the law will be implemented, consistent with our values and the rule of law, which are at the heart of our country's strength. This legislation authorizes critical funding for military personnel overseas, and its passage sends an important signal that Congress supports our efforts as we end the war in Iraq and transition to Afghan lead while ensuring that our military can meet the challenges of the 21st century.

As a result of these changes, we have concluded that the language does not challenge or constrain the President's ability to collect intelligence, incapacitate dangerous terrorists, and protect the American people, and the President's senior advisors will not recommend a veto. However, if in the process of implementing this law we determine that it will negatively impact our counterterrorism professionals and undercut our commitment to the rule of law, we expect that the authors of these provisions will work quickly and tirelessly to correct these problems.

Mr. LEVIN. Again, I want to thank all of my colleagues who participated in this debate.

I yield the floor.

The PRESIDING OFFICER (Ms. KLOBUCHAR.) The question is on agreeing to the conference report.

Mr. LEVIN. 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 bill clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kansas (Mr. MORAN).

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

The result was announced—yeas 86, nays 13, as follows:

[Rollcall Vote No. 230 Leg.]

YEAS—86

Akaka	Graham	Mikulski
Alexander	Grassley	Murkowski
Ayotte	Hagan	Murray
Barrasso	Hatch	Nelson (NE)
Baucus	Heller	Nelson (FL)
Begich	Hoeven	Portman
Bennet	Hutchison	Pryor
Bingaman	Inhofe	Reed
Blumenthal	Inouye	Reid
Blunt	Isakson	Roberts
Boozman	Johanns	Rockefeller
Boxer	Johnson (SD)	Rubio
Brown (MA)	Johnson (WI)	Schumer
Brown (OH)	Kerry	Sessions
Burr	Kirk	Shaheen
Cantwell	Klobuchar	Shelby
Carper	Kohl	Snowe
Casey	Kyl	Stabenow
Chambliss	Landrieu	Tester
Coats	Lautenberg	Thune
Cochran	Leahy	Toomey
Collins	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Coons	Lugar	Vitter
Corker	Manchin	Warner
Cornyn	McCain	Webb
Enzi	McCaskill	Whitehouse
Feinstein	McConnell	Wicker
Gillibrand	Menendez	

NAYS—13

Cardin	Franken	Risch
Coburn	Harkin	Sanders
Crapo	Lee	Wyden
DeMint	Merkley	
Durbin	Paul	

NOT VOTING—1

Moran

The conference report was agreed to.

MR. LEVIN. Madam President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

CORRECTING THE ENROLLMENT OF H.R. 1540

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H. Con. Res. 92, which the clerk will report.

The legislative clerk read as follows:

> A concurrent resolution (H. Con. Res. 92) directing the Clerk of the House of Representatives to correct the enrollment of the bill H.R. 1540.

The PRESIDING OFFICER. Under the previous order, the concurrent resolution is agreed to, and the motion to reconsider is considered made and laid upon the table.

EXECUTIVE SESSION

NOMINATION OF MORGAN CHRISTEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume

consideration of the Christen nomination.

Under the previous order, there will be 2 minutes of debate equally divided and controlled in the usual form.

Mr. WHITEHOUSE. Madam President, I ask unanimous consent that all time be yielded back.

The PRESIDING OFFICER. The Senator from Rhode Island asks that all time be yielded back. Is there objection?

Without objection, it is so ordered.

The question is, Will the Senate advise and consent to the nomination of Morgan Christen, of Alaska, to be United States Circuit Judge for the Ninth Circuit?

Mr. WHITEHOUSE. 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 Massachusetts (Mr. KERRY) is necessarily absent.

I further announce that if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

Mr. KYL. The following Senator is necessarily absent: the Senator from Kansas (Mr. MORAN).

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

The result was announced—yeas 95, nays 3, as follows:

[Rollcall Vote No. 231 Ex.]

YEAS—95

Akaka	Franken	Merkley
Alexander	Gillibrand	Mikulski
Ayotte	Graham	Murkowski
Barrasso	Grassley	Murray
Baucus	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Hatch	Portman
Bingaman	Heller	Pryor
Blumenthal	Hoeven	Reed
Blunt	Hutchison	Reid
Boozman	Inhofe	Risch
Boxer	Inouye	Roberts
Brown (MA)	Isakson	Rockefeller
Brown (OH)	Johanns	Rubio
Burr	Johnson (WI)	Sanders
Cantwell	Johnson (SD)	Schumer
Cardin	Kirk	Sessions
Carper	Klobuchar	Shaheen
Casey	Kohl	Shelby
Chambliss	Kyl	Snowe
Coats	Landrieu	Stabenow
Coburn	Lautenberg	Tester
Cochran	Leahy	Thune
Collins	Lee	Toomey
Conrad	Levin	Udall (CO)
Coons	Lieberman	Udall (NM)
Corker	Lugar	Warner
Cornyn	Manchin	Webb
Crapo	McCain	Whitehouse
Durbin	McCaskill	Wicker
Enzi	McConnell	Wyden
Feinstein	Menendez	

NAYS—3

DeMint	Vitter
Paul	

NOT VOTING—2

Kerry	Moran

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table. The President will be immediately notified of the Senate's action.

VOTE EXPLANATION

Mr. KERRY. Mr. President, I was necessarily absent for the vote on the nomination of Morgan Christen, of Alaska, to be U.S. circuit judge for the Ninth Circuit. If I were able to attend today's session, I would have supported the Christen nomination.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

MORNING BUSINESS

Mr. BEGICH. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business until 7 p.m., with Senators permitted to speak for up to 10 minutes each.

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

40TH ANNIVERSARY OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

Mr. BEGICH. Madam President, I come to the floor to first say ''thank you'' to my colleagues for supporting an incredible judge, but I also come to the floor today to mark an anniversary. December 18, 2011, marks the 40th anniversary of a truly historic date for the first people of Alaska—passage of the Alaska Native Claims Settlement Act. To mark this historic occasion, Senator MURKOWSKI and I have submitted a Senate resolution to formally celebrate the success and contributions of Alaska Native people and their corporations. We will be asking for the unanimous consent of our colleagues to adopt this resolution at a certain point.

Over the past 40 years, Alaska has witnessed astonishing economic growth resulting from ANCSA. This has benefited not just Native people but all Alaskans. This historic piece of legislation allowed a new group of people who for centuries were economically disadvantaged to enter into the business world and to become economic leaders. Under ANCSA, they have contributed to the State and national economies in unprecedented ways. ANCSA has two primary goals: to resolve longstanding issues surrounding aboriginal land claims in Alaska and to stimulate economic development.

Many Alaskans led the charge on creation and passage of the claims act. My father, the late Representative Nick Begich, was one of them. There were many new Native leaders involved—Willie Hensley, John Borbridge, and other young advocates who very quickly engaged in this historic Native rights legislation.

Today, I would also like to recognize all the wives, daughters, sisters, secretaries, and other powerful women who contributed to the passage of ANCSA. Many of them may not have received formal recognition of their contributions, women such as Marlene Johnson, who played an instrumental role in the creation and passage of ANCSA. She spent countless hours flying to and from southeast Alaska and Washington, DC, leaving behind her full-time job and five children, doing her part to see ANCSA move through Congress. To engage in negotiations, Alaskans would fly for days to get from Barrow or Fairbanks or Kotzebue to Washington, DC. Many of them camped out on couches and floors in Washington for months to get it done.

Today, Alaska Native corporations are tremendous economic drivers not only for Alaska but for the entire United States and even internationally. In 2010, 8 of the 10 most profitable businesses in Alaska were Alaska Native corporations. Of the five that topped $1 billion, all were Native corporations.

Cash dividends paid to corporation shareholders continue to be a very important source of income for many Alaska Native individuals and families. In total, dividends paid by Alaska Native corporations to their shareholders rose by 39 percent from 2009 to 2010, up to $171 million.

These dividends serve Native families in many ways. In some cases, they help provide basics, such as food and heating fuel or supplies and equipment to continue their subsistence way of life. For other families, shareholder dividends go into college savings accounts or new startup businesses. Sometimes they simply help offset the costs of caring for their aging loved ones.

For the business owners everywhere, Native and non-Native alike, shareholder dividends provide a major economic boost. Today, Alaska Native corporations and their subsidiaries are providing thousands of jobs across the United States. These corporations provide job training and scholarships and other support to create new opportunities for young shareholders and their descendents. The corporations also offer meaningful internships to help young Alaska Natives build longstanding professional careers within the corporate structure. Elders, the most respected people in the Native communities, receive special assistance and financial support from their corporations.

Clearly, 40 years later, many Alaska Native corporations have matured to become business leaders. Unfortunately, many others and the Alaska Natives they represent have not all had great success—yet.

The Alaska Native Claims Settlement Act was one approach, an experiment to meet America's treaty obligations to the first people of this country. I will continue to support the Alaska Native tribes while also strengthening the capacity of the Alaska Native corporations.

Now we look forward to the next 40 years of ANCSA. I call on my colleagues in this Chamber to work together to help all American Indian and Alaska Native people gain their economic independence. Through ANCSA, we see this happening in Alaska. Alaska Native groups are proud of their culture and heritage but also of their business success. We all should be proud of this success.

In Alaska, we innovate. We rely on fresh approaches to solve our unique challenges. The Alaska Native Claims Settlement Act is such an example. It was a monumental act of Congress—one my father pushed forward and I know is profoundly successful and one that today I profoundly defend.

With our national economy in its current state, we need more of this in America. We need to lift our people to build capacity and to allow the first people of this Nation to succeed. When that happens, we all benefit.

Madam President, Senator MURKOWSKI and I ask you and our colleagues to support this resolution to recognize and honor the impact and importance of the Alaska Native Claims Settlement Act. More important, it honors Alaska's first people and their extraordinary accomplishments over the past 40 years.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

NOMINATION OF MORGAN CHRISTEN

Ms. MURKOWSKI. Madam President, I feel as if this is a little bit of Alaska day here. We just celebrated the very successful nomination of Morgan Christen to the Ninth Circuit. I am really quite proud of Morgan and her accomplishments. As an Alaskan and as an Alaskan woman, to achieve what Morgan has achieved, to be the example she has set makes me quite proud today. So I am pleased the Senate gave her such a resounding confirmation. This is quite significant for us, and Alaskans are feeling good today.

40TH ANNIVERSARY OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

Ms. MURKOWSKI. As Senator BEGICH mentioned, Alaskans are celebrating other occasions this week as well.

I rise today to speak about a resolution Senator BEGICH and I have submitted that recognizes December 18, 2011, as the 40th anniversary of the Alaska Native Claims Settlement Act. Our resolution recognizes and commends the significant achievements Alaska Native people have made over the past 40 years through their congressionally created Alaska Native corporations.

Not only has the Alaska community risen to the challenge of creating sustainable businesses, but they have created employment opportunities for our Nation's citizens really across the country—not just located in the State of Alaska but really all across our country and through the world. Alaska Native corporations continue to make significant contributions to their communities, our Nation, and the global economy, and for this they should be commended and they should be applauded.

Our resolution encourages the citizens of the United States to acknowledge and support the leadership and continued efforts of Alaska Native people in managing their resources through the Alaska Native corporations. The resolution also sends a strong message of support to thousands of Alaska Native youth from across the State who are working and contributing positively to their families and to their communities, focusing their efforts on earning a college education, participating in cultural activities, and realizing a dream that they may one day earn places of leadership within their own corporations. Their efforts are recognized and appreciated.

Over this coming weekend, Alaska Natives and advocates from across the United States will participate in community dialogs and celebratory events to reflect upon what has been accomplished over these past 40 years since passage of ANCSA. Participants will focus on the next steps that are needed to improve upon the continued success and the unity of Alaska Native tribes, villages, and our corporations.

Through their participation and commitment to management of their resources through the vehicle of Alaska Native corporations, many young Alaska Native people will embark upon a lifetime journey of service, community engagement, and philanthropy. Alaska Native corporations have afforded a unique opportunity for Alaska Native people to gain valuable insights into the business world, while maintaining thoughtful focus on issues concerning Alaska Native tribes and communities.

The next generation of Alaska Native people will continue to make positive changes in the world around them through acquired leadership skills, cultural advocacy, and community engagement, and through their dedication and enthusiasm, the next generation of leaders honors the previous generation of Alaska Native leaders who really worked so very diligently to achieve the passage of the most significant Native lands settlement in our Nation's history.

In addition to all of the very remarkable young people who will one day be managers and policymakers of their Native corporations, I honor the work of those who contributed to the success of the passage of the Alaska Native Claims Settlement Act. It was no easy feat negotiating this very complex piece of litigation. It took the drafters years for the settlement to be discussed, to be interpreted, analyzed, debated, negotiated, and finalized. It was truly an accomplishment.

While no piece of legislation can claim perfection, the original drafters of the ANCSA bill worked tirelessly to achieve a fair and a just settlement for the native people of Alaska and the ever-evolving document has had a number of significant amendments that have considerably improved the original bill.

While a list acknowledging all of the Alaska Native leaders and advocates who worked on the act would prove impossibly long, I wish to recognize a few of the people who have since passed, who played an instrumental and an unforgettable role in its passage.

First, U.S. Secretary of the Interior, Secretary Udall. I had both TOM and MARK UDALL sitting right in front of me before I began my comments here. It is a tribute to him that he did so much in his service as Secretary of the Interior. Also our own Senator Ted Stevens and his efforts; U.S. Congressman Nick Begich, who was instrumental in passage of ANCSA, and Morris Thompson, who is an Athabascan out of the Koyukon area. It was back in 1966 that Stewart Udall, who was Secretary of the Interior then, responded to pleas from Alaska Native groups, imposed a ''land freeze'' on all land in Alaska under Federal control, which amounted to about 96 percent of all the land in the State at the time. Secretary Udall helped develop a program for solutions to the Native land claims issue throughout the State. Although ANCSA at that time was still in its infancy, the freeze prevented the transfer of all remaining Federal lands and would remain in effect until the Native land claims were resolved. Without that freeze, the Alaska Native people might have won their claim but they may not have had lands to select.

Senator Stevens, in his role, called his work on the unprecedented landmark legislation of ANCSA his Senate baptism of fire. In a 1991 newspaper article, the Senator is quoted as saying that he believed a settlement could be achieved because of his ''faith in the determination and the unity of purpose of Alaska's Native people.'' Senator Stevens was one of the advocates who pushed for the 40-million-acre land provision versus the 1 million acres the White House had initially proposed.

With threats looming that subcommittee sessions would be called off, which would effectively end a negotiated settlement, Congressman Nick Begich played a key role in keeping the legislative process moving. By the end of the negotiations, the subcommittee package was a tribute to the Congressman's role as architect of the House compromise. One veteran lobbyist said:

> It is the best individual achievement I have ever heard of for a freshman Congressman.

I would be remiss in not mentioning the very unforgettable Morris Thompson. At 34 years old, Morris was the youngest commissioner of the Bureau of Indian Affairs. He held a Cabinet position in the Nixon administration and,

with his Interior Department positions, Morris was very deeply involved in passage of the ANCSA at the time. He was a prominent leader in the Native, corporate, and political worlds. He was known for a good sense of humor, wit, and wisdom, but was also a very savvy businessman who led Doyon, which was an Alaska Native regional corporation, to great success. His lifelong commitment to the people and progress of Alaska truly lives on in his legacy.

I am proud of all these people. I value their idealism, their energy, dedication, and unique perspectives they brought to the table in working toward the initial crafting of the Alaska Native Claims Settlement Act.

I thank Senator BEGICH for standing with me to submit this important resolution that acknowledges the hard work of the Alaska Native people in the success of their Alaska Native corporations on this 40th anniversary of passage of the Alaska Native Claims Settlement Act. I know Congressman YOUNG joins with us in celebrating this anniversary as well.

HONORING RAY MALA

Since, as I mentioned, we are working a little bit on Alaska Day, I wish also to take a couple of moments here to recognize yet another Alaskan leader, truly an Alaskan legend. Two days after Christmas of this year would have marked the 105th birthday of an Alaska legend, Ray Mala. Despite insurmountable odds, Ray Mala dared to dream and he went on to become our Nation's first Native American international film star. He would have been 105, or he will have been, 2 days after Christmas, but he was our Nation's first Native American international film star. He was born in the remote village of Candle, to an immigrant father of Russian Jewish descent. He was fluent in both English and his mother's native language of Inupiat. He was a skilled hunter. He learned the Inupiat ways from his maternal grandmother, Nancy Armstrong, and while the family lived a traditional lifestyle, Mala learned to walk in both the traditional and modern worlds. Facing poverty, Mala was a very accomplished hunter, using a bow and arrow to catch whatever food he would bring home. Wearing a handmade fur parka, he and his grandmother would traverse through harsh arctic storms in pursuit of subsistence land animals. When they would return home, Mala would pour himself into academic studies at the local school, always striving to improve himself.

At age 16 he made his acting debut in the film ''Primitive Love.'' Mala was initially hired as a laborer on the remote film set there in the State, but film makers discovered his natural talent behind the camera and, as I say, the rest is history. He was bitten by the acting bug. Mala set out for Hollywood. He worked his way up from sweeping the stage floors to being an assistant cameraman at Fox Studios.

Initially he was turned down for any leading roles because of the his mixed Eskimo-Jewish heritage, but Mala landed his first role in the silent film ''Igloo,'' which was shot in Barrow, AK. The film's success earned him the title of the Eskimo Clark Gable.

In 1932, Metro-Goldwyn-Mayer, MGM Studios, sent a film crew from Hollywood to Nome. My mother was born in Nome in 1932. Nome was a pretty interesting community back there, still very rough around the edges, but they sent a film crew to Nome to begin shooting the film that would thrust Mala into stardom. MGM struck gold with the film ''Eskimo,'' a film also called ''Mala the Magnificent,'' the first full-length feature film ever shot in Alaska. Mala became Alaska's first Hollywood film star and also the first nonwhite actor cast in a leading role. Over the span of his career, Mala would appear in over 25 films, all the while winning devoted fans across generations, across cultures—they loved him. His widely acclaimed role in ''Eskimo'' would earn Mala his place in Hollywood history.

He was more than an actor. He also excelled in cinematography and screenwriting. Keep in mind, this is a young Eskimo boy, raised in the traditional ways back in the early 1900s. Not only is he picked up by Hollywood and is a phenomenal actor, but he also excels in cinematography and screenwriting. He worked on films with many legendary filmmakers, including Alfred Hitchcock and Cecil B. DeMille. But his blossoming career was cut short by his death at age 45 due to heart complications. Mala faced many challenging personal circumstances, such as racial discrimination, at a very early age. But that did not prevent him from achieving both personal and professional excellence. I am sure he would be very proud to see that his grandson was following in his acting footsteps.

This year, in her newly released book ''Eskimo Star,'' author Lael Morgan chronicled the inspirational life story of Ray Mala, and the State of Alaska hosted a Ray Mala film festival celebrating Mala's films in community theaters from Juneau all the way up to Point Hope.

It is a great honor for me to reflect on the life of this inspirational Alaska Native icon, and to offer a tribute to his spirited and very triumphant journey from small-town village boy to silver screen leading man. Alaskans look forward to the day when Ray Mala's magnificent star might be posthumously added to the Hollywood Walk of Fame, a tribute to the Nation's first ever Native American film star.

It is a good way to end our Alaska day series. I appreciate the indulgence of my colleagues.

I yield the floor.

The PRESIDING OFFICER (Mr. FRANKEN). The Senator from Iowa.

THE ECONOMY

Mr. GRASSLEY. Mr. President, it seems the President of the United States has finally acknowledged that the economy is in a terrible state and there is nothing he can do about it. So, rather than offer new ideas to grow the economy, the President has now shifted into blame mode. I recognize that the slow economic growth and high levels of unemployment are having a significant impact on the middle class. But rather than listen to political rhetoric and witness finger pointing by President Obama, the unemployed would likely prefer ideas, ideas on how to turn this economy around.

I presume President Obama aspired to lead the country because he believed he had the vision and the ability to lead to a more prosperous nation. But beyond the vision, a President also needs a plan and the leadership to put that vision into place. Where is that leadership? During the past 3 years, we witnessed President Obama's theory on economic stimulus. We saw a massive expansion of government and deficit spending. More than $800 billion was spent on a failed economic stimulus bill that was supposed to keep unemployment below 8 percent. But it did not. Government spending in the process has reached an unprecedented level. Today, the size of government, if you combine local, State, and Federal, is 40 percent of our gross national product. One hundred years ago when Teddy Roosevelt delivered his speech in Kansas, it was 8 percent. I refer to Teddy Roosevelt and the speech in Kansas because the President of the United States now tried to duplicate that speech 100 years later.

Today, government consumes 40 percent of the entire economy. According to economic policies of President Obama, government needs to grow even bigger to help our economy, and in the process there is a goal to use government to redistribute wealth. If government gets a little bit bigger, the argument goes, and if it gets a little more involved, and particularly if it gets involved in every facet of our economy and our lives, that will surely increase economic prosperity of all Americans. Right?

Of course not. All of this has led to taxes and deficit spending that crowd out private investment that could grow the economy and, in the process, create jobs. Government doesn't create self-sustaining jobs; government only creates government jobs. The private sector creates jobs. It is the responsibility of the government to create an environment that leads to job growth. It does this by instituting the rule of law, property rights, the patent system, among others—and there are a lot of others I ought to add to it. Government sets the tone.

Remember, government consumes well, it does not create well. Through economic freedom, entrepreneurs are free to innovate and prosper. This economic success leads to higher standards of living and a better quality of

life. Importantly, these gains do not come then at the expense of others. Contrary to what some would have you believe, business growth does not have to come at the cost of others. In other words, it is not a zero sum game. In fact, business success and economic growth lifts all boats through employment gains, higher wages, and value to consumers, among a lot of other things that could be mentioned.

There are some who believe that individual success cannot be achieved without government involvement or intervention. What is more, they believe an individual's success must mean that someone else has been deprived or they believe if someone else is successful, the success was achieved collectively only with the help of government or others in society. This line of thinking concludes that government and society is, therefore, entitled to some of those achievements.

President Obama's recent speech in Kansas provides great insight into his economic theory. He clearly believes government should be involved at every level of individual and business activity. The President says that hard-working Americans should be rewarded for their achievements. However, his economic vision demonstrates his belief that individual success is due to society, not because of hard work or individual effort. This line of thinking is in stark contradiction to our country's founding principles that government exists to allow for the individual to achieve success and the pursuit of happiness.

The idea of government intervention runs contrary to our founding principles of individual and economic freedom. Government exists to serve the needs of people rather than people serving the needs of their government. There are some who believe government is the only creator of economic prosperity, but if others have achieved success, they must be, by default, the cause of other people's hardships. This type of class warfare demagoguery is harmful to our country and our country's future and our people's future, and it has the end result of dividing America. It creates envy, hatred, and resentment toward those who have worked hard, played by the rules, and achieved success. This divisive rhetoric seeks to put blame on the successful for the hardships of those who have been hurt during this recession.

Most Americans don't support President Obama's divisive vision and rhetoric. The American people still believe if you work hard and play by the rules, you can be successful and you can flourish. I doubt the majority of Americans believe it is the goal of government to intervene in this process. In fact, most Americans would be happy to have the government get out of the way. Most Americans believe in individual responsibility and liberty, including freedom to succeed and freedom to fail.

It appears President Obama's commitment to these fundamental freedoms is less sure. Based on his recent speech in Kansas, it seems the Federal Government is the answer to all of America's problems. According to the President, if we tax the wealthy, ensure they pay their fair share, we can get our economy back on the right track. President Obama wants the American people to believe higher taxes on job creators will lead to economic prosperity and create jobs. This is contrary to what Republicans know to be true. It is also contrary to the vision President John F. Kennedy knew to be true when in the 1963 tax bill he reduced the marginal tax rates very dramatically. President John F. Kennedy recognized the economic benefits of lowering taxes, so in his State of the Union Address on January 14, 1963, President Kennedy spoke of the need to increase economic growth and job creation. He stated:

> To achieve these greater gains, one step, above all, is essential—the enactment this year of a substantial reduction and revision in the Federal income taxes . . . A net reduction in tax liabilities . . . will increase the purchasing power of American families and business enterprise in every tax bracket.

He further stated:

> It will, in addition, encourage the addition and risk-taking on which our free enterprise system depends—induce more investment, production, and capacity use . . . and reinforce the American principle of additional reward for additional effort.

It is worth repeating. President Kennedy pushed for lowering Federal income taxes to encourage initiative and risk-taking to induce investment, production, and economic growth. President Kennedy recognized and believed in the American principle of additional reward for additional effort.

It seems to me, from the speeches that have been made recently, that our President—meaning President Obama—disagrees. It seems to me that he argues innovators and job creators should be subjected to punitive tax increases for being successful. He seems to believe economic growth will come by confiscating the wealth of job creators and sending that money to Washington, and I could not disagree more.

For Americans to prosper, we must first reduce the size of government. This year the Federal Government will spend about 24 percent of our gross domestic product. This type of spending has led to annual deficits above $1 trillion for the past 3 years. The total debt stands at over $15 trillion. This is 100 percent of our gross domestic product. The size of government, the size of deficits, the size of debt, and the size of interest payments are unsustainable over the long haul. We must reverse course.

Second, we must work to reform the Tax Code to provide certainty and predictability. Nearly every day our President is on the campaign trail talking about tax increases. It is no wonder our job creators, particularly small businesses, are reluctant to make business decisions or investments in this climate, which decisions we would hope if they would make them would obviously lead to a great deal of job creation in the private sector. This country doesn't need more taxes, we need more taxpayers, and the way to get more taxpayers is to have more people working.

The President's threat of higher taxes is directly inhibiting job growth and economic expansion. It is time for President Obama to recognize that with 13 million Americans unemployed and anemic economic growth, tax increases will harm, not help, economic recovery.

Finally, we had a recent Gallup poll finding that compliance with government regulations is the single biggest issue facing small business owners today. You might think we would emphasize the Fortune 500 big corporations when it comes to creating jobs, but we know that 70 percent of the new jobs in America are created by small business, so we ought to be concentrating on what small business people are telling us about the economy not turning around.

Small business owners, when it comes from the standpoint of regulations, need to spend less time and money making sure they comply with burdensome and needless Washington regulations. Those valuable resources should be spent growing their business, hiring more workers, and as a result growing our economy. We must halt the Federal Government regulations binge. For many of these new regulations, the cost of compliance outweighs the public benefit. They are acting like a wet blanket on our economy. There should be a moratorium on new regulations.

I want to give you a perfect example that is now an issue before the Congress, the Keystone XL Pipeline. At a time of high unemployment and energy costs, the Federal Government should not be standing in the way of private investment that will create jobs and increase our energy supply. It is unconscionable that the largest private shovel-ready construction project is being delayed by President Obama's decision to override two different studies by the State Department and that there was no negative environmental impact. It seems the only jobs President Obama is interested in creating are government jobs or government-subsidized jobs. The unfounded delay should be ended and the pipeline project should move ahead.

This situation typifies the Obama philosophy that the free market and intelligent Americans are incapable of making informed decisions. The argument we hear is that Americans are not smart enough to know we need solar energy rather than fossil fuels. So our big government caretaker uses ½ billion in taxpayer dollars to support a solar company while simultaneously blocking an entirely private enterprise from developing an oil pipeline that will make us much more energy independent. We have seen how the decision by the government elite to support

Solyndra has worked out. It was a complete failure.

It is time we got out of the way of the Keystone Pipeline. I hope the American people will dismiss the economic theories and visions of our President as he seeks to divide our country. I believe we can achieve a prosperous future by empowering individuals rather than our Federal Government. Americans are smart enough to put their trust in themselves and their neighbors, not in bigger government. It is time to end the political blame game and divisive rhetoric and, instead, work on genuine and real policies that will create economic jobs and, more importantly, economic growth that is going to help all Americans; in other words, expanding the economy because this does not have to be a zero sum gain. We can have more for more people, and if we don't have more for more people, we are going to have less for more people and everybody is going to lose out.

Mr. MERKLEY. Mr. President, we are in the midst of an important debate over whether we will allow all working Americans to be hit with a big tax increase next year.

This is a critical measure of relief for our working families in these tough times. During the aftermath of the most severe recession since the Great Depression, many middle-class Americans cannot afford to lose the $1,000 the average family receives from this tax cut. Furthermore, economists across the spectrum believe that extending the payroll tax cut is a critical step in building momentum toward a stronger recovery and minimizing the chances that our economy could slip back into recession.

While keeping working Americans from being hit with this tax increase is our first and most important priority, we must also look to what is best for our economy when deciding on offsets for the cost. The offset in the bill that we voted on 2 weeks ago made good sense: asking millionaires and billionaires to fund a fairer share of our national budget. I am concerned, however, about a new offset provision in S. 1944 that increases the guarantee fee on mortgages backed by Fannie Mae and Freddie Mac. I am very wary of placing additional costs on new mortgages given the ongoing crisis in the housing and mortgage markets. Moreover, if there is such a fee increase, it should be used to strengthen our battered housing market.

I look forward to discussing other offsets with my colleagues as we continue this debate. This much is clear: Keeping this tax cut in place is a huge factor in the success of our working families and a huge factor in the recovery of our economy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

FEDERAL WORKERS

Mr. CARDIN. Mr. President, it is time for Republicans to end their war on dedicated, hard-working middle-class Federal employees. Who are these Federal workers? They are the Veterans' Administration's nursing assistants who care for our wounded warriors; the Department of Defense civilian employees who support our military troops at home and abroad; Social Security Administration claims representatives who process benefits to our Nation's senior citizens and people who qualify for disability payments. They also include Nobel prize-winning scientists who are conducting groundbreaking research at the National Institutes of Health and the National Aeronautics and Space Administration on everything from fighting cancer to understanding the origins of the universe; the Environmental Protection Agency and Food and Drug Administration staff who keep our air and water clean and our food and drugs safe; the Federal Aviation Administration's air traffic controllers who keep the skies safe; also, the Department of Justice, Federal Bureau of Investigation, and United States Marshal Service attorneys and law enforcement officers who track down and arrest and convict terrorists and drug cartel and gang members.

The list of those who are on the front line of public service goes on and on. Federal employees are dedicated and hard-working, and like many other Americans, many of them are struggling to deal with their family budgets. And yet Federal employees are already contributing $60 billion to the deficit reduction through a 2-year pay freeze.

They have already contributed to deficit reduction. They were the first in line to try to help balance our budget.

Like their private sector counterparts, Federal employees haven't been immune to the country's economic woes. They are confronting similar hardships: disabled or unemployed spouses, declining home values, rising gasoline and living expenses. Many Federal employees head single-parent families. As do other Americans, many Federal employees struggle to pay their mortgages and find ways to send their children to college.

H.R. 3630, the House Republicans' payroll tax cut bill, would require 2 million Federal employees to shoulder nearly one-half of the cost of a tax reduction that benefits 160 million Americans. So what the Republican bill is doing is extending the payroll tax reductions for working families, but saying to the middle-class Federal worker: You are going to pay most of the burden. That is not going to help our economy. That is not the right way to extend the payroll tax reduction.

The current Republican assault on our Federal employees is piled on top of the current 2-year pay freeze, which is piled on top of a workforce already lagging behind the private sector when it comes to pay. According to the nonpartisan Congressional Research Service, average wages among all workers in our economy have risen over 600 percent since 1969, while salaries for civilian Federal employees have grown by a little over 400 percent since 1969. There is a widening gap between public sector employees and the private sector.

What these proposals would do is widen that gap even further.

Republicans want to extend the current pay freeze for another year. That would cost a Federal employee who makes $50,000 annually about $800 a year. A 3-year pay freeze would cost GS–5 employees almost $4,000 in cumulative lost salaries; for GS–7 employees, almost $5,000 in cumulative lost salaries; and for GS–9 employees, almost $6,000 in cumulative lost salaries.

The Republican bill would require massive increases in the contributions current and future Federal employees make to their retirement system—a system that is currently fully funded—while slashing benefits. That is rubbing salt in the wound of the additional pay freeze. So the Republican bill takes a 2-year pay freeze and adds a third year pay freeze and tells our employees to triple their contributions to their retirement system, which is another pay cut. It is not only a freeze, Republicans are proposing. It's a pay cut for our Federal workers.

In addition to these assaults, we are already asking the federal workforce to do more with less. As my colleagues have noticed, when it comes to job growth numbers, the public sector numbers aren't going up; they're going down. But the workload isn't going down. We are asking our Federal workers to do more with less, to have a 2-year pay freeze, and now to take a pay cut. That is not fair.

The Republicans save their most severe punishment for future Federal employees, making it clear that their intention is to provide as many disincentives for people to consider a career in public service as possible. Increasing pension contributions for future hires by 3.2 percent would force an employee making $30,000 a year to pay $1,200 rather than $400. We should be embracing people who are willing to engage in public service. The Republicans are doing just the opposite.

It is time for the Republicans to stop their war on hard-working Federal employees. Increasingly, the Federal workforce is being asked to do more with less. Increasingly, the Federal workforce is being asked to shoulder a disproportionate share of deficit reduction. It is time to stop that assault. I think it is time we all properly recognize the dedication, hard work, valor, sacrifice, and professionalism of our Federal workers.

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

I withdraw my request.

The PRESIDING OFFICER. The Senator from Iowa.

HEALTH CARE REFORM

Mr. GRASSLEY. Mr. President, in the past 3 weeks I think I have come to the floor three times to discuss the case on the President's health care reform bill: one time to discuss the constitutionality of the individual mandate and another time to deal with the severability clause. I come now to speak about the unconstitutionality of the massive expansion of Medicaid. Those are three of four issues that the Court is going to deal with. My colleagues probably remember the Court has extended the period of time they normally deal with arguments before them from 1 hour to 5½ hours because this is such a very important case.

Today I wish to talk about the far-reaching implications of this mandate, but also about the constitutionality of the Medicaid expansion. If the Supreme Court rules the individual mandate unconstitutional, it will have the effect of striking down this new law that has not been fully implemented. If the Supreme Court rules that the Medicaid expansion and the Affordable Care Act is unconstitutional, it has the potential to cause significant changes in a program that has been in operation for the last 46 years.

Just to remind everybody about Medicaid, it was created in 1965 at exactly the same time Medicare was created. Where Medicare was created to provide health care coverage for our senior citizens, Medicaid was created as a safety net for low-income individuals. Medicare is run exclusively by the Federal Government. Medicaid is a Federal-State partnership. The Federal Government sets the parameters of the Medicaid Program. It pays at least half of the program in every State but then turns the functional operation of the Medicaid Program over to the States.

In the 46 years since both programs were created, eligibility for the Medicare Program has been essentially unchanged. On the other hand, eligibility for the Medicaid Program has expanded significantly through the years and, with that, the program has grown dramatically as well.

Medicaid, when it was created, covered fewer than 5 million. Today, the Medicaid Program currently covers nearly 57 million. The program spends more than $300 billion each year.

Medicaid has expanded so dramatically for two reasons. First, at various points in the last 46 years Congress has mandated that the States increase eligibility and services for the program. Second, Congress has also given the States the option to expand their eligibility. When Congress gives States the option of expanding their eligibility, States can expand and the Federal Government will still provide its proportionate share of Federal dollars.

For instance, one of the programs I helped get passed with Senator Kennedy from Massachusetts when he was a Member of the Senate was a program that allowed some help for families who had particularly high health care costs for kids—something that was just catastrophically high. That is just one example.

The decision to expand is up to the States. When Congress mandates the States expand eligibility, States can either expand their programs or forfeit all Federal funds for the program.

Now, this is what we call an all-or-nothing requirement. It has been used in every expansion of the program. The all-or-nothing requirement on States has not only been used to expand eligibility within the Medicaid Program, but it has been used to expand services and require changes in the administration of the program.

If the Federal Government wants States to cover podiatrists in Medicaid, the Federal Government can mandate States to do so. If a State doesn't do it? Withhold all Federal dollars to that State. If the Federal Government wants States to implement a secondary payer program to ensure that services are being properly paid by private dollars, the Federal Government can mandate States to do so and withhold every Federal dollar if that State refuses to go along.

It has been a staple of the program for 46 years that the Federal Government can require States to do certain things in Medicaid. Now comes along the Affordable Care Act. That act requires States to expand their Medicaid Program to cover all individuals up to 133 percent of the poverty level. It is the first expansion of Medicaid's mandatory eligibility groups since the all-or-nothing expansion in the bills of 1989 and 1990. Those were both reconciliation acts.

It is this all-or-nothing requirement that States are challenging and that the Supreme Court will consider next year and has given a certain portion of the 5½ hours just to debate this issue. So I think that means the Supreme Court thinks this is a very significant issue they are being asked to consider.

So I would like to describe the arguments being made by the States that this is an unconstitutional use of congressional power. The States argue that the 10th amendment limits the power of Congress to coerce States to accept Federal funds as opposed to providing inducements. The States argue that a restriction on Federal funds compels rather than induces if its burdens and losses as they affect vital ordinary State functions are too burdensome and costly. So I quote from their position:

> By conditioning all of the States Federal Medicaid funding—for most States, more than a billion dollars each year—upon agreement to substantially expand their Medicaid programs, the Affordable Care Act passes the point at which pressure turns into compulsion and achieves forbidden direct regulation of the States.

The part of the quote which says it is at the point where pressure turns into compulsion makes the act unconstitutional because it has always been a principle that the Federal Government can put certain conditions on States, but if it reaches a point where the State has to do it, in this case the States say: You have really gone too far.

The Affordable Care Act withholds all Federal dollars, then, from States that refuse to submit to the policy dictates of the Congress. Medicaid accounts for more than 40 percent of all Federal funds that States receive. States spend on average 20 percent of their State budget on Medicaid. Federal funds cover, on average, 57 cents of each dollar spent on the program because previously I said the Federal Government gives every State at least 50 percent, but the average of all 50 States is 57 percent of the Medicaid dollars coming from Federal dollars.

In my State of Iowa, for instance, I think it is 63 percent from the Federal Government and 37 percent of State funds. So the loss of all Federal Medicaid funding would obviously be devastating to the States.

The States maintain that the law's expansion of Medicaid was deliberately designed to force the States to agree to expand the program because of the threat that a State's entire Federal funding stream would be cut off if they decided not to go along with decisions made in Congress. In the harshest terms, they were made an offer they could not refuse. Further quoting from the States' argument:

> The Affordable Care Act essentially holds the States hostage based on their earlier decision to establish a Medicaid infrastructure and accept federal funds subject to different conditions.
>
> The Affordable Care Act uses the States' decision to accept earlier federal inducements against them, and, in doing so, presents states with no real choice: they must abandon completely the existing Medicaid system and funding or accept the radical new conditions. This amounts to a massive bait-and-switch.

The States are arguing to the Supreme Court that there is no way the States can turn down a Federal inducement as massive as all Medicaid funding.

This is especially true because the effect of declining is that the State's own taxpayers have to pay the full cost of providing health care for the neediest citizens of the State and, at the same time, provide the Federal Government taxes for Medicaid funds that would be distributed to pay for the program, including expansion in the other 49 States.

Since no State could make taxpayers fund the State and Federal portions of Medicaid, while also taxing their citizens to pay for Medicaid in the other 49 States, it is a phony choice, not a real choice, for the States to turn down the money to expand their Medicaid Programs. In other words, the States are being compelled to do so.

The States argue that giving notice of the coercion they face does not make the choice any less coercive, and they argue that when States originally accepted Medicaid, they were not

warned that their participation would put them at the mercy of any future unpredictable congressional demands.

The States are arguing Congress can change Medicaid, and Congress can condition the funding for those changes on State agreement to them.

But it cannot force changes on the States by threatening them with the loss of the entirety of Federal funds.

Although the Federal Government will pay the vast majority of the cost of expansion, the States also point out that coercion turns on the financial inducement that Congress offers, not the amount a State is coerced to spend.

The critical issue is what is referred to as the ''coercion doctrine.'' The coercion doctrine protects the States' decision whether the inducement is worth the cost.

Among the controlling cases is South Dakota v. Dole in 1987. The Supreme Court there upheld a Federal law that threatened States with the loss of 5 percent of Federal highway funds if they did not raise their drinking age to 21.

Remember, that was only 5 percent of their road funds, not 100 percent of their road funds, as in the case of the all-or-nothing in the case of Medicaid, where if you do not go along, you are going to lose everything.

So in that Dole case, writing for the majority, Chief Justice Rehnquist noted:

> Our decisions have recognized that, in some circumstances, the financial inducement offered by Congress might be so coercive as to pass the point at which ''pressure turns into compulsion.''

In the years since the Dole decision, Federal courts have yet to establish a clear test for coercion. I assume that is what could happen if they would overturn Congress's decision; that there would be a clearer test of coercion in this Affordable Care Act.

The Supreme Court will be challenged in this affordable care act case to determine where the limits of Federal coercion, if any, lie.

It is difficult to overstate the potential implications of this particular aspect of the affordable care act in the case that is being appealed.

There are three specific ways this decision could have a profound impact on Federal policy if the Supreme Court rules in favor of the States.

A ruling for the States could affect future Medicaid policy, current Medicaid policy, and broader Federal-State partnerships.

The expansion of Medicaid in the Affordable Care Act was written to minimize the cost to the States. The Federal Government pays for 100 percent of the cost of the Medicaid expansion in the first few years, before transitioning to an approximately 92-percent share of the cost of the expansion.

If the Federal Government cannot require expansion of the Medicaid Program and pick up 92 percent of the tab, what can the Federal Government require? Would a mandatory expansion be constitutional if the Federal Government permanently paid for 100 percent of the cost? Could the Federal Government mandate future expansions if they were much smaller in scope, such as in the 1989 and 1990 mandatory expansions under those reconciliation bills?

If the Federal Government wanted to require States to cover podiatrists or implement a secondary payer program, could it do so using Federal funds as leverage to require it?

A ruling in favor of the States would raise those questions.

Further, if the current mandatory expansion of Medicaid is unconstitutional, what does that imply for previous expansions and policies?

In the 1989 and 1990 acts, when Congress required States to expand eligibility for women and children, Congress did so without providing any additional funding to the States beyond their normal share, which in the case of Iowa today would be 63 percent Federal, 37 percent State.

If the Supreme Court rules in favor of the States, will previous mandatory expansions to Medicaid be subject to challenge? Will a State be able to challenge the existing enforcement mechanism of withholding Federal dollars if a State wants to ignore a service requirement or an antifraud provision? These questions will then have to be answered.

Finally, a Supreme Court ruling on a coercion test necessarily has broader implications for all Federal-State partnerships. The original Dole case was about transportation funding.

A Supreme Court ruling in favor of the States will necessarily bring into question every agreement between the Federal Government and the States where the Federal Government conditions 100 percent of the Federal funds on States meeting requirements that are determined in Washington, DC.

It is certainly possible that such a Supreme Court ruling could require future Congresses to carefully consider a coercion test in designing legislation.

A Supreme Court ruling in favor of the States in this case could not only jeopardize the mandated Medicaid expansion in the Affordable Care Act but could challenge the fundamental structure of Medicaid and have broader implications outside health care.

One may ask: Does the Supreme Court have this case before it—and why does it have it before it?—a case with such broad and far-reaching implications? It is because of a massive restructuring of our health care system in a partisan fashion, using nearly every procedural tool at the majority party's disposal in accomplishing the goal of passage.

The constitutionality of this law has been challenged in numerous courts throughout the country. These challenges will soon be heard before the Supreme Court. While most people want to focus on the individual mandate, it is important we do not forget the potential consequence of the Medicaid question before the Court.

It could, obviously, strike the expansion in the Affordable Care Act. It could hamstring future Congresses as they consider potential policies for the Medicaid Program in the future. It could threaten the fundamental structure of the Medicaid Program by bringing into question all the requirements on the States in the program today. It could require future Congresses to consider the structure of every Federal-State partnership.

We are here discussing this because the White House and the Democratic majority put their partisan goals ahead of collaboration with Republicans and States to build legitimate public policy—contrary to how most social policy in this country has been devised: Social Security, bipartisan; Medicare, Medicaid, bipartisan; civil rights laws, bipartisan—but not this Affordable Care Act, a partisan document.

Now we see that far more than this one specific policy is threatened. If the Supreme Court accepts the States' argument, a host of constitutional questions will surround the operation of many Federal funding streams to the States. It would be difficult to overstate the significance of such a ruling. I have outlined it was not necessary for the Congress to have taken action that might produce that result.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

CUBA TRAVEL POLICY

Mr. RUBIO. Mr. President, there is a lot of conversation in the building today about one of the provisions that is holding up the omnibus; they are saying this is Cuba travel, families traveling back to Cuba. I have strong opinions about that as well. Suffice it to say that it is important to let my colleagues know what is being asked for in the omnibus, and what will be coming over here if it is kept in, will not prohibit families from traveling to Cuba. It will limit the amount that they can. That is a wise policy, one that I support, because it limits access to hard currency to a tyrannical regime.

I am here to talk about a different part of the Cuba policy, however, Cuban travel, which does not get a lot of notice these days, but it is part of conversations that are ongoing with the administration and the State Department with regard to some of the appointments they have in the Western Hemisphere, and that is the so-called people-to-people travel.

I have here in my hand an immediate release from January 14, 2011, titled ''Reaching Out to the Cuban People.'' It came from the President, where he announced a series of steps to continue efforts to reach out to the Cuban people in support of their desire to freely determine their country's future.

One of the changes they made is to something they call purposeful travel. It says here:

The President believes these actions—

Which I am about to describe—

combined with the continuation of the embargo, are important steps in reaching the widely shared goal of a Cuba that respects the basic rights of all its citizens.

Right here in this release—and I am glad he wrote it—the President is stating that in combination with the embargo, the steps that he wanted to take, the goal of these steps was reaching the widely shared goal of a Cuba that respects the basic rights of all of its citizens. That is the reason why he made these policy changes. So far so good.

Let me tell you one of the policy changes. It is called ''restore specific licensing of educational exchanges not involving academic study pursuant to a degree program under the auspices of an organization that sponsors and organizes people-to-people programs.''

What that means in plain English is this is not colleges or universities; these are organizations not for degree credits—educational in purpose, but not for degree credits. What we want to do is encourage them or allow them the opportunity to take Americans to Cuba under their auspices.

Again, remember, the goal here is to bring about, as the President stated, ''the widely shared goal of a Cuba that respects the basic rights of all of its citizens.'' That is the purpose of these trips.

I decided to look up some of these trips, and let's look at some of the itineraries. They are very interesting. Let me read you one. This one is from an organization called Insight Cuba. It is located in New York. I am not going to advertise their Web site. Let them pay for it. But I will tell you this. There is an itinerary for something called the Cuban Music & Art Experience. Sounds interesting, the Cuban Music & Art Experience. Let's go to some of the highlights.

Day 2 in Havana. You are going to get to meet with the Castro Ministry of Culture to learn how Cuba promotes the arts on this diverse island. You are also going to get to spend the evening—and this will become a familiar theme here—dusting off your dancing shoes, because tonight you are going to head off to Casa de la Musica. Here you will enjoy performances by local Cuban artists and, of course, dance. They put an exclamation mark after it. This is an important part of this trip. This is day 2 of this trip designed to promote, as the President wrote, ''the widely shared goal of a Cuba that respects the basic rights of its citizens.''

Day 3 is interesting too. You get to go to this place Casa de la Amistad, which basically means Friendship House. There you will meet with your Cuban ''host'' which I would bet you right now is members of the Castro government and perhaps enjoy another exciting musical performance. Then you spend the evening of day 3 back at Casa de la Musica for some incredible salsa music and dancing.

Day 4 is the real highlight of this trip. This is not to be missed. You get to fly to Santiago de Cuba. Guess where you get to visit. You get to visit a place called Quartel Moncada, which is basically an old army barracks where, on July 26 of 1952, Fidel Castro launched the Cuban revolution. You get to visit this place where Fidel Castro's revolution actually began. Imagine. I can see where that begins to further ''the widely shared goal of a Cuba that respects the basic rights of all of its citizens.''

Guess what you get to do at night. You guessed it. You get to spend the night at a music and local dance club to hear performances by Cuba's most popular artists and you get to dance. It goes on and on.

Day 5 has dancing.

Day 6, you get to visit the historic Granma Province, which is known as the birthplace of Cuban nationality. You get to meet with the Cuban Institute for Friendship Between the People, which is a very catchy title. That night, you get to spend the evening at Casa de la Trova to dance and take in a performance of Cuban artists. It goes on and on.

Day 7.

Day 8.

This is quite an adventure and in pursuit of the government of Cuba that respects the basic rights of all of its citizens.

Let me share another one. Before I get to one, I think this is another Insight Cuba one. This one takes you, on day 1—this is called the Havana Jazz Experience, and on day 1, it takes you to explore the famous Cathedral Square, the City Museum, and the Havana Club Rum Museum. This is part of this effort to bring about freedom and democracy in Cuba. You get to go there. At night, you go to the jazz club La Zorra y el Cuervo. There you get to do some of the best dancing you can ever imagine, in a very intimate setting.

Day 3 brings you to Cojimar, which is a village which is the setting for ''The Old Man and the Sea'' which won the Nobel prize for literature in 1954, Ernest Hemingway, very interesting. You get to sit there at night and then you do get to go up to the hills where you get to learn about the religion of Santeria, which is an Afro-Cuban religion. You get to learn all about that.

Then at night you get to go back to Havana—you guessed it—for dancing at a local jazz club.

Day 4, you get to go to the infamous now—I have already mentioned it before—Casa de la Amistad, a historic mansion, where you will have the opportunity to observe a forum regarding United States-Cuba relations put together by the Cuban government, very interesting, in pursuit of the goal of a Cuba that respects the basic rights of all of its citizens. You spend the night at a jazz cafe, where the seaside view is almost as impressive as the musicians who play there nightly. I am guessing now, I am not sure, but there might be some dancing involved on night 4 in Cuba.

Night 5 is quite interesting too, because there you get to learn from the actual Cuban musicians about the sensual and passionate rhythms of their music, and you round out the day with a 2-hour salsa class, in furtherance of freedom and democracy. That is trip No. 2.

There are a lot of these. There is one more. This one is good. This one is called ''Cuba for Educators: Ethics & The Revolution.'' So you go to Cuba to learn about ethics from the Castro regime.

On day 2 you get to visit the Museum of the Revolution where you will learn about the ethical foundations of the Cuban revolution. This is not to be missed. Clearly we want to learn about ethics from the Castro regime. Then you get to go to the Literacy Museum, where you get to learn about Cuba's war on illiteracy, which was one of Fidel Castro's goals in his 1960 speech to the United Nations.

Day No. 3, you get to meet the Ministry of Public Health, which I assure you is a government employee, because it sounds like it, Ministry of Public Health, and you get to discuss why revolutionary ethics demand free public health care, while our own society will not even consider it. Very interesting. It goes on and on. And, by the way, there is a bunch of dancing in this one too. But I think you get the point. This is run by a group called the Center for Cuban Studies.

Why do I say all of this? It is pretty simple. There is this sports show, I think it is on ESPN on Sunday nights where they review NFL highlights. Michael Irvin, who was a great player, has a segment called ''Come On, Man,'' where they put on some ridiculous things that happened during the day. He is like, ''Come on, man.'' When I look at this stuff, you know what I want to say? Come on, man.

This is about promoting democracy and freedom in Cuba? This is not about promoting freedom and democracy in Cuba. This is nothing more than tourism. This is tourism for Americans who at best are curious about Cuba and, at worst, sympathize with the Cuban regime.

You may ask: We are a free society. Why would we restrict that? Here is why. Because this is not just a source of irritation; this is a source of hard currency, of millions of dollars in the hands of the Castro government that they use to oppress the Cuban people,

and to jail and hold hostage an American citizen, who today is being held hostage in Cuba, Alan Gross. By the way, after they took him hostage, we implemented this policy.

So this policy is a reward for what? Here is my challenge to the administration and the State Department. I know you are not going to change your mind. I know you people in this people-to-people stuff. I know someone has sold you a bill of goods that this people-to-people travel is a good idea, it will further democracy and freedom in Cuba. I get that. You are not going to change your mind. But at least examine how this is being implemented, because this is a charade. This is an embarrassment. These people are getting licenses to conduct this outrageous tourism, which, quite frankly, borders on indoctrination of Americans by Castro government officials.

I hope we will continue to look at this, and that this administration, as part of its Western Hemispheric approach, will look at these trips for what they are. They are an outrage. They are grotesque. They are providing hard currency to a regime that oppresses its people, that jails people because they disagree with the government. It is wrong. This is not what we are about as a country. This cannot be what we defend. Even if you agree with this people-to-people theory and concept, you cannot justify how this program is being implemented, or these people who are getting licenses to conduct these kinds of trips.

I hope in our conversations with the State Department about their appointments in the Western Hemisphere, and specifically the nomination of Roberta Jacobsen, we will use that as an opportunity to examine how these programs are being implemented. Because, quite frankly, they are an outrage.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2011—MOTION TO PROCEED

Mr. REID. Mr. President, I move to proceed to Calendar No. 257, H.R. 3630.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 257, H.R. 3630, an act to provide incentives for the creation of jobs, and for other purposes.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to calendar No. 257, H.R. 3630, an Act to provide incentives for the creation of jobs, and for other purposes.

Harry Reid, Max Baucus, Kirsten E. Gillibrand, Jeff Bingaman, Richard J. Durbin, Patrick J. Leahy, Joseph I. Lieberman, Mark L. Pryor, Christopher A. Coons, Patty Murray, Tom Udall, Charles E. Schumer, Mark Begich, Robert P. Casey, Jr., Kent Conrad, Thomas R. Carper.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that we proceed to a period of morning business and that Senators be allowed to speak for up to 10 minutes each.

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

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM REFORM AND REAUTHORIZATION ACT OF 2011

Mr. DURBIN. Mr. President, I rise in support of H.R. 2867, the United States Commission on International Religious Freedom Reform and Reauthorization Act of 2011.

Many of our Nation's Founders fled religious persecution, and they placed great importance on religious freedom. George Washington summed up the prevailing view when he said, ''In this land of equal liberty, it is our boast, that a man's religious tenets will not forfeit the protection of the laws.''

In 1791, the first amendment of the Constitution was ratified, enshrining freedom of religion as the ''First Freedom'' of all Americans. The first amendment became an inspiration to people all over the world who struggle to throw off the yoke of religious persecution.

Throughout our history, the United States has sought to protect and promote the fundamental human right of religious freedom at home and around the world. Just last week, on December 10, we celebrated Human Rights Day, the 63rd anniversary of the Universal Declaration of Human Rights. After World War II, under Eleanor Roosevelt's leadership, the United States spearheaded the ratification of the Universal Declaration, which recognized freedom of religion as a fundamental right of all people.

As the founding chairman of the first-ever Senate subcommittee focused on human rights, I am deeply committed to protecting religious freedom, and I strongly support the mission of the U.S. Commission on International Religious Freedom. However, as I will outline below, I am concerned that USCIRF has gone astray in recent years. Therefore, I offered an amendment to H.R. 2867, the USCIRF Reauthorization Act, including good-government reforms like term limits for Commissioners, a prohibition on employee discrimination, and a requirement that Commissioners follow Federal travel regulations. My amendment also included changes to H.R. 2867 that will make USCIRF stronger, extending its reauthorization from 2 to 3 years and increasing the number of Commissioners from five to nine. The Durbin amendment will allow the USCIRF to more effectively pursue its mission.

On Monday, the Senate adopted my amendment and passed the USCIRF reauthorization bill on a unanimous vote. The bill is now awaiting consideration in the House of Representatives. USCIRF's current authorization is scheduled to expire tomorrow, December 16, so I urge my colleagues in the House to quickly take up and pass H.R. 2867.

I would like to take a moment to outline the provisions of the amendment that I offered to H.R. 2867.

Although the plain language of USCIRF's authorizing statute limits Commissioners to two, 2-year terms, for a total of 4 years of service, this term limit has never been observed. In fact, several Commissioners have served more than 10 years. The members of many governmental boards and commissions are term limited, and USCIRF would be well served by the new ideas and fresh perspective that new Commissioners would bring.

The House-passed version of H.R. 2867 includes a provision that limits Commissioners to serving two consecutive terms. However, the bill creates two new exceptions to the term limit provision in USCIRF's existing authorization. First, the bill would allow a Commissioner to serve an unlimited number of nonconsecutive terms. Second, the bill would allow each current Commissioner to complete his or her current term and then serve one additional term, regardless of how long the Commissioner has served. As a result, Commissioners who have already served more than 10 years would be permitted to serve an additional full term and unlimited nonconsecutive terms.

These loopholes are a step backwards from existing law and undercut the purpose of a term limit, which is to make sure that new voices from a range of viewpoints and faiths are rotated into the Commission periodically to collaborate in strengthening and shaping the Commission's mandate. In keeping with this spirit, my amendment includes in H.R. 2867 a firm term limit of two, 2-year terms—4 years total—with no grandfathering of current Commissioners.

USCIRF has taken the position that its employees do not enjoy the same antidiscrimination protections as all

other Federal employees. It is simply unacceptable for a Federal agency charged with promoting human rights to argue that it has the legal right to discriminate against its employees. The Durbin amendment includes in H.R. 2867 a provision which allows pending civil rights claims against USCIRF to proceed under the Congressional Accountability Act.

The House-passed version of H.R. 2867 provided antidiscrimination protections to USCIRF employees for future incidents of discrimination through the Congressional Accountability Act. However, I was concerned that this provision did not apply to former employees or past discrimination. As a result, there would have been no legal remedy for any incidents of discrimination that may have taken place prior to enactment of H.R. 2867.

Specifically, last year a former USCIRF employee filed a discrimination claim based on her allegation that her permanent employment offer was rescinded after the Commissioners learned of her prior job with a Muslim civil rights organization. Though she subsequently received a temporary contract with USCIRF, she claims she was terminated when she filed her discrimination claim. The Commission argued that it is not subject to title VII of the Civil Rights Act of 1964. The case is now on appeal.

There must be some avenue for resolving—on the merits—past allegations that USCIRF discriminated against its employees. Accordingly, my amendment to H.R. 2867 provides that pending civil rights claims against USCIRF may proceed under the Congressional Accountability Act.

The House-passed version of H.R. 2867 reduced the number of Commissioners from nine to five, which would make it more difficult for USCIRF to carry out its mission. Moreover, the bill accomplished this reduction in a disproportionate fashion by reducing the number of Commissioners appointed by the President from three to one. The Durbin amendment strikes the provision from H.R. 2867 which reduces the number of Commissioners from nine to five.

Religious freedom advocates allege that some USCIRF Commissioners have traveled first class and stayed in five-star hotels, in violation of Federal travel regulations. This is deeply troubling, particularly during a time when all Federal agencies are being asked to do more with less. The Durbin amendment simply clarifies that USCIRF Commissioners are subject to Federal travel regulations, like other Federal employees.

H.R. 2867 reauthorizes USCIRF until September 30, 2013. With the good-government reforms in the Durbin amendment, it would be more appropriate to reauthorize USCIRF until September 30, 2014, so that USCIRF Commissioners and staff have more certainty about the future of the Commission.

I strongly support the mission of the U.S. Commission on International Religious Freedom, but I have been deeply troubled by allegations of misconduct, misuse of funds, and discrimination at the Commission. For example, according to the Washington Post:

> Some past commissioners, staff and former staff of the U.S. Commission on International Religious Freedom say the agency charged with advising the president and Congress is rife, behind-the-scenes, with ideology and tribalism, with commissioners focusing on pet projects that are often based on their own religious background. In particular, they say an anti-Muslim bias runs through the commission's work. . . . Rumors about infighting and ineffectiveness have swirled for years around the commission.

My amendment will make good-government reforms to USCIRF that should help to address the concerns that have been raised about USCIRF. Moreover, my amendment will make USCIRF stronger by increasing the number of Commissioners in the reauthorization bill from five to nine and by extending the reauthorization from 2 to 3 years. As chairman of the Judiciary Committee's Constitution, Civil Rights, and Human Rights Subcommittee and a member of the Appropriations Subcommittee on the Department of State, Foreign Operations, and Related Programs, I will closely monitor the work of the USCIRF in the coming months and years to ensure that it is functioning in a transparent fashion and effectively performing its mission of promoting and protecting international religious freedom.

I urge my colleagues in the House of Representatives to quickly take up and pass H.R. 2867 so that the U.S. Commission on International Religious Freedom can be reauthorized.

TRIBUTE TO SPECIALIST JOHN O. BERRY, JR.

Mr. MCCONNELL. Mr. President, I stand today to honor an outstanding Kentucky hero and patriot, SPC John O. Berry, Jr. SPC Berry is a veteran of the Vietnam war who has received numerous awards and commendations for his heroism and bravery in serving his country.

John O. Berry, Jr., of Wayne County, KY, grew up a typical kid—he spent his time hanging out with friends, listening to music, and enjoying time spent with his brothers and sisters. On September 18, 1968, however, John answered a call to duty, and his life was forever changed when he joined the U.S. Army.

John received his introduction to the Army and basic training at Fort Knox, KY, before being sent to Fort Leonard Wood, MO, to complete his advanced training. Four short months later, John had achieved the honor of combat demolition specialist with Company A, 299th Engineer Battalion, and was sent to a fire base in North Vietnam.

John's job was especially dangerous. He was responsible for ensuring the roads were free of the many deadly land mines that were strategically placed by the Viet Cong. Although scores of Americans were killed by these mines, John and other courageous demolition engineers were responsible for saving thousands of additional lives by dismantling the mines throughout the war.

Over the years John has received many distinguished awards and honors for his bravery and service to our country. Included in these honors are two Purple Hearts, two Army Commendation Medals for heroism and exceptionally meritorious achievement in the Republic of Vietnam, two National Defense medals, and the Republic of Vietnam Gallantry Cross with Palm, which was awarded by the Republic of Vietnam to those who display valor and heroic conduct in combat.

These awards only represent a small portion of the gratitude we owe John for his selflessness and courage. According to the Department of the Army's account of a rescue mission in which John's unit was sent to aid an ambushed team, ''John distinguished himself by exceptionally valorous action. . . . He demonstrated admirable courage and devotion to duty as he unflinchingly performed his task without regard to personal safety. His actions were in keeping with the highest traditions of the military service and reflect great credit upon himself, his unit and the United States Army.''

Mr. President, I would ask that my Senate colleagues join me in thanking SPC John O. Berry, Jr. for his sacrifice and service. John's heroism is truly inspiring, and the people of our great Commonwealth are grateful for his selflessness and service. The Wayne County Outlook recently published an article thanking Specialist Berry and highlighting his accomplishments. I ask unanimous consent that the full article be printed in the RECORD.

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

[From the Wayne County Outlook, Nov. 9, 2011]

BERRY RECEIVED MEDALS FOR SERVICE TO HIS COUNTRY

(By Harlan Ogle)

Here's the way the Department of the Army tells the story: He ''distinguished himself by exceptionally valorous action . . . while serving as a member of a reactionary force sent to aid the mine sweep team which had been ambushed. . . . When he and other members of the reaction force dismounted their vehicle they immediately came under heavy enemy fire. With complete disregard for his own safety, [he] formed one line with the other members of the force and moved towards the front. He and the others laid down a base of fire which enabled the trapped mine sweep to break contact. The reaction force then advanced still further into the kill zone to continue firing while Delta Company's casualties were carried out. [He] demonstrated admirable courage and devotion to duty as he unflinchingly performed his tasks without regard to his personal safety. His cool-headedness in the face of conditions which would unnerve a weaker man served to inspire his comrades to follow suit. [His] actions were in keeping with the highest traditions of the military service and reflect great credit upon himself, his unit and the United States Army.''

Could these words be a description of the bravery demonstrated by such heroes as Sergeant Alvin York, who is probably the most recognized veteran of World War I? Maybe these words describe Audie Murphy, the most decorated American of World War II?

No!

These words describe the man who could be Wayne County's most decorated soldier of the Vietnam War.

These are words that depict the extreme bravery of a veteran who still lives in our midst. These words describe one of our country's real heroes.

These are words contained in General Order 847 that officially awarded the Army Commendation Medal for Heroism to John O. Berry, Jr., who presently lives in the Gap of the Ridge community of Wayne County. John is the son of Willie Lee (Sloan) Berry and Johnny Berry.

He spent his childhood as most any other boy would—going to school, hanging out with his friends, listening to music, growing up with his brothers and sisters: Ted, Fred, George, Stella, Mae, Maggie, and Alene, and just generally enjoying life.

Until.

Until September 18, 1968. That's when John became a soldier in Uncle Sam's Army.

He took his basic training at Fort Knox and advanced training at Fort Leonard Wood in Missouri. Just four short months after entering the Army, he was sent to a fire base in North Vietnam.

He had become a combat demolition specialist with Company A, 299th Engineer Battalion.

His was a dangerous job because he had the responsibility of clearing the roads of the deadly mines placed by the Viet Cong.

Thousands of American service men were killed by these mines. However, because of the sacrifice and courage of soldiers like John O. Berry, Jr., thousands of lives were saved as these demolition engineers dismantled the mines.

Specialist Four John O. Berry, Jr., served his country with dedication and commitment. That service was continually recognized as he received numerous awards and commendations. Some of those distinguished awards include:

—Two Purple Hearts (a combat decoration awarded to members of the Armed Forces who are wounded by an instrument of war in the hands of the enemy).

—An Army Commendation Medal with first oak leaf cluster ''for exceptionally meritorious achievement in support of the United States's objectives in the counterinsurgency effort in the Republic of Vietnam . . . . Through his outstanding professional competence and devotion to duty he consistently obtained superior results. Working long and arduous hours, he set an example that inspired his associates to strive for maximum achievement. The loyalty, initiative and will to succeed that he demonstrated at all times materially contributed to the successful accomplishment of the mission of this command.''

—A second Army Commendation Medal with ''V'' device ''for heroism in the Republic of Vietnam'' distinguishing himself by meritorious achievement and service.

—Two National Defense medals.

—Republic of Vietnam Gallantry Cross w/ Palm awarded by the Vietnam Government to military personnel who have accomplished deeds of valor and displayed heroic conduct while fighting the enemy.

Eventually John was discharged from the Army, and when he returned to Monticello, he continued serving his country by joining the local National Guard.

Today, John lives in the Gap of the Ridge community and walks among us as one of our nation's heroes. More especially, John is one of Wayne County's heroes!

He shares that role with two of his brothers who also served in the military during the Vietnam War: Ted in the Navy and Fred in the Army.

A grateful community proudly recognizes John O. Berry, Jr., and salutes him and all the other men and women who have sacrificed more than the average citizen will ever know.

Specialist Four John O. Berry, Jr., we salute you and thank you from the bottom of our hearts for your service to our country!

On Veterans Day 2011, we pray that you will be able to accept the fact that you are, indeed, an American hero!

You are our hero!

TRIBUTE TO HELEN HIERONYMUS

Mr. MCCONNELL. Mr. President, I stand today to pay tribute to an exceptional Kentuckian, Helen Hieronymus of Somerset, KY. Helen, who recently celebrated her 85th birthday, has lived a full and successful life and still exhibits youthfulness far beyond her years.

On October 20, 2011, her birthday, Helen decided to celebrate in a rather unconventional way—she went skydiving. For those who know her, however, her great leap wasn't all that surprising. Over the years, Helen has been a vibrant member of the local community—she has served as director of the local United Way, Cub Scout den mother, and president of the Junior Women's Club, all while always entertaining her adventurous appetite. Her travels have taken her fishing in Alaska, to the Great Wall of China, and to 80 different countries around the world.

Going skydiving has been an unfulfilled desire of Helen's for many years. As a child, Helen dreamed of being able to fly. Then, about 9 years ago, Helen was further inspired after witnessing a collection of paratroopers make their way to the ground while on a trip to Paris. ''I thought it would be fun,'' she says. And so it was.

After ascending to 12,000 feet, Helen successfully completed a tandem jump followed by a safe landing. ''No problem at all,'' she explained. ''When you come out of the plane, you do a free fall. You see the earth below you, and it's amazing down there. I would do it again.''

Mr. President, Ms. Helen Hieronymus is a courageous woman who has experienced a lifetime of excitement and fulfillment. Helen's community involvement and adventurous spirit serve as an inspiration to Kentuckians everywhere, and it is my hope that she have many more adventures to come. The Commonwealth Journal, a Somerset-area publication, recently published an article highlighting Helen's life of journeys and daring parachute jump. I ask unanimous consent that the full article be printed in the RECORD.

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

[From the Commonwealth Journal, Oct. 30, 2011]

SOMERSET WOMAN CELEBRATES 85TH BIRTHDAY BY TAKING PLUNGE OUT OF AN AIRPLANE

(By Chris Harris)

How does a woman who has traveled the world, ripped the roadway on a Harley, and hunted big game celebrate her 85th birthday?

By jumping out of an airplane, naturally.

Helen Hieronymus has lived a big life, no question about it. Her name is familiar to many in Pulaski County, having touched the community in many different ways—director of the local United Way, Cub Scout den mother, president of the Junior Women's Club, and so much more.

You could say she's lived a full life . . . yet she's always looking for ways to make it even more full.

''Of course,'' said Hieronymus. ''Why waste it?''

Hieronymus turned 85 on October 20. She had a yen to try her hand at skydiving.

Why?

''God only knows,'' quipped her daughter, Janie Hail, known to many Somerset High School alumni as their former English teacher, now retired. ''Mine was the voice in the background saying, Mother, are you sure you want to do this?'''

In actuality, Hieronymus was inspired by a trip to Paris, France, about nine years ago, where she witnessed a collection of paratroopers descend to the earth from three different heights, landing in a circle.

Hieronymus's reaction? ''I thought that would be fun.''

In fairness, Hieronymus had dreamed of being able to fly since she was only a child. Of course, she was smart enough not to try it herself without a little experimentation first.

''I tried to teach my brother to fly by tying a sheet to his ankles and wrists and having him jump off the porch railing,'' she recalled. ''I was just testing it in that one (case).''

By the time she reached her 85th birthday, she'd done nearly everything else. Hieronymus reported having done a ''bit of traveling.'' That's only if you consider visiting 80 different countries to be ''a bit.'' She's fished in Alaska, hunted wild beasts in the field, and walked on the Great Wall of China. Even recently, friend Tommy Cate took her for a ride on a Harley-Davidson motorcycle.

Hieronymus kept her adventurous spirit her whole life, but wasn't able to fully explore it until years down the road.

''I had responsibilities to take care of, like three children and a husband and things like that,'' she said. ''Now they're big enough to take care of themselves.''

Flying like a bird in the air, however, continued to elude her. Hieronymus had mentioned to her granddaughter that she would like to do a parachute jump. As a result, all of her grandchildren decided to chip in and buy ''Granny'' an opportunity to ''jump out of a perfectly good airplane,'' as Hail put it.

Hail wasn't a fan of the idea. She constantly tried to talk her mother out of the idea, given the danger that falling to earth from 12,000 feet in the air could present.

''I'd think I had her talked out of it, but then it would come up again,'' said Hail, who

characterized herself whimsically as the coolly pragmatic complement to her mother's free-spirited daredeviling.

''I suggested doing a zipline instead. She said that sounded like fun, that she hadn't thought of that before,'' added Hail, ''and she calls up the next day and says she's going to jump the next day.''

Hail decided that if she couldn't beat 'em, as the saying goes, that she would join 'em—on the ground as moral support, at any rate. So earlier this month, she accompanied her mother to the site of the Start Skydiving organization's site in Middletown, Ohio, where the big jump would take place.

What Hail saw when she got there didn't exactly bolster her confidence. She and Hieronymus watched as a group of skydivers went earlier in the day.

''The wind caught the chute of the last one coming in and rolled her over; it looked like a disaster waiting to happen,'' said Hail. ''I point that out to my mother, and said, 'Did you see that?' and she responded, 'Well, she got up.' ''

''I said, 'Mom, she's 20!' ''

The winds picked up throughout the day; as the hours rolled along, it looked more and more like Hieronymus wouldn't be able to make the jump, but she refused to leave. After all, if she wanted to use the coupon her grandchildren had given her as a gift, it would have to be by Thanksgiving; that time in mid-October might have been her last opportunity to do so.

So Hieronymus held on to be in the last group to go up into the sky that day. The plane climbed to 12,000 feet before she was able to make the tandem jump with her instructor (they were connected to each other, but he was wearing the parachute).

''They put a jumpsuit on you and zip you up,'' Hieronymus explained. ''Then they put the harness on you. Janie was there coaching.''

Hieronymus took no apprehension with her into the airplane and left no regrets floating in the air. She made a successful jump and landed on the earthen floor no worse for the wear.

''No problems at all,'' she said. ''I would do it again.''

For Hieronymus, this was a ''bucket list'' item: Something she wanted to make sure and experience before she passed away, as referenced in the film called ''The Bucket List.'' It certainly lived up to the expectations.

''When you come out of the plane, you do a free fall,'' said Hieronymus. ''You see the earth below you, and it's amazing down there.''

Her thoughts upon landing? ''Oh shucks, I'm back on land.''

Hieronymus laughed as she noted that she had a video of the event that she would show at her place of worship, First United Methodist Church, to entertain her friends there.

And despite Hail's skeptical nature, her mother's exploits have managed to serve as an inspiration.

''Oh my gosh, I felt younger,'' said Hail. ''If an 85-year-old can do that, surely I'm not that old.''

TRIBUTE TO EARL DEVANEY

Mr. COBURN. Mr. President, I rise today to give tribute to Mr. Earl Devaney, who will be retiring from 42 years of public service at the end of this year.

In an era when the American people have a record-level of distrust in government, Mr. Devaney has risen above partisanship as a staunch defender of taxpayers and champion of government transparency.

Devaney started his career as a cop on the beat in Massachusetts. Then, Devaney went to work for the U.S. Secret Service until 1991, where he was the Special Agent-in-Charge of the agency's fraud division. In 1999, President Clinton appointed Devaney the inspector general of the Interior Department. There, he gained wide renown for overseeing the public corruption investigations that helped lead to the convictions of Jack Abramoff, a Washington superlobbyist and major beneficiary of the congressional earmark favor factory that polluted our politics for several decades. He also presided over the landmark investigation of the royalties program in the Minerals Management Service, finding a ''culture of ethical failure'' among public officials there, involving illegal gifts, illegal drug abuse, sexual misbehavior and more.

In his role as the chief watchdog of the Department of Interior, I got to know Earl and spent significant time visiting with him. What I have learned to appreciate about him was his honesty, integrity and forthrightness.

In February 2009, President Obama named Devaney to head the Recovery Board, which is charged with overseeing the American Recovery and Reinvestment Act, ARRA. In this position, he was integral to making sure that the spending in the stimulus was as transparent as possible.

At the end of the year, Mr. Devaney will be resigning from three posts: the Chair of the Recovery Board, inspector general for the Department of the Interior, and Chairman of the Government Accountability and Transparency Board, the position that Vice President BIDEN appointed him to for managing the administration's efforts to reduce government waste and to provide ''concrete methods'' for improving oversight and transparency of Federal funds.

I can't think of a tougher defender of the interests of citizens and taxpayers in the Federal Government than Mr. Devaney. As one of the best inspectors general, his dogged pursuits of corruption and waste in government will be missed.

In his resignation letter to President Obama, Mr. Devaney thanked the President for the ''opportunities you have given me to serve my country, and I will always look fondly on my decades as a public servant.''

Mr. Devaney, the American people will also look fondly on years of public service. Thank you for all you have done.

ADDITIONAL STATEMENTS

RECOGNIZING ORONO MIDDLE SCHOOL

• Ms. SNOWE. Mr. President, today I wish to offer my heartfelt and warm congratulations to Orono Middle School in my State of Maine on being named a National Blue Ribbon School by the U.S. Department of Education earlier this year on September 14, especially as the school community gathers to celebrate this milestone next week.

Since the inception of the National Blue Ribbon School Program in 1982, the U.S. Department of Education has undergone a rigorous, selective process of identifying those exceptional schools nationwide where students attain and maintain high academic goals. Needless to say, the bestowal of this well-earned, prestigious award speaks volumes about Orono Middle School's exemplary student accomplishments—and is an accolade in which all RSU 26 school board members, administrators, faculty, staff, and students—not to mention our entire State—can certainly take enormous pride.

This distinguished recognition also affords Orono Middle School with an ideal platform to share its outstanding teaching models and approaches under the vision of Principal Robert Lucy with other schools—an opportunity which aligns with the larger effort of the Department of Education to facilitate the robust exchange of the best school leadership and teaching practices.

Just as the Bangor region, where Orono is located, is the gateway to the natural wonders of the North Maine Woods and Acadia National Park, it is also a gateway to excellence in education. That is certainly the case at the university level at the University of Maine, my alma mater, as well as at the primary school level at Orono Middle School, where challenging and cultivating young minds is paramount; curiosity is prized; character is rewarded; enthusiasm is contagious; values are imparted; and an exuberant love of learning is palpable, even at times audible, and always ever-present.

Principal Lucy aptly characterized this spirit and energy when he wrote that ''a visitor walking the halls hears parents conversing with teachers and students, actors exchanging lines, artists collaborating on projects, mathematicians solving team challenges, and coaches encouraging athletes. The sounds of our community make it clear that Orono Middle School thrives, largely because our students are connected to our school.'' And, thrive, it has, as Orono Middle School is exemplifying Maine's motto, ''Dirigo'' or ''I Lead'' and in doing so, ensuring that the seeds of hope for the next generation are firmly planted and taking root.

Orono Middle School is proof positive that our State's hallmark work ethic and can-do spirit are alive and well. Orono Middle School is a top-performing institution on State-required assessments, which teachers use to customize and improve instruction. Eighty percent of Orono Middle School's faculty have advanced degrees

and its award-winning roster of teachers place a premium on professional development. The school goes the extra mile to ensure that 100 percent of the student body participates in co-curricular activities and that the pervading climate is one of trust, purpose, and dignity. This focus also helps create an atmosphere where consensus and collaboration are the order of the day and where parents are actively engaged in the learning process of their children.

I cannot underscore enough just how instrumental schools like Orono Middle School are to the overall progress of our tremendous State of Maine and indeed in brightening the horizons of this great land we love. What American and Maine political icon, U.S. Senator Margaret Chase Smith, once expressed in words Orono Middle School has demonstrated in action; namely, that ''education is not a means to life but education is life and must not be ignored.''

Orono Middle School has my very best wishes on receiving the National Blue Ribbon School designation this year which could not be more well-deserved.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:15 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1264. An act to designate the property between the United States Federal Courthouse and the Ed Jones Building located at 109 South Highland Avenue in Jackson, Tennessee, as the ''M.D. Anderson Plaza'' and to authorize the placement of a historical/identification marker on the grounds recognizing the achievements and philanthropy of M.D. Anderson.

H.R. 2668. An act to designate the station of the United States Border Patrol located at 2136 South Naco Highway in Bisbee, Arizona, as the ''Brian A. Terry Border Patrol Station''.

ENROLLED BILLS SIGNED

At 1:25 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 384. An act to amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research.

The enrolled bill was subsequently signed by the President pro tempore (Mr. INOUYE).

At 3:45 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 443. An act to provide for the conveyance of certain property from the United States to the Maniilaq Association located in Kotzebue, Alaska.

H.R. 886. An act to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service.

H.R. 2719. An act to ensure public access to the summit of Rattlesnake Mountain in the Hanford Reach National Monument for educational, recreational, historical, scientific, cultural, and other purposes.

H.R. 3659. An act to reauthorize the program of block grants to States for temporary assistance for needy families through fiscal year 2012, and for other purposes.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 443. An act to provide for the conveyance of certain property from the United States to the Maniilaq Association located in Kotzebue, Alaska; to the Committee on Indian Affairs.

H.R. 2668. An act to designate the station of the United States Border Patrol located at 2136 South Naco Highway in Bisbee, Arizona, as the ''Brian A. Terry Border Patrol Station''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 2719. An act to ensure public access to the summit of Rattlesnake Mountain in the Hanford Reach National Monument for educational, recreational, historical, scientific, cultural, and other purposes; to the Committee on Energy and Natural Resources.

H.R. 3659. An act to reauthorize the program of block grants to States for temporary assistance for needy families through fiscal year 2012, and for other purposes; to the Committee on Finance.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 3094. An act to amend the National Labor Relations Act with respect to representation hearings and the timing of elections of labor organizations under that Act.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–4315. A communication from the Director of the Regulatory Review Group, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Farm Loan Programs Loan Making Activities'' (RIN0560-AI03) received in the Office of the President of the Senate on December 12, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4316. A communication from the Management Analyst, Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Suspension of Delivery of Birds, Additional Capital Investment Criteria, Breach of Contract, and Arbitration'' (RIN0580-AB07) received in the Office of the President of the Senate on December 13, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4317. A communication from the Administrator, Rural Utilities Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Standards and Specifications for Timber Products Acceptable for Use by Rural Utilities Service Electric and Telecommunications Borrowers'' (7 CFR Parts 1728 and 1755) received in the Office of the President of the Senate on December 12, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4318. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Butyl acrylate-methacrylic acid-styrene polymer; Tolerance Exemption'' (FRL No. 9327–6) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4319. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Hexythiazox; Pesticide Tolerances'' (FRL No. 9327–7) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4320. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting the report of two (2) officers authorized to wear the insignia of the grade of rear admiral (lower half), in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

EC–4321. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' ((44 CFR Part 64)(Docket No. FEMA–2011–0002)) received in the Office of the President of the Senate on December 12, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–4322. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Addition of Certain Persons to the Entity List; and Implementation of Entity List Annual Review Changes'' (RIN0694-AF46) received in the Office of the President of the Senate on December 13, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–4323. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to Turkey; to the Committee on Banking, Housing, and Urban Affairs.

EC–4324. A communication from the Chair, U.S. Sentencing Commission, transmitting, pursuant to law, a report relative to the

Comprehensive Iran Sanctions Accountability and Divestment Act of 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–4325. A communication from the Secretary of the Commission, Bureau of Consumer Protection, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Business Opportunity Rule'' (RIN3084-AB04) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Commerce, Science, and Transportation.

EC–4326. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Limited Access Privilege Program'' (RIN0648-BA18) received in the Office of the President of the Senate on December 12, 2011; to the Committee on Commerce, Science, and Transportation.

EC–4327. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Implementation Plans: Oregon'' (FRL No. 9248–1) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Environment and Public Works.

EC–4328. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, South Coast Air Quality Management District'' (FRL No. 9499–9) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Environment and Public Works.

EC–4329. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Cincinnati-Hamilton, OH-KY-IN 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment'' (FRL No. 9506–3) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Environment and Public Works.

EC–4330. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; State of Missouri'' (FRL No. 9505–8) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Environment and Public Works.

EC–4331. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances-Hydrocarbon Refrigerants'' (FRL No. 9507–7) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Environment and Public Works.

EC–4332. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Extension of the Laboratory and Analytical Use Exemption for Essential Class I Ozone-Depleting Substances'' (FRL No. 9507–6) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Environment and Public Works.

EC–4333. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans: Kentucky; Visibility Impairment Prevention for Federal Class I Areas; Removal of Federally Promulgated Provisions'' (FRL No. 9507–3) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Environment and Public Works.

EC–4334. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''William and Sharon Norris v. Commissioner, T.C. Memo 2011–161'' (AOD–2011–05) received in the Office of the President of the Senate on December 13, 2011; to the Committee on Finance.

EC–4335. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Employer's Annual Federal Tax Return and Modifications to the Deposit Rules'' (RIN1545-BK82) received in the Office of the President of the Senate on December 13, 2011; to the Committee on Finance.

EC–4336. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Targeted Populations Under Section 45D(e)(2)'' (RIN1545-BE89) received in the Office of the President of the Senate on December 13, 2011; to the Committee on Finance.

EC–4337. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Sample Plan Amendment for Section 436'' (Notice 2011–96) received in the Office of the President of the Senate on December 13, 2011; to the Committee on Finance.

EC–4338. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Report to Congress on the Evaluation of the Quality Improvement Organization (QIO) Program for Medicare Beneficiaries for Fiscal Year 2008''; to the Committee on Finance.

EC–4339. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2011–0189—2011–0201); to the Committee on Foreign Relations.

EC–4340. A communication from the Executive Analyst, Office of the Secretary, Department of Health and Human Services, transmitting, pursuant to law, a report relative to a vacancy in the position of Administrator, Centers for Medicare and Medicaid Services, Department of Health and Human Services; to the Committee on Health, Education, Labor, and Pensions.

EC–4341. A communication from the Director, National Science Foundation, transmitting, pursuant to law, the 2009–2010 Committee on Equal Opportunities in Science and Engineering (CEOSE) Biennial Report to Congress; to the Committee on Health, Education, Labor, and Pensions.

EC–4342. A communication from the General Counsel, Federal Retirement Thrift Investment Board, transmitting, pursuant to law, the report of a rule entitled ''Correction of Administrative Errors; Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts'' (5 CFR Parts 1605 and 1653) received in the Office of the President of the Senate on December 14, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4343. A communication from the Chief Financial Officer, Farm Credit System Insurance Corporation, transmitting, pursuant to law, a report relative to the requirements of the Federal Managers' Financial Integrity Act and the Inspector General Act of 1978; to the Committee on Homeland Security and Governmental Affairs.

EC–4344. A communication from the Director of Administration, National Labor Relations Board, transmitting, pursuant to law, a report entitled ''Performance and Accountability Report Fiscal Year 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–4345. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, a report entitled ''Blowing the Whistle: Barriers to Federal Employees Making Disclosures''; to the Committee on Homeland Security and Governmental Affairs.

EC–4346. A communication from the Vice President for Administration and Finance and Chief Financial Officer, Millennium Challenge Corporation, transmitting, pursuant to law, the corporation's Agency Financial Report for fiscal year 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4347. A communication from the Secretary of Education, transmitting, pursuant to law, the Department's Agency Financial Report for fiscal year 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4348. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the Semi-Annual Report of the Inspector General for the period from April 1, 2011 through September 30, 2011 and the Compendium of Unimplemented Recommendations from the period from April 1, 2011 through September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4349. A communication from the President of the Federal Financing Bank, transmitting, pursuant to law, the Bank's Annual Report for Fiscal Year 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4350. A communication from the Chief Executive Officer, Millennium Challenge Corporation, transmitting, pursuant to law, the Office of Inspector General's Semiannual Report for the period of April 1, 2011 through September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4351. A communication from the Director of the Peace Corps, transmitting, pursuant to law, the Office of Inspector General's Semiannual Report for the period of April 1, 2011 through September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4352. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the Semi-Annual Report of the Inspector General for the period from April 1, 2011 through September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4353. A communication from the General Counsel, Executive Office for Immigration Review, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Civil Monetary Penalties Inflation Adjustment'' (RIN1125-AA69) received in the Office of the President of the Senate on December 14, 2011; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, without amendment:

H.R. 789. A bill to designate the facility of the United States Postal Service located at 20 Main Street in Little Ferry, New Jersey, as the ''Sergeant Matthew J. Fenton Post Office''.

H.R. 2422. A bill to designate the facility of the United States Postal Service located at 45 Bay Street, Suite 2, in Staten Island, New York, as the ''Sergeant Angel Mendez Post Office''.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

S. 1236. A bill to reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels.

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment:

S. 1821. A bill to prevent the termination of the temporary office of bankruptcy judges in certain judicial districts.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. LEVIN for the Committee on Armed Services:

*Brad Carson, of Oklahoma, to be General Counsel of the Department of the Army.

*Michael A. Sheehan, of New Jersey, to be an Assistant Secretary of Defense.

Air Force nomination of Col. Merle D. Hart, to be Brigadier General.

Air Force nomination of Lt. Gen. Frank Gorenc, to be Lieutenant General.

Air Force nomination of Col. Brian E. Dominguez, to be Brigadier General.

Air Force nomination of Col. John P. Currenti, to be Brigadier General.

Air Force nominations beginning with Colonel John D. Bansemer and ending with Colonel Sarah E. Zabel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011. (minus 1 nominee: Colonel Ricky J. Locastro)

Army nomination of Brig. Gen. Michael J. Lally III, to be Major General.

Army nominations beginning with Colonel John W. Baker and ending with Colonel Eric P. Wendt, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on May 23, 2011. (minus 2 nominees: Colonel John H. Hort; Colonel Robert P. White)

Army nomination of Brig. Gen. Lynn A. Collyar, to be Major General.

Army nomination of Maj. Gen. Mary A. Legere, to be Lieutenant General.

Army nomination of Col. Jimmie O. Keenan, to be Major General.

Mr. LEVIN. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDs on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nominations beginning with Christine L. Blicebaum and ending with Abner Perry V. Valenzuela, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 1, 2011.

Air Force nominations beginning with Joel O. Almosara and ending with Annette J. Williamson, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 1, 2011.

Air Force nominations beginning with Keith Allen Allbritten and ending with Gregory S. Woodrow, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Air Force nominations beginning with Christon Michael Gibb and ending with Thad M. Reddick, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nominations beginning with Michael S. Funk and ending with John W. Rueger, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nominations beginning with Jarrod W. Hudson and ending with Charles B. Wagenblast, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nomination of Kari L. Crawford, to be Major.

Army nominations beginning with Henry H. Beaulieu and ending with Eric K. Little, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nominations beginning with Donald B. Absher and ending with Irene M. Zoppi, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nominations beginning with James S. Aranyi and ending with Mark A. Young, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nominations beginning with Mitchell J. Abel and ending with Thomas M. Zubik, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nominations beginning with Nancy L. Davis and ending with Sheila Villines, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nomination of Genevieve L. Costello, to be Major.

Army nominations beginning with Robert J. Newsom and ending with Richard Y. Yoon, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nominations beginning with Richard A. Daniels and ending with Stephen M. Langlois, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nominations beginning with Arthur E. Rabenhorst and ending with Steven J. Svabek, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

Army nomination of Harvey D. Hudson, to be Major.

Army nomination of William H. Carothers, to be Major.

Army nominations beginning with Todd S. Albright and ending with D001765, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on December 5, 2011.

Army nominations beginning with Larrington R. Connell and ending with Ricardo J. Vendrell, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on December 5, 2011.

Navy nomination of Andrew K. Ledford, to be Lieutenant Commander.

Navy nomination of Matthew R. Loe, to be Lieutenant Commander.

Navy nomination of Thomas P. English, to be Lieutenant Commander.

Navy nominations beginning with Richard A. Ackerman and ending with Adam I. Zaker, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 30, 2011.

By Mr. BINGAMAN for the Committee on Energy and Natural Resources:

*Arunava Majumdar, of California, to be Under Secretary of Energy.

By Mr. LEAHY for the Committee on the Judiciary:

Brian C. Wimes, of Missouri, to be United States District Judge for the Eastern and Western Districts of Missouri.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. AYOTTE (for herself, Mr. RUBIO, and Mr. JOHNSON of Wisconsin):

S. 1996. A bill to amend the Congressional Budget Act of 1974 to provide for macroeconomic analysis of the impact of legislation; to the Committee on the Budget.

By Mr. VITTER (for himself, Mr. CRAPO, Mr. JOHANNS, Mr. TOOMEY, Mr. DEMINT, Mr. PAUL, Mr. RISCH, Mr. CORNYN, and Mr. LEE):

S. 1997. A bill to prohibit the Secretary of the Treasury from providing extra support to the Federal Housing Administration; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BROWN of Massachusetts (for himself, Mr. CARPER, and Mr. JOHNSON of Wisconsin):

S. 1998. A bill to obtain an unqualified audit opinion, and improve financial accountability and management at the Department of Homeland Security; to the Committee on Homeland Security and Governmental Affairs.

By Ms. KLOBUCHAR (for herself and Mr. FRANKEN):

S. 1999. A bill to amend title XVIII of the Social Security Act to apply the frailty adjustment under PACE payment rules to certain specialized MA plans for special needs individuals; to the Committee on Finance.

By Mr. KOHL:

S. 2000. A bill to amend the copyright law to secure the rights of artists of works of visual art to provide for royalties, and for other purposes; to the Committee on the Judiciary.

By Mr. WYDEN (for himself and Mr. MERKLEY):

S. 2001. A bill to expand the Wild Rogue Wilderness Area in the State of Oregon, to make additional wild and scenic river designations in the Rogue River area, to provide additional protections for Rogue River tributaries, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. FEINSTEIN (for herself, Mr. SESSIONS, Mr. SCHUMER, and Mr. CORNYN):

S. 2002. A bill to amend the Federal Food, Drug, and Cosmetic Act to improve the safety of Internet pharmacies; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN (for herself, Mr. LEAHY, Mr. LEE, Mr. UDALL of Colorado, Mr. KIRK, Mrs. GILLIBRAND, Mr. PAUL, Mr. COONS, Mr. DURBIN, Mr. NELSON of Florida, Mrs. SHAHEEN, Mr. UDALL of New Mexico, Mr. FRANKEN, and Mrs. MCCASKILL):

S. 2003. A bill to clarify that an authorization to use military force, a declaration of war, or any similar authority shall not authorize the detention without charge or trial of a citizen or lawful permanent resident of the United States and for other purposes; to the Committee on the Judiciary.

By Mr. UDALL of New Mexico (for himself, Mr. BINGAMAN, Mr. INOUYE, and Ms. LANDRIEU):

S. 2004. A bill to grant the Congressional Gold Medal to the troops who defended Bataan during World War II; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BROWN of Massachusetts (for himself and Mr. KIRK):

S. 2005. A bill to authorize the Secretary of State to issue up to 10,500 E-3 visas per year to Irish nationals; to the Committee on the Judiciary.

By Mr. LAUTENBERG:

S. 2006. A bill to amend the Surface Transportation and Uniform Relocation Assistance Act of 1987 to authorize the Secretary of Transportation to permit Federal regulation and review of tolls and toll increases on certain surface transportation facilities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BAUCUS (for himself, Mr. HATCH, Mr. KERRY, Mr. LUGAR, Mr. WYDEN, Mr. BLUNT, Mr. DURBIN, Mr. BROWN of Massachusetts, Mr. CARDIN, Mr. ISAKSON, Mr. COONS, and Mr. THUNE):

S. 2007. A bill to amend the African Growth and Opportunity Act to extend the third-country fabric rule, to add South Sudan to the list of countries eligible for designation under that Act, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. SNOWE:

S. Res. 348. A resolution expressing the sense of the Senate that the Secretary of the Treasury should take actions to increase the transparency and accountability of the Small Business Lending Fund Program; to the Committee on Small Business and Entrepreneurship.

ADDITIONAL COSPONSORS

S. 195

At the request of Mr. ROCKEFELLER, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 195, a bill to reinstate Federal matching of State spending of child support incentive payments.

S. 249

At the request of Mr. HATCH, the name of the Senator from Nevada (Mr. HELLER) was added as a cosponsor of S. 249, a bill to amend the Endangered Species Act of 1973 to provide that Act shall not apply to any gray wolf (Canis lupus).

S. 431

At the request of Mr. PRYOR, the names of the Senator from California (Mrs. BOXER), the Senator from Iowa (Mr. GRASSLEY), the Senator from Virginia (Mr. WARNER), the Senator from Wisconsin (Mr. KOHL), the Senator from New Jersey (Mr. MENENDEZ) and the Senator from South Dakota (Mr. THUNE) were added as cosponsors of S. 431, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service.

S. 750

At the request of Mr. DURBIN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 750, a bill to reform the financing of Senate elections, and for other purposes.

S. 810

At the request of Ms. CANTWELL, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 810, a bill to prohibit the conducting of invasive research on great apes, and for other purposes.

S. 1181

At the request of Mr. GRASSLEY, the name of the Senator from Arkansas (Mr. BOOZMAN) was added as a cosponsor of S. 1181, a bill to require the Secretary of the Treasury to mint coins in commemoration of the National Future Farmers of America Organization and the 85th anniversary of the founding of the National Future Farmers of America Organization.

S. 1392

At the request of Ms. COLLINS, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1392, a bill to provide additional time for the Administrator of the Environmental Protection Agency to issue achievable standards for industrial, commercial, and institutional boilers, process heaters, and incinerators, and for other purposes.

S. 1468

At the request of Mrs. SHAHEEN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1468, a bill to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by authorizing certified diabetes educators to provide diabetes self-management training services, including as part of telehealth services, under part B of the Medicare program.

S. 1497

At the request of Ms. KLOBUCHAR, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1497, a bill to amend title XVIII of the Social Security Act to extend for 3 years reasonable cost contracts under Medicare.

S. 1606

At the request of Mr. PORTMAN, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1606, a bill to reform the process by which Federal agencies analyze and formulate new regulations and guidance documents.

S. 1680

At the request of Mr. CONRAD, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1680, a bill to amend title XVIII of the Social Security Act to protect and preserve access of Medicare beneficiaries in rural areas to health care providers under the Medicare program, and for other purposes.

S. 1871

At the request of Mr. BROWN of Massachusetts, the name of the Senator from Illinois (Mr. KIRK) was added as a cosponsor of S. 1871, a bill to prohibit commodities and securities trading based on nonpublic information relating to Congress, to require additional reporting by Members and employees of Congress of securities transactions, and for other purposes.

S. 1903

At the request of Mrs. GILLIBRAND, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1903, a bill to prohibit commodities and securities trading based on nonpublic information relating to Congress, to require additional reporting by Members and employees of Congress of securities transactions, and for other purposes.

S. 1925

At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1925, a bill to reauthorize the Violence Against Women Act of 1994.

S. 1956

At the request of Mr. THUNE, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1956, a bill to prohibit operators of civil aircraft of the United States from participating in the European Union's emissions trading scheme, and for other purposes.

S. 1959

At the request of Mr. BURR, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 1959, a bill to require a report on the designation of the Haqqani Network as a foreign terrorist organization and for other purposes.

S. 1984

At the request of Mr. KERRY, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1984, a bill to establish a commission to develop a national strategy and recommendations for reducing fatalities resulting from child abuse and neglect.

S. 1994

At the request of Mr. SCHUMER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1994, a bill to prohibit deceptive practices in Federal elections.

S. RES. 310

At the request of Ms. MIKULSKI, the name of the Senator from Idaho (Mr.

CRAPO) was added as a cosponsor of S. Res. 310, a resolution designating 2012 as the ''Year of the Girl'' and Congratulating Girl Scouts of the USA on its 100th anniversary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KOHL:

S. 2000. A bill to amend the copyright law to secure the rights of artists of works of visual art to provide for royalties, and for other purposes; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce the Equity for Visual Artists Act of 2011. This bill would enable visual artists to benefit from their copyrights in a meaningful way similar to other creators of literary and artistic works such as authors, playwrights and composers. It provides for the payment of a copyright royalty long recognized in international law to be paid at the time a work of visual art is sold at auction in the United States. Half of this royalty payment will go directly to the artists or their estate and the other half will be made available to nonprofit American art museums as an endowment to be used by them to purchase the works of living American artists so that these works may be freely enjoyed by everyone.

Like all authors, the primary legal right of an artist in his or her work is the copyright. Yet, visual artists stand alone within America's creative community in their inability to gain any significant income under existing copyright law. As an example, creators of music will collect nearly $2 billion in copyright royalty payments this year. By contrast, America's visual artists receive only a tiny amount of copyright income, primarily when their works are reproduced in publications such as museum catalogues. Visual art often generates money only when the original work itself is first sold. The vast majority of money-making sales are not by artists themselves but by collectors, dealers and auction houses who trade in their works after their first sale. Under current law artists receive no income from these sales.

For nearly 100 years international copyright law under the Berne Convention on Literary and Artistic Works, of which the United States is a party, has given artists a right to royalties each time their works are resold. However, unlike other rights protected under the Convention, individual countries are not required to recognize the artists' resale right. While over 40 other countries, including all members of the European Union, provide their artists with income from resale of their works, the United States does not. Under the Convention's reciprocity rule, these countries will only pay royalties to artists from countries that also recognize the resale right. As a result, American artists receive no money from these sales.

In 1990, Congress enacted the Visual Artists Rights Act that asked the Copyright Office to study the issue of resale royalties and report back with recommendations. The Copyright Office reported back to Congress that creation of new artworks would be encouraged by adoption of the Berne Convention provisions on resale rights, but it recommended that we wait to see whether the European Union would first require all of its member countries to join those like France and Germany who had long provided their artists with such a right. In 2001, the European Union decided to make resale royalties mandatory throughout its territory, underpinning the Copyright Office's initial conclusions about the positive effects of introducing resale rights. In 2006, the United Kingdom was the last EU country to implement its law.

In order to make the administration of a resale right as simple as possible, the bill would take 7 percent of any sale $10,000 or more from only the most public and easily accountable transactions, auction sales, and divide the amount by artists or their beneficiaries and non-profit museums to purchase American art. The legislation would apply only to sales by entities that have $25 million per year of cumulative sales of visual art. It also excludes entities that solely conduct business in online auctions over the Internet. The bill gives primary responsibility for collecting and distributing royalties to non-governmental collecting societies with oversight by the Copyright Office and reporting requirements to Congress.

This legislation is a long overdue step in fulfilling our obligation under the Berne Convention to award visual artists the benefits derived from the resale of their works, a right that literary and musical artists have enjoyed for decades. Under current law, visual artists are denied royalties for lucrative sales of their art, and this bill is a meaningful start for providing them with just compensation. It is only fair that, as stipulated by international law, visual artists profit from the appreciation in value of their work.

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

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

S. 2000

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Equity for Visual Artists Act of 2011''.

SEC. 2. DEFINITIONS.

Section 101 of title 17, United States Code, is amended by—

(1) inserting after the definition of ''architectural work'' the following:

''For purposes of section 106(b), 'auction' means a public sale run by an entity that sells to the highest bidder works of visual art in which the cumulative amount of such works sold during the previous year is more than $25,000,000 and does not solely conduct the sale of visual art by the entity on the Internet.''.

(2) inserting after the definition of ''proprietor'' and prior to the definition of ''pseudonymous work'' the following:

''For purposes of section 106(b), 'price' is the aggregate of all installments paid in cash or in-kind by or on behalf of a purchaser for a work as the result of auction of that work.'';

(3) inserting at the end of the definition of ''Publication'' the following: ''For purposes of section 106(b), in the case of a work of visual art as defined in this section, a publication does not include photographic reproductions or other images of the work, including castings of a sculptural work, made or distributed prior to January 1, 1978, in connection with the exhibition of such work by a gallery or museum, whether for purposes of sale of the original work, or in connection with any publication authorized by a gallery or museum in possession of the work regardless of whether such publication was with the consent of the author. In no other circumstances is a work of visual art considered to have been published prior to January 1, 1978, unless such publication has been authorized by the express written consent of the author of such work.'';

(4) inserting after the definition of ''registration'' and prior to the definition of ''sound recordings'' the following:

''For purposes of sections 106(b) and 701(b)(5), 'sale' means transfer of ownership or physical possession of a work as the result of the auction of that work.''; and

(5) amending paragraph (1) of the definition of a ''work of visual art'' to read as follows:

''(1) a painting, drawing, print, sculpture, or photograph, existing either in the original embodiment or in a limited edition of 200 copies or fewer that bear the signature or other identifying mark of the author and are consecutively numbered by the author, or, in the case of a sculpture in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or''.

SEC. 3. EXCLUSIVE RIGHTS.

Section 106 of title 17, United States Code, is amended by—

(1) inserting ''(a)'' before ''Subject to sections 107 through 122''; and

(2) adding at the end the following:

''(b)(1) In this subsection, the term 'net royalty' means the royalty amount collected less administrative expenses of the visual artists' collecting society. In no case shall the administrative expenses of the visual artists' collecting society subtracted from the royalty amount collected exceed 18 percent.

''(2) Whenever a work of visual art is sold as the result of auction of that work by someone other than the artist who is the author of the work, the entity that collects the money or other consideration paid for the sale of the work shall, within 90 days of collecting such money or other consideration, pay out of the proceeds of the sale a royalty equal to 7 percent of the price. Such royalty shall be paid to a visual artists' collecting society. The collecting society shall distribute, no fewer than 4 times per year, 50 percent of the net royalty to the artist or his or her successor as copyright owner. After payment to the artist or his or her successor as copyright owner, the remaining 50 percent of the net royalty shall be deposited into an escrow account established by the collecting society for the purposes of funding purchases by nonprofit art museums in the United States of works of visual art authored by living artists domiciled in the United States. The right to receive such royalty and the obligation to deposit the remaining share of

sale proceeds into the escrow account provided in this subsection may not be waived by the artist or his successor as copyright owner. Failure of the entity collecting the money or other consideration resulting from the sale of the work to pay the royalty provided under this section shall constitute an infringement of copyright. Any such infringement shall be subject to the payment of statutory damages under section 504.

''(3) Paragraph (2) shall not apply to the sale of a work for a gross sales price of less than $10,000, or in exchange for property with a fair market value of less than $10,000.''.

SEC. 4. NOTICE OF COPYRIGHT.

Section 401 of title 17, United States Code, is amended by adding at the end the following:

''(e) NON APPLICABILITY TO WORKS OF VISUAL ART.—The provisions of this section shall not apply to a work of visual art.''.

SEC. 5. COPYRIGHT OFFICE.

Section 701(b) of title 17, United States Code, is amended by—

(1) redesignating paragraph (5) as paragraph (6); and

(2) inserting after paragraph (4) the following:

''(5) Issue regulations governing visual artists' collecting societies pursuant to section 106(b), which shall, at a minimum—

''(A) establish a process by which entities would be determined to be and designated as visual artists' collecting societies;

''(B) require that a visual artists' collecting society authorized to administer royalty collections and distributions under this title shall have had prior experience in licensing the copyrights of authors of works of visual art in the United States, or have been authorized by no fewer than 10,000 authors of works of visual art, either directly or by virtue of reciprocal agreements with foreign collecting societies, to license the rights granted under section 106;

''(C) exclude any entity from being considered a visual artists' collecting society where, after having been designated a visual artists' collecting society, the royalties collected for at least 5 consecutive years have not been distributed directly to authors after deduction of administrative expenses;

''(D) establish the methodology and procedures pursuant to which visual artists' collecting societies shall make grants to nonprofit museums for the purchase of works with the escrow funds provided in this section, after notice and opportunity to comment, including—

''(i) the criteria to be used by the visual artists' collecting societies for application by nonprofit art museums for the purchase of works out of the funds held in escrow for that purpose by such societies;

''(ii) the amount of the maximum grant for the purchase of an individual work of visual art;

''(iii) the maximum amount that may be granted to a nonprofit museum; and

''(iv) criteria for the award of grants when the amounts requested exceed the total amount of funds held in escrow;

''(E) require that each such society provide the Register of Copyrights with an annual audit of royalty funds collected under section 106(b)(1) that includes the total amount received from the sales of works of visual art, the total amount paid in distributions to artists or, if deceased, to their successors as owners of copyright, and the total amount paid in grants to each nonprofit museum for the purchase of works of visual art; and

''(F) make publicly available an annual report to the Congress setting forth the total amount of royalties received by each visual artists' collecting society and the amount disbursed to each nonprofit art museum receiving a grant or grants from the escrow funds established by each visual artists' collecting society.

Except as necessary for the report to Congress required pursuant to subparagraph (F), the Register of Copyrights shall not disclose any confidential or proprietary information provided to it in the annual audits made available pursuant to this section.''.

SEC. 6. COPYRIGHT OFFICE FEES.

Section 708(a) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (10) and (11) as paragraphs (11) and (12), respectively;

(2) by inserting after paragraph (9) the following:

''(10) for expenses associated with carrying out its responsibilities under section 701(b)(5), provided that such fees shall be paid out of the total royalty payments received by collecting societies pursuant to section 106(b), before deduction of such societies' administrative expenses; and provided further, that following the initial rulemaking necessary to carry out its obligations under section 701(b)(5), such fees shall not exceed 5 percent of the total annual amount of royalties received by such collecting societies;''; and

(3) in the matter following paragraph (12), as so redesignated, in the second sentence, by striking ''(10) and (11)'' and inserting ''(11) and (12)''.

SEC. 7. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date that is 1 year after the date of enactment of this Act.

By Mr. WYDEN (for himself and Mr. MERKLEY):

S. 2001. A bill to expand the Wild Rogue Wilderness Area in the State of Oregon, to make additional wild and scenic river designations in the Rogue River area, to provide additional protections for Rogue River tributaries, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. WYDEN. Mr. President, today I am pleased to introduce legislation to expand the Wild Rogue Wilderness Area and expand protections to Oregon's iconic Rogue River and its tributaries. I am pleased that Senator MERKLEY is joining me in this effort, and that Congressman DEFAZIO has introduced similar legislation in the House of Representatives.

The Wild Rogue Wilderness and the Rogue River that runs through it embody one of the Nation's premier recreation destinations, famous for the free flowing waters which provide numerous rafting and fishing opportunities. The headwaters of the Rogue River start in one of Oregon's other great gems Crater Lake National Park, and the river ultimately empties into the Pacific Ocean, near Gold Beach on Oregon's southwest coast. Along that stretch, the Rogue River flows through one of the most spectacular canyons and diverse natural areas in the United States. The Rogue River is a world class rafting river, offering everything from one day trips to week long trips through deep forested canyons. On the land, the Rogue River trail is also one of Oregon's most renowned backpacking routes.

The legislation I introduce today, the Rogue Wilderness Area Expansion Act of 2011, would add 60,000 acres of new wilderness to the existing Wild Rogue Wilderness. The Wild Rogue Wilderness expansion would protect habitat for bald eagles, osprey, spotted owls, bear, elk, cougar, wild coho, wild Chinook, wild steelhead and many others. It would also ensure these treasured lands are protected for generations to come.

My legislation would also protect an additional 143 miles of tributaries that feed the Rogue River with cold clean water; 93 miles would be designated Wild and Scenic Rivers and an additional 50 miles would be protected from mining. The areas receiving protection include Galice Creek, Little Windy Creek, Jenny Creek, Long Gulch, and 36 other tributaries of the Rogue. The Rogue River is one of Oregon's most iconic and beloved rivers. It is a river that teems with salmon leaping up rapids to spawn, and finds rafters down those very same rapids at other times of the year. The Rogue River is home to runs of coho, spring and fall Chinook, winter and summer steelhead, and it has the special distinction of being one of only a handful of rivers in the country with runs of green sturgeon. In 2008, American Rivers named the Rogue and its tributaries as the second most endangered river in the U.S. I am hoping to change that today by introducing legislation to protect this river and its tributaries.

I previously introduced legislation to protect the Rogue River tributaries in the last two Congresses. Since that time, I have worked with the timber industry and conservationists to find a compromise that protects one of America's treasures with additional wilderness designations and more targeted protections for the Rogue's tributaries. I am pleased that nearly 60 local businesses, and over 100 organizations and business in total, support protecting the Wild Rogue, and that support grows every day. Many of those businesses directly benefit from the Wild Rogue and the Rogue River. As I often say, protecting these gems is not just good for the environment, but also good for the economy. These protected landscapes are powerhouses of the recreation economy that draws visitors from around the world to this region and the Rogue River is one of Oregon's most important sport and commercial fisheries. The Wild Rogue is the second largest salmon fishery in Oregon behind the Columbia. The Wild Rogue provides the quality of life and recreational opportunities that create an economic engine that attracts businesses and brings in tourists from around the world. The Rogue River supports 450 local jobs in nearby communities like Grants Pass.

By protecting the Wild Rogue landscape and the tributaries that feed the mighty Rogue River, Congress will ensure that future generations can raft, fish, hike and enjoy the Wild Rogue as

it is enjoyed today and that the recreational economy of this region remains strong.

I want to express my thanks to the conservation and business communities of southern Oregon, who have worked diligently to protect these lands and waters and enable the outdoor recreationists to use and enjoy these rivers. I look forward to working with my House colleagues and the bill's supporters to advance our legislation to the President's desk.

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

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

S. 2001

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rogue Wilderness Area Expansion Act of 2011''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) MAP.—The term ''map'' means the map entitled ''Wild Rogue Wilderness Additions'' and dated December 8, 2011.

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

(4) STATE.—The term ''State'' means the State of Oregon.

(5) WILDERNESS ADDITIONS.—The term ''Wilderness additions'' means the land added to the Wild Rogue Wilderness by section 3(a).

SEC. 3. EXPANSION OF WILD ROGUE WILDERNESS AREA.

(a) EXPANSION.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), the approximately 60,000 acres of Bureau of Land Management land, as generally depicted on the map, is included in the Wild Rogue Wilderness, a component of the National Wilderness Preservation System.

(b) MAP; LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and legal description of the wilderness area designated by subsection (a), with—

(A) the Committee on Energy and Natural Resources of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) FORCE OF LAW.—The map and legal description filed under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct typographical errors in the map and legal description.

(3) PUBLIC AVAILABILITY.—The map and legal description filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(c) ADMINISTRATION.—Subject to valid existing rights, the Wilderness additions shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), except that—

(1) any reference in that Act to the effective date shall be considered to be a reference to the date of enactment of this Act; and

(2) any reference in that Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary.

(d) FISH AND WILDLIFE.—Nothing in this section affects the jurisdiction or responsibilities of the State with respect to fish and wildlife in the State.

(e) ADJACENT MANAGEMENT.—

(1) IN GENERAL.—Nothing in this section creates any protective perimeter or buffer zone around the Wilderness additions.

(2) ACTIVITIES OUTSIDE WILDERNESS.—The fact that a nonwilderness activity or use on land outside the Wilderness additions can be seen or heard within the Wilderness additions shall not preclude the activity or use outside the boundary of the Wilderness additions.

(f) PROTECTION OF TRIBAL RIGHTS.—Nothing in this section diminishes any treaty rights of an Indian tribe.

(g) WITHDRAWAL.—Subject to valid existing rights, the Wilderness additions are withdrawn from all forms of—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.

SEC. 4. WILD AND SCENIC RIVER DESIGNATIONS, ROGUE RIVER AREA.

(a) AMENDMENTS.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by striking paragraph (5) and inserting the following:

''(5) ROGUE, OREGON.—

''(A) IN GENERAL.—The segment of the river extending from the mouth of the Applegate River downstream to the Lobster Creek Bridge, to be administered by the Secretary of the Interior or the Secretary of Agriculture, as agreed to by the Secretaries of the Interior and Agriculture or as directed by the President.

''(B) ADDITIONS.—In addition to the segment described in subparagraph (A), there are designated the following segments in the Rogue River:

''(i) KELSEY CREEK.—The approximately 4.8-mile segment of Kelsey Creek from the east section line of T. 32 S., R. 9 W., sec. 34, Willamette Meridian, to the confluence with the Rogue River, as a wild river.

''(ii) EAST FORK KELSEY CREEK.—The approximately 4.6-mile segment of East Fork Kelsey Creek from the Wild Rogue Wilderness boundary in T. 33 S., R. 8 W., sec. 5, Willamette Meridian, to the confluence with Kelsey Creek, as a wild river.

''(iii) WHISKY CREEK.—

''(I) RECREATIONAL RIVER.—The approximately 0.6-mile segment of Whisky Creek from the confluence of the East Fork and West Fork to 0.1 miles downstream from road 33-8-23, as a recreational river.

''(II) WILD RIVER.—The approximately 1.9-mile segment of Whisky Creek from 0.1 miles downstream from road 33-8-23 to the confluence with the Rogue River, as a wild river.

''(iv) EAST FORK WHISKY CREEK.—

''(I) WILD RIVER.—The approximately 2.6-mile segment of East Fork Whisky Creek from the Wild Rogue Wilderness boundary in T. 33 S., R. 8 W., sec. 11, Willamette Meridian., to 0.1 miles downstream of road 33-8-26 crossing, as a wild river.

''(II) RECREATIONAL RIVER.—The approximately 0.3-mile segment of East Fork Whisky Creek from 0.1 miles downstream of road 33-8-26 to the confluence with Whisky Creek, as a recreational river.

''(v) WEST FORK WHISKY CREEK.—The approximately 4.8-mile segment of West Fork Whisky Creek from its headwaters to the confluence with Whisky Creek, as a wild river.

''(vi) BIG WINDY CREEK.—

''(I) SCENIC RIVER.—The approximately 1.5-mile segment of Big Windy Creek from its headwaters to 0.1 miles downstream from road 34-9-17.1, as a scenic river.

''(II) WILD RIVER.—The approximately 5.8-mile segment of Big Windy Creek from 0.1 miles downstream from road 34-9-17.1 to the confluence with the Rogue River, as a wild river.

''(vii) EAST FORK BIG WINDY CREEK.—

''(I) SCENIC RIVER.—The approximately 0.2-mile segment of East Fork Big Windy Creek from its headwaters to 0.1 miles downstream from road 34-8-36, as a scenic river.

''(II) WILD RIVER.—The approximately 3.7-mile segment of East Fork Big Windy Creek from 0.1 miles downstream from road 34-8-36 to the confluence with Big Windy Creek, as a wild river.

''(viii) LITTLE WINDY CREEK.—The approximately 1.9-mile segment of Little Windy Creek from 0.1 miles downstream of road 34-8-36 to the confluence with the Rogue River, as a wild river.

''(ix) HOWARD CREEK.—

''(I) SCENIC RIVER.—The approximately 0.3-mile segment of Howard Creek from its headwaters to 0.1 miles downstream of road 34-9-34, as a scenic river.

''(II) WILD RIVER.—The approximately 6.9-mile segment of Howard Creek from 0.1 miles downstream of road 34-9-34 to the confluence with the Rogue River, as a wild river.

''(x) MULE CREEK.—The approximately 6.3-mile segment of Mule Creek from the east section line of T. 32 S., R. 10 W., sec. 25, Willamette Meridian, to the confluence with the Rogue River, as a wild river.

''(xi) ANNA CREEK.—The approximately 3.5-mile segment of Anna Creek from its headwaters to the confluence with Howard Creek, as a wild river.

''(xii) MISSOURI CREEK.—The approximately 1.6-mile segment of Missouri Creek from the Wild Rogue Wilderness boundary in T. 33 S., R. 10 W., sec. 24, Willamette Meridian, to the confluence with the Rogue River, as a wild river.

''(xiii) JENNY CREEK.—The approximately 1.8-mile segment of Jenny Creek from the Wild Rogue Wilderness boundary in T. 33 S., R. 9 W., sec.28, Willamette Meridian, to the confluence with the Rogue River, as a wild river.

''(xiv) RUM CREEK.—The approximately 2.2-mile segment of Rum Creek from the Wild Rogue Wilderness boundary in T. 34 S., R. 8 W., sec. 9, Willamette Meridian, to the confluence with the Rogue River, as a wild river.

''(xv) EAST FORK RUM CREEK.—The approximately 1.3-mile segment of East Rum Creek from the Wild Rogue Wilderness boundary in T. 34 S., R. 8 W., sec. 10, Willamette Meridian, to the confluence with Rum Creek, as a wild river.

''(xvi) WILDCAT CREEK.—The approximately 1.7-mile segment of Wildcat Creek from its headwaters downstream to the confluence with the Rogue River, as a wild river.

''(xvii) MONTGOMERY CREEK.—The approximately 1.8-mile segment of Montgomery Creek from its headwaters downstream to the confluence with the Rogue River, as a wild river.

''(xviii) HEWITT CREEK.—The approximately 1.2-mile segment of Hewitt Creek from the Wild Rogue Wilderness boundary in T. 33 S., R. 9 W., sec. 19, Willamette Meridian, to the confluence with the Rogue River, as a wild river.

''(xix) BUNKER CREEK.—The approximately 6.6-mile segment of Bunker Creek from its headwaters to the confluence with the Rogue River, as a wild river.

''(xx) DULOG CREEK.—

''(I) SCENIC RIVER.—The approximately 0.8-mile segment of Dulog Creek from its headwaters to 0.1 miles downstream of road 34-8-36, as a scenic river.

''(II) WILD RIVER.—The approximately 1.0-mile segment of Dulog Creek from 0.1 miles

downstream of road 34-8-36 to the confluence with the Rogue River, as a wild river.

''(xxi) QUAIL CREEK.—The approximately 1.7-mile segment of Quail Creek from the Wild Rogue Wilderness boundary in T. 33 S., R. 10 W., sec. 1, Willamette Meridian, to the confluence with the Rogue River, as a wild river.

''(xxii) MEADOW CREEK.—The approximately 4.1-mile segment of Meadow Creek from its headwaters to the confluence with the Rogue River, as a wild river.

''(xxiii) RUSSIAN CREEK.—The approximately 2.5-mile segment of Russian Creek from the Wild Rogue Wilderness boundary in T. 33 S., R. 8 W., sec. 20, Willamette Meridian, to the confluence with the Rogue River, as a wild river.

''(xxiv) ALDER CREEK.—The approximately 1.2-mile segment of Alder Creek from its headwaters to the confluence with the Rogue River, as a wild river.

''(xxv) BOOZE CREEK.—The approximately 1.5-mile segment of Booze Creek from its headwaters to the confluence with the Rogue River, as a wild river.

''(xxvi) BRONCO CREEK.—The approximately 1.8-mile segment of Bronco Creek from its headwaters to the confluence with the Rogue River, as a wild river.

''(xxvii) COPSEY CREEK.—The approximately 1.5-mile segment of Copsey Creek from its headwaters to the confluence with the Rogue River, as a wild river.

''(xxviii) CORRAL CREEK.—The approximately 0.5-mile segment of Corral Creek from its headwaters to the confluence with the Rogue River, as a wild river.

''(xxix) COWLEY CREEK.—The approximately 0.9-mile segment of Cowley Creek from its headwaters to the confluence with the Rogue River, as a wild river.

''(xxx) DITCH CREEK.—The approximately 1.8-mile segment of Ditch Creek from the Wild Rogue Wilderness boundary in T. 33 S., R. 9 W., sec. 5, Willamette Meridian, to its confluence with the Rogue River, as a wild river.

''(xxxi) FRANCIS CREEK.—The approximately 0.9-mile segment of Francis Creek from its headwaters to the confluence with the Rogue River, as a wild river.

''(xxxii) LONG GULCH.—The approximately 1.1-mile segment of Long Gulch from the Wild Rogue Wilderness boundary in T. 33 S., R. 10 W., sec. 23, Willamette Meridian, to the confluence with the Rogue River, as a wild river.

''(xxxiii) BAILEY CREEK.—The approximately 1.7-mile segment of Bailey Creek from the west section line of T. 34 S., R.8 W., sec.14, Willamette Meridian, to the confluence of the Rogue River, as a wild river.

''(xxxiv) SHADY CREEK.—The approximately 0.7-mile segment of Shady Creek from its headwaters to the confluence with the Rogue River, as a wild river.

''(xxxv) SLIDE CREEK.—

''(I) SCENIC RIVER.—The approximately 0.5-mile segment of Slide Creek from its headwaters to 0.1 miles downstream from road 33-9-6, as a scenic river.

''(II) WILD RIVER.—The approximately 0.7-mile section of Slide Creek from 0.1 miles downstream of road 33-9-6 to the confluence with the Rogue River, as a wild river.''.

(b) MANAGEMENT.—Each river segment designated by subparagraph (B) of section 3(a)(5) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(5)) (as added by subsection (a)) shall be managed as part of the Rogue Wild and Scenic River.

(c) WITHDRAWAL.—Subject to valid existing rights, the Federal land within the boundaries of the river segments designated under subparagraph (B) of section 3(a)(5) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(5)) (as added by subsection (a)) is withdrawn from all forms of—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.

SEC. 5. ADDITIONAL PROTECTIONS FOR ROGUE RIVER TRIBUTARIES.

(a) LICENSING BY COMMISSION.—The Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works on or directly affecting any stream described in subsection (d).

(b) OTHER AGENCIES.—

(1) IN GENERAL.—No department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project on or directly affecting any stream segment that is described in subsection (d), except to maintain or repair water resources projects in existence on the date of enactment of this Act.

(2) EFFECT.—Nothing in this subsection prohibits any department or agency of the United States in assisting by loan, grant, license, or otherwise, a water resources project—

(A) the primary purpose of which is ecological or aquatic restoration; and

(B) that provides a net benefit to water quality and aquatic resources.

(c) WITHDRAWAL.—Subject to valid existing rights, the Federal land located within a ¼ mile on either side of the stream segments described in subsection (d), is withdrawn from all forms of—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.

(d) DESCRIPTION OF STREAM SEGMENTS.—The following are the stream segments referred to in subsection (a):

(1) KELSEY CREEK.—The approximately 4.5-mile segment of Kelsey Creek from its headwaters to the east section line of T. 32 S., R. 9 W., sec. 34.

(2) EAST FORK KELSEY CREEK.—The approximately 0.2-mile segment of East Fork Kelsey Creek from its headwaters to the Wild Rogue Wilderness boundary in T. 33 S., R. 8 W., sec. 5.

(3) EAST FORK WHISKY CREEK.—The approximately 0.9-mile segment of East Fork Whisky Creek from its headwaters to the Wild Rogue Wilderness boundary in T. 33 S., R. 8 W., sec. 11.

(4) LITTLE WINDY CREEK.—The approximately 1.2-mile segment of Little Windy Creek from its headwaters to the west section line of T. 33 S., R. 9 W., sec. 34.

(5) MULE CREEK.—The approximately 5.1-mile segment of Mule Creek from its headwaters to the east section line of T. 32 S., R. 10 W., sec. 25.

(6) MISSOURI CREEK.—The approximately 3.1-mile segment of Missouri Creek from its headwaters to the Wild Rogue Wilderness boundary in T. 33 S., R. 10 W., sec. 24.

(7) JENNY CREEK.—The approximately 3.1-mile segment of Jenny Creek from its headwaters to the Wild Rogue Wilderness boundary in T. 33 S., R. 9 W., sec. 28.

(8) RUM CREEK.—The approximately 2.2-mile segment of Rum Creek from its headwaters to the Wild Rogue Wilderness boundary in T. 34 S., R. 8 W., sec. 9.

(9) EAST FORK RUM CREEK.—The approximately 0.8-mile segment of East Fork Rum Creek from its headwaters to the Wild Rogue Wilderness boundary in T. 34 S., R. 8 W., sec. 10.

(10) HEWITT CREEK.—The approximately 1.4-mile segment of Hewitt Creek from its headwaters to the Wild Rogue Wilderness boundary in T. 33 S., R. 9 W., sec. 19.

(11) QUAIL CREEK.—The approximately 0.8-mile segment of Quail Creek from its headwaters to the Wild Rogue Wilderness boundary in T. 33 S., R. 10 W., sec. 1.

(12) RUSSIAN CREEK.—The approximately 0.1-mile segment of Russian Creek from its headwaters to the Wild Rogue Wilderness boundary in T. 33 S., R. 8 W., sec. 20.

(13) DITCH CREEK.—The approximately 0.7-mile segment of Ditch Creek from its headwaters to the Wild Rogue Wilderness boundary in T. 33 S., R. 9 W., sec. 5.

(14) LONG GULCH.—The approximately 1.4-mile segment of Long Gulch from its headwaters to the Wild Rogue Wilderness boundary in T. 33 S., R. 10 W., sec. 23.

(15) BAILEY CREEK.—The approximately 1.4-mile segment of Bailey Creek from its headwaters to the west section line of T. 34 S., R. 8 W., sec. 14.

(16) QUARTZ CREEK.—The approximately 3.3-mile segment of Quartz Creek from its headwaters to its confluence with the North Fork Galice Creek.

(17) NORTH FORK GALICE CREEK.—The approximately 5.7-mile segment of the North Fork Galice Creek from its headwaters to its confluence with Galice Creek.

(18) GRAVE CREEK.—The approximately 10.2-mile segment of Grave Creek from the confluence of Wolf Creek downstream to the confluence with the Rogue River.

(19) CENTENNIAL GULCH.—The approximately 2.2-mile segment of Centennial Gulch from its headwaters to its confluence with the Rogue River.

(20) GALICE CREEK.—The approximately 2.2-mile segment of Galice Creek from the confluence with the South Fork Galice Creek downstream to the Rogue River.

By Mrs. FEINSTEIN (for herself, Mr. SESSIONS, Mr. SCHUMER, and Mr. CORNYN):

S. 2002. A bill to amend the Federal Food, Drug, and Cosmetic Act to improve the safety of Internet pharmacies; to the Committee on Health, Education, Labor, and Pensions.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce legislation that will help stop criminals from exploiting the Internet to illegally sell prescription drugs. I am pleased to be joined in this effort by Senator SESSIONS, Senator SCHUMER, and Senator CORNYN.

I first became concerned about the issue of illegitimate online pharmacies in 2001, when one of my constituents, high school student Ryan Haight, died from an overdose of the controlled substance Vicodin. He had purchased the Vicodin from a rogue online pharmacy after simply filling out an online questionnaire in which he described himself as a 25-year-old male suffering from chronic back pain. The doctor prescribing the drug never met or personally examined Ryan.

Ryan's death was a terrible tragedy. He was a remarkable young man, an honors student and an athlete. He looked forward to going to college. Instead, his life was cut short.

In response, I introduced legislation, beginning in 2004, to better regulate

the online sale of prescription drugs that are controlled substances.

In 2008, the Ryan Haight Online Pharmacy Consumer Protection Act, Ryan Haight Act, was enacted into law, and it became effective in April 2009. Senator SESSIONS was the lead cosponsor on that legislation.

The Ryan Haight Act makes it a violation of the Controlled Substances Act to dispense a prescription for a controlled substance by means of the Internet without a practitioner having conducted at least one in-person medical evaluation of the purchaser. The act also requires online pharmacies to register with the Drug Enforcement Administration, DEA, and comply with DEA regulations.

The Ryan Haight Act has helped to prevent illegitimate online sales of prescribed controlled substances. However, illegitimate online sellers continue to sell other types of prescription drugs, and stronger laws are needed to stop them.

The sale of prescription drugs online by web sites acting unlawfully is a dangerous and widespread problem. The National Association of Boards of Pharmacy and other non-profit organizations that monitor the Internet have consistently found that about 96 percent of all Internet pharmacies don't require a prescription, aren't appropriately licensed, and sell unregulated drugs.

Theses illegitimate online pharmacies continue to cause serious harm. The National Association of Boards of Pharmacy reports that from the start of its Internet Drug Outlet Identification Program in April 2008, it has received 509 customer inquiries about online prescription drug sellers, and 21 of those customers have reported injuries. Some of these injuries were very serious leading to hospitalization, with customers suffering worsening symptoms caused by the ailment the medications were intended to treat, as well as severe side effects.

The easy accessibility of prescription drugs through illegitimate online drug sellers also contributes to a growing prescription drug abuse problem. A study published in the May 2011 edition of the Journal of Health Affairs suggests that the growth in high-speed Internet access has fueled prescription drug abuse. Conducted by investigators from Massachusetts General Hospital and the University of Southern California, the study found that, over a 7-year period, States with the greatest expansion in high-speed Internet access also had the largest increase in admissions for treatment of prescription drug abuse.

We should be particularly concerned about this problem when it comes to young people, who are frequently online unsupervised and vulnerable to rogue drug sellers on the Internet.

Not surprisingly, there is also a significant amount of fraud associated with illegitimate online drug sellers. Some of these websites simply take money without providing anything in return.

Web sites that dispense counterfeit drugs are an even more dangerous problem. These counterfeit drugs are frequently manufactured in unsanitary conditions and may contain contaminated ingredients, or the wrong ingredients. A recent CBS News story found that counterfeit drugs can contain paint, floor wax, and boric acid. So, instead of the appropriate medicine needed for their health problem, online consumers are receiving substances that may harm or even kill them.

The legislation I am introducing today will address these problems, and help stop illegitimate online drug sellers.

There are two main components to the legislation. First, it amends the Food, Drug and Cosmetic Act to add a definition of ''valid prescription,'' requiring at least one in-person medical evaluation of the patient. This is the same approach taken in the Ryan Haight Act with prescription drugs that are controlled substances. It will prevent illegitimate online pharmacies from selling drugs over the Internet with sham prescriptions.

The second critical element is the establishment, by the Food and Drug Administration, of a registry of legitimate online pharmacy websites. This will protect consumers who will know that they are dealing with lawful online pharmacies and help law enforcement crack down on the illegitimate websites.

The exploitation of the Internet by rogue online drug sellers continues to be a dangerous and deadly problem and we should not wait for more lives to be lost or ruined before we act.

Consumers deserve access to safe and legitimate online pharmacies and protection from illegitimate websites that sell counterfeit or otherwise illegitimate medication, and I urge my colleagues to support this legislation.

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

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

S. 2002

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Online Pharmacy Safety Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) consumers in the United States are targeted by organized international crime networks that use Internet websites to sell illegal and often dangerous drugs under the guise of being legitimate online pharmacies;

(2) illegal online drug sellers offer products that do not meet the safety standards established by United States laws, and recent reports from the National Association of Boards of Pharmacy show that 92 to 95 percent of Internet websites offering to sell prescription medications online are illegitimate and operate in clear violation of United States laws enacted to protect patients;

(3) criminals are attracted to the high profit margin of business through illegitimate online drug sales, as counterfeit drug sales alone are estimated to have generated $75,000,000,000 in 2010, an increase of 92 percent from 2005;

(4) the World Health Organization estimates that 50 percent of the prescription medicines sold online by Internet websites that hide their physical address are counterfeit;

(5) research by The Partnership at Drugfree.org found that 1 in 6 consumers in the United States, a total of about 36,000,000 Americans, has bought or currently buys prescription medication online without a valid prescription;

(6) the prevalence of illegal online drug sellers, and their sale of counterfeit or otherwise illegitimate medicines, is a growing public health threat;

(7) people have been seriously injured or killed by products sold by illegal online drug sellers;

(8) the accessibility of controlled substances and other drugs without a valid prescription by illegal online drug sellers contributes to a growing prescription drug abuse problem in the United States that is endangering teenagers and public health;

(9) the anonymous and unregulated nature of the Internet contributes to the counterfeit drug trade and enables counterfeit medicines to reach United States consumers through illegitimate online drug sellers posing as legitimate pharmacies;

(10) counterfeit drugs that are sold through illegal online drug sellers are manufactured by criminals who deliberately and fraudulently misrepresent the product in order to trick consumers into thinking they are purchasing a legitimate and safe medicine;

(11) these counterfeit drugs are frequently manufactured in unsanitary conditions and may contain the wrong ingredients, lack active ingredients, have insufficient or contaminated active ingredients, or contain too many active ingredients;

(12) counterfeit drugs obtained from illegal online drug sellers have been found to contain harmful ingredients including arsenic, boric acid, brick dust, cement powder, chalk dust, floor polish, leaded road paint, nickel, shoe polish, and talcum powder;

(13) United States citizens deserve access to safe and legitimate online pharmacies and protection from illegal Internet websites that sell counterfeit or otherwise illegitimate medication;

(14) while the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Public Law 110–425) has helped to prevent illegitimate online sales of prescribed controlled substances, illegal online sellers continue to sell other types of prescription drugs and stronger laws are needed to stop them; and

(15) greater education and awareness regarding illegal online drug sellers will help to protect the United States drug supply chain from infiltration by unregulated and counterfeit products.

SEC. 3. VALID PRESCRIPTIONS.

Section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)) is amended—

(1) in paragraph (1), in the matter following subparagraph (B), by striking ''shall be dispensed'' and all that follows through ''the pharmacist.'' and inserting the following: ''shall be dispensed only pursuant to a valid prescription that is (i) a written prescription of a practitioner licensed by law to administer such drug; (ii) an oral prescription of such practitioner which is reduced promptly to writing by the pharmacist; (iii) an electronic prescription issued by a practitioner licensed by law to administer such

drug; or (iv) the refill of any such written, oral, or electronic prescription if such refilling is authorized by the prescriber either in the original prescription, electronic prescription, or by oral order which is reduced promptly to writing by the pharmacist.''; and

(2) by adding at the end the following:

''(6) In this paragraph:

''(A) The term 'valid prescription' means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by—

''(i) a licensed practitioner who has conducted at least 1 in-person medical evaluation of the patient, subject to paragraph (7);

''(ii) a covering practitioner; or

''(iii) a practitioner engaged in the practice of telemedicine.

''(B)(i) The term 'in-person medical evaluation' means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

''(ii) Nothing in clause (i) shall be construed to imply that 1 in-person medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

''(C) The term 'covering practitioner' means, with respect to a patient, a licensed practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a licensed practitioner who—

''(i) has conducted at least 1 in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous 24 months; and

''(ii) is temporarily unavailable to conduct the evaluation of the patient.

''(D) The term 'practice of telemedicine' has the meaning given that term in section 102 of the Controlled Substances Act.

''(7) For purposes of paragraph (6), an in-person medical evaluation of the patient is not required if—

''(A) the prescribing practitioner is issuing a prescription or dispensing a legend drug in accordance with the Expedited Partner Therapy in the Management of Sexually Transmitted Diseases guidance document issued by the Centers for Disease Control and Prevention; or

''(B) the prescription, administration, or dispensing is through a public health clinic or other distribution mechanism approved by the State health authority in order to prevent, mitigate, or treat a pandemic illness, infectious disease outbreak, or intentional or accidental release of a biological, chemical, or radiological agent.

''(8) The Secretary may by regulation establish exceptions to the requirements described in paragraph (6) with respect to a drug, based on criteria established by the Secretary.''.

SEC. 4. REGISTRY OF LEGITIMATE ONLINE PHARMACY WEBSITES.

Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 510 the following:

''SEC. 510A. REGISTRY OF LEGITIMATE ONLINE PHARMACY WEBSITES.

''(a) DEFINITIONS.—In this section:

''(1) DISPENSING PHARMACY.—The term 'dispensing pharmacy' means a pharmacy that dispenses, distributes, or supplies prescription drugs pursuant to orders made on, through, or on behalf of, an online pharmacy website.

''(2) DOMAIN NAME.—The term 'domain name' has the meaning given that term in section 45 of the Lanham Act (15 U.S.C. 1127).

''(3) FINANCIAL TRANSACTION PROVIDER.—The term 'financial transaction provider' has the meaning given that term in section 5362(4) of title 31, United States Code.

''(4) INTERNET WEBSITE.—The term 'Internet website' means the collection of digital assets, including links, indexes, or pointers to digital assets, accessible through the Internet that are addressed relative to a common domain name.

''(5) LEGITIMATE ONLINE PHARMACY WEBSITE.—The term 'legitimate online pharmacy website' means an online pharmacy website that is included in the Registry pursuant to a designation by the Secretary under this section.

''(6) ONLINE PHARMACY WEBSITE.—The term 'online pharmacy website' means an Internet website that offers, sells, dispenses, or distributes, or facilitates the sale, dispensing, or distribution of prescription or other drugs to consumers.

''(7) PRESCRIPTION DRUG.—The term 'prescription drug' means a drug that is subject to section 503(b)(1).

''(b) ESTABLISHMENT OF REGISTRY.—The Secretary shall establish a Registry of Legitimate Online Pharmacy Websites (referred to in this section as the 'Registry') for the purpose of educating consumers and promoting public health and safety.

''(c) CRITERIA.—The Secretary shall designate an online pharmacy website as a legitimate online pharmacy website, and include such legitimate online pharmacy website on the Registry, if the Secretary determines that—

''(1) the online pharmacy website is accredited by the United States National Association of Boards of Pharmacy Verified Internet Pharmacy Practice Sites program; or

''(2) the online pharmacy website meets each of the following requirements:

''(A) Prescription drugs ordered, sold, dispensed, distributed, supplied, or provided through or by the online pharmacy website are sold, dispensed, distributed, supplied, or provided solely by dispensing pharmacies that are domiciled in the United States and that maintain pharmacy licensure, a permit, or registration in good standing in all United States jurisdictions where such dispensing pharmacies provide services or are required to maintain such licensure, permit, or registration.

''(B) Each dispensing pharmacy affiliated with, or that dispenses, distributes, supplies, or provides prescription or other drugs on behalf of the online pharmacy website, maintains a valid Drug Enforcement Administration registration, unless such registration is not required by Drug Enforcement Administration regulations.

''(C) Each dispensing pharmacy affiliated with, or that dispenses, distributes, supplies, or provides prescription drugs on behalf of the online pharmacy website, dispenses, distributes, supplies, provides, or offers or attempts to dispense, distribute, supply, or provide, prescription drugs only pursuant to a valid prescription (as defined in section 503(b)).

''(D) Each dispensing pharmacy affiliated with, or that dispenses, distributes, supplies, or provides prescription drugs on behalf of the online pharmacy website, complies with applicable Federal and State laws and regulations applicable to pharmacy practice.

''(E) Each dispensing pharmacy affiliated with, or that dispenses, distributes, supplies, or provides prescription or other drugs on behalf of the online pharmacy website, does not dispense, distribute, supply, provide, offer or attempt to dispense, distribute, supply, or provide, advertise, or promote prescription or other drugs that have not been approved by the Food and Drug Administration.

''(F) The online pharmacy website prominently displays the following information:

''(i) An accurate United States street address of each dispensing pharmacy or the corporate or other legal business entity headquarters of each dispensing pharmacy.

''(ii) An accurate, readily accessible, and responsive telephone number or other secure accurate means that allows the consumer to contact or consult with the pharmacist about his or her prescription drug.

''(G) The online pharmacy website does not make any statements, regarding the nature of any dispensing pharmacy or product offered via the website, that are materially misleading or fraudulent.

''(H) The domain name registration information applicable to the online pharmacy website is accurate, not anonymous, and has a logical nexus to each dispensing pharmacy or the corporate or other legal business headquarters of each dispensing pharmacy.

''(I) The online pharmacy website, including any operator, content owner, or domain name registrant of the online pharmacy website, is not affiliated with, and does not own or control any other online pharmacy website that violates the requirements under this paragraph.

''(J) The online pharmacy website, including any operator, content owner, or domain name registrant of the online pharmacy website, is not affiliated with, and does not own or control any other online pharmacy website that violates Federal or State law.

''(K) Information that would be considered protected health information under the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (commonly referred to as the 'HIPAA Privacy Rule') is transmitted by the online pharmacy website and each dispensing pharmacy affiliated with, or that dispenses, distributes, supplies, or provides prescription drugs on behalf of the online pharmacy website, in accordance with the requirements of such Act, including the use of Secure-Socket Layer or equivalent technology for the transmission of protected health information, and the online pharmacy website displays its privacy policy and that such policy complies with the requirements of the HIPAA Privacy Rule.

''(L) The online pharmacy website complies with other requirements as determined appropriate by the Secretary, in consultation with other Federal and State agencies responsible for regulating the practice of pharmacy.

''(d) PROCESS.—

''(1) APPLICATION.—The Secretary shall develop an application process through which an interested operator, content owner, or domain name registrant of an online pharmacy website may apply for inclusion on the Registry. Such an application shall be submitted in such form and manner as required by the Secretary and shall include, at a minimum, information to determine whether the online pharmacy website satisfies the criteria described under subsection (c). The Secretary shall not charge a fee for submission of an application.

''(2) IDENTIFICATION WITHOUT APPLICATION.—

''(A) IN GENERAL.—The Secretary shall take reasonable steps to identify online pharmacy websites for which no application has been submitted under paragraph (1) and evaluate whether these online pharmacy websites satisfy the criteria described under subsection (c).

''(B) COMPLIANCE CONFIRMED.—In cases where satisfaction of the criteria described under subsection (c) can be verified without the receipt of an application, an online pharmacy website that the Secretary determines to satisfy such criteria may be designated as a legitimate online pharmacy website and

included on the Registry and the operator, content owner, or domain name registrant of such online pharmacy website shall be notified of such placement.

''(C) ADDITIONAL INFORMATION REQUIRED.—In cases where satisfaction of the criteria described under subsection (c) cannot be verified without additional information or some corrective action by the online pharmacy website operator, content owner, or domain name registrant, the online pharmacy website shall not be designated as a legitimate online pharmacy website or placed on the Registry until the additional information is received by the Secretary and the Secretary determines that all applicable and necessary corrective actions have been taken.

''(3) REGULATIONS REGARDING APPLICATION PROCESS.—

''(A) IN GENERAL.—The Secretary shall promulgate regulations—

''(i) to establish the timeframes applicable to informing online pharmacy website operators, content owners, or domain name registrants that submit an application under paragraph (1) of the acceptance or denial of such application;

''(ii) to address what information may be shared with or withheld from online pharmacy website operators, content owners, or domain name registrants that submit such an application regarding corrective actions that would need to be taken to establish compliance with the Registry requirements;

''(iii) to establish an appeal process giving online pharmacy website operators, content owners, or domain name registrants that submit such an application the ability to request a second review of the application to determine compliance with the Registry requirements; and

''(iv) to address other procedural matters regarding the receipt and evaluation of applications submitted under paragraph (1) as the Secretary determines necessary.

''(B) LIMITATION REGARDING APPEALS PROCESS.—The appeals process established under subparagraph (A)(iii) shall in no case require the Secretary—

''(i) to disclose information that may impede an ongoing or potential criminal or regulatory investigation; or

''(ii) to provide an opportunity for appeal in cases where the Secretary determines, in the Secretary's sole discretion, that the violation of a Registry requirement is materially significant, such a violation is not likely to be curable, or the applicant has engaged in a pattern of violations of Federal or State law.

''(4) AUTHORITY AND PROCESS FOR REMOVAL FROM REGISTRY.—

''(A) IN GENERAL.—The Secretary shall have the authority to remove an online pharmacy website from the Registry—

''(i) upon determination that the online pharmacy website is not in compliance with the criteria as established by this section;

''(ii) upon determination that the online pharmacy website was mistakenly included in the Registry; or

''(iii) for good cause as determined by the Secretary based on credible evidence.

''(B) PROCESS.—If the Secretary determines that an online pharmacy website shall be removed from the Registry under subparagraph (A), the Secretary shall provide notice to the operator, content owner, or domain name registrant of the online pharmacy website of the determination, the date of the removal of the website from the Registry, and the reasons for removal.

''(C) REGULATIONS FOR APPEAL PROCESS.—

''(i) IN GENERAL.—The Secretary shall promulgate regulations that provide the operator, content owner, or domain name registrant of an online pharmacy website removed from the Registry the ability to appeal the removal and to provide information to correct matters that served as basis for removal from the Registry. Such regulations shall provide a reasonable time period to correct the grounds for removal.

''(ii) LIMITATION REGARDING APPEALS PROCESS.—The appeals process established under clause (i) shall in no case require the Secretary—

''(I) to disclose information that may impede an ongoing or potential criminal or regulatory investigation; or

''(II) to provide an opportunity for appeal in cases where the Secretary determines, in the Secretary's sole discretion, that the violation of a Registry requirement is materially significant, such a violation is not likely to be curable, or the applicant has engaged in a pattern of violations of Federal or State law.

''(e) CONTRACTS WITH PRIVATE ENTITIES.—

''(1) IN GENERAL.—The Secretary may enter into contracts with the United States National Association of Boards of Pharmacy or other private entities to—

''(A) review applications submitted under subsection (d)(1) and evaluate whether the online pharmacy website satisfies the criteria described under subsection (c);

''(B) on an ongoing basis, review and identify online pharmacy websites for which no application has been submitted under subsection (d)(1) and evaluate whether these online pharmacies satisfy the criteria described under subsection (c);

''(C) make recommendations to the Secretary as to whether an online pharmacy website, either through application or through identification under subparagraph (B), satisfies the criteria under subsection (c);

''(D) notify the Food and Drug Administration of online pharmacy websites that do not to satisfy such criteria; and

''(E) provide services to maintain the Registry.

''(2) CONTRACTING.—In contracting with entities under this subsection, the Secretary—

''(A) may waive such provisions of the Federal Acquisition Regulation, except for provisions relating to confidentiality of information, as necessary for the efficient implementation of this subsection and for selecting such entities; and

''(B) shall select entities that have demonstrated a history of competency in reviewing, evaluating, and determining the legitimacy of online pharmacy websites, based on standards approved by the United States National Association of Boards of Pharmacy.

''(3) TERMS OF CONTRACT.—A contract with an entity under this subsection shall include such terms and conditions as specified by the Secretary, including the following:

''(A) The entity shall monitor the Internet on an ongoing basis in order to sufficiently maintain a current list of legitimate online pharmacy websites for consideration by the Secretary.

''(B) On at least a monthly basis, the entity shall submit to the Secretary an updated list of legitimate online pharmacy websites recommended for inclusion on the Registry.

''(f) USE OF REGISTRY.—

''(1) PUBLIC AVAILABILITY.—The Secretary shall—

''(A) make the Registry available to Internet advertising services, financial transaction providers, domain name registries, domain name registrars, other domain name authorities, information location tool service providers, and others as determined necessary and appropriate by the Secretary to promote public health and safety;

''(B) make the Registry available to consumers and other interested persons through publication on the Internet website of the Food and Drug Administration; and

''(C) specify the Registry criteria used to designate legitimate online pharmacy websites on the Internet website of the Food and Drug Administration.

''(2) CONSUMER EDUCATION.—The Secretary shall—

''(A) engage in a campaign to educate consumers on the availability and use of the Registry to promote public health and safety through means as determined appropriate and necessary by the Secretary, which may include radio, television, print media, and Internet public service announcements; and

''(B) make consumer education materials available, on the Internet website of the Food and Drug Administration and in a consumer-friendly form and manner, regarding how to safely purchase drugs over the Internet.

''(g) REFUSAL OF SERVICE; IMMUNITY.—

''(1) REFUSAL OF SERVICE.—A domain name registry, domain name registrar, other domain name authority, financial transaction provider, information location tool service provider, or Internet advertising service, acting in good faith based on the Registry, may cease or refuse to provide services to an online pharmacy website that is not included on the Registry.

''(2) IMMUNITY FROM LIABILITY.—An entity described in paragraph (1), including the directors, officers, employees, or agents of such entity, that, acting in good faith, ceases or refuses to provide services to an online pharmacy website that is not listed on the Registry shall not be liable to any party under any Federal or State law for such action.

''(3) IMMUNITY FROM SUIT.—No cause of action shall lie in any court or administrative agency against any entity described in paragraph (1), including the directors, officers, employees, or agents of such entity, that, acting in good faith, ceases or refuses to provide services to an online pharmacy website that is not included on the Registry.''.

SEC. 5. FUNDING.

There is authorized to be appropriated such sums as may be necessary to carry out this Act (and the amendments made by this Act).

SEC. 6. EFFECTIVE DATE.

This Act (and the amendments made by this Act) shall take effect on the date that is 180 days after the date of enactment of this Act.

By Mr. UDALL of New Mexico (for himself, Mr. BINGAMAN, Mr. INOUYE, and Ms. LANDRIEU).

S. 2004. A bill to grant the Congressional Gold Medal to the troops who defended Bataan during World War II; to the Committee on Banking, Housing, and Urban Affairs.

Mr. UDALL of New Mexico. Mr. President, last week we marked the 70th anniversary of the attack on Pearl Harbor, an event that led to the U.S. into the Second World War. But that wasn't the only important 70th anniversary commemorated last week. Seventy years ago, on December 8, 1941, the day after the attack on Pearl Harbor, halfway across the world the long battle for control of the strategically important country of the Philippines began.

This is a battle that began in the air and on the sea, but would ultimately see the surrendered American and Filipino troops forced on a brutal death

march, languishing in substandard POW camps, and in many cases, succumbing to malnourishment, mistreatment, and disease.

It is on behalf of all of these soldiers that I introduce legislation to honor the Defenders of Bataan, a peninsula on the island of Luzon where the battle ended, but the hellish journey began, with a Congressional Gold Medal. They are most deserving and this honor is, I believe, long overdue.

Soon after the air and naval battle for the Philippines began, the Japanese would land a sizable force to take control of Luzon. Ten days later the Japanese began their main offensive into the island.

On Christmas Eve, 1941, General MacArthur put War Plan Orange 3 into effect. This plan called for some troops to delay the Japanese advance as the greater force withdrew into Bataan. According to historical documents, the purpose of the plan was to keep Manila Bay from Japanese control until the U.S. Navy could reopen the supply lines that had been cut off after the attack on Pearl Harbor.

With the supply lines cut off, troops also had no hope of reinforcements. Despite this logistical nightmare, they valiantly fought to defend the Philippines. For months, against all odds, they held back the enemy advance. The Japanese, hoping for a swift victory, were forced to slow the pace of their Pacific strategy. The delay enabled U.S. and allied forces the chance to regroup in the Pacific and prepare for the eventual liberation of occupied Pacific islands and the Philippines.

But by April of 1942, the defenders of Bataan were malnourished and exhausted. With no hope of overcoming the overwhelming conditions, they were ordered to surrender. While many followed the order to lay down their arms, others still fought to disrupt the Japanese by forming guerrilla units to maintain the opposition.

One such guerrilla leader was Oklahoma native and Choctaw Warrior Lt. Colonel Edward McClish, who, according to the U.S. Navy's historical website, ''had an organization of more than 300 soldiers, with four machine guns, 150 rifles, and six boxes of ammunition.''

Following capture, the defenders of Bataan suffered three years of intense hardship. Many would not survive. They would be forced to endure what became known as the horrendous 65-mile Bataan Death March. They would languish in substandard POW camps, where their malnourishment worsened and disease was rampant. Many others would be shipped to Japan on the dreaded hell ships. One such ship, the Arisan Maru, claimed nearly 1,800 American lives.

For us New Mexicans, the events of Bataan strike home particularly hard. Eighteen hundred men from New Mexico's 200th and 515th regiments left their homes to fight. Approximately half returned. These soldiers, largely of Hispanic origin, earned the honor of being the first to fire and defend the Philippines on December 8. A special group, they were successors to the New Mexico National Guardsmen who made up part of Teddy Roosevelt's famed ''Rough Riders'' from the Spanish-American war.

One of these men, Eliseo Lopez, a Bataan defender who was born in Springer, NM, endured all the horrors Bataan had to offer. A member of the 200th Coast Artillery Regiment he trained at Ft. Bliss and was deployed to Manila before war broke out. He fought the Japanese on Bataan. He survived the Death March to Camp O'Donnell and was moved to Cabanatuan prison camp. He was taken on a hell ship to Japan, and was forced to labor in a copper mine until he was rescued in September of 1945. Mr. Lopez died this past November at the age of 92. His obituary alone is a record of the tremendous service to the United States given by the Bataan defenders.

In New Mexico, we continue to honor and respect our Bataan Defenders. We remember their suffering. We take pride in their heroism. Every year we commemorate their sacrifice with a march at White Sands Missile Range. Other States, such as Missouri, have similar marches. In April, Missouri will honor their Bataan veterans with a march on the Katy Trail State Park.

The people of the United States and Philippines are forever indebted to Eliseo Lopez and the other men who served with him and endured the similar horrors. They represented the best of America. They hailed from diverse locales, but were united in their valor and in their devotion to their country. Their courage and tenacity during the first four months of World War II, and their perseverance during 3 years of imprisonment truly deserves the recognition of a Congressional Gold Medal. I urge my colleagues to join me in supporting this legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 348—EXPRESSING THE SENSE OF THE SENATE THAT THE SECRETARY OF THE TREASURY SHOULD TAKE ACTIONS TO INCREASE THE TRANSPARENCY AND ACCOUNTABILITY OF THE SMALL BUSINESS LENDING FUND PROGRAM

Ms. SNOWE submitted the following resolution; which was referred to the Committee on Small Business and Entrepreneurship:

S. RES. 348

Whereas the Government Accountability Office published a report in December 2011 entitled ''Small Business Lending Fund: Additional Actions Needed to Improve Transparency and Accountability'' (GAO–12–183) (referred to in this preamble as the ''GAO Report'');

Whereas the GAO Report highlighted that ''Federal government internal control standards state that management should ensure that the agency has adequate means of communicating with and obtaining information from external stakeholders when such information could have a significant impact on the agency's achieving its goals.'';

Whereas the GAO Report found that the Secretary of the Treasury's ''lack of clarity in explaining program requirements and decisions created confusion among applicants'';

Whereas the GAO Report expressed the following: ''Internal control standards for the federal government state that internal control activities are a major part of efficiently and effectively managing a program. Control activities, such as (1) proper execution of transactions and events, (2) accurate and timely recording of transactions and events, (3) and establishing and reviewing performance measures, are an integral part of an agency's planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results. Establishing performance measures and developing a process for monitoring participating financial institutions will be critical to identifying and addressing any potential problems in these institutions' compliance with program requirements. Until Treasury finalizes its plans for monitoring compliance and assessing impact in a timely manner, it will not be positioned to anticipate and manage payment problems and other program risks.'';

Whereas the GAO Report concluded that the Secretary of the Treasury has not finalized plans for assessing the impact of the Small Business Lending Fund Program on small business lending or procedures for monitoring recipients for compliance with requirements of the Small Business Lending Fund Program; and

Whereas the GAO Report concluded that, until the Secretary of the Treasury finalizes plans for monitoring compliance with and assessing the impact of the Small Business Lending Fund Program in a timely manner, the Secretary will not be positioned to anticipate and manage payment problems and other program risks: Now, therefore, be it

Resolved, That it is the sense of the Senate that, as recommended by the Comptroller General of the United States in the December 2011 report entitled ''Small Business Lending Fund: Additional Actions Needed to Improve Transparency and Accountability'' (GAO–12–183)—

(1) to promote transparency and improve communication with participants in the Small Business Lending Fund Program and other interested stakeholders, such as Congress and the appropriate Federal banking agencies (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the Secretary of the Treasury should apply lessons learned from the application review phase of the Small Business Lending Fund Program to help improve the communication strategy of the Secretary; and

(2) to enhance the transparency and accountability of the Small Business Lending Fund Program, the Secretary of the Treasury should finalize—

(A) procedures for monitoring participants in the Small Business Lending Fund Program, including procedures to ensure that the Secretary is receiving accurate information on small business lending by such participants; and

(B) plans for assessing the performance of the Small Business Lending Fund Program, including measures that can isolate the impact of Small Business Lending Fund Program from other factors that affect small business lending.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1464. Mr. DURBIN (for Mrs. FEINSTEIN (for herself and Mr. GRASSLEY)) proposed an amendment to the bill S. 1612, to provide the Department of Justice with additional tools to target extraterritorial drug trafficking activity.

TEXT OF AMENDMENTS

SA 1464. Mr. DURBIN (for Mrs. FEINSTEIN (for herself and Mr. GRASSLEY)) proposed an amendment to the bill S. 1612, to provide the Department of Justice with additional tools to target extraterritorial drug trafficking activity; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Targeting Transnational Drug Trafficking Act of 2011''.

SEC. 2. POSSESSION, MANUFACTURE OR DISTRIBUTION FOR PURPOSES OF UNLAWFUL IMPORTATIONS.

Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) in subsection (a), by striking ''It shall'' and all that follows and inserting the following: ''It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II or flunitrazepam or a listed chemical intending, knowing, or having reasonable cause to believe that such substance or chemical will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States.

''(b) It shall be unlawful for any person to manufacture or distribute a listed chemical—

''(1) intending or knowing that the listed chemical will be used to manufacture a controlled substance; and

''(2) intending, knowing, or having reasonable cause to believe that the controlled substance will be unlawfully imported into the United States.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on December 15, 2011, at 10:30 a.m. in room 328A of the Russell Senate Office Building.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS AND SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works and the Subcommittee on Clean Air and Nuclear Safety be authorized to meet during the session of the Senate on December 15, 2011, at 10 a.m. in room 406 of the Dirksen Senate Office Building to conduct a joint hearing entitled, ''Review of the NRC's Near-Term Task Force Recommendations for Enhancing Reactor Safety in the 21st Century.''

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on December 15, 2011 at 9:30 a.m., in room 366 of the Dirksen Senate Office Building.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet during the session of the Senate to conduct a hearing entitled ''Prescription Drug Shortages: Examining a Public Health Concern and Potential Solutions'' on December 15, 2011, at 10 a.m. in room 106 of the Dirksen Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on December 15, 2011, at 10 a.m. in room SD–226 of the Dirksen Senate Office Building.

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

SUBCOMMITTEE ON AFRICAN AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on December 15, 2011, at 2:15 p.m., to hold an African Affairs subcommittee hearing entitled, ''Improving Governance in the Democratic Republic of Congo.''

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

SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND THE COAST GUARD

Mr. DURBIN. Mr. President, I ask unanimous consent that the Subcommittee on Oceans, Atmosphere, Fisheries, and the Coast Guard of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on December 15, 2011, at 10:30 a.m. in room 253 of the Russell Senate Office Building.

The Committee will hold a hearing entitled, ''Environmental Risks of Genetically Engineered Fish.''

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

SUBCOMMITTEE ON WESTERN HEMISPHERE, PEACE CORPS, AND GLOBAL NARCOTICS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on December 15, 2011, at 11 a.m., to hold a Western Hemisphere, Peace Corps, and Global Narcotics Affairs subcommittee hearing entitled, ''The U.S.-Caribbean Shared Security Partnership: Responding to the Growth of Trafficking Narcotics in the Caribbean.''

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

PRIVILEGES OF THE FLOOR

Ms. MURKOWSKI. Mr. President, I ask unanimous consent that Patrick Norton and Will Frey, interns in Senator PAUL's office, be granted floor privileges for the remainder of the day.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I ask unanimous consent that MAJ James Long, an Air Force fellow in Senator THUNE's office, be granted floor privileges during today's and tomorrow's sessions of the Senate.

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

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that LTC John Novak, a legislative fellow in my office, be granted floor privileges during the remainder of today's session.

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

FALLEN HEROES OF 9/11 ACT

Mr. REID. Mr. President, I ask unanimous consent that we now proceed to H.R. 3421.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3421) to award Congressional Gold Medals in honor of the men and women who perished as a result of the terrorist attacks on the United States on September 11, 2001.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 3421) was ordered to a third reading, was read the third time, and passed.

The PRESIDING OFFICER. The Senator from Michigan.

CORRECTING THE ENROLLMENT OF H.R. 2845

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to consideration of H. Con. Res. 93, which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 93) providing for a correction to the enrollment of the bill H.R. 2845.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DURBIN. I ask unanimous consent that the concurrent resolution be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 93) was agreed to.

TARGETING TRANSNATIONAL DRUG TRAFFICKING ACT OF 2011

Mr. DURBIN. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 1612 and the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1612) to provide the Department of Justice with additional tools to target extraterritorial drug trafficking activities.

There being no objection, the Senate proceeded to consider the bill.

Mr. DURBIN. I ask unanimous consent that the Feinstein substitute amendment, which is at the desk, be agreed to; the bill, as amended, be read three times and passed; the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements be printed in the RECORD.

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

The amendment (No. 1464) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Targeting Transnational Drug Trafficking Act of 2011''.

SEC. 2. POSSESSION, MANUFACTURE OR DISTRIBUTION FOR PURPOSES OF UNLAWFUL IMPORTATIONS.

Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) in subsection (a), by striking ''It shall'' and all that follows and inserting the following: ''It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II or flunitrazepam or a listed chemical intending, knowing, or having reasonable cause to believe that such substance or chemical will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States.

''(b) It shall be unlawful for any person to manufacture or distribute a listed chemical—

''(1) intending or knowing that the listed chemical will be used to manufacture a controlled substance; and

''(2) intending, knowing, or having reasonable cause to believe that the controlled substance will be unlawfully imported into the United States.''.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 1612), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

RECOGNIZING THE 40TH ANNIVERSARY OF THE NATIONAL CANCER ACT OF 1971

Mr. DURBIN. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of S. Res. 347 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 347) recognizing the 40th anniversary of the National Cancer Act of 1971 and the more than 12,000,000 survivors of cancer alive today because of the commitment of the United States to cancer research and advances in cancer prevention, detection, diagnosis, and treatment.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. Mr. President, I ask unanimous consent to be added as cosponsor of this measure.

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

Mr. DURBIN. Mr. President, I further ask that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements be printed in the RECORD.

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

The resolution (S. Res. 347) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 347

Whereas 40 years ago, with the passage of the National Cancer Act of 1971 (Public Law 92–218; 85 Stat. 778), the leaders of the United States came together to set the country on a concerted course to conquer cancer through research;

Whereas the passage of the National Cancer Act of 1971 led to the establishment of the National Cancer Program, which significantly expanded the authorities and responsibilities of the National Cancer Institute, a component of the National Institutes of Health;

Whereas the term ''cancer'' refers to more than 200 diseases that collectively represent the leading cause of death for people in the United States under the age of 85, and the second leading cause of death for people in the United States overall;

Whereas cancer touches everyone, either through a direct, personal diagnosis or indirectly through the diagnosis of a family member or friend;

Whereas, in 2011, cancer remains one of the most pressing public health concerns in the United States, with more than 1,500,000 people in the United States expected to be diagnosed with cancer each year;

Whereas the National Institutes of Health estimated the overall cost of cancer to be greater than $260,000,000,000 in 2010 alone;

Whereas approximately 1 out of every 3 women and 1 out of every 2 men will develop cancer in their lifetimes, and more than 570,000 people in the United States will die from cancer this year, which is more than 1 person every minute and nearly 1 out of every 4 deaths;

Whereas the commitment of the United States to cancer research and biomedical science has enabled more than 12,000,000 people in the United States to survive cancer, 15 percent of whom were diagnosed 20 or more years ago, and has resulted in extraordinary progress being made against cancer, including—

(1) an increase in the average 5-year survival rate for all cancers combined to 68 percent for adults and 80 percent for children and adolescents, up from 50 percent and 52 percent, respectively, in 1971;

(2) average 5-year survival rates for breast and prostate cancers exceeding 90 percent;

(3) a decline in mortality due to colorectal cancer and prostate cancer; and

(4) from 1990 to 2007, a decline in the death rate from all cancers combined of 22 percent for men and 14 percent for women, resulting in nearly 900,000 fewer deaths during that period;

Whereas the driving force behind this progress has been support for the National Cancer Institute and its parent agency, the National Institutes of Health, which funds the work of more than 325,000 researchers and research personnel at more than 3,000 universities, medical schools, medical centers, teaching hospitals, small businesses, and research institutions in every State;

Whereas the commitment of the United States to cancer research has yielded substantial returns in both research advances and lives saved, and it is estimated that every 1 percent decline in cancer mortality saves the economy of the United States $500,000,000,000 annually;

Whereas advancements in understanding the causes and mechanisms of cancer and improvements in the detection, diagnosis, treatment, and prevention of cancer have led to cures for many types of cancers and have converted other types of cancers into manageable chronic conditions;

Whereas continued support for clinical trials to evaluate the efficacy and therapeutic benefit of promising treatments for cancer is essential for translating new knowledge and discoveries into tangible benefits for patients, especially because all standard cancer therapies began as clinical trials;

Whereas, despite the significant progress that has been made in treating many cancers, there remain those cancers for which the mortality rate is extraordinarily high, including pancreatic, liver, lung, multiple myeloma, ovarian, esophageal, stomach, and brain cancers, which have a 5-year survival rate of less than 50 percent;

Whereas research advances concerning uncommon cancers, which pose unique treatment challenges, provide an opportunity for understanding the general properties of human cancers and curing uncommon cancers as well as more common cancers;

Whereas crucial developments have been achieved in cancer research that could provide breakthroughs necessary to address the increasing incidence of, and reduce deaths caused by, many forms of cancer;

Whereas research into the effect of certain forms of cancer on different population groups offers a significant opportunity to lessen the burden of the disease, because many population groups across the country suffer disproportionately from certain forms of cancer; and

Whereas a sustained commitment to the research of the National Institutes of Health

and the National Cancer Institute is necessary to improve the entire spectrum of patient care, from cancer prevention, early detection, and diagnosis, to treatment and long-term survivorship, and to prevent research advances from being stalled or delayed: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the 40th anniversary of the National Cancer Act of 1971 (Public Law 92–218; 85 Stat. 778); and

(2) celebrates and reaffirms the commitment embodied in the National Cancer Act of 1971, specifically, that support for cancer research continues to be a national priority to address the scope of this pressing public health concern.

MEASURE READ THE FIRST TIME—H.R. 3094

Mr. DURBIN. Mr. President, I understand there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3094) to amend the National Labor Relations Act with respect to representation hearings and the timing of elections of labor organizations under that Act.

Mr. DURBIN. I now ask for a second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read the second time on the next legislative day.

ORDERS FOR FRIDAY, DECEMBER 16, 2011

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., on Friday, December 16, 2011; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate be in morning business until 12 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the first hour equally divided and controlled between the two leaders or their designees, with the majority controlling the first 30 minutes and the Republicans controlling the next 30 minutes.

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

PROGRAM

Mr. DURBIN. Mr. President, we continue to work on an agreement to consider the omnibus spending bill and a payroll tax compromise. Senators will be notified when votes are scheduled.

The majority leader filed cloture on the motion to proceed to H.R. 3630 this evening. Unless an agreement is reached, that vote will be Saturday morning.

ADJOURNMENT UNTIL 10 AM TOMORROW

Mr. DURBIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 7:03 p.m., adjourned until Friday, December 16, 2011, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF STATE

MICHAEL A. RAYNOR, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BENIN.

JACOB WALLES, OF DELAWARE, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER—COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE TUNISIAN REPUBLIC.

NATIONAL LABOR RELATIONS BOARD

SHARON BLOCK, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING DECEMBER 16, 2014, VICE CRAIG BECKER.

RICHARD F. GRIFFIN, JR., OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING AUGUST 27, 2016, VICE WILMA B. LIEBMAN, TERM EXPIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. HARRIS J. KLINE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. RICHARD M. ERIKSON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. ROBERT G. KENNY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIGADIER GENERAL GARY M. BATINICH
BRIGADIER GENERAL RICHARD S. HADDAD
BRIGADIER GENERAL ROBERT M. HAIRE
BRIGADIER GENERAL MICHAEL D. KIM
BRIGADIER GENERAL MARK A. KYLE
BRIGADIER GENERAL KEVIN E. POTTINGER
BRIGADIER GENERAL ROBERT D. REGO
BRIGADIER GENERAL GEORGE F. WILLIAMS

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

RACHEL L. BRAND, OF IOWA, TO BE A MEMBER OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD FOR A TERM EXPIRING JANUARY 29, 2017. (NEW POSITION)

DAVID MEDINE, OF MARYLAND, TO BE CHAIRMAN AND MEMBER OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD FOR A TERM EXPIRING JANUARY 29, 2012. (NEW POSITION)

DAVID MEDINE, OF MARYLAND, TO BE CHAIRMAN AND MEMBER OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD FOR A TERM EXPIRING JANUARY 29, 2018. (REAPPOINTMENT)

PATRICIA M. WALD, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD FOR A TERM EXPIRING JANUARY 29, 2013. (NEW POSITION)

FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE DEPARTMENT OF AGRICULTURE FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR:

RONALD P. VERDONK, OF MARYLAND
BRUCE J. ZANIN, OF CALIFORNIA

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be brigadier general

COL. STEVEN FERRARI

CONFIRMATION

Executive nomination confirmed by the Senate December 15, 2011:

THE JUDICIARY

MORGAN CHRISTEN, OF ALASKA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT.

WITHDRAWAL

Executive message transmitted by the President to the Senate on December 15, 2011 withdrawing from further Senate consideration the following nomination:

CRAIG BECKER, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING DECEMBER 16, 2014, VICE DENNIS P. WALSH, WHICH WAS SENT TO THE SENATE ON JANUARY 26, 2011.