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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JEFF MERKLEY, a Senator from the State of Oregon.

PRAYER

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

Let us pray.

O God, our Father, we look to You this day for help. Without Your help our Senators can see the ideal but cannot reach it; they can know the right but cannot do it; they can seek the truth but cannot fully find it; they can recognize their duty but cannot perform it. Empowered by Your might, help them to reach beyond guessing to knowing and beyond doubting to certainty regarding Your purposes.

We pray in Your loving Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JEFF MERKLEY 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 1, 2011.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEFF MERKLEY, a Senator from the State of Oregon, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. MERKLEY 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. Mr. President, following leader remarks the Senate will be in morning business until 11 a.m. Following that morning business, the Senate will resume consideration of the Defense Department authorization bill. This will be postcloture debate. We expect to complete action on the Defense bill today. We will give everyone as much notice as we can when we have votes coming.

Additionally, yesterday I filed cloture on a motion to proceed to S. 1917, a middle-class tax cut. If no agreement is reached, this vote will be tomorrow morning.

MEASURES PLACED ON THE CALENDAR—S.J. RES. 30, S.J. RES. 31, S.J. RES. 32, S. 1930, S. 1931, S. 1932 EN BLOC

Mr. REID. Mr. President, there are six measures at the desk due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the measures by title for the second time en bloc.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 30) extending the cooling-off period under section 10 of the Railway Labor Act with respect to the dispute referred to in Executive Order No. 13586 of October 6, 2011.

A joint resolution (S.J. Res. 31) applying certain conditions to the dispute referred to in Executive Order 13586 of October 6, 2011, between the enumerated freight rail carriers, common carriers by rail in interstate commerce, and certain of their employees represented by labor organizations that have not agreed to extend the cooling-off period under section 10 of the Railway Labor Act beyond 12:01 a.m. on December 6, 2011.

A joint resolution (S.J. Res. 32) to provide for the resolution of the outstanding issues in the current railway labor-management dispute.

A bill (S. 1930) to prohibit earmarks.

A bill (S. 1931) to provide civilian payroll tax relief, to reduce the Federal budget deficit, and for other purposes.

A bill (S. 1932) to require the Secretary of State to act on a permit for the Keystone XL Pipeline.

Mr. REID. I object to any further proceedings in regard to these matters.

The ACTING PRESIDENT pro tempore. Objection having been heard, the measures will be placed on the calendar.

PAYROLL TAX CUTS

Mr. REID. Mr. President, yesterday on the Senate floor my friend the Republican leader said he supports an extension of the payroll tax cut that had been enacted last year. There has been an extreme change of heart here. On the Sunday shows the assistant leader, my friend, the junior Senator from Arizona, said Sunday: Not a chance they would work to extend this payroll tax cut. Then, as late as Tuesday, my friend the Republican leader said it would not ''do a thing to help the economy.'' Obviously there has been a change of heart since then by the leaders of the Senate Republicans.

But I noted yesterday that my friend was very careful to say only that he supports existing cuts, not that he supports our plan to cut taxes for 160 million workers in every business in the country.

Last night I found out why. I was disappointed to see the Republicans' alternate proposal was actually a backdoor route to protect the very rich while shortchanging the middle class and small businesses. Should we be surprised at this? That is what has been going on this past year. Our proposal would provide relief for American families and extend existing tax cuts to benefit businesses. The Republican proposal rejects this new tax relief and

doesn't provide a penny of additional tax cuts for working families and it does nothing for small businesses—the job creators the Republicans claim to care so much about.

They seem to think our plan to put $1,500 back into the pocket of every American, with rare exception, and give small businesses the boost they need to hire new employees goes too far. They are willing to fight for ever deeper tax cuts for the wealthy, but when it comes to the middle class, Republicans here in the Senate—not Republicans generally, but Republicans here in the Senate—believe the status quo is good enough for struggling families. The Republican plan goes directly against the budget agreement we reached in the summer, the so-called Budget Deficit Reduction Act, where we raised the debt ceiling and those things we worked on. It took 3 months. Their plan goes directly against that plan that we made, which is now the law of this country. While Democrats have been working tirelessly to create new jobs, the Republican plan goes in precisely the opposite direction. Instead of creating jobs, it would cost jobs. The report is out today that during the month of October there were 206,000 private sector jobs created. Under their plan, the Republicans' plan, many more middle-class families around the country would lose their jobs. That includes Americans dedicated to public service, hard-working people committed to keeping our streets safe—for example, an FBI agent, Drug Enforcement officer, food safety workers, highway construction workers. They want to devastate those folks. That is how they want to pay for this tax cut. It is not anything that is going to help the economy. It hurts the economy.

They are going after jobs that we need so desperately. Do the Republicans believe—I guess so, because that is what their legislation is all about—that the way to revive the economy is to lay off more FBI agents or fire more Border Patrol officers? These cuts will not revive the economy, they will only slow it down and cost more jobs. But, remember, the role of the Republicans here in the Senate is to defeat Barack Obama. It doesn't matter what it does to middle-class families, obviously.

While targeting the middle class, Republicans propose to do nothing to cut back on excessive subsidies for many large corporations that benefit from government contracts. This is almost hard to comprehend. The Republicans started it, and it caught fire during the Republican control of the Presidency. There are more than 5 million government contractors. The Republicans propose to do nothing to cut back on excessive subsidies for many of these large corporations that benefit from government contracts. Employees at some of these taxpayer-supported corporations are being paid more than $700,000 a year while many public servants struggle to make ends meet. The Republicans want to whack these people who work to keep us safe in many different ways while they let these people go untouched.

The Republicans are uninterested in going after these high-income earners. As usual, the only real target of this Republican meat axe is the middle class. It is wrong. Americans believe, across the country, that the middle class is hurting. I have said—I will say it again—the only people in America who believe that the richest of the rich should not contribute a little bit to help our economy are the Senate Republicans. The Republicans outside this body do not feel that way. America's middle class has been hurting for a long time. They are the people who are struggling. They are the ones who need help, not these multimillionaires, and not large, profitable government contractors.

The Republican proposal is unacceptable. It will not pass the Senate. We can do better and we must do better.

Would the Chair announce the business of the day?

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 now be in a period of morning business until 11 a.m., 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, the majority controlling the first half and the Republicans controlling the final half.

The Senator from Washington is recognized.

MIDDLE-CLASS TAX CUT

Mrs. MURRAY. Mr. President, I come to the floor this morning to urge my colleagues to support the middle-class tax cut bill that would extend and expand the payroll tax relief for our families and small business owners. This legislation is straightforward. It should not be controversial. At a time when so many of our hard-working middle-class families continue to struggle in this very tough economy, this bill would cut their Social Security payroll tax in half, from 6.2 percent to 3.1 percent. That means a tax cut for 160 million workers in this country today.

In my home State of Washington it represents a tax cut of around $1,700 for a family earning the median income next year. This bill would put money into the pockets of small business owners and encourage them to hire workers by cutting the employer's side of the payroll tax in half as well and eliminating it altogether for firms that are making new hires. In Washington State, 150,000 small business owners would receive a tax cut under this plan and they would have thousands of dollars more in their pockets to spend in their communities and get workers back on the job.

This is a big deal. Economists from across the ideological spectrum have said payroll tax cuts create jobs and boost the economy. They have said it could be devastating to allow them to go up in this weak economy.

In the past, Republicans have agreed and have strongly supported payroll tax cuts as an effective way to boost the economy and create jobs, so this should be easy. It should be something both parties can get behind and quickly pass, but unfortunately it seems politics are getting in the way. I am disappointed that many of the same Republicans who spent the last few months fighting tooth and nail to prevent tax increases on the richest Americans and biggest corporations are now hesitating to give average working families a break. In fact, it was this very issue that prevented the Joint Select Committee on Deficit Reduction to come to a deal.

On the Democratic side we put forward serious compromises on the table to get to a balanced and bipartisan deal, but our Republican counterparts refused to allow the wealthiest Americans to pay a single penny more in taxes and insisted that the middle class and seniors and most vulnerable Americans bear the burden of this crisis alone. It was not fair then; it is not fair now. This bill is fully paid for by asking millionaires, who earn more than $1 million a year, to pay a little bit more, a small step toward a fair share. It is not drastic. It does not close the loopholes and shelters that Republicans have been fighting hard to maintain. It does not touch the Bush tax cuts for the rich they have been protecting. It doesn't end the tax breaks for the oil and gas industry that they would not allow us to close. It simply adds a 3.25-percent tax on incomes over $1 million a year. That means if someone earns $1.2 million in a single year they only owe an additional 3.25 percent on that last $200,000.

At a time when so many families are struggling, we think this is a fair thing to ask the wealthiest Americans, who survived so well, to continue to give working families a break.

This vote sets up a simple choice. Do you vote to extend tax cuts for middle-class families and small businesses that have been struggling in this economy or do you vote to protect the wealthiest Americans from paying 1 penny more toward their fair share? I know where I stand. I feel very strongly that we owe it to middle-class families across this country to extend this tax cut. I think it would be a whole lot easier if our Republican colleagues were as focused on tax cuts for the middle class as they are for tax cuts for the wealthiest Americans and corporations.

I urge my colleagues to support this legislation and extend tax cuts for the families who need them most.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

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

PAYROLL TAX EXTENSION

Mr. MCCONNELL. Mr. President, yesterday, Republicans, led by Senator HELLER, introduced what we believe is a much smarter approach to extending the temporary payroll tax cut than the one proposed by Democrats involving permanent tax hikes on job creators.

Similar to Democrats, we think struggling American workers should continue to get this temporary relief for another year. There is no reason folks should suffer even more than they already are from the President's failure to turn this jobs crisis around. But there is also no reason we should pay for that relief by raising taxes on the very employers we are counting on to help jolt this economy back to life. We would not be helping anybody by making it less likely that small businesses actually start hiring people again. Senator HELLER's proposal would achieve the same result, the same relief, without a gratuitous hit on job creators. Even better, our plan protects Social Security and reduces the Federal deficit by more than $111 billion.

How do we do it? Consistent with the recommendations of the bipartisan Simpson-Bowles Commission, our payroll tax plan would institute a 3-year pay freeze on Federal civilian employees, including Members of Congress. It would also reduce the Federal workforce gradually by 10 percent, not by firing anybody but by only hiring one replacement for every three Federal employees who leave Federal service until a 10-percent reduction that the Simpson-Bowles Commission recommended is reached. So over this period, only hire one worker for every three who leave until it achieved a 10-percent reduction in the Federal workforce. This is a recommendation in the Simpson-Bowles Commission.

Our bill would also save money by means testing Medicare benefits for millionaires and billionaires. What does that mean? One of the things the economic downturn of the past few years has revealed is that a lot of people out there are getting a pretty good deal from the government at every level, all on the taxpayers' dime. Let me give you an example. Yesterday, a CBS affiliate in Philadelphia reported that a former Philadelphia school superintendent who got a nearly $1 million buyout in August is now putting in for unemployment benefits. The lady was shown the door, given $905,000 not to finish her 5-year contract with the school district, and on top of that she now wants the taxpayers to subsidize her unemployment benefits to the tune of about $30,000 a year. Our proposal helps minimize this kind of thing.

What we are saying is, anybody who makes more than $1 million a year should not get an unemployment check on top of it, paid for with tax dollars of folks struggling just to make ends meet. No more unemployment checks or food stamps for millionaires. No more unemployment checks or food stamps for millionaires. We don't think these folks would mind having to pay the full freight on their Medicare premiums either. Millions of seniors need help covering their monthly Medicare premiums; Warren Buffett is not one of them.

Here is another way we think folks such as Warren Buffett can offset the relief we are giving working Americans through our proposal of a temporary extension of payroll tax cuts, which would also incorporate legislation from Senator THUNE, that would allow people who want to voluntarily help pay down the Federal debt to do so on their tax return. There would actually be a new line right on Warren Buffett's tax returns enabling him or anybody else, for that matter, to give as much as they want. That way those who want to go that route can feel they are contributing in a way they want to contribute, and small business owners who want to help our economic and fiscal situation by growing their businesses and creating jobs can do that too without Washington dictating one way or the other.

This is the kind of balanced plan Americans are looking for. It is focused on helping middle-class Americans without asking them to fund benefits for the wealthiest among us, and it does so without hamstringing the economy—as the Democrats would—with a permanent tax on job creators. Bear in mind what they are doing here is ''paying for a temporary payroll tax relief with a permanent tax increase on job creators.'' It also helps rein in the bureaucracy in Washington.

Millions of Americans have had to go without or to live with less over the past few years. Yet all they see here is that Washington just keeps getting bigger and bigger and richer. It is about time Washington took the hit for a change. We think this is a plan that those who are fed up with Washington and Wall Street can embrace but, as I have said before, we are never going to turn this economy around as long as we are focused on these temporary measures.

Yesterday, I outlined our vision for a tax-reform plan that restores basic fairness, helps put businesses on a level playing field, and puts our tax rates in line with our competitors overseas. That is the kind of thing that will get this economy charging again and we will continue to press for it. Meanwhile, we will also continue to point out what this administration is doing to prevent job creation right now.

KEYSTONE XL PIPELINE

Mr. MCCONNELL. Yesterday, Republicans drew attention to one of the greatest fumbles of this administration yet, and this is astonishing. I don't know how many Americans are familiar with the proposed Keystone XL Pipeline, but this is an issue every single American is soon going to learn a lot about. The Keystone XL Pipeline is the single largest shovel-ready project in our entire country—the single largest shovel-ready project in our entire country. It would transport oil from Canada—our friendly neighbor to the north—to the gulf coast. It is privately funded, so it would not cost the taxpayer a dime, and we are told that its approval would lead to the creation of 20,000 jobs, not some other time but immediately, right now.

This project is enormous. It is a huge job creator, and it is ready to go. Labor unions love this project. Folks in the Heartland love this project. The Chamber of Commerce loves this project. But here is the problem: President Obama is getting heat from his base over this project, especially from the very young and very liberal voters he will need knocking on doors before November. So the State Department now says they are going to delay the approval—even though previously they were seemingly ready to approve it after a 3-year review that has already occurred, including two exhaustive environmental evaluations.

Here is the bottom line. The President has said time and time again that his top priority is jobs. Yet here we have the single largest shovel-ready project in the country ready to go, and he is delaying its approval—interestingly enough—until after the election next year. He is saying he doesn't care so much about jobs in States such as Nebraska—that he doesn't think he will carry next year—so he can keep the enthusiasm up in States he hopes to carry. So I think it is pretty clear the President cares less about this particular boon for job creation than his own job preservation, and it is wrong.

There is no reason whatsoever to delay this project and these jobs by another day. As the President recently put it, we have to decide what our priorities are. We have to ask ourselves what is not just best for me but what is best for us. What is the best way to grow the economy and create jobs? It was President Obama who said that. That is why Republicans are proposing legislation today that would require the President either to approve this massive job-creating project within 60 days or to explain clearly why he doesn't think it is in the national interest to do so. We will give the President 60 days—not after next year's election but 60 days—to decide why this should not be approved and explain it to us. We think the people who want to start hiring deserve action or a straightforward explanation from the President himself as to why he opposes it.

Get this pipeline going right now or get out of the way.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

MIDDLE CLASS TAX CUT ACT

Mr. CASEY. Mr. President, I rise to speak about the issue of job creation and also supporting our small businesses and strengthening our economic recovery.

One of the fundamental questions I have been asked in Pennsylvania—and I think most Senators on both sides of the aisle have been asked repeatedly, not just in the last couple of days or weeks but for many months now—is a very fundamental question: What are you doing as a Member of the Senate to create jobs or to at least create the conditions under which jobs will be created? What are you doing in your votes, in your advocacy, in your fight in Washington for jobs? What does that mean? Sometimes we have a better answer than other times. Today, and certainly in the last couple days—and I think we will be debating this for a number of days moving forward and that is a good thing—we will have a better answer to that fundamental question: What are you doing as a public official to create jobs in America?

One of the ways we can kick-start the economy and get job creation moving in the right direction again is by passing legislation such as the legislation that I have introduced, the Middle Class Tax Cut Act. It is now before the Senate, as the Presiding Officer knows, and we have been talking about it already, but we have more work to do on this today and some voting to do today on this legislation.

The legislation is fully paid for and will accomplish two important objectives. No. 1, it will strengthen the economy to support middle-income families, and specifically the way we do that is by providing middle-income families with a cut in the payroll tax, which means take-home pay that will help make ends meet for that worker and that family, but it will also have an impact by boasting demand throughout our economy. No. 2, we will cut payroll taxes for small businesses to help them grow and create jobs.

Here is what most people are confronting, and it is not just the big numbers. There are more than 14 million people out of work across America. In Pennsylvania, the latest number for October was more than 500,000 people out of work. To be exact, it is 513,000 people out of work. That number has fluctuated. Thank goodness it started to go below half a million, but then it bumped again to almost 525,000 so it is at least is moving away from that number.

When half a million people are out of work in a State, you can imagine the hurt the families are feeling, the lives of struggle and sacrifice in our midst, and that is why we have to do something to jump-start the economy and create jobs.

I think the American people also want us to do this in a bipartisan way and we can and we should. We came together at the end of 2010 and passed a tax bill which was bipartisan. There are elements of that bill that one side or the other did not like, and vehemently so, but we came together in a bipartisan way to pass a tax bill at the end of last year. We need to do the same thing on a payroll tax cut.

We need to work together, Democrats and Republicans, and get a result for the American people. This is something we can do right now—not 6 months from now, not a year from now but right now—to help our families and to create jobs. There is broad agreement that more needs to be done to support the economic recovery. We have to create more jobs, and we have to kick-start the engine of economic growth.

While the economy has added nearly 2.8 million private sector jobs in the past 20 months, we continue to face significant economic challenges. Unemployment across the country, as we all know, is still at about 9 percent, and long-term unemployment remains at record levels, with 4 out of every 10 unemployed workers having been jobless for 6 months or more. We know that gross domestic product—so-called GDP—grew at less than 1 percent, the annual rate, for the first half of the year. So for the first 6 months of 2011, we had less than 1 percent growth. The third quarter of gross domestic product growth was recently revised downward. Initially 2.5 percent, it was revised downward to just a 2 percent annual rate. So it is self-evident that we have to do something right now about jobs. With a weak labor market and only modest economic growth this year, it is clear we have to act right now.

Payroll tax cuts and credits are powerful tools to increase job creation and provide economic relief for middle-income families. The current 2 percent payroll tax cut for working Americans that is in place now has played an important role in sustaining the economic recovery. By the end of this year, 121 million families will have received an average tax cut of more than $930 based upon last year's action we took to cut the payroll tax. That was a good decision, but, if anything, we need to continue that as well as expand it, and I will explain that as I go forward.

The number of families benefiting from this current payroll tax cut is very large because anyone who receives a paycheck benefits from a cut in payroll tax. Anyone who receives a paycheck gets this cut. Cutting payroll taxes immediately increases the take-home pay of everyone who gets a paycheck.

Compared to reducing the tax rates for the top 1 percent of the American people, more money goes to middle and lower income Americans, who are likely to spend it, if we keep the payroll tax cut in place, and, of course, we want to expand it as well. Because take-home pay is greater, people have more money in their pockets—as I said, more than 930 bucks this year. This additional take-home pay will result in more spending. When we spend at that level—and a lot of families are spending more, especially during the holiday season—that boosts demands for goods and services and that leads to job creation. This is not theory. This is not some untested theory or hope. We know this works. We did it in 2011, and we have to do more of it in 2012.

The employee side of this—and I will divide this into employee and employer for a second—the employee tax cut expires at the end of this year, as I mentioned. Without congressional action, employees' share of the payroll tax will return to 6.2 percent of earnings, up from the current 4.2-percent level. So we have a payroll tax that has been cut from 6.2 to 4.2. That is in place. But if we do nothing, if we don't act, if we don't pass an extension, that 4.2 percent will go up to 6.2 percent, and it will be a tax increase for families across the board. If we fail to act, these middle-income families will see their payroll tax cut disappear at the end of this year. Let me say that again. If we don't act by the end of December, middle-income families will lose this payroll tax cut that is in place now.

What does this mean? Well, it means basically losing between 900 bucks and 1,000 bucks. And this is take-home pay for workers and their families.

This is a very tough time for families, as I mentioned before, with high unemployment and so many stresses, economic stresses and pressures on their lives. Families who are already facing both declining wages and stubbornly high unemployment, families who are struggling to pay for housing, make car payments, pay the food bill, pay for college tuition, whatever it is in their lives that means making ends meet, are still having a terribly difficult time.

Losing this tax cut would also undermine the recovery by reducing consumer spending. Numerous economists and forecasters have highlighted the dangers to the economy of allowing this payroll tax cut to expire. Independent analysts estimate that letting a 2-percent employee tax cut expire would reduce gross domestic product growth by up to two-thirds of 1 percent in 2012. Mark Zandi, from Moody's, in an article from September 9 of 2011 entitled ''An Analysis of the Obama Jobs Plan,'' made that same point. If we don't continue the payroll tax cut, we will have an adverse impact on economic growth. Goldman Sachs Global ECS Research had a similar conclusion. So this isn't just about individuals losing a payroll tax cut that is in place now, this is about harming in a very adverse way our economy's ability to grow in a substantial way.

Let me talk for a moment about the legislation before us, the Middle Class Tax Cut Act which I introduced.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. CASEY. I ask unanimous consent for an additional 5 minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. CASEY. I thank the Chair.

Let me talk for a moment about the legislation. The legislation before us, as I said before, would both extend and expand the payroll tax cut that is in place right now.

First of all, for employees, we cut it in half. So instead of paying a 6.2-percent payroll tax, the employee, the worker, would pay just 3.1 percent. That has a sizable impact on the economy when we do that—1,500 bucks in the pockets of the average worker in America. Approximately 160 million American workers are impacted and as many as 6.7 million in Pennsylvania. So we would not only keep in place the payroll tax cut for workers, but we want to expand it so it is fully cut in half.

Secondly, I wish to speak for a moment about the employer side of this because that wasn't part of last year's effort. I introduced the payroll tax credit in early 2010 to encourage employers to hire and accelerate the pace of the recovery. A number of folks on both sides of the aisle have worked on this. The ideas of those kinds of tax credits in those kinds of bills we introduced form the foundation of what we are trying to do today. This legislation incorporates elements of my and others' earlier legislation to provide businesses with quarterly incentives to increase their payrolls.

I wish to highlight a couple of elements of the legislation before us.

First, this bill cuts payroll taxes in half for 98 percent of U.S. businesses. These businesses have taxable payrolls of $5 million or less. They will see their payroll taxes cut in half, as I said before, for the worker as well as the business.

Some people say: OK, that is 98 percent of businesses. That is good news. What about the other 2 percent who have higher incomes?

Those businesses that have taxable income above $5 million will still get a payroll tax cut from 6.2 percent to 3.1 percent on the first $5 million of their taxable payroll. So they get it up to that level. So this is a huge benefit to small businesses across the country and even some businesses larger than that.

The Joint Economic Committee, of which I am the chair, recently released a report that indicated that small business lending remains well below prerecession levels both in the number of loans and the dollar value of those loans. So a lot of small businesses still cannot get access to credit. This payroll tax cut legislation will help those companies substantially to be able to get access to credit.

Finally, I wish to make a point about the legislation as it relates to eliminating the employer's share of the Social Security payroll tax on the first $50 million of increased payroll in 2012. This isn't just a cut, this is an elimination if they do one of three things: if they are hiring more workers; if they increase the hours, which is another way to get the benefit; thirdly, if they are boosting pay.

This legislation is one of the best ways to create jobs, one of the best ways to kick-start our economy.

I will conclude with this. If we look at the real world of communities across Pennsylvania or across the country, means that if we pass this legislation, for median family income in Pennsylvania, the benefit is $1,535, a little more than $1,500. So whether people go to small rural counties or big cities or suburban communities, wherever it is across a State such as ours, workers will be able to put roughly $1,500 in their pockets for this season coming up when people need some help, and small businesses will be substantially positively impacted by this legislation.

We need to pass this legislation. We need to do it now to help our workers, to help our businesses, and to grow the economy and create jobs.

Thank you, Mr. President.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

CERP REFORM

Mrs. MCCASKILL. Mr. President, I have offered an amendment to the Defense authorization bill that unfortunately we are not going to get a chance to vote on, but I want to begin talking about it because I think this is something we need to do as we appropriate money for our military for the next year.

I wish to start by saying that I support the mission in Afghanistan, but after years of work on wartime contracting issues and looking at the way we have spent money through contracting in both Iraq and Afghanistan, I have come to a stark and real conclusion about the money we have wasted and continue to waste in this effort.

We are building infrastructure in Afghanistan that we cannot secure and that will not be sustained. Since 2004, the Defense Department—just the Defense Department, not the State Department—has spent more than $6.9 billion in Iraq and Afghanistan on humanitarian stabilization projects that include infrastructure, energy, and road construction.

Primarily, this has occurred through what is known as the CERP fund. ''CERP'' stands for ''Commanders Energy Response Program.'' This began as an effort in the war against insurgencies, the counterinsurgency effort, the COIN strategy. This began as a good idea where the commanders on the ground would have money they could directly access to do small neighborhood projects, to win the hearts and minds, to secure a neighborhood, to stabilize a community.

These projects were envisioned, when I first came to the Senate, as fixing broken panes of glass in a shopkeeper's window. This program has morphed into something much different than what was envisioned at the beginning of the counterinsurgency effort in Iraq. These $100 projects, $1,000 projects, are now hundreds of millions of dollars. In fiscal year 2010, more than 90 percent of the spending in CERP was for projects over $½ million. At its height in 2009, the authorizations for CERP spending in Afghanistan and Iraq reached $1.5 billion. And—this is the kicker—the military building large infrastructure projects has not shown a measurable impact on the success of our mission.

I have stacks of studies, and I am such a wonk; I have actually read all of these studies. These are just a few of the studies that have been done by inspectors general, by special inspectors general, by the DOD inspector general, by the Wartime Contracting Commission that Senator WEBB and I put into place to look at all of the wartime contracting issues. Even our own troops have studied the expenditure of these funds. I want to quote their conclusion in a recent study that was completed by the troops that are, in fact, fighting this effort in Afghanistan.

> Despite hundreds of millions in investments, there is no persuasive evidence that the Commander's Emergency Response Program has fostered improved interdependent relationships between the host government and the population—arguably the key indicator of counterinsurgency success.

I go on, a direct quote:

> The effectiveness of CERP in advancing our counterinsurgency objectives in Afghanistan has yet to be operationalized or well documented. The relationship between development assistance and counterinsurgency is being increasingly challenged in the academic and practitioner fields with only unsubstantiated assertions and the occasional anecdote offered as counterargument. There are no clear objectives for a program that funds everything from immediate emergency relief to multi-year, multi-million dollar road projects. The lack of proper incentives and accountability measures have rendered CERP and similar funds an extractive industry for construction companies, nongovernmental organizations, and multiple Afghan government ministries, fueling rather than fighting corruption, community insecurity and insurgent coercion.

Finding and defeating terrorists, fighting the Taliban, securing strategic victories against al-Qaida, training the Afghanistan military and police—all of these things I support. But this amount of money being spent on large infrastructure projects that cannot be sustained we must end.

In an unprecedented fashion, our military—not the State Department—has embarked upon these massive projects. This year, for the first time in this authorization, there is now a new Afghanistan Reconstruction Fund to get around the limits that have been placed on the size of projects in the CERP fund. I call this fund the ''son of

CERP.'' It has now been documented that they want to go even larger and even bigger with these large multimillion dollar projects. I cannot stand by as we spend billions on roads, electrical grids, and bridges in Afghanistan, knowing the incredible need we have in this country for exactly that kind of investment.

These projects are not being built in a secure environment. We are paying off people to try to keep the contractors safe. And it has been documented that some of that money has gone right into the hands of our enemy. That must be stopped.

These projects, in many if not most instances, cannot be sustained. I can give a number of examples. But all you would have to do is travel around Iraq and see the empty, crumbling health care centers built with American taxpayer dollars, the water park that is a twisted pile of rubble that is no longer operational, all of the investments that were made in oil production and electricity generation that were blown to bits.

I can give specific examples in Afghanistan. How about hundreds of million of dollars spent on a powerplant—the latest technology: duel fuel—and nobody there knows how to operate it. And they cannot afford to operate it, so it stands by as an empty, hulking potential generator for backup power, while they buy cheaper electricity from a neighboring country.

For the first time, the Department of Defense has requested and received $400 million in authorization in this new Afghanistan Reconstruction Fund. We should limit our military to the small projects that CERP was originally intended for, not produce contracts to major, multinational corporations.

All of these reconstruction funds should be pulled, and my amendment would do just that. We would pull all of this money out with the exception of projects under $50,000. That would be as much as $700 million that we could immediately put directly into the highway trust fund in this country. That is what my amendment does. It will transfer that investment from a nonsecure environment, in areas these projects cannot be sustained, to the very needy cause of infrastructure investment in the United States of America.

Let's do this. Let's stop these large projects that cannot be secured and be sustained. Keep in mind, as much as $700 million would be pulled, and that is a small fraction of what we are spending in Afghanistan. The authorization for next year is more than $100 billion. So anyone who tries to say this will cripple our mission in Afghanistan does not understand the numbers. Of the moneys we are spending in Afghanistan, the vast majority is about personnel: to train the Afghan military, to train the Afghanistan police department, to fight the terrorists who are there, the Taliban, al-Qaida in the areas near Pakistan. All of that remains. A very small percentage of this would be pulled. But it should be pulled, and it should be pulled today. We should take this investment and put it in roads and bridges right here in our country.

I hope this amendment will have success when we look at the appropriations process. I think it is time we stop this funding, and stop it now.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

DR. DONALD BERWICK

Mr. BINGAMAN. Mr. President, I want to take a few minutes to commend Dr. Donald Berwick for his service as Administrator of the Centers for Medicare and Medicaid Services and also to express my deep disappointment that his nomination was blocked by a minority of Senators.

CMS, the Centers for Medicare and Medicaid Services, has benefitted greatly from Dr. Berwick's innovation and leadership, and the refusal of some Members to support confirming him for this position is difficult to understand.

Dr. Berwick is widely recognized as a highly qualified leader in the realm of health care quality. But, unfortunately, many of my colleagues across the aisle adamantly opposed Dr. Berwick's tenure, beginning when he was first nominated by President Obama for this position in April of last year. Many of these objections are based on inaccurate accusations and sound bites that have been completely taken out of context.

Dr. Berwick has the qualifications, expertise, and demonstrated leadership ability that CMS needs at this critical time. He is a pediatrician by training, Harvard professor, health care analyst, elected member of the Institute of Medicine, a leading advocate on health care quality and patient safety, and a cofounder of the Institute for Healthcare Improvement, which is a respected think tank that trains hospitals on how to increase patient safety and improve operations.

Don Berwick has also written extensively, with there being more than 120 scholarly articles he has authored or coauthored, along with several books, on the quality and efficiency of health care.

Dr. Berwick is a true visionary. He has been an advocate for transparency and accountability within our health care system, and his distinguished career has made him the ideal candidate to lead the CMS at this critical time.

It was due to Dr. Berwick's deep knowledge of health care, his vast experience, and his passion for this issue that his nomination originally won praise from across the political and professional spectrum. This includes Tom Scully and Mark McClellan, both former Administrators of CMS under President George W. Bush. They strongly endorsed his nomination. His nomination also had the support of Dr. Nancy Nielsen, who is the past president of the American Medical Association; John Rother, who is the former executive vice president of the AARP; and former Republican Senator from Minnesota, our former colleague, Dave Durenberger. In fact, Newt Gingrich even saluted Dr. Berwick for seeking a ''dramatically safer, less expensive, and more effective system of health care.''

During his tenure as CMS Administrator—the few months he has been in that position—Dr. Berwick has been able to implement impressive reforms, including launching the new CMS Innovation Center, which will test new health care delivery models that emphasize primary care and innovative ways to finance health care.

He has also instituted a financial incentives program for physicians who use electronic health records. And generally, he has set the tone for health reform to take root and to provide Americans with affordable, high-quality health care in a cost-efficient manner.

To be perfectly clear, I am not in any way suggesting that I do not continue to have enthusiasm for the President's recent nominee to replace Dr. Berwick. From all I know of this nominee, she will do an excellent job. But I am frustrated that an eminently qualified public servant is being denied the opportunity to continue serving the American people in this important position. There is no valid justification for denying him that opportunity.

The ACTING PRESIDENT pro tempore. The majority's time has expired.

Mr. BINGAMAN. I ask unanimous consent for an additional minute.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. BINGAMAN. John McDonough of the Boston Globe, in his commentary on the response to Don Berwick's nomination, wrote:

> One of [health care's] most distinguished leaders and voices got mugged by partisan Republicans who know better and who got away with it.

I am truly disappointed that certain Senators have pledged to block his nomination and that he has chosen to resign his position effective tomorrow.

Our task now is to assess the new nominee the President has sent us. I hope Members can come together to do what is right in this circumstance; that is, to quickly confirm an Administrator for this very important position.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Indiana.

Mr. COATS. Mr. President, it is my understanding that I have 20 minutes of time allotted under morning business.

The ACTING PRESIDENT pro tempore. Under the previous order, each Senator has 10 minutes to speak.

Mr. COATS. All right. Mr. President, I do not think I will use all of those 20 minutes. I might ask for 10 additional

minutes. I will use the 10 minutes, but I may need to ask for some additional time if it works out and others are not waiting.

FISCAL STABILITY

Mr. COATS. Mr. President, I come to the floor deeply disappointed—like many—over our failure to seize a unique opportunity to put America on a more fiscally sane path for the future.

My No. 1 priority for this year—I have talked about it so many times, not only publicly but with colleagues in discussions for nearly a year—that No. 1 priority has been to advocate for a deficit reduction package that would be deemed credible by the financial markets and would put us on a path to fiscal stability. I think, given the situation that exists around the world today, nothing could have been more impactful in a positive way producing such a package.

Financial experts agree—and they have now for years—that we are on the wrong path, that we are spending far too much in relationship to our anemic growth and GDP, and that we have staggered along for 3 years but continued to spend an extraordinary amount of money without seeing the economy recover.

A number of plans have come forward. One year ago today, Simpson-Bowles produced one of those types of bold plans that could help get us back on this fiscal path to prosperity. As you know, Mr. Bowles was the Chief of Staff to our former President Bill Clinton. He and our former colleague Alan Simpson put together a package that—whether you agreed with all of it or not, certainly was something that could have put us on a more fiscally sound path. Yet those recommendations were rejected out of hand by the White House and others.

We have seen the activities and presentations of the Gang of 6. Forty-plus Senators, including me, came together in a bipartisan way to urge the President to join us in pushing for a bold, comprehensive plan. That was rejected. Earlier in the year, the President's budget was laughed out of this Chamber. Not one person—either Democrat or Republican—voted for it.

Then in August we came far shot short of what we needed to do to address our debt crisis when Congress passed the Budget Control Act. I was not able to support that particular plan. Although it averted a default on our debt, it fell woefully short of what was needed to address our fiscal situation. Nevertheless, that opportunity—which we had with the involvement of both parties to do something truly significant—was passed over.

So then it fell to the committee of 12, which is called the supercommittee. Many of us—offered suggestions and urged those members to try and go beyond the minimum of $1.2 trillion of deficit reduction over a 10-year period of time.

There was a so-called Draconian sequester, or across-the-board cut, that would go into place automatically, starting in 2013, if the committee could not come to an agreement. The consensus at the time was these cuts would be so Draconian that it would force an agreement among Republicans and Democrats—to come forward with at least a minimal plan. Many of us were urging them to do much more, to bring forth something that would be credible with the investment community and restore confidence that America understood the dire situation we were in and we were doing something about it as representatives of the people.

No clearer message came to this body than the message sent in November of 2010 with the historic turnover of Members and an outpouring of support for putting the future of our country, our fiscal future and economic future and the future of our children and grandchildren ahead of politics. Yet it is politics that defeated the effort.

Now, it is easy to blame the committee of 12. I know there was an earnest attempt to come together. I believe, politically, perhaps, it was doomed from the start just by the way it was designed. That is one of the reasons I voted against that proposal. Nevertheless, they made an earnest attempt but, unfortunately, were not able to bring it home.

So the responsibility falls not just on those 12, but it falls on this entire Congress because we would not even have gotten to that supercommitteen if we had done our job earlier and presented a real plan in August, when we were bumping up against the debt limit extension. That's when we should have done what most of us intuitively understand needs to be done. Yet the political considerations and ramifications were such that we came forward with a very timid and woefully short plan of what we needed to do.

The President has to take some responsibility. We cannot really bring forward a bold change in the way the U.S. Government does business unless we have bipartisan support. We cannot get that bipartisan support unless the Chief Executive, the quarterback of the team, stands up and says: I want to be involved and engaged and stay engaged. While there was some rhetoric coming out of the White House, there was no plan. As I said, the only plan we have had from the President—his budget plan—was rejected earlier this year on a unanimous vote, every Republican and every Democrat turned it down.

The President has said some nice words about what we needed to do and so forth and so on. But he was AWOL. As I said, the quarterback of the team needs to be engaged. He is the key person. Yet that quarterback was not even on the field. So responsibility falls on both Congress and the White House. I think some responsibility also falls on outside groups who distorted what we were trying to do, who mischaracterized what Republicans were seeking to accomplish, and there was some mischaracterization of what Democrats were seeking to accomplish as well. But it was an undermining process. Those groups that supposedly are representative of seniors across this country, the shameful way in which they distorted the message and what we were trying to do—and, obviously, it had a political impact here and put restraint on Members because their base was being lied to in terms of what was under consideration and what we were trying to do.

We all know Social Security and Medicare are not going to have the funds available in the future to provide the services that were promised to the American people. Yet any attempt to try to salvage and save and retain those programs' solvency was distorted by these groups that supposedly represent the interests of our seniors. Many of these groups falsely claimed that we were trying to take away their program, we were trying to destroy their program.

I mean, how ridiculous it is that someone is going to come in here and say: My goal is to destroy retirement benefits for the American people or I am here to take away health benefits for American retirees. None of us are here to do that.

These programs are law. They are in place. We want them to be more efficient, more effective, but, more importantly, we want them to remain solvent. Yet outside groups were basically sending just the opposite messages. So the Congress failed. We came up short. But having done so, Congress cannot avoid the responsibility we have to do everything in our power to try to address a very serious fiscal problem that exists in this country.

Years and years, decades and decades, not only this Congress but former Congresses, not only this President but former Presidents have made promises to the American people that we now are unable to keep because we do not have the fiscal capability of doing so. We have not had a budget come out of the Congress in more than 1,000 days. There is some indication that we will have a budget next year. I sincerely hope we can get together and come forward with a deficit reduction budget, one that recognizes the fiscal plight in which we find ourselves. I will work with both sides of the aisle to try to accomplish that. We have to acknowledge that we continue to spend trillions more dollars than we have available to us. No nation can sustain that.

All we have to do is look across the Atlantic at what is taking place in Europe from country to country. It is not just Greece, it is not just Portugal, it is not just Ireland anymore. It is Italy and maybe France and maybe other countries. The European Union is struggling to try to address this serious debit crisis, the same type of problem we have here.

There have been many here that look at Europe and say: They need to get

their act together. Well, we need to get our act together here because what we are seeing there may be coming across the shore. Certainly, similar problems exist: promising more than we can deliver, borrowing more so that we can pay debts that we do not have the money to pay through the revenues we generate in our country. The same thing is happening here.

This is the challenge in front of us. We need to find a way to seize this opportunity to do something for the future of this country. Our generation must step up for the next generations and for the sake of the country's future. We need to continue this debate and go forward. It is easy to sit around and grumble and blame somebody else and say, well, we gave it our best shot and therefore we will just let whatever happens happen. We do not want to do that because what will happen here, if we continue on the current course, is what is happening in Europe today. There is no clearer picture of the consequences of a sovereign nation promising more and spending more than it takes in over time. It slows the economy. It piles up the interest payments. It shrinks the amount of money available for essential services. It puts the programs that were in place in real jeopardy.

So if we consider the consequences, we clearly have to answer the question: Where do we go from here? How do we go forward in a constructive way?

I would suggest a few things: First, we need to enforce the law that is there under the Budget Control Act. The law that is in place on the books now, even though I believe that law designed a process that is woefully short of where we need to go, but we need to enforce it now.

No one wanted to get to this across-the-board cutting, this sequester that impacts our national security and other functions of government. But that sequester was supposed to prevent us from failing and urge us to come to agreement. It did not. The sequestration rule now is the law, and I think an attempt to undo that is one of the most cynical things we can do, and the American people know it. I do not believe they will allow us to do it.

So the law needs to be enforced if we cannot come up with the minimum amount of cuts required. We need to go forward and do that. So there are a number of ways—and I commend the committee for at least trying to come up with some efficiencies and effectiveness rein in our Federal spending. I believe they have a list of things that we can look to in order to enforce more cuts. I have suggested a triage process when we review every aspect of an agency of government, every function that is performed through this Federal Government, and basically say: We have a patient that is sick, a patient with a potentially terminal disease. But we need to triage. We have a bunch of people in the waiting room. Some of them need attention right away. So we need a triage of every agency, every function, every expenditure being examined from the standpoint of, is this absolutely essential to the future of this country, to the protection of our citizens? Is this an absolutely essential function of government that cannot be done at the State level, at the local level, or at the private level? If so, then that needs to have priority.

Secondly, there is a whole range of issues. We come down every day with new ideas and thoughts of ''this would be nice to do, but we cannot afford to do.'' We have to delay these initiatives those or just simply say to people: I am sorry, we do not have the money to pay for this idea.

So we separate the essential from ''like to do and cannot do,'' and then we look at what needs to be done that someone else can do better. Whether in the private sector, at the State level, or at the local level, there are a whole range of areas where the Federal Government has gotten in way over its head. These are functions that can take place in the private sector or through State and local governments.

We can look at the duplication and inefficiencies that exist. Senator COBURN came up with a long list, trillions of dollars in expenditures that could be saved. We ought to look at that. We ought to look at those and decide which ones we want to go forward with and how we can start that process.

Let me mention a couple of things: 18 separate domestic food assistance programs. Do we need domestic assistance for food? Probably there are some areas where we do. Do we need 18 separate programs dolling this out?

There are 47 different job training programs. OK. The economy is restructuring. We need job training. Do we need 47 separate programs to do that?

And my personal favorite: 56 financial literacy programs. We can argue that the Federal Government is in no place to teach the American people how to be financially literate. I think what we need to do is be financially literate here in Washington and then use that model to show people how to be literate rather than simply say, well, we have the answer. We, obviously, do not have the answer. Why we have 56 financial literacy programs in place through the Federal Government is just astounding.

So these are suggestions. There are many others regarding cutting of spending. But there are other functions that need to be addressed. There are three major categories. One is regulatory reform. Regulation from various agencies is costing the American taxpayer and Americans millions and billions of dollars.

There is a process underway to look at those. That is one category. I can talk for a long time about that, but I will not. A second one is entitlement reform. Now, I have been talking about this subject from the beginning. This is the engine that drives the train of deficits, and we can stand by and continue to lie to the American people and say they have nothing to worry about. We can say we are going to preserve every penny of the Social Security and every penny of the Medicare and Medicaid, and it will always be there. Do not worry. Even the money put in via payroll taxes and so forth, it is all sacrosanct, and do not worry about it. We can continue that lie or we can tell the American people the truth; that is, if we want to keep these programs viable, we need to take structured reform measures now.

Those could be increasing the age of eligibility for Medicare to coincide with the current Social Security age. It could be changes in some of the indexes that are used to calculate the cost-of-living adjustment. That could be modified through means testing.

Warren Buffett says he does not need Social Security. Fine. If people do not need Social Security or Medicare or at least the full payment, let's give them back what they paid in. So we could put means testing in there. We need to debate and talk about this issue.

Is it politically sensitive? Sure. But let's be honest with the American people. They want us to be honest. I think that is what the message of 2010 was all about.

The third category, one in which I have been very involved in, is reforming our Tax Code, which is a mess.

The tax code is totally incomprehensible to anybody who spends less than 15 hours a day as a career studying it and trying to figure it out. Our tax code is a nightmare. Americans spend billions of dollars having people do their taxes because the tax code is too complex to understand. There are tens of thousands of pages in the Tax Code.

There is a growing bipartisan consensus here in Congress that we need to reform our Tax Code. Senator WYDEN and I have a bipartisan bill that has been worked on for 3 years to reform the tax code. Our plan is not the absolute answer to everything, but it is the only bipartisan bill in legislative text, it has been scored, and it is available to be debated. I know the supercommittee looked at our proposal. The Ways and Means Committee and the Finance Committee ought to look at it as well. Tax reform can, make this country more competitive, grow economy, and help with our fiscal situation.

I sense that I am close to or running out of time. In deference to my colleagues, I will wrap up.

I came here deeply disappointed today. I remain disappointed that we haven't been able to do more. My No. 1 priority has been to advocate for going big on a deficit reduction plan. We weren't able to do that. Experts agree that we must do more. We only have to look at Europe to see what is coming next. Let's try to avoid that. There are plans out there we can build off of right now. So instead of just folding our tent and saying there is nothing we

can do except wait for the election results of 2012 when we may have a different President or a different Congress, we have a responsibility to act now. There are ways we can do this. We need to demonstrate to ourselves and to the American people that we will accept this responsibility. I choose to do that. I choose to take the tough medicine for the future of the country. I believe the American people choose to do that as well.

I urge my colleagues to join me as we move forward. Let's not sit and wait for election results. Let's do something now because the urgency and the crisis is real, and it needs to be addressed now. Let's be responsible and step up and do it.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Georgia is recognized.

TRIBUTE TO LARRY MUNSON

Mr. CHAMBLISS. Mr. President, I rise today, along with my colleague, my fellow University of Georgia graduate, Senator ISAKSON, to honor a man who died last week who became a legend in his own time in our great State, a legend who was respected by, as we would say, folks on both sides of the aisle. That term for this man means he was respected by Georgia Tech football fans as well as University of Georgia football fans.

The man I am talking about is Larry Munson. Larry Munson was not a southerner by birth, but he became a southerner and Georgia Bulldog by passion. He was the Georgia football announcer for over four decades. During those four decades, he not only witnessed some of the most memorable football games, but he made some of the most memorable calls. His way of describing a football play will go down in the annals of broadcasting as not only being unique, not only being fascinating, but it will go down in the annals of sports broadcasting as being some of the best and most professional calls ever made on a football field.

But there was more to Larry Munson than the ''Run, Lindsay, run,'' more to Larry Munson than the ''Oh, you Herschel Walker,'' more to Larry Munson than ''We just stomped on them with a hob-nailed boot.'' He was a man who had passion for life, a man who had a thorough understanding of his profession, and a man who worked very hard at his profession.

He used to get up every Saturday morning before a football game and have coffee with our legendary coach, Vince Dooley. Coach Dooley said he finally had to stop having coffee with Larry Munson because Larry was ever the pessimist, from a football standpoint. Coach Dooley would come to those coffees feeling good about his chances in the ball game that day, and by the time he finished having coffee with Larry Munson, he had to go back and rewrite his playbook.

Larry Munson was simply a man who loved the University of Georgia. He loved calling football games, and he loved putting his emotions into those calls. He was also a man who cared not just about the University of Georgia but about his students. He used to have what he called a Wednesday night movie night where he would invite students to join him at a theater in Athens, GA, and he would share time—his time—with students that he loved. He did this for years and years and years. I have heard stories from some of those folks who attended those movie nights that Larry Munson was more passionate about movies than he was about University of Georgia football, which is hard to imagine.

As we look back on the life of Larry Munson, those of us who live and breathe Georgia football will always remember the passionate calls, the way he put his heart and soul into the football game, but we will also remember the man Larry Munson, who enjoyed life, enjoyed people, enjoyed his profession, and who gave so much back to his profession.

He was a man who loved the outdoors. He came south from his birthplace of Minneapolis many years ago. He remained a true southerner not just for his 40 years of broadcasting at the University of Georgia but in his bass fishing, for example. I remember when he would come down to our part of the world in south Georgia to speak to a touchdown club, or whatever it may be, and he would always call up and say, ''Where is the best bass pond in south Georgia? That is where I want to be this afternoon before my speech.'' He thoroughly enjoyed the outdoors, and he enjoyed being around people. That was obvious in the way he expressed himself behind the microphone when he called football games.

As we celebrate the life of Larry Munson, we celebrate more than his historic calls. His passion for football, his passion for his family, and his passion for friends exceeds any passion he had for football. He was a great man, a great friend, and he will certainly be missed by our State and particularly by our university.

With that, I yield to Senator ISAKSON.

The ACTING PRESIDENT pro tempore. The Senator from Georgia, Mr. ISAKSON, is recognized.

Mr. ISAKSON. I appreciate the opportunity to share a few moments with Senator CHAMBLISS on the floor of the Senate to pay tribute to a great Georgian, Larry Munson.

Larry Munson was born in Minneapolis, and after the service he got a scholarship at a broadcasting school, and he got a job at the University of Wyoming. He worked his way to Tennessee, where he announced for the Vanderbilt basketball and football programs. Then, when the Braves moved from Milwaukee to Atlanta, he was brought in to be one of the announcers for Atlanta Braves baseball. Shortly after that, the voice of the Georgia Bulldogs retired and went to another job, and Larry Munson was asked to take over broadcasting at the University of Georgia. He was a Yankee, an outsider, not one whom many people thought much of when he started. Well, he became a legend in his time. He is a revered person in our State.

It is said that Southeastern Conference football is not a game, it is a religion. In that analogy, if it is a religion in the Southeastern Conference, Larry was the high priest. He was the man whom everybody looked to to make the call nobody else could. The greatest tribute I ever saw to Larry Munson was on SEC football on an afternoon, at 3:30, when, a couple of years ago, before he retired, the announcer for CBS television brought in Larry Munson's radio play by play and set themselves aside because he was that good. He brought the game to life. He brought a spirit to the game you just could not find.

He was a hometown boy. There was no question whom he worked for, no question who signed his ticket. He was always fair but always friendly to the Dogs. It was his spirit that brought the University of Georgia from the doldrums of the 1960s to the height of college football—the national championship in 1980, four SEC championships in the last 12 years, and, hopefully, an SEC championship this Saturday night.

Larry Munson passed away a few days before Thanksgiving in his beloved town and hometown of Athens, GA. Although he started in Minneapolis, MN, and went to Wyoming and later to Tennessee, he finally resided in Georgia, and he died in Georgia. He is esteemed in our State.

On this day, let me, on behalf of the people I represent in my State of all persuasions when it comes to college football, pay tribute to a man who gave every single measure of himself to make sure every person who listened to his voice saw a game, whether they were blind or could see, because he brought life to a game like nobody else could. He was a great Georgian and a great American. He will be missed.

I can promise you this: His view at Stanford Stadium today is far better than the view he used to have in the broadcast booth because he is high over the stadium, where he made his living and where he will always be remembered.

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

The PRESIDING OFFICER (Mr. BROWN of Ohio). Without objection, it is so ordered.

Mr. GRAHAM. I believe we are still in morning business.

The PRESIDING OFFICER. The Senator is correct.

Mr. GRAHAM. I ask unanimous consent to enter into a colloquy, and if the Chair could let me know when 10 minutes has expired.

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

DEFENSE AUTHORIZATION

Mr. GRAHAM. While we decide how we are going to move on the Defense bill, I appreciate Senator KYL coming to the floor. Senator KYL and I, along with Senators LEVIN and MCCAIN, have been working on detainee policy for years now. There is an issue that is before the Senate soon. It involves what to do with an American citizen who is suspected of collaborating with al-Qaida or an affiliated group.

Does the Senator agree with me that in other wars American citizens, unfortunately, have aided the enemies of their time?

Mr. KYL. Mr. President, yes. I would say to my colleague, unfortunately, it is the case that there probably hasn't been a major conflict in which at least some American citizen has decided to leave his country and side with the enemy.

Mr. GRAHAM. Is the Senator familiar with the efforts by German saboteurs who landed—I believe, in the Long Island area, but I don't know exactly where they landed—during World War II, and they were aided by American citizens to execute a sabotage plot against the United States?

Mr. KYL. Mr. President, yes. In fact, there is a famous U.S. Supreme Court case, Ex parte Quirin, decided in 1942, that dealt with the issue of an American citizen helping the Nazi saboteurs that came to our shores.

Mr. GRAHAM. Does the Senator agree with me that our Supreme Court ruled then that when an American citizen decides to collaborate and assist an enemy force, that is viewed as an act of war and the law of war applies to the conduct of the American citizen?

Mr. KYL. Mr. President, I would say to my colleague, yes. My colleague knows this case, I am confident. I think one quotation from the case makes the point clearly—in Ex parte Quirin the court made clear: ''Citizenship in the United States of an enemy belligerent does not relieve him from the consequences of his belligerency.''

In other words, if a person leaves their country and takes the position contrary, they side with the enemy, they become a belligerent against the United States, the fact that they are still a citizen does not protect them from being captured, from being held, and in this case even being tried by a military tribunal.

Mr. GRAHAM. So the law, at least since 1942, by the Supreme Court has been that if someone decides as an American citizen to join forces with enemies of the United States, they have committed an act of war against their fellow citizens. It is not a criminal event we are investigating or dealing with; it is an act of war, and the American citizens who helped the Nazis were held as enemy combatants and tried as enemy combatants?

Mr. KYL. Mr. President, yes. I would just qualify that statement this way. A person can be subject to military custody being a belligerent against the United States, even while being a U.S. citizen, be tried by military commission because of the act of war against the United States that they committed. One could also theoretically have been tried in a criminal court. But one can't reach the opposite conclusion, which is that they can only be tried in civilian court.

Mr. GRAHAM. In the Military Commission Act of 2009, we prohibited American citizens from being tried by military commissions. I am OK with that. But what we have not done—and I would be very upset if we chose to do that—is take off the table the ability to interrogate an American citizen who has chosen to help al-Qaida regarding what they know about the enemy and what intelligence they may provide us to prevent a future attack.

Since homegrown terrorism is a growing threat, under the current law, if an American citizen became radical, went to Pakistan and trained with al-Qaida or an affiliated group, flew back to Dulles Airport, got off the plane, got a rifle, went down to the Mall right behind us and started shooting people, does the Senator agree with me that under the law as it exists today, that person could be held as an enemy combatant, that person could be interrogated by our military and intelligence community and we could hold them as long as necessary to find out what they know about any future attacks or any past attacks and we don't have to read them their Miranda rights?

Mr. KYL. Mr. President, yes. The answer to the question, short, is, yes. It is confirmed by the fact that in the Hamdi case, the U.S. Supreme Court precisely held that detention would be lawful. Of course, with the detention being lawful, the interrogation to which my colleague refers could also be taken.

Mr. MCCAIN. Would the Senator yield for a question on that subject point?

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. The individual who was an American citizen—Mr. Hamdi, the subject of the U.S. Supreme Court case—was an American citizen captured in Afghanistan; is that correct?

Mr. GRAHAM. Yes.

Mr. MCCAIN. Yet in the Supreme Court decision reference is made to an individual who was captured during World War II in the United States of America; isn't that correct? It was referenced in the Supreme Court decision.

Mr. GRAHAM. Yes. The In re Quirin case dealt with an American citizen helping the Nazis in America. The Hamdi case dealt with an American citizen helping the Taliban in Afghanistan.

Mr. MCCAIN. The reason why I raise the question is because the Senator from Illinois, and others, have cited the fact that Hamdi was an American citizen but captured in Afghanistan, not in the United States of America.

Yet isn't it a fact that the decision in Hamdi also made reference to a person who was apprehended in the United States of America?

This is what is bizarre about this discussion, it seems to me.

Mr. GRAHAM. The Hamdi case cited In re Quirin for the proposition that an American citizen who provides aid, comfort or collaboration with the enemy can be held as an enemy combatant. The In re Quirin case dealt with an American citizen helping the Nazis in New York. The Padilla case involves an American citizen, collaborating with al-Qaida, captured in the United States.

Mr. MCCAIN. So I guess my question is, it is relevant where the citizen of the United States was captured. Because the decision made reference to people captured both in the United States and outside the United States.

Mr. GRAHAM. Exactly. I would add, and get Senator KYL's comment. Wouldn't it be an absurd result if you can kill an American citizen abroad—Awlaki—whatever his name was—the President targeted him for assassination because he was an American citizen who went to Yemen to engage in an act of terrorism against the United States. The President went through an Executive legal process, targeted him for assassination and a drone attack killed him and we are all better off. Because when an American citizen helps the enemy, they are no longer just a common criminal; they are a military threat and should be dealt with appropriately.

But my point is, wouldn't it be an odd result to have a law set up so that if they actually got to America and they tried to kill our people on our own soil, all of a sudden they have criminal status?

I would argue that the homeland is part of the battlefield, and we should protect the homeland above anything else. So it would be crazy to have a law that says if you went to Pakistan and attacked an American soldier, you could be blown up or held indefinitely, but if you made it back to Dulles Airport, you went downtown and started killing Americans randomly, we couldn't hold you and gather intelligence. The Supreme Court, in 1982, said that made no sense.

If a Senator, in 1942, took the floor of the Senate and said: You know those American citizens who collaborated with the Nazis, we ought not treat them as an enemy, they would be run out of town.

I am just saying, to any American citizen: If you want to help al-Qaida, you do so at your own peril. You can

get killed in the process. You can get detained indefinitely. When you are being questioned by the CIA, the FBI or the Department of Defense about where you trained and what you did and what you know and you say to the interrogator: I want my lawyer, the interrogator will say: You don't have a right to a lawyer because you are a military threat.

This is not ''Dragnet.'' We are fighting a war. The Supreme Court of the United States has clearly said an American citizen who joins with the enemy has committed an act of war.

Senator FEINSTEIN, who is the chairman of the Intelligence Committee, is a very good Senator. But her concerns about holding an American citizen under the law of war, her amendment, unfortunately, would change the law.

Does Senator KYL agree with that?

Mr. KYL. Yes. Mr. President, that is the key point. There is a reason why you don't want to adopt the Feinstein amendment: It would preclude us from gaining all the intelligence we could gain by interrogating the individual who has turned on his own country and who would have knowledge of others who might have joined him in that effort or other plans that might be underway.

We know from past experience this interrogation can lead to other information to save American lives by preventing future attacks, and it has occurred time and time again. In a moment, I will put a statement in the RECORD that details a lot of this intelligence we have gathered. It is not as if an American citizen doesn't have the habeas corpus protection—which still attaches—whether or not that individual is taken into military custody.

The basic constitutional right of an American citizen is preserved. Yet the government's ability to interrogate and gain intelligence is also preserved by the existing law, by the status of the law that exists today. We would not want to change that law by something such as the Feinstein amendment.

Mr. GRAHAM. Simply stated, when the American citizens in question decided to give aid and comfort to the Nazis, I am very glad they were allowed to be held by the military and interrogated about the plot and what they knew, because intelligence gathering is the best way to keep us safe.

I would be absolutely devastated if the Senate, for the first time in 2011, denied the ability of our military and intelligence community to interrogate somebody who came back from Pakistan and started killing people on the Mall—that we could no longer hold them as an enemy combatant and find out what they did and why they did it; that we would have to treat them as a common criminal and read them their Miranda rights. That is not the law.

If that becomes the law, then we are less safe because I tell you, as we speak, the threat to our homeland is growing. Homegrown terrorists are becoming the threat of the 21st century, and now is not the time to change the law that has been in place for decades. I do hope people understand what this means.

It means we would change the law so that if we caught somebody in America who went overseas to train and came back home, an American citizen who turned on the rest of us, no longer could we hold them as an enemy combatant and gather intelligence. That, to me, would be a very dangerous thing to do.

I ask the Senator, who determines what the Constitution actually means; is it the Congress or the Supreme Court?

Mr. KYL. Mr. President, ultimately the U.S. Supreme Court, when cases come before the Court that present these issues, determines what the law is. In this situation we have actually two specific cases, and there are others that are tangential, that do clarify what the Court believes what the Constitution would provide in this case.

Mr. GRAHAM. So the issue is pretty simple. Our courts at the highest level—the Supreme Court has acknowledged that the executive branch has the legal authority to hold an American citizen who is collaborating with an enemy as an enemy belligerent to gather intelligence to protect the rest of us; they recognize that power of the executive. Does the Senator agree with me that the amendment of Senator FEINSTEIN would be a situation where the Congress does not recognize that authority and would actually try to change it?

Mr. KYL. Yes. One of the questions is this interplay between the executive and the legislative branch. When the legislative branch, as Congress has done here through the authorization of military force, has provided the legal basis for the administration to hold a person engaged in war against us, then it cannot be denied that that authority exists. There is a 1971 law that Congress passed that said you could hold people only pursuant to law. This was the precise holding of the Hamdi case, where the U.S. Supreme Court said they had the authority because of the authorization of military force. So the executive has that authority, the legislature has provided the basis for the authority, and the Supreme Court has upheld it by its ultimate jurisdiction.

Mr. GRAHAM. And to conclude this colloquy—I enjoyed the discussion—I am not saying our law enforcement or military intelligence community cannot read someone their Miranda rights. I will leave that up to them. I am saying Congress should not take off the table the ability to hold someone under the law of war to gather intelligence, and that is what we are about to do if this passes.

To those who believe that homegrown terrorists are a threat now and in the future, if you want to make sure we can never effectively gather intelligence, we only have one option, then that is what we are about to impose on the country.

Mr. KYL. If I might ask my colleague to yield for one other point I wish to make here.

Mr. GRAHAM. Absolutely.

Mr. KYL. In a criminal trial, the object is to do justice to an individual as it pertains to his alleged violation of law in the United States. In the case of the capture and detention of a combatant, someone who has taken action against the United States, the object first is to keep the United States safe from this individual's actions and, second, where possible, gain intelligence from that individual. That is the critical element that would be taken from our military, were the Feinstein amendment to be adopted.

I ask unanimous consent to have printed in the RECORD a statement that makes very clear where military detention is necessary: to allow intelligence gathering that will prevent future terrorist attacks against the American people.

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

WARTIME DETENTION OF ENEMY COMBATANTS—INCLUDING U.S. CITIZENS WHO JOIN THE FORCES OF THE ENEMY—IS AN ESTABLISHED PRACTICE THAT IS CLEARLY CONSTITUTIONAL

Unfortunately, in almost every major war that the United States has fought, there have been some U.S. citizens who have joined the forces of our Nation's enemies or who have otherwise collaborated with the enemy. These traitors and collaborators have always been treated as enemy combatants—and have been subjected to trial by military commission where appropriate.

The U.S. Supreme Court has consistently held that the President has the constitutional authority to detain enemy combatants, including U.S. citizens who have cast their lot with the enemy.

In its 2004 decision in *Hamdi v. Rumsfeld*, for example, the Supreme Court held that the detention of enemy combatants is proper under the U.S. Constitution. Moreover, the person challenging his military detention in that case was a U.S. citizen.

During World War II, the Supreme Court also upheld the military detention and trial of a U.S. citizen who had served as a saboteur for Nazi Germany and was captured in the United States. The Court made clear that ''[c]itizenship in the United States of an enemy belligerent does not relieve him from the consequences of a belligerency.'' That case is *Ex Parte Quirin* (1942).

In support of her amendment number 1126, Senator FEINSTEIN yesterday cited a 1971 law, apparently arguing that the detention of an enemy combatant who is a U.S. citizen would be prohibited under that law.

That 1971 law is 18 U.S.C. 4001. It provides that ''no citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.''

This is the very law that was at issue in the *Hamdi* case. And the precise holding of the U.S. Supreme Court in *Hamdi* was that the detention of a U.S. citizen as an enemy combatant through the duration of hostilities would not violate that law.

The Supreme Court stated: ''[Hamdi] posits that his detention is forbidden by 18 U.S.C. § 4001(a). Section 4001(a) states that '[n]o citizen shall be imprisoned or otherwise detained by the United States except pursuant

to an Act of Congress.' . . . Congress passed §4001(a) in 1971. . . . [The government maintains] §4001(a) is satisfied because Hamdi is being detained pursuant to an Act of Congress, the AUMF. . . . [W]e conclude that . . . the AUMF satisfied §4001(a)'s requirement that a detention be pursuant to an Act of Congress.''

WHY MILITARY DETENTION IS NECESSARY: TO ALLOW INTELLIGENCE GATHERING THAT WILL PREVENT FUTURE TERRORIST ATTACKS AGAINST THE AMERICAN PEOPLE

Some may ask, why does it matter whether a person who has joined Al Qaeda is held in military custody or is placed in the civilian court system? One critical reason is intelligence gathering. A terrorist operative held in military custody can be effectively interrogated. In the civilian system, however, that same terrorist would be given a lawyer, and the first thing that lawyer will tell his client is, ''don't say anything. We can fight this.''

In military custody, by contrast, not only are there no lawyers for terrorists. The indefinite nature of the detention—it can last as long as the war continues—itself creates conditions that allow effective interrogation. It creates the relationship of dependency and trust that experienced interrogators have made clear is critical to persuading terrorist detainees to talk.

Navy Vice-Admiral Lowell Jacoby, who at the time was the Director of the Defense Intelligence Agency, explained how military custody is critical to effective interrogation in a declaration that he submitted in the Padilla litigation. He emphasized that successful noncoercive interrogation takes time—and it requires keeping the detainee away from lawyers.

Vice-Admiral Jacoby stated:

DIA's approach to interrogation is largely dependent upon creating an atmosphere of dependency and trust between the subject and the interrogator. Developing the kind of relationship of trust and dependency necessary for effective interrogations is a process that can take a significant amount of time. There are numerous examples of situations where interrogators have been unable to obtain valuable intelligence from a subject until months, or, even years, after the interrogation process began.

Anything that threatens the perceived dependency and trust between the subject and interrogator directly threatens the value of interrogation as an intelligence gathering tool. Even seemingly minor interruptions can have profound psychological impacts on the delicate subject-interrogator relationship. Any insertion of counsel into the subject-interrogator relationship, for example—even if only for a limited duration or for a specific purpose—can undo months of work and may permanently shut down the interrogation process.

Specifically with regard to Jose Padilla, Vice Admiral Jacoby also noted in his Declaration that: ''Providing [Padilla] access to counsel now would create expectations by Padilla that his ultimate release may be obtained through an adversarial civil litigation process. This would break—probably irreparably—the sense of dependency and trust that the interrogators are attempting to create.''

In other words, military custody is critical to successful interrogation. Once a terrorist detainee is transferred to the civilian court system, the conditions for successful interrogation are destroyed.

Preventing the detention of U.S. citizens who collaborate with Al Qaeda would be a historic abandonment of the law of war. And, by preventing effective interrogation of these collaborators, it would likely have severe consequences for our ability to prevent future terrorist attacks against the American people.

We know from cold, hard experience that successful interrogation is critical to uncovering information that will prevent future attacks against civilians.

On September 6 of 2006, when President Bush announced the transfer of 14 high-value terrorism detainees to Guantanamo, he also described information that the United States had obtained by interrogating these detainees. Abu Zubaydah was captured by U.S. forces several months after the September 11 attacks. Under interrogation, he revealed that Khalid Sheikh Mohammed was the principal organizer of the September 11 attacks. This is information that the United States did not already know—and that we only obtained through the successful military interrogation of Zubaydah.

Zubaydah also described a terrorist attack that Al Qaida operatives were planning to launch inside this country—an attack of which the United States had no previous knowledge. Zubaydah described the operatives involved in this attack and where they were located. This information allowed the United States to capture these operatives—one while he was traveling to the United States.

Again, just imagine what might have happened if the Feinstein amendment had already been law, and if the Congress had stripped away the executive branch's ability to hold Al Qaeda collaborators in military custody and interrogate them. We simply would not learn what that detainee knows—including any knowledge that he may have of planned future terrorist attacks.

Under military interrogation, Abu Zubaydah also revealed the identity of another September 11 plotter, Ramzi bin al Shibh, and provided information that led to his capture. U.S. forces then interrogated bin al Shibh. Information that both he and Zubaydah provided helped lead to the capture of Khalid Sheikh Mohammed.

Under interrogation, Khalid Sheikh Mohammed provided information that helped stop another planned terrorist attack on the United States. K.S.M. also provided information that led to the capture of a terrorist named Zubair. And K.S.M.'s interrogation also led to the identification and capture of an entire 17–member Jemaah Islamiya terrorist cell in Southeast Asia.

Information obtained from interrogation of terrorists detained by the United States also helped to stop a planned truck-bomb attack on U.S. troops in Djibouti. Interrogation helped stop a planned car-bomb attack on the U.S. embassy in Pakistan. And it helped stop a plot to hijack passengers planes and crash them into Heathrow airport in London.

As President Bush stated in his September 6, 2006 remarks, ''[i]nformation from terrorists in CIA custody has played a role in the capture or questioning of nearly every senior al Qaida member or associate detained by the U.S. and its allies.'' The President concluded by noting that Al Qaida members subjected to interrogation by U.S. forces: ''have painted a picture of al Qaeda's structure and financing, and communications and logistics. They identified al Qaeda's travel routes and safe havens, and explained how al Qaeda's senior leadership communicates with its operatives in places like Iraq. They provided information that . . . has allowed us to make sense of documents and computer records that we have seized in terrorist raids. They've identified voices in recordings of intercepted calls, and helped us understand the meaning of potentially critical terrorist communications.

[Were it not for information obtained through interrogation], our intelligence community believes that al Qaeda and its allies would have succeeded in launching another attack against the American homeland. By giving us information about terrorist plans we could not get anywhere else, this [interrogation] program has saved innocent lives.''

If the Feinstein amendment were adopted, this is all information that we would be unable to obtain if the Al Qaeda collaborator that our forces had captured was a U.S. citizen. It would simply be impossible to effectively interrogate that Al Qaeda collaborator—the relationship of trust and dependency that military custody creates would be broken, and the detainee would instead have a lawyer telling him to be quiet. And we know that information obtained by interrogating Al Qaeda detainees has been by far the most valuable source of information for preventing future terrorist attacks.

Again, in every past war, our forces have had the ability to capture, detain, and interrogate U.S. citizens who collaborate with the enemy or join forces with the enemy. I would submit that in this war, intelligence gathering is more critical than ever. Al Qaeda doesn't hold territory that we can capture. It operates completely outside the rules of war, and directly targets innocent civilians. Our only effective weapon against Al Qaeda is intelligence gathering. And the Feinstein amendment threatens to take away that weapon—to take away our best defense for preventing future terrorist attacks against the American people.

Mr. KYL. I hope this statement clarifies in anyone's mind the point that by taking people in custody in the past we have gathered essential intelligence to protect the American people. That is the reason for the detention in the first place—A, to keep the American people safe from further attack by the individual, and, B, to gather this kind of intelligence. Nothing precludes the United States, the executive branch, from thereafter deciding to try the individual as a criminal in the criminal courts with all the attendant rights of a criminal. But until that determination, it cannot be denied that the executive has the authority to hold people as military combatants, gather intelligence necessary, and hold that individual until the cessation of hostilities.

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

The senior Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I understand we are still in morning business?

The PRESIDING OFFICER. The time for morning business has expired.

Mr. LEAHY. I ask unanimous consent I be recognized for another 5 minutes as in morning business, and the distinguished Senator from Illinois be recognized for 10 minutes as in morning business.

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

Mr. LEAHY. Mr. President, earlier this week, one of this bill's lead sponsors said here on the floor of the United States Senate that the bill's detention subtitle would authorize the indefinite detention of U.S. citizens at Guantanamo Bay. That is a stunning statement. We should all pause to consider the ramifications of passing a bill

containing such language. Supporters of the detention provisions in the bill 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.

One of the provisions in this bill, Section 1032, runs directly contrary to those principles. Section 1032 requires the military to detain terrorism suspects, even those who might be captured on U.S. soil. This provision is opposed by the very intelligence, military, and law enforcement officials who are entrusted with keeping our Nation safe—including the Secretary of Defense, the Director of National Intelligence, the Attorney General, the Director of the FBI, and the President's top counterterrorism advisor. As Chairman of the Judiciary Committee, I support the efforts of Senator FEINSTEIN, the chair of the Senate Intelligence Committee, to modify Section 1032 so that it does not interfere with ongoing counterterrorism efforts or undermine our constitutional principles.

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. But the mandatory military detention provision in Section 1032 actually limits those tools by tying the hands of the intelligence and law enforcement professionals who are fighting terrorism on the ground, and by creating operational confusion and uncertainty. This is unwise and unnecessary.

On Monday, Director Mueller warned that Section 1032 would adversely affect the Bureau's ability to continue ongoing international investigations. Secretary Panetta has also 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.'' These are not partisan objections, but rather the significant operational concerns voiced by the Secretary of Defense and the Director of the FBI—both of whom were confirmed by this body with 100–0 votes. And yet these are the voices that supporters of this bill would ignore.

Supporters of this bill have argued that the new national security waiver and implementation procedures in this section provide the administration with the flexibility it needs to fight terrorism. The intelligence and law enforcement officials who are actually responsible for fighting terrorism and keeping our Nation safe, however, could not disagree more. As Director Mueller stated in his letter, these provisions are still problematic and ''fail to recognize the reality of a counterterrorism investigation.'' Director of National Intelligence Clapper has stated that ''the various detention provisions, even with the proposed waivers, would introduce unnecessary rigidity'' in the intelligence gathering process. Put differently, Lisa Monaco, the Assistant Attorney General for the National Security Division, recently stated that ''agents and prosecutors should not have to spend their time worrying about citizenship status and whether and how to get a waiver signed by the Secretary of Defense in order to thwart an al-Qaida plot against the homeland.''

We should listen to the intelligence and law enforcement professionals who are entrusted with our Nation's safety, and we should fix this flawed provision.

Senator FEINSTEIN's amendment would ensure that the requirement of military detention of terrorism suspects does not apply domestically. As Chairman of the Judiciary Committee, I am proud to be a cosponsor of this amendment, and I urge all Senators to support its adoption.

I know Senator DURBIN is next, but I now understand from Senator DURBIN the distinguished Senator from Missouri is going next.

In any event, I yield the floor and thank my colleagues for their courtesy.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BLUNT. Mr. President, I ask unanimous consent to address the Senate for 10 minutes in morning business.

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

Mr. BLUNT. I appreciate my good friend from Illinois allowing me to go ahead and talk about the Defense bill at this time, but doing it in the context of where we are on the floor right now.

Mr. President, defending the country is the Congress's most important constitutional responsibility. Abraham Lincoln said that government should do for people only those things that people cannot better do for themselves. If there is anything at the top of that list, this is at the top of that list. So it is critical that we have this discussion, that we pass this bill as soon as possible in order to give our men and women in uniform the tools they need to do their job and the certainty we need to know how that job is going to be done from the point of view of what the Government can and needs to provide.

While this bill we are debating today is only about next year's defense program, we should not lose sight of the fact that our budget environment is more challenging all the time and whether the automatic budget cuts to future defense happen, we do know we are going to have to be more thoughtful, more cautious about how we get the most for our investment in defense. Everybody else in America has spent the last 20 years figuring out how you focus on a better result from less investment, and defense is going to have to be there as well. Still, that does not mean it is not a top priority for the Federal Government.

I appreciate the work my friends Senator LEVIN and Senator MCCAIN have done to get this bill to the floor. I am proud to represent a State that is involved in our national defense. Missouri is the home of Fort Leonard Wood, of Whiteman Air Force Base, of the Marine Corps Mobilization Command Center in Kansas City. We have dozens of National Guard and Reserve facilities in our State. Our State has 17,184 active-duty soldiers, marines, and airmen right now; 34,000 Guard and Reservists.

We are the home of large and small defense contractors that provide thousands of jobs in our State. Those defense contractors can do their work better and our defense dollars are better spent if we know what the plan is. The only real way to know what the plan is is to have an authorization bill that works.

Since the beginning of Operations Enduring Freedom and Iraqi Freedom, 134 Missourians have given their lives and over a thousand have been wounded in the line of duty. In fact, one of the amendments I have that I hope finds its way into this bill is research associated with rehabilitating those wounded warriors who have eye injuries. Thousands of vision-related injuries have occurred as a result of the wars we are fighting now. Tremendous work is being done by St. John's Hospital and Missouri State University in Springfield to see what can be done to develop better ways to deal with those eye wounds. With IEDs as a principal tool of our opponents, our enemies in this war, your eyes are the hardest thing ultimately to protect. Twelve percent of our wounded warriors have eye wounds. Hopefully we can look to see what we can do to provide greater protection and greater recovery from those wounds.

I join all Missourians in thanking those who serve. I think all of us will show greater commitment to those who serve by actually having a Defense authorization bill that sets out a plan for the future.

I am particularly pleased that this bill contains funding for modifications of the B–2 bomber's mixed load capacity. Most of our Stealth bombers operate out of Whiteman Air Force Base in Missouri and we discovered, as recently as the operation in Libya, that operations with our B–2 bombers are not as efficient as they need to be or could be, simply by making that loading capacity work differently. That is the kind of thing we are going to have to do as we look at more difficult-to-get defense dollars. We are going to have to figure out how we spend those defense dollars in the best possible way. I hope the Senate language as it is in the bill now prevails in a final bill.

I also want to call attention to the bill's full authorization of the development of the next generation long-range strike bomber and I am pleased with the funding in this bill for a vehicle maintenance facility at Fort Leonard

Wood and weapons storage at Whiteman.

I filed a few amendments to this bill and I will mention a couple of them. One I am working on with Senator GILLIBRAND is an amendment to ensure National Guard soldiers mobilized for domestic emergency operations are entitled to the same employment rights as others are when they come back. Senator GILLIBRAND and I also worked on a bill to ensure that people in the Guard and Reserve, and their families, have access to financial and marital and other kinds of counseling as they try to put their other life back together.

I thank my colleagues for bringing this bill to the floor. We face a wide variety of threats today, including some that are new and constantly evolving—cyber-warfare, WMD, all things that we need to take seriously. This is a principal responsibility of the Federal Government. I am looking forward to seeing this bill passing the Senate today and then to work with the House to get a bill on the President's desk so that all who are involved in the defense of the country know what the long-term plan is.

I yield the floor.

The PRESIDING OFFICER. The assistant majority leader is recognized.

Mr. DURBIN. Mr. President, I thank my colleague from Missouri, and I concur with his comments about our American military. We have the best in the world. These men and women serve us well with courage and honor every day, and we are fortunate to have them. We are fortunate—those of us who enjoy the blessings of liberty and the safety of this Nation—to have men and women willing to risk their lives for America.

This Defense authorization bill is a bill that authorizes the continued operations of our military, and every year we pass this bill, as we should, in a timely manner. I have supported it consistently over the years with very few exceptions and believe the work product brought to us by Senators LEVIN and MCCAIN is excellent, bipartisan, and moves us in a direction toward an even safer America, and I thank them for all the work they put into it.

There are provisions within this bill today which trouble me greatly. There are provisions on which I hope Members of the Senate will reflect, one in particular that I will address at this time. Senator FEINSTEIN is offering amendment No. 1125, which I am cosponsoring. I would say this amendment raises a serious question about section 1032 in this bill. I am concerned this section would limit the flexibility of any President to fight terrorism. I am concerned it will create uncertainty for law enforcement, intelligence, and our military regarding how to handle suspected terrorists. I think it raises fundamental and serious constitutional concerns.

This provision, 1032, would, for the first time in the history of the United States, require our military to take custody of certain terrorism suspects in the United States. On its face, that doesn't sound offensive, but, in fact, it creates a world of problems. Where do we start this debate?

We understand the responsibility of Congress in passing laws and the President with the option to sign those laws or veto them and the courts with the responsibility to interpret them. When it comes to the protection of this country in fighting terrorism, most of us have believed this is primarily an executive function under Presidents of both political parties. We may disagree from time to time on the PATRIOT Act and other aspects of it and debate those issues, but, by and large, I think we have ceded to Presidents of both parties the power to protect America.

My colleague and friend, Senator LINDSEY GRAHAM, a Republican of South Carolina, on September 19, 2007, stated—and he states things very colorfully and clearly—

> 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.

That was Senator GRAHAM's statement in 2007. Although I would carefully and jealously guard the constitutional responsibility of Congress when it comes to the declaration of war, even the waging of war, I do believe there is a line we should honor. We should not stop our President and those who work for him in keeping America safe by second-guessing decisions to be made.

Today, again, on the Republican side of the aisle came colleagues who make the argument that it is a serious mistake for us to take a suspected terrorist and put them into our criminal justice system. They argue the last thing in the world we want to do is to take a suspected terrorist and read them their constitutional rights: the right to remain silent, everything you say can be used against you, the right to counsel. They argue that is when terrorists will clam up and stop talking. Therefore, they argue, suspected terrorists should be transferred to military jurisdictions where Miranda rights will not be read. On its face it sounds like a reasonable conclusion. In fact, it is not. It is not.

Since 9/11, we have arrested and detained 300 suspected terrorists, read them their Miranda rights, and then went on to prosecute them successfully and incarcerate them. They cooperated with the Federal Bureau of Investigation, gave information, and in many cases gave volumes of information even after having been read their rights. So to argue that it cannot be done or should not be done is to ignore the obvious. Three hundred times we have successfully prosecuted suspected terrorists, and America has remained safe for these 10 years-plus since 9/11. How many have been prosecuted under military tribunals in that period of time? Six, and three have been released. We are keeping this country safe by giving to the President and those who work for the President in the military intelligence and law enforcement community the option to decide the best course of action when it comes to arresting, detaining, investigating, and prosecuting an individual.

Remember the man who was on the plane flying into Detroit a couple of years ago? He tried to detonate a bomb on the plane. His clothing caught fire, and the other passengers subdued him, restrained him. He was arrested, investigated by the FBI, and read his Miranda rights. Within a day his parents were brought over. The following day he decided to cooperate with the United States and told us everything he knew. At the end of the day, he was prosecuted, brought to trial, and pled guilty. He went through our regular criminal court system, though he was not an American citizen, and he was successfully prosecuted. President Obama had the right to decide what best thing to do to keep America safe, and he did it. Why would we want to tie his hands?

Now let me talk about this section 1032 and why it is a serious mistake. Section 1032 in this bill would for the first time in American history require the military to take custody of certain terrorism suspects in the United States. From a practical point of view, it could be a deadly mistake for us to require this. Listen to what was said by the Justice Department in explaining why:

> While the legislation proposes a waiver in certain circumstances to address concerns, this proposal inserts confusion and bureaucracy when FBI agents and counterterrorism prosecutors are making split-second decisions. In a rapidly developing situation—like that involving Najibullah Zazi traveling to New York in September of 2009 to bomb the subway system—they need to be completely focused on incapacitating the terrorist suspect and gathering critical intelligence about his plans.

Instead, this provision, 1032, written into this law, would require a handoff of terrorism suspects to military authorities. So what does our military think about this?

Well, the Secretary of Defense Leon Panetta made it abundantly clear when he said:

> The failure of the revised text to clarify that section 1032 applies to individuals captured abroad, as we have urged, may needlessly complicate efforts by frontline law enforcement professionals to collect critical intelligence concerning operations and activities within the United States.

What we have seen, then, as our Secretary of Defense tells us, ceding to the military this authority could compromise America's security at a critical moment when every second counts, when the gathering of intelligence could literally save not just a life but thousands of lives.

Senator FEINSTEIN's amendment makes it clear—as the administration

wants to make it clear—that those terrorism suspects who are arrested abroad will be detained by the military. But within the United States we are told by this administration this provision will jeopardize the security of our country, will require a procedure now to hand off these individuals to the military side in places where they could not possibly be handed off quickly or seamlessly.

We have 10,000 FBI agents dedicated to the security of this country when it comes to these national security issues and 56 different offices. We don't have anything near that capacity when it comes to the military picking up the interrogation of an individual who may have knowledge that if we can glean it from that person could save thousands of lives.

Why in the world do we want to tie the hands of law enforcement? Why do we want to tie the hands of the intelligence community? Why do we want to create this situation of giving to the military this responsibility when they are not prepared at this moment to take it?

I think Senator FEINSTEIN is doing the right thing for the protection of this country. Her position is supported by the Attorney General, by the Secretary of Defense, and by the intelligence community. They have done a good job in keeping America safe. They have asked us: Please, do not micromanage. Do not presume, do not create another hurdle for us when it comes to gathering information that can save lives in America.

Why would we do that? After more than 10 years of success and avoiding another 9/11, let's not make the situation worse by this 1032, this section of the bill that is being presented to us.

I know we will hear arguments on the Senate floor, well, there are opportunities for a waiver. So if a person is detained by the Federal Bureau of Investigation and then it is determined that this is a suspect who falls in the category and needs to go to military detention and then we need to turn to the executive side for a waiver of that military detention, how much time will be lost? Will it be minutes, hours, days? Could we afford that if what is at stake is the potential loss of thousands of American lives? Why? Why make it more complex?

I cannot understand why the other side of the aisle is now so determined with this President to micromanage the defense of this country when it comes to terrorism. When it was a Republican President any suggestions along those lines were dismissed as unpatriotic and unwise and illogical. Now, under this President, everything is fair game. They want to change the rules, rules which have successfully protected the United States for more than 10 years.

I urge my colleagues to support Senator FEINSTEIN's amendment No. 1125 and amend this section 1032 and make sure that our Defense Department, military and law enforcement, as well as intelligence community have the tools they need to continue to keep America safe.

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

Mr. CORNYN. Mr. President, I ask unanimous consent that I be recognized to speak as in morning business for up to 10 minutes.

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

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The senior Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that when we return to the bill, which will be after Senator CORNYN speaks, we move immediately to Feinstein amendment No. 1125, and that there be a 30-minute debate evenly divided and that the vote would occur immediately following that.

I withdraw my request.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I want to talk about something that is all too rare, and that is bipartisan support for an important piece of legislation that not only fulfills America's commitments to our ally, Taiwan, under the Taiwan Relations Act of 1979, but it helps stabilize a critical region of the world—that would be in Asia—and particularly the growing tensions between Taiwan and China. It also creates jobs in America by facilitating foreign military sales of things made here in America, by Americans, that we are going to sell to people in other countries—our friends in other countries—for cash and doesn't cost taxpayers a penny.

My amendment No. 1200 is pending before the Senate, and I was pleased in introducing this amendment to be joined by several of my colleagues on a bipartisan basis: Senator MENENDEZ from New Jersey, Senator INHOFE from Oklahoma, Senator LIEBERMAN from Connecticut, Senator WYDEN from Oregon, and Senator BLUMENTHAL from Connecticut.

This amendment is straightforward and simple. It would require the President to carry out the sale of 66 F–16C/D aircraft to Taiwan. These are American-made fighters our Democratic ally in Taiwan has been trying to purchase since 2007. As I said earlier, this is a win-win amendment. It reflects the right national security policy, and it is good for the American economy and jobs. We know Taiwan's Air Force continues to deteriorate.

First, let me just remind my colleagues what Taiwan is looking at in terms of the disparity in combat aircraft between Communist China and Democratic Taiwan.

Communist China has roughly 2,300 operational combat aircraft. Our ally and friend democratic Taiwan has 490 operational combat aircraft—obviously a growing imbalance in the Taiwan Strait. But that only tells part of the story because, as my colleagues also know, this chart indicates the incredible shrinkage of Taiwan's air force, that many of Taiwan's combat aircraft are F–5 aircraft which America has previously sold to Taiwan but which are now becoming older and more obsolete as time goes by, as well as French Mirage 2000 aircraft. As this chart indicates, around roughly 2020, maybe even before, these aircraft are going to become completely obsolete, and we will see the huge cliff and, in fact, exacerbate the disparity between Communist China and our democratic ally Taiwan.

This F–16 sale would be an export-driven job machine for our country at a time when unemployment is at 9 percent and when the No. 1 issue on America's agenda is job creation. People without jobs can't pay their mortgages, and they lose their homes due to foreclosure. Why in the world, when this sale would support jobs in 32 different States and the District of Columbia, would anyone object to this amendment? Indeed, as I indicated, I believe there is strong bipartisan support for it. This sale would support more than 60 job-years of employment and generate some $8.7 billion in economic output. It would also generate $768 million in taxes for the Federal Government.

As I indicated, Taiwan's air force is facing a looming fighter shortfall. The fact is, this falls squarely in Congress's wheelhouse. The Taiwan Relations Act that I referred to earlier was, in 1979, signed by President Jimmy Carter with bipartisan support. It requires the U.S. Government to provide Taiwan, our friend and ally, with the defense articles necessary for them to defend themselves against Communist Chinese aggression, and it instructs the President and the Congress to determine the nature and quantity of such defense articles based on their judgment of the needs of Taiwan.

Forty-seven Democrats and Republicans in the Senate—almost half—have signed a letter to the President of the United States supporting this sale. In the House of Representatives, 181 Democrats and Republicans have signed a letter to the President supporting this sale.

As my colleagues will recall, in September the Senate voted on an amendment like this in the trade adjustment authority assistance bill, which ended up in a 48-to-48 tie. Although the bill had strong bipartisan support, some of my colleagues said they preferred not to offer that amendment on that particular legislative vehicle but said that if I came back on an appropriate legislative vehicle, they would support it. And if there is a more appropriate legislative vehicle than the Defense authorization bill, I hope someone will point that out to me. This is the appropriate vehicle. This is the appropriate time. This is the right thing to do for job creation in America. It is the right thing to do in terms of our national security and stability in Asia. That is why I believe this is an appropriate time for us to take up this amendment.

I was advised by the Parliamentarian that my original amendment as drafted would not be germane postcloture. However, in consultation with the Parliamentarian, we have come up with a technical modification which essentially would strike what are called the findings that would support the need for the legislation. In essence, it strikes the A section and the B section and leaves only the C section remaining. This, of course, at this point in the proceedings would require unanimous consent.

In consultation with Senator MCCAIN, the ranking member of the Senate Armed Services Committee, I am advised that our friends across the aisle will not grant unanimous consent for us to modify what is really a technical modification for this amendment so we can get a vote on it. I realize that at this point we are in morning business and it is not appropriate, perhaps, for me to ask unanimous consent, but I will ask unanimous consent at a later and appropriate time because I would like to get an explanation from the distinguished chairman of the Armed Services Committee as to why in the world there would be an objection to an amendment that enjoys such broad bipartisan support on a clearly appropriate legislative vehicle.

Madam President, I see the distinguished chairman on the floor. So I would at this time, if it is appropriate, ask unanimous consent to modify my pending amendment, to strike the findings under section A and under section B, and to leave section C, which states in full:

Sale of aircraft. The President shall carry out the sale of no fewer than 66 F–16 C and D multirole fighter aircraft to Taiwan.

We have been advised by the Parliamentarian that this section is indeed germane and would be eligible for a vote with that modification. So I ask unanimous consent to so modify my amendment.

The PRESIDING OFFICER (Mrs. HAGAN). Is there objection?

Mr. LEVIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, there is objection on this side, and I will attempt to bring together Senator CORNYN and the objectors so he can hear from them why they object, but in the meantime I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Texas.

Mr. CORNYN. Madam President, I am disappointed, but more than disappointed, I look forward to that explanation. I hope there will be an opportunity to have a colloquy and a discussion here on the floor so the American people can see why a piece of legislation that enjoys such broad bipartisan support can't even get a vote.

When people watch what is happening in Washington these days, I think they are tempted to avert their gaze because they ask the question of me—and I am sure, when the Presiding Officer is back in North Carolina, of her as well—why can't people get anything done? Well, it is because, unfortunately, of things like this. These are technical objections that are not based on the substance or the merit of the legislation.

I respect the chairman of the Armed Services Committee, who says there is an objection on the Democratic side, and he personally is not making that objection but is on behalf of some unnamed other party. I hope that person will be named. I hope they will come to the floor. I hope they will explain to the American people and to our Democratic allies in Taiwan why it is they object to a vote on this amendment.

I believe that if we are able to get a vote on the Defense authorization bill, this has a high likelihood of passage, and I think it would send a strong message to our friends and allies around the world that, yes, you can count on your friend and ally, the United States of America. Conversely, if we are thwarted in our attempt to try to get this amendment voted on and passed, then this will send a countervailing message—that you cannot depend on America—and it will embolden bullies around the world.

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

The Senator from Michigan.

ORDER OF PROCEDURE

Mr. LEVIN. I ask unanimous consent that the Senate proceed to the consideration of the pending Feinstein amendment No. 1125; that there be 30 minutes of debate equally divided and controlled in the usual form; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Feinstein amendment, with no amendments in order prior to the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1867, which the clerk will report.

The bill clerk read as follows:

A bill (S 1867), 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.

Pending:

Merkley amendment No. 1174, to express the sense of Congress regarding the expedited transition of responsibility for military and security operations in Afghanistan to the Government of Afghanistan.

Feinstein amendment No. 1125, to clarify the applicability of requirements for military custody with respect to detainees.

Feinstein amendment No. 1126, to limit the authority of the Armed Forces to detain citizens of the United States under section 1031.

Franken amendment No. 1197, to require contractors to make timely payments to subcontractors that are small business concerns.

Begich amendment No. 1114, to amend title 10, United States Code, to authorize space-available travel on military aircraft for members of the Reserve components, a member or former member of a Reserve component who is eligible for retired pay but for age, widows and widowers of retired members, and dependents.

Shaheen amendment No. 1120, to exclude cases in which pregnancy is the result of an act of rape or incest from the prohibition on funding of abortions by the Department of Defense.

Collins amendment No. 1105, to make permanent the requirement for certifications relating to the transfer of detainees at U.S. Naval Station Guantanamo Bay, Cuba, to foreign countries and other foreign entities.

Collins amendment No. 1155, to authorize educational assistance under the Armed Forces Health Professions Scholarship Program for pursuit of advanced degrees in physical therapy and occupational therapy.

Collins amendment No. 1158, to clarify the permanence of the prohibition on transfers of recidivist detainees at U.S. Naval Station Guantanamo Bay, Cuba, to foreign countries and entities.

Inhofe amendment No. 1097, to eliminate gaps and redundancies between the over 200 programs within the Department of Defense that address psychological health and traumatic brain injury.

Inhofe amendment No. 1099, to express the sense of Congress that the Secretary of Defense should implement the recommendations of the Comptroller General of the United States regarding prevention, abatement, and data collection to address hearing injuries and hearing loss among members of the Armed Forces.

Inhofe amendment No. 1100, to extend to products and services from Latvia existing temporary authority to procure certain products and services from countries along a major route of supply to Afghanistan.

Inhofe amendment No. 1093, to require the detention at U.S. Naval Station Guantanamo Bay, Cuba, of high-value enemy combatants who will be detained long-term.

Casey amendment No. 1139, to require contractors to notify small business concerns that have been included in offers relating to contracts let by Federal agencies.

McCain (for Cornyn) amendment No. 1200, to provide Taiwan with critically needed U.S.-built multirole fighter aircraft to strengthen its self-defense capability against the increasing military threat from China.

McCain (for Ayotte) amendment No. 1068, to authorize lawful interrogation methods in addition to those authorized by the Army Field Manual for the collection of foreign intelligence information through interrogations.

McCain (for Brown (MA)/Boozman) amendment No. 1119, to protect the child custody rights of members of the Armed Forces deployed in support of a contingency operation.

McCain (for Brown (MA)) amendment No. 1090, to provide that the basic allowance for housing in effect for a member of the National Guard is not reduced when the member transitions between Active-Duty and

full-time National Guard duty without a break in Active service.

McCain (for Brown (MA)) amendment No. 1089, to require certain disclosures from post-secondary institutions that participate in tuition assistance programs of the Department of Defense.

Udall (NM) amendment No. 1153, to include ultralight vehicles in the definition of aircraft for purposes of the aviation smuggling provisions of the Tariff Act of 1930.

Udall (NM) amendment No. 1154, to direct the Secretary of Veterans Affairs to establish an open burn pit registry to ensure that members of the Armed Forces who may have been exposed to toxic chemicals and fumes caused by open burn pits while deployed to Afghanistan or Iraq receive information regarding such exposure.

Udall (NM)/Schumer amendment No. 1202, to clarify the application of the provisions of the Buy American Act to the procurement of photovoltaic devices by the Department of Defense.

McCain (for Corker) amendment No. 1171, to prohibit funding for any unit of a security force of Pakistan if there is credible evidence that the unit maintains connections with an organization known to conduct terrorist activities against the United States or U.S. allies.

McCain (for Corker) amendment No. 1173, to express the sense of the Senate on the North Atlantic Treaty Organization.

Levin (for Bingaman) amendment No. 1117, to provide for national security benefits for White Sands Missile Range and Fort Bliss.

Levin (for Gillibrand/Portman) amendment No. 1187, to expedite the hiring authority for the defense information technology/cyber workforce.

Levin (for Gillibrand/Blunt) amendment No. 1211, to authorize the Secretary of Defense to provide assistance to State National Guards to provide counseling and reintegration services for members of Reserve components of the Armed Forces ordered to Active Duty in support of a contingency operation, members returning from such Active Duty, veterans of the Armed Forces, and their families.

Merkley amendment No. 1239, to expand the Marine Gunnery Sergeant John David Fry Scholarship to include spouses of members of the Armed Forces who die in the line of duty.

Merkley amendment No. 1256, to require a plan for the expedited transition of responsibility for military and security operations in Afghanistan to the Government of Afghanistan.

Merkley amendment No. 1258, to require the timely identification of qualified census tracts for purposes of the HUBZone Program.

Leahy amendment No. 1087, to improve the provisions relating to the treatment of certain sensitive national security information under the Freedom of Information Act.

Leahy/Grassley amendment No. 1186, to provide the Department of Justice necessary tools to fight fraud by reforming the working capital fund.

Wyden/Merkley amendment No. 1160, to provide for the closure of Umatilla Army Chemical Depot, Oregon.

Wyden amendment No. 1253, to provide for the retention of members of the Reserve components on Active Duty for a period of 45 days following an extended deployment in contingency operations or homeland defense missions to support their reintegration into civilian life.

Ayotte (for Graham) amendment No. 1179, to specify the number of judge advocates of the Air Force in the regular grade of brigadier general.

Ayotte (for Heller/Kirk) amendment No. 1137, to provide for the recognition of Jerusalem as the capital of Israel and the relocation to Jerusalem of the U.S. Embassy in Israel.

Ayotte (for Heller) amendment No. 1138, to provide for the exhumation and transfer of remains of deceased members of the Armed Forces buried in Tripoli, Libya.

Ayotte (for McCain) amendment No. 1247, to restrict the authority of the Secretary of Defense to develop public infrastructure on Guam until certain conditions related to Guam realignment have been met.

Ayotte (for McCain/Ayotte) amendment No. 1249, to limit the use of cost-type contracts by the Department of Defense for major defense acquisition programs.

Ayotte (for McCain) amendment No. 1220, to require Comptroller General of the United States reports on the Department of Defense implementation of justification and approval requirements for certain sole-source contracts.

Ayotte (for McCain) amendment No. 1248, to expand the authority for the overhaul and repair of vessels to the United States, Guam, and the Commonwealth of the Northern Mariana Islands.

Ayotte (for McCain) amendment No. 1118, to modify the availability of surcharges collected by commissary stores.

Sessions amendment No. 1182, to prohibit the permanent stationing of more than two Army brigade combat teams within the geographic boundaries of the U.S. European Command.

Sessions amendment No. 1184, to limit any reduction in the number of surface combatants of the Navy below 313 vessels.

Sessions amendment No. 1274, to clarify the disposition under the law of war of persons detained by the Armed Forces of the United States pursuant to the authorization for use of military force.

Levin (for Reed) amendment No. 1146, to provide for the participation of military technicians (dual status) in the study on the termination of military technician as a distinct personnel management category.

Levin (for Reed) amendment No. 1147, to prohibit the repayment of enlistment or related bonuses by certain individuals who become employed as military technicians (dual status) while already a member of a Reserve component.

Levin (for Reed) amendment No. 1148, to provide rights of grievance, arbitration, appeal, and review beyond the adjutant general for military technicians.

Levin (for Reed) amendment No. 1204, to authorize a pilot program on enhancements of Department of Defense efforts on mental health in the National Guard and Reserves through community partnerships.

Levin (for Reed) amendment No. 1294, to enhance consumer credit protections for members of the Armed Forces and their dependents.

Levin amendment No. 1293, to authorize the transfer of certain high-speed ferries to the Navy.

Levin (for Boxer) amendment No. 1206, to implement commonsense controls on the taxpayer-funded salaries of defense contractors.

Chambliss amendment No. 1304, to require a report on the reorganization of the Air Force Materiel Command.

Levin (for Brown (OH)) amendment No. 1259, to link domestic manufacturers to defense supply chain opportunities.

Levin (for Brown (OH)) amendment No. 1261, to extend treatment of base closure areas as HUBZones for purposes of the Small Business Act.

Levin (for Brown (OH)) amendment No. 1263, to authorize the conveyance of the John Kunkel Army Reserve Center, Warren, OH.

Levin (for Leahy) amendment No. 1080, to clarify the applicability of requirements for military custody with respect to detainees.

Levin (for Wyden) amendment No. 1296, to require reports on the use of indemnification agreements in Department of Defense contracts.

Levin (for Pryor) amendment No. 1151, to authorize a death gratuity and related benefits for Reserves who die during an authorized stay at their residence during or between successive days of inactive-duty training.

Levin (for Pryor) amendment No. 1152, to recognize the service in the reserve components of the Armed Forces of certain persons by honoring them with status as veterans under law.

Levin (for Nelson (FL)) amendment No. 1209, to repeal the requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation.

Levin (for Nelson (FL)) amendment No. 1236, to require a report on the effects of changing flag officer positions within the Air Force Material Command.

Levin (for Nelson (FL)) amendment No. 1255, to require an epidemiological study on the health of military personnel exposed to burn pit emissions at Joint Base Balad.

Ayotte (for Blunt/Gillibrand) amendment No. 1133, to provide for employment and reemployment rights for certain individuals ordered to full-time National Guard duty.

Ayotte (for Murkowski) amendment No. 1286, to require a Department of Defense inspector general report on theft of computer tapes containing protected information on covered beneficiaries under the TRICARE program.

Ayotte (for Murkowski) amendment No. 1287, to provide limitations on the retirement of C–23 aircraft.

Ayotte (for Rubio) amendment No. 1290, to strike the national security waiver authority in section 1032, relating to requirements for military custody.

Ayotte (for Rubio) amendment No. 1291, to strike the national security waiver authority in section 1033, relating to requirements for certifications relating to transfer of detainees at U.S. Naval Station Guantanamo Bay, Cuba, to foreign countries and entities.

Levin (for Menendez/Kirk) amendment No. 1414, to require the imposition of sanctions with respect to the financial sector of Iran, including the Central Bank of Iran.

AMENDMENT NO. 1125

The PRESIDING OFFICER. Under the previous order, there will be 30 minutes of debate on the Feinstein amendment.

The Senator from Arizona.

Mr. MCCAIN. Madam President, before we begin the debate, and with the Senator from California on the floor, for the benefit of our colleagues and the chairman, there are two pending Feinstein amendments, as I understand it. The Senator from California has agreed to the half hour equally divided as the chair just said, and then I understand the Senator from California has agreed to the second amendment at 4 p.m.; is that correct?

Mrs. FEINSTEIN. That is correct.

Mr. MCCAIN. So prior to that, I would ask my friend the chairman if we could have an hour of debate starting at 3 o'clock equally divided before the vote at 4:00 on the second Feinstein amendment.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Reserving the right to object, I just want to know if the Senator from California understands that

the vote on the second Feinstein amendment would be at 4:00 and that the debate would begin at 3:00, with that hour equally divided.

Mrs. FEINSTEIN. I do. I have a four corners meeting on the Energy and Water appropriations bill. That is my problem. So the later it is, the better it is for me.

Mr. LEVIN. So is a 4 o'clock vote after an hour of debate acceptable?

Mrs. FEINSTEIN. Yes. My understanding is the House chairman only has until 3 o'clock, but I anticipate we will take all that time. So I can't change that.

Mr. LEVIN. So it is agreeable, then, that there will be an hour of debate on the second amendment starting at 3 o'clock with a vote at 4 o'clock?

Mrs. FEINSTEIN. Yes.

Mr. LEVIN. I also ask unanimous consent that there be no second-degree amendments to the Feinstein amendment.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Arizona.

Mr. MCCAIN. If we can then—obviously, we can call a vote at any particular time. So I would suggest again that we try to dispose of other amendments after the vote on the first Feinstein amendment, and then we will try to dispose of additional amendments between the disposition of the first Feinstein amendment and the second one, with the hour of debate equally divided, and Senator FEINSTEIN can begin.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I rise to ask my colleagues to support amendment No. 1125, which will limit mandatory military custody to terrorists captured outside the United States. This amendment is cosponsored by Senators LEAHY, DURBIN, UDALL, KIRK, LEE, HARKIN and WEBB.

This is a very simple amendment. It adds only one word—the word ''abroad''—to section 1032 of the underlying bill. I strongly believe if it is not broke, do not fix it. The ability to have maximum flexibility in the United States is very important, and I totally support the Executive having that flexibility.

This bill creates a presumption that members or parts of al-Qaida or associated forces will be held in the military system. That is what concerns me because the military system has not produced very well over the last 10 years.

I want to take a moment to contrast some cases.

On this chart, we have sentences—five of them from military commissions and five or six from Federal courts. The Federal courts have actually convicted over the last 10, 11 years not 300 people but 400 people.

Military commissions are limited to some six convictions. Let's take a look at what they are.

A very famous one is Salim Hamdan because he brought a Supreme Court case. He was bin Laden's driver. He was acquitted of conspiracy and only convicted of material support for terrorism. He received a 5-month sentence by the military commission and was sent back to his home in Yemen to serve the time before being released in January of 2009.

No. 2: David Hicks entered into a plea on material support for terrorism and was given a 9-month sentence, mostly served back home in Australia.

Omar Khadr pled guilty in exchange of an 8-year sentence, but he will likely be transferred to a Canadian prison.

Ibrahim Ahmed Mahmoud al-Qosi pled guilty to conspiracy and material support to terrorism. His final sentence was 2 years pursuant to a plea deal.

Noor Uthman Muhammed pled guilty to conspiracy and material support to terrorism. His final sentence will be less than 3 years pursuant to his plea agreement.

Ali Hamza al-Bahlul received a life sentence after he boycotted the entire commission process.

On the other hand, you have sentences from the Federal courts.

You have Richard Reid, the Shoe Bomber—life in prison.

''Blind Sheik'' Omar Abdel Rahman—life in prison for the plot to bomb New York City.

Twentieth Hijacker Zacarias Moussaoui—life in prison.

Ramzi Yousef—life in prison for the 1993 World Trade Center bombing and the Manila Air plot.

Umar Farouk Abdulmutallab—probably life in prison; will be sentenced in January 2012.

Najibullah Zazi—potential life in prison. This is the man, with conspirators, who was going to bomb the New York subway.

There is definitive evidence that is irrefutable that the Federal courts have done a much better job than the military commissions.

Why this constant press, that if it is not broke we are going to fix it anyway, I do not understand. Why the constant push to put people in military custody rather than provide the flexibility so that evidence can be evaluated quickly? This person will get life in a Federal court versus an inability or a problem in a military commission or vice versa. I think the Executive should have that.

I think the last 10 years have clearly shown that this country is safer than it has ever been. Terrorists are behind bars where they belong and plots have been thwarted, so the system is working.

This amendment would make clear that under section 1032, U.S. Armed Forces are only required to hold a suspected terrorist in military custody when he is captured abroad. All the amendment does is add one word—that is the word ''abroad''—to make clear that the military will not be roaming our streets looking for suspected terrorists. The amendment does not remove the President's ability to use the option of military detention or prosecution inside the United States.

The administration has threatened to veto this bill, and has said:

> [It] strongly objects to the military custody provision of section 1032 [because it] would tie the hands of our intelligence and law enforcement professionals.

Perhaps, most importantly, addressing the issue of this amendment specifically, on November 15, Defense Secretary Leon Panetta wrote this:

> The failure of the revised text to clarify that section 1032 applies to individuals captured abroad . . . may needlessly complicate efforts by frontline law enforcement professionals to collect critical intelligence concerning operations and activities within the United States.

The Director of National Intelligence, Jim Clapper, also wrote a letter on November 23, to say that he opposes the detainee provisions of this bill because they could—and I quote—''restrict the ability of our nation's intelligence professionals to acquire valuable intelligence and prevent future terrorist attacks.''

The administration suggested this change to the Armed Services Committee, but it was rejected. So the administration has had to threaten a veto on the bill. Who knows whether they will. I certainly do not know. This amendment limiting mandatory military custody to detainees outside the United States is a major improvement to the bill, and I ask my colleagues to support it.

I have a very hard time because I have watched detainees carefully as part of the Senate Intelligence Committee, and we are doing a study on the detention and treatment of high-value detainees. This has been going on for 2 years now. It is going to be a 4,000-page document, and it is going to be classified. But it will document what was actually done with each of the high-value detainees and what was learned from them. It shows some very interesting things. But the upshot of all of this is that we should keep military custody to people arrested abroad and have the wide option in this country, which is the case now, and not mandate—mandate—that military custody and military commission trial must be for everyone arrested in the United States.

You will hear that anyone who comes to the United States who carries out a criminal act, a terrorist act under the laws of war, should be subject to military custody. The problem is, 10 years of experience has not worked. How many years' experience do we need? How many sentences—six cases—and this is all there is in 10 years.

I know the other side got very upset when Abdulmutallab was Mirandized. The fact of the matter is, every belief is Abdulmutallab is going to do a life sentence in a Federal prison, put away somewhere in a place where he cannot escape and where the treatment is very serious.

I have, again, a hard time knowing why if it is not broke we need to fix it, and why we need to subject everybody who might be arrested in this country to a record that is like this: 5-month sentence, 9-month sentence, 8-year sentence, 2-year sentence, 3 years pursuant to a plea agreement, and one life sentence, when you have 400 cases that have been disposed of in a prompt way in a Federal court, who are serving long sentences in Federal prison.

I wish to hold the remainder of my time and have an opportunity to respond to the distinguished chairman and ranking member.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I wish to yield——

Mr. LEVIN. Before the Senator yields time to the Senator——

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Will the Senator refrain for 1 minute? While Senator FEINSTEIN is here, I understand it is now preferable from our leader that the vote be at 2 o'clock, not immediately following this half-hour debate.

Mrs. FEINSTEIN. If that is possible, that would be helpful. But it is whatever Senators want.

OK. All right.

Mr. MCCAIN. Does the Senator want to unanimous-consent that?

Mr. LEVIN. Madam President, I ask unanimous consent that the vote, which was previously scheduled to occur at the end of the half hour of debate on this amendment, now be rescheduled for 2 o'clock.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LEVIN. Madam President, relative to the time between that half hour and 2 o'clock, that time, hopefully, would be used. It will be by me for my remarks on this amendment, by the way, because after the 30 minutes, if it is used totally, I would want an opportunity to speak during that time, if necessary in morning business. But there are other amendments we believe can be voice voted during that period of time, I believe my friend from Arizona would agree. So that time will be fruitfully used. But the time now is 2 o'clock for the vote on that first Feinstein amendment.

I thank my friend.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, the vote will be at 2 o'clock. The Senators from New Hampshire and South Carolina wish to speak. I do not know if the chairman wishes to be before or during that or in between. But, also, it does not change the agreement we have, which has not been agreed to but we have agreed we will attempt to have a vote on the second Feinstein amendment at 4 o'clock still. Is that correct? We will attempt to do that?

Mr. LEVIN. It will continue to be our intent. It was objected to before. But we hope that objection will be removed. If it is not removed, we will have to have all these votes at the end of the day instead of during the day.

Mr. MCCAIN. So beginning at 3, whether we have a unanimous consent agreement—because the Feinstein amendment is very important—I would ask, informally, if we do not have a unanimous consent agreement, that we have an hour equally divided beginning at 3 so we can debate the second Feinstein amendment.

In the meantime, as the chairman said, we will try to dispense with voice votes and other agreed-upon amendments, and perhaps even maybe a recorded vote if necessary on one of the amendments.

I would remind my colleagues, we run out of time at 6 o'clock this evening, and we would rather do it in a measured fashion, allowing recorded votes or debate before those recorded votes, because those pending amendments will be voted on after 6 p.m. tonight.

I hope I did not say anything the chairman does not agree with.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. No. I agree with what the Senator said and what the intent is here; that, hopefully, we could have an hour debate starting at 3 o'clock. We will try to lock that in at a later time, after giving folks notice. But if there is objection to votes before the time runs out, the 30-hour clock runs out, then we will have to have all those votes after the 30-hour clock runs out, and it does not make any sense to do that. But if there is going to be an objection, then that is the way it will have to be.

What Senator MCCAIN is saying—and I totally agree with him—is, even if we are put in that position, which I hope we are not, that at least we could use the time between now and then for debate on those amendments which we would have to vote on at a later time. I totally agree with my friend from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I yield 7 minutes to the Senator from New Hampshire and 8 minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from New Hampshire.

Ms. AYOTTE. Madam President, I rise in opposition to the amendment offered by the Senator from California, amendment No. 1125. I would start with this: We have heard repeatedly—not only from the Senator from California but also from the Senator from Illinois—about the number of cases in our civilian system where we have tried terrorists versus the number of military commissions.

I think there is one thing that needs to be clarified upfront here; that one of the first acts the President took when he came into office was to actually suspend all military commissions for about 2 years. So to compare the number of cases in our civilian system versus the number of military commission trials we have had is a false comparison when we suspended these trials for over 2 years. I want to say that upfront.

But I think the chart the Senator shows actually misses the point of why we have this amendment before us; that is, we need to gather intelligence. When we have captured a member of al-Qaida who is planning an attack against the United States of America, the first goal has to be, obviously, getting that person away from where he can threaten us again to kill Americans, but also, just as importantly, to gather intelligence to protect America. The criminal justice system is set up to see that justice is served in a particular case, not to see that we have the maximum tools in the hands of our intelligence officials to gather information.

Yet it seems to me that if you look in the context of Senator FEINSTEIN's amendment 1126 that we have already talked about on the floor, she wants to limit the administration. The case law of our Supreme Court that is going back to World War II would take us before 9/11. And heaven forbid if we had an American citizen who was one of the participants in an incident such as we had occur on our soil on 9/11. Our military would not be permitted to hold that person and to question them to get the maximum amount of information and protect our country.

With respect to this amendment she has pending before the Senate, 1125, I want to point out that the amendment would lead to a very absurd result. Essentially what it would say is if you are a member of al-Qaida, planning or committing an attack against the United States of America, a foreigner, and you make it to our soil, as the 9/11 conspirators did who committed that horrible attack on our country, then you cannot be held in military custody. There is no mandatory military custody under those circumstances. Yet we will hold you in mandatory military custody if you are found overseas. So, in other words, please, their goal is unfortunately to come to the homeland, to come to our country to attack us here, and in our country we need the authority to, in the first instance—the presumption should be to hold those individuals in military custody so that we are not reading them Miranda rights. To tell a terrorist: You have the right to remain silent is counter to what we need to do to protect Americans and make sure that—for example, I will use the Christmas Day Bomber as an example because it has been cited so many times here on this floor.

That day, when he was found on the plane, after 50 minutes of questioning, he was read his Miranda rights and he invoked his Miranda rights and remained silent. It was only 5 weeks later after we tracked down his parents and convinced him to cooperate that he actually provided more information.

We are very fortunate that he was only involved in one event, that it was not a 9/11-type event where there were multiple events on American soil planned. But what if after that 50 minutes we waited 5 weeks to get more information, yet there had been more events coming that day? That is what is at issue here. Let's bring ourselves back to September 11. What if we had caught the individuals who were on one of those planes before it took off on 9/11? What if in that instance we would not hold those members of al-Qaida in military custody that instant to make sure that we could get the maximum amount of information from them to hopefully, God forbid, prevent the lifting off of the other flights and what happened on that horrible day in our country's history?

I have to believe that if we were standing here immediately after the events of 9/11, I do not think we would be debating this amendment, deciding whether if you make it to our homeland we will not hold you in military custody in the first instance, to find out how much information you have, to make sure you are not part of multiple attacks on the United States of America.

If the amendment of the Senator from California passes, what kind of message are we sending to members of al-Qaida, foreigners who are planning attacks against the United States of America? We are laying out, unfortunately in my view, a welcome mat to say: If you make to it America, you will not be held in military custody. But if you attack us overseas, then you will be held in military custody. Why would we create a dual standard where we should be prioritizing protecting our homeland, protecting the United States of America? This leads to an absurd result.

I would hope my colleagues would reject the Senator's amendment to say that only those members of al-Qaida who do not make it to our homeland to attack us right here on our soil will be held in the first instance in mandatory military custody. Because our goal has to be here to protect Americans and to make sure we do not create a dual standard where if you are captured over there, we are going to hold you in military custody, but if you are captured and if you make it here, you are going to be getting greater rights, we will process you in the civilian system, and we will tell you you have the right to remain silent. We should not be telling terrorists they have the right to remain silent. We should be protecting Americans. If we were to pass this amendment, it would create an absurd standard where you get greater rights when are you here on our soil. I think that makes us less safe.

I would urge my colleagues to reject both of the Senator's amendments, both 1126 that would deny the executive branch the authority to hold them——

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

Ms. AYOTTE. Madam President, I ask unanimous consent for 30 seconds to wrap up.

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

Ms. AYOTTE. Madam President, I would ask my colleagues to reject 1126 as well, which would take away the authority of the executive branch as allowed by our Supreme Court and would make us less safe in this country as well as 1125. We have to protect America and make sure we get the maximum information to prevent future attacks on this country.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining of the original 30 minutes.

Mrs. FEINSTEIN. Thank you very much.

Mr. LEVIN. Would the Senator yield for a question?

Mrs. FEINSTEIN. Not on my time. On the Senator's time.

Mr. LEVIN. On my time. Quick question. After the 30 minutes expires, because we are not going to have a vote now, there would be additional time should the Senator need it after that 30 minutes.

Mrs. FEINSTEIN. I appreciate it. I may well use it.

Madam President, I object to the statement just made that this will make the United States of American less safe. Ten years of experience has shown it has not. Plot after plot after plot has been interrupted. I have served on the Intelligence Committee for 11 years now. We follow this closely. This country is much more safe because things have finally come together with the process that is working.

The FBI has a national security division with 10,000 people. There are 56 FBI offices. The military does not have offices to make arrests around this country. This constant push that everything has to be militarized—they were wrong on Hamdi, they were wrong on Hamdan. And it keeps going. And that it is terrible to protect people's rights. I do not think that creates a safe country. This country is special because we have certain values, and due process of law is one of those values. So I object. I object to holding American citizens without trial. I do not believe that makes us more safe. I object to saying that everything is mandatory military commission and military custody if anyone from abroad commits a crime in this country. The administration has used the flexibility in a way that they have won every single time. There have been no failures.

The Bush administration as well used the Federal courts without failure. They have gotten convictions. The military commissions have failed, essentially; 6 cases over 10, 11 years. I pointed out the sentences. So to say that what we are doing is to make this country less safe may be good for a 30-second sound bite, but it is not the truth.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. I say to my good friend from California, you are a patriot. You are here for all of the right reasons. We just have a strong disagreement about where we stand as a nation.

Nobody interrupted the Christmas Day Bomber plot. The people on the plane attacked the guy before he could blow it up. There was no FBI agent there. There was no CIA agent there. We are lucky, thank God, the passengers did it. So there is nothing to suggest that our intelligence community does not need as many tools as possible because the guy got through the system. We are lucky as hell the bomb did not go off.

Mrs. FEINSTEIN. Would the Senator yield for a question?

Mr. GRAHAM. The Times Square Bomber, nobody interrupted that plot. The guy did not know how to set the bomb off. We are lucky as hell the bomb did not go off. So do not stand here and tell me that we have got it right, because we have not. And here is the point: We never will always get it right. I am not saying that as criticism. Because we are going to get hit again. We cannot be right and lucky all of the time.

To those who are trying to defend us, the one thing I do not want to do is micromanage the war. Here is the political dynamic. You have got people on the left who hate the idea of saying ''the war on terror.'' If you left it up to them, they would never, ever use the military, they would always insist that the law enforcement model be used because they do not buy into the idea of we are at war. So you have got one part of the country, a minority, that wants to criminalize the war. If we ever go down that road, woe be unto us.

You have got people on my side—the Senator is right about this. They have gone the other way. If you left it up to people on my side, there would be a law passed tomorrow that you could never, ever read a Miranda right to a terrorist caught anywhere in the United States.

I do not agree with that way of thinking. To my fellow members of the U.S. military, you have not failed at Guantanamo Bay. You have not failed. Because you sentenced someone to 9 months to me validated the fact that those who are taking an oath to defend us, when they are put in a position of passing judgment on people accused of trying to kill us all, will be fair.

So when you say a military commission tribunal at Guantanamo Bay gave a 9-month sentence and that is a failure, I say, as a proud member of the military, I am proud of the fact that you can judge a case based on the facts and the law and not emotion. So I am very proud of the fact that military commissions can do their job as well as the civilian courts.

I say to our Federal prosecutors and our Federal juries and our Federal judges, I am proud of you too. We should be using an ''all of the above'' approach. There are times that Federal courts are better than military commissions. There are times that military commissions are better than Federal courts.

The 1032 language has nothing to do about what venue you choose. This provision is simple in its concept. It is a compromise between those on the left who say you must criminalize this war; we are not at war; you are going to have to use the law enforcement model; you can neither gather military intelligence, who do not believe that the military has a role on the homeland to gather intelligence, which is an absurd concept, never acknowledged before in any other war.

When American citizens helped the Nazis, collaborated with Nazis to engage in sabotage, not only were they held as enemy combatants during World War II, they were tried by military commissions. We no longer allow American citizens to be tried by military commissions. I think that is a reasoned decision. But what we do not want to do is prevent our intelligence community from holding an al-Qaida affiliated member and gathering intelligence.

If an American citizen went to Pakistan and got radicalized in a madrasah and came back to the United States and landed at Dulles Airport and got a rifle and started shooting everyone on the Mall, I believe it is in our national security interests to give our intelligence community the ability to hold that person and gather intelligence about: Is another guy coming? What did you do? What future threats do we face? And not automatically Mirandize him. But if they choose to Mirandize him, they can. In this legislation, we presume military custody, but it can be waived.

That is the point I am trying to make. Senators LEVIN and MCCAIN have struck a balance between one group that thinks the military can only be used and nobody else and another group that says we can never use the military. We have that balance. If we upset this balance, we are going to make us not only less safe, the Congress is going to do things on our watch that we have never done in any other war.

A word of warning to my colleagues: If we had a bill on the floor of the Senate saying we are not going to read Miranda rights to terrorists who are trying to kill us all, 70 percent of the American people would say: Heck yes.

I don't want this bill to come up. I believe the people who are best able to judge what to do is not any politician, they are the experts in the field fighting this war. We are saying we can waive the presumption of military custody, we can write the rules to waive it, but we believe we should start with that construct.

Let me read to you what the general counsel for the Department of Defense said today:

> Top national security lawyers in the Obama administration say U.S. citizens are legitimate military targets when they take up arms with al-Qaida. The government lawyers, CIA counsel Stephen Preston, and Pentagon counsel Jeh Johnson, did not address the Awlaki case. But they said U.S. citizens don't have immunity when they are at war with the United States.

The President of the United States was right to target this citizen when he went to Yemen to help al-Qaida. I am glad we took him out. So would it not be absurd that we can kill him, but we cannot detain him? If he came here, we cannot question him for military intelligence gathering. So this is a compromise between two forces that are well intended but will take us into a bad policy position: the hard left who wants to say the military has no role in protecting us on the homeland and some people on my side who say the law enforcement community cannot be involved at all.

So Senator LEVIN and Senator MCCAIN have constructed a concept that provides maximum flexibility, gives guidance to the law enforcement community, starts with a presumption that I like and can be waived and will not impede an ongoing investigation. That is the part of the bill that was changed.

To my good friend from California, we have the balance we have been seeking for 5 years. To me, this is what we should be doing as a nation—creating legislation that allows those who are fighting the war the tools they need. In this case, we start with the presumption of military custody because that allows us to gather intelligence. Under the domestic criminal law, we cannot hold someone and ask them about future attacks, because we are investigating a crime. Under military law, when somebody joins the enemy and engages in an act of war against the Nation, our military intelligence community can hold that person for as long as it takes to find out what they know about future attacks. If the guy gets off of plane and starts killing people at the mall, when we grab him and he says I want my lawyer, we can say: You are not entitled to a lawyer. We are trying to gather intelligence.

At the end of the day, use military commission trials, use Federal courts, and read Miranda rights when we think it makes sense; but we don't have to because the law allows us to hold people, under military custody, who represent a military threat. The law allows us to kill American citizens who have joined al-Qaida abroad. That has been the law for decades. I hope this compromise that CARL LEVIN and JOHN MCCAIN have crafted—and I say to CARL LEVIN, I have been in his shoes. When JOHN and I were on the floor saying don't waterboard people—gather intelligence but don't become like the enemy—a lot of Americans believed we should waterboard these people, do whatever we need to do because they are so vicious and hateful. But JOHN MCCAIN knows better than anybody in this body what it is like to be tortured.

I wish to protect America without changing who we are. It has always been the law that when an American citizen takes up arms and joins the enemy, that is not a criminal act; that is an act of war. They can be held and interrogated about what they did and what they know because that keeps us safe. If we take that off the table, with homegrown terrorism becoming the greatest threat we face, we will have done something no other Congress has done in any other war.

The PRESIDING OFFICER. The original 30 minutes has expired.

Mr. GRAHAM. Madam President, I thank Senators LEVIN and MCCAIN for drafting a compromise that I think speaks to the best of this country. To my colleagues, please don't upset this delicate balance. If you do, you will open a Pandora's box.

Mr. MCCAIN. Madam President, I say to both Senators while they are on the floor, if it had not been for their invaluable effort, this legislation would not have come about. I thank them for their incredibly important contributions, using the benefit of the experience that both Members have.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I wonder if I might take a few minutes to make a couple statements.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Madam President, I have no objection.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I wished to say with respect to Abdulmutallab, what was very new there was that an explosive had been invented that could go through a magnetometer without detection. It is, to my knowledge, the first time anyone came into the United States—this young Nigerian from a very prominent Nigerian family—wearing a diaper that had enough of this PETN, this new explosive, to blow up the plane. He missed in detonation and it caught on fire and the fire was put out.

There have been other incidents of trying to smuggle this PETN in cartridges of computers and they even had dogs going to the airport and they could not smell the explosive inside the computer cartridge. That was in Dubai. It is a very dangerous explosive. It is new, and it has been improved. It is something we need to be very wary of.

I also wish to point out that there is a public safety exception to Miranda. We do not have to Mirandize someone or we could continue to question them, if there is a public safety risk. So Mirandizing an individual is not a point in this argument, in my view, because we can continue the interrogation.

What is a point, in my argument, is that the FBI now has competence; that there is a group of special experts who can be flown to a place where someone is arrested and do initial interrogation. They are specifically trained and, to the best of my knowledge, they are effective at interrogating. My point is, the system is working, and we should keep it as it is.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. While Senator GRAHAM is on the floor, I ask unanimous consent to have a colloquy with him about this section 1032, the section at issue.

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

Mr. LEVIN. I very much appreciate Senator GRAHAM's remarks. He said the provision provides for military custody as a beginning or starting point. I wonder whether he would agree that not only is it a beginning point, but it is only for a narrow group of people who are determined to be al-Qaida or their supporters.

Mr. GRAHAM. Yes. It is not only a presumption that can be waived, based on what the experts in the field think is necessary; the waiver provision is incredibly flexible. You do not have to stop an interrogation to get the waiver. The executive branch can write the procedures. Not only is it a presumption that can be waived, it is also limited to a very narrow class of people. It has nothing to do with somebody buying gold. I don't know about Senator LEVIN, but people call me, who are on the right, saying: Don't let Obama put me in jail because I think he is a socialist or are you going to be able to grab me because of my political views? I tell my staff to be respectful and read them the language. The only people who need to worry about this provision are a very narrow group of people who are affiliated with al-Qaida, engaged in hostile acts.

Mr. LEVIN. Would the Senator also agree with me that under the provision in the bill, on page 360—we were told that civilian trials are preferable to military trials, preferable to the detention of an unlawful combatant. Does the Senator agree that every one of those options is open to the executive branch and that there is no preference stated, one way or the other, for which approach is taken to people who are detained?

Mr. GRAHAM. Not only would I agree that 1032 and 1031—the compromise language about statement of authority to detain and military detaining as a presumption—has nothing to do with the choice of venue, there are people on my side who are champing at the bit to prohibit civilian courts from being used in al-Qaida-driven cases; is the Senator familiar with that?

Mr. LEVIN. Yes.

Mr. GRAHAM. I am of the view that we are overly criminalizing the war. I don't want to adopt that policy. There is nothing in this language that has anything at all to do with how you try somebody and what venue you pick. I am in the camp—and I think Senator LEVIN is too—of an all-of-the-above approach. I am proud of our civilian courts and our military courts. The Senator and I are probably not in the best position to determine that. Let's let the experts do it.

Mr. LEVIN. That is exactly the point. This language, when it is described as language that says somehow or other it works against using civilian courts, is from folks who haven't read our language. The language is explicit. On page 360, lines 3 through 14 in the bill, it says the disposition of a person under the law of war may include the following—and then they talk about detention under the law of war, trial under title X, which is the military trial, transfer for trial by an alternative court or competent tribunal having lawful jurisdiction; that is, article III courts, and transfer or return of custody to the country of origin. There are no others. There is no preference stated for which of those venues would be selected by the executive branch.

Mr. GRAHAM. Is this a fair statement: If it was your goal to prevent military commissions from ever being used, you didn't get your way in this legislation. If it was your goal to mandate that military commissions are the only venue to be used, you didn't get your way in this legislation because this legislation doesn't speak to that issue at all.

Mr. LEVIN. That is absolutely true. Senator GRAHAM brought to the floor something that was stated this morning by the top lawyer for the Obama administration. I think everybody ought to listen to this. There has been so much confusion about what is in the bill and what isn't. Right now, there is authority to detain U.S. citizens as enemy combatants. That authority exists right now. That is not me saying it, that is the Supreme Court that has said it as recently as Hamdi, when they said there is no bar to this Nation holding one of its own citizens as an enemy combatant. That is current law. That is the Supreme Court saying that. Then, the Supreme Court also said in Hamdi that they see no reason for drawing a line because a citizen, no less than an alien, can be part of supporting forces hostile to the United States or coalition partners and engaged in armed conflict against the United States.

Top lawyers for the President, this morning, acknowledged this. I wish every one of our colleagues could hear what Senator GRAHAM brought to the floor. Top national security lawyers in the administration say U.S. citizens are legitimate military targets when they take up arms with al-Qaida.

Are we then going to adopt an amendment that says to al-Qaida that if you attack us overseas, you are subject to military detention; but if you come here and attack us, you are not subject to military detention? That is what the first Feinstein amendment says.

Mr. GRAHAM. If I may just add—not only is that the effect, that would be a change in law because the Senator agrees with me that in other conflicts, prior to the one we are in today, American citizens, unfortunately, have been involved in aiding the enemy; is that correct?

Mr. LEVIN. I am sorry, I was distracted.

Mr. GRAHAM. Does the Senator agree with me that in prior wars American citizens have been involved in aiding the enemy of their time?

Mr. LEVIN. They have, and they have been held accountable.

Mr. GRAHAM. Yes. And the In re Quirin case, which Hamdi cited and affirmed, was a fact pattern that went as follows: We had German saboteurs, some living in America before they went back to Germany—I think one or two may have been an American citizen—who landed on our shores with a plot to blow up different parts of America. During the course of their efforts, American citizens aided the Nazis. The Supreme Court said when an American citizen chose to help the Nazis at home, on our homeland, they were considered to be an enemy belligerent regardless of their citizenship, and we could detain one of our own when they sided with the enemy.

Mr. LEVIN. There was a naturalized citizen involved in Quirin, who was arrested, as I understand it, on Long Island, and who was charged with crimes involving aiding and supporting the enemy.

Mr. GRAHAM. Let's talk about the world in which we live today.

Mr. LEVIN. And military detention.

Mr. GRAHAM. Military detention and tried by a military commission.

Mr. LEVIN. Exactly. By the way, I think executed.

Mr. GRAHAM. And executed. The Senator from Michigan and I have said, along with our colleagues, that military commissions cannot be used to try American citizens.

Mr. LEVIN. That is correct.

Mr. GRAHAM. Our military has said they do not want that authority. They want to deal with enemy combatants when it comes to military commission trials. But our military CI and FBI have all understood their power to detain for intelligence-gathering purposes is an important power. It is not an exclusive power.

So let's talk about today's threat. The likelihood of homegrown terrorism is growing. Does the Senator agree that the homegrown terrorist is becoming a bigger problem?

Mr. LEVIN. It is an issue, absolutely.

Mr. GRAHAM. So in a situation where an American citizen goes to Pakistan and gets radicalized in a madrasah, gets on a plane and flies back to Dulles Airport, gets off the plane and takes up arms against his fellow citizens, then goes to the mall

and starts randomly shooting people, the law we are trying to preserve is current law, which would say if the experts decide it is in the Nation's best interests, they can hold that American citizen as they were able to hold the American citizen helping the Nazis and gather intelligence.

That is a right already given. Senator FEINSTEIN's amendment, even though I don't think it is well written, could possibly take that away. That is 1031. But what we are saying is, we want to preserve the ability of the intelligence community to hold that person under the law of war and find out: Is anybody else coming? Are you the only one coming? What do you know? What madrasah did you go to? How did you get over? How did you get back?

We want to preserve their ability to hold that person under the law of war for interrogation. But we also concede, if they think it is better to give them their Miranda rights, they can. That is what the legislation we create will do. Does the Senator agree with that?

Mr. LEVIN. I do. And the top lawyers of the administration acknowledged as much this morning when they said U.S. citizens are legitimate military targets when they take up arms with al-Qaida.

The provisions we are talking about in section 1032, which Senator FEINSTEIN would modify so that it is only al-Qaida abroad who would be subject to this presumption of a military detention, but al-Qaida who come here—and, by the way, American citizens are not even covered under 1032. But the foreign al-Qaida fighters who come here to attack us are not going to be subject to that presumption of military detention which, again, can be waived. It has nothing to do with in what venue they are tried. The administration, the Executive, has total choice on that. It is just whether we are going to start with an assumption if they are determined to be al-Qaida, if they are a foreign al-Qaida person, they sure as heck ought to be subject to that same assumption whether they attack us here or whether they attack us overseas.

Mr. GRAHAM. Wouldn't it be kind of hard to explain to our constituents that our top lawyers in the Pentagon and CIA said today that once an American citizen decides to help al-Qaida they can be killed in a drone attack, but the Congress somehow says, OK, but they can't be detained?

Mr. LEVIN. I wouldn't want to try to hold that position.

Mr. GRAHAM. Does the Senator believe America is part of the battlefield in our global war on terror?

Mr. LEVIN. It has been made part of the battlefield without any doubt. On September 11, the war was brought here by al-Qaida. How do we suggest that a foreign al-Qaida member should not be subject to an assumption to begin with, if they are determined to be al-Qaida, that they are going to be detained—that we should not start with that assumption—subject to procedures which the administration adopts. It is totally in their hands. It cannot interfere with a civilian interrogation. It cannot interfere with civilian intelligence. We are very specific about it. The procedures are written by the executive branch. They can try them anywhere they want.

But if they bring a war here—they bring a war here—we are going to create an assumption that they can be subject, and are going to be subject, to military detention.

Mr. GRAHAM. Well, my belief is that most Americans would want our military being able to combat al-Qaida at home as much as they would abroad. I think most Americans would be very upset to hear that the military has no real role in combatting al-Qaida on our own shore, but we can do anything we want to them overseas.

Frankly, there are very good people on our side who want to mandate that the military has custody, and no one else, so we never have to read Miranda rights. Quite frankly, there are people on the left, libertarians, well-meaning people, who want to prevent the idea of a person being held under military custody in the homeland because they do not think we are at war and this is really not the battlefield.

What the Senator and I have done is to start with the presumption that focuses on intelligence gathering because the Senator and I are more worried about what they know about future attacks than how we are going to prosecute them.

Under domestic criminal law, we can't hold someone indefinitely. The public safety law I will talk about in a bit, but I say to my good friend from California, the public safety exception was a very temporary ability to secure a crime scene. It was not written regarding terrorism. So our law enforcement officials cannot use the public safety exception to hold an al-Qaida operative for days and question them. The only way to do that legally is under the law of war. In every other war we have had that right, and we are about to change that.

Mr. LEVIN. If I can interrupt, we have that right abroad against members of al-Qaida. But under this approach we would not be able to assume that military detention at home, again, subject to waiver and subject to all the other protections we have.

Mr. GRAHAM. Right. Well, let's keep talking about it because the more we talk about it the more interesting the whole concept becomes.

The last time I looked, there were no civilian jails overseas. So when we capture a terrorist overseas, the only place we can detain them is in military custody. If they make it at home to say the military can't hold a person and interrogate them under the law of war, the only way we can hold an al-Qaida operative who made it to America is under the law enforcement model. This is not ''Dragnet.'' We are trying to make sure both systems are preserved, starting with the presumption of intelligence gathering.

Here is the key distinction. To my colleagues who worry about how we prosecute someone, that is really the least of my concerns. I am worried about intelligence gathering. I have confidence in our civilian system and confidence in our military system. But shouldn't we be concerned, most of all, Senator LEVIN, that when we capture one of these operatives on our shores or abroad that we hold them in a humane fashion but a fashion to gather intelligence?

Imagine if we got one of the 9/11 hijackers. Wouldn't it have been nice to have been able to find out if there was another plane coming and hold them as long as necessary to get that information humanely? To say we can't do that makes us a lot less safe.

Mr. LEVIN. We could do that if we captured them in Afghanistan, but here we are going to be treating them differently. It ought to probably be worse. In other words, people who bring the war here, it seems to me, at a minimum ought to be subject to the same rules of interrogation as they would be if they were captured and part of al-Qaida in Afghanistan.

I don't understand the theory behind this. As a matter of fact, when we adopted the authorization for use of military force, it would seem to me the first people we would want to apply the authority of that authorization to would be al-Qaida members who attack this country.

Mr. GRAHAM. That is the only group subject to this provision; is that correct?

Mr. LEVIN. The only group that is protected.

Mr. GRAHAM. But this provision we wrote only deals with that.

Mr. LEVIN. Exactly.

Mr. GRAHAM. No one is going to be put in jail because they disagree with LINDSEY GRAHAM or Barack Obama. We are trying to fight a war.

I would say something even more basic. It is in my political interest, quite frankly, being from South Carolina—a very conservative State, great people—to be able to go home and say I supported legislation to make sure these terrorists trying to come here and kill us never hear the words ''you have the right to remain silent.'' Most people would cheer.

It would have been in my interest years ago, quite frankly, to have gone back and said: You know what. I wish the worst thing that could happen to our guys caught by these thugs and barbarians is that they would get waterboarded. They get their heads cut off. Yet we have all these people worried about how we treat them in trying to find out a way to protect the country. That would be in my political interest, and I am sure it would probably be in your political interest to say: Wait a minute, we don't want to militarize this conflict.

At the end of the day, what I wanted to say about the Senator and Senator

MCCAIN is that one of you is a warrior who has experienced worse than waterboarding and doesn't want that to be part of his country's way of doing business. The other is someone who has been a very progressive, solid, left-of-center Senator for years. I am a military lawyer who comes from a very conservative State, but I want to fight this war—I don't believe we are fighting a crime—but I want to fight it in a way that doesn't come back to haunt us. I don't want to create a system on our watch that could come back and haunt our own people. I don't want to say that every enemy prisoner in this war has to go to trial because what if one of our guys is captured in a future war? Do we want them to be considered a war criminal just because they were fighting for the United States?

So what we are trying to do is to create policy that is as flexible as possible but understands the difference between fighting a war and fighting a crime.

Mr. LEVIN. Mr. President, I understand there are other Senators who may be coming over to speak, and I will be happy to yield the floor whenever that happens because this is the time which is not structured before the scheduled vote at 2 p.m. But if I can continue, then, until another Senator comes to the floor, I want to just expand on this one point which has been made which has to do with whether there is something in this section of ours that would allow our military to patrol our streets. We have heard that.

Well, we have a posse comitatus law in this country. That law embodies a very fundamental principle that our military does not patrol our streets. There is nothing in section 1032 or anywhere else in this bill that would permit our military to patrol our streets.

I think Senator GRAHAM is probably more familiar with what I am going to say than perhaps any of our colleagues. We have a posse comitatus statute in this country. It makes it a crime for the military to execute law enforcement functions inside the United States.

That is unchanged. That law is unchanged by anything in this bill.

Mr. GRAHAM. Does the Senator know why that law was created?

Mr. LEVIN. I think we had a fear a couple hundred years ago that that might happen.

Mr. GRAHAM. One of the things you learn in military law school is the Posse Comitatus Act, because if a military member or a unit is asked to assist in a law enforcement function, that is prohibited in this country. Why is that? We don't want to become a military state. We have civilian law enforcement that is answerable to an independent judiciary.

The Posse Comitatus Act came about after Reconstruction, because during the Reconstruction era the Union Army occupied the South. They were the judge, jury, and law enforcement. They did it all because there was no civilian law enforcement. After the South was reconstructed, a lot of people felt that was not a good model to use in the future; that we don't want to give the military law enforcement power; they are here to protect us against threats, foreign and domestic; law enforcement activities are completely different.

Now we have National Guard members on the border. That is not a law enforcement function. That is the national security function. But I have been receiving calls that say our legislation overturns the Posse Comitatus Act. Here is why that is completely wrong.

Surveilling an al-Qaida member, capturing and interrogating an al-Qaida member is not a law enforcement function; it is a military function. For the Posse Comitatus Act to apply, you would have to assume that a member of al-Qaida is a common criminal and our military has no legal authority here at home to engage the enemy if they get here.

You talk about perverse. You would be saying, as a Congress, that an al-Qaida member who made it to America could not be engaged by our military. What a perverse reading of the Posse Comitatus Act.

The reason al-Qaida is a military threat and not a common criminal threat is because the Congress in 2001 so designated. I think most Americans feel comfortable with the idea that the American military should be involved in fighting al-Qaida at home, and that is not a law enforcement function.

Mr. LEVIN. That is why we have very carefully pointed this provision 1032 to a very narrow group of people—people who are determined to be members of or associated with al-Qaida.

Then the question becomes, Well, how is that determination made? What are the procedures for that? The answer is it is left up to the executive branch to determine those procedures. Can there be any interference with the civilian law enforcement folks who are interrogating people that they arrest? If someone tries to blow up Times Square and they are being interrogated by the FBI, is there any interference with that interrogation? None. We explicitly say that there is no such interference.

What about people who are seeking to observe illegal conduct? Is there any interference with that? There is none. We specifically say those procedures shall not interfere with that kind of observation, seeking intelligence. We are not interfering with the civilian prosecution, with the civilian law enforcement at all.

The rules to determine whether someone is a member of al-Qaida are rules which the executive branch is going to write. They can't say, Well, this thing authorizes the interference with civilian interrogation when, as a matter of fact, it specifically says it won't, and the procedures to determine whether somebody is governed by this assumption are going to be written by the FBI and the Justice Department and the executive branch. And, on top of that, there is a waiver.

Mr. GRAHAM. May I add something. I want to respond to one of my good friends, Senator PAUL, who said, Well, that is all good, but sometimes in democracies you let in very bad people and I don't want to give broad power to the executive branch that could result in political persecution.

I would tell you—Senator LEVIN may find this hard to believe—there are people on my side who don't trust President Obama and his administration. Some of them don't think he is an American. Some of them believe that if we pass this law, you are going to give the Obama administration the power to come on and pick them up because they go to a rally somewhere.

All I can say to Senator PAUL and others: I share the concern about unlimited executive power. I support the Posse Comitatus Act. I don't support the idea that the military can't fight al-Qaida when they come here. We are not talking about law enforcement functions.

But here is what happens: If someone is picked up as a suspected enemy combatant under this narrow window, not only does the executive branch get to determine how best to do that—do you agree with me that, in this war, that every person picked up as an enemy combatant—citizen or not—here in the United States goes before a Federal judge, and our government has to prove to an independent judiciary outside the executive branch by a preponderance of the evidence that you are who we say you are and that you have fit in this narrow window? That if you are worried about some abuse of this, we have got a check and balance where the judiciary, under the law that we have created, has an independent review obligation to determine whether the executive branch has abused their power, and that decision can be appealed all the way to the Supreme Court?

Mr. LEVIN. That guarantee is called habeas corpus. It has been in our law. It is untouched by anything in this bill. Quite the opposite; we actually enhance the procedures here. The Senator from South Carolina has been very much a part of the effort here.

Mr. GRAHAM. Much to my detriment.

Mr. LEVIN. With all the risks that are entailed of being misunderstood and all the rest. That is something the Senator from South Carolina has engaged in, to try to see if we can put down what the detention rules are—by the way, ''are''—because as the administration itself said in its statement of administration policy, the authorities codified in this section—authorities codified in section 1031 they are referring to—those authorities already exist.

Mr. GRAHAM. In this case where somebody is worried about being picked up by a rogue executive branch because they went to the wrong political rally, they don't have to worry

very long, because our Federal courts have the right and the obligation to make sure the government proves their case that you are a member of al-Qaida and didn't go to a political rally. That has never happened in any other war. That is a check and balance here in this war. And let me tell you why it is necessary.

This is a war without end. There will never be a surrender ceremony signing on the USS Missouri. So what we have done, knowing that an enemy combatant determination could be a de facto life sentence, is we are requiring the courts to look over the military's shoulder to create checks and balances. Quite frankly, I think that is a good accommodation.

Mr. LEVIN. Not only is what the Senator said accurate, but we have done something else in this bill. There is an Executive order that was issued some years ago that said there should be a periodic review process for folks who are being detained under the law of war. Because it is so unclear as to when this war ends, there is real concern about that. What do we do about that? So in this bill what we require the executive branch to do—and I am now quoting from section 1035—is to adopt procedures for implementing a periodic review process. Those procedures don't exist now. They are not formalized. So we want to formalize them for the very reason that the Senator from South Carolina addressed: because we want to make sure that since we don't know when this particular war is going to end, it is kind of hard to define it and everyone is concerned about that, you have got to have review procedures. The greatest review procedure of all is habeas corpus. But there are also requirements in the Executive order for a periodic review process of whether somebody is still a threat or not a threat, for instance. The war may still be going on, but the person may no longer be a threat.

Should there be an opportunity for the person to say that? Well, there should be. There surely should be a regular review process. The Senator from South Carolina has been very much involved in this kind of due process. But what we put into our bill—which would have been eliminated, by the way, if the Udall amendment had been adopted yesterday—is a requirement that the Executive order's procedures be adopted, because so far we haven't seen that.

Mr. GRAHAM. I would say why I wanted to do that. I want to be able to say—and not to my political advantage. But I want to be able to tell people post-Abu Ghraib, post-early Guantanamo Bay, we have cleaned up our act. We are trying to get the balance we didn't have originally. I want to be able to tell people we no longer torture in America. That is why you and I wrote the Detainee Treatment Act, with Senator MCCAIN, the War Powers Act that clearly bans waterboarding.

I want to be able to tell anybody who is interested that no person in an American prison—civilian or military—held as a suspected member of al-Qaida will be held without independent judicial review. We are not allowing the executive branch to make that decision unchecked. For the first time in the history of American warfare, every American combatant held by the executive branch will have their day in Federal court, and the government has to prove by a preponderance of the evidence you are in fact part of the enemy force. And we did not stop there. Because this could be a war without end, we require an annual review process where each year the individual's case is evaluated as to whether they still maintain a threat or they have intelligence that could be gathered by longer confinement.

What I would say to our colleagues is that we have tried to strike that balance. There are a lot of people who don't like the idea that you give these terrorists Federal hearings and lawyers and all that other stuff. There are a lot of people who don't like the fact that we do have now humane interrogation techniques. But I like that, because I want to win this war on our terms, not theirs. So I couldn't be more proud of this bill.

To my colleagues on the right who want to mandate military custody all the time and you never can read them their Miranda rights, I am sorry, I can't go there. To our friends on the left who want to say the military has no role in this war at home, I am sorry, I can't go there. Military commissions make sense sometimes, sometimes Federal courts make sense.

I will end on this note. This compromise that we have come up with I think will stand the test of time. Unfortunately, most likely radical Islam as we know it today is not going to be defeated in our lifetime, and I hope to have created on my watch as a Senator a legal system that has robust due process, that adheres to our values, but also recognizes we are at threat like any other time in recent memory and allows us to protect ourselves within the values of being an American. I cannot tell you how much I appreciate working with the Senator and Senator MCCAIN, and I think we have accomplished that after 10 years of trying.

Mr. LEVIN. Mr. President, I yield the floor.

Mr. MANCHIN. Mr. President, I ask unanimous consent to speak as if in morning business.

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

EXTENSION OF PAYROLL TAX CUTS

Mr. MANCHIN. Mr. President, I want to speak on these very strange days in Washington, in this Congress.

This esteemed body's approval rating is at 9 percent, and I am having a hard time finding the 9 percent. It seems to me that the only thing we are working hard on is whether we can get the approval rating to zero, and I think we seem to be going in that direction.

We fight over political solutions that can't pass and, more importantly, won't solve this Nation's great problems. We fight for political points and mistakenly believe that the American people care who is up or down. But they don't.

I didn't come to Washington for the purpose of playing games, taking names, or keeping score. That is not what I was sent here to do. That is not what the people of West Virginia want me to do. I came here to fix things and to be a part of the solution. I have not come here to worry about my next election or whether Republicans or Democrats are up or down. I came here to do what I could to improve life for the next generation. I, for one, am willing to sacrifice my next election so the next generation can win. And if that means losing, so be it.

I rise today to speak about the next chapter of this sad state of affairs which the American people are forced to witness: whether we should extend and expand the payroll tax cut that will cost more than $240 billion in 1 year.

Many accusations are being thrown back and forth in the debate over the so-called tax cuts or tax increases, depending on which side of the fence you are on. There is one very basic fact that is missing from all of this very important conversation: Americans pay for one thing with our payroll tax—One. Social Security.

Social Security isn't just another government program. It was established in 1935 to provide economic security for our Nation's seniors who worked hard and earned their retirement benefits. They worked their whole life to provide our generation and those that will follow with a better and greater America.

Yet at the time when our Nation faces a death spiral of debt, when we should be talking about how we can come together to fix a fiscal nightmare that will threaten the very programs we care about such as Social Security, instead we are talking about undermining the very foundation of our longest standing retirement program. Right now, Social Security is on a collision course. By 2037, according to the trustees, if we do not do anything, benefits for everyone will have to be cut by 22 percent. Yet we are digging a deeper hole by destabilizing its funding with this recommendation. All in return for what? A temporary measure that has already cost nearly $120 billion and has at best created few if any jobs.

In the real world, when policy doesn't work, we stop and try something else. Apparently, in Washington we double down. Why would we do this? Why would we double down on a policy that did not work? The answer is simple. For the sake of a short-term political gain, leaders of both parties and the President are willing to fight over how we should pay for a failed program that jeopardizes the fundamental way that

we pay for our retirement security in this country. That does not make any sense to me, and it does not make any sense to the good people in West Virginia.

I know in the coming days we are going to hear a lot of political talk about extending the payroll tax. What they are saying sure sounds good: More money in our pockets. In fact, politicians will offer assurances that Social Security will not be hurt at all. My good friend, who will be speaking also on this, Senator KIRK from Illinois, is going to show a graph that basically shows that to be different.

What you will not hear them say, though, is that reducing payroll taxes even temporarily would take more than $240 billion out of Social Security's funding stream, if we approve the President's proposal. We certainly will not hear them say the way they would repay those hundreds of billions of dollars is through our general revenue fund. If we extend the cuts this year, what about the next year and the year after? When does it stop? When do we have the political will to finally say we better start paying again for Social Security.

Our approval rating is at 9 percent, and we are rapidly losing the support of our family members. Just how many Americans really believe that Congress will make sure our general fund is solid enough to live up to the responsibility of funding Social Security? If the payroll tax cut is extended as it stands this year, the average family in West Virginia will pay $14 less per week. For a lot of people that is a lot of money. But the few West Virginians who even realize they are getting help say they would gladly give that up in return for a reliable Social Security safety net or for a real tax reform that cuts rates across the board and that ensures that every American, especially the wealthy, will start paying their fair share. They would gladly do that.

Let me be clear. As a country, we cannot expect that Social Security will remain secure if we keep telling Americans we do not have to pay for it, and that is exactly the conclusion people will reach if we keep reducing their contributions. Social Security is one of our highest priorities as a country, and we should not let the Federal Government undermine Social Security by convincing Americans they do not really have to pay for it.

Then, again, there are some in Washington who want us to believe the very act of reducing our contributions to Social Security will spur job creation. Unfortunately, the reality is very different.

We tried the payroll tax cut last year, and I supported it. But I will not double down on the failed policy, especially one that jeopardizes the future of Social Security. Truth be told, over the last year I traveled more than 18,000 miles in my State, and I have yet to find very many West Virginians who even know they are getting a discount, let alone business owners who say they will hire anybody if we give them a discount for 1 year.

What business owners do tell me is that what they want more than anything is some certainty and some confidence in this economy; that we will do the right thing and stabilize this economy. Instead, the President and leadership in both parties are trying to give them more of the same failed policies—taking steps that will further undermine our finances, worsen our debt crisis, and jeopardize hundreds of billions from Social Security's regular funding stream, all without the reality that it will create any jobs.

With this great Nation now more than $15 trillion in debt—it will be $17 trillion next year and going to $21 trillion by 2021—the enormity of this problem is that just servicing the debt by 2021 will be greater than what we spend on our Department of Defense to secure this great Nation. We cannot afford to continue to double down on failed policies.

As for taxes, don't get me wrong. I don't want to see Americans paying higher taxes. No way. I simply want a commonsense tax system that ensures everyone pays their fair share, especially the wealthy, who have benefitted the most from this failed tax system we have right now—real tax reform that will lower tax rates for everyone as we close the loopholes, credits, and offsets that allow some corporations and some Americans to avoid paying their fair share. It is time to stop all of that.

Some will say that it is impossible; it cannot be done. I think they are wrong. It requires leadership from the White House to every corner of Congress, and it requires each and every one of us to be willing to sacrifice our political futures for the Nation's future. I, for one, am willing to do just that.

This is our moment. At this critical moment in our history we must get our financial house in order and letting Americans believe we do not have to pay for Social Security is wrong. It is dead wrong. It is the wrong policy. It is wrong for our seniors, it is wrong for our future, and I will not vote for it, period, under any condition. For the sake of the next generation we must get our fiscal house in order, and we can do that if we are willing to make difficult decisions.

I will not vote for either of these two proposals to extend the payroll tax cuts. Looking forward for the sake of our Nation, I hope we will begin to work on a proposal that makes the hard decisions while also protecting the programs and commitments we value as a nation. For myself, and I believe many of my colleagues, there is a bipartisan path forward that can help save this Nation, and I have my good colleague, the Republican from Illinois, who is going to speak to it also.

I believe the best path forward is based on the framework and recommendations outlined in the Bowles-Simpson proposal. When those recommendations were laid out a year ago today—this is the anniversary today—I had been a Senator for less than a month—brandnew, less than 1 month. What I saw in that report gave me great hope. It gave me hope that we could identify our problems, which we did—the fiscal responsibility that we had—and willingly tackle them together. So I was on a high for that one short period.

As a brandnew Member, I was so encouraged that such a responsible, bipartisan group of people, put together by the President, offered a no-holds-barred report on our fiscal situation and some pathways to fix it. Then the proverbial air came out. Not only did the President and his administration walk away from these bipartisan proposals, but leadership in both Chambers of Congress failed to pick up this report and run with it.

Here we are a year later. If anything, our problems are worse. We are going to be forced to make deeper cuts than we wanted to, all because our leadership would not confront the enormous problems we face with a comprehensive long-term solution. But the Bowles-Simpson plan is still the only proposal that enjoys strong bipartisan support. It started as a bipartisan commission. It grew in numbers and it is still growing. It has a responsible manner to balance this problem we have.

It is not perfect; no plan is. I do not agree with everything it proposes. But no plan can be everything to everyone. With today being the 1-year anniversary of the unveiling of that proposal, I am urging, and will continue to urge, our President and the leadership of both Chambers to support any and all efforts—not only to pick up this report, but also to put the resources behind drafting and passing this legislation into law. I ask we all remember the great opportunity we have before us to do what is right.

I do not want to be part of the first generation—and I know the Presiding Officer doesn't want to be part, and I know my good friend from Illinois doesn't want to be part of the first generation that leaves this Nation in worse shape for the next generation. I don't believe this President or any Member of Congress wants to fail the next generation either.

With that, I want to turn over my time to my colleague from Illinois.

Mr. KIRK. If I could engage the Senator in a colloquy, this is a chart that shows the legislation we are considering today. What it shows is the tremendous hit to the tax that supports Social Security. This is the Old Age Survivors Disability Act. It is a $240 billion hit to the funding to support Social Security. We both are going to vote no on both pieces of legislation today because we do not think seniors should take this level of hit.

In the Casey-Reed legislation—this is where the so-called millionaires' tax comes in—it only refunds what Social

Security needs to the level of 7 percent in 2013. In fact, according to one analysis, we may trigger the end of the debt limit before the election if we pass this because of the $246 billion we will have to borrow temporarily until the long stretch of this revenue comes in.

We are about to do a chart with the Republican alternative. It has the same long payout there, and tremendous hit to Social Security. In this time of all these political bills, I think Senator MANCHIN and I are both saying let's not do the political thing anymore. We both voted for the payroll tax deduction legislation before because the country was in crisis, and we wanted to try this out. But this is revenue that supports the benefits that Social Security recipients depend on, and we cannot continue to try to run this program without that revenue. So I think this holiday should end. I think this revenue should not be foregone. I do not think seniors should be faced with a trust-us policy that will pay them back. I would actually say even the political vote is to vote against this so you are for Social Security and for making sure this payment is continued.

I commend the Senator. I think we should exactly follow this policy of no on both of these because, if you vote no, you are supporting Social Security.

One other thing: I ask AARP to speak more clearly on this issue. AARP currently told my staff that they are neutral on this. I urge AARP members to contact AARP and say: Defend Social Security revenues. Make sure there is enough in the kitty for our benefits. We know that 10,000 Americans a day are now qualifying for Social Security. We know this is an age of no free lunch. We want to make sure the revenues are there not just today but tomorrow because seniors absolutely depend on that.

With that, I yield back to my colleague.

The PRESIDING OFFICER. Let the record show the Senator sought recognition, unanimous consent to proceed to a colloquy and did so without objection.

Mr. KIRK. I thank the Chair.

Mr. MANCHIN. I say to my friend from Illinois, what he says is absolutely correct. We have so many people, especially in West Virginia and Illinois, who depend on Social Security. In fact, in West Virginia, for 62 percent of the people who receive Social Security it is their major funding mechanism. It is how they live day to day. They have told me: Do not touch our Social Security Program, our core values of Social Security, what it does for us. If we pass this, not only do we touch it, we jeopardize its solvency in the long term.

If you believe we are going to be responsible enough to pay for this in the 10 years outgoing, then we have some beach-front property in West Virginia we would love to interest you in.

Mr. KIRK. I would say, this is a very long payout, both under the majority and minority piece of legislation. I am hoping enough Members say no to both pieces of legislation so we defend Social Security, and I commend the Senator.

Mr. MANCHIN. I think we are very strong in support of the Bowles-Simpson, basically, the template that it laid out. It is the only one that is bipartisan. As you can see, it stayed bipartisan with the Senator and I, and it will remain bipartisan. It has a tax reform, but everyone pays a fair share. The very wealthy who have escaped paying because of the flawed tax policies would now start paying if we had real tax reform—not increased rates but just their fair share. That is what we ask.

Mr. KIRK. With that, I yield and commend the Senator. We are hoping for two ''no'' votes because we think those are the votes that support Social Security and its continued revenue.

Mr. MANCHIN. I thank the Bowles-Simpson committee, Mr. Bowles and Mr. Simpson, for what they have done a year ago, bringing it to our attention, bringing a pathway to fixing the financial problems we are dealing with. We are concerned about the next generation more so than our next election. That is what we were sent here to do.

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

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

AMENDMENT NO. 1414

Mr. MENENDEZ. Mr. President, I rise to urge my colleagues to pass amendment No. 1414 that I have offered with my distinguished colleague from Illinois, Senator KIRK, to strengthen sanctions against Iran that go to the heart of the regime's ability to finance its nuclear ambitions. This is a broad-based effort, a bipartisan effort, and one that needs the Senate's attention and passage.

In my view, we have to follow the money, and this amendment does exactly that. If we are serious about limiting Iran's ability to finance its nuclear ambitions, this amendment is essential to that effort. It is a serious attempt to sanction the Central Bank of Iran, which is known to be complicit in Iran's nuclear efforts.

If we fail to close loopholes and sanction funding mechanisms for Iran's nuclear development programs, we would be like a rancher who left the barn open and wonders why the horses are gone. To not pass this amendment is leaving the door open to Iran's runaway nuclear ambitions. We cannot and we must not let that happen.

I know the administration has expressed their concerns about this amendment—an amendment which, by the way, has come about as a result of the administration asking us to work with them, and a bipartisan effort has achieved a narrower, more defined, tailored effort to bring the maximum sanctions upon Iran with the minimum consequence to both the United States and our allies across the globe. But in the absence of congressional action over the last 15 years, starting with the Iran and Libya Sanctions Act and ending with CISADA, I have to wonder what we would be doing to stop Iran's drive to obtain nuclear weapons, if it were not for the Congress's intercession and actions.

I recognize this administration has done more than any prior administration in terms of using those tools the Congress has given them, but in my view, we have not done enough.

In a letter from Secretary Geithner today, the administration recognizes that ''Iran's greatest economic resource is its export of oil. Sales of crude oil line the regime's pockets, sustain its human rights abuses, and feed its nuclear ambitions like no other sector of the Iranian economy.'' That is what Secretary Geithner had to say in his letter. That is pretty compelling as to why this amendment needs to pass, that is why I have worked with Senator KIRK to pass this important amendment, and that is why we urge our colleagues to pass it.

To those who have raised concerns about the impact of the amendment on our allies and our multilateral diplomacy efforts, I would note that the European nations and the French in particular are already considering their own Iranian oil embargo. This is not, by the way, an oil embargo, but they are considering something far more significant—their own Iranian oil embargo. They recognize that the Iranian nuclear program has a short fuse. Published reports say it may be as short as 1 year, and the time to act is now. They recognize that the Shahab missile would not only be capable of hitting the State of Israel but could easily hit a European nation—a European nation which obviously would be a NATO ally.

As for other countries, frankly, I am not concerned with how the Chinese feel about our amendment given that they are currently one of greatest violators of our current sanctions regime already. The evidence is clear.

I have been made aware that several major energy traders continue to make prohibited sales of refined petroleum to Iran. Yet our response has been to sanction the front companies rather than the major figures behind these sales.

China also continues to be a major Iranian trading partner and has agreements with Iran for nearly $40 billion in investments to develop Iranian oil fields. China has reportedly directed the China National Offshore Oil Corporation and National Petroleum Corporation to slow their work in Iran, presumably to allow them to make the argument to Washington to hold off on sanctions.

We must ask, why has the administration been reluctant to sanction Chinese companies when there is ample evidence that they are violating our own existing laws and there is precedent for us sanctioning Chinese companies for nuclear and weapons proliferation outcomes?

Mr. MCCAIN. Would the Senator yield for a question?

Mr. MENENDEZ. I would be happy to yield.

Mr. MCCAIN. Is it the Senator's impression that action by the United Nations Security Council is pretty dim given the stated positions of Russia and China on this issue?

Mr. MENENDEZ. The Senator, in my view, is right, considering that they both have veto power at the Security Council. It seems to me that they are not likely allies in helping us pursue this course.

Mr. MCCAIN. So then it really makes a more compelling argument to those who may be wavering on this amendment that there is a clear record on the part of China and Russia in the U.N. Security Council that we cannot expect a Security Council vote, but perhaps we could expect other nations to follow suit once the United States leads on this issue.

Mr. MENENDEZ. I believe the Senator is right.

Mr. MCCAIN. I thank the Senator.

Mr. MENENDEZ. The November 8 IAEA report underscores the need for this amendment. It undeniably confirms that there is a military component to Iran's nuclear program; that Iran has not suspended its Iranian enrichment and conversion activities at declared facilities and is seeking to develop as many as 10 new enrichment facilities; that there are undisclosed nuclear facilities in Iran; that Iran is seeking back channels to acquire dual-use technology and materials; that Iran is experimenting and testing detonators and initiation systems critical to creating a nuclear weapon; and that Iran may be working on an indigenous design for a nuclear weapon, including a nuclear payload small enough to fit on Iran's long-range Shahab missile, a missile capable of reaching Israel. These public revelations have led to an increase in multilateral sanctions on the Iranian regime, which I applaud, but given what appears to be a shortening timeline until Iran has a potential nuclear weapon, it would seem we are not doing enough fast enough.

Iran has adapted to CISADA and has negotiated workarounds to constraints on its financial transactions and its ability to acquire requisite materials to advance its clandestine program. This amendment will prevent those workarounds. It will impose sanctions on those international financial institutions that engage in business activities with the Central Bank of Iran—particularly in the pursuit of petroleum products—with the exception of transactions that include medicine and medical devices.

It is a timely amendment that follows the administration's decision last week designating the entire Iranian banking sector as a primary money laundering concern and a threat to government and financial institutions, noting Iran's illicit activities, including its pursuit of nuclear weapons, its support of terrorism, and its efforts to deceive responsible financial institutions and evade sanctions. In fact, the Financial Crimes Enforcement Network of the Department of the Treasury wrote:

> The Central Bank of Iran, which regulates Iranian banks, has assisted designated Iranian banks by transferring billions of dollars to those banks in 2011. In making these transfers, the CBI attempted to evade sanctions by minimizing the direct involvement of large international banks with both CBI and designated Iranian banks.

The Under Secretary of the Treasury for Terrorism and Financial Intelligence, David Cohen, wrote:

> Treasury is calling out the entire Iranian banking sector, including the Central Bank of Iran, as posing terrorist financing, proliferation financing, and money laundering risks for the global financial system.

I don't know how much more compelling even the administration's own arguments are. As I have said on this floor, Iran's conduct threatens the national security of the United States and its allies. The complicit action of the Central Bank of Iran, based on its facilitation of the activities of the government, its evasion of multilateral sanctions directed against the Government of Iran, its engagement in deceptive financial practices and illicit transactions, and, most important, its provision of financial services in support of Iran's effort to acquire the knowledge, materials, and facilities to enrich uranium and to ultimately develop weapons of mass destruction, threatens regional peace and global security.

This amendment will starve the beast. It requires the President to prohibit transactions of Iranian financial institutions that touch U.S. financial institutions. To ensure that we don't spook the oil markets, transactions with Iran's Central Bank in petroleum and petroleum products would only be sanctioned if the President makes a determination that petroleum-producing countries other than Iran can provide sufficient alternative resources for the countries purchasing from Iran and that the country declines to make significant decreases in the purchases of Iranian oil.

This bipartisan amendment has been carefully crafted to ensure the maximum impact on Iran's financial infrastructure and ability to finance terrorist activities and to minimize the impact on global economy. It has the best chance of helping us achieve a peaceful solution to this threat. I urge my colleagues to support this amendment.

Mr. MCCAIN. May I ask one additional question?

Mr. MENENDEZ. I would be happy to do so. I know we have a vote in 5 minutes, and I want the distinguished Senator from Illinois to have an opportunity to speak.

Mr. MCCAIN. These questions are for either Senator.

Is it true that in this legislation, there is a national security waiver, that the President can waive the provisions of this bill if he feels it is in the national interest? Also, how do you respond to the argument being put forward that this could destroy the world's financial system if this legislation would be put into effect?

Mr. MENENDEZ. The answer is, yes, there is a national security waiver, and, no, we do not believe the world's financial system will be destroyed. The fact is, as my distinguished colleague from Illinois has said, it is a choice between a $300 billion economy in Iran and a $14 trillion economy in the United States. I think that choice would be very clear for countries as they choose to do so, and the Europeans are already on a march on their own because they understand the risk to them.

I yield the floor, and I hope to hear from my colleague from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. KIRK. I rise in very strong support of the Menendez-Kirk amendment.

I wish to compliment the Senator from New Jersey for an outstanding performance in the Senate Foreign Relations Committee today in which he called on the representatives of our government to move quicker on this.

We saw the Baha'is radicals of Iran overrun the embassy of our allies in the United Kingdom. We saw the British Prime Minister just announce that he was removing all Iranian diplomats from the United Kingdom. We saw the Government of Italy announcing that they were suspending some diplomatic activities. We have seen a whole number of actions by the EU now to join with us on sanctions.

I will just say with regard to this amendment that it has now been cosponsored formally by 46 Senators: MENENDEZ, KIRK, BARRASSO, BLUMENTHAL, BLUNT, BOOZMAN, BROWN of Massachusetts, BROWN of Ohio, CARDIN, CASEY, COLLINS, COONS, CRAPO, FEINSTEIN, FRANKEN, GILLIBRAND, GRAHAM, HATCH, HELLER, JOHANNS, KLOBUCHAR, KYL, LAUTENBERG, LEE, LIEBERMAN, MANCHIN, MERKLEY, MIKULSKI, MORAN, MURKOWSKI, NELSON of Florida, NELSON of Nebraska, PORTMAN, PRYOR, RISCH, ROBERTS, SCHUMER, SNOWE, STABENOW, TESTER, THUNE, TOOMEY, VITTER, WARNER, WHITEHOUSE, and WYDEN. These 46 Members are on the shoulders of the 92 who signed the Kirk-Schumer letter in August. When in these partisan times do we have all but eight Senators agreeing on a policy?

I will just note, as Senator MENENDEZ and Senator MCCAIN pointed out, the administration is somewhat worried about this amendment, but Senator MENENDEZ correctly provided flexibility to the administration by saying,

No. 1, if the energy information agency says oil markets are tight and issues a report on the affected oil markets, these sanctions could be suspended for a time. On top of that one waiver, there is a second waiver for the national security of the United States that the President could have that kind of flexibility.

So with flexibility, with bipartisan support, with outrageous activity by Iran, in the face of the IAEA report, moving toward a nuclear weapon, with the danger we see from that government and Hezbollah and Hamas against our allies in Lebanon and Israel, with the plot announced by the Attorney General of the United States to blow up a Georgetown restaurant in an effort to kill the Saudi Arabian Ambassador, with the plight of 330,000 Baha'is oppressed by that country, with someone like Nasrin Sotoudeh, the lawyer for Shirin Ebadi—the Noble Prize laureate's lawyer was thrown in jail just for representing that client—for all these reasons, this is the right amendment, at the right time, sending the right message in the face of a very irresponsible regime.

I yield back and thank the Senator for offering this well-timed amendment.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 1093 WITHDRAWN

Mr. MCCAIN. On behalf of Senator INHOFE, I ask to withdraw amendment No. 1093.

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

Mr. MCCAIN. Mr. President, very briefly I would like to thank the Senators for their leadership on this issue. There is a threat to the security of the world posed by the Islamic nation of Iran. This is much needed legislation.

I think it is important to note, as they did, that there is a national security waiver given to the President of the United States, and also we cannot expect a lot of help considering the membership of the United Nations Security Council and Russia and China's unwillingness to act on behalf of reining in this path that Iran is on to the acquisition and the possibility and the capability for the use of nuclear weapons.

I congratulate both sponsors of the amendment, and I hope we can get a recorded vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

AMENDMENT NO. 1125

Mr. UDALL of Colorado. Mr. President, I wanted to rise at this time in support of the Feinstein amendment No. 1125, which would modify the requirement that the Armed Forces detain suspected terrorists by adding the word ''abroad'' to ensure that we aren't disrupting domestic counterterrorism efforts. And I would like to correct the record because some of the opponents of the amendment have stated that by inserting the word ''abroad,'' we would be preventing the military from detaining al-Qaida terrorists on U.S. soil, and that is simply not true.

The President knows and my colleagues know that I am not comfortable with the detention provisions in this bill because I think they will undermine our fight against terrorism. But this would be an important change, a narrowly focused change in the provisions that have already been put on the floor.

Mr. President, is the vote imminent?

The PRESIDING OFFICER (Mr. SANDERS). It is.

Mr. UDALL of Colorado. Mr. President, I rise in support of the Feinstein amendment No. 1125, which would modify the requirement that the Armed Forces detain suspected terrorists by adding the word ''abroad'' to ensure we are not disrupting domestic counterterrorism efforts. I wish to correct the RECORD, because some of the opponents of this amendment have stated that by inserting the word ''abroad'' we would be ''preventing the military from detaining al Qaeda terrorists on U.S. soil.'' This is simply not true.

I am not comfortable with the detention provisions in this bill because I think they will undermine our fight against terrorism. While section 1031 of this legislation will authorize the military to detain terrorists, section 1032 requires that the military detain certain terrorists even if the FBI or local law enforcement is in the middle of a larger investigation that would yield the capture of even more dangerous terrorists.

This may disrupt the investigation, interrogation, and prosecution of terrorist suspects by forcing the military to interrupt FBI, CIA, or other counterterrorism agency operations—against each of these organizations' recommendations, including the military's. This would be an unworkable bureaucratic process that would take away the ability to make critical and split-second decisions about how best to save Americans lives. That is why the director of the FBI and the director of National Intelligence have strongly opposed the underlying provisions.

The Feinstein amendment would simply provide the needed flexibility for the FBI and other law enforcement agencies to work to fight and capture terrorists without having to stop and hand over suspects to the military. However, even with the Feinstein modification, with the authorization in section 1031 the military could still detain a suspected terrorist but would not have to step in and interrupt other domestic counterterrorism operations.

In other words, the Feinstein amendment would do nothing to prevent the military from acting, it would simply take away the mandate that they interrupt other investigations. I still do not believe we should enshrine in law authorization for the military to act on U.S. soil, but to argue that adding ''abroad'' to section 1032 would take away from the authority given in this bill is just wrong.

Clarifying that the military is only required to detain suspected terrorists abroad is the best approach to address the FBI's concerns about this legislation, and it is the best approach for our national security. What we are doing is working. We should not take away the flexibility that is necessary to keep us safe.

Passing this amendment would be welcome news to Secretary of Defense Panetta, Director of National Intelligence Clapper, FBI Director Mueller, and CIA Director Petraeus—who oppose the intrusive restrictions on their counterterrorism operations that the underlying bill would create.

The other side has argued that this is fundamentally about whether we are fighting a war or a crime. I think that is a false choice and it does a disservice to our integrated intelligence community that is fighting terrorism successfully using every tool it possibly can. We can debate this in theoretical, black-and-white terms about whether this is a war or a crime. Or we can get back to the business of taking on these terrorists in every way we know how, including by using our very effective criminal justice system. At the end of the day, it is about protecting Americans, protecting this country. Why on Earth would we want to tie our hands behind our back?

Our national security leadership has said the detention provisions in this bill could make us less safe. We should listen to their concerns and pass this amendment to preserve the U.S. Government's current detention and prosecution flexibility that has allowed both the Bush and Obama Administrations to effectively combat those who seek to do us harm.

Again, I encourage my colleagues to support the Feinstein amendment, to keep faith with the Directors of the FBI, the DNI, the Secretary of Defense, and our Attorney General, who say these provisions could create unwanted complications in our fight against terrorism.

Let's adopt the Feinstein amendment. It will help us win the war against terror.

Thank you, Mr. President.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to a vote on the Feinstein amendment No. 1125.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 45, nays 55, as follows:

[Rollcall Vote No. 213 Leg.]

YEAS—45

Akaka	Bennet	Blumenthal
Baucus	Bingaman	Boxer

Brown (OH)	Kerry	Reed
Cantwell	Kirk	Reid
Cardin	Klobuchar	Rockefeller
Carper	Kohl	Sanders
Conrad	Lautenberg	Schumer
Coons	Leahy	Shaheen
Durbin	Lee	Tester
Feinstein	Menendez	Udall (CO)
Franken	Merkley	Udall (NM)
Gillibrand	Mikulski	Warner
Hagan	Murray	Webb
Harkin	Nelson (FL)	Whitehouse
Johnson (SD)	Paul	Wyden

NAYS—55

Alexander	Graham	McConnell
Ayotte	Grassley	Moran
Barrasso	Hatch	Murkowski
Begich	Heller	Nelson (NE)
Blunt	Hoeven	Portman
Boozman	Hutchison	Pryor
Brown (MA)	Inhofe	Risch
Burr	Inouye	Roberts
Casey	Isakson	Rubio
Chambliss	Johanns	Sessions
Coats	Johnson (WI)	Shelby
Coburn	Kyl	Snowe
Cochran	Landrieu	Stabenow
Collins	Levin	Thune
Corker	Lieberman	Toomey
Cornyn	Lugar	Vitter
Crapo	Manchin	Wicker
DeMint	McCain	
Enzi	McCaskill	

The amendment (No. 1125) was rejected.

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

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Michigan.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. SHAHEEN. Mr. President, I rise today in support of the 2012 National Defense Authorization Act, the critical piece of legislation we are now working on that will strengthen our national security, provide for our troops and their families, and improve oversight of American taxpayer dollars.

Over the last half century, the Senate has successfully passed a defense authorization bill without fail every year. This strong tradition of bipartisanship continues today under the joint leadership of Senators LEVIN and MCCAIN.

As a member of the Armed Services Committee, I thank the chairman and ranking member, as well as the majority and minority staff, for their dedicated and tireless effort as we work to bring this important legislation to the floor.

Throughout this yearlong process, our committee takes on extremely difficult and contentious security issues, and at times we have our differences. However, we take on these disagreements in a respectful and openminded fashion, driven by a strong commitment to cooperation and compromise. Bipartisanship has never been easy, but it works, as the Armed Services Committee has proven year in and year out. I hope all of our committees in the Senate can work in this kind of cooperative fashion, especially these days when budget constraints are so difficult.

No department of the Federal Government is immune from the severe fiscal challenges facing our Nation. That includes our Department of Defense. We are cutting $27 billion from the President's budget request in this bill, nearly $43 billion from the last year's authorization. We need to find ways to maximize our investments in defense by aggressively eliminating unneeded and underperforming programs and we need to streamline our business practices and invest strategically in future technology.

The bill before us helps ensure that our troops, especially the 96,000 serving in Afghanistan as well as their families, continue to receive the care and support they deserve. It provides hard-earned pay raises for all uniformed military personnel, funding for critical equipment, and training required for our men and women to succeed on the battlefield.

The Defense authorization bill before us makes important investments in defense, science, and technology. As I know the Chair agrees, we need to do more to prepare the next generation of scientists and engineers who will be so important to maintaining our Nation's superior technological edge. The current bill makes a small downpayment on this important effort, and I intend to continue to fight for more investment as we move forward.

The bill also includes a number of provisions that will enable the Defense Department to lead in the creation of a more secure energy future for our military and for our country. As the single largest consumer of energy in the world today, the U.S. military has taken some initial steps on energy efficiency, energy mitigation, and the use of renewable and clean energy alternatives. But we still have a very long way to go. I look forward to continuing to work with the Department of Defense to take advantage of more energy savings opportunities in the future.

This year's Defense authorization bill also includes significant resources to fight nontraditional threats, including the proliferation of nuclear, chemical and biological weapons and the growing challenge posed by cyber warfare. In addition, I am pleased a number of provisions I have been working on are currently included in the bill.

First, we are extending the Small Business Innovation Research Program for the next 8 years. This is critical to keep our defense manufacturing base and our small business innovators strong and competitive. This is a provision I have worked on. I commend Senators LANDRIEU and SNOWE for their leadership in the Small Business Committee for working on this effort and for working so hard to get this extension, a long-term extension, into the Defense authorization bill.

The bill also includes a version of the National Guard Citizen Soldiers Support Act, which will go far in providing our National Guard members with the unique services and support they need when they return home from the fight.

We also have a Navy shipyard modernization provision that has been introduced by Senators SNOWE and COLLINS and Senator AYOTTE and I, from New Hampshire. It also includes a $400 million cut to an unnecessary and underperforming weapons program that I have worked closely with Senators MCCAIN and BEGICH to include.

In addition, I was pleased to cosponsor Senator LEAHY's National Guard Empowerment Act, which gives a stronger voice to our 450,000 citizen soldiers in our National Guard.

Although we have a good bill before us, I believe it could be better, and I have introduced several additional amendments, two of which are designed to provide the nearly 214,000 women serving in our Armed Services with the reproductive health care they are currently denied under the law. Unfortunately, we were not able to get a vote on those amendments. But I hope to continue to work closely with the chairman and ranking member to address these important concerns.

In addition, I have worked closely with Senators COLLINS and CASEY on an amendment to address unsecured and looted stockpiles of tens of thousands of shoulder-fired missiles in Libya. If these weapons fall into the wrong hands, they pose a serious threat to civil aviation worldwide and to our deployed forces abroad.

I wish to thank the committee for including this provision in the legislation. I also wish to address, briefly, some of the concerns that have been raised with respect to the detainee provisions in the bill. The underlying legislation which I supported is an attempt to provide a statutory basis for dealing with detained members of al-Qaida and its terrorist affiliates.

In committee, we made some difficult choices on this extremely complex issue. But we did that in order to strike a bipartisan agreement to both protect our values and our security. I understand, similar to all the Members of this body, the concerns that have been raised on both sides of these issues.

Again, as a general principle, I believe our national security officials should have the flexibility needed to deal with the constantly evolving threat. But I also believe that clear, transparent rules of procedure are a bedrock legal principle of our constitutional system. I believe the military detention language in this bill includes a significant amount of flexibility for the executive branch, including a national security waiver and broad authorities on implementation.

Although I support the goals of the chairman and ranking member's underlying legislation, I also believe we can improve those provisions. I supported Senator FEINSTEIN's amendment that we just voted on which would restrict required military custody to only those terrorist suspects captured abroad.

I hope that despite the disagreements, we will continue to chart a bipartisan path forward with respect to these detainee provisions in the years ahead. We need to give our national security officials at home and abroad a clearly defined but yet flexible system which protects our constitutional rights and our national security.

In conclusion, I believe the 2012 Defense authorization bill before us will strengthen our national security, maintain our military power, keep our defense businesses competitive, help cancel and roll back wasteful spending, and support the men and women who defend our Nation every day. I hope the full Senate will quickly come to an agreement on the pending amendments and pass this important piece of legislation so it can go to the President's desk as soon as possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I call for the regular order with respect to the Merkley amendment No. 1174.

The PRESIDING OFFICER. The Senator has that right. That amendment is now the regular order.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Is it necessary to lay aside the pending amendment so I may engage in a colloquy?

The PRESIDING OFFICER. There is no need to do that.

AMENDMENT NO. 1206

Mrs. BOXER. Senator LEVIN and Senator MCCAIN, I wish to thank you very much. Before we engage in a colloquy, I simply want to show one chart which tells a story as to why Senator GRASSLEY and I are so pleased the Senators are willing to accept this by voice vote.

If I could ask Senator LEVIN to take a peek at this because I think this tells the story. This is what our military leadership makes, about $200,000. This is what the President of the United States as the Commander in Chief makes every year. This is what we have limited, and that was a reform, the top five defense contractors to—almost $700,000. But all the rest of the contract employees have absolutely no limit and can make $1 million a year. This is from the taxpayers.

Senator GRASSLEY and I feel, particularly in these times, but just as a matter of equity, we can fix it. We are very grateful to the two Senators for their willingness. So I would like to enter into a colloquy with Chairman LEVIN and, of course through him, Ranking Member MCCAIN.

I greatly appreciate their willingness to accept the Boxer-Grassley amendment No. 1206 that limits contractor employees' salaries to no more than the salary of the Commander in Chief, who is, of course, the President of the United States.

Mr. LEVIN. The Senator from California, my great friend, Mrs. BOXER, is correct. We are willing to accept the Boxer-Grassley amendment by voice vote.

Mr. GRASSLEY. Mr. President, there currently is no cap at all on the amount taxpayers will reimburse contractor employees for compensation except for just a handful of executives, and that limit is already too high at $693,951. That is far above what the chief executive of the U.S. Government gets paid at $400,000 a year.

So that is why we would cap it at no more than what the President can get. I presume the Senator from Michigan is aware of that and willing to help us on that process by adopting this amendment.

Mr. MCCAIN. Where would the congressional and staff salaries fit on that?

Mrs. BOXER. That is a good question. We would be well below. We would be about here.

Mr. MCCAIN. I thank the Senator.

Mr. LEVIN. In response to Senator GRASSLEY's question, I am very much aware of what he referred to.

Mr. GRASSLEY. I thank the Senator.

Mrs. BOXER. Mr. President, just in conclusion, did the Senator from Iowa and I have word from the Senator from Michigan that during conference negotiations with the House of Representatives regarding this bill, he will work to ensure that contractor employees are covered by a reasonable limit so taxpayers are not on the hook for excessive salary reimbursements?

Mr. LEVIN. You do, indeed.

Mrs. BOXER. I thank the Chairman.

Mr. GRASSLEY. I say thank you to the managers of the bill for helping us with this very important amendment.

Mr. LEVIN. I thank the Senator from California and the Senator from Iowa for their efforts in this area.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 1145

Mr. TESTER. Mr. President, first, I wish to start by thanking Chairman LEVIN and Senator MCCAIN for their continued dialog on a matter of overseas basing priorities. I very much appreciate their efforts to work to get at least the first steps in place for a thorough review of our overseas basing needs and finally getting some answers on the costs of these bases.

I also wish to especially thank my colleague from Texas, Senator HUTCHISON, for her continued leadership on this issue and for joining me on amendment 1145, a bipartisan effort to establish an overseas basing commission.

I realize there are concerns that this is not the right time to establish such a commission. However, I think it is the perfect time. So let me reiterate one point I mentioned yesterday. The commission would be charged with saving taxpayers money by identifying potential savings from reevaluating and potentially realigning our overseas military base structure and investments.

It is time we take some commonsense steps to identify and cut overseas military facilities and construction projects that have minimal negative impacts on our national security and military readiness. There is no better time than the present to begin this work. In a spirit of compromise and understanding that establishing a commission is not currently acceptable to some, I have worked with my colleagues to include an independent assessment of our overseas basing in this legislation.

I ask unanimous consent to speak now as in morning business for 5 minutes.

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

PAYROLL TAX HOLIDAY

Mr. TESTER. What I would like to speak on now is regarding the payroll tax votes that we are going to be taking later today or possibly even this evening. I wish to tell you exactly why I am going to vote against both of these proposals. I believe they are gimmicks, designed more for political posturing than what Congress ought to be doing right now; that is, working together to create jobs on a long-term basis; to create long-term certainty for businesses throughout this country, Montana included, while we work to cut our deficit.

The Democrat's proposal is the same included in the President's American Jobs Act, which I voted against several weeks ago. My reasons for voting against that proposal have not changed. It would temporarily extend the Social Security payroll tax holiday through 2012 and pay for it by raising taxes on the wealthy. Although I support making sure millionaires and corporations pay their fair share in taxes, I do not believe this particular proposal will create jobs or give our economy the boost it needs right now.

A small 1-year temporary tax cut will not give Main Street businesses the long-term certainty they need to grow and hire.

The proposal by the Senate Republicans also temporarily extends the payroll tax holiday but only by cutting certain Medicare benefits and cutting jobs and extending a current pay freeze for our folks who serve in public service. Neither of these proposals is right for Montana and neither will earn my vote.

I want to take you back to a few weeks ago, in November, when Congress unanimously passed my veterans jobs bill, called the VOW to Hire Heroes Act. The President has already signed it into law. I believe Congress has a responsibility to spend more time passing legislation such as that—real solutions that create real jobs, and not political theater.

I know we can do it. It was appropriate for us to work together for the veterans. It is also appropriate for us to work together to create jobs for all Americans.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1126

Mr. CHAMBLISS. Mr. President, I rise in opposition to the second Feinstein amendment, No. 1126, I believe. I have the privilege as serving as vice chairman on the Intelligence Committee with Chairman FEINSTEIN. We have a good working relationship and agree on most every issue that comes before the committee. I know the diligence and seriousness with which she takes every issue but particularly this one.

We have had a number of discussions about the fact that we have a lack of a detainee and interrogation policy in this country now, and I know she is concerned about that and is trying to make the situation better. I remain committed to work with her on a solution.

Unfortunately, I am going to have to oppose her amendment today because of my concerns about the limitation it imposes on the authority to detain Americans who have chosen to wage war against America. My first concern is that it appears, from the debate yesterday, that there is confusion among some Members about what this amendment does. For example, my colleague and friend from Illinois, Senator KIRK, argued that he is in favor of robust and flexible U.S. military action overseas, including against American citizens such as Anwar al-Awlaqi. Senator KIRK said he supports the Feinstein amendment, however, because he believes in a zone of protection for citizens inside the United States.

But the Feinstein amendment does not apply to only those American citizens who commit belligerent acts inside the United States; it would also prohibit the long-term military detention of American terrorists such as Anwar al-Awlaqi, who committed terrorist acts outside the United States. As a result, this amendment would have the perverse effect of allowing American belligerents overseas to be targeted in lethal strikes but not held in U.S. military detention until the end of hostilities. That makes no sense whatsoever.

I am also concerned about the ambiguity in the amendment's language and the uncertainty it will cause our operators, especially those overseas. The amendment exempts American citizens from detention without trial until the end of hostilities. But short of the end of hostilities, the amendment appears to allow detention without trial. Is it the Senator's intent to allow for some long-term detention of Americans without trial?

This is troubling because we don't know how the prohibition will be interpreted by our operators or the courts that will hear inevitable habeas challenges. Would the military be permitted to hold a captured belligerent for a month, a few months, or a few years, as long as it was not until the end of hostilities? Or would the military interpret the amendment as a blanket prohibition against military detention of Americans for any period of time? If the military rounded up American terrorists such as Adam Gadahn or Adnan Shukrijumah among a group of terrorists, would they have to let these Americans go because the military would not be permitted to detain them? Would more American belligerents be killed in strikes if capture-and-detain operations were perceived to be unlawful? I don't believe we can leave our operators with this kind of uncertainty.

Finally, we should all remember the provisions of the National Defense Authorization Act do not provide for a new authority to hold U.S. citizens in military detention. American citizens can be held in military detention under current law. Contrary to some claims that were made yesterday and debated on this floor, these Americans would be given ample due process through their ability to bring habeas corpus challenges to their detention in Federal court. The Supreme Court has held in the Hamdi case that the detention of enemy combatants without the prospect of criminal charges or trial until the end of hostilities is proper under the AUMF and the Constitution. Hamdi is a U.S. citizen. This is not a new concept. In reaching its decision, the Hamdi Court cited the World War II case, Ex parte Quirin, in which the Supreme Court held:

[C]itizenship in the United States as an enemy belligerent does not relieve him from the consequences of a belligerency.

In conclusion, I understand Senator FEINSTEIN's motivation, but I just don't believe this amendment does what she wants it to do, and there will be unintended consequences that could seriously hamper overseas capture operations. Mr. President, I urge my colleagues to oppose the Feinstein amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business.

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

ATF FAST AND FURIOUS OPERATION

Mr. GRASSLEY. For anybody interested in how long I might be, I would say roughly 10 minutes.

Mr. President, for nearly a year, I have been investigating the Bureau of Alcohol, Tobacco, Firearms, and Explosives' operation known as Operation Fast and Furious. I have followed up on questions from that investigation as the Senate Judiciary Committee held oversight hearings over the past few weeks with both Secretary Janet Napolitano and Attorney General Eric Holder. Each of them testified about the aftermath of the shooting of Border Patrol agent Brian Terry. I have sought to clarify with facts some of the half-truths that were said during these meetings.

Each claimed they were ignorant of the connection between Agent Terry's death and Operation Fast and Furious until my letters with whistleblower allegations brought the connection to light. However, documents that have come to light in my investigation draw those claims into question. I would like to address a couple of those discrepancies.

Secretary Napolitano went to Arizona a few days after Agent Terry's death. She said she met at that time with the FBI agents and the assistant U.S. attorneys looking for the shooters. She also said at that point in time that nobody knew about Fast and Furious. Yet documents show that many people knew about Fast and Furious on December 15, the day Agent Terry died.

Secretary Napolitano referenced the FBI agents looking for the shooters. The head of the FBI field division was present at the December 15 press conference about Agent Terry's murder. At that very press conference the FBI head told a chief assistant U.S. attorney about the connection to an ongoing ATF investigation. That same night, U.S. attorney Dennis Burke confirmed that the guns tied back to Operation Fast and Furious. These connections were made days before Secretary Napolitano's visit at that time. The very purpose of her visit was to find out more about the investigation.

So a very important question comes up: The Department of Homeland Security oversees the Border Patrol. Why wouldn't the Phoenix FBI head have told Secretary Napolitano that the only guns found at the scene of Agent Terry's murder were tied to an ongoing ATF investigation?

Let's not forget the U.S. Attorney's Office. Secretary Napolitano said she met with the assistant U.S. attorneys looking for the shooters. The chief assistant U.S. attorney for the Tucson office, which coordinated the Terry investigation, found out about the ATF connection directly from our Federal Bureau of Investigation.

So a very important question comes up that needs to be answered: Why would they conceal the Fast and Furious connection from Secretary Napolitano days later?

The Tucson office is overseen by the U.S. attorney for the District of Arizona, Dennis Burke, who confirmed to Tucson that guns came from Operation Fast and Furious. When Ms. Napolitano served as Governor of Arizona,

Mr. Burke served as her chief of staff for 5 years. Secretary Napolitano acknowledges that she had conversations with him about the murder of Agent Terry.

So a very important question comes up: Why would Mr. Burke conceal the Fast and Furious connection from Secretary Napolitano?

Even before Secretary Napolitano came to Arizona, e-mails indicate Mr. Burke spoke on December 15 with Attorney General Holder's deputy chief of Staff, Monte Wilkinson.

So a very important question is unanswered: Before finding out about Agent Terry, Mr. Burke e-mailed Mr. Wilkinson that he wanted to ''explain in detail'' about Fast and Furious when they talked. In that phone call—and this is a very important question—did U.S. attorney Burke tell Mr. Wilkinson about the case's connection to a Border Patrol agent's death that very day?

The next day, the Deputy Director of the ATF made sure briefing papers were prepared about the Operation Fast and Furious connection to Agent Terry's death. He sent them to individuals in Washington, DC, in the Deputy Attorney General's Office at the Justice Department. Within 24 hours, they were forwarded to the Deputy Attorney General. They were accompanied by personal e-mails from one of the Deputy Attorney General assistants explaining the situation.

Two weeks later, that Deputy Attorney General, Gary Grindler, was named Attorney General Holder's chief of staff. Yet a month and a half after Agent Terry's death, Attorney General Holder was allegedly ignorant of the Operation Fast and Furious connection to the murder of Agent Terry.

So a very important question is unanswered: Why wouldn't Mr. Grindler bring up these serious problems with Attorney General Holder, either as his Deputy Attorney General or as his chief of staff?

It is clear that multiple highly placed officials in multiple agencies knew almost immediately of the connection between Operation Fast and Furious and Agent Terry's death.

The Department of Justice and the Department of Homeland Security have failed to adequately explain why Attorney General Holder and Secretary Napolitano allegedly remained ignorant of that connection. Whether it is the Attorney General or the Secretary or members of their staff, somebody wasn't doing their job. Somebody wasn't serving their higher-ups as they should have been, as proper staff people.

In the case of Secretary Napolitano, either she was not entirely candid with me and others or this was a gross breach on the part of those who kept her in the dark. The Border Patrol and the Department of Homeland Security lost a man—Agent Terry being murdered. It was their right to know the full circumstances surrounding that from people who served under them.

No one likes the unpleasant business of having to fess up, but the FBI, ATF, and U.S. Attorney's Office owed it to Agent Brian Terry and his family to fully inform the leadership of the Department of Homeland Security. This was the death of a Federal agent involving weapons allowed to walk free by another agency in his own government.

Let me explain ''walking guns.'' The Federal Government operates under the rule of law, just like all of us have to live under that rule of law. There are licensed Federal gun dealers, and Federal gun dealers were encouraged to sell guns illegally to straw buyers and, supposedly, follow those guns across the border to somehow arrest people who were involved with drug trafficking and other illegal things. Two of these guns showed up at the murder scene of Agent Terry. So it is a very serious situation that we need to get to the bottom of.

If what I have just described, with all these unanswered questions, is not enough to brief up to the top of the Department, then I don't know what is. In other words, staff people ought to be doing their job or, if staff people were doing their job, then the Congress, in our constitutional job of oversight, is being misled.

I yield the floor.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from Rhode Island.

Mr. REED. Madam President, I ask unanimous consent to speak as in morning business.

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

PAYROLL TAX CUT AND UNEMPLOYMENT COMPENSATION

Mr. REED. Madam President, I rise today to urge my colleagues to extend and expand the payroll tax cut and to fully extend unemployment compensation insurance immediately. The payroll tax cut and full extension of unemployment insurance are two of our best tools for strengthening our economic recovery. We must work without let-up to pass this legislation before year's end.

Democrats are doing everything we can to create jobs and solve our unemployment crisis. Millions of Americans are still out of work, however, and looking for a job in the toughest economy since the Great Depression. Jobless benefits, which have been essential to millions of Americans as they search for a job, are set to expire at the end of this year.

Congress has never failed to extend benefits when unemployment is this high. Unfortunately, right now, Republicans are refusing to fully extend unemployment insurance, despite our Nation's 9 percent unemployment rate. In extending benefits, we should not do any less for the recently unemployed than we did for those who were unemployed in the last year or two. That is why I introduced the Emergency Unemployment Compensation Extension Act of 2011, which fully extends Federal support for unemployment insurance through 2012.

Extending benefits doesn't just make sense for a person who has been laid off, it makes sense for the economy as a whole. In fact, during today's hearing in the Senate Banking Committee, a business operator recognized that failing to extend unemployment insurance would have a negative impact on their business. Its was hard for him to quantify, but the sense he has, from operating a very dispersed convenience store operation throughout this country, is there would likely be a negative impact.

Those impacts will be magnified and multiplied throughout our economy. It will, ironically, cause not just those without jobs to lose benefits, it will also probably lead to further reductions in jobs as demand falls off and the need for employees, particularly in retail establishments, might lessen.

That is why, if Congress truly wishes to help strengthen our economy, we need to extend unemployment insurance now. The reason we must fully extend unemployment insurance is simple: If people don't have jobs, they can't spend money. If people can't spend money, businesses go under. If businesses fail, more people lose their jobs, and the downward spiral continues.

Extending unemployment insurance is not just the right thing to do, it is a wise investment with a strong rate of return that will provide a much needed economic boost to every State across the country.

Unemployment is, regrettably, a national crisis. This program will address a nationwide problem, and it will do it in an extraordinarily cost-effective way. The CBO has calculated that this has one of best returns on the dollar. The reason we must fully extend unemployment insurance is quite simple. People who are receiving unemployment benefits need that money to pay for groceries, to put some gas in the car, to take care of those immediate expenses. So, as the economists would say, their marginal propensity to consume—i.e., their willingness to take the dollar in and spend it out—is very high. As a result, this program not only helps families who are struggling, it also immediately injects dollars and demand into the economy. These programs have a real benefit.

We understand what we have to do to address our unemployment crisis and that is to grow the economy, and that means we must create jobs. Again, this program will help stimulate demand, will help keep people at work and perhaps even—we hope—put more people to work.

When it comes to the efficacy of this program, the bang for the buck, it is among the most effective. I referred earlier to some economists—in specific terms—Alan Blinder and Mark Zandi

have estimated that for every dollar spent on extending unemployment benefits, the economy grows by $1.61. The Economic Policy Institute has estimated that failing to extend UI benefits for a year could result in the loss of $72 billion in economic activity for 2012, which impacts 560,000 jobs across the country. The country cannot afford this hit. We cannot afford to miss the opportunity to maintain or create over 500,000 jobs. We cannot ignore the fact that, in this very critical budget situation, this is one of the most cost-effective ways to continue to stimulate demand and grow jobs in our country.

We also have to understand that we are dealing with a situation that is getting to be critical because we are running out of time. These benefits will expire at the end of the year, and we must move forward.

I think we can also do something else, and that is to improve this program. One way to improve it is to adopt a program that is very effective in my State of Rhode Island and several other States across the country, and that is work sharing. Work sharing is a voluntary program that prevents layoffs, it keeps people on the job, it helps employers retain skilled workers, and it strengthens the unemployment insurance system.

Over 20 States are utilizing this program. They estimate they saved 100,000 jobs in 2010 alone. Essentially what it does is it allows an employer—for example—to keep people on the job for 3 out of 5 days of the week, and the other 2 days are compensated for by the Unemployment Insurance Fund. The fund saves money, and the employer keeps these people in the workplace with all their skills and all their contributions to the firm. It is a win-win, and it is something over 20 States across this country have embraced. I think it should be national, and we have provisions in legislation I've introduced that would help extend it nationally.

Again, we cannot delay. I urge all of my colleagues to join me in taking the needed steps to help our economic recovery and extend our unemployment compensation insurance program before the end of this year.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. HOEVEN. Madam President, I rise to speak in regard to several amendments to the Defense authorization bill. First is in regard to the nuclear triad and the important role it plays in defense of our Nation and security of the world and also in regard to the Global Hawk unmanned aerial systems program and the important role it has for our forces, both today in our efforts around the world and what it means to us in the future.

First, in regard to amendment 1279 and the nuclear triad, this amendment was cosponsored by Senator TESTER, Senator ENZI, Senator BLUNT, Senator VITTER. Also, I ask unanimous consent that my colleague from North Dakota, Senator CONRAD, be included as a cosponsor of the amendment, as well as Senator BAUCUS of Montana.

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

Mr. HOEVEN. The amendment declares that the United States should maintain a triad of strategic nuclear delivery systems which includes missiles, bombers, and submarines. It also declares that it is the sense of the Senate that the President should budget for the modernization of those systems and the weapons they deliver.

Over the past couple of years, numerous statements have been made in support of the triad. The 2010 Nuclear Posture Review concluded that the United States needs the nuclear triad. The Senate, in its resolution of ratification for the New START treaty, declared that the United States needs the nuclear triad. And President Obama last February certified that he intends to modernize the nuclear triad. However, the administration is now currently conducting a further review of the role nuclear weapons play in defending U.S. national security—a miniature Nuclear Posture Review. It is important that the Senate reaffirm its commitment to the nuclear triad once again.

I am particularly concerned by statements that we can reduce our nuclear arsenal significantly below the requirements laid out in the New START treaty. Given the threats we face and the responsibility we have to the American people and to our allies, I believe we must retain the nuclear triad. The reasons are clear and compelling. We need missiles to provide a persistent, dispersed, and cost-effective deterrent. We need submarines to provide an invisible, mobile, and survivable deterrent. And we need bombers to provide a visible, long-range, recallable deterrent.

The bottom line is that the triad provides us with a safe, credible, reliable nuclear deterrent that renders any effort to eliminate or sidestep our retaliatory capabilities completely meaningless. And those benefits accrue not only to the United States but to our allies as well. The Congressional Strategic Posture Commission, the resolution of the ratification to the New START agreement, and the 2010 Nuclear Posture Review all concluded that the United States needs to maintain the triad.

The triad was developed out of a need to counter an immense threat from the Soviet Union, but it now gives us the flexibility to adapt to an ever-changing international security environment. And supporting a triad means supporting a program to maintain and enhance the weapons and a delivery system that make up the triad.

It is very important to point out—particularly given our fiscal situation—that the costs of updating and maintaining the weapons in the triad will not take up a very big percentage of the defense budget, particularly relative to the tremendous security advantages it provides. In fact, General Kehler, the head of Strategic Command, recently indicated his strong support for efforts to preserve the triad and modernize each of the associated delivery systems.

It is tempting to assume that because the Cold War is over, we don't need the nuclear arsenal anymore. In fact, people who defend the nuclear arsenal are often accused of being stuck in a cold war mindset. The truth is just the opposite. Only in a cold war mindset would we assume Russia is the sole reason we preserve our nuclear arsenal. Today, our nuclear deterrent counters a variety of threats that did not even exist during the Cold War, and it hedges against the emergence of new nuclear threats.

The decades following the end of the Cold War have made nuclear deterrence far more complicated than the old superpower confrontation of last century. We must now counter nuclear threats from multiple actors around the world.

First, consider China. China's military modernization program is built on a foundation of a large and growing nuclear arsenal. Intelligence estimates suggest that the number of warheads atop Chinese ICBMs capable of reaching the United States could more than double within the next 15 years. Recent reports indicate that China is fielding four different new nuclear-ready ballistic missiles. China is prioritizing the development of mobile land-based ICBMs and submarine-launched ballistic missiles. China's nuclear posture is also troubling. China has not defined what it would consider a minimum nuclear deterrent, making it difficult to understand the motivations behind China's nuclear force expansion and their modernization efforts.

Second, new nuclear powers such as North Korea and Pakistan further complicate how we calculate our need for deterrence. North Korea has pursued nuclear weapons using both plutonium and uranium and continues to develop long-range ballistic missiles that can threaten the United States. North Korea's nuclear arsenal forces our allies in East Asia—especially South Korea and Japan—to put a premium on the U.S. nuclear deterrent. Pakistan's nuclear weapons greatly complicate the security situation in central Asia and create a serious risk of nuclear proliferation. The emergence of these two nuclear powers is a cautionary tale about the unpredictable ripple effects of new players in the nuclear game and a strong reason why reductions to U.S. strategic forces should only be made with the greatest caution.

Third, nuclear proliferation will remain one of our foremost security challenges in the world. The IAEA reports that Iran has been researching and developing nuclear weapons, and it expressed serious concerns about the military dimensions of Iran's nuclear program. Syria was so serious about developing a nuclear weapon—probably with the help of North Korea and Iran—that in 2007 Israel had to destroy

a Syrian nuclear site. Terrorist groups and other rogue actors also seek the development or the acquisition of nuclear arms.

And, of course, fourth, we cannot yet forget about Russia. Under the provisions of the New START agreement, Russia can expand its nuclear force rather than pursue reductions. Russia intends to build a new heavy ICBM to be available by 2018. Russia expects to build eight new nuclear submarines, and it also plans on designing and building a new nuclear bomber.

We cannot afford to let our nuclear deterrent atrophy in light of so many nuclear threats. Once we lose our nuclear capabilities, it will be extremely hard to reconstitute them.

We need a reliable and credible nuclear arsenal. We need it to dissuade new nations from acquiring nuclear weapons. We need it to deter nuclear powers from using their weapons. And we need it to hold enemy arsenals at risk.

People may not always stop and think about the demands placed on America's nuclear deterrent, but they are real and they are extensive. We have nuclear weapons as a guarantor of the security of the American homeland. Our nuclear arsenal renders any plan to strike the United States with nuclear weapons sheer folly. The investments made over the last several decades continue to pay dividends by creating the space within which America can address other security threats.

Make no mistake, without a large nuclear arsenal other nations would move plans to strike the United States from the category of unthinkable to possibly thinkable.

Second, and nearly as important, the United States nuclear deterrent replaces the need for our allies to develop or acquire nuclear weapons, keeping the peace in critical regions around the world. East Asia is a particularly good example. The status of U.S. nuclear posture is a major concern in Japan. Despite assurances from the United States that our nuclear umbrella will continue to protect Japan, Tokyo is worried about even the most subtle changes in U.S. policy. During his most recent trip, Secretary Panetta publicly reiterated the U.S. commitment to protect South Korea with our nuclear umbrella and our nuclear deterrent is probably the only reason South Korea has not developed a nuclear capability in response to North Korea's nuclear programs.

I will conclude on the triad. Our nuclear deterrent has been the foundation of U.S. national security since World War II. The nuclear triad provides an incredible return on our investment and I urge the Senate to send a strong signal of support for the nuclear triad as laid out in amendment No. 1279.

AMENDMENT NO. 1358

Madam President, if I may very briefly also address the importance of the Global Hawk with a brief overview of amendment No. 1358. This amendment simply states that it is the sense of Congress that the Secretary of the Air Force should continue to abide by the guidelines set forth in the acquisition decision memorandum issued June 14, 2011 from the Office of the Secretary of Defense. That memorandum on Global Hawk, the RQ–4 Global Hawk, found that the Global Hawk UAS is essential to national security and that there is no other program that can provide the benefits to the warfighter that the Global Hawk can provide.

The Global Hawk is a vital intelligence surveillance and reconnaissance asset. The Global Hawk flies at high altitude. It can fly at extended ranges and for long periods of time, and it can carry a wide array of sensors simultaneously.

We have invested a lot of time and a lot of money in this platform and it is paying fast dividends. The Global Hawk is flown in a wide variety of missions all over the world in support for things such as CENTCOM operations, humanitarian relief efforts in Japan and Haiti, and extensively for operations in Libya. For these reasons and many more, my amendment stresses that the Air Force must continue to heed the conclusions of the June 14, 2011 acquisition decision memorandum on the RQ–4 Program. The RQ–4, which is Global Hawk, remains essential for United States national security and is irreplaceable.

The bottom line is America needs to support and continue the Global Hawk. Our commanders require as much information about the battlefield as they can get. The RQ–4 represents a new generation of ISR aircraft with unprecedented capabilities.

Finally, we must invest in this essential capacity precisely because budgets are tight. As the Pentagon concluded in June, the Global Hawk represents the most cost-effective way to meet the requirements of our warfighters now and in the future.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

AMENDMENT NO. 1274

Mr. SESSIONS. Madam President, I wish to address amendment 1274, which would clarify what I believe is existing law that the President has authority to continue to detain an enemy combatant under the law of war, following a trial before a military commission or an article III court, and regardless of the outcome of that trial. Let me explain what I mean.

As I said yesterday, even under the law of war the President has the authority to detain an enemy combatant, a prisoner of war, a captured enemy soldier, a belligerent. The President can detain him through the duration of the hostilities. The President is not required—the Commander in Chief is not required to release an individual whose sworn duty it is to return to his military outfit and commence hostilities again against the United States. That individual could be killed on the battlefield, but if captured, you are not required, under all laws of war that I am aware of and certainly the Geneva Conventions—you can maintain that individual in custody to prevent him from attacking you. But you can also try an individual who has been captured if that individual violated the rules of war.

For example, a decent soldier from Germany—many of them were held in my State of Alabama. They behaved well. They made paintings of American citizens, they did a lot of things, and did not cause a lot of trouble. They were in uniform and they complied with the rules of war and they were not tried as illegal enemy combatants.

But many of the terrorists today do not wear uniforms, deliberately target innocent men, women, and children, and deliberately violate multiple rules of war. Those individuals are subject, in addition to being held as a combatant, as an unlawful combatant. They can be prosecuted and they should be prosecuted. In World War II a group of Nazi saboteurs in the Ex parte Quirin case were let out of a submarine off, I think, of Long Island. They came into the country with plans to sabotage the United States. They were captured and tried by military commissions. Several were American citizens. A number of them—most of them, frankly—after being tried and convicted, were executed. The Supreme Court of the United States approved that procedure.

But recent cases demonstrate the potential problem we have today. One Guantanamo Bay detainee has already raised the question I have discussed before the military commission where he is being tried. Abd al-Rahim al-Nashiri, the alleged mastermind of the USS Cole bombing, was arraigned before a military commission on November 9. He was held not only as an al-Qaida, or a belligerent against the United States, but he was charged with a violation of the rules of war.

This was a group that sneaked into the harbor pretending to be innocent people and ran their boat against the Cole, killing a number of U.S. sailors.

I remember being at a christening of one of the Navy ships at Norfolk not long after this. I walked out of that area and I heard one of the sailors cry out: Remember the Cole. The hair still stands up on my neck when I hear it.

We have an obligation to defend our men and women in uniform. When they are out on the high sea or they are in a neutral port, they expect to be treated according to the laws of war and then they are murdered by an individual such as this.

This individual's lawyers filed a motion asking the military judge to clarify the effect of an acquittal, should the commission acquit him. He argued that the members of the committee had a right to know what would happen if he were acquitted because they might object to taking part in what he called a show trial if it turned out that he would continue to be detained at Guantanamo Bay.

There is another case in which the administration was almost confronted with the problem a year ago, in the case of a former Guantanamo detainee, an al-Qaida member named Ahmed Ghailani, who was responsible for the 1998 embassy bombings in Kenya and Tanzania. Most of us remember those early al-Qaida bombings against our embassies in Africa.

After the Justice Department chose to prosecute Ghailani in an article III civilian court and directed the United States Attorney not to seek the death penalty—I am not sure why that ever happened; we don't know—but the jury acquitted him on 284 out of 285 counts. Luckily, he received a life sentence on the single count of conspiracy, for which he was convicted.

But what if he had not been convicted? What if there was insufficient evidence to prove he committed a crime, but not insufficient evidence to prove he was a combatant against the United States? Al-Qaida has declared war against the United States, officially and openly. The U.S. Congress has authorized the use of military force against al-Qaida, which is the equivalent of a declaration of war.

What if he had received a modest sentence after being convicted and had credit for time served? What if he had been acquitted on all 285 counts? Would the President have been required to release him into the United States, if the government could not get some country to take him? That would be wrong. He was at war against the United States. He was a combatant against the United States. Like any other captured combatant, he can be held as long as the hostilities continue.

By the way, let me note, military commissions are open. If they decide to try one of these individuals—not just hold him as a prisoner of war but hold him and try him for violation of the laws of war—they get lawyers, they get procedural rights. The Supreme Court has established what those rights are. Congress has passed laws effectuating what the Supreme Court said these trials should consist of, and a mechanism has been set up to fairly try them.

But enemy combatants are not common criminals. If a bank robber is denied bail, he remains in jail awaiting a trial, a speedy public trial, with government-paid lawyers. Enemy combatants are not sitting in Guantanamo Bay awaiting trial by a military commission, or by an article III court. They are held in military custody precisely because they are enemies, combatants against the United States. They should continue to be held there as long as the war continues and as long as they do not remain a threat to return to the battlefield against the United States.

This is an important point, considering that 27 percent of the former Guantanamo detainees who have been released—161 out of 600—have returned to the battlefield, attacked Americans. This Nation has no obligation to release captured enemy prisoners of war when we know for an absolute fact that 27 percent of them have returned to war against the United States. How many others have but we do not have proof of it? That is what the whole history of warfare is.

Lincoln ceased exchanging prisoners with the South after he realized they had more soldiers in the South. It was not to his advantage to release captured southern soldiers who would return to the fighting, so he held them until the war was over. Under the laws of war, the President has the authority to prevent an enemy combatant from returning to the battlefield. That is consistent with all history.

This amendment—please, Senators, I hope you would note—would make it clear that the President simply has authority to continue to detain enemy combatants held pursuant to the rules of war, even though they may have been tried, regardless of where that trial would be held and what the outcome was, as long as, of course, they could prove they were an enemy combatant and violating the rules of war.

I would note one thing.

I see my friend, the Senator from California, is here and probably is ready to speak.

On the question of citizenship, can a citizen be held in this fashion? The Supreme Court has clearly held they may. But the Senator is offering legislation that might change that. My amendment does not answer that question. It simply says a combatant should be able to be held under the standard of a prisoner of war, a combatant, even if they had been prosecuted for violation of the laws of war and acquitted.

It is common sense. I believe the courts will hold that, but it is an issue that is out there. I think Congress would do well to settle it today.

I urge my colleagues to do so.

I thank the Chair, and I yield the floor. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill 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.

Mr. LEVIN. Madam President, in a few moments, Senator MCCAIN and I will be seeking unanimous consent that the following pending and germane amendments be considered en bloc, that the amendments be modified with the changes that are at the desk where applicable: Begich 1114, as modified; McCain 1220; Reed of Rhode Island 1146, as modified; Levin 1293, as modified; Boxer 1206; Chambliss 1304, as modified; Pryor 1151; Nelson of Florida 1236; Blunt 1133; Murkowski 1287.

Further, that the amendments be agreed to en bloc—we are not making that request now. We will be making that request in a few minutes. This is not the so-called managers' package, by the way. These are the pending germane amendments which have been before us for some time but which we believe have now been cleared, and there is no opposition; however, if there is, there is an opportunity for people to come down.

I would yield now to my friend from Arizona.

Mr. MCCAIN. Reserving the right to object, and I will not object, I thank my friend. I believe the Senator overlooked Brown of Massachusetts amendment No. 1090, I think, was agreed to be a part of that.

Mr. LEVIN. That was not on my sheet, but that is fine, and that would be added.

Mr. MCCAIN. I note the presence of our friend from Texas, who would like to voice his objections to the package of amendments which is pending which have been agreed by both sides because of his concerns about a particular amendment he had. I would like to hear from him in a minute.

I would like to say to my colleagues on this side of the aisle, if you have an objection, please come to the floor. We would intend to vote—or seek approval of what the distinguished chairman just proposed—at 5 after the hour. That gives them 15 minutes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, is there a unanimous consent request pending?

The PRESIDING OFFICER. There is not.

Mr. CORNYN. Thank you for clarification. I just wanted to make sure.

Madam President, I discussed with the distinguished chairman of the Senate Armed Services Committee and the distinguished ranking member my concerns that earlier I attempted to gain unanimous consent to modify my amendment regarding the sale of F–16s to Taiwan in order to make it germane. I was happy to do that in order to get a vote, but the chairman tells me there is an objection to that.

I wished to make clear that any amendment that is offered—whether now in this list or subsequently in the managers' package or otherwise—and is being treated differently than mine is, then I am going to object to unanimous consent.

Through the Chair, I would ask the distinguished chairman of the Armed Services Committee are there any amendments on this list that were modified in order to make them germane?

Mr. LEVIN. I doublechecked on this. The answer is no, and that is about as directly as I can say it. I checked with staff and the staff says they have been modified—in many cases as I indicated—but none in order to make them germane.

Mr. CORNYN. Madam President, I appreciate the direct response from the chairman. I will have no objection to

any amendment that is being offered that is not being offered as modified in order to make it germane. I hope my point is clear as mud.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I just wish to say I strongly support the amendment by the Senator from Texas, and I will do everything I can to see that this issue is raised. I cannot comprehend why we would not want to provide one of our closest allies with the equipment they need to defend themselves with the growingly aggressive mainland China exhibiting the characteristics of intimidation and bullying and perhaps threatening Taiwan.

I wished to state, first of all, my appreciation to both Senators from Texas, who have been very involved in this issue, and I wish to tell them I will do everything I can to make sure this amendment is adopted. We do need to send the signal that we support our friends.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I join with Senator MCCAIN in support of Senator CORNYN's amendment. Taiwan has been a strong ally of the United States. Senator MCCAIN said we would provide them military aircraft, but, in truth, they would buy it. They are our allies. They are friends. They are prepared to purchase from an American company legitimate military equipment that they could use to help maintain the freedom they have cherished on the island, and it is hard for me to understand how that would be objected to.

I just wish to say, as someone who has looked at these issues for some time as a member of the Armed Services Committee, I do believe Senator CORNYN—also a member of that committee—is correct, and I strongly support the amendment and urge my colleagues to vote for it, if and when we can get a vote.

I thank the Chair, yield the floor, and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1090

Mr. BROWN of Massachusetts. I have an amendment that has been accepted—almost—sort of kind of accepted—amendment No. 1090, which I would like to discuss briefly.

I thank Senators WYDEN and COONS for their bipartisan leadership as cosponsors of this amendment. I believe we are going to vote on it shortly, and I ask that it be accepted, either by vote or by unanimous consent.

It is a simple amendment that will make sure the National Guardsmen who get deployed will receive the housing allowances they need and deserve. This is a bipartisan amendment. The Defense Department has agreed that the situation needs to be fixed—something that recently was developed.

There is a little bit of history behind this, but I don't think it is important because Senator WYDEN and Senator COONS and I have taken the lead on this issue, which is critically important to providing the funds that have been taken merely by a change in the regulations. This has happened at a time, quite frankly, when our men and women who are fighting need that money.

I am offering this amendment as a result of a bill I introduced last September, entitled the ''National Guard Basic Allowance for Housing Equity Act.'' I introduced this legislation to fix an inequity that hurts National Guardsmen who are deployed. Merely as a result of their deployment, they could lose upward of $1,000 per month in their monthly housing allowance.

Basic Allowance for Housing, or BAH, is a benefit paid to members of the military to help offset the cost of local housing markets. When a servicemember is deployed, for example, BAH is necessary to help offset the cost of a mortgage or rent in a particular geographic area. Everyone in the military, especially families, rely on this benefit. This benefit is especially critical when servicemembers deploy because, as we know, the spouse is often at home and she or he is responsible for taking care of the bills.

What would my colleagues say if I said that because you are ordered to deploy to Afghanistan, for example, the Department of Defense is going to withhold $1,000 or more from your monthly housing allowance, a huge piece of your total household income—upward of $12,000 or more per year—because of a new policy interpretation? That is right. It is merely a new policy interpretation.

Because of a DOD oversight, over 800 Guardsmen—some even in the Presiding Officer's State and 40 in Massachusetts who are deployed to Afghanistan right now—are losing, in the middle of the battle, up to $1,000 per month in their housing allowance because they were ordered to deploy.

Title X mandates that full-time Guardsmen, when ordered to Active Duty for a contingency operation, even if there is no break in their active Federal service, must revert back to their home-of-record status rather than their current duty station. Because of this change in status, it alters a guardsman's basic allowance for housing on their monthly pay stub. Basically, guardsmen are being punished for being deployed to a war zone.

For example, take a full-time guardsman who is from Worcester. He calls Worcester, MA, home and probably votes there, but he is stationed in Washington, DC, let's say right down the street at the Pentagon. So he or she earns a housing allowance based on the cost of living in DC and, as we all know, it is higher than in Worcester, MA. Sounds pretty normal, pretty straightforward, right?

This guardsman is then ordered to Active Duty—to Federal status—for the purpose of deploying overseas. A new housing allowance rate kicks in that is based on his home of record back in Worcester, not where he or she was actually stationed, here in D.C.

As a result, the guardsman and his family immediately start losing up to $1,000 per month because of that deployment to serve their country. So full-time guardsmen are entitled to the BAH rate they are receiving at the duty station because it is where they and their dependents live, and that is often where the spouses will reside until that servicemember comes back. Obviously, family members are not going back to Worcester while the guardsman is stationed at the Pentagon or here in D.C.

This is not right. It is something DOD agrees with. Senator WYDEN and Senator COONS concur, and I appreciate their bipartisanship in moving this forward. I am all about finding savings, but the good thing is that this is no cost to the government. It is already budgeted in the DOD budget. I am not into savings that treat our service men and women unfairly.

So my amendment provides a simple, noncontroversial fix. It is germane. It is relevant. It helps people who are serving our country right now. It is bipartisan. It is how we should do things around here.

I am glad the DOD has realized this is a problem, and I hope my colleagues will move forward in a manner to make our citizens proud.

I wish to thank Senator MCCAIN for his effort in getting this important matter to our guardsmen who are serving presently overseas. It is a testament to his diligence. I thank Chairman LEVIN for putting up with the problems over the last few days, but it is important to the people. It is not about politics; it is about serving our men and women.

AMENDMENT NO. 1206

Mr. GRASSLEY. Madam President, at a time when the national security budget is under immense pressure, it is vitally important that we spend our defense dollars more wisely.

The Boxer-Grassley amendment will contain runaway spending in contractor salary reimbursements. Notice that I said ''salary reimbursements,'' not salaries.

Someone not familiar with government contracting might ask why it's any of our business what government contractors get paid, and I would agree if we're talking about what their company pays them out of its own pocket.

When most people hire a contractor to renovate their bathroom or re-shingle their roof, they find the one that does the best work for the least cost.

Having done that, you are not likely to ask or care what their cut is or what they pay their crew.

To the extent that government contracts work the same way, the same principle applies. Unfortunately, not all government contracts do work that way.

A large proportion of government contracts actually reimburse the contractor directly for the costs they incur, including for the salaries of their employees. These types of contracts are risky because contractors lose the incentive to control costs. They are only supposed to be used when a fixed price contract is not possible for instance, if the scope or duration of the work is not possible to determine at the outset.

Nevertheless, cost-reimbursement type contracts are used extensively by Federal departments and agencies.

The Defense Department alone accounted for over $100 billion in cost reimbursement type contracts in fiscal year 2010.

President Obama has criticized the widespread use of these types of contracts and has set a goal of slowing the growth and ultimately reducing their use.

He has made a little progress. However, we are talking about a small dent in a large bucket.

It's clear that cost type contracts are going to account for a major proportion of the dollars spent on federal contracting for the foreseeable future. As a result, we must take steps to limit unreasonable expenditures under these types of contracts.

Senator BOXER and I worked together to try to head off this problem back in 1997.

At that time, we proposed capping salary reimbursements at the salary level of the President of the United States.

However, a compromise was ultimately enacted that capped how much the top 5 highest earning contractor executives could charge the federal government for their salaries.

The cap was set at the median salary of the top five executives at companies with annual sales over $50 million, which must be recalculated annually.

Since that time, the cap has more than doubled from $340,650 to $693,951. That's 53 percent faster than the rate of inflation.

The House-passed version of the National Defense Authorization bill expands the current cap to all contractor employees, not merely the top five executives, closing a loophole that was being exploited.

The version of the DoD Bill before the Senate extends the cap only to the top 10 to 15 executives.

However, Senator BOXER and I think it's time to reconsider a fixed cap at the level of the President's salary, which I should add was doubled by Congress to $400,000 since our previous proposal.

That is more than generous.

Surely the taxpayers should not be asked to pay the salary of a contractor more than the President makes, which is twice what any cabinet secretary makes.

Keep in mind that this cap just limits how much Uncle Sam can be billed for, which is on top of whatever the company chooses to pay its employees out of its own pocket.

Not only would our straightforward cap save man-hours in the Office of Federal Procurement Policy, which has to gather the data every year to determine the current convoluted cap, but it would save millions of dollars that need not be spent.

Again, we cannot afford to go on wasting our increasingly limited defense dollars.

We have to be more aggressive in weeding out waste in defense spending and this is one unnecessary expenditure that we can easily eliminate in favor of higher priorities.

I urge my colleagues to join us in this commonsense cost cutting measure.

I yield the floor.

The PRESIDING OFFICER (Ms. KLOBUCHAR). The Senator from Arizona.

Mr. MCCAIN. Madam President, I thank the Senator from Massachusetts for his amendment. He has spent a great deal of time in his life serving in the National Guard, including spending time in Afghanistan recently. He understands the burdens our National Guard men and women bear. I am very grateful for his careful attention to their needs. This is clearly an issue that needed to be addressed. We are proud to have it as part of our legislation.

Again, my thanks to the Senator from Massachusetts as well as to my friend, Chairman LEVIN, for helping make this amendment possible.

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. 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.

AMENDMENTS NOS. 1114, AS MODIFIED; 1220; 1146, AS MODIFIED; 1293, AS MODIFIED; 1206; 1304, AS MODIFIED; 1151, 1236, 1133, AS MODIFIED; 1287, AS MODIFIED; AND 1090, AS MODIFIED

Mr. LEVIN. Madam President, I now ask unanimous consent that the following pending germane amendments be considered en bloc; that the amendments be modified with the changes that are at the desk, where applicable: Begich No. 1114, as modified; McCain No. 1220; Reed of Rhode Island No. 1146, as modified; Levin No. 1293, as modified; Boxer No. 1206; Chambliss No. 1304, as modified; Pryor No. 1151; Nelson of Florida No. 1236; Blunt No. 1133, as modified; Murkowski No. 1287, as modified; and Brown of Massachusetts No. 1090, as modified; further, that the amendments be agreed to en bloc.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendments (Nos. 1220, 1206, 1151, and 1236) were agreed to.

The amendments (Nos. 1114, 1146, 1293, 1304, 1133, 1287, and 1090), as modified, were agreed to, as follows:

AMENDMENT NO. 1114, AS MODIFIED

At the end of subtitle E of title III, add the following:

SEC. 346. ELIGIBILITY OF ACTIVE AND RESERVE MEMBERS, RETIREES, GRAY AREA RETIREES, AND DEPENDENTS FOR SPACE-AVAILABLE TRAVEL ON MILITARY AIRCRAFT.

(a) IN GENERAL.—Chapter 157 of title 10, United States Code, is amended by inserting after section 2641b the following new section:

''§ 2641c. Space-available travel on department of defense aircraft: eligibility

''(a) AUTHORITY TO ESTABLISH BENEFIT PROGRAM.—The Secretary of Defense may establish a program to provide transportation on Department of Defense aircraft on a space-available basis. The program shall be conducted in a budget neutral manner.

''(b) BENEFIT.—If the Secretary establishes such a program, the Secretary shall, subject to section (c), provide the benefit equally to the following individuals:

''(1) Active duty members and members of the Selected Reserve holding a valid Uniformed Services Identification and Privilege Card.

''(2) A retired member of an active or reserve component, including retired members of reserve components, who, but for being under the eligibility age applicable to the member under section 12731 of this title, would be eligible for retired pay under chapter 1223 of this title.

''(3) An unremarried widow or widower of an active or reserve component member of the armed forces.

''(4) A dependent that—

''(A)(i) is the child of an active or reserve component member or former member described in paragraph (1) or (2); or

''(ii) is the child of a deceased member entitled to retired pay holding a valid Uniformed Services Identification and Privilege Card and a surviving unremarried spouse; and

''(B) is accompanying the member or, in the case of a deceased member, is the surviving unremarried spouse of the deceased member or is a dependent accompanying the surviving unremarried spouse of the deceased member.

''(5) The surviving dependent of a deceased member or former member described in paragraph (2) holding a valid Uniformed Services Identification and Privilege Card, if the dependent is accompanying the member or, in the case of a deceased member, is the surviving unremarried spouse of the deceased member or is a dependent accompanying the surviving unremarried spouse of the deceased member.

''(6) Other such individuals as determined by the Secretary in the Secretary's discretion.

''(c) DISCRETION TO ESTABLISH PRIORITY ORDER.—The Secretary, in establishing a program under this section, may establish an order of priority that is based on considerations of military needs and military readiness.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2641b the following new item:

''2641c. Space-available travel on Department of Defense aircraft: eligibility.''.

(c) REQUIREMENT FOR COMPTROLLER GENERAL REVIEW.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a review

of the Department of Defense system for space-available travel. The review shall determine the capacity of the system presently and as projected in the future and shall examine the efficiency and usage of space-available travel.

(2) ELEMENTS.—The review required under paragraph (1) shall include the following elements:

(A) A discussion of the efficiency of the system and data regarding usage of available space by category of passengers under existing regulations.

(B) Estimates of the effect on availability based on future projections.

(C) A discussion of the logistical and managements problems, including congestion at terminals, waiting times, lodging availability, and personal hardships currently experienced by travelers.

(D) An evaluation of the cost of the system and whether space-available travel is and can remain cost-neutral.

(E) Other factors relating to the efficiency and cost effectiveness of space available travel.

AMENDMENT NO. 1146, AS MODIFIED

On page 114, strike line 2 and insert the following:

the study; and

(8) ensure the involvement and input of military technicians (dual status).

AMENDMENT NO. 1293, AS MODIFIED

At the end of subtitle C of title X, add the following:

SEC. 1024. TRANSFER OF CERTAIN HIGH-SPEED FERRIES TO THE NAVY.

(a) TRANSFER FROM MARAD AUTHORIZED.—The Secretary of the Navy may, subject to appropriations, from funds available for the Department of Defense for fiscal year 2012, provide to the Maritime Administration of the Department of Transportation an amount not to exceed $35,000,000 for the transfer by the Maritime Administration to the Department of the Navy of jurisdiction and control over the vessels as follows:

(1) M/V HUAKAI.

(2) M/V ALAKAI.

(b) USE AS DEPARTMENT OF DEFENSE SEALIFT VESSELS.—Each vessel transferred to the Department of the Navy under subsection (a) shall be administered as a Department of Defense sealift vessel (as such term is defined in section 2218(k)(2) of title 10, United States Code).

AMENDMENT NO. 1304, AS MODIFIED

Strike section 324 and insert the following:

SEC. 324. REPORTS ON DEPOT-RELATED ACTIVITIES.

(a) REPORT ON DEPOT-LEVEL MAINTENANCE AND RECAPITALIZATION OF CERTAIN PARTS AND EQUIPMENT.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense in consultation with the military departments, shall submit to the congressional defense committees a report on the status of the Drawdown, Retrograde and Reset Program for the equipment used in support of operations in Iraq and Afghanistan and the status of the overall supply chain management for depot-level activities.

(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:

(A) An assessment of the number of backlogged parts for critical warfighter needs, an explanation of why those parts became backlogged, and an estimate of when the backlog is likely to be fully addressed.

(B) A review of critical warfighter requirements that are being impacted by a lack of supplies and parts and an explanation of steps that the Director plans to take to meet the demand requirements of the military departments.

(C) An assessment of the feasibility and advisability of working with outside commercial partners to utilize flexible and efficient turn-key rapid production systems to meet rapidly emerging warfighter requirements.

(D) A review of plans to further consolidate the ordering and stocking of parts and supplies from the military departments at depots under the control of the Defense Logistics Agency.

(3) FLEXIBLE AND EFFICIENT TURN-KEY RAPID PRODUCTION SYSTEMS DEFINED.—For the purposes of this subsection, flexible and efficient turn-key rapid production systems are systems that have demonstrated the capability to reduce the costs of parts, improve manufacturing efficiency, and have the following unique features:

(A) VIRTUAL AND FLEXIBLE.—Systems that provide for flexibility to rapidly respond to requests for low-volume or high-volume machined parts and surge demand by accessing the full capacity of small- and medium-sized manufacturing communities in the United States.

(B) SPEED TO MARKET.—Systems that provide for flexibility that allows rapid introduction of subassemblies for new parts and weapons systems to the warfighter.

(C) RISK MANAGEMENT.—Systems that provide for the electronic archiving and updating of turn-key rapid production packages to provide insurance to the Department of Defense that parts will be available if there is a supply chain disruption.

(b) REPORT ON THE ALIGNMENT, ORGANIZATIONAL REPORTING, AND PERFORMANCE RATING OF AIR FORCE SYSTEM PROGRAM MANAGERS, SUSTAINMENT PROGRAM MANAGERS, AND PRODUCT SUPPORT MANAGERS AT AIR LOGISTICS CENTERS OR AIR LOGISTICS COMPLEXES.—

(1) REPORT REQUIRED.—The Secretary of the Air Force shall enter into an agreement with a federally funded research and development center to submit to the congressional defense committees, not later than 180 days after the date of the enactment of this Act, a report on the alignment, organizational reporting, and performance rating of Air Force system program managers, sustainment program managers, and product support managers at Air Logistics Centers or Air Logistics Complexes.

(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:

(A) Consideration of the proposed reorganization of Air Force Materiel Command announced on November 2, 2011.

(B) An assessment of how various alternatives for aligning the managers described in subsection (a) within Air Force Materiel Command would likely support and impact life cycle management, weapon system sustainment, and overall support to the warfighter.

(C) With respect to the alignment of the managers described in subsection (A), An examination of how the Air Force should be organized to best conduct life cycle management and weapon system sustainment, with any analysis of cost and savings factors subject to the consideration of overall readiness.

(D) Recommended alternatives for meeting these objectives.

(3) COOPERATION OF SECRETARY OF AIR FORCE.—The Secretary of the Air Force shall provide any necessary information and background materials necessary for completion of the report required under paragraph (1).

AMENDMENT NO. 1133, AS MODIFIED

At the end of subtitle H of title X, add the following:

SEC. _____. REEMPLOYMENT RIGHTS FOLLOWING CERTAIN NATIONAL GUARD DUTY.

Section 4312(c)(4) of title 38, United States Code, is amended—

(1) in subparagraph (D), by striking ''or'' at the end;

(2) in subparagraph (E), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following new subparagraph:

''(F) ordered to full-time National Guard duty (other than for training) under section 502(f) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned.''.

AMENDMENT NO. 1287, AS MODIFIED

At the end of subtitle C of title I, add the following:

SEC. 136. LIMITATION ON RETIREMENT OF C–23 AIRCRAFT.

(a) IN GENERAL.—Upon determining to retire a C–23 aircraft, the Secretary of the Army shall first offer title to such aircraft to the chief executive officer of the State in which such aircraft is based.

(b) TRANSFER UPON ACCEPTANCE OF OFFER.—If the chief executive officer of a State accepts title of an aircraft under subsection (a), the Secretary shall transfer title of the aircraft to the State without charge to the State. The Secretary shall provide a reasonable amount of time for acceptance of the offer.

(c) USE.—Notwithstanding the transfer of title to an aircraft to a State under this section, the aircraft may continue to be utilized by the National Guard of the State in State status using National Guard crews in that status.

(D) SUSTAINMENT.—Immediately upon transfer of title to an aircraft to the State under this section, the State shall assume all costs associated with operating, maintaining, sustaining, and modernizing the aircraft.

AMENDMENT NO. 1090, AS MODIFIED

At the end of title VI, add the following:

Subtitle D—Pay and Allowances

SEC. 641. NO REDUCTION IN BASIC ALLOWANCE FOR HOUSING FOR NATIONAL GUARD MEMBERS WHO TRANSITION BETWEEN ACTIVE DUTY AND FULL-TIME NATIONAL GUARD DUTY WITHOUT A BREAK IN ACTIVE SERVICE.

Section 403(g) of title 37, United States Code, is amended by adding at the end the following new paragraph:

''(6) The rate of basic allowance for housing to be paid a member of the Army National Guard of the United States or the Air National Guard of the United States shall not be reduced upon the transition of the member from active duty under Title 10, United States Code, to full-time National Guard duty under Title 32, United States Code, or from full-time National Guard duty under Title 32, United States Code, to active duty under Title 10, United States Code, when the transition occurs without a break in active service of at least one calendar day.''

AMENDMENTS NOS. 1105 AND 1158 WITHDRAWN

Mr. LEVIN. I ask unanimous consent now that the following two amendments be withdrawn: Collins No. 1105 and Collins No. 1158.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The amendments are withdrawn.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. VITTER. 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. VITTER. Madam President, I ask unanimous consent to speak for up to 10 minutes on a different topic than the Defense authorization bill.

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

NATIONAL FLOOD INSURANCE PROGRAM

Mr. VITTER. Madam President, I come to the Senate floor to discuss another very important issue for our economy, which is the National Flood Insurance Program.

The National Flood Insurance Program is a vital Federal program that helps provide flood insurance for properties all across the country. It is absolutely vital to citizens and to our economy, to the real estate market, to closings which cannot happen without this type of insurance in many instances. It is important all across the country. It is nowhere more important than in Louisiana, which, unfortunately, has pretty severe flooding risks.

In the last few years, we have extended this necessary and important program but sometimes with real fits and starts and even lapses of the program. As you know, Madam President, in 2010, it got worse than ever. Congress allowed the National Flood Insurance Program to lapse four times—for a total of 53 days—for no good reason. It was not a money issue; it was not a cost issue; it was not a deficit issue because continuation of the program along the current structure does not raise deficit and debt. But we had these deadlines that kept approaching, and we let, in many instances—in four instances—the deadline actually come and the program to lapse—four times in 2010, for a total of 53 days.

That had enormous negative consequences. Real estate closings that were scheduled to happen had to be canceled. Here we are in the middle of a horrendous recession—clearly the worst since World War II—led by problems in the real estate market, and we had good, solid real estate closings which had to be put off and canceled for no good reason. Really crazy.

We learned a little bit from that experience, and this year, in 2011, we have done better. We have continued the program without lapse. But I am afraid we are getting back into this habit of extremely short-term extensions, which brings with it the threat of lapses. We extended the program a few weeks ago, but we only extended it for the duration of the current CR, until this December 16. So, again, the program is set to completely expire nationwide this December 16.

The ultimate solution is a long-term, full reauthorization of the flood insurance program. I support that full 6-year bill, and we have voted out of the Senate Banking Committee a full, long-term, 6-year reauthorization bill. However, that is not going to pass into law between now and December 16, and it is pretty clear it is not going to pass into law for several months.

That is why I am urging all of us to come together in a bipartisan fashion in the meantime to pass a clean extension of the program for the remainder of this fiscal year, through September 30, 2012, or for some significantly long time within that year. I think that is needed right now to assure the real estate market there will not be disruptions, to take that threat and that uncertainty out of the market and out of the line of closings, that we want to encourage, we want to build, as we try to build up the real estate market and the economy in general.

Because I believe this is clearly the right path, I have done two things. First, I have filed that extension, that clean extension—a bill under my name—through September 30, 2012. This is very similar to the extension we passed in late 2010 to get us through that fiscal year to September 30, 2011. That was my bill. We passed it unanimously here in the Senate, again, to avoid these deadlines and disruptions, which hamper economic recovery. So I filed that bill. That would be a clean extension of the program through September 30, 2012.

The second thing I did today is write Senator REID, the majority leader, and ask him to focus on this important program and the need for this extension as soon as possible, and to hotline it through the Senate, to ask for unanimous consent from both sides, all Members, as we did about a year ago, pass this so we extend this important, vital program through September 30, 2012, or some similar, significant timeframe.

Again, I wrote Senator REID today to highlight this need. I will be following up with him. I have already followed up and talked to many other interested Members, starting with those leaders on the Banking Committee under whose jurisdiction this falls.

This should be a no-brainer. This should be a completely nonpartisan or bipartisan exercise. This is not some big ideological dispute. This is simply extending, continuing a vital, necessary program without in any way increasing deficit and debt, in a way that we take out uncertainty, take out the specter of this necessary program lapsing yet again, as it did four times in 2010, for a total of 53 days.

We cannot let this lapse. And, quite frankly, we should not even go near the deadline before we extend it because that in and of itself—even if we do not technically allow it to lapse—creates uncertainty and chaos in the real estate market and disrupts real estate closings.

We need every good real estate transaction we can get. We need every bit of additional economic activity we can get in this horrible economy, this recession that was led by a bad real estate market. We need to lead recovery with a recovering real estate market. So let's do this in a simple, straightforward, commonsense, bipartisan way in that effort. We did it around my bill in that nearly full-year extension about a year ago. Let's do it again.

In closing, I want to underscore I am fully committed to the full, detailed 6-year reauthorization bill. It has come out of the Senate Banking Committee. It needs to pass through the Senate. We need to resolve differences with the House. We need to pass that into law. But that is not going to happen between now and December 16, and it is not going to happen for several months. So, in the meantime, let's remove the threat of disruption, of lapses in the program, of uncertainty. All of that is extremely harmful in this very fragile economy.

Madam President, I yield the floor.

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. THUNE. 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. THUNE. Madam President, I ask unanimous consent to speak as in morning business.

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

KEYSTONE XL PIPELINE

Mr. THUNE. Madam President, yesterday a number of us—I think the number now is somewhere in the 37-to-38 ballpark of Senators—introduced legislation to expedite consideration of the Keystone XL Pipeline. What is interesting to me about all of this is that this is a project that has been literally reviewed and analyzed and studied and scrutinized now for the better part of 3 years.

In fact, they have had two comprehensive environmental evaluations and 3 years of study and review. Then, just recently, the Obama administration deferred a decision on the permit until after the 2012 elections, essentially putting off the decision for about 18 months.

Well, what is ironic and sort of interesting about that is this is a project which—after having been carefully vetted for the past 3 years, carefully reviewed, carefully studied, all of the environmental impact analysis done—would lead to all kinds of economic development for this country and job creation in many of the States that are impacted.

Our State of South Dakota happens to be one of those. The pipeline traverses South Dakota as it heads down to refineries in other places in the country. But it would benefit my State by generating significant amounts of State and local tax revenue, revenue that is much needed by many of the

local jurisdictions: school districts, counties, municipalities in the State of South Dakota.

So there is a tremendous benefit to the construction of this pipeline to the various States that are impacted simply as a result of the additional tax revenue that would be raised by it. Add to that, in my State of South Dakota, the hundreds of jobs that would be created, the half billion dollars of economic activity that it would generate—and this is very clear, from the State of South Dakota's standpoint, which is why I believe our Governor has weighed in behind this project, that this is something that ought to at least be decided. There is no reason why, no rational reason why, no logical reason why this project would be delayed for 18 months simply to get past the next election.

All of the work has been done. It seems to me at least there ought to be a decision made. We are talking about a $7 billion investment in this country and partly in Canada to get from where the oil sands are to get the oil to the refineries in the United States. If we look at the overall, as I said, economic impact, number of jobs created, it is pretty impressive—20,000 jobs, I think, is the estimate that it would create in this country.

Those are jobs that, frankly, many of these States could certainly benefit from. Not to mention the fact that we are doing business with someone who is favorable and friendly to us. Canada is our biggest trading partner. I think we do about $640 billion annually in bilateral trade with Canada. Canada is a country with which we have a very good, strong trading relationship. It strikes me at least that if we are going to get oil from somewhere, it makes sense to get it from a country such as Canada as opposed to some of the other countries around the world that are much less friendly to the United States.

In fact, the Keystone XL Pipeline would transport daily about 700,000 barrels of oil that would come through that pipeline. That is the equivalent of the amount that we get on a daily basis from Venezuela.

So if you are thinking about getting 700,000 barrels of oil from somewhere in the world, would it not make more sense to get it from Canada as opposed to Venezuela? I think in terms of what it does for our energy independence, for our energy security, dealing with a friendly nation, and making it more possible for our country to become less dependent upon foreign countries for this energy we need, it strikes me that at least this particular project makes a lot of sense.

You have not only the economic impact, in terms of the activity it would create in the various States that would be impacted by it, the number of jobs created—as I said, 20,000 jobs is the estimate, with a $7 billion initial investment—and all the tax revenue generated for State and local government along the way, but wouldn't it be nice if the United States got into the situation where we were actually an energy exporter?

Believe it or not, this is the first year in the last 62 years—and this is according to a story that ran in the Wall Street Journal yesterday—according to data released by the U.S. Energy Information Administration on Tuesday, the United States has sent abroad 753.4 million barrels of everything from gasoline to jet fuel in the first 9 months of this year, while it imported 689.4 million barrels. That means that, for the first time in 62 years, in 2011—if this trend continues—and it looks as though it will—we will have exported more energy than we imported. We are still a net importer of petroleum, or oil. Hopefully, we can change that in the future by developing these resources we have in this country, one of which is the Bakken Reserve in North Dakota, which is generating enormous amounts of oil for this country. So we are still a net oil importer.

In terms of refined gasoline and other products—refined energy—for the first time in 62 years, in 2011, we may be a net exporter of energy. I think that is an amazing data point, and it suggests this is something that could benefit enormously the American economy. Well, in order for that to happen, we have to have those resources we can get from the oil sands in Canada and bring them into the United States, where they are refined here and then either used here or sent abroad. But it is a way we can generate additional economic activity and jobs for our economy.

This is a quote from the Global Director of Oil, which tracks energy markets. He said this trend we are going to see this year, 2011—again, first time in 62 years we will be a net exporter of energy—he says it looks like a trend that could stay in place for the rest of the decade. That is a remarkable change in terms of the flow of energy from this country. The last time we were a net exporter of energy was during World War II and shortly thereafter. It has been over 60 years.

That is what a project such as this could do for our country—not just the immediate impact on those States through which this pipeline would traverse, in terms of the tax revenue that would be generated for State and local governments, but you also have the economic activity it creates in those States, the jobs it creates in those States, and what it does in order to move us increasingly away from dependence upon other countries in the world with whom we have, at best, shaky relationships to start with.

Doing business with our largest trading partner—a country with which we do enormous amounts of trade every single year—seems to me at least to be a much better solution to this country's energy needs than is getting that same amount of energy from other countries around the world.

Madam President, 700,000 barrels a day is what the pipeline would transport into this country. That is the equivalent that we get on a daily basis from Venezuela. This is a project that ought to be decided. Whether it is decided affirmatively—obviously, as you can tell, I believe it should be. There are people in South Dakota who are opposed to this. There have been ample opportunities for public forums and hearings for people to comment on it. There have been lots of opportunities for those opposed to it to weigh in.

Notwithstanding that, again, all the analyses have been done, the review done, and the studies are now completed, and they have indicated there is no reason for this not to move forward—particularly given the fact that the State of Nebraska has negotiated with TransCanada, the builder of the pipeline, an agreement that would take it in a different direction through that State. All those hoops have been gone through, and the hurdles have been cleared. There isn't a reason why this should be delayed another 18 months until after the next Presidential election—other than, purely and simply, for political reasons.

I hope we will be able to get good, strong support in the Senate for this legislation that would allow this to be decided in a more immediate timeframe. As I said, right now, the administration has punted until after the next election, 18 months down the road. This legislation would enable this to be decided in the next couple of months—the next 60 days or so—subject, obviously, to some requirements that are in there—obviously, the strongest environmental requirements. But all that having been reviewed and having been accomplished, it is time for a decision on this important project.

I hope we can get strong support in the Senate for this legislation. It has been introduced by a number of my colleagues, including the Senator from North Dakota, Senator HOEVEN, Senator JOHANNS from Nebraska, Senator MURKOWSKI from Alaska, and a number of others. I am a cosponsor. At last count, I think it has somewhere along the lines of 37 or 38 cosponsors. Incidentally, it passed in the House of Representatives already. So there is a vehicle out there that has passed one body of Congress. It is my hope we will be able to get action here in the Senate, and that it might be something we can do that would have an immediate impact on jobs.

We always talk about shovel-ready projects. This is a shovel-ready project. This is ready to go. They are ready to start construction of this project. It has been through in the last 3 years all of the process this government can require it to go through in order to make sure this project should move forward.

I think it is important for this body to act on this legislation and allow us to get to where we can get a decision on this project that will lead to more

economic activity, more economic impact, more jobs for Americans, more energy security for this country, and hopefully, at the end of the day, a lessening of the dangerous dependence we have on foreign sources of energy, which we want to get away from. I think it is a win-win. I congratulate the sponsors of the legislation for the thoughtful way they have considered this and put this legislation together. I hope it gets consideration in the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE ECONOMY

Mr. NELSON of Florida. Mr. President, here we are, stuck again, and I want to speak just a little bit about getting this country moving again and getting Americans earning again.

This great country of ours has endured a lot. We have endured despite the Civil War, the Great Depression, the two World Wars we have been in, the assassination of leaders, and the slaughter of innocents by terrorists. This great Nation of ours has confronted racism and civil unrest and political scandal at all levels, and always we have endured.

In the throes of the Great Depression, the words of President Roosevelt reassured most Americans when he said:

> This great Nation will endure as it has endured. It will revive and it will prosper.

Today, we are once again walking a rugged path, and the most recent example of the failure of the supercommittee has been the latest crash caused by super-rigid ideology and hyperpolitical partisanship. Truth be told, we are in a most difficult time in our Nation's economic life—still facing a decision of how to pay for an enormous debt. We owe this money mostly due to the misconduct of the money changers, the misuse of the Tax Code that favors special interests, and years of excessive spending. Yet there are Members of this Congress who propose we should first not address those underlying causes, and that those most responsible should not even have to pay their fair share toward reducing the debt.

Instead, they propose we first take away from Social Security savings and Medicare health coverage for the elderly, and that we pull back the hand this Nation compassionately extends to those among us who are less fortunate. That would seem somewhat to erase all the progress we have made since those words of President Roosevelt by declaring war not on poverty but on the poor, the middle class, and the elderly.

Because a host of our citizens face the grim problems of unemployment, the loss of their homes, and depletion of their savings, this Congress should fight any measure that unfairly inflicts pain on those least responsible for our present economic condition. The American people deserve a lot from their Congress. They deserve honesty. They expect us to work together, and they want action that is evenhanded.

So as we move forward, I hope all my colleagues in the Senate and in the House will be guided by the words of a young President Kennedy, who said:

> Let us not seek the Republican answer nor the Democratic answer—but the right answer.

In this spirit, can't we work to pull our Nation out of its financial doldrums? Can't we just ask: What is the right thing to do?

Is it right that household income for the average American is actually in decline? Is it right that a hedge fund manager pays a lower tax rate than the person who cleans his office? Is it right that an oil company gets to write off $11 billion on its tax return because it polluted the Gulf of Mexico? Is it right that the Congress cannot agree on a deficit reduction plan because of partisan politics?

The American people know what is right and they know what is not right. If we could just for 1 minute put all this partisanship aside and do what is right, then we might be able to balance our Nation's books to get this country moving again and to get Americans employed and earning again. While we are at it, we might just restore the American public's confidence in our government.

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

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

Mr. SESSIONS. I ask that I be allowed to speak as if in morning business.

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

FINANCIAL CRISIS

Mr. SESSIONS. Mr. President, our country is facing a very serious financial crisis.

We have seen what happened in Europe. We had some numbers on the stock market for a while. But if I understand what happened, there was a very real crisis facing the Europeans, and at the very last moment they took some action that was received positively.

But they are not out of the woods yet and neither are we. Our debt is surging. We have gone from 5 years ago a $161 billion deficit to a $450 billion deficit in President Bush's last year to $1.2 trillion in President Obama's first year, $1.3 trillion in President Obama's second year, $1.2 trillion this year, and over $1 trillion predicted in deficits next year.

We are going to have a proposal that comes before us to provide a payroll holiday, and it is sold as avoiding a tax increase. That is what the President says it is; we are avoiding a tax increase. So we ought to ask ourselves exactly how that is so and if it is so. Let me just say, I don't think that is accurate.

Two years ago, there was an employer payroll tax holiday that went only to the employer. It cost the Treasury $7.6 billion. Last year, as part of the final compromise, a bipartisan compromise, it was agreed that there would be a 2-percent tax holiday for working persons. So instead of paying 6-plus percent on your withholding tax, you would pay 4. That cost $111 billion for that year.

So the President said: If we don't extend that, we are going to have a tax increase. But is he accurate? No, not really. This year's proposal would be to reduce not the 4 percent but the 3.1 percent, cutting the 6.2 withholding to 3.1 for the employer and for the employee, and it would cost in 1 year $265 billion—$265 billion that would not be going into the Social Security trust fund so that those who retire would have the retirement funds they have been promised. It would not go there. It weakens Social Security, the integrity of the system, in my opinion.

But we are told not to worry, the U.S. Treasury will replace this $265 billion with Treasury money. But the problem is, the Treasury doesn't have any money. The Treasury is already in debt. The Treasury is going to add another $1 trillion to the deficit this year. So now it is going to be added to—$265 billion more in one fell swoop, in one bill, right here at the end of the session. If you don't vote for it, the President says, you are raising taxes on the American people. That is not an accurate statement.

In an economic sense, in my opinion, the real essence of this is the U.S. Treasury will borrow $265 billion. Then, it will direct the Social Security Administration to send that money out in the form of a reduced withholding amount to be paid by workers. It is a direct borrow and it is a direct delivery of money and it uses Social Security trust fund moneys as a vehicle to transfer the money. In an economic sense, it borrows $265 billion to spend.

How much is $265 billion? The supercommittee, the committee of 12, was trying to find $1,200 billion in savings over 10 years—not 1 year, 10 years. This one bill, this one proposal of $265 billion would be spent this 1 year.

To achieve the committee of 12's goal, they would simply have needed to have cut $120 billion a year for 10 years out of the entire Federal Government. They failed. Immediately now, the President and our majority leader are demanding this Congress pass an expenditure—unexpected, not before

done; nothing like such a large expenditure ever has come out of Social Security—to spend another $265 billion. How will we ever get our house in order? I wish I could figure out a way to be supportive. I don't see how I can be.

I am pleased the Republicans are trying to work up a bill that would not cost as much as $265 billion and some way to pay for it. But, in truth, if we are going to be able to cut spending to pay for any kind of new expenditure, wouldn't we be better to do what the committee of 12 tried to do: cut spending to reduce the debt? Shouldn't we be seeking ways, if we are going to raise taxes, to use those taxes to pay down the debt, instead of taking 10 years under the President's plan in a new tax that takes 10 years of that tax to pay for this 1 year's expenditure? That is what the proposal is.

I would say to my colleagues, this goes beyond partisan politics. This gets to the point: Are we in control of the Treasury and the spending of the United States of America? Can we defend what we are doing?

Don't think that is the only thing that is going to come up. I am the ranking Republican on the Budget Committee. We look at these numbers. This also will be taken care of in December, count on it: We are going to deal with the alternative minimum tax. That is going to cost $50 billion. We are going to deal with unemployment insurance, an additional $70 billion to extend those payments beyond 90-some-odd weeks. We are going to fix the doctors payment, because we have to. We can't cut the doctors that much, $21 billion. We are going to extend most, if not all, of the tax extenders we call them, $90 billion. The total is $500 billion.

Some of this we have been expecting to take care of. But we weren't expecting or planning in any way to have a continuation of the payroll holiday that is going to cost $265 billion. I just would say to my colleagues, when are we going to think more rationally about it?

I just heard: How are we going to pay for the AMT, unemployment insurance, doctors payments, and the tax extenders? Somebody said: We are going to count the savings from the war. The Congressional Budget Office will show a decline in expenses for the Iraq and Afghanistan war will be a savings. We can spend that. That is fraudulent, that is a gimmick, and it should not be acceptable.

Everybody knows the war costs are going to be coming down and we have been planning for that. We can't assume that money is available to spend willy-nilly. We were bringing the war costs down to bring the debt down, not to fund new spending. We need to bring the war costs down to try to reduce our debt and our deficit, not to fund new spending. But that is how they are going to do this, I have been told. I am not surprised because there is no other way they are going to do it.

I just would share that. We will be voting in a little bit on this issue. I don't know what the answer is. I don't know how to fix our problems, but I know one thing. We remain in denial. Our country is in greater debt crisis than we realize. Mr. Erskine Bowles and Alan Simpson of President Obama's debt commission say we are facing the most predictable financial crisis in our Nation's history as a result of our debt, and we need to get serious about how to fix it.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. I ask unanimous consent to speak as if in morning business.

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

FREEING ALAN GROSS

Mr. CARDIN. Mr. President, I rise to address the human rights issue of deep concern.

For 2 years, since December 3, 2009, an American citizen and a Marylander, Alan Gross, has been imprisoned by the Cuban Government. For 2 years, he has been held by the Cuban authorities.

Alan was in Cuba to help the country's small Jewish community establish an Internet and improve its access to the Internet, which would allow the community to go online without fear of censorship or monitoring.

After being held for 14 months without charge and then a cursory 2-day trial, he was convicted and sentenced to 15 years in prison. His appeal to the Cuban supreme court was denied in August of this year.

Alan Gross is a caring husband and a father, a devoted man who has dutifully promoted U.S. foreign policy interests while serving the needs of thousands of foreign citizens, from Afghanistan to Haiti, over a career that has spanned more than 25 years of public service.

Unfortunately, Alan has been caught in the middle of a conflict between two nations with a long and difficult relationship. But it is entirely unacceptable that his personal freedoms have been violated every day he continues to be incarcerated.

Alan's health has deteriorated during his imprisonment. He has lost 100 pounds and suffers from a multitude of medical conditions, including gout, ulcers, and arthritis, that have worsened without adequate treatment.

Last night, I had a chance to talk to his wife Judy, who had a chance to visit with her husband in Cuba earlier last month. Judy informs me that Alan Gross's health conditions are deteriorating and that he is in need of adequate health care. In addition, his mother and daughter are both struggling with serious health care issues, and his wife is struggling to make ends meet.

The Gross family should not have to suffer through such a trying period of time without Alan for support. Sentencing Alan Gross to 15 years behind bars also sentences his family to 15 years without a husband, father, and son. There is no reason for the Gross family to continue to suffer the consequences of political gamesmanship any longer. I urge the Cuban Government to remember that this is a real man and a family who are suffering.

I have already written the Cuban Government urging them, in the strongest possible manner, to immediately and unconditionally release Alan Gross. His continued imprisonment is a major setback in our bilateral relations, and it is unlikely any positive steps to improve that relationship can or will happen while he remains in prison.

As a Senator and as a Marylander and as a fellow human being, I urge the Cuban Government to see Alan Gross, who has dedicated his life to serving others, for who he is—a man who believed he was helping others by stepping in when he saw a need. Enough is enough. I call on the Cuban Government to release Alan Gross immediately and to allow him to return to his family.

Ms. MIKULSKI. Mr. President, Mr. Gross has worked with Cuban communities for many years. In 2009, he was working with USAID to assist Cuba's Jewish community by improving their access to the Internet. As a former social worker who has worked for 25 years in international development, he has a long record of helping people around the world to improve their lives.

He was arrested and held without charge for 14 months and later sentenced to 15 years for crimes against the state.

Mr. Gross is in failing health. He has lost 100 pounds and suffers from arthritis. He is being held in harsh conditions on trumped-up charges.

His family in Maryland has had very limited contact with him. They, too, have faced health challenges and are facing significant financial hardships.

I was hopeful that America and Cuba could move closer together—in trade, in community connections, and for individual families who have been separated. I thought these links would help open up Cuba, improve human rights, and enable their country to move toward democracy. Yet the case of Mr. Gross shows that Cuba is not serious about moving forward—for its own people or for its relations with the United States.

If Cuba wants to improve relations with the United States, they need to release Mr. Gross now. I will not support easing restrictions or sanctions on Cuba until Mr. Gross is allowed to come home to Maryland. I thank my colleagues for joining me in standing up for Alan Gross and urge the Government of Cuba to release him immediately.

I yield the floor and 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 the order for the quorum call be rescinded.

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

Mr. LEVIN. Mr. President, I ask unanimous consent that upon the conclusion of the postcloture time, the pending germane Feinstein amendment, No. 1126, be the pending business; that the Senate proceed to vote in relation to the following Feinstein amendments in the order listed: Feinstein amendment No. 1126, Feinstein amendment No. 1456; that there be 2 minutes equally divided in the usual form prior to the second vote—there will be more time than that prior to the first vote; that no amendment be in order to either amendment prior to the votes, and that all postcloture time be considered expired at 6 p.m.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Reserving the right to object, and I will not object, for the benefit of our colleagues, after spirited discussions for a long period of time we have reached a compromise with the Senator from California on language concerning detainees and there are certain Members on my side who wanted a vote on the original amendment as written. We modified it, so that there will be a vote on the original Feinstein amendment and then on the one which is modified by agreement among most of the people involved. There may be some who will still oppose it, but we have reached an agreement among the Senator from California, the chairman, myself, the Senator from Idaho, the Senator from South Carolina and others, that I think will be agreeable to the majority of the Members.

I suggest to my friend, the chairman, that when the vote starts at 6, perhaps we can line up the other remaining amendments, on some of which we hope to get voice votes, some of which will require recorded votes, as is the procedure under postcloture.

Mr. LEVIN. Mr. President, this has not yet been ruled on. I want to modify very slightly what I said in the unanimous consent request. I said that the Senate proceed to votes in relation to the following Feinstein amendments. I should have said the Senate proceed to votes on the Feinstein amendments in the order listed.

The PRESIDING OFFICER. Is there objection to the request, as modified?

Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I have two other unanimous consent requests before we turn this over to the Senator from California. I ask unanimous consent that it be in order to make a point of order en bloc against the list of amendments in violation of rule XXII that is at the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, the points of order are sustained and the amendments fall.

The nongermane amendments are as follows:

Amendments Nos. 1255, 1286, 1294, 1259, 1261, 1263, 1296, 1152, 1182, 1184, 1147, 1148, 1204, 1179, 1137, 1138, 1247, 1249, 1248, 1118, 1117, 1187, 1211, 1239, 1258, 1186, 1160, 1253, 1068, 1119, 1089, 1153, 1154, 1171, 1173, 1099, 1100, 1139, 1200, 1120, 1155, 1097, 1197; as being dilatory: No. 1174: as being drafted in improperly: No. 1291

Mr. MCCAIN. Mr. President, in the minutes remaining between now and 6 p.m. I hope we could roughly divide time on the amendment between the two sides.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I would hope and I ask the time between now and 6 o'clock be divided between the two sides. We will yield immediately to Senator FEINSTEIN.

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

Mr. LEVIN. Mr. President, I have one more unanimous consent.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENTS NOS. 1290 AND 1256 WITHDRAWN

Mr. LEVIN. I ask unanimous consent that the following amendments be withdrawn: Rubio amendment No. 1290 and Merkley amendment No. 1256.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendments are withdrawn.

AMENDMENT NO. 1126

Mr. LEVIN. I thank the Presiding Officer and all those who have been involved in working out this approach that allows us now to vote on two amendments, the original Feinstein amendment that is pending, plus an alternative which I think, hopefully, will command great support.

Mr. MCCAIN. I ask how much time is remaining?

The PRESIDING OFFICER. Eight minutes on each side.

Mr. MCCAIN. I wish to give 3 minutes to the Senator from South Carolina, preceded by 2 minutes from the Senator from Idaho, and 2 minutes for the Senator from New Hampshire if she arrives.

Mrs. FEINSTEIN. Shall I go first?

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I wish to explain what has happened this long afternoon. Originally some of us, namely Senators LEAHY, DURBIN, UDALL of Colorado, KIRK, LEE, HARKIN, WEBB, WYDEN, MERKLEY, and myself, realized that there was a fundamental flaw in section 1031 of the bill. There is a difference of opinion as to whether there is this a fundamental flaw. We believe the current bill essentially updates and restates the authorization for use of military force that was passed on September 18, 2001. Despite my support for a general detention authority, the provision in the original bill, in our view, went too far. The bill before us would allow the government to detain U.S. citizens without charge until the end of hostilities. We have had long discussions on this.

The disagreement arises from different interpretations of what the current law is. The sponsors of the bill believe that current law authorizes the detention of U.S. citizens arrested within the United States, without trial, until ''the end of the hostilities'' which, in my view, is indefinitely.

Others of us believe that current law, including the Non-Detention Act that was enacted in 1971, does not authorize such indefinite detention of U.S. citizens arrested domestically. The sponsors believe that the Supreme Court's Hamdi case supports their position, while others of us believe that Hamdi, by the plurality opinion's express terms, was limited to the circumstance of U.S. citizens arrested on the battlefield in Afghanistan, and does not extend to U.S. citizens arrested domestically. And our concern was that section 1031 of the bill as originally drafted could be interpreted as endorsing the broader interpretation of Hamdi and other authorities.

So our purpose in the second amendment, number 1456, is essentially to declare a truce, to provide that section 1031 of this bill does not change existing law, whichever side's view is the correct one. So the sponsors can read Hamdi and other authorities broadly, and opponents can read it more narrowly, and this bill does not endorse either side's interpretation, but leaves it to the courts to decide.

Because the distinguished chairman, the distinguished ranking member, and the Senator from South Carolina assert that it is not their intent in section 1031 to change current law, these discussions went on and on and they resulted in two amendments: our original amendment, which covers only U.S. citizens, which says they cannot be held without charge or trial, and a compromise amendment to preserve current law, which I shall read:

On page 360, between lines 21 and 22, insert the following:

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.

I believe this meets the concerns of the leadership of the committee and this is presented as an alternative. There are those of us who would like to vote for the original amendment, which I intend to do, as well as for this modifying amendment. They will appear before you as a side-by-side, so everyone will have the chance to vote yea or nay on the original or yea or nay on the compromise. As I said, I would urge that we vote yes on both.

This is not going to be the world as we see it postvote, but I will tell you this, the chairman and the ranking member have agreed that the modified language presented in the second vote will be contained in the conference; that they will do everything they can to contain this language in the conference.

In the original amendment—my original amendment—which affects only U.S. citizens, that is not the case. They are likely to drop that amendment. So I wish to make the point by voting for both, and I would hope others would do the same. I think a lot has been gained. I think a clear understanding has been gained of the problems inherent in the original bill. I think Members came to the conclusion that they did not want to change present law and they wanted to extend this preservation of current law not only to citizens but to legal resident aliens as well as any other persons arrested in the United States. That would mean they could not be held without charge and without trial. So the law would remain the same as it is today and has been practiced for the last 10 years.

I actually believe it is easy to say either my way or the highway. I want to get something done. I want to be able to assure people in the United States that their rights under American law are protected. The compromise amendment, which is the second amendment we will be voting on, does that. It provides the assurance that the law will remain the same and will not affect the right of charge and the right of trial of any U.S. citizen, any lawful legal alien or any other person in the United States. We have the commitment by both the chairman and the ranking member that they will defend that in conference.

There are those who say I wish to just vote for the original amendment. That is fine. I am not sure it will pass. I don't know whether it will pass, but in my judgment, the modification is eminently suitable to accomplish the task at hand and has the added guarantee of the support of the chairman, the ranking member in a conference committee with the House, which I think is worth a great deal. They have given their word, and I believe they will keep it. This RECORD will reflect that word.

AMENDMENT NO. 1456

I call up my amendment No. 1456, which is the modification.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN] proposes an amendment numbered 1456.

Mrs. FEINSTEIN. I ask unanimous consent that the reading of the amendment be dispensed with.

There are others who wish to speak.

The amendment is as follows:

On p 360, between lines 21 and 22, insert the following:

(e) 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.

I will yield the floor.

Mr. LEVIN. How much time is there on our side?

The PRESIDING OFFICER. One minute.

Mr. LEVIN. I wanted to have a couple minutes. I wonder if Senator MCCAIN is here, if there is an objection to extending this by 10 minutes. Is there objection? I am not going to do that without him here.

Madam President, if the other side is ready to go, they can start using the time on their side.

Mr. GRAHAM. How much time do we have?

The PRESIDING OFFICER. Eight minutes. You were allotted 3 minutes.

Mr. GRAHAM. Will the Chair warn me when I use 2 minutes.

The PRESIDING OFFICER. Yes.

Mr. GRAHAM. To Senator FEINSTEIN, I do believe the second provision is where we want to be, at least from my point of view. To my colleagues, I never intended by 1031 to change the law imposing a greater burden on American citizens or more exposure to military detention, nor did I wish to have additional rights beyond what exist today. The problem I have with Senator FEINSTEIN's amendment is it says the authority in this section for the Armed Forces of the United States to detain a person does not include the authority to detain a citizen of the United States without trial until the end of hostilities.

Here is my concern. When you tell a judge, as a defense attorney: I want my client's rights preserved regarding a civilian trial guaranteed in this section—and the end of hostilities could be 30 years from now—Your Honor, if these rights mean anything, they need to attach now—if the civilian rights attach immediately upon detention, what I think would be a problem is that the military interrogation is lost. American citizens are not subject to a military commission trial. A lot of people on my side didn't like that.

I do want to make sure American citizens go into article III courts, but the law has been since World War II, if a person joins the enemy, even as an American citizen, they are subject to being detained for interrogation purposes. That is my goal and that has always been my goal. We can detain an American who has sided with al-Qaida, if they are involved with hostile acts, to gather intelligence, and that is a proper thing to have been doing. It was done in World War II when American citizens helped the Nazis. If an American citizen wants to help al-Qaida involved in a hostile act, then they become an enemy of this Nation. They can be humanely detained, and that is my concern about the Senator's amendment; that it would take that away.

We have common ground on the second amendment, and at the end of the day, the Senate has talked a lot about different things. This has been a discussion about something important and I, quite frankly, enjoyed it.

I yield my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. First of all, let me say I think there has been an adequate compromise that has been reached, and we are to have a side-by-side to vote on which will give everybody the opportunity to express themselves. Let me say that every single one of us on this floor has a goal to protect the rights of U.S. citizens.

This country was founded by people who had just gone through some very difficult times with a government that was very oppressive on them, and they wrote the Constitution specifically to protect themselves and to protect individuals from the government. Those constitutional provisions today are as good as they were then. Every single one of us wants to see that American citizens are protected; that is, protections that take place in the case of criminal cases.

In the case of a war, in the case where a U.S. citizen joins enemy combatants and fights against the United States, there is a different standard—although a delicate division—that exists. If we look at the provisions of section 1031, where covered persons are defined, it is very clear it applies only to people who participated in the September 11, 2001, attack on the United States, and it applies to people who are part of it or who have substantially supported al-Qaida and the Taliban or its associated forces and have actually committed a belligerent act or have directly participated in the hostilities.

This is drawn very carefully and very narrowly so a U.S. citizen can—as my good friend from Kentucky always says—be able to file a writ of habeas corpus in the U.S. district court and have the U.S. district judge determine whether a person is actually an enemy combatant. If that U.S. district judge turns it down, that person does not necessarily go free. The U.S. Government can then charge them with treason or any one of a number of crimes, but they will be tried in the U.S. district court.

On the other hand, if they are found to be an enemy combatant by a U.S. district judge whose decision is reviewable by the circuit court and if the Supreme Court chooses—by the Supreme Court, if they are found to be the enemy combatant, then they will, indeed, be subject to this.

So this has been very narrow. People who are watching this and who are concerned about the civil liberties of U.S. citizens, as I am, as people in Idaho are, as people in every State in America are, under those circumstances, those people will be well protected. We will have the amendment here that everybody will have the opportunity to express themselves on.

I will yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, I would ask that there be 5 additional minutes, evenly divided, so we could have 3 minutes left on our side. I would split that with the Senator from Illinois.

The PRESIDING OFFICER. Is there objection?

Mr. RISCH. We have no objection.

Mr. LEVIN. Mr. President, we are soon going to be voting on two amendments. The first amendment that is proposed, the first Feinstein amendment restricts the authority that was available and is available currently to the President of the United States under the laws of war. That authority is if an American citizen joins a hostile Army against us, takes up arms against us, that person can be determined to be an enemy combatant. That is not me saying that; that is the Constitution. That is the Supreme Court of the United States in the Hamdi case: ''There is no bar to this Nation's holding one of its own citizens as an enemy combatant.''

The problem with the Feinstein amendment is that current authority of the President to find and designate an American citizen who attacks us, who comes to our land and attacks us as an enemy combatant would be restricted. We should not restrict the availability of that power in the President. Now we have an alternative. In the second Feinstein amendment, which I ask unanimous consent to be a cosponsor of—

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

Mr. LEVIN. In the second amendment, we have an alternative because now it would provide the assurance that we are not adversely affecting the rights of the U.S. citizens in this language. Senator MCCAIN, Senator GRAHAM, and I have argued on this floor that there is nothing in our bill—nothing which changes the rights of the U.S. citizens. There was no intent to do it, and we did not do it.

What the second Feinstein amendment provides is that nothing in this section of our bill shall be construed to affect existing law or authorities relating to the detention of the U.S. citizens or lawful resident aliens of the United States or any other persons who are captured or arrested in the United States. It makes clear what we have been saying this language already does, which is that it does not affect existing law relative to the right of the executive branch to capture and detain a citizen. If that law is there allowing it, it remains. If, as some argue, the law does not allow that, then it continues that way. We think the law is clear in Hamdi that there is no bar to this Nation holding one of its own citizens as an enemy combatant, and we make clear whatever the law is. It is unaffected by this language in our bill.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to thank my colleagues, Senators GRAHAM and LEVIN, and particularly Senator FEINSTEIN for working so hard to come to an agreement on section 1031. I was concerned that the United States would, for the first time in the history of this country, with the original language, authorize indefinite detention in the United States. But we have agreed to include language in this bill with the latter amendment that makes it clear that this bill does not change existing detention authority in any way.

It means the Supreme Court will ultimately decide who can and cannot be detained indefinitely without a trial. 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. Some of my colleagues see this differently, but the language we have agreed on makes it clear that section 1031 will not change that law in any way. The Supreme Court will decide who will be detained; the Senate will not.

I ask unanimous consent to be added as a cosponsor to the second pending amendment by Senator FEINSTEIN.

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

All time has expired on the majority side.

Mr. GRAHAM. How much time do we have remaining?

The PRESIDING OFFICER. There is 4½ minutes remaining.

Mr. GRAHAM. Mr. President, I would like to take the opportunity to end what I think has been a very good debate. Senator FEINSTEIN—and I know she is busy—said something on the floor that I wish to reiterate: that the second amendment which Senator DURBIN just suggested we have reached a compromise on, I am fully committed to making sure it stays in the conference report. Some folks in the House may have a problem, but I think it is good, sound law.

The goal for me has never been to change the law, to put an American citizen more at risk than they are today. It is just to keep the status quo and acknowledge from the point of view of the Congress that the Obama administration's decision to detain people as enemy combatants lies within the President's power to do so. The Court has said in In re Quirin and in the Hamdi case that at a time of war the executive branch can detain an American citizen who decides to collaborate with the Nazis, as well as al-Qaida, as an enemy combatant. They can hold them for interrogation purposes to collect intelligence. We don't have to take anybody into court and put them on trial because the goal is to protect the Nation from another attack.

The law also says no one, including an American citizen, can be held indefinitely without going to an article III court. Every person determined to be an enemy combatant by the executive branch has to have their case presented to an independent judiciary, and the government has to prove to a Federal judge by a preponderance of the evidence that they fall within this narrow exception. The government has lost about half the cases and won about half the cases.

My concern with Feinstein 1 is that it would change the law; that the law would be changed for the first time ever, saying we cannot hold an American citizen who has collaborated with the enemy for intelligence gathering purposes. I think homegrown terrorism is growing. If an American citizen left this country and went to Pakistan, got radicalized in a madrasah, came back and started trying to kill Americans, I think we should have the authority to detain them as with any belligerent, just like in World War II, and gather intelligence as to whether somebody else may be coming.

So that is what I want to preserve. With all due respect to Senator FEINSTEIN, I think her first amendment very much puts that in jeopardy. It is going to be confusing, litigation friendly, so let's just stay with what we believe the law is.

As to Senator DURBIN, he has one view, I have another, but we have a common view; that is, not to do anything to 1031 that would change the law. The ultimate authority on the law is not LINDSEY GRAHAM or DICK DURBIN, it is the Supreme Court of the United States. That is the way it should be, and that is exactly what we say here. We are doing nothing to change the law when it comes to American citizen detention to enhance it or to restrict whatever rights the government has or the citizen has. I think that is what we need to say as a nation.

One last word of warning to my colleagues, the threats we face as a nation are growing. Homegrown terrorism is going to become a greater reality, and we need to have tools. Law enforcement is one tool, but in some cases holding people who have decided to help al-Qaida and turn on the rest of us and try to kill us so we can hold them long enough to interrogate them to find out what they are up to makes sense. When we hold somebody under the criminal justice system, we have to read them their rights right off the bat under the law or we don't because the purpose is to gather intelligence. We need that tool now as much as at any other time, including World War II.

Thank you all for a great debate. I hope we can vote no on Feinstein 1 and have a strong bipartisan vote on Feinstein 2.

With that, I yield the floor.

The PRESIDING OFFICER. Is all time yielded back?

Mr. GRAHAM. If anybody wishes to speak, speak now.

All time is yielded back.

The PRESIDING OFFICER. Under the previous order, the question is on amendment No. 1126 offered by the Senator from California.

Mr. LEVIN. Could I just interrupt with a unanimous consent request that prior to each vote there be 2 minutes of debate equally divided in the usual form and that it start with the vote after this one.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

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

The question is on agreeing to amendment No. 1126.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 45, nays 55, as follows:

[Rollcall Vote No. 214 Leg.]

YEAS—45

Akaka	Franken	Moran
Baucus	Gillibrand	Murray
Bennet	Hagan	Nelson (FL)
Bingaman	Harkin	Paul
Boxer	Johnson (SD)	Reid
Brown (OH)	Kerry	Rockefeller
Cantwell	Kirk	Sanders
Cardin	Kohl	Schumer
Carper	Lautenberg	Shaheen
Casey	Leahy	Tester
Collins	Lee	Udall (CO)
Conrad	McCaskill	Udall (NM)
Coons	Menendez	Warner
Durbin	Merkley	Webb
Feinstein	Mikulski	Wyden

NAYS—55

Alexander	Grassley	Murkowski
Ayotte	Hatch	Nelson (NE)
Barrasso	Heller	Portman
Begich	Hoeven	Pryor
Blumenthal	Hutchison	Reed
Blunt	Inhofe	Risch
Boozman	Inouye	Roberts
Brown (MA)	Isakson	Rubio
Burr	Johanns	Sessions
Chambliss	Johnson (WI)	Shelby
Coats	Klobuchar	Snowe
Coburn	Kyl	Stabenow
Cochran	Landrieu	Thune
Corker	Levin	Toomey
Cornyn	Lieberman	Vitter
Crapo	Lugar	Whitehouse
DeMint	Manchin	Wicker
Enzi	McCain	
Graham	McConnell	

The amendment (No. 1126) was rejected.

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

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

The motion to lay upon the table was agreed to.

AMENDMENT NO. 1456

The PRESIDING OFFICER (Mr. UDALL of Mexico). Under the previous order, there will be now be 2 minutes of debate equally divided prior to a vote on amendment No. 1456 offered by the Senator from California, Mrs. FEINSTEIN.

The majority leader is recognized.

Mr. REID. I ask unanimous consent that all votes relating to the Defense authorization bill be 10 minutes in duration, including final passage.

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

The Senator from Michigan.

Mr. LEVIN. Mr. President, a number of my colleagues have asked where we are. We are going to have probably three or four more rollcall votes, hopefully including final passage. There is also a package—and everyone should listen to this because at least 70 of us are affected. There is a package of about 70 amendments which have been cleared. However, as of the moment, there is an objection to that package being adopted.

When I say the package has been cleared, what I am saying is there has been no objection to the substance of any of those 70 amendments. If there was an objection to the substance, they would not be cleared. So there is no objection to the substance of those approximately 70 amendments, but you should be aware, because most of us have amendments in that cleared managers' package, that unless that objection is removed, we cannot get that package adopted tonight.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I wonder if I might be able to make a few comments.

This amendment is a compromise amendment. I think it is actually a very good amendment. I want to thank the chairman of the committee, the ranking member, and Senator GRAHAM, who participated in a rather lengthy discussion, and this is the result.

The amendment—I will read it. It says:

Nothing in this section shall be construed to affect existing law or authority 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.

There is a commitment from both the chairman and the ranking member and Senator GRAHAM that they will defend this amendment in conference. So I hope everyone will vote for it because essentially it just supports present law, whether one supports the broad interpretation of present law, or one supports a more narrow interpretation of present law. There is no change in law.

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

The Senator from Michigan.

Mr. LEVIN. Mr. President, I very much support this amendment, I am a cosponsor, and I hope we can all vote for it. This does what we said—those of us who wrote this bill—the bill does and does not do all along. It does not change current law. This amendment reinforces the point that this bill does not change current law relative to this section of this bill. The section of this bill does not change current law relative to the detention of people in the United States.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I will not repeat what the chairman said except that I would like to thank Senator FEINSTEIN for her willingness to sit down and negotiate with us, and Senator DURBIN, who has been a passionate advocate. I would also like to thank all of the people who came to the floor so often. I think the Senate is a better institution as a result of the debate, and I am sure the Senate and the American people are much better informed on this very important national security aspect of this bill.

I thank my colleagues. I urge an aye vote.

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

Mrs. FEINSTEIN. I ask for the yeas and nays.

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

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 99, nays 1, as follows:

[Rollcall Vote No. 215 Leg.]

YEAS—99

Akaka	Franken	Mikulski
Alexander	Gillibrand	Moran
Ayotte	Graham	Murkowski
Barrasso	Grassley	Murray
Baucus	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Hatch	Paul
Bingaman	Heller	Portman
Blumenthal	Hoeven	Pryor
Blunt	Hutchison	Reed
Boozman	Inhofe	Reid
Boxer	Inouye	Risch
Brown (MA)	Isakson	Roberts
Brown (OH)	Johanns	Rockefeller
Burr	Johnson (SD)	Rubio
Cantwell	Johnson (WI)	Sanders
Cardin	Kerry	Schumer
Carper	Kirk	Sessions
Casey	Klobuchar	Shaheen
Chambliss	Kohl	Shelby
Coats	Landrieu	Snowe
Coburn	Lautenberg	Stabenow
Cochran	Leahy	Tester
Collins	Lee	Thune
Conrad	Levin	Toomey
Coons	Lieberman	Udall (CO)
Corker	Lugar	Udall (NM)
Cornyn	Manchin	Vitter
Crapo	McCain	Warner
DeMint	McCaskill	Webb
Durbin	McConnell	Whitehouse
Enzi	Menendez	Wicker
Feinstein	Merkley	Wyden

NAYS—1

Kyl

The amendment (No. 1456) was agreed to.

AMENDMENT NO. 1414

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate, equally divided, prior to a vote on amendment No. 1414, offered by the Senator from New Jersey, Mr. MENENDEZ, and the Senator from Illinois, Mr. KIRK.

The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, the Menendez-Kirk bipartisan amendment is sponsored by over half of the Members of the Senate. It makes it very clear that the Treasury Department's own determination under the PATRIOT Act that the Iranian Central Bank is the central source for money for Iran's nuclear march toward a nuclear weapon needs to be addressed. That is exactly what we do in this amendment. It creates the maximum effort against the Iranians, and it ensures that we do not have any oil disruption as a result of those sanctions by giving the President the opportunity to make a determination that there are sufficient oil supplies so as not to create a disruption, and it gives him in addition a national security waiver.

This is the maximum opportunity to have a peaceful diplomacy tool to stop Iran's march to nuclear weapons.

I urge my colleagues to give it a strong bipartisan vote.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I support the amendment. I think this amendment is vital at this time to send a strong signal to Iran, which recently tried to pull off the assassination of the Saudi Ambassador here in Washington, DC. It is long overdue, and it is too bad that the United States has to do it by ourselves rather than having the U.N. Security Council act. This is a strong amendment. I think it is very important and, again, I strongly support it.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. KIRK. Mr. President, this Menendez-Kirk amendment is a strong, bipartisan amendment. Over half of the Senate has formally cosponsored it. I urge its adoption, especially after the bomb plot in Washington, DC, the IAEA report on nuclear development in Iran, and the overrunning of our British ally's embassy site by Iran 2 days ago.

I yield the floor.

The PRESIDING OFFICER. Is all time yielded back?

Mr. MCCAIN. Yes.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 216 Leg.]

YEAS—100

Akaka	Gillibrand	Moran
Alexander	Graham	Murkowski
Ayotte	Grassley	Murray
Barrasso	Hagan	Nelson (NE)
Baucus	Harkin	Nelson (FL)
Begich	Hatch	Paul
Bennet	Heller	Portman
Bingaman	Hoeven	Pryor
Blumenthal	Hutchison	Reed
Blunt	Inhofe	Reid
Boozman	Inouye	Risch
Boxer	Isakson	Roberts
Brown (MA)	Johanns	Rockefeller
Brown (OH)	Johnson (SD)	Rubio
Burr	Johnson (WI)	Sanders
Cantwell	Kerry	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	Vitter
Cornyn	Manchin	Warner
Crapo	McCain	Webb
DeMint	McCaskill	Whitehouse
Durbin	McConnell	Wicker
Enzi	Menendez	Wyden
Feinstein	Merkley	
Franken	Mikulski	

The amendment (No. 1414) was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, if we have this consent agreement that I am going to ask in just a second, we will have four votes remaining for the evening, and that would be all. We will be in session tomorrow. We have some things we need to do procedurally, but there shouldn't be any votes tomorrow.

Mr. President, I ask unanimous consent that upon disposition of S. 1867, the Defense authorization bill, the Senate proceed to vote on the Reid of Nevada motion to proceed to Calendar No. 238, S. 1917; that there be 2 minutes equally divided between the two leaders or their designees prior to the vote; that upon disposition of the Reid motion to proceed, it be in order for the Republican leader or his designee to move to proceed to Calendar No. 244, S. 1931; that there be 2 minutes of debate equally divided between the two leaders or their designees prior to the vote; that both motions to proceed be subject to a 60 affirmative-vote threshold; finally, that the cloture motion relative to the motion to proceed to S. 1917 be vitiated.

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

AMENDMENT NO. 1209

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided prior to a vote on amendment No. 1209 offered by the Senator from Florida, Mr. NELSON.

The Senator from Florida.

Mr. NELSON of Florida. Mr. President, it is my understanding that both leaders have decided to accept this. So I don't see any need for a rollcall vote.

Mr. MCCAIN. I thank the Senator.

The PRESIDING OFFICER. Is all time yielded back?

Mr. LEVIN. Our time is yielded back.

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

The amendment (No. 1209) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1080 WITHDRAWN

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote on amendment No. 1080, offered by the Senator from Vermont, Mr. LEAHY.

The Senator from Michigan.

Mr. LEVIN. Mr. President, Senator LEAHY authorized me and told me he was withdrawing this amendment relative to military custody because of all of the actions which have been previously taken. I am very confident that is what he told me, so I am going to withdraw that amendment on his behalf.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

AMENDMENT NO. 1274

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote on amendment No. 1274, offered by the Senator from Alabama, Mr. SESSIONS.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, this amendment is crafted to simply clarify and affirm what appears to be the law, and logic tells us should be the law today.

If an individual is apprehended as a prisoner of war, they are detained under the laws of war until the conflict ends. But if, after being detained or when they are detained, it is determined they have committed crimes against the laws of war, they can be tried for those crimes.

There is a slight ambiguity. I think it is pretty clear the military would have a right to continue to detain them as a prisoner of war if they were not convicted of the much higher burden crime against the laws of war.

So the essence of this is simply to say what the judge said in the case involving the African Embassy bombing, the Ghailani case. The guy was acquitted of 284 out of 285 counts, and the judge said: You probably would be detained under the laws of war. So this would clarify that.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mr. LEVIN. Mr. President, I think this can be accepted on a voice vote. I have great problems with it, but I think there is probably a majority here that will favor it and a distinct minority perhaps that would not. But it is something which basically doesn't add to the existing law, which says this is theoretically possible, and all this does is say it is possible one could be acquitted of a criminal case and still be held as an enemy combatant.

Mr. PAUL. I object. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 41, nays 59, as follows:

[Rollcall Vote No. 217 Leg.]

YEAS—41

Alexander	Graham	Moran
Ayotte	Grassley	Murkowski
Barrasso	Hatch	Portman
Blunt	Hoeven	Pryor
Boozman	Hutchison	Risch
Burr	Inhofe	Roberts
Chambliss	Isakson	Rubio
Coats	Johanns	Sessions
Coburn	Johnson (WI)	Shelby
Cochran	Kyl	Thune
Cornyn	Lieberman	Toomey
Crapo	Lugar	Vitter
DeMint	Manchin	Wicker
Enzi	McConnell	

NAYS—59

Akaka	Blumenthal	Cardin
Baucus	Boxer	Carper
Begich	Brown (MA)	Casey
Bennet	Brown (OH)	Collins
Bingaman	Cantwell	Conrad

Coons	Landrieu	Reid
Corker	Lautenberg	Rockefeller
Durbin	Leahy	Sanders
Feinstein	Lee	Schumer
Franken	Levin	Shaheen
Gillibrand	McCain	Snowe
Hagan	McCaskill	Stabenow
Harkin	Menendez	Tester
Heller	Merkley	Udall (CO)
Inouye	Mikulski	Udall (NM)
Johnson (SD)	Murray	Warner
Kerry	Nelson (NE)	Webb
Kirk	Nelson (FL)	Whitehouse
Klobuchar	Paul	Wyden
Kohl	Reed	

The amendment (No. 1274) was rejected.

The PRESIDING OFFICER. The majority leader is recognized.

THE 9,000TH VOTE OF SENATOR FRANK LAUTENBERG

Mr. REID. Mr. President, the next rollcall vote will be the 9,000th vote cast by Senator FRANK LAUTENBERG. Senator LAUTENBERG, the senior Senator from New Jersey, has always been a fighter for his State, for progressive causes.

Before coming to the Senate, Senator LAUTENBERG served his country admirably in World War II, graduated from Colombia Business School, and became—and this is an understatement—a successful businessman.

The determination that made him successful in the private sector served him well in the Senate, where he worked tirelessly on behalf of the State of New Jersey. Frank tried to retire once—in 2000—but he just couldn't stay away from serving the State and the Nation and returned to the Senate a little over a year after he had retired.

As the top Democrat on the Senate Budget Committee, Senator LAUTENBERG negotiated the balanced budget amendment of 1997, which restored fiscal discipline while cutting taxes for students and families with children.

He has been at the cutting edge of environmental issues in this country since he came to the Senate. He has worked as a member of the Environment and Public Works Committee, doing a good job with highways, railways, and runways in New Jersey, and has done that in conjunction with being a member of the Environment and Public Works Committee but also the Appropriations Committee.

During his time in the Senate, he has done things that will be a lasting mark on his career, his legacy, forever. Our Nation's roads are safer because he was responsible for our passing the 21-year-old drinking age. He established a national drunk driving standard, a standard throughout the country. He banned triple-trailer trucks—so-called killer trucks—from the roads of New Jersey and many other States. He dedicated his time in the Senate to holding terrorists accountable and protecting New Jersey's ports, which are important to all of us, not only to New Jersey.

Senator LAUTENBERG has done many things. He authored the domestic violence gun ban—the only significant gun legislation to become law since the Brady bill—which prevents convicted abusers from buying guns.

The thing I recognize as very important—one of my boys couldn't stand the cigarette smoke in airplanes. Even though the airlines tried to set up a standard for smoking, you know that if there was smoking in the airplane, the fact that you were someplace else in the airplane didn't matter; everybody got the secondhand smoke. He fought this and banned smoking on airplanes, which I will always remember, and certainly my boy Key will always remember that.

For three decades, FRANK LAUTENBERG has left a mark that is very impressive, and his 9,000 votes will be something people will look back on and determine that FRANK LAUTENBERG is one of the most productive Senators in the history of our country.

Congratulations, Frank.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I would like to associate myself with the remarks of the majority leader and congratulate the Senator from New Jersey on this milestone in his long and very distinguished career here in the Senate.

(Applause.)

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, I know we want to hear from our colleague shortly. I wish to join in recognizing over a quarter of a century of distinguished service from the senior Senator from New Jersey on this 9,000th vote, which is only emblematic of the type of work he has done, which is with a view toward not the next election but the next generation, whether it is saving lives by raising the drinking age; whether it is allowing workers to understand and have the right to know the toxic chemicals they were working with and the community in which those toxic chemicals were located; whether it is making sure all of us don't have to breathe secondhand smoke on an airplane; whether it is making sure that those who pilfer the land and contaminated it were held responsible to clean it up in the Superfund or to have cleaner air to breathe, FRANK LAUTENBERG's legislation has touched millions of lives not only in New Jersey but across the Nation, and we salute him for his tremendous service.

The PRESIDING OFFICER. The senior Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank the leader for his kind words and the help he has given me to make some of the decisions we labored with. I thank my colleague, the Senator from New Jersey, BOB MENENDEZ, who has worked very hard to do his share in moving legislation and doing the right thing by the people in our State and our country.

One of the things that is, to me, pretty important is when I said to my mother in 1982: Mom, I am going to run for the U.S. Senate; I think there is an opportunity there. I was running ADP and in quite good company at the time. So she said: Frank, what do you need it for? I said: Mom, I don't need it. On the night of the election, we were gathered at my house in New Jersey—and my mother was then committed to a wheelchair—and she had tears running down her face. I said: Mom, you asked me why I needed it. I said: Why are you crying? She said: Because I always wanted you to win.

The people in New Jersey were very kind over these years, electing me five times to the Senate and giving me the honor and the opportunity to give something back to this country of ours.

I came from a family that was a poor family, immigrant family. My parents were young when they were brought by their parents to America. They were hoping that maybe good things could happen as a result of their becoming Americans. So I stand here and I am glad we are not taking a vote on whether I should be commended for this. I might not get all the votes you gave me because you didn't ask for unanimous consent, but nevertheless, it passed, and so I thank all of you, even those with whom I might occasionally disagree. It is shocking, but it does happen here. But I have respect for everybody who is sent here by their constituents from every State in the country and for their point of view. It doesn't mean I agree, but I have respect for the fact that we can say what we want in this free country of ours, say things that sometimes maybe we wish we had not said, but we have a chance to speak out on the things we believe in.

I thank all of my colleagues for their service and for the accolades given to me this night.

With that, I yield the floor.

AMENDMENT NO. 1087

The PRESIDING OFFICER. There will now be 2 minutes of debate on the Leahy amendment No. 1087.

Who yields time?

The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that the germane Leahy amendment No. 1087 be modified with the changes at the desk; further, that the amendment, as modified, be agreed to.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Reserving the right to object, could the manager clarify exactly what that is?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. There was a provision in the bill relative to the Freedom of Information Act which, by agreement, was modified.

Mr. THUNE. This doesn't have anything to do with the managers' package.

Mr. MCCAIN. It is agreeable on both sides.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment, as modified, is agreed to.

The amendment (No. 1087), as modified, is as follows:

Strike section 1044 and insert the following:

SEC. 1044. TREATMENT UNDER FREEDOM OF INFORMATION ACT OF CERTAIN SENSITIVE NATIONAL SECURITY INFORMATION.

(a) CRITICAL INFRASTRUCTURE SECURITY INFORMATION.—

(1) IN GENERAL.—The Secretary of Defense may exempt certain Department of Defense information from disclosure under section 552 of title 5, United States Code, upon a written determination that—

(A) the information is Department of Defense critical infrastructure security information; and

(B) the public interest in the disclosure of such information does not outweigh the Government's interest in withholding such information from the public.

(2) INFORMATION PROVIDED TO STATE OR LOCAL FIRST RESPONDERS.—Critical infrastructure security information covered by a written determination under this subsection that is provided to a State or local government to assist first responders in the event that emergency assistance should be required shall be deemed to remain under the control of the Department of Defense.

(b) MILITARY FLIGHT OPERATIONS QUALITY ASSURANCE SYSTEM.—The Secretary of Defense may exempt information contained in any data file of the Military Flight Operations Quality Assurance system of a military department from disclosure under section 552 of title 5, United States Code, upon a written determination that the disclosure of such information in the aggregate (and when combined with other information already in the public domain) would reveal sensitive information regarding the tactics, techniques, procedures, processes, or operational and maintenance capabilities of military combat aircraft, units, or aircrews. Information covered by a written determination under this subsection shall be exempt from disclosure under such section 552 even when such information is contained in a data file that is not exempt in its entirety from such disclosure.

(c) DELEGATION.—The Secretary of Defense may delegate the authority to make a determination under subsection (a) or (b) to any civilian official in the Department of Defense or a military department who is appointed by the President, by and with the advice and consent of the Senate.

(d) TRANSPARENCY.—Each determination of the Secretary, or the Secretary's designee, under subsection (a) or (b) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request, through the office of the Assistant Secretary of Defense for Public Affairs.

(e) DEFINITIONS.—In this section:

(1) The term ''Department of Defense critical infrastructure security information'' means sensitive but unclassified information that, if disclosed, would reveal vulnerabilities in Department of Defense critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to Department of Defense operations, property, or facilities, including information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected systems owned or operated by or on behalf of the Department of Defense, including vulnerability assessments prepared by or on behalf of the Department, explosives safety information (including storage and handling), and other site-specific information on or relating to installation security.

(2) The term ''data file'' means a file of the Military Flight Operations Quality Assurance system that contains information acquired or generated by the Military Flight Operations Quality Assurance system, including the following:

(A) Any data base containing raw Military Flight Operations Quality Assurance data.

(B) Any analysis or report generated by the Military Flight Operations Quality Assurance system or which is derived from Military Flight Operations Quality Assurance data.

Mr. LEAHY. Mr. President, I am pleased that the Senate has unanimously adopted my Freedom of Information Act, FOIA, amendment to the National Defense Authorization Act. This measure appropriately narrows the overbroad exemptions to FOIA contained in the bill and will help ensure that the American public has access to important information about potential threats to their health and safety at or near Department of Defense facilities.

I thank Senator LEVIN and Senator MCCAIN for working with me on this issue and including this language, with our agreed-to modifications, in the managers' package for this bill. I also thank the many open government groups from across the political spectrum that support this amendment, including OpentheGovernment.org, the Liberty Coalition, the Sunlight Foundation and the American Library Association.

For more than 45 years, the Freedom of Information Act has been a cornerstone of open government and a hallmark of our democracy, ensuring that the American people have access to their Government's records. 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.

I am particularly pleased that the language adopted by the Senate includes a public interest balancing test that requires the Secretary of Defense to consider whether the Government's interests in withholding critical infrastructure information are outweighed by other public interests. This improvement to the bill will help ensure that truly sensitive information is protected, while allowing the public to obtain important information about potential health and safety concerns.

This language adopted by the Senate strikes an appropriate balance between safeguarding the ability of the Department of Defense to perform its vital mission and the public's right to know. I am pleased that this measure has been included in this important legislation with the unanimous support of the Senate.

Mr. LEVIN. Mr. President, I move to reconsider the vote on the Leahy amendment.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1202, AS MODIFIED

The PRESIDING OFFICER. There will now be 2 minutes of debate on the Udall amendment.

Mr. LEVIN. Mr. President, there is a pending amendment which apparently the clerk will need to report at this point.

The PRESIDING OFFICER. The Udall amendment is pending.

Mr. LEVIN. Mr. President, I ask unanimous consent that the pending germane Udall of New Mexico amendment No. 1202 be modified with the changes at the desk; further, that the amendment, as modified, be agreed to.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment, as modified, is agreed to.

The amendment (No. 1202), as modified, is as follows:

At the end of subtitle B of title VIII, add the following:

SEC. 827. APPLICABILITY OF BUY AMERICAN ACT TO PROCUREMENT OF PHOTOVOLTAIC DEVICES BY DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—Section 2534 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(k) PROCUREMENT OF PHOTOVOLTAIC DEVICES.—

''(1) CONTRACT REQUIREMENT.—The Secretary of Defense shall ensure that each contract described in paragraph (2) awarded by the Department of Defense includes a provision requiring any photovoltaic devices installed pursuant to the contract, or pursuant to a subcontract under the contract, to comply with the provisions of chapter 83 of title 41 (commonly known as the 'Buy American Act'), without regard to whether the contract results in ownership of the photovoltaic devices by the Department.

''(2) CONTRACTS DESCRIBED.—The contracts described in this paragraph include energy savings performance contracts, utility service contracts, power purchase agreements, land leases, and private housing contracts pursuant to which any photovoltaic devices are

(A) installed on property or in a facility—owned by the Department of Defense;

''(B) generate power consumed by the Dept of Defense and counted toward Federal renewable energy purchase requirements

''(3) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS.—Paragraph (1) shall be applied in a manner consistent with the obligations of the United States under international agreements.

''(4) DEFINITION OF PHOTOVOLTAIC DEVICES.—In this subsection, the term 'photovoltaic devices' means devices that convert light directly into electricity.

''(5) EFFECTIVE DATE.—This subsection applies to photovoltaic devices procured or installed on or after the date that is 30 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012 pursuant to contracts entered into after such date of enactment.''.

(b) CONFORMING REPEAL.—Section 846 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2534 note) is repealed.

Mr. UDALL of New Mexico. Mr. President, I thank the chairman for working with me on this amendment. I think he gave us a modification that is a good one. This amendment I offer

with Senator SCHUMER and Senator SANDERS closes the Buy American loopholes, and applies Buy American requirements to solar projects that are funded by the Department of Defense to meet energy goals in this bill. If American taxpayer funds are used to improve our military bases' energy security, then American solar firms should have the ability to compete.

I ask unanimous consent that my full statement be printed in the RECORD.

Mr. UDALL of New Mexico. Mr. President, solar power increases energy security for American military installations and our troops in the field. With solar power, our military is less dependent on the surrounding electricity grid or fuel supplies for generators. As a result, the Department of Defense is a leader on utilizing solar power—not for environmental reasons, but for energy security reasons.

However, if we are going to use taxpayer funds to support military solar power—which also qualifies for federal solar tax incentives—we must provide a level playing field for U.S. solar manufacturers in the contracting process. Last year's Defense Authorization bill took an important step, by clarifying that DOD's Buy American Act requirements apply to solar.

Previously, when solar was installed on DOD property, Buy American would not apply because DOD purchases the power, not the panels. DOD uses that arrangement for two reasons—first, it spreads the cost out through long term power purchase agreements instead of up-front costs; second, it allows the project to use tax credits DOD cannot use.

While last year's bill attempted to fix this situation, it left two loopholes. First, the Buy American requirements from last year's bill are limited ''to the extent that such contracts result in ownership of [solar] devices by DOD.'' The nature of power purchase agreements means that often this requirement is not fulfilled, thus allowing Chinese solar makers to undercut bids for DOD funded solar projects.

Second, last year's provision also only applied when ''reserved for the exclusive use'' of DOD for the ''full economic life'' of the device. Solar power projects may sometimes sell back to the grid, and DOD may use them for 20 years, when they are warranted for 25. The combined effect of these loopholes is that Buy American does not currently apply to DOD-funded solar.

The amendment I am offering with Senator SCHUMER and SANDERS closes these loopholes and applies Buy American requirements to solar projects that are funded by DOD to meet the energy goals in this bill.

If American taxpayer funds are used to improve our military bases' energy security, American solar firms should have an ability to compete. We know that other nations like China are spending vast resources to become leaders in the solar power market. They do not play by our trade rules, and they are taking advantage of our taxpayer funds.

Think about it this way: China does not spend its tax dollars on U.S. solar panels at Chinese military bases. Why should Congress provide market access that is not extended to U.S. manufacturers?

This amendment halts that practice, while maintaining all existing provisions of the Buy American Act: Nations who are in the WTO are not discriminated against—''Buy American'' does not bar nations that allow reciprocal access to U.S. firms to their government procurement. Existing exemptions such as availability and cost still apply, so we do not expect this to harm DOD's procurement in any way.

Our amendment is supported by a strong coalition of U.S. solar manufacturers and U.S. workers.

I thank Senator SCHUMER and his staff for working with us, along with Chairman LEVIN and his staff, and I urge the Senate's support.

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

Mr. UDALL of New Mexico. I thank Senator MCCAIN, I thank Senator LEVIN, and I appreciate their help on this amendment.

FOREIGN SUBSIDIARIES OF U.S. PARENT COMPANIES ACTIVE IN IRAN

Mr. LAUTENBERG. Mr. President, I wish to engage in a colloquy with my friend, the distinguished chairman of the Senate Banking Committee, regarding U.S. companies that continue to do business with Iran. I know the chairman shares my concern about Iran's continued violations of international norms. As the International Atomic Energy Agency's recent report starkly highlights, Iran continues to work to build a nuclear weapon despite the current sanctions in place. While we have made great strides in strengthening sanctions on Iran, more work clearly needs to be done to place pressure on Iran to change its behavior. For the past 7 years, I have been working to close a loophole in current law that allows foreign subsidiaries of U.S. companies to continue doing business with Iran without facing the same penalties that would be placed on the parent company. I have now filed an amendment to the National Defense Authorization Act for Fiscal Year 2012 currently under consideration to try and close this loophole once again. Although I am not going to call for a vote on this amendment at this time, it is time we work to close this loophole once and for all.

Mr. JOHNSON. I thank Senator LAUTENBERG for his longstanding leadership on this issue. It is timely for him to raise it again now in the wake of the IAEA's recent report on Iran's illicit nuclear activities and in the midst of our efforts in the Banking Committee to ratchet up the pressure on Iran's leaders through additional sanctions. As President Obama noted last week when he imposed a new round of sanctions using the tools Congress gave him, Iran's government has persistently refused to abide by its international obligations, and it is time to turn up the heat in an effort to persuade its leaders to come clean on their nuclear program. While U.S. sanctions enacted last year, multilateral sanctions, and other efforts have slowed Iran's nuclear program and damaged its key revenue-generating energy sector, it remains my urgent priority to strengthen sanctions further to ensure that Iran effectively has no choice but to change its current path. That is why we are acting to sanction Iran's Central Bank today as well. On the issue you have raised, I think it is long past time for U.S. subsidiaries to withdraw from doing business in Iran. That is already happening due to U.S. and other international pressure on the business and financial sectors. Firms realize the huge risks this activity poses, reputationally and otherwise, to their companies. I note that it is already a violation for American subsidiaries to engage in sanctionable activity in Iran's energy sector and certain other activities under U.S. sanctions laws. It is also a violation of U.S. trade law for a U.S. firm to do business of any kind in Iran via a subsidiary. What that means is that if a U.S. parent is acting through its subsidiary, directing its activity, that violates U.S. law. The balance that has been struck so far is that we have directed our law, including our trade embargo, to U.S. companies and what U.S. companies do. Foreign subsidiaries are not, by definition, U.S. persons. But I agree with you that we can and should do more to stop the foreign subsidiaries of American companies from doing business with Iran, and I intend to address this problem in our upcoming legislation to expand Iran sanctions.

Mr. LAUTENBERG. My amendment would have applied the same penalties that can be imposed on U.S. companies that violate the U.S. trade ban with Iran to foreign subsidiaries of U.S. companies. Does the chairman agree that this loophole remains an issue that must be addressed?

Mr. JOHNSON. I agree that we must address the problem of foreign subsidiaries of U.S. companies doing business in Iran not being penalized for it under U.S. law. I know that, as in the past, there will be opposition from some in the business community, and elsewhere including European and other foreign governments who have long objected to the extraterritorial application of U.S. laws to reach companies organized under their jurisdiction. They will argue that the activities of U.S. subsidiaries are not legally U.S. persons, but are rather foreign persons organized under other countries' laws, and so should not be reached by U.S. law. But I am committed to working with my friend and with my committee members to address this issue.

Mr. LAUTENBERG. I thank the chairman. As we know, Iran funds Hamas, Hezbollah, and other terrorist

organizations. We should not allow American-controlled companies to provide cash to Iran so that they can convert these funds into bullets and bombs to be used against us and our allies. It is inexcusable for American companies to engage in any business practice that provides revenues to terrorists, and we have to stop it. I look forward to working with Chairman JOHNSON to close this loophole.

Mrs. FEINSTEIN. Mr. President, I rise to respond to a colloquy yesterday that occurred between Senators AYOTTE, LIEBERMAN, and GRAHAM regarding amendment No. 1068 offered by Senator AYOTTE to the Defense authorization bill.

Senator AYOTTE's amendment would eliminate measures that provide our interrogators with the guidance and clarity they need to effectively solicit actionable intelligence while upholding American values. In doing so, the amendment would override the better judgment of our military and intelligence professionals in a manner that will harm, not improve, our short- and long-term security.

Yesterday, Senator LIEBERMAN said on the Senate floor that he wants prisoners taken captive by the United States to be ''terrified about what is going to happen to them while in American custody.'' He also said he wants ''the terror they inflict on others to be felt by them.'' I believe that such statements are antithetical to fundamental American values. I firmly believe that America will not and cannot lower itself to the level of terrorists. To do so would be to abandon our most cherished principles and what our country stands for.

There was also discussion of abuses at Abu Ghraib, which diminished America's standing and outraged the American public.

As chairman of the Select Committee on Intelligence, I can say that we are nearing the completion a comprehensive review of the CIA's former interrogation and detention program, and I can assure the Senate and the Nation that coercive and abusive treatment of detainees in U.S. custody went beyond a few isolated incidents at Abu Ghraib.

Moreover, the abuse stemmed not from the isolated acts of a few bad apples but from fact that the line was blurred between what is permissible and impermissible conduct, putting U.S. personnel in an untenable position with their superiors and the law.

That is why Congress and the executive branch subsequently acted to provide our intelligence and military professionals with the clarity and guidance they need to effectively carry out their missions. And that is where the September, 2006 Army Field Manual comes in.

However, Senator AYOTTE's amendment would require the executive branch to adopt a classified interrogation annex to the Army Field Manual, a concept that even the Bush administration rejected outright in 2006.

Senator AYOTTE argued that the United States needs secret and undisclosed interrogation measures to successfully interrogate terrorists and gain actionable intelligence. However, our intelligence, military, and law enforcement professionals, who actually interrogate terrorists as part of their jobs, universally disagree. They believe that with the Army Field Manual as it currently is written, they have the tools needed to obtain actionable intelligence from U.S. detainees.

Further, in 2009, after an extensive review, the intelligence community unanimously asserted that it had all the guidance and tools it needed to conduct effective interrogations. The Special Task Force on Interrogations—which included representatives from the CIA, Defense Department, the Office of the Director of Intelligence, and others—concluded that ''no additional or different guidance was necessary.''

Since 2009, the interagency High Value Detainee Interrogation Group Interrogation Group has assured the Senate Intelligence Committee that it has all the authority it needs to effectively gain actionable intelligence.

Unfortunately, amendment No. 1068 would overrule the judgments of these professionals—who have served under both the Bush and Obama administrations—and impede their important work.

If our intelligence community is telling us that the current guidelines and interrogation techniques are effective, why would we add secret interrogation methods?

Senator AYOTTE's amendment would muddy the waters on what is and isn't permissible in interrogating U.S. detainees. Her amendment would overturn not only the Executive order on lawful interrogations but also roll back the McCain amendment passed in 2005—which the Senate approved in a 90-to-9 vote—by allowing some interrogators, including some military interrogators, to evade established interrogation protocols.

In creating unnecessary exceptions to existing interrogation guidance, Senator AYOTTE's amendment would deprive our military and intelligence professionals of the clarity they deserve and threaten to reopen the door to secret techniques and other abuses of U.S. detainees.

While Senator AYOTTE has insisted that her amendment would continue to prohibit cruelty, the colloquy on the floor suggests otherwise. When Senator GRAHAM asked her if the amendment was needed to bring back enhanced interrogation techniques—techniques we now know included induced hypothermia, slapping, sleep deprivation, and forced stressed positions she responded in the affirmative.

We cannot have it both ways. Either we make clear to the world that the United States will honor our values and treat prisoners humanely or we let the world believe that we have secret interrogation methods to terrorize and torture our prisoners.

The Ayotte proposal also ignores the dangerous practical implications for our intelligence and military partners overseas.

The colloquy between the Senators yesterday suggests they believe the United States will have some advantage by having a secret list of interrogation techniques and that this will have no negative implications, aside from giving interrogators more options.

Last year, GEN David Petraeus said it best when he unequivocally asserted that we should not return to so-called ''enhanced'' techniques because they ''undermine your cause'' and ''bite you in the backside in the long run.''

Current U.S. law and policy makes clear that America is committed to fundamental humane treatment standards. By overturning the status quo, the Ayotte amendment would create dangerous pockets of uncertainty to the detriment of our international standing, our intelligence collectors, and our national security.

Should this amendment ever come to the floor of the Senate, I urge my fellow Senators to oppose it.

Mr. AKAKA. Mr. President, I rise to express my deep concerns with the payroll tax alternative that our colleagues have proposed. Their alternative would be paid for by extending the current pay freeze for Federal employees through 2015 and requiring each agency to cut its workforce by 10 percent.

I strongly oppose putting the entire cost on the backs of two million middle class Federal employees, who already have contributed to deficit reduction through a 2-year pay freeze. These men and women are working harder than ever with tighter budgets and, in many agencies, continued staffing shortages. If adopted, these provisions would hamper investments in national defense, homeland security, veterans' services, food safety inspection, and other critical areas for a short-sighted approach that does little to address our current fiscal challenges and does nothing to create jobs. In the end, these policies would cost the government more, by harming the Federal Government's ability to recruit and retain highly-skilled workers and increasing our reliance on high-cost contractors.

Arbitrary caps on Federal employees often lead to waste, fraud, and abuse as contracting expands without investment in oversight. Already, over the past decade, Federal contracts have nearly doubled in size, but the acquisition workforce charged with overseeing our Federal contracts has remained constant. We should not be adding to this trend, but working to reverse it.

While I agree it is important that all Americans share the sacrifice in these

challenging economic times, I believe Federal workers have already done so. The 2-year Federal pay freeze enacted as part of the Budget Control Act of 2011 will save approximately $60 billion over the next 10 years. It is important to remember that a pay freeze affects employees much longer than just the years it is in place; future salaries will build from a lower base throughout employees' careers. The pay freeze will also reduce future retirement benefits, because they are calculated using the high three years' of earnings.

Nearly two thirds of our 2 million Federal employees are employed by the Departments of Defense, Veterans Affairs, or Homeland Security—and according to the Office of Personnel Management, 4 out of 5 jobs filled since President Obama took office have been to these same agencies. These employees do critical work to keep our Nation safe and care for our veterans.

Approximately 85 percent of Federal employees work outside of the Washington, DC area, and they are our neighbors and constituents in each of our States. Like the rest of our constituents, they are struggling with the deepest recession since the Great Depression. Although fortunate to have more job security than most workers, many have unemployed spouses and adult children, their home values and retirement savings have fallen dramatically, and like everyone else they face high health care, college, and other costs. Contrary to what you might hear from our colleagues, Federal employees are not overpaid. Those guarding our airports and borders, and working at our naval shipyards, may start at less than $30,000 per year. Many make less than what they could in the private sector, but they work for the American people because they love their country and they are committed to service. Further cuts to Federal pay and benefits will not only hurt these individual families, but will hinder the larger economic recovery.

At a time when close to half our Federal workforce will soon be eligible to retire, I worry that extending the pay freeze could further harm our ability to recruit the best and brightest to government service. As chairman of the Federal workforce subcommittee, I have been working with my colleagues to adopt policies to ensure that the Federal Government is viewed as the employer of choice in this country. Guaranteeing fair and competitive pay for its civilian workforce should be part of our commitment to the American people that the Federal Government has the right people, with the right skills to run their government in an effective and efficient manner.

Our Federal civil service is made up of hard working, talented people who have dedicated their lives to serving this country. These honorable men and women provide many essential services to the American people, including keeping our Nation safe, caring for our wounded warriors, ensuring our food and drugs are safe, and responding to natural disasters. America's public servants deserve our gratitude and respect. I thank them for their dedication, and I urge my colleagues to support them by opposing these efforts to freeze Federal pay and hiring.

Mr. COONS. Mr. President, earlier this week, the Senate adopted an amendment to the bill we now consider that would, among other things, give the Chief of the National Guard Bureau a seat on the Joint Chiefs of Staff. I was a strong supporter of this amendment, as I was its two legislative predecessors, the Guardians of Freedom Act and the National Guard Empowerment and State-National Defense Integration Act.

Since then, I have actively lobbied my colleagues to support the measures, and I am glad that this week, so many of them came together to support it. With more than 70 cosponsors from across the political spectrum and ultimately, the unanimous consent of this body, the deep bipartisan support shown for the National Guard this week is not only indicative of the immense respect the brave citizen soldiers of this Nation have earned, but of the extraordinary potential they have for enhancing our national security.

A National Guard in one form or another has served our Nation bravely and honorably for 375 years. Their courage is no less respected, their families no less concerned for their well-being. They have done extraordinary work these last 10 years in in Operation Enduring Freedom, Operation Iraqi Freedom, and in Operation New Dawn. But that is not what this amendment was about. This amendment was not about rewarding what has been done in the past.

Rather, it was about recognizing what we need to do for our future in order to keep our country safe. That is the key here: bringing to bear every resource we have for the defense of this Nation.

The Joint Chiefs of Staff are the top military advisers to the President and to the Secretary of Defense. They are responsible for making sure our military is prepared for every threat to our national security, but as those threats tilt toward the asymmetric, so must our military planning.

The wars in Afghanistan and Iraq have begun a fundamental transformation of our military, shifting away from a posture designed to counter Soviet aggression in Europe toward a posture that confronts asymmetric threats to American lives and interests.

Writing in a report for the Center for New American Security last year, retired General Gordon Sullivan described the National Guard as at a crossroads: ''Down one path lies continued transformation into a 21st-century operational force and progress on the planning, budgetary and management reforms still required to make that aspiration a reality. Down the other path lies regression to a Cold War-style strategic force meant only to be used as a last resort in the event of major war.''

There was a clear choice, and this week the Senate made it, taking what I believe is a significant step toward strengthening our national security.

When national defense solely meant fighting our enemies abroad, the current organizational strategy made sense. But now that we are more likely to have to defend against threats to America's national security here on American shores at the same time, we need the National Guard to have a seat at the table. We need the National Guard's resources and capabilities to be a first-line consideration that matches their first-line mandate.

In my home State of Delaware, the 31st Civil Support Team is the tip of the spear of the military response to a chemical, biological, radiological, or nuclear attack by terrorists. Following closely behind police, fire, and EMS services, our CST would diagnose the threat, inform and update the chain of command, and prepare the affected area to receive a response by larger units, coordinating as far up the chain as U.S. Northern Command.

When the Joint Chiefs sit down to plan for a biological attack on this country, they need someone at the table who fully understands the mission of units like the 31st Civil Support Team, whose members are full-time Guard, but not Active Duty military.

One area that needs more thought by the Joint Chiefs, and that I hope General McKinley and his successors will help them focus on, is the important role the Guard can play in cyber security, an area where most threats are decidedly asymmetric.

The Delaware Air National Guard's 166th Network Warfare Squadron is already playing a key role in our nation's defensive and offensive cyber capability working with U.S. Cyber Command, but its potential as a bridge between the Departments of Defense and Homeland Security, between Federal and State governments, and between the public and private sectors has barely been considered outside of a few circles. Determining what unique role the Guard can play in cyber security to create a more robust, more flexible defense-in-depth is just one of the new ideas I believe the Chief of the National Guard Bureau can bring to the planning process.

The men and women of the National Guard bring extraordinary capabilities to our Armed Forces, and because of the action we have taken here this week, I know that our military will be better prepared for new and emerging threats to our Nation.

Mrs. MURRAY. Mr. President, I rise today to reiterate my support for section 526 of the Energy Independence and Security Act of 2007. Section 526 prohibits Federal agencies including the Department of Defense—from contracting for fuels that have higher

emissions than conventional petroleum.

This is not only an issue of clean energy and a better environment but, more importantly, our Nation's security and ability to fight. The Department of Defense is the world's biggest energy consumer, using 300,000 barrels of oil every day. Given our reliance on foreign sources of oil, this is a formidable security challenge for our country.

The efforts underway at the Department to increase efficiency and expand the use of renewable energy and alternative fuel sources are critical to both the bottom line of Pentagon and to increase the safety of our warfighters. As you know, a record number of casualties in Iraq and Afghanistan have occurred while units transport fuel and supplies in military convoys. Increasing our energy and fuel efficiency not only reduces the overhead costs of the military, but it will also decrease the need to move as much fuel and supplies, lessening the risks posed by these convoys to our troops.

This is an important and timely issue because while the National Defense Authorization Act we are considering on the Senate floor does nothing to affect section 526, the House version of NDAA repeals this important law.

The Department of Defense supports this existing law and has said that it does not prevent them from purchasing the fuel it needs to meet its current mission needs. Hundreds of veterans who served in the Armed Forces from World War II through the Iraq and Afghanistan wars have asked the Senate to oppose repeal of section 526.

I urge my colleagues to join with the Department and our veterans to support this law.

I also applaud the work the DOD has done to date to move toward homegrown, renewable fuel sources, including the Navy's commitment to reduce petroleum use in its fleet by 50 percent through programs such as the Green Fleet.

To help the DOD realize its goals and to increase the security of our troops, we must dramatically scale up advanced biofuels production in the United States. Companies here in the United States have already developed technologies to produce ''drop-in'' ready fuels, so no new infrastructure or engine modifications are needed. These fuels are based on plants like camelina, jatropha, and algae—plants that can be grown all over the country in a variety of climates.

I believe section 526 has laid the foundation for this needed scale up of advanced biofuels, and it is time to take the next step toward ensuring that the DOD has access to a greater range of energy options than foreign sources of fossil fuels. That is why I have been working with my colleagues, Senator CANTWELL, Congressman INSLEE, and others, to put in place multiyear contracting authority for the purchase of biofuels.

We have introduced legislation in both the Senate and the House to do just that, and while that legislation in not included in this bill, I am pleased that we were able to include language that will require the Department to clarify its existing authorities for multiyear contracts for the purchase of advance biofuels and what additional authorities are needed for the Department to enter into such contracts going forward.

Mr. President, I look forward to working with my colleagues to ensure the final NDAA bill keeps the Department moving forward on securing and supporting renewable energy and fuel alternatives.

Mr. BAUCUS. Mr. President, I rise in support of Senator MERKLEY's calling for the withdrawal of American troops from Afghanistan. I support bringing our troops home for two reasons: First, we can't afford what we are spending today in Afghanistan. Second, we need to focus on nation building here at home.

We are spending $10 billion per month in Afghanistan. Every dime of it is deficit spending. We should listen to the former Chairman of the Joint Chiefs of Staff, Admiral Mullen. He said our debt is the top security threat facing the United States. We can't continue down this path.

Our troops continue to serve heroically on some of the toughest missions imaginable. They have done everything we have asked of them—and we have asked a lot through weekends and holidays, over frigid mountains and hot deserts. The service of the men and women of the military has been nothing short of remarkable.

It is now time to hand over the responsibility of this war to the Afghans. Afghan President Hamid Karzai recently held a Loya Jirga, or grand assembly, among leaders and elders from across Afghanistan.

The assembly approved a resolution calling for the Afghans to take the lead role of the war effort. Let's take them up on their offer. Let's not have American men and women doing the work that Afghans want to do for themselves.

For years we have been putting war spending on our national credit card. In 2003, I joined Senators BIDEN and CONRAD in offering an amendment to the Iraq supplemental appropriations bill that would have offset the war spending.

Instead of adopting the amendment, Congress elected to pay for the war with deficit spending. Over the past decade, we have grown our debt by $1.3 trillion due to war spending alone. The President's budget projects $500 billion dollars in war spending in the coming decade. This spending is in addition to the trillions we will spend on the defense base budget. This endless deficit spending is simply not sustainable.

During our work on the Joint Select Committee on Deficit Reduction, every member of the panel came to a better appreciation of the difficult financial decisions we face as a nation. There is no choice: we have to balance our books.

But how we balance our books will reflect who we are as a nation, what our values are, what our goals are. Most important, these choices will determine whether the 21st century will be the American century or whether we will cede our leadership to countries such as China.

In the year ahead, Congress will make a number of hard choices, and we must be strategic about these choices. We will choose among essential investments in education, infrastructure, health care for our veterans and seniors, and maintaining the best military in the world.

And every month we spend $10 billion dollars in Afghanistan will limit what we can do at home. Every dollar we send to Afghanistan is one less dollar we have for health care for our seniors or education benefits for our veterans.

The tough choices must be made at a time when the world is changing rapidly. During his final press conference as the U.S. Ambassador to Japan on November 14, 1988, Mike Mansfield said:

> [Japan and the United States] will work together in the next century which will be the Century of the Pacific.
>
> Our two nations working together will be able to compliment and guide the rest of the world as it moves into this area, into the [Pacific] basin, because we both realize that it is in that Basin where it all is, where it is all about, and where our joint future lies.

Looking back 23 years later, his remarks seem prescient. According to the World Bank, China's average annual GDP growth rate since 2001 has been 10.4 percent. Asian developing nations collectively had an average growth rate of 9.1 percent. The United States has seen an average growth of just 1.7 percent.

The 21st century will not be the American century if we don't change course. During the first decade of this century, we spent $5.9 trillion dollars on defense spending, much of it in Iraq and Afghanistan. During that same decade, China spent $1.1 trillion. Now, which nation's power increased more during that period?

China is flexing muscles abroad not with shiny new weapon systems but with their growing financial power. China is now the second-largest economy in the world, and it continues to grow.

We are seeing our influence wane around the world not because we are short an aircraft carrier but because some have begun to question American resolve, the ability of American political process to solve basic problems and to govern.

Meanwhile, millions of Americans are out of work and struggling to make ends meet. Last year, I asked the Congressional Budget Office to prepare a report on income inequality in this country. The statistics are sobering. The top 1 percent of earners in the United States more than doubled their

share of income in the past 30 years. The wealthiest fifth of the country earned more than the other four-fifths combined.

These are only but a few of the great challenges we face at home, and to overcome these challenges we have to work together. To compete and win in today's world, we need to balance our budget, grow our economy, and invest in education and infrastructure. We can't afford another year of spending tens of billions of dollars on nation building overseas.

For the 21st century to be the American century, we are going to have to make some changes. We need to bring our troops home from Afghanistan and focus on nation building here at home. I urge my colleagues to support Senator MERKLEY's amendment.

Mr. COONS. Mr. President, another amendment that I filed to S. 1867, the Senate's Fiscal Year 2012 National Defense Authorization bill, would have advanced new clean energy opportunities and enjoyed bipartisan support. The amendment's cosponsors included Senators SHAHEEN, PORTMAN, GILLIBRAND, MERKLEY, and KERRY. Unfortunately, we were not able to offer it this week because of a disagreement over scoring. It was an important opportunity missed so I wanted to take a moment to note what this amendment entailed.

Amendment No. 1265 would have confronted a critical long-term challenge facing our Nation's military: the spiraling cost of its reliance on petroleum. As we look for ways to save taxpayer dollars and reduce our Nation's dependence on foreign oil, utilizing more electric vehicles should become a priority for the Defense Department and the entire Federal Government.

Investment in clean energy technology is an investment in America's energy security. Liquid petroleum accounts for three-quarters of our Armed Forces' energy consumption, and approximately 60 percent of that comes from abroad. The Defense Department has explicitly cited the operational risk inherent to our dependence on foreign oil and has committed itself to aggressively reducing energy consumption.

Senate Amendment No. 1265 would allow the Defense Department and other Federal agencies to purchase electric vehicles and charging infrastructure under Energy Savings Performance Contracts, ESPC. ESPCs themselves aren't new: the government has used ESPCs for years to pay for energy efficiency upgrades. It has been enormously successful and costs the government nothing up front. That's right, ESPCs are paid for, financed, performed and guaranteed by the private sector with the government paying back the private sector through guaranteed energy savings over time. Our amendment would have made electric vehicles and charging infrastructure eligible for the program.

Energy efficiency is about more than turning the lights off when you leave a building. It is about the appliances you buy, the tools you use, and the vehicles you drive.

The Federal Government is America's largest energy consumer and within the government, the Defense Department is the biggest energy consumer. One out of every three vehicles owned by the Federal Government is owned by the Pentagon, which is why we raised this amendment this week.

Amendment No. 1265 would have helped increase the share of the government-owned fleet that is cost-efficient, energy-efficient electric vehicles. On top of that, it would not add a dime to the Federal deficit. By buying these vehicles in through ESPCs, the government does not put up any money up front. Rather, it enters an agreement with a private-sector contractor—a job-creating private-sector contractor—where the agency pays the contractor over an agreed-upon period of time—as many as 25 years.

What they are paying each month, though, is the net savings achieved by using the electric vehicle instead of a conventional vehicle. This is an unconventional, but creative and cost-efficient way to save money, reduce our dependence on foreign oil, and even to help support a growing private industry.

This amendment would have simply provided the Defense Department with a new tool for acquiring cost-efficient electric vehicles, which is what they are asking us to do. They want to add electric vehicles to their fleets. The Defense Department has already done extraordinary work in leveraging energy efficiency to reduce its costs and reduce its dependence on foreign oil. We want to help them do more.

This is a challenging economic time for our country, and our military needs every advantage it can get as it confronts dangerous threats to our national and energy security. By empowering the Pentagon to buy more of these energy-efficient, cost-efficient electric vehicles, we are saving taxpayer dollars and reducing our dependence on foreign oil. Investment in clean energy technology is an investment in America's energy security, and energy security is, without a doubt, an increasingly important, and increasingly fragile, aspect of America's national security.

This is a common-sense policy that unfortunately cannot be considered at this point because of a technicality in how the Congressional Budget Office scores ESPCs. It has been going on for 10 years and, as I understand, it has provided endless frustration to my colleagues on the Senate Energy and Natural Resources Committee and several other congressional committees, and this problem reaches beyond the electric vehicle option alone.

A key point to make here is that whenever Congress tells the Federal Government to become more efficient but does not provide appropriated funding for the purpose, a score is triggered because the government might use ESPCs to meet the mandate. Effectively, Congress cannot tell the Federal Government to save money through efficiency. Further, while ESPCs are scored by the CBO rules, OMB does not score them because the government does not incur any costs through their use. This specious score has essentially limited our ability to reduce appropriated dollars and achieve energy efficient simultaneously using private sector expertise and funding.

This amendment is something that is important to me. I am hopeful it is something that we will be able to pass down the road. In the meantime, it is an opportunity lost, to help our military prepare for the threats facing our nation.

Mrs. SHAHEEN. Mr. President, I rise today to express my disappointment that the Senate was not able to reach agreement to consider an important amendment on the Defense authorization bill that would allow women in the military access to the same health care coverage as civilian women.

There are almost 214,000 women currently serving in our Armed Forces. Many of these brave women are risking their lives for our national security. Despite the sacrifices these women make to protect our freedom, they are not given the same rights as civilian women when it comes to their reproductive health care.

If a service woman becomes pregnant as a result of rape or incest, her insurance will not cover an abortion if she decides to seek one; the law as currently written expressly prohibits it. This is unconscionable. To correct this injustice, I offered an amendment to the bill that we are currently debating that would allow a service woman the ability to receive insurance coverage for an abortion if her pregnancy is the result of rape or incest. Unfortunately, because there are some in this body who do not want this unfair law changed, we were not able to bring this amendment to the floor for a vote.

Women currently serving in the armed services are victims of discrimination. They do not have access to the same critical—and legal—reproductive health care as the civilians they protect.

Bans on abortion coverage exist for millions of women who receive their health care through government programs, but in most cases these bans allow for coverage of such care if the pregnancy is the result of rape or incest. Women receiving their health care through Medicaid, Medicare, the Federal Employees Health Benefits Program, and the Indian Health Services all have access to the care they need if the pregnancy is a result of rape or incest. Even women serving time in our Federal prisons can get abortions covered in the case of rape. Sadly, this is not the case for our Nation's women in uniform.

I believe that every woman should have the reproductive health care coverage she needs wherever she is and whenever she needs it. I do not think that any ban on abortion is appropriate. However if Federal bans do exist, they should at least be consistent.

My amendment is simple. It would permit a service woman to have an abortion covered by her military health insurance if the pregnancy is the result of rape or incest. Repealing the current ban on such coverage will simply bring the Department of Defense in line with most other federal policies.

I recently met a woman who was a victim of rape during her military service. She was stationed in Korea and was unable to receive the health care she needed and deserved. Her story was heartbreaking. Because of her unwanted pregnancy, she had to leave the service and return home.

The reality is that women in the military, especially those posted overseas, have few safe or legal reproductive health care options when they cannot rely on the military. Without access to these services, some women will be forced to resort to unsafe care or delay the health services they need. Women who give their lives for our country deserve better.

While the bill we are considering today will move forward without this important change, I pledge to all the women in our military who are victims of this law that I will continue my fight to bring the Department of Defense in line with other Federal agencies to allow coverage for critical reproductive health care.

Mr. LUGAR. Mr. President, I commend Chairman LEVIN and Ranking Member MCCAIN, our distinguished Armed Services Committee leaders, for their amendment regarding the problem of counterfeit parts, Senate amendment 1092, which was agreed to, as modified, last Tuesday. The amendment establishes a prudent framework for countering the dangerous infiltration of counterfeit parts into our defense supply chain. I also want to commend Senator WHITEHOUSE for his work on this important issue.

The amendment would create criminal penalties for those trafficking in counterfeit parts so as to ensure that our Armed Forces have the best equipment from trusted suppliers in order to carry out their critical roles and missions. It would also significantly strengthen our supply-chain management to detect and prevent surreptitious attempts to supply our Armed Forces with counterfeit parts and components.

I have followed the hearings in the Senate Armed Services Committee regarding these matters. I wanted to take time today to raise in relation to the amendment a problem that I believe could complicate its enforcement. If we truly intend to grow our economy through exports, then we ought to pay attention to any risks that may stem from liberalizing our present export controls so as to ensure that our industrial base benefits—and not those who deal in counterfeit parts and components in other nations.

A person who commits an offense under this amendment may be punished if that person ''had knowledge that the good or service is falsely identified as meeting military standards or is intended for use in a military or national security application.''

I am concerned that the amendment may be undermined by the export control initiatives of the administration. The administration is engaged in an effort to remove most, if not all, of the military-grade parts and components controlled on the U.S. Munitions List. Many of these will be decontrolled altogether for export and import purposes. Others will be placed under the Commerce Department's Export Administration Regulations. Hundreds of thousands of military-grade parts, components and systems are involved.

The reasons why this agenda presents significant challenges to dealing with counterfeit parts center on the relatively liberal legal and policy considerations that govern our commercial trade with China. Senators Levin and Whitehouse pointed to the many problems emanating from counterfeit Chinese parts in their remarks on the floor. As we know from the hearings and studies to date, Chinese suppliers play the major role in the unauthorized supply of counterfeit parts.

We also know from the Commerce Department's January 2010 report on counterfeit electronics, which was commissioned by the Navy Department, that the counterfeit electronics infiltrating the Defense Department supply chain and affecting weapon system reliability are predominantly commercial and industrial grade parts—so-called commercial off-the-shelf, COTS, technology.

The drawings and specifications needed to produce those parts can be—and are—freely exported to China under the Commerce Department's Export Administration Regulations, EAR. There is no legal bar to exports of such drawings and parts to China and, in all but rare cases, they may be sent to China without an export license. The same holds true for the import of such parts into the United States after they are produced in China.

In contrast, there has been a much lower incidence to date of counterfeit parts specifically designed for military use. Such parts are currently controlled on the U.S. Munitions List. Maintenance of the U.S. Munitions List is authorized by the Arms Export Control Act, AECA, and it is administered by the State Department in consultation with the Defense Department. The Foreign Relations Committee has unique jurisdiction over these matters in the Senate.

The reasons for the lower incidence of counterfeit military-grade parts are threefold: One, it is illegal to export any drawings or specifications to China that are controlled on the U.S. Munitions List, due to the statutory arms embargo imposed on China following the Tiananmen Square massacre; two, it is illegal under the International Traffic in Arms Regulations, ITAR—the State Department's regulations which contain the U.S. Munitions List—to import any defense article into the United States from China; and three, willful violations of the ITAR and the AECA are vigorously enforced by U.S. courts, with the majority of convictions resulting in prison sentences, while the majority of willful violations involving illegal exports of industrial or commercial products result in probation. The latter are currently enforced under the International Emergency Economic Powers Act because the Export Administration Act has lapsed.

Unfortunately, all of the deterrents inherent in control on the U.S. Munitions List could go away if and when the administration's export control reform initiatives are implemented.

I congratulate and welcome the efforts of Senator LEVIN, Senator MCCAIN and other Senators to close down the infiltration of counterfeit parts into our defense supply chain, but I remain concerned that the administration's agenda for export control reform will increase these problems in the future and frustrate enforcement of this amendment.

In addition, it is my understanding that the administration not only plans to remove nearly all the military-grade parts and components from the U.S. Munitions List, but also to redefine those few categories of high-end parts and components remaining on the Munitions List in a way that would seriously complicate enforcement of the amendment.

We will continue to consult with the administration on its reform agenda in the Foreign Relations Committee.

Mr. WARNER. Mr. President, I would like to ask for the attention of my colleagues on two amendments that I have filed to S. 1867, the National Defense Authorization Act of 2012.

Each of these amendments relates to the Navy's proposal to build a new nuclear pier facility to support East Coast aircraft carriers. With annual recurring costs, this new project would likely cost just shy of a billion dollars.

At a time when our Nation is in a severe fiscal crisis the Navy cannot pay to maintain the infrastructure it currently owns. As Admiral Mullen has said, the greatest challenge to our national security is our mounting debt.

Together, these amendments would save nearly $30 million for an unnecessary Navy military construction project at Naval Station Mayport, Florida. We are awaiting completion of an independent GAO assessment of the strategic risks to our carrier fleet which include manmade and natural disasters. The study would also consider the cost and benefits of what

other measures we can take to mitigate risk.

This is not a small project. The Navy estimates its homeporting plan will cost nearly $600 million, but those costs could rise to up to $1 billion over the next eight years. Tack on to that more than $25 million in annual maintenance costs currently estimated for an additional homeport and we are signing the taxpayer up for a big bill, much of which is not funded. It's in the ''out years'' as they say.

The justification for a new homeport is the mitigation of the risk of a terrorist attack, accident, or natural disaster occurring at the nuclear handling facility at the existing carrier homeport at Norfolk, VA.

However, the current Navy plan fails to take into account the two additional East Coast carrier capabilities facilities at Newport News, VA, and the Naval Shipyard. Each of these facilities maintains separate nuclear handling sites located many miles apart. If there were damage to the existing Naval base, the Navy could simply disperse the carriers to other piers. That is a lot cheaper and more efficient than building a new, duplicative facility.

Additionally, recent Navy briefings indicate there is a 50 percent greater chance of a major hurricane hitting Mayport than Norfolk. Why would we want to build a new facility at a higher risk location?

The Navy has also identified unfunded priorities totaling $11.8 billion dollars. These priorities are in critical areas including shipbuilding, military construction, maintenance, and acquisition programs—programs which are critical to both our current and future readiness.

We must maintain our existing infrastructure properly before pursuing a duplicative homeporting project. It is more fiscally responsible for the Navy to reduce its current unfunded requirements, which total tens of billions of dollars.

We have had some recent developments that I want to highlight that cast more doubt on the wisdom of embarking on this enormous expenditure. Responding to a letter I wrote, along with other colleagues in the Virginia delegation, the Navy's new CNO, Admiral Greenert has said that it is time to take a fresh look at the costs of this project, given the current fiscal constraints. Admiral Greenert wrote the Navy will be making a ''comprehensive strategic review, examining every program element, including the funding required to homeport a CVN in Mayport.'' I agree with Admiral Greenert. With the serious fiscal issues facing our Nation, the prudent course of action is to focus on taking care of the infrastructure we already have instead of buying new infrastructure which we do not need and cannot afford.

Mr. JOHNSON of South Dakota. Mr. President, I want to discuss the amendment to the pending Defense authorization bill negotiated between my two Banking Committee colleagues, Senators MENENDEZ and KIRK, designed to address the deceptive and fraudulent practices, sanctions evasion, facilitation of proliferation, and other illicit behavior of Iran's Central Bank.

Ten days ago, President Obama issued an Executive order designed to further isolate and penalize Iran for its refusal to live up to its international obligations regarding its nuclear program. As he noted, for years the Iranian Government has failed to abide by its obligations under the Nuclear Non-Proliferation Treaty, violated repeated U.N. Security Council resolutions, and ignored its legal commitments to the International Atomic Energy Agency. In the face of this intransigence, the world has spoken with one voice—at the IAEA, at the U.N., and in capitals around the world—making it clear that Iranian actions are a threat to international peace and stability and will only further isolate the Iranian regime.

The President targeted, for the first time, Iran's petrochemical sector, prohibiting the provision of goods, services, and technology to this sector and authorizing penalties against any person or entity that engages in such activity. He also designated for sanction a group of individuals and entities for assisting Iran's prohibited nuclear programs, including its enrichment and heavy water programs. And he escalated the financial and economic pressure by using provisions of the USA PATRIOT Act to identify the entire Iranian banking sector—including Iran's Central Bank—as a threat to governments and financial institutions that do business with Iran.

I strongly support enhanced sanctions on Iran, including its Central Bank, and have been working with my ranking member, Senator SHELBY, on another sanctions measure to expand and reinforce the Comprehensive Iran Sanctions and Accountability Act, CISADA, enacted last year. That legislation will be marked up soon in our committee. But as in all areas of complex sanctions law, it is important to craft these provisions with an eye to ensuring that they do not have negative unintended consequences for the United States and American consumers in terms of substantially increased oil and gas prices; for our allies, whose cooperation is crucial in further isolating Iran; for central banks around the world. We also want to avoid the result—if this measure is not further refined and then implemented by the White House in close consultation with our allies—that Iran itself could benefit from an oil price premium we in the West would pay if notoriously volatile world oil markets respond negatively and if non-Iranian oil supplies are not sufficient to fill the gap caused by countries that seek their oil elsewhere than from Iran.

The amendment seeks to address that concern by providing for a lag time of 6 months for oil markets to prepare and providing for a Presidential certification on oil price and supply availability before the petroleum sanctions would become effective. But that may not be sufficient, given the complexity of oil markets, which I am told by the Energy Department tend to pull such dates forward, anticipating oil price supply shortfalls—and oil price increases—and building them into oil traders' assumptions well before sanctions actually take effect.

I have heard a number of concerns about this amendment in its current form from senior officials at the Treasury Department charged with implementing it. First, Treasury officials have indicated that they have concerns about how this amendment could affect our close allies, including foreign central banks of those governments that have worked with us in recent years to sanction Iran and that hold large reserves in the United States but who have thus far decided they cannot, because of their current dependence on Iranian oil, completely and relatively quickly withdraw from purchasing its oil. We must avoid having these central banks begin to pull their reserves from the United States out of fear that enforcement of this amendment might limit their access to the U.S. financial system. That is why the signals sent by the Treasury Secretary and the President about implementing this provision are so important.

The administration also has concerns regarding effective implementation of this amendment, especially its requirement that the President prohibit accounts outright instead of, as elsewhere in U.S. law, allowing discretion to impose strict conditions on accounts—on trade finance limits, on the nature or size of transactions, on preapproval of transactions and about the timelines it presents, the confusing and seemingly conflicting interaction of some of its provisions, its lack of an exception for countries that are closely cooperating with the United States on sanctions enforcement, and others. I ask consent to print in the RECORD following my statement a copy of a letter from Secretary Geithner indicating his strong opposition to the amendment.

The PRESIDING OFFICER. Without objection, so ordered (see Exhibit 1).

Mr. JOHNSON. We all agree that interactions by the international financial community with Iran's financial system should be severely reduced, not least because such interactions pose serious risks for the international banking system. But we do not want to do it in a way that could have negative consequences for some of our closest allies or for ourselves. We want to be careful that we don't end up shooting ourselves in the head and Iran in the foot.

I know my colleagues have worked in the last week, including over the Thanksgiving holidays, to make the provision more effective and to provide for additional targeting by the President, building in a national security

waiver, a lag period for implementation of the crude oil sanctions, and other measures. But I think the provision could use further refinement. That is why I had hoped to be able to address this issue through the more deliberative committee process.

Even though I have concerns about some of the effects of this amendment in its current form, I will support it as a signal of my support for tightening the financial and economic noose around Tehran and for further isolating its government as a means of prompting it to turn aside from its current path and come clean on its nuclear program. Even so, these implementation issues should be addressed in conference prior to the legislation being finalized.

Finally, I want to remind my colleagues that the Banking Committee is working expeditiously to adopt new comprehensive sanctions legislation and I hope will be ready to bring that legislation to the full Senate soon. It will complement and reinforce the Comprehensive Iran Sanctions and Accountability Act, CISADA, enacted a little over a year ago, and international diplomatic efforts led by the President to further isolate Iran and ratchet up the pressure on its leaders. I think all of us would agree that the most effective sanctions are those that are imposed and enforced by a coalition of nations, and the administration's success in building and sustaining a coalition to do precisely that is to be commended. I look forward to working with my colleagues on that effort.

EXHIBIT 1

DEPARTMENT OF THE TREASURY,
Washington, DC, December 1, 2011.

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

DEAR CHAIRMAN LEVIN: I am writing to address amendment 1414 to S. 1867, the National Defense Authorization Act for Fiscal Year 2012, regarding the imposition of sanctions on foreign financial institutions that conduct business with the Central Bank of Iran (CBI).

The Obama Administration's determination to prevent Iran from acquiring nuclear weapons is unwavering. We are resolved to build and sustain as much pressure as necessary to bring Iran to meet its international obligations and address the international community's grave concerns with its nuclear program. I know that you and your colleagues in the Senate share this commitment.

We understand that this amendment was offered in this spirit. However, I am writing to express the Administration's strong opposition to this amendment because, in its current form, it threatens to undermine the effective, carefully phased, and sustainable approach we have undertaken to build strong international pressure against Iran. In addition, the amendment would potentially yield a net economic benefit to the Iranian regime.

We have steadily increased the pressure on Iran by tightening sanctions, closing loopholes, and encouraging other countries to do the same. Congress has been absolutely critical in providing some of the tools that we have used to accomplish that goal, and we are seeing genuine results. The collaborative approach the U.S. has taken with our international partners has led many to impose sanctions on Iran that were not even contemplated three years ago, including on Iran's energy sector.

Iran's greatest economic resource is its oil exports. Sales of crude oil line the regime's pockets, sustain its human rights abuses, and feed its nuclear ambitions like no other sector of the Iranian economy. We are committed to doing as much as possible to reduce Iran's oil revenue while concurrently working to stabilize global oil markets. Today, the United States does not permit the import of Iranian crude. Other countries have already begun to reduce their consumption of Iranian crude and the Administration is working hard to discourage anyone from taking advantage of the responsible policies of these countries. Our closest allies are seriously considering curtailing their own crude purchases altogether in the near future and we are doing everything possible to encourage them to make the right decision.

However, as currently conceived, this amendment threatens severe sanctions against any commercial bank or central bank if they engage in certain transactions with the CBI. This could negatively affect many of our closest allies and largest trading partners. Rather than motivating these countries to join us in increasing pressure on Iran, they are more likely to resent our actions and resist following our lead—a consequence that would serve the Iranians more than it harms them. Further, there is a substantial likelihood that this amendment, particularly if passed into law at this time and in its current form, could have the opposite effect from what is intended and increase the Iranian regime's revenue, literally fueling their suspect nuclear ambitions. The Administration is prepared at your convenience to share the details of our analysis on this point, in a classified briefing.

The Obama Administration strongly supports increasing the pressure on Iran significantly, including through properly designed and well-targeted sanctions against the CBI. The Administration has several legislative proposals to both enhance and expand the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) and to strike at the CBI that we would like to discuss with you and your colleagues. We intend to work with our partners to achieve the objectives of this amendment, but in a fashion that we believe will have a greater and more sustainable impact on Iran. We ask that you continue to work with us on ways to improve this amendment and to consider other, more immediate and more effective steps that we can take to accomplish our shared goals while we work with our partners to bring about the effects this amendment is intended to achieve.

Sincerely,

TIMOTHY F. GEITHNER.

Mr. BROWN of Massachusetts. Mr. President, I rise today to protect the families of our men and women in uniform. While these brave members of our community put their lives on the line to protect our freedoms abroad, courts here are using their service against them when making child custody determinations.

Although I did not submit my amendment due to concern expressed by the Senate Veterans Affairs Committee, it is important that the committee take up this issue to ensure that servicemembers have a uniform standard of protection when determining the best interests of their children.

Servicemembers risk their lives in support of the contingency operations that keep our Nation safe. The amendment prohibits courts from permanently altering custody orders during a parent's deployment, and requires predeployment custody to be reinstated unless that is not in the best interest of the child.

This language of my amendment has enjoyed widespread support in the House for the past five years and was recently endorsed by the Department of Defense. Earlier this year Secretary Gates stated that he wanted to work with Congress to pursue the creation of a Federal uniform standard. In his letter of support dated February 15th, 2011, Secretary dates stated: ''I have been giving this matter a lot of thought and believe we should change our position to one where we are willing to consider whether appropriate legislation can be crafted that provides servicemembers with a federal uniform standard of protection.''

Our men and women in uniform sacrifice a great deal to serve our country. We owe it to them to provide uniform legal standards regarding child custody. Servicemembers should never be in the position of having to choose between their country and their family.

Mr. REID. Mr. President, tonight the Senate will vote overwhelmingly to support our men and women in uniform, including the more than 1,100 Nevadans serving overseas, as they continue to put their lives on the line. I congratulate Senators LEVIN and MCCAIN for their stewardship of this bill and for working through several difficult issues.

There is still work to be done in conference to perfect parts of this bill, including the provisions dealing with military detainees and efforts to improve key elements of TRICARE.

I am pleased that today an overwhelming, bipartisan majority agreed that protecting our national security is more important than partisan politics. Today we came together to support our troops, and ensured that this Nation does everything in its power to keep America safe from those who would do us harm.

Mr. MCCAIN. I yield back the 1 minute of time remaining.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided on the bill, as amended.

The Senator from Michigan.

Mr. LEVIN. Mr. President, we are going to be making a unanimous consent request. I am not even going to use my 1 minute on this other than to say thanks to everybody who has been so heavily involved, which is just about everybody in this Senate.

I want to particularly thank Senator MCCAIN. His staff and my staff have been utterly incredible. We have had hundreds of amendments we had to get through. We have done the best we can, and I want to tell my friends this so we can prepare a path for a unanimous consent agreement. It is not prepared yet, so I cannot read it, but it is going to be something like this. For those amendments which were germane, not because of modification, but were germane—

Mr. UDALL of New Mexico. Will the Senator from Michigan yield? I don't think we disposed of the Udall amendment.

Mr. LEVIN. I believe we did.

The PRESIDING OFFICER. The Udall amendment was agreed to.

Mr. MCCAIN. Reluctantly.

Mr. LEVIN. Let me describe what this is about so we can be thinking about it before it is offered. There were 71 amendments, approximately, which were cleared. We spoke about those before. If anyone had an objection, they were not cleared. So by definition there is no objection on the substance of these amendments. However, there is objection for other reasons, one of them being that if an amendment was modified to make it germane, there would be an objection on that basis.

So what Senator MCCAIN and I are talking about—and we will put it in a unanimous consent proposal and then you all can decide if you want to agree to this—is that we would work—we pass a bill tonight and do all the other things we need to do because that has to be done. We have to get to conference.

In the next couple of days Senator MCCAIN and I, working with the Parliamentarian, would go through the 71 amendments, or whatever the number is. The Parliamentarian would then advise us as to which of those amendments is germane and were germane—and these are all cleared amendments. And for that group, whatever the number is, that we are informed by the Parliamentarian is germane and were germane, we would then put in a bill which would be introduced next week. If we can get that done, then the unanimous consent request would have that bill introduced, read a third time, and passed. That would be the most we could ask for.

It would seem to me if we could pass this tonight, we could do the same thing with a bill—providing Senator MCCAIN and I agree after talking to the Parliamentarian—that the only amendments that would be in that bill would be amendments which were germane.

How do we get that bill into the conference report? We have not figured that out yet, but we are working on that piece as well. At least we can get the bill passed so we can go to conference and show the Senate passed these X number of amendments. This is the best we could do. It is the cleanest we could do. The Parliamentarian did not like the different idea that we proposed, and I don't blame him and her, but that is what we are going to be offering in a few minutes.

Mr. MCCAIN. I have nothing more to add. I wish to vote.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. If I may be permitted to thank the distinguished chairman for that offer. It is unclear to me how it will actually be executed—and all of this could have been avoided, from my perspective, if a simple unanimous consent request had been allowed to modify an amendment that I had that was not germane to make it germane so we could have a simple up-or-down vote, something that was in the nature of a technical correction, which I would think as a matter of custom and courtesy would be allowed. But apparently that is not the way things are operating.

All of these convulsions are being engaged in simply to avoid an objection to a unanimous consent request to modify an amendment to make it germane. It could all be avoided and we could have taken care of this in 10 or 15 minutes. I don't understand if the distinguished chairman is actually making that unanimous consent request at this time or is merely explaining what his intentions are. I will try to work with him, but I am not yet sure this is going to work as he hopes it will. My objection will remain that any amendment that was not germane when filed but could be made germane by modification, as mine could, would not be permitted to be in this managers' package or passed by unanimous consent.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. It sounds simplistic, and the hour is late and we need to vote, but the fact is there were 382 amendments that were submitted. There were hundreds of amendments that were waiting, and the fact is that initially the Cornyn amendment was not agreed to, so it is a little more complicated than that. There were literally 400 or 500 amendments that were filed, and we had to at some point cut off the process. For next year's bill we will try to get a situation where it is far more inclusive and far more informative. When you are dealing with 500 amendments, I know that each is important, but there is no way you are going to be able to get through the authorization bill with that many amendments that are filed, and that is just a fact. We are doing the best we can to accommodate the Senator from Texas and the Senator from Oklahoma and every other Senator who didn't get their amendment voted on.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that upon passage of S. 1867, the Armed Services Committee be discharged from further consideration of H.R. 1540 and the Senate proceed to its consideration; that all after the enacting clause be stricken and the text of S. 1867, as amended, and passed by the Senate, be inserted in lieu thereof; that H.R. 1540, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses; and the Chair be authorized to appoint conferees on the part of the Senate, with the Armed Services Committee appointed as conferees; that no points of order be considered waived by virtue of this agreement; and all with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LEVIN. I thank everybody and I thank the Chair.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

[Rollcall Vote No. 218 Leg.]

YEAS—93

Akaka	Feinstein	Menendez
Alexander	Franken	Mikulski
Ayotte	Gillibrand	Moran
Barrasso	Graham	Murkowski
Baucus	Grassley	Murray
Begich	Hagan	Nelson (NE)
Bennet	Hatch	Nelson (FL)
Bingaman	Heller	Portman
Blumenthal	Hoeven	Pryor
Blunt	Hutchison	Reed
Boozman	Inhofe	Reid
Boxer	Inouye	Risch
Brown (MA)	Isakson	Roberts
Brown (OH)	Johanns	Rockefeller
Burr	Johnson (SD)	Rubio
Cantwell	Johnson (WI)	Schumer
Cardin	Kerry	Sessions
Carper	Kirk	Shaheen
Casey	Klobuchar	Shelby
Chambliss	Kohl	Snowe
Coats	Kyl	Stabenow
Cochran	Landrieu	Tester
Collins	Lautenberg	Thune
Conrad	Leahy	Toomey
Coons	Levin	Udall (CO)
Corker	Lieberman	Udall (NM)
Cornyn	Lugar	Vitter
Crapo	Manchin	Warner
DeMint	McCain	Webb
Durbin	McCaskill	Whitehouse
Enzi	McConnell	Wicker

NAYS—7

Coburn	Merkley	Wyden
Harkin	Paul	
Lee	Sanders	

The bill (S. 1867), as amended, was passed.

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

Mr. HARKIN. Mr. President, as a Senator, I have no greater responsibility than to work to ensure the security of the United States, and I believe the military should have all the tools they need to keep our Nation safe. I

support the vast majority of the Defense authorization bill. However, because I believe we can protect our national security without infringing on critical constitutional values, I could not support this bill. The bill fails to clarify that under no circumstance can an American citizen be detained indefinitely without trial. And it mandates for the first time that suspects arrested in the United States will be detained by the military rather than domestic and civilian law enforcement, who since 9/11 have successfully convicted in civilian courts over 400 terrorists. Finally, the bill would make it more difficult to close the detention center at Guantanamo Bay, for which I have long fought because the detention facility is a stain on our honor and a recruiting tool for terrorists around the world.

Not only do these provisions violate the core values upon which our freedom rests, but they won't make us safer. The Pentagon, CIA Director Petraeus, Intelligence Director Clapper, and FBI Director Mueller all said these provisions will needlessly hurt, rather than help, our national security.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Michigan.

Mr. LEVIN. Mr. President, I will be very brief for obvious reasons. But this is a golden moment for us. The proud tradition of the Senate Armed Services Committee has been maintained every year since 1961 and continues with the Senate's passage of the 50th consecutive national defense authorization bill. It always takes a huge amount of work to get a bill of this magnitude done. It could not happen without the support of all the Senators on the committee. I will not thank each and every one—the subcommittee chairs, the ranking members, our staff, the floor staff here, who do extraordinary work. But the bipartisanship of this committee dominates again, and we hope that flavor will continue to dominate forever in the committee and hope it will permeate this Senate.

We always have to work long and hard to pass this bill and no two of these bills are alike. But it's worth every bit of effort we put into it because it is for our security, for our troops, and for their families. I thank all Senators for their roles in keeping our tradition going.

Our committee's bipartisanship also makes this moment possible. I am proud to serve with Senator MCCAIN and grateful for his partnership and friendship. I also want to thank our very dedicated and capable Senate floor staff on both sides of the aisle—Gary Myrick, Trish Engle, Tim Mitchell, and Meredith Mellody on the Democratic side and David Schiappa, Laura Dove, Ashley Messick, and Patrick Kilcur on the Republican side. They have all helped us get this bill across the finish line and we are very grateful to them and all others here on the floor and in both cloakrooms.

Finally, I thank all our committee staff members for their extraordinary drive and many personal sacrifices to get this bill done. Led by Rick DeBobes, our committee's staff director; Peter Levine, our general counsel; and Dave Morriss, our minority staff director, our staff really has given their all to get this bill passed. So to all of you and to all your families, thank you for your hard work. Take a few minutes to celebrate this moment and then put all your talents to work in conference with the House so we can bring a conference report back to the Senate before the holidays.

Mr. President, they all deserve recognition and, as a tribute to their professionalism and as a further expression of our gratitude, I ask unanimous consent that all staff members' names be printed in the RECORD.

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

Richard D. DeBobes, Staff Director; David M. Morriss, Minority Staff Director; Adam J. Barker, Professional Staff Member; June M. Borawski, 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 W. 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. To end my thanks—I do not see Senator MCCAIN here. I think he had to leave for a few minutes.

He is here. Let me personally thank him. I thought Senator MCCAIN had to leave.

I put in some thank-yous here on behalf of the committee, and I just want to tell the Senator how tremendous it is to work with him and how this tradition of bipartisanship in our committee has been maintained. The Senator is a very major part of the reason for that happening, and I thank him.

Mr. MCCAIN. I thank the chairman. One of the things I look back on with great nostalgia and appreciation is the relationship we have developed over many years. I must say that we have had spirited discussions from time to time, but they have been educational, enlightening, and entertaining. I thank the Senator for his leadership.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that the next two votes be 10 minutes in duration.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. As the order that is now before the Senate indicates, I have the ability to designate who will be the speakers. We have 1 minute on one and 1 minute on the other. Those 2 minutes will be used by the senior Senator from Pennsylvania, Mr. CASEY.

The PRESIDING OFFICER. Under the previous order, the Armed Services Committee is discharged from further consideration of H.R. 1540 and the Senate will proceed to its consideration; all after the enacting clause is stricken and the text of S. 1867, as amended, is inserted in lieu thereof; the bill, as amended, is considered read a third time and passed, and the motion to reconsider is made and laid upon the table.

The Senate insists on its amendment, and requests a conference with the House on the disagreeing votes of the two Houses, and the Chair appoints Mr. LEVIN, Mr. LIEBERMAN, Mr. REED, Mr. AKAKA, Mr. NELSON of Nebraska, Mr. WEBB, Mrs. MCCASKILL, Mr. UDALL of Colorado, Mrs. HAGAN, Mr. BEGICH, Mr. MANCHIN, Mrs. SHAHEEN, Mrs. GILLIBRAND, Mr. BLUMENTHAL, Mr. MCCAIN, Mr. INHOFE, Mr. SESSIONS, Mr. CHAMBLISS, Mr. WICKER, Mr. BROWN of Massachusetts, Mr. PORTMAN, Ms. AYOTTE, Ms. COLLINS, Mr. GRAHAM, Mr. CORNYN, and Mr. VITTER conferees on the part of the Senate.

MIDDLE CLASS TAX CUT ACT OF 2011—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, there is 2 minutes equally divided prior to a vote on the motion to proceed to S. 1917.

The Senator from Pennsylvania.

Mr. CASEY. Mr. President, this Middle Class Tax Cut Act is very simple. It does two things for employers and also helps employees.

Last year, the Senate came together in a bipartisan bill. We passed a tax bill that, among other things, reduced payroll taxes for employees. This legislation expands that. Instead of just saying we are going to have a reduction of 2 percent of the payroll tax, this legislation cuts it in half. So you are cutting the payroll tax in half. That is

take-home pay, $1,500 in the pockets of the average working family in America.

Secondly, it allows us to provide a cut as well for businesses, cutting in half the payroll tax for businesses. It is good public policy. It will create lots of jobs at a time when the American people are telling us, with one voice, they want us to do one thing here: create jobs or create the conditions for job creation so small businesses can hire. At the same time, they want us to come together in a bipartisan way.

I urge a ''yes'' vote.

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

Who yields time in opposition?

The Senator from South Dakota.

Mr. THUNE. Mr. President, there are a lot of Republicans here who agree with one of the basic principles in the Democratic bill; that is, there is no reason why people ought to suffer even more than they already are from the President's failure to turn this job crisis around.

What the Republicans have proposed is an alternative to this bill that ensures that no one sees a tax hike this year. The biggest difference is that the Republican proposal ensures that no one's taxes get raised in a down economy.

There is simply no reason that preventing a tax hike in this bad economy needs to be paid for by raising taxes on the very employers whom we are counting on to help jolt this economy back to life, which is exactly what the Democrats have put forward. So the Republican proposal would ensure that no one sees a tax increase next year. It avoids the gratuitous hit on job creators, and, even better, our plan reduces the Federal deficit by more than $111 billion.

This is a dramatic expansion of this particular provision, which we cannot afford when we already have a $15 trillion debt. There is a right way and wrong way to do this. This is the wrong way in the Democratic proposal. The Republican proposal is the right way.

I urge our colleagues to vote against this bill.

The PRESIDING OFFICER. The time has expired.

Mr. BROWN of Massachusetts. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. Under the previous order, 60 votes are required for adoption.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 219 Leg.]

YEAS—51

Akaka	Blumenthal	Carper
Baucus	Boxer	Casey
Begich	Brown (OH)	Collins
Bennet	Cantwell	Conrad
Bingaman	Cardin	Coons
Durbin	Lautenberg	Reed
Feinstein	Leahy	Reid
Franken	Levin	Rockefeller
Gillibrand	Lieberman	Schumer
Hagan	McCaskill	Shaheen
Harkin	Menendez	Stabenow
Inouye	Merkley	Udall (CO)
Johnson (SD)	Mikulski	Udall (NM)
Kerry	Murray	Warner
Klobuchar	Nelson (NE)	Webb
Kohl	Nelson (FL)	Whitehouse
Landrieu	Pryor	Wyden

NAYS—49

Alexander	Grassley	Murkowski
Ayotte	Hatch	Paul
Barrasso	Heller	Portman
Blunt	Hoeven	Risch
Boozman	Hutchison	Roberts
Brown (MA)	Inhofe	Rubio
Burr	Isakson	Sanders
Chambliss	Johanns	Sessions
Coats	Johnson (WI)	Shelby
Coburn	Kirk	Snowe
Cochran	Kyl	Tester
Corker	Lee	Thune
Cornyn	Lugar	Toomey
Crapo	Manchin	Vitter
DeMint	McCain	Wicker
Enzi	McConnell	
Graham	Moran	

The PRESIDING OFFICER. Under the previous order requiring 60 votes for the adoption of this motion to proceed, the motion is rejected.

TEMPORARY TAX HOLIDAY AND GOVERNMENT REDUCTION ACT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, there is 2 minutes of debate equally divided on the motion to proceed to S. 1931.

The Senator from Nevada.

Mr. HELLER. Mr. President, the Senate today has an opportunity to put aside some of the partisan differences and come together and do something that will benefit all Americans. The legislation I propose is a solution, and I support solutions which Republicans, Democrats, and Independents can all support.

By supporting my legislation and imposing tax increases on employers, Congress can also preserve opportunity for job growth in the future. Increasing taxes on small businesses will not help my State overcome the highest unemployment rate in the Nation. By asking millionaires and billionaires to pay higher premiums for government health care, my proposal asks the richest Americans to do more, just like my colleagues on the other side of the aisle ask that they should.

Lastly, this proposal is the only one that has a chance of passing the House of Representatives and be signed into law. I urge all of my colleagues to support this piece of legislation and this effort to help Americans already struggling to make ends meet.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Mr. President, the problem with this proposal—and I hope we are reaching the point where we are actually coming together in a bipartisan way—is that it does not help small business. What we should be doing is cutting the payroll tax in half for employees and cutting it in half for employers so we can help small businesses.

This bill does not do that. All it does is take the existing cut in the payroll tax and keep that in place.

We like that part of it. We should expand the tax cut for workers and also have a separate cut in the payroll tax for employers, so 160 million workers and lots of businesses can get the benefit of this payroll tax cut to put money in people's pockets, grow the economy, and move the economy forward. I urge a ''no'' vote.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Under the previous order, 60 votes are required to adopt the motion to proceed.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 20, nays 78, as follows:

[Rollcall Vote No. 220 Leg.]

YEAS—20

Ayotte	Heller	Portman
Barrasso	Hoeven	Risch
Brown (MA)	Hutchison	Rubio
Collins	Lugar	Snowe
Crapo	McConnell	Vitter
Enzi	Murkowski	Wicker
Grassley	Paul	

NAYS—78

Akaka	Feinstein	Merkley
Alexander	Franken	Mikulski
Baucus	Gillibrand	Moran
Begich	Graham	Murray
Bennet	Hagan	Nelson (NE)
Bingaman	Harkin	Nelson (FL)
Blumenthal	Hatch	Pryor
Blunt	Inhofe	Reed
Boozman	Inouye	Reid
Boxer	Isakson	Roberts
Brown (OH)	Johanns	Rockefeller
Burr	Johnson (SD)	Sanders
Cantwell	Johnson (WI)	Schumer
Cardin	Kirk	Sessions
Carper	Klobuchar	Shaheen
Casey	Kohl	Shelby
Chambliss	Kyl	Stabenow
Coats	Landrieu	Tester
Coburn	Lautenberg	Thune
Cochran	Leahy	Toomey
Conrad	Lee	Udall (CO)
Coons	Levin	Udall (NM)
Corker	Lieberman	Warner
Cornyn	Manchin	Webb
DeMint	McCaskill	Whitehouse
Durbin	Menendez	Wyden

NOT VOTING—2

Kerry	McCain

The PRESIDING OFFICER (Mr. COONS). Under the previous order requiring 60 votes for the adoption of this motion, the motion is rejected.

VOTE EXPLANATION

● Mr. KERRY. Mr. President, I was necessarily absent for the cloture vote on the motion to proceed to legislation to provide civilian payroll tax relief, to reduce the Federal budget deficit, and for other purposes, S. 1931. If I were able to attend today's session, I would have opposed cloture on this bill.●

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that we move to a period of morning business, with Senators allowed to speak up to 10 minutes each.

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

EXECUTIVE SESSION

NOMINATION OF CAITLIN JOAN HALLIGAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mr. REID. Mr. President, I move to proceed to executive session to consider Calendar No. 43, and I send a cloture motion to the desk. In fact, it is at the desk.

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant 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 nomination of Caitlin Joan Halligan, of New York, to be United States Circuit Judge for the District of Columbia Circuit.

Harry Reid, Patrick J. Leahy, Charles E. Schumer, Christopher A. Coons, Amy Klobuchar, Al Franken, Richard Blumenthal, Sheldon Whitehouse, Richard J. Durbin, Dianne Feinstein, Herb Kohl, Kirsten E. Gillibrand, Tom Udall, Ron Wyden, Robert P. Casey, Jr., Sherrod Brown, Jeanne Shaheen.

Mr. REID. Mr. President, I ask unanimous consent that on Tuesday, December 6, 2011, at 11 a.m., the Senate proceed to executive session to consider Calendar No. 43; that there be 1 hour for debate, equally divided in the usual form prior to the cloture vote; further, that the mandatory quorum under rule XXII be waived.

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

LEGISLATIVE SESSION

Mr. REID. Mr. President, I now ask unanimous consent to resume legislative session.

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

The Senator from Kansas.

PAYROLL TAX HOLIDAY

Mr. MORAN. Mr. President, just a few moments ago we cast several votes in regard to the so-called payroll tax holiday. I opposed both the Republican amendment and the Democratic amendment.

There were significant differences between these two versions of this legislation; in part, the differences at least included the way that the provisions were paid for. While I may support the pay-fors, I objected to what the pay-fors are paying for.

I support freezing the pay of Members of Congress, the elimination of certain benefits to millionaires, and reducing the Federal workforce. But wouldn't we be better using the proceeds of these reductions in spending to reduce the debt and deficit rather than a short-term change that reduces the revenues going to the Social Security and Medicare trust funds? When are we going to admit we are broke?

I am reminded of a plan approved by Congress just several years ago where we borrowed money to give citizens a $600 rebate, all in the name of a stimulus. We wanted to stimulate the economy and, in my view, what we did was we stimulated little and increased the debt a lot.

Many of us have expressed support for the concepts contained in the Bowles-Simpson deficit reduction plan. Their recommendations are very important and we have paid a lot of attention to them and expressed our desire to proceed in that way. Many times we have said that. But the legislation we just voted on uses many of their suggested reductions in spending, not for deficit reduction but for another stimulus plan. The Bowles-Simpson plan has been hijacked once again in the name of stimulating the economy.

These proposals also undermine the foundation of Social Security. We are reducing the payments into the trust fund. We should leave the trust fund alone and cut spending and use those savings to pay down our annual deficits and live within our means. Once again, we are putting off difficult decisions and leaving it up to our children and grandchildren to pay for our irresponsibility.

Finally, let me, once again, on this floor make the case for certainty in our Tax Code. Congress is tinkering tonight with the Tax Code, creating greater uncertainty. In almost every conversation I have with a business owner, they ask for certainty in the Tax Code and certainty in the regulatory environment. But instead, tonight we are changing or attempting to change the Tax Code one more time, for a short period of time, claiming some benefit for doing so. Instead, we should focus on long-term tax policy and a Tax Code that is simpler and certain. Certainty is something that will create jobs.

I expect there to be some criticism of the votes I just cast, and I can hear the campaign sound bites. But we have to get beyond the next election and get to the next generation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

DEFENSE AUTHORIZATION

Mr. MERKLEY. Mr. President, tonight, I voted against final passage of the Defense authorization bill, and I rise now to explain why I voted against it and the considerable concerns I have about the vast expansion of the powers of detention of American citizens that were contained in that bill.

These provisions related to the detention of American citizens—without the standard rights of the fifth and sixth amendment—have been an object of intense debate on the floor of the Senate over the last several days.

As a Senator who has now been here 3 years, I can say unequivocally that this debate was extremely valuable. Folks came from both parties on both sides of this issue and shared their insights, both from their life experiences, from their scholarly knowledge of the law, and certainly from their philosophy, and I commend all who participated in that debate. I listened to a great deal of that debate on both sides. I thought this was extraordinarily important; issues surrounding our Bill of Rights and the rights of American citizens, protection from the abuse of power.

Some came to this floor and said that essentially the detention provisions in this bill simply clarify existing law and will enhance our national security, and they did so with sincere hearts and sharp minds. Others came, equally sincere, equally learned, and argued the opposite side; that the detention provisions in this bill constitute a devastating circumvention of the fifth amendment right to due process and the sixth amendment right to a speedy trial by impartial jury, as well as a sixth amendment right to confront the witnesses against him or her. Maybe it is useful to take a look at what the fifth and sixth amendments actually say.

One of the last clauses of the fifth amendment notes that:

No person shall be deprived of life, liberty, or property without due process of law.

I think we all grow up in this country absolutely believing in this fundamental value that the government cannot take from you your life, your liberty or your property without the process of law.

The sixth amendment notes that, in prosecutions, the accused shall enjoy the right to a speedy and public trial—and I emphasize public trial—by an impartial jury of the state. It goes on to note that the accused shall be able to confront the witnesses against him and to have the assistance of counsel. So these basic issues of speedy and public trial, an impartial jury, the assistance of counsel, and the ability to confront

the witnesses against you, all of these are contained in the sixth amendment and all relevant to this debate over detention.

Most of this conversation is about a section of the bill called section 1031, subtitle D, and it is referenced subtitle D, ''Detainee Matters.'' I will just read the title of the section to give a sense of what this is all about.

Section 1031. Affirmation of authority of the Armed Forces of the United States to detain covered persons pursuant to the authorization of the use of military force.

It uses this fancy word ''covered persons,'' and it is what is referred to in everyday speech as enemy combatants. So section 1031 is about the ability of the Armed Forces to detain enemy combatants.

The reason this is framed this way is that there is a historical exception under constitutional findings of the Supreme Court to amendment five and amendment six of the Constitution. That exception is that if an individual is fighting on the side of the enemy against the United States, they do not have the same rights because they are now an enemy combatant in time of war, and they can be detained for the duration of that conflict. This was adjudicated in World War II over individuals who assisted with sabotage in New York, and it was found that the standard rights of speedy public trial, trial by jury, right to counsel do not apply if you are an enemy combatant. Instead, you are put into the framework of a war setting to be treated as a member of the opposing army.

So this exception has historically been extremely narrow. You are on the battlefield or you are directly working as a member of the enemy force against the United States. It should be extremely narrow, and it should be substantial hurdles for the State to be able to simply claim that you are an enemy combatant and thereby strip you of your fifth and sixth amendment rights.

But what we have in this bill, in section 1031, is not this narrow set of provisions based on the historical understanding of an enemy combatant. Instead, we have a definition that says ''a person who was a part or substantially supported al-Qaida, the Taliban, or associated forces, engaged in hostilities against the U.S. or coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of enemy forces.''

On first reading, it may sound as if that individual is directly involved in combat, but listen to the words embedded in this. First of all, it says ''a part of,'' with no conception of what ''a part of'' means. Did you write one sympathetic e-mail in your lifetime? Does that make you ''a part of''? We have no standard here.

''Substantially supported'' is understood to mean material support, but no contingency for intent. If you donated money to a charity and that charity used it to support Taliban activities somewhere in the world or some other group that had an association with the Taliban, you have substantially supported, under this conversation.

Then it says ''the U.S. or its coalition partners.'' Who are these coalition partners? What is the definition of that? A few weeks ago, you might have noticed in the news that there were a lot of protests going on in Bahrain. We have a military facility in Bahrain. Is Bahrain a coalition partner since we utilize a partnership with them to supply our forces in the Middle East? Yes, probably so, because there is no definition of ''coalition partner.'' With individuals who were standing up for human rights and got into a battle with police in a public square, they are engaging in a belligerent act against a coalition partner.

I hope you can start to see that the standard understanding that has been constitutionally established over time is completely taken apart in this simple paragraph. That should be of grave concern to all Americans who care about our constitutional rights to a fair hearing.

What happens when the government suspects you have done something? I want to take you to a case in Oregon. We had a case regarding an individual named Brandon Mayfield. Brandon Mayfield was born in Kansas. Brandon Mayfield got his law degree in Topeka, KS. Brandon Mayfield is an Army veteran. Brandon Mayfield is married with three children and lives with family in a Topeka suburb.

Brandon Mayfield is a Muslim convert, and in 2004 FBI agents raided his law office, his home, and his family farm to collect evidence, believing he was a terror mastermind behind the Madrid bombings. The reason why is an FBI agent concluded that a partial fingerprint matched Brandon Mayfield's fingerprint. Under this framework, the government now labels him an enemy combatant, and what right does Brandon Mayfield have to contest this? Basically, no rights. The law provides only that there will be a hearing; that the rules of the hearing will be set by the executive branch—by the President, if you will; that the attorney will be assigned by the executive branch; that the rules of evidence will be determined by the executive branch; that this hearing will occur sometime—but when? We don't know. There is no right to a speedy trial, there is no commitment that it will be public; in other words, no protections from the force of the State whatsoever—completely the opposite.

This gateway around the fifth and sixth amendments is very loosely defined rather than tightly defined. The entire process by which an individual might try to say ''You are wrong, that was not me, I was not there'' is extraordinarily without powers for the defendant.

I find that outrageous because once that hearing occurs, possibly in secret without an attorney that the individual would like to employ, without rights to evidence, without an ability to confront the witnesses against him or her—without any of these rights, that person can now be locked away forever under this law. There is no right to appeal, no right to contest, and therefore this completely works against the principles we hold dear. Those principles were set up—the fifth amendment and sixth amendments were set up to defend us against the overreach of an executive branch. Yet tonight we have stripped away those protections.

A lot of the conversation over the last few days has noted that there was a historical gate through which you did not have the fifth and sixth amendment but also recognized how narrow that was. What we have done today changes that.

I hope this continues to receive substantial attention. I would have hoped there would be hearings about this phenomenal change in U.S. law adopted tonight because this sort of thing should not be done lightly. It should not be placed at the last second into a Defense authorization bill without extensive consideration, extensive testimony by experts on all sides of this issue.

There is another feature of this bill that I think deserves attention, and that is that it creates a presumption for certain types of crimes to be tried in military tribunals rather than in civilian courts. Many of my colleagues are much more familiar with this than I am, but they have come to the floor and noted that 300 individuals who have been accused of terrorist-related crimes have been tried in civilian courts and found guilty, versus 6 in military courts. They have noted that because the FBI is immersed in the process of getting evidence out of individuals, they are masters at it, which helps to explain these 300 convictions versus the 6 in military courts. But the law tonight creates a presumption that they can be tried in a military court under an argument that several of my colleagues have made that simply the military is better at it. But there is not one shred of evidence brought that the military is better and lots of evidence about the sophisticated, experienced, systematic, and successful efforts of the FBI.

Mr. President, I would like to conclude by summarizing that all that we hold dear as Americans in this Constitution about our fair rights as citizens has been trampled on tonight. This has happened twice before in this Chamber, and the Supreme Court has thrown it out twice before. I hope they will find a case that this will put before the Court again because it is the responsibility of the Court to keep taking us back to this document, this Constitution, when we waver from the course it lays out. There should not be a situation that the government can simply assert that the President, no matter what President it is—this

President or any future President, whether it be President Bush, whether it be President Obama, whether it be the next President of the United States or one of five Presidencies into the future—they should not be able to say: You, Joe American, I am calling you an enemy combatant. I am locking you up. I am assigning your defender—your court attorney if you will. I am deciding the rules of evidence. I am deciding if it is going to be secret. And after I conclude that there is enough evidence because of a partial fingerprint, I am locking you up forever, and there is not a damned thing you can do about it.

Brandon Mayfield was locked up, and he might have been locked up forever if this law had been in place. But the FBI made a mistake. The FBI completely botched the fingerprint comparison. It was Spain that brought it to our attention. Spain kept saying: America, you have the wrong guy. America, you have the wrong fingerprint. And it was Spain that found the right match, and it was finally our own system that said: Yes, we made a mistake, and we are setting Brandon Mayfield free. But under what was done tonight, he may never have seen the light of day outside of his prison. That is not right. It is not, absolutely not a contributor to the security of this country to strip away fair rights of due process, to summon the evidence, to confront your accusers and make sure that a just decision occurs.

Mr. President, I yield the floor.

RECOGNIZING WORLD AIDS DAY

Mr. DURBIN. Mr. President, today is World AIDS Day, a time for us to reflect on one of the worst plagues the world has experienced. This year also marks the 30th anniversary of the first appearance of the disease in the United States.

For three decades this preventable disease has devastated families and communities around the world. It has killed over 25 million people. But there has been a strong global response from the research community, governments, health workers, and patient advocates to fight this disease and save lives. This battle has yielded notable victories, and I am proud of the leadership the United States has demonstrated in the fight against AIDS.

The number of newly infected people in the world is steadily declining. Successful antiretroviral treatments have saved 2.5 million lives in developing countries. Advancements have been made in HIV testing and prevention, and biomedical innovations have created powerful drugs that can transform AIDS from a death sentence into a more manageable chronic disease. Most recently, promising tests in gene therapies and vaccines are giving researchers renewed hope for a way to prevent the spread of HIV. Some scientists are becoming optimistic about the possibility of a cure.

Despite this considerable progress, however, an estimated 34 million people in the world are still suffering from AIDS—5 million more than in 2002. Only about half of them have access to ongoing medical treatment that is essential to making HIV/AIDS a manageable disease.

Today President Obama announced two new initiatives that will enable us to build on our successful efforts to combat HIV/AIDS here in America. First, the United States will commit $15 million to the Ryan White program, which supports HIV clinics around the country. In addition, we will commit $35 million to State AIDS drug assistance programs.

I commend the President and his administration on these critical new commitments. They represent the next step in America's first-ever National HIV/AIDS Strategy, which the President introduced in 2010. They remind us that AIDS doesn't just affect people in developing countries—1.2 million people are currently living with HIV/AIDS in the United States, and over 600,000 people here have died from this deadly virus.

Thirty years into this epidemic, the burden of the disease in America continues to be disproportionately borne by gay and bisexual men and people of color. While African Americans represent 12 percent of the U.S. population, they account for almost half of all people living with HIV and half of new infections each year.

In the State of Illinois, over 37,000 people have HIV or AIDS. Eighty-three percent of those people make their homes in Chicago. All of these lives depend upon continued Federal commitment to investment in research and treatments.

There is hope. Organizations such as AIDS Foundation Chicago—the umbrella group for HIV/AIDS groups working in Chicago—are dedicated to eliminating the disease in the United States. The ONE Campaign is a grassroots organization that works closely with African leaders and activists to stop the spread of preventable diseases such as HIV/AIDS. These two groups are examples of the many groups of people of conscience who are working to make HIV/AIDS history. The promising new biomedical research in gene therapies and vaccines gives me hope that we can someday eliminate AIDS and in the meantime improve the lives of those who are affected by it both here and abroad. But these important programs depend upon the Federal Government's will and ability to fund them. Unfortunately, these programs are at risk.

The U.N. recently released a progress report on the global response to AIDS. It said:

> Financial pressures on both domestic and foreign assistance budgets are threatening the impressive progress to date. Recent data indicating that HIV funding is declining is a deeply troubling trend that must be reversed for the international community to meet its commitments on HIV.

The Global Fund to Fight AIDS, Tuberculosis, and Malaria—the international financing institution that invests the world's money into fighting these deadly diseases—has recently announced that the decline in funds is putting the fund in a tough spot. It can't award any new grants until 2014.

As Congress debates the deficit, we should remember that the fight against AIDS has always been a bipartisan effort. It was under the administration of President George W. Bush that PEPFAR—now the Tom Lantos and Henry J. Hyde U.S. Global Leadership against HIV/AIDS, Tuberculosis and Malaria Act—was created. PEPFAR and other notable programs continue to be strengthened under the Obama administration. Today our President reminded us of this historical bipartisan support. He said:

> At a time when so much in Washington divides us, the fight against this disease has united us across parties and across presidents. And it shows that we can do big things when Republicans and Democrats put their common humanity before politics.

We need to cut the deficit, but let's be smart about it. The fact is that every dollar we cut from HIV/AIDS research and treatment this year means additional funding will be required the next year and the next. But this is not just about saving taxpayer dollars, as important as that is. Most of all, this is about saving lives. Every dollar not funded this year will exact a horrible toll. Men, women, and children will die who otherwise could have been saved. People who would have lived longer, healthier lives will have to rely on overly burdened programs such as Medicare and Medicaid just to survive. We must not allow that to happen.

Several years ago, I visited a program in Uganda for women who were dying of AIDS. We sat on the porch, and the women showed me scrapbooks they were making. They were gathering together photos, notes, and other bits of memorabilia about their lives so that their children would have some way to remember them after they died. Their children, playing in the yard, had already lost one parent and were now about to be orphaned. As I sat with those mothers, all of Uganda began to feel like a terminal ward of a hospital—an entire nation waiting to die. That is not true anymore. Today, because of discoveries by scientists and the determination of people of conscience, there is hope in Uganda and other desperately poor nations that have been hit hard by the HIV/AIDS pandemic.

There is also hope here at home. The United States continues to demonstrate its leadership in eliminating HIV/AIDS, but we cannot allow our efforts to fail for lack of funding and support. The elimination of HIV/AIDS is one of our most important commitments to the people of this country and the world, and we ought to keep that promise.

REMEMBERING BISHOP ODIS FLOYD

Mr. LEVIN. Mr. President, just as a building needs a foundation, every community needs pillars—people who provide strength, inspiration, guidance, and leadership, people to rally around in tough times. Today, the city of Flint, MI, is missing one of its pillars.

Bishop Odis Floyd of New Jerusalem Full Gospel Baptist Church died this week at the age of 71 after a long illness. For more than four decades, he was the spiritual leader of the church he helped his grandfather found. At an imposing 6-foot-6, with a powerful preaching and singing voice, he became known around the country for his stirring sermons and appeared on a number of gospel music albums. Whether in quiet conversation with a church member or in powerful preaching from the pulpit, he was a spiritual giant.

His faith taught him to reach out beyond his church, not just with spiritual guidance but to lend a hand to those in need. The church's charitable and outreach efforts under his leadership have had an enormous impact. They include programs to provide a safe and welcoming place for children; educational efforts; assistance to those who need medical care, food, and clothing; counseling and social work services, and much more.

Bishop Floyd also was a valued adviser to business and community leaders in Flint, in Michigan, and beyond. I was fortunate to visit with him on many occasions, and I valued those visits for his knowledge of the community and the quality of his counsel. His love and concern for Flint ran deep, and no matter the challenge, he was always at the forefront of those looking for solutions. His commitment to his community was profound and provided a shining example to others.

Whether it was in preaching the gospel he felt so deeply or in reaching out to help others, one word sums up the gift Bishop Floyd brought to those around him: hope. ''People need hope,'' he once told an interviewer, ''and that's always what I want to give them.''

His loss has deprived the community he loved of a strong and steady pillar. It now falls to all those who care about Flint to take up where he left off and to continue his work to improve the city and lives of its citizens.

Many will miss him, but none more than the family he loved: his wife and partner, Brenda; son Anthony; daughters, Nikki and Toyia, who served admirably as an intern in my office; and five grandchildren. Barbara and I send our condolences to them, to the members of New Jerusalem Full Gospel Baptist Church, and to the thousands who have, in ways great and small, been touched by Bishop Floyd's strength, generosity, and faith.

TRIBUTE TO ANDY SWAPP

Mr. HATCH. Mr. President, this past August I had the opportunity to visit Beaver County, Utah, where I met an educator who is working tirelessly to prepare our Nation's youth for success in our transformative economy. This rural area of southwest Utah is home to my State's major energy initiatives, including the largest wind farm in Utah.

In 2001 a local shop teacher, Andy Swapp, observed that Milford, UT could capitalize on the powerful winds in the area. Inspiring his students to learn about renewable energy, the class applied to Utah's anemometer loan program to erect a 20 meter meteorological tower. As the students collected and analyzed the wind data, they attracted the attention of a wind prospector named Curtis Whittaker. Mr. Whittaker was impressed with the preliminary data but more so with the dedication, enthusiasm and accomplishments of eighth grade students. He sent a 50 meter tower to Milford High School for Mr. Swapp and students to construct in the wind-swept desert. Mr. Swapp used the real world project to teach students about wind turbines and power outputs, inspiring students to apply their classroom lessons to developing solutions for affordable, abundant energy. As the commercial wind farm developed, Mr. Swapp's classes were continually relied upon for data collection while receiving training in wind farm maintenance operations. Over the last decade, Mr. Swapp's students participated in all phases of completing Utah's largest commercial wind farm.

Mr. Swapp's dedication to fostering student learning and success is not limited to wind power. His classes at Milford High School won a Rocky Mountain Power ''Bluesky'' grant to install a 10 kilowatt array of solar panels on a dual axis tracker on the front lawn of the school, and a roof top mounted solar array. The students were allowed to work with the contractor, helping install the $125,000 system. The students are now monitoring the energy production to compare the dual axis tracker with the standard technology. His classes also participate in national electric race car construction contests.

To broaden the education of his students, Mr. Swapp organized the Milford Renewable Energy Fair. With support from South West Applied Technology College, the fair has grown to include secondary schools from all over the State and major vendors in the industry. Milford High School is also home to the Southwest Renewable Energy Center, which Mr. Swapp helped devise to promote the energy-rich area of Beaver County and Southwest Utah. It is a collaboration of secondary schools, technical colleges, 4-year universities, State-wide economic advancement districts, research and development partnerships and technology commercialization firms. This center connects students to jobs, internships, and scholarships.

Mr. Swapp is an outstanding example of educators bringing learning to life and helping students envision a sustainable future. Mr. Swapp's students have enrolled in energy and engineering programs at Southern Utah University and Southwest Applied Technology College. They have secured high-skill, high paying jobs in their hometown. Their paths have been inspired by the curiosity, creativity and dedication of their teacher.

Prior to becoming an educator, Mr. Swapp served our country as a career infantry Sergeant in the U.S. Army. Following his service, he returned to Utah to offer rural students the very best in education, to expand their horizons, and to foster a positive attitude for their future. Mr. Swapp has been an example to his students by completing an Associate of Science, AS, from Dixie State College, a Bachelor of Science from Southern Utah University, and a Master of Science from Utah State University.

Mr. President, I was really impressed with what I experienced in meeting Andy. I wanted to highlight the important, innovative work of a successful educator engaged in leading our Nation into the future.

WORLD AIDS DAY

Mr. NELSON of Florida. Mr. President, musicians Bono and Alicia Keys are in Washington, DC, today to meet with Presidents Obama, Clinton, and Bush about what is next in the global battle against AIDS. They note that we are reaching a tipping point on combating HIV/AIDS worldwide, which is why they and many others, including myself, believe continued U.S. leadership is critical.

It is fitting that this gathering is taking place today—World AIDS Day. We all should remember that HIV/AIDS has claimed the lives of more than 550,000 Americans so far, while 1.1 million others are living with the disease.

Florida has been hit particularly hard: about 100,000 people are living with HIV/AIDS. Florida has the longest waiting list of low-income residents waiting for assistance with the high cost of lifesaving medications. More than 3,000 Floridians are on that list; and, alarmingly, the number could grow as the State considers cutting more than 1,600 who already are in the government-backed program.

Federal, State, and local governments must understandably tighten their belts. But focusing on such short-term savings is horribly shortsighted. For several reasons, these cuts will only lead to higher costs to taxpayers in the long run—cases will become more difficult to manage, transmission rates are likely to increase, and patients will more frequently need expensive care in emergency rooms and hospitals.

We must also remain committed to the goals of the President's Emergency Plan for AIDS Relief globally. Among the goals are to prevent more than 12 million new HIV infections and provide

care for more than 12 million people, including 5 million orphans and children around the world.

REMEMBERING DR. SUSAN M. DANIELS

Mr. HARKIN. Mr. President, I wish to pay tribute to a much respected and beloved leader in America's disability community, the late Dr. Susan Daniels.

Dr. Daniels acquired her disability at a very young age. Though she spent much of her early years in rehabilitation institutes and hospitals, her parents advocated for her full inclusion in school and in the life of her local community. As a consequence, Susan attended regular elementary and secondary schools. She went on to graduate summa cum laude from Marquette University, and to earn her master's degree at Mississippi State University and her Ph.D. from the University of North Carolina. And I would note that she achieved these things before the days of accessible campuses.

While still in her twenties, Dr. Daniels served as chair of the Department of Rehabilitation Counseling at Louisiana State University Medical Center. There, she developed an innovative program to train individuals to work directly in community-based settings with people with developmental disabilities. This program became a core element in Louisiana's efforts to deinstitutionalize people with disabilities.

Throughout her adult life, Dr. Daniels was a passionate advocate for people with disabilities. She served as Associate Commissioner of the Rehabilitation Services Administration in the U.S. Department of Education, and as Associate Commissioner of the Administration on Developmental Disabilities, ADD, in the U.S. Department of Health and Human Services. While at ADD, she developed the Home of Your Own Program to assist people with developmental disabilities in their quest to become homeowners in their communities. It is one of Dr. Daniels' living legacies that this Home of Your Own Program is now operating in 27 States.

Perhaps Dr. Daniels' greatest accomplishment was her leadership in passing the Ticket to Work and Work Incentive Improvement Act of 1999. Appointed by President Clinton to serve as Deputy Commissioner for Disability and Income Security Programs at the Social Security Administration, she worked tirelessly to lay the groundwork for this legislation. The Ticket to Work Act created employment incentives and healthcare provisions for workers with disabilities, and removed many of the systemic barriers that often required citizens with disabilities to make a stark choice between working or retaining their health coverage. Two of the most important provisions of this legislation are the authorization for a State Medicaid buy-in program to allow individuals to maintain health coverage after returning to work, and a continuation of Medicare coverage for individuals who are working.

Dr. Daniels was also very active in the fight for disability rights internationally. She addressed many conferences and research forums in Africa, Europe, and Asia. And she advised governments on the best ways to set up social insurance programs for individuals with disabilities. She served as president of the U.S. International Council on Rehabilitation, and was Rehabilitation International's deputy vice president. In 1998, she played a lead role in convening the International Women with Disabilities Leadership Forum.

Dr. Daniels was the recipient of many awards for her work, including the prestigious Henry B. Betts Award, which honors individuals who have made transformative differences in the lives of people with disabilities.

Dr. Daniels played leadership roles in a wide range of national and international organizations, but she also worked for change at the individual level, mentoring and sponsoring countless young men and women with disabilities both in the U.S. and abroad.

Susan's husband, John Watson, and many other family members, friends, and colleagues will gather for a memorial service in her honor at the National Press Club here in Washington on December 4. I will be with them in spirit as they celebrate a determined advocate and a truly bright light, a woman who was and is an inspiration to people with disabilities around the world.

ADDITIONAL STATEMENTS

TRIBUTE TO HALEY BARTON

● Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Haley Barton for her hard work as an intern in my Washington, DC, office. I recognize her efforts and contributions to my office as well as to the State of Wyoming.

Haley is a native of Wyoming and graduated from Lander Valley High School. She attends the University of Wyoming, where she is majoring in political science and history. Throughout her internship, she has demonstrated a strong work ethic which has made her an invaluable asset to our office. The quality of her work is reflected in her great efforts over the last several months.

I want to thank Haley for the dedication she has shown while working for me and my staff. It was a pleasure to have her as part of our team. I know she will have continued success with all of her future endeavors. I wish her all my best on her next journey.●

TRIBUTE TO AMY BLACK

● Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Amy Black for her hard work as an intern in my Washington, DC, office. I recognize her efforts and contributions to my office as well as to the State of Wyoming.

Amy is a native of Wyoming and graduated from Kelly Walsh High School. She attends the University of Wyoming, where she is majoring in political science. Throughout her internship, she has demonstrated a strong work ethic which has made her an invaluable asset to our office. The quality of her work is reflected in her great efforts over the last several months.

I want to thank Amy for the dedication she has shown while working for me and my staff. It was a pleasure to have her as part of our team. I know she will have continued success with all of her future endeavors. I wish her all my best on her next journey.●

TRIBUTE TO KAITLYNN GLOVER

● Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Kaitlynn Glover for her hard work as an intern in my Washington, DC, office. I recognize her efforts and contributions to my office as well as to the State of Wyoming.

Kaitlynn is a native of Wyoming and graduated from Natrona County High School. She attends the University of Wyoming, where she is majoring in agriculture communications. Throughout her internship, she has demonstrated a strong work ethic which has made her an invaluable asset to our office. The quality of her work is reflected in her great efforts over the last several months.

I want to thank Kaitlynn for the dedication she has shown while working for me and my staff. It was a pleasure to have her as part of our team. I know she will have continued success with all of her future endeavors. I wish her all my best on her next journey.●

TRIBUTE TO MANDI MOSHER

● Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Mandi Mosher for her hard work as an intern in my Casper office. I recognize her efforts and contributions to my office as well as to the State of Wyoming.

Mandi is a native of Wyoming and graduated from Glenrock High School. She attends the University of Wyoming where she is majoring in social work. She has demonstrated a strong work ethic which has made her an invaluable asset to our office. The quality of her work is reflected in her great efforts over the time she has been with us.

I want to thank Mandi for the dedication she has shown while working for me and my staff. It was a pleasure to have her as part of our team. I know she will have continued success with all of her future endeavors. I wish her all my best on her next journey.●

TRIBUTE TO RIO SMITH

● Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Rio Smith for his hard work as an intern in the U.S. Senate Committee on Indian Affairs. I recognize his efforts and contributions to my office as well as to the State of Wyoming.

Rio is a native of Wyoming and graduated from Cheyenne Central High School. He attends Stonehill College in Massachusetts where he is majoring in business administration. Throughout his internship, he has demonstrated a strong work ethic which has made him an invaluable asset to our office. The quality of his work is reflected in his great efforts over the time he has been with us.

I want to thank Rio for the dedication he has shown while working for me and my staff. It was a pleasure to have him as part of our team. I know he will have continued success with all of his future endeavors. I wish him all my best on his next journey.●

TRIBUTE TO KALEIGH WILLIAMS

● Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Kaleigh Williams for her hard work as an intern in my Cheyenne office. I recognize her efforts and contributions to my office as well as to the State of Wyoming.

Kaleigh is a native of Wyoming and graduated from Cheyenne East High School. She attends the University of Wyoming where she is majoring in political science. She has demonstrated a strong work ethic which has made her an invaluable asset to our office. The quality of her work is reflected in her great efforts over the last several months.

I want to thank Kaleigh for the dedication she has shown while working for me and my staff. It was a pleasure to have her as part of our team. I know she will have continued success with all of her future endeavors. I wish her all my best on her next journey.●

TRIBUTE TO PEASE GREETERS

● Ms. AYOTTE. Mr. President, today I wish to honor the memory of Charles Nichols II, a World War II veteran who helped start the Pease Greeters—a New Hampshire-based volunteer group that honors the brave U.S. service members who touch down at Portsmouth's Pease International Airport.

A decorated marine who represented the very best of America's ''greatest generation'', Mr. Nichols understood the critical importance of showing support for our troops. Thanks to the Pease Greeters, service men and women returning from, and traveling to, Iraq, Afghanistan, and other deployments have arrived at Pease and found smiling faces and a warm welcome—along with good food and a phone to call home.

As a cofounder of the Pease Greeters, Mr. Nichols helped launch a very special Seacoast tradition that sets the standard for how we ought to recognize our service members. I join citizens across New Hampshire and Maine in expressing my gratitude for Mr. Nichols' service to our country, his commitment to supporting America's troops, and his contributions to the life of the Seacoast Region.●

MARKING THE RETIREMENT OF BOB CONNERS

● Mr. BROWN. Mr. President. I rise today to honor Bob Conners, the retiring long-time voice on radio for thousands of Ohioans in Central Ohio, who broadcasted his final show on WTVN on November 30, 2011.

Bob and I have not always agreed on the issues, but he has always been the consummate professional. He is fair and dignified in discussions ever since he took to the airwaves back in 1964. And he is always armed with a quick wit. I spoke with Bob earlier this week. He told me that during his retirement he plans to learn a foreign language. When I asked which one, he said he wanted to master English first. That endearing sense of humor earned him the trust of listeners across Central Ohio. And as those who have listened to him over the years know, he has not only mastered English, he has mastered morning radio.

Growing up in St Marys, PA, Bob first wanted to become a radio actor, inspired by the Lone Ranger and encouraged by his father. He got his start on the airwaves when he was in high school, earning $45 per month as a radio deejay. After graduating from high school, Bob worked in Erie, Buffalo, San Diego, and Pittsburgh. He served our nation and volunteered for the Army in 1956.

By 1964, he joined WTVN in Central Ohio. Bob cemented his loyal following in the afternoons transitioning from music to a talk radio format. Some memorable stories of his time on air relate to his beloved Ohio State Buckeyes football team, led at the time by the famed Woody Hayes.

''The Morning Monarch,'' as he would be known while hosting the Bob Conners Show beginning in 1978, he brought in more listeners and would eventually range 33 years, six U.S. presidents, and five Ohio State football coaches. And as much as he enriched the lives of his listeners, he also served his community away from the microphone, volunteering with the Boys and Girls Clubs of Columbus and the Charity Newsies.

Bob Conners had the ear of his listeners because they could trust him, whether they agreed or disagreed with him. It is that admirable trait we will miss with his retirement. But it is that endearing quality that's earned him this retirement and no more 3 a.m. wake-up calls.

Bob, I wish you and Linda all the best in your retirement. Thank you for all that you have done for your listeners and for our great State.●

TRIBUTE TO ED STRICKFADEN

● Mr. RISCH. Mr. President, I rise today to recognize and pay tribute to an outstanding public servant, Ed Strickfaden. Today, the Idaho State Police will be naming a building after Ed, who served as the director of the Idaho State Police and was a 35-year veteran of the department. He is very deserving of this honor, and I congratulate him on this special day.

Ed Strickfaden graduated from Council High School, located in a small rural town in southwestern Idaho. He honorably served in the U.S. Air Force before beginning his career with the Idaho State Police. In 1967, he was hired as a port of entry officer, and from there he worked his way up the ranks, serving in almost every region of the State.

In 1980, he was promoted from a patrolman in the Lewiston area to a sergeant in Twin Falls. By 1984, he was district commander in Idaho Falls, then moving to the district commander position in Coeur d'Alene the following year.

He served in the headquarters office beginning in 1991, first as a major in charge of field operations, then as a deputy superintendent of the Idaho State Police. He was appointed ISP superintendent by Gov. Phil Batt and served 4 years in that position prior to his appointment as director of the Department of Law Enforcement by Gov. Dirk Kempthorne in January 1999.

Colonel Strickfaden undertook a major reorganization of the Idaho State Police, streamlining its functions and enhancing training throughout the department. He even initiated the name change to Idaho State Police, effective July 1, 2000.

With his years of service, rising through the ranks and serving in all parts of Idaho, Colonel Strickfaden understood more than most what was needed and how to do it. He was a man of uncompromising integrity and had the utmost respect of those he led and the respect of the state's elected officials.

Today, the Idaho State Police and the people of Idaho honor this humble man by putting his name on the building at ISP headquarters. It is a fitting tribute to a great leader and a wonderful human being. We are all very grateful for the many years of exemplary service Colonel Ed Strickfaden has provided to our great State.

I would be remiss if I did not also mention Colonel Strickfaden's wonderful family and especially his wife Barbara for her strong support throughout Ed's career. Together, they have served the people of Idaho with great distinction.●

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 1:36 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 bill, in which it requests the concurrence of the Senate:

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.

ENROLLED BILL SIGNED

At 6:13 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 394. An act to amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. INOUYE).

MEASURES PLACED ON THE CALENDAR

The following bills and joint resolutions were read the second time, and placed on the calendar:

S. 1930. A bill to prohibit earmarks.

S. 1931. A bill to provide civilian payroll tax relief, to reduce the Federal budget deficit, and for other purposes.

S. 1932. A bill to require the Secretary of State to act on a permit for the Keystone XL pipeline.

S.J. Res. 30. Joint resolution extending the cooling-off period under section 10 of the Railway Labor Act with respect to the dispute referred to in Executive Order No. 13586 of October 6, 2011.

S.J. Res. 31. Joint resolution applying certain conditions to the dispute referred to in Executive Order 13586 of October 6, 2011, between the enumerated freight rail carriers, common carriers by rail in interstate commerce, and certain of their employees represented by labor organizations that have not agreed to extend the cooling-off period under section 10 of the Railway Labor Act beyond 12:01 a.m. on December 6, 2011.

S.J. Res. 32. Joint resolution to provide for the resolution of the outstanding issues in the current railway labor-management dispute.

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–4115. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Fenamidone; Pesticide Tolerances'' (FRL No. 9325–4) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4116. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Prohexadione Calcium; Pesticide Tolerances'' (FRL No. 9326–4) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4117. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Polyethylene glycol; Tolerance Exemption'' (FRL No. 8892–1) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4118. A communication from the Acting Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Admiral Patrick M. Walsh, United States Navy, and his advancement to the grade of admiral on the retired list; to the Committee on Armed Services.

EC–4119. A communication from the Assistant Secretary of Defense (Legislative Affairs), transmitting a legislative proposal relative to the National Defense Authorization Act for Fiscal Year 2012; to the Committee on Armed Services.

EC–4120. A communication from the Associate General Counsel for Legislation and Regulations, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Federal Housing Administration (FHA) Appraiser Roster: Appraiser Qualifications for Placement on the FHA Appraiser Roster'' (RIN2502–AI96) received in the Office of the President of the Senate on November 30, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–4121. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' ((44 CFR Part 67)(Docket No. FEMA–2011–0002)) received in the Office of the President of the Senate on November 29, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–4122. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency with respect to the stabilization of Iraq that was declared in Executive Order 13303 of May 22, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–4123. A communication from the Division Chief of Regulatory Affairs, Bureau of Land Management, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Geothermal Resource Leasing and Geothermal Resources Unit Agreements'' (RIN1004–AD86) received during recess of the Senate in the Office of the President of the Senate on August 11, 2011; to the Committee on Energy and Natural Resources.

EC–4124. A communication from the Division Chief of Regulatory Affairs, Bureau of Land Management, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Public Sales'' (RIN1004–AD74) received during recess of the Senate in the Office of the President of the Senate on August 11, 2011; to the Committee on Energy and Natural Resources.

EC–4125. 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 Air Quality Implementation Plans; West Virginia and Ohio; Determinations of Attainment of the 1997 Annual Fine Particle Standard for the Parkersburg-Marietta and Wheeling Nonattainment Areas'' (FRL No. 9498–7) received in the Office of the President of the Senate on November 29, 2011; to the Committee on Environment and Public Works.

EC–4126. 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 Air Quality Implementation Plans; Louisiana; Revisions to Control Volatile Organic Compound Emissions for Surface Coatings and Graphic Arts'' (FRL No. 9496–8) received in the Office of the President of the Senate on November 29, 2011; to the Committee on Environment and Public Works.

EC–4127. 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; Louisiana; Baton Rouge Area: Redesignation to Attainment for the 1997 8-Hour Ozone Standard'' (FRL No. 9498–2) received in the Office of the President of the Senate on November 29, 2011; to the Committee on Environment and Public Works.

EC–4128. 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, Placer County Air Pollution Control District'' (FRL No. 9493–2) received in the Office of the President of the Senate on November 29, 2011; to the Committee on Environment and Public Works.

EC–4129. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Mandatory Reporting of Greenhouse Gases'' (FRL No. 9493–9) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Environment and Public Works.

EC–4130. 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; North Carolina: Redesignation of the Hickory-Morganton-Lenoir 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment'' (FRL No. 9493–5) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Environment and Public Works.

EC–4131. 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; North Carolina: Redesignation of the Greensboro–Winston-Salem–High Point 1997 Annual Fine Particulate Matter Nonattainment Area to

Attainment'' (FRL No. 9493–6) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Environment and Public Works.

EC–4132. 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; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); General Definitions; Definition of Modification of Existing Facility'' (FRL No. 9489–8) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Environment and Public Works.

EC–4133. 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 Air Quality Implementation Plans; West Virginia; Determination of Clean Data for the 2006 Fine Particulate Standard for the Charleston Area'' (FRL No. 9494–2) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Environment and Public Works.

EC–4134. 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 Air Quality Implementation Plans; Delaware; Amendments to the Control of Volatile Organic Compound Emissions from Offset Lithographic Printing and Letterpress Printing'' (FRL No. 9493–1) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Environment and Public Works.

EC–4135. 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 Air Quality Implementation Plans; Virginia; Update to Materials Incorporated by Reference'' (FRL No. 9490–3) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Environment and Public Works.

EC–4136. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Compliance Date Amendment for Farms'' (FRL No. 9494–8) received during adjournment of the Senate in the Office of the President of the Senate on November 22, 2011; to the Committee on Environment and Public Works.

EC–4137. A communication from the Director of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''List of Approved Spent Fuel Storage Casks: MAGNASTOR System, Revision 2'' (RIN3150–AI91) received in the Office of the President of the Senate on November 29, 2011; to the Committee on Environment and Public Works.

EC–4138. 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 ''Proposed Method of Accounting for OID on a Pool of Credit Card Receivables'' (Notice 2011–99) received in the Office of the President of the Senate on November 30, 2011; to the Committee on Finance.

EC–4139. 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 ''Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability'' (Rev. Proc. 2011–58) received in the Office of the President of the Senate on November 30, 2011; to the Committee on Finance.

EC–4140. 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 ''Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability'' (Rev. Proc. 2011–57) received in the Office of the President of the Senate on November 28, 2011; to the Committee on Finance.

EC–4141. A communication from the Federal Register Liaison Officer, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Approval of Grape Variety Names for American Wines'' (RIN1513–AA42) received in the Office of the President of the Senate on November 30, 2011; to the Committee on Finance.

EC–4142. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement to include the export of defense articles, including, technical data, and defense services to support the Proton integration and launch of the Inmarsat 5 Series F1, F2, and F3 Commercial Communication Satellites from the Baikonur Cosmodrome in Kazakhstan in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–4143. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including, technical data, and defense services to the Secretaria de la Defensa Nacional, for a radar system for the Surveillance and Control of the Mexican Airspace program the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–4144. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including, technical data, and defense services to the United Kingdom and France for the delivery and support of fourteen Mk6 Chinook helicopters to the United Kingdom Ministry of Defense in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–4145. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement to include the export of defense articles, including, technical data, and defense services to the United Kingdom for the design, development and manufacture of upgrades to the Brimstone Weapon System for several United States allies in Europe in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–4146. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement to include the export of defense articles, including, technical data, and defense services to the United Kingdom and India for the manufacturing and maintenance of AC and DC electrical power generating systems, motors, motor drive systems, and system control units utilized on military aircraft and ground vehicles for users in 63 countries in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–4147. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement to include the export of defense articles, including, technical data, and defense services for the manufacture and sales of AN/APG–63(V)1 radar system retrofit kits for sale and delivery to the Japanese Air Self Defense Force in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–4148. A communication from the Director of Regulations and Policy Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Animal Food Labeling; Declaration of Certifiable Color Additives'' (Docket No. FDA–2009–N–0025) received in the Office of the President of the Senate on November 30, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–4149. A communication from the Secretary of Education, transmitting, pursuant to law, the report of a rule entitled ''Race to the Top Fund Phase 3'' (RIN1894–AA01) received in the Office of the President of the Senate on November 28, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–4150. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the Administration's Semiannual Report of the Inspector General and the Semiannual Management Report on the Status of Audits for the period from April 1, 2011 through September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4151. A communication from the Chairman of the Federal Communications Commission, transmitting, pursuant to law, the Commission's fiscal year 2011 Agency Financial Report; to the Committee on Homeland Security and Governmental Affairs.

EC–4152. A communication from the Budget Officer, Office of the Treasurer, National Gallery of Art, transmitting, pursuant to law, the financial statements for the National Gallery of Art for the year ended September 30, 2011 and the auditor's report thereon; to the Committee on Homeland Security and Governmental Affairs.

EC–4153. A communication from the Secretary of Labor, transmitting, pursuant to law, the Semiannual Report of the Office of Inspector General of the Department of Labor for the period from April 1, 2011 through September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4154. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Semiannual 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–4155. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–228 ''Jubilee Housing Residential Rental Project Real Property Tax Exemption Clarification Temporary Act of

2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–4156. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–234 ''Cooperative Housing Association Economic Interest Recordation Tax Temporary Amendment Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–4157. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–235 ''Real Property Tax Appeals Commission Establishment Clarification Temporary Amendment Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–4158. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–236 ''Criminal Penalty for Unregistered Motorist Repeal Temporary Amendment Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–4159. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–237 ''The Washington Ballet Equitable Real Property Tax Relief Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–4160. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–238 ''Vault Tax Clarification Amendment Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–4161. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–239 ''Arthur Capper/Carrollsburg Public Improvements Revenue Bonds Amendment Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–4162. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Department of Health and Human Service's Semiannual 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–4163. A communication from the Director, Office of Personnel Management, 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 Management Response for the period ending September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4164. A communication from the Secretary of Energy, transmitting, pursuant to law, the Department of Energy's Semiannual Report of the Inspector General for the period from April 1, 2011 to September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4165. A communication from the Administrator of the Agency for International Development (USAID), 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–4166. A communication from the Acting Chief Executive Officer, Corporation for National and Community Service, transmitting, pursuant to law, the Semi-Annual Report of the Inspector General and the Corporation for National and Community Service's Report on Final Action for the period from April 1, 2011 through September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4167. A communication from the Chairman, Defense Nuclear Facilities Safety Board, transmitting, pursuant to law, the Board's fiscal year 2011 Performance and Accountability Report; to the Committee on Homeland Security and Governmental Affairs.

EC–4168. A communication from the Chairman, U.S. Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's Performance and Accountability Report for fiscal year 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4169. A communication from the Federal Register Liaison Officer, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Expansions of the Russian River Valley and Northern Sonoma Viticultural Areas'' (RIN1513–AB57) received in the Office of the President of the Senate on November 30, 2011; to the Committee on the Judiciary.

EC–4170. A communication from the Federal Register Liaison Officer, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Establishment of the Pine Mountain-Cloverdale Peak Viticultural Area'' (RIN1513–AB4) received in the Office of the President of the Senate on November 30, 2011; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KERRY, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and an amendment to the title and with an amended preamble:

S. Res. 227. A resolution calling for the protection of the Mekong River Basin and increased United States support for delaying the construction of mainstream dams along the Mekong River.

By Mr. KERRY, from the Committee on Foreign Relations, without amendment and with an amended preamble:

S. Res. 316. A resolution expressing the sense of the Senate regarding Tunisia's peaceful Jasmine Revolution.

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 671. A bill to authorize the United States Marshals Service to issue administrative subpoenas in investigations relating to unregistered sex offenders.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

S. 1792. A bill to clarify the authority of the United States Marshal Service to assist other Federal, State, and local law enforcement agencies in the investigation of cases involving sex offenders and missing children.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of nominations were submitted:

By Mr. LEAHY for the Committee on the Judiciary.

Jacqueline H. Nguyen, of California, to be United States Circuit Judge for the Ninth Circuit.

Gregg Jeffrey Costa, of Texas, to be United States District Judge for the Southern District of Texas.

David Campos Guaderrama, of Texas, to be United States District Judge for the Western District of Texas.

(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 Mr. SCHUMER (for himself, Mr. TOOMEY, Mr. WARNER, and Mr. CRAPO):

S. 1933. A bill to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HELLER:

S. 1934. A bill to amend the Internal Revenue Code of 1986 to repeal certain communications taxes, and for other purposes; to the Committee on Finance.

By Mrs. HAGAN (for herself, Ms. COLLINS, Mr. SCHUMER, Mr. KIRK, and Mr. AKAKA):

S. 1935. A bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the 75th anniversary of the establishment of the March of Dimes Foundation; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. JOHNSON of Wisconsin (for himself, Mrs. HUTCHISON, Mr. WICKER, Mr. RISCH, Mr. COBURN, Mr. SESSIONS, Mr. DEMINT, Mr. RUBIO, Mr. ENZI, Mr. CORNYN, Mr. LEE, Mr. PAUL, Mr. BARRASSO, Ms. AYOTTE, and Mr. MCCAIN):

S. 1936. A bill to adopt the seven immediate reforms recommended by the National Commission on Fiscal Responsibility and Reform to reduce spending and make the Federal government more efficient; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BROWN of Ohio (for himself and Ms. SNOWE):

S. 1937. A bill to amend the Internal Revenue Code of 1986 to extend the nonbusiness energy property credit to include the insulation component of insulated siding; to the Committee on Finance.

By Ms. SNOWE:

S. 1938. A bill to amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Ms. KLOBUCHAR (for herself and Mr. WARNER):

S. 1939. A bill to amend title 23, United States Code, to direct the Secretary of Transportation to require that broadband conduits be installed as part of certain highway construction projects, and for other purposes; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. RUBIO:

S. Res. 342. A resolution honoring the life and legacy of Laura Pollan; to the Committee on Foreign Relations.

By Mr. BLUMENTHAL:

S. Con. Res. 33. A concurrent resolution reorganizing the need to improve physical access to many federally funded facilities for

all people of the United States, particularly people with disabilities; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 491

At the request of Mr. PRYOR, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. 491, a bill to amend title 38, United States Code, to recognize the service in the reserve components of the Armed Forces of certain persons by honoring them with status as veterans under law, and for other purposes.

S. 506

At the request of Mr. CASEY, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 506, a bill to amend the Elementary and Secondary Education Act of 1965 to address and take action to prevent bullying and harassment of students.

S. 606

At the request of Mr. CASEY, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 606, a bill to amend the Federal Food, Drug, and Cosmetic Act to improve the priority review voucher incentive program relating to tropical and rare pediatric diseases.

S. 672

At the request of Mr. ROCKEFELLER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 672, a bill to amend the Internal Revenue Code of 1986 to extend and modify the railroad track maintenance credit.

S. 678

At the request of Mr. KOHL, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 678, a bill to increase the penalties for economic espionage.

S. 797

At the request of Ms. MIKULSKI, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 797, a bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

S. 810

At the request of Ms. CANTWELL, the name of the Senator from Vermont (Mr. LEAHY) 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. 834

At the request of Mr. CASEY, the names of the Senator from Colorado (Mr. UDALL), the Senator from Oregon (Mr. MERKLEY) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 834, a bill to amend the Higher Education Act of 1965 to improve education and prevention related to campus sexual violence, domestic violence, dating violence, and stalking.

S. 881

At the request of Ms. LANDRIEU, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 881, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide substantive rights to consumers under such agreements, and for other purposes.

S. 1122

At the request of Mr. MENENDEZ, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1122, a bill to amend title 23, United States Code, to establish standards limiting the amounts of arsenic and lead contained in glass beads used in pavement markings.

S. 1214

At the request of Mrs. GILLIBRAND, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1214, a bill to amend title 10, United States Code, regarding restrictions on the use of Department of Defense funds and facilities for abortions.

S. 1358

At the request of Mr. TESTER, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1358, a bill to amend the Family and Medical Leave Act of 1993 to provide leave because of the death of a son or daughter.

S. 1440

At the request of Mr. BENNET, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1440, a bill to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 1538

At the request of Ms. COLLINS, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1538, a bill to provide for a timeout on certain regulations, and for other purposes.

S. 1544

At the request of Mr. TESTER, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from Connecticut (Mr. BLUMENTHAL) were added as cosponsors of S. 1544, a bill to amend the Securities Act of 1933 to require the Securities and Exchange Commission to exempt a certain class of securities from such Act.

S. 1578

At the request of Mr. TOOMEY, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1578, a bill to amend the Safe Drinking Water Act with respect to consumer confidence reports by community water systems.

S. 1733

At the request of Mr. TESTER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1733, a bill to establish the Commission on the Review of the Overseas Military Facility Structure of the United States.

S. 1738

At the request of Mr. CORNYN, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1738, a bill to rescind the 3.8 percent tax on the investment income of the American people and to promote job creation and small businesses.

S. 1747

At the request of Mrs. HAGAN, the name of the Senator from Massachusetts (Mr. BROWN) was added as a cosponsor of S. 1747, a bill to amend the Fair Labor Standards Act of 1938 to modify provisions relating to the exemption for computer systems analysts, computer programmers, software engineers, or other similarly skilled workers.

S. 1753

At the request of Mr. KIRK, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1753, a bill to require operators of Internet websites that provide access to international travel services and market overseas vacation destinations to provide on such websites information to consumers regarding the potential health and safety risks associated with traveling to such vacation destinations, and for other purposes.

S. 1792

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 1792, a bill to clarify the authority of the United States Marshal Service to assist other Federal, State, and local law enforcement agencies in the investigation of cases involving sex offenders and missing children.

At the request of Mr. WHITEHOUSE, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1792, supra.

S. 1798

At the request of Mr. UDALL of New Mexico, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1798, a bill to direct the Secretary of Veterans Affairs to establish an open burn pit registry to ensure that members of the Armed Forces who may have been exposed to toxic chemicals and fumes caused by open burn pits while deployed to Afghanistan or Iraq receive information regarding such exposure, and for other purposes.

S. 1816

At the request of Mr. LAUTENBERG, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1816, a bill to amend title 23, United States Code, to modify a provision relating to minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.

S. 1866

At the request of Mr. RUBIO, the names of the Senator from Alaska (Mr.

BEGICH) and the Senator from Mississippi (Mr. WICKER) were added as cosponsors of S. 1866, a bill to provide incentives for economic growth, and for other purposes.

S. 1871

At the request of Mr. BROWN of Massachusetts, the name of the Senator from Nebraska (Mr. JOHANNS) 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. 1876

At the request of Mr. BROWN of Ohio, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1876, a bill to require the establishment of a Consumer Price Index for Elderly Consumers to compute cost-of-living increases for Social Security benefits under title II of the Social Security Act.

S. 1886

At the request of Mr. LEAHY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1886, a bill to prevent trafficking in counterfeit drugs.

S. 1894

At the request of Mr. SCHUMER, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 1894, a bill to deter terrorism, provide justice for victims, and for other purposes.

S. 1900

At the request of Mr. MENENDEZ, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1900, a bill to amend title XVIII of the Social Security Act to preserve access to urban Medicare-dependent hospitals.

S. 1903

At the request of Mrs. GILLIBRAND, the name of the Senator from Nebraska (Mr. JOHANNS) 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. 1917

At the request of Mr. CASEY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1917, a bill to create jobs by providing payroll tax relief for middle class families and businesses, and for other purposes.

S. 1929

At the request of Mr. BLUMENTHAL, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1929, a bill to require the Secretary of the Treasury to mint coins in commemoration of Mark Twain.

S. 1930

At the request of Mr. TOOMEY, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. 1930, a bill to prohibit earmarks.

S. 1932

At the request of Mr. LUGAR, the name of the Senator from New Hampshire (Ms. AYOTTE) was added as a cosponsor of S. 1932, a bill to require the Secretary of State to act on a permit for the Keystone XL pipeline.

AMENDMENT NO. 980

At the request of Mr. WEBB, the names of the Senator from Ohio (Mr. PORTMAN), the Senator from South Dakota (Mr. THUNE), the Senator from Nebraska (Mr. JOHANNS), the Senator from Oklahoma (Mr. INHOFE), the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of amendment No. 980 intended to be proposed to H.R. 2354, a bill making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2012, and for other purposes.

AMENDMENT NO. 1024

At the request of Mr. TOOMEY, the names of the Senator from Pennsylvania (Mr. CASEY) and the Senator from Indiana (Mr. COATS) were added as cosponsors of amendment No. 1024 intended to be proposed to H.R. 2354, a bill making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2012, and for other purposes.

AMENDMENT NO. 1114

At the request of Mr. BEGICH, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of amendment No. 1114 proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1120

At the request of Mrs. SHAHEEN, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of amendment No. 1120 proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1125

At the request of Mrs. FEINSTEIN, the names of the Senator from Oregon (Mr. MERKLEY) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of amendment No. 1125 proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1126

At the request of Mrs. FEINSTEIN, the names of the Senator from Utah (Mr. LEE), the Senator from Oregon (Mr. MERKLEY) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of amendment No. 1126 proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1145

At the request of Mr. TESTER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of amendment No. 1145 intended to be proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1152

At the request of Mr. PRYOR, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of amendment No. 1152 proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1182

At the request of Mr. SESSIONS, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of amendment No. 1182 proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1202

At the request of Mr. UDALL of New Mexico, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Michigan (Ms. STABENOW) and the Senator from West Virginia (Mr. MANCHIN) were added as cosponsors of amendment No. 1202 proposed to S. 1867, an original bill 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.

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 1202 proposed to S. 1867, supra.

AMENDMENT NO. 1206

At the request of Mrs. BOXER, the name of the Senator from Michigan

(Ms. STABENOW) was added as a cosponsor of amendment No. 1206 proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1225

At the request of Ms. KLOBUCHAR, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of amendment No. 1225 intended to be proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1257

At the request of Mr. MERKLEY, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of amendment No. 1257 proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1294

At the request of Mr. REED, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of amendment No. 1294 proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1401

At the request of Mr. CORKER, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of amendment No. 1401 intended to be proposed to S. 1867, an original bill 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.

AMENDMENT NO. 1414

At the request of Mr. MENENDEZ, the names of the Senator from Rhode Island (Mr. WHITEHOUSE), the Senator from Ohio (Mr. PORTMAN), the Senator from Arkansas (Mr. PRYOR), the Senator from Minnesota (Mr. FRANKEN), the Senator from New Mexico (Mr. UDALL), the Senator from Virginia (Mr. WARNER), the Senator from Texas (Mr. CORNYN), the Senator from Colorado (Mr. BENNET), the Senator from Mississippi (Mr. WICKER), the Senator from Colorado (Mr. UDALL), the Senator from California (Mrs. BOXER) and the Senator from Missouri (Mrs. MCCASKILL) were added as cosponsors of amendment No. 1414 proposed to S. 1867, an original bill 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.

At the request of Mr. GRASSLEY, his name was added as a cosponsor of amendment No. 1414 proposed to S. 1867, supra.

At the request of Ms. AYOTTE, her name was added as a cosponsor of amendment No. 1414 proposed to S. 1867, supra.

AMENDMENT NO. 1451

At the request of Mr. RUBIO, the names of the Senator from Arizona (Mr. KYL), the Senator from Illinois (Mr. KIRK) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of amendment No. 1451 intended to be proposed to S. 1867, an original bill 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.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HAGAN (for herself, Ms. COLLINS, Mr. SCHUMER, Mr. KIRK, and Mr. AKAKA):

S. 1935. A bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the 75th anniversary of the establishment of the March of Dimes Foundation; to the Committee on Banking, Housing, and Urban Affairs.

Mrs. HAGAN. Mr. President, today I am proud to introduce the March of Dimes Commemorative Coin Act.

For almost 75 years, the March of Dimes has fought to combat and prevent diseases that strike our youngest children, while also supporting mothers-to-be and families with infants in intensive care. The March of Dimes was founded in 1938 by President Franklin Roosevelt as the National Foundation for Infantile Paralysis, at a time when polio was on the rise. The Foundation established a polio patient aid program and funded research for vaccines developed by Jonas Salk, MD, and Albert Sabin, MD. These vaccines effectively ended epidemic polio in the United States.

Today one in 33 babies born in the United States is affected by a birth defect, and tragically, more than 5,500 infants die every year because of a birth defect. Moreover, an additional 500,000 children are diagnosed with developmental disabilities each year.

Almost 13 percent of babies born in America are born prematurely—an increase of 36 percent since the early 1980s. In 2003, the March of Dimes took on the cause of reducing the number of infants who are born prematurely. And thanks to the great work of the March of Dimes and others, after three decades of increase, the pre-term birth rate has now dropped for the third year in a row.

You would be hard pressed to find someone today who doesn't have a friend, a family member, a neighbor or a coworker who's had a baby born prematurely or born with some kind of birth defect. A month ago, I had the pleasure of meeting the 2011 March of Dimes National Ambassador: Lauren Fleming, and her parents, Nikki and Densel from Marvin, NC. Lauren was born three and a half months early and weighed just 2 pounds, 1 ounce. She spent the first 5 months of her life in the intensive care unit, being treated for respiratory distress and undergoing multiple surgeries. In part, because of the research and support provided by the March of Dimes, Lauren is now an adorable, vivacious 7-year old, and a hero to young children and their families throughout the country.

Although some progress has been made over the past several decades on reducing and preventing birth defects and prematurity, we need organizations such as the March of Dimes to continue to push for more research, more innovation and more prevention efforts.

The March of Dimes makes a difference. By investing millions of dollars to study premature births, birth defects, and infant mortality, including $5.6 million in North Carolina over the past 5 years, the March of Dimes is helping to ensure that we can reduce these occurrences.

But we can do more. That is why today I am introducing the March of Dimes Commemorative Coin Act of 2011. This bill would mint coins in recognition and celebration of the March of Dimes' 75 anniversary in 2014. Proceeds from the commemorative coin will be used to support the March of Dimes' Prematurity Campaign, an intensive multi-year campaign to raise awareness among health professionals and the general public and find the causes of prematurity.

Not only will the Commemorative Coin raise awareness of the March of Dimes' efforts, but it will also help raise more funding for their efforts. I cannot think of a more appropriate way to honor the March of Dimes than to mint actual ''dimes'' celebrating their work.

I want to thank my Republican colleague, Senator SUSAN COLLINS, as well as Senators SCHUMER, KIRK, and AKAKA for joining me in cosponsoring this measure.

I urge my other colleagues to join us in supporting this important bill.

By Ms. SNOWE:

S. 1938. A bill to amend chapter 6 of title 5, United States Code (commonly

known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Ms. SNOWE. Mr. President, I rise today to introduce the Regulatory Flexibility Improvements Act of 2011. Originally introduced in the House by Representative LAMAR SMITH of Texas, this targeted regulatory reform bill would amend the Regulatory Flexibility Act, RFA, the seminal legislation enacted in 1980 that requires Federal agencies to consider the cost and impact of proposed regulations on small businesses if such regulation would significantly affect a substantial number of small entities.

As a steadfast proponent for regulatory reform, I have been deeply troubled by this chamber's unwillingness to act on an issue so critical to our Nation's job creators. In stark contrast, our House counterparts are poised to pass this legislation, offering relief to our Nation's small business job creators. I encourage my colleagues in the Senate to seize this opportunity and support this legislation.

If anyone believes this is a solution in need of a problem, there is ample evidence to the contrary. In fact, an October 24 Gallup poll of American small business owners revealed that the number one problem they face is ''complying with government regulations.'' What I find increasingly frustrating is that although small businesses repeatedly express their concerns, the Senate continues to sit idly by, failing to take serious action!

At a time when unemployment stands at an unacceptable nine percent, and small businesses are struggling to create jobs, the imperative to focus our attention on regulatory reform couldn't be clearer. Unfortunately, small businesses, which historically create two-thirds of all new jobs, face an unequal federal regulatory burden. A September 2010, study commissioned by the Small Business Administration, SBA, Office of Advocacy found that small firms with fewer than 20 employees bear a disproportionate burden in complying with federal regulations. They pay an annual regulatory cost of $10,585 per employee, which is 36 percent higher than the regulatory cost facing larger firms.

This must change, and the Regulatory Flexibility Improvements Act of 2011 aims to do just that. This bill reforms the flawed rulemaking process to ensure that federal agencies consider small business impact before a rule is promulgated, not after. For example, one provision of this legislation would expand the small business review panel process to apply to all agencies. These panels currently only apply to the Environmental Protection Agency, EPA, Occupational Safety and Health Administration, OSHA, and, thanks to an amendment that I included in the Wall Street Reform legislation, the new Consumer Financial Protection Bureau, CFPB. These panels have worked well at EPA and OSHA since 1996. Why not apply this stipulation to every Federal agency, so small businesses are considered at the forefront of the rulemaking process?

Another provision would require agencies to consider foreseeable ''indirect'' economic effects when determining whether a rule will have a significant impact on a substantial number of small businesses. Currently, only ''direct'' economic impacts are considered in the analysis. The RFA has already saved billions for small businesses by forcing government regulators to address the direct impact of proposed rules on small firms. If billions of dollars can be saved by filtering out overly cumbersome or duplicative direct regulatory mandates upon small business while improving workplace safety and environmental conditions, even more can be saved by filtering out unnecessary or burdensome costs to those small businesses indirectly impacted by regulation.

This type of commonsense reform is why the Regulatory Flexibility Improvements Act enjoys the support of more than 150 small business advocacy organizations, including the U.S. Chamber of Commerce and the National Federation of Independent Business, NFIB.

President Obama himself has identified government regulations as harmful to job creation. In a January 18 Wall Street Journal op-ed, he wrote that, ''[s]ometimes, those rules have gotten out of balance, placing unreasonable burdens on business—burdens that have stifled innovation and have had a chilling effect on growth and jobs.'' More recently, my friend, former Democratic Senator Blanche Lincoln, partnered with NFIB President Dan Danner to write an open letter to President Obama calling for sensible regulatory reform.

Winston Churchill once said, ''If you have 10,000 regulations, you destroy all respect for the law!'' And certainly, looking at the expanding universe of rules waiting on the horizon, and the vast labyrinth of existing ones, we should ponder how business can dedicate any time and resources to their principal mission of creating products, offering services, innovating and growing.

Consider that, since President Obama took office, his administration has approved 613 Federal rules, 129 of which have an economic impact topping $100 million. In fact, the President's health reform legislation alone mandates 41 separate rulemakings, at least 100 additional regulatory guidance documents, and 129 reports, according to the U.S. Chamber of Commerce. How can our Nation's small businesses compete in a global economy when Washington, DC agencies continue to saddle them with overwhelming regulatory burdens year after year? How can entrepreneurs grow their companies when the regulatory environment dissuades them from investing in new equipment or hiring additional workers?

While members of both parties are now calling for small business regulatory reform, the United States Senate remains regrettably disengaged. I urge my colleagues to change course and put the interest of small business, our Nation's economic engines, ahead of petty politics at a time when more than 14 million Americans are unemployed and have been so for the longest time since World War II.

The days of working together to craft innovative solutions for the good of the American people do not have to be over. It is well beyond time for this body to pass small business regulatory reform and I urge my colleagues to support this critical legislation.

Mr. President, I ask unanimous consent that the text of the bill and a letter of support be printed in the RECORD.

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

S. 1938

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Regulatory Flexibility Improvements Act of 2011''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. CLARIFICATION AND EXPANSION OF RULES COVERED BY THE REGULATORY FLEXIBILITY ACT.

(a) IN GENERAL.—Paragraph (2) of section 601 of title 5, United States Code, is amended to read as follows:

''(2) RULE.—The term 'rule' has the meaning given such term in section 551(4) of this title, except that such term does not include a rule of particular (and not general) applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances.''.

(b) INCLUSION OF RULES WITH INDIRECT EFFECTS.—Section 601 of title 5, United States Code, is amended by adding at the end the following new paragraph:

''(9) ECONOMIC IMPACT.—The term 'economic impact' means, with respect to a proposed or final rule—

''(A) any direct economic effect on small entities of such rule; and

''(B) any indirect economic effect on small entities that is reasonably foreseeable and results from such rule (without regard to whether small entities will be directly regulated by the rule).''.

(c) INCLUSION OF RULES WITH BENEFICIAL EFFECTS.—

(1) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (c) of section 603 of title 5, United States Code, is amended by striking the first sentence and inserting ''Each initial regulatory flexibility analysis shall also contain a detailed description of alternatives to the proposed rule which minimize any adverse significant economic impact or maximize any beneficial significant economic impact on small entities.''.

(2) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604(a) of title 5, United States Code, is amended, in the first paragraph designated as paragraph (6), by striking ''minimize the significant economic impact'' and inserting ''minimize the adverse significant economic impact or maximize the beneficial significant economic impact''.

(d) INCLUSION OF RULES AFFECTING TRIBAL ORGANIZATIONS.—Paragraph (5) of section 601 of title 5, United States Code, is amended by striking ''or special districts'' and inserting ''special districts, or tribal organizations (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)))''.

(e) INCLUSION OF LAND MANAGEMENT PLANS AND FORMAL RULE MAKING.—

(1) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (a) of section 603 of title 5, United States Code, is amended in the first sentence—

(A) by striking ''or'' after ''proposed rule,''; and

(B) by inserting ''or publishes a revision or amendment to a land management plan,'' after ''United States,''.

(2) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (a) of section 604 of title 5, United States Code, is amended, in the first sentence—

(A) by striking ''or'' after ''proposed rulemaking,''; and

(B) by inserting ''or adopts a revision or amendment to a land management plan,'' after ''section 603(a),''.

(3) LAND MANAGEMENT PLAN DEFINED.—Section 601 of title 5, United States Code, is amended by adding at the end the following new paragraph:

''(10) LAND MANAGEMENT PLAN.—

''(A) IN GENERAL.—The term 'land management plan' means—

''(i) any plan developed by the Secretary of Agriculture under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604); and

''(ii) any plan developed by the Secretary of Interior under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).

''(B) REVISION.—The term 'revision', when used with respect to a land management plan, means any change to a land management plan which—

''(i) in the case of a plan described in subparagraph (A)(i), is made under section 6(f)(5) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)); or

''(ii) in the case of a plan described in subparagraph (A)(ii), is made under section 1610.5–6 of title 43, Code of Federal Regulations (or any successor regulation).

''(C) AMENDMENT.—The term 'amendment', when used with respect to a land management plan, means any change to a land management plan which—

''(i) in the case of a plan described in subparagraph (A)(i), is made under section 6(f)(4) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(4)) and with respect to which the Secretary of Agriculture prepares a statement described in section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); or

''(ii) in the case of a plan described in subparagraph (A)(ii), is made under section 1610.5–5 of title 43, Code of Federal Regulations (or any successor regulation) and with respect to which the Secretary of the Interior prepares a statement described in section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).''.

(f) INCLUSION OF CERTAIN INTERPRETIVE RULES INVOLVING THE INTERNAL REVENUE LAWS.—

(1) IN GENERAL.—Subsection (a) of section 603 of title 5, United States Code, is amended by striking the period at the end and inserting ''or a recordkeeping requirement, and without regard to whether such requirement is imposed by statute or regulation.''.

(2) COLLECTION OF INFORMATION.—Paragraph (7) of section 601 of title 5, United States Code, is amended to read as follows:

''(7) COLLECTION OF INFORMATION.—The term 'collection of information' has the meaning given such term in section 3502(3) of title 44.''.

(3) RECORDKEEPING REQUIREMENT.—Paragraph (8) of section 601 of title 5, United States Code, is amended to read as follows:

''(8) RECORDKEEPING REQUIREMENT.—The term 'recordkeeping requirement' has the meaning given such term in section 3502(13) of title 44.''.

(g) DEFINITION OF SMALL ORGANIZATION.—Paragraph (4) of section 601 of title 5, United States Code, is amended to read as follows:

''(4) SMALL ORGANIZATION.—

''(A) IN GENERAL.—The term 'small organization' means any not-for-profit enterprise that, as of the issuance of the notice of proposed rulemaking—

''(i) in the case of an enterprise which is described by a classification code of the North American Industrial Classification System, does not exceed the size standard established by the Administrator of the Small Business Administration pursuant to section 3 of the Small Business Act (15 U.S.C. 632) for small business concerns described by such classification code; and

''(ii) in the case of any other enterprise, has a net worth that does not exceed $7,000,000 and has not more than 500 employees.

''(B) LOCAL LABOR ORGANIZATIONS.—In the case of any local labor organization, subparagraph (A) shall be applied without regard to any national or international organization of which such local labor organization is a part.

''(C) AGENCY DEFINITIONS.—Subparagraphs (A) and (B) shall not apply to the extent that an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions for such term which are appropriate to the activities of the agency and publishes such definitions in the Federal Register.''.

SEC. 3. EXPANSION OF REPORT OF REGULATORY AGENDA.

Section 602 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking '', and'' at the end and inserting a semicolon;

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

''(3) a brief description of the sector of the North American Industrial Classification System that is primarily affected by any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities; and''; and

(2) in subsection (c), to read as follows:

''(c) Not later than 3 days after the date on which an agency publishes a regulatory flexibility agenda in the Federal Register under subsection (a), the agency shall prominently display a plain language summary of the information contained in the regulatory flexibility agenda on the website of the agency. The Office of Advocacy of the Small Business Administration shall compile and prominently display plain language summaries of each regulatory flexibility agenda published under subsection (a) on the website of the Office of Advocacy, not later than 3 days after the date on which the agency publishes the regulatory flexibility agenda the Federal Register.''.

SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (b) of section 603 of title 5, United States Code, is amended to read as follows:

''(b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement—

''(1) describing the reasons why action by the agency is being considered;

''(2) describing the objectives of, and legal basis for, the proposed rule;

''(3) estimating the number and type of small entities to which the proposed rule will apply;

''(4) describing the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report and record;

''(5) describing all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule, or the reasons why such a description could not be provided;

''(6) estimating the additional cumulative economic impact of the proposed rule on small entities beyond that already imposed on the class of small entities by the agency or why such an estimate is not available; and

''(7) describing any disproportionate economic impact on small entities or a specific class of small entities.''.

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) IN GENERAL.—Section 604(a) of title 5, United States Code, is amended—

(A) in paragraph (4), by striking ''an explanation'' and inserting ''a detailed explanation'';

(B) in each of paragraphs (4), (5), and the first paragraph designated as paragraph (6), by inserting ''detailed'' before ''description''; and

(C) by adding at the end the following:

''(7) a description any disproportionate economic impact on small entities or a specific class of small entities.''.

(2) INCLUSION OF RESPONSE TO COMMENTS ON CERTIFICATION OF PROPOSED RULE.—Paragraph (2) of section 604(a) of title 5, United States Code, is amended by inserting ''(or certification of the proposed rule under section 605(b))'' after ''initial regulatory flexibility analysis''.

(3) PUBLICATION OF ANALYSIS ON WEBSITE.—Subsection (b) of section 604 of title 5, United States Code, is amended to read as follows:

''(b) The agency shall make copies of the final regulatory flexibility analysis available to the public, including by making the entire analysis available on the website of the

agency, and shall publish in the Federal Register the final regulatory flexibility analysis, or a summary thereof which includes the telephone number, mailing address, and link to the website where the complete analysis may be obtained.''.

(c) CROSS-REFERENCES TO OTHER ANALYSES.—Subsection (a) of section 605 of title 5, United States Code, is amended to read as follows:

''(a) A Federal agency shall be treated as satisfying any requirement regarding the content of an agenda or regulatory flexibility analysis under section 602, 603, or 604, if such agency provides in such agenda or analysis a cross-reference to the specific portion of another agenda or analysis which is required by any other law and which satisfies such requirement.''.

(d) CERTIFICATIONS.—Subsection (b) of section 605 of title 5, United States Code, is amended, in the second sentence, by striking ''statement providing the factual'' and inserting ''detailed statement providing the factual and legal''.

(e) QUANTIFICATION REQUIREMENTS.—Section 607 of title 5, United States Code, is amended to read as follows:

''§ 607. Quantification requirements

''In complying with sections 603 and 604, an agency shall provide—

''(1) a quantifiable or numerical description of the effects of the proposed or final rule and alternatives to the proposed or final rule; or

''(2) a more general descriptive statement and a detailed statement explaining why quantification is not practicable or reliable.''.

SEC. 5. REPEAL OF WAIVER AND DELAY AUTHORITY; ADDITIONAL POWERS OF THE CHIEF COUNSEL FOR ADVOCACY.

(a) IN GENERAL.—Section 608 of title 5, United States Code, is amended to read as follows:

''§ 608. Additional powers of Chief Counsel for Advocacy

''(a)(1) Not later than 270 days after the date of the enactment of the Regulatory Flexibility Improvements Act of 2011, the Chief Counsel for Advocacy of the Small Business Administration shall, after opportunity for notice and comment under section 553, issue rules governing agency compliance with this chapter. The Chief Counsel may modify or amend such rules after notice and comment under section 553. This chapter (other than this subsection) shall not apply with respect to the issuance, modification, or amendment of rules under this paragraph.

''(2) An agency shall not issue rules which supplement the rules issued under subsection (a) unless such agency has first consulted with the Chief Counsel for Advocacy of the Small Business Administration to ensure that such supplemental rules comply with this chapter and the rules issued under paragraph (1).

''(b) Notwithstanding any other provision of law, the Chief Counsel for Advocacy of the Small Business Administration may intervene in any agency adjudication (unless such agency is authorized to impose a fine or penalty under such adjudication), and may inform the agency of the impact that any decision on the record may have on small entities. The Chief Counsel shall not initiate an appeal with respect to any adjudication in which the Chief Counsel intervenes under this subsection.

''(c) The Chief Counsel for Advocacy of the Small Business Administration may file comments in response to any agency notice requesting comment, regardless of whether the agency is required to file a general notice of proposed rulemaking under section 553.''.

(b) CONFORMING AMENDMENTS.—Section 611(a) of title 5, United States Code, is amended—

(1) in paragraph (1), by striking ''608(b),'';

(2) in paragraph (2), by striking ''608(b),''; and

(3) in paragraph (3)—

(A) by striking subparagraph (B); and

(B) by striking ''(3)(A) A small entity'' and inserting the following:

''(3) A small entity''.

SEC. 6. PROCEDURES FOR GATHERING COMMENTS.

Section 609 of title 5, United States Code, is amended by striking subsection (b) and all that follows through the end of the section and inserting the following:

''(b)(1) Prior to publication of any proposed rule described in subsection (e), the agency making such rule shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel for Advocacy with—

''(A) all materials prepared or utilized by the agency in making the proposed rule, including the draft of the proposed rule, except as provided in paragraph (2); and

''(B) information on the potential adverse and beneficial economic impacts of the proposed rule on small entities and the type of small entities that might be affected.

''(2) An agency may provide a summary of any draft if the rule—

''(A) relates to the internal revenue laws of the United States; or

''(B) is proposed by an independent regulatory agency (as defined in section 3502(5) of title 44).

''(c) Not later than 15 days after the receipt of materials and information under subsection (b), the Chief Counsel for Advocacy of the Small Business Administration shall—

''(1) identify small entities or representatives of small entities or a combination of both for the purpose of obtaining advice, input, and recommendations from those persons about the potential economic impacts of the proposed rule and the compliance of the agency with section 603; and

''(2) convene a review panel consisting of an employee from the Office of Advocacy of the Small Business Administration, an employee from the agency making the rule, and in the case of an agency other than an independent regulatory agency (as defined in section 3502(5) of title 44), an employee from the Office of Information and Regulatory Affairs of the Office of Management and Budget to review the materials and information provided to the Chief Counsel for Advocacy of the Small Business Administration under subsection (b).

''(d)(1) Not later than 60 days after the review panel described in subsection (c)(2) is convened, the Chief Counsel for Advocacy of the Small Business Administration shall, after consultation with the members of such panel, submit a report to the agency and, in the case of an agency other than an independent regulatory agency (as defined in section 3502(5) of title 44), the Office of Information and Regulatory Affairs of the Office of Management and Budget.

''(2) Such report shall include an assessment of the economic impact of the proposed rule on small entities, including an assessment of the proposed rule's impact on the cost that small entities pay for energy, and a discussion of any alternatives that will minimize adverse significant economic impacts or maximize beneficial significant economic impacts on small entities.

''(3) Such report shall become part of the rulemaking record. In the publication of the proposed rule, the agency shall explain what actions, if any, the agency took in response to such report.

''(e) A proposed rule is described by this subsection if the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, the head of the agency (or the delegatee of the head of the agency), or an independent regulatory agency determines that the proposed rule is likely to result in—

''(1) an annual effect on the economy of $100,000,000 or more;

''(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, tribal organizations, or geographic regions;

''(3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or

''(4) a significant economic impact on a substantial number of small entities.

''(f) Upon application by the agency, the Chief Counsel for Advocacy of the Small Business Administration may waive the requirements of subsections (b) through (e) if the Chief Counsel for Advocacy of the Small Business Administration determines that compliance with the requirements of such subsections are impracticable, unnecessary, or contrary to the public interest.''.

SEC. 7. PERIODIC REVIEW OF RULES.

Section 610 of title 5, United States Code, is amended to read as follows:

''§ 610. Periodic review of rules

''(a) Not later than 180 days after the enactment of the Regulatory Flexibility Improvements Act of 2011, each agency shall publish in the Federal Register and make available on the website of the agency a plan for the periodic review of rules issued by the agency which the head of the agency determines have a significant economic impact on a substantial number of small entities. Such determination shall be made without regard to whether the agency performed an analysis under section 604. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any adverse significant economic impacts or maximize any beneficial significant economic impacts on a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register and subsequently making the amended plan available on the website of the agency.

''(b) The plan shall provide for the review of all such agency rules existing on the date of the enactment of the Regulatory Flexibility Improvements Act of 2011 within 10 years of the date of publication of the plan in the Federal Register and for review of rules adopted after the date of enactment of the Regulatory Flexibility Improvements Act of 2011 within 10 years after the publication of the final rule in the Federal Register. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the head of the agency shall so certify in a statement published in the Federal Register and may extend the review for not longer than 2 years after publication of notice of extension in the Federal Register. Such certification and notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration and the Congress.

''(c) The plan shall include a section that details how an agency will conduct outreach to and meaningfully include small entities for the purposes of carrying out this section. The agency shall include in this section a plan for how the agency will contact small

entities and gather their input on existing agency rules.

''(d) Each agency shall annually submit a report regarding the results of its review pursuant to such plan to the Congress, the Chief Counsel for Advocacy of the Small Business Administration, and, in the case of agencies other than independent regulatory agencies (as defined in section 3502(5) of title 44) to the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget. Such report shall include the identification of any rule with respect to which the head of the agency made a determination described in paragraph (5) or (6) of subsection (e) and a detailed explanation of the reasons for such determination.

''(e) In reviewing a rule pursuant to subsections (a) through (d), the agency shall amend or rescind the rule to minimize any adverse significant economic impact on a substantial number of small entities or disproportionate economic impact on a specific class of small entities, or maximize any beneficial significant economic impact of the rule on a substantial number of small entities to the greatest extent possible, consistent with the stated objectives of applicable statutes. In amending or rescinding the rule, the agency shall consider the following factors:

''(1) The continued need for the rule.

''(2) The nature of complaints received by the agency from small entities concerning the rule.

''(3) Comments by the Regulatory Enforcement Ombudsman and the Chief Counsel for Advocacy of the Small Business Administration.

''(4) The complexity of the rule.

''(5) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, unless the head of the agency determines it to be infeasible, State, territorial, and local rules.

''(6) The contribution of the rule to the cumulative economic impact of all Federal rules on the class of small entities affected by the rule, unless the head of the agency determines that such calculations cannot be made and reports that determination in the annual report required under subsection (d).

''(7) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

''(f) The agency shall publish in the Federal Register and on the website of the agency a list of rules to be reviewed pursuant to such plan. Such publication shall include a brief description of the rule, the reason why the agency determined that the rule has a significant economic impact on a substantial number of small entities (without regard to whether it had prepared a final regulatory flexibility analysis for the rule), and request comments from the public, the Chief Counsel for Advocacy of the Small Business Administration, and the Regulatory Enforcement Ombudsman concerning the enforcement of the rule.''.

SEC. 8. JUDICIAL REVIEW OF COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATORY FLEXIBILITY ACT AVAILABLE AFTER PUBLICATION OF THE FINAL RULE.

(a) IN GENERAL.—Paragraph (1) of section 611(a) of title 5, United States Code, is amended by striking ''final agency action'' and inserting ''such rule''.

(b) JURISDICTION.—Paragraph (2) of section 611(a) of title 5, United States Code, is amended by inserting ''(or which would have such jurisdiction if publication of the final rule constituted final agency action)'' after ''provision of law,''.

(c) TIME FOR BRINGING ACTION.—Paragraph (3) of section 611(a) of title 5, United States Code, is amended—

(1) by striking ''final agency action'' and inserting ''publication of the final rule''; and

(2) by inserting '', in the case of a rule for which the date of final agency action is the same date as the publication of the final rule,'' after ''except that''.

(d) INTERVENTION BY CHIEF COUNSEL FOR ADVOCACY.—Subsection (b) of section 612 of title 5, United States Code, is amended by inserting before the first period ''or agency compliance with section 601, 603, 604, 605(b), 609, or 610''.

SEC. 9. JURISDICTION OF COURT OF APPEALS OVER RULES IMPLEMENTING THE REGULATORY FLEXIBILITY ACT.

(a) IN GENERAL.—Section 2342 of title 28, United States Code, is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(3) by inserting after paragraph (7) the following new paragraph:

''(8) all final rules under section 608(a) of title 5.''.

(b) CONFORMING AMENDMENTS.—Paragraph (3) of section 2341 of title 28, United States Code, is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(F) the Office of Advocacy of the Small Business Administration, when the final rule is under section 608(a) of title 5.''.

(c) AUTHORIZATION TO INTERVENE AND COMMENT ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCEDURE.—Subsection (b) of section 612 of title 5, United States Code, is amended by inserting ''chapter 5, and chapter 7,'' after ''this chapter,''.

SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 601 of title 5, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking the semicolon at the end and inserting a period; and

(B) by striking ''(1) the term'' and inserting the following:

''(1) AGENCY.—The term'';

(2) in paragraph (3)—

(A) by striking the semicolon at the end and inserting a period; and

(B) by striking ''(3) the term'' and inserting the following:

''(3) SMALL BUSINESS.—The term'';

(3) in paragraph (5)—

(A) by striking the semicolon at the end and inserting a period; and

(B) by striking ''(5) the term'' and inserting the following:

''(5) SMALL GOVERNMENTAL JURISDICTION.—The term''; and

(4) in paragraph (6)—

(A) by striking ''; and'' and inserting a period; and

(B) by striking ''(6) the term'' and inserting the following:

''(6) SMALL ENTITY.—The term''.

(b) SECTION 605.—The heading of section 605 of title 5, United States Code, is amended to read as follows:

''§ 605. Incorporations by reference and certifications''.

(c) TABLE OF SECTIONS.—The table of sections for chapter 6 of title 5, United States Code, is amended—

(1) by striking the item relating to section 605 and inserting the following new item:

''605. Incorporations by reference and certifications.'';

(2) by striking the item relating to section 607 and inserting the following new item:

''607. Quantification requirements.''; and

(3) by striking the item relating to section 608 and inserting the following:

''608. Additional powers of Chief Counsel for Advocacy.''.

(d) OTHER AMENDMENTS.—Chapter 6 of title 5, United States Code, is amended—

(1) in section 603, by striking subsection (d); and

(2) in section 604(a) by striking the second paragraph designated as paragraph (6).

SEC. 11. AGENCY PREPARATION OF GUIDES.

Section 212(a)(5) the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended to read as follows:

''(5) AGENCY PREPARATION OF GUIDES.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities and may cooperate with associations of small entities to distribute such guides. In developing guides, agencies shall solicit input from affected small entities or associations of affected small entities. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.''.

SEPTEMBER 21, 2011.

Re Business Letter on H.R. 527, the Regulatory Flexibility Improvements Act of 2011

MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES: We are writing to express our support for H.R. 527, the Regulatory Flexibility Improvements Act of 2011, and to ask you to cosponsor this legislation, if you have not done so already. The legislation improves the regulatory process by strengthening agency analysis of a rule's impact on small businesses.

Small businesses are the backbone of our nation's economy, and their ability to operate efficiently and free of unnecessary regulatory burdens is critical for our country's economic recovery. Research from a 2010 study released by the Small Business Administration (SBA) Office of Advocacy illustrates that the small business community is disproportionately affected by burdensome federal regulations. This legislation addresses that small business challenge directly.

H.R. 527 gives the SBA Office of Advocacy additional authorities and requires the office to establish standards for conducting a ''regulatory flexibility analysis'' during the rulemaking process. It improves transparency and ensures that agencies thoughtfully consider the impact of regulations on small businesses.

The legislation would also improve the accuracy of benefit-cost analysis by requiring agencies to consider the indirect impact of regulations on small business.

Finally, the legislation's provisions on periodic review of rules are in line with President Obama's Executive Order 13563, which requires agencies to conduct a retrospective analysis of existing rules to identify and modify rules in need of reform.

The legislation strengthens the regulatory process and builds upon the intent of Congress when the Regulatory Flexibility Act was originally enacted in 1980.

Thank you for your support of small business and we urge you to cosponsor the Regulatory Flexibility Improvements Act of 2011, H.R. 527.

Sincerely,

Alabama Restaurant Association; American Architectural Manufacturers Association; American Beverage Association; American Coatings Association; American Composites Manufacturers Association; American Council of Engineering Companies; American Farm Bureau Federation; American Fiber Manufacturers Association; American Foundry Society; American Home Furnishings Alliance; American Hotel & Lodging Association; American Institute for International Steel; American Nursery and Landscape Association; American Sportfishing Association; American Trucking Associations; AR State Chamber of Commerce/Associated Industries of AR; Arizona Nursery Association; Arkansas Hospitality Association; Associated Builders & Contractors, Inc.; Associated General Contractors of America; Associated Industries of Massachusetts; Association For Hose and Accessories Distribution; Association of Washington Business Brick Industry Association; Business Council of Alabama; Business Council of New York State; California Manufacturers & Technology Association; California Restaurant Association; Carpet and Rug Institute; Colorado Association of Commerce & Industry; Colorado Restaurant Association; Connecticut Restaurant Association; Edison Electric Institute; European-American Business Council; Florida Restaurant & Lodging Association; Food Marketing Institute; Forging Industry Association; Georgia Restaurant Association; Golf Course Superintendents Association of America; Greeting Card Association; Hearth, Patio & Barbecue Association; Idaho Lodging & Restaurant Association; Idaho Retailers Association; Illinois Manufacturers' Association; Illinois Retail Merchants Association; Independent Electrical Contractors, Inc.; Independent Lubricant Manufacturers Association; Indiana Chamber of Commerce; Indiana Hotel & Lodging Association; Indiana Manufacturers Association; Industrial Fasteners Institute; Industrial Minerals Association—North America; Interlocking Concrete Pavement Institute; International Council of Shopping Centers; International Sign Association; Iowa Restaurant Association; IPC—Association Connecting Electronics Industries; Kansas Restaurant & Hospitality Association; Kentucky Restaurant Association; Kentucky Retail Federation; Kitchen Cabinet Manufacturers Association; Louisiana Association of Business and Industry; Louisiana Restaurant Association; Louisiana Retailers Association; Maine Merchants Association; Maine Restaurant Association; Manufacturers Association of Florida; Maryland Retailers Association; Maryland Retailers Association; Massachusetts Restaurant Association; Michigan Restaurant Association; Minnesota Restaurant Association; Minnesota Retailers Association; Mississippi Hospitality and Restaurant Association; Missouri Association of Manufacturers; Montana Chamber of Commerce; Montana Restaurant Association; Montana Retail Association; Motor and Equipment Manufacturers Association; National Association for the Self-Employed; National Association of Convenience Stores; National Association of Home Builders; National Association of Manufacturers; National Association of REALTORS; National Association of the Remodeling Industry; National Automatic Merchandising Association; National Black Chamber of Commerce; National Club Association; National Community Pharmacists Association; National Council of Chain Restaurants; National Federation of Independent Business; National Grocers Association; National Lumber and Building Material Dealers Association; National Marine Manufacturers Association; National On-site Testing Associates; National Restaurant Association; National Retail Federation; National Roofing Contractors Association; National Shooting Sports Foundation; Nebraska Chamber of Commerce & Industry; Nevada Manufacturers Association; Nevada Restaurant Association; New Mexico Restaurant Association; Non-Ferrous Founders' Society; North American Association of Food Equipment Manufacturers; North American Die Casting Association; North Dakota Hospitality Association; Northeast Pennsylvania Manufacturers and Employers Association; NPES The Association for Suppliers of Printing, Publishing and Converting Technologies; Ohio Restaurant Association; Oklahoma Restaurant Association; Oregon Restaurant and Lodging Association; Pennsylvania Manufacturers' Association; Pennsylvania Restaurant Association; Pennsylvania Retailers Association; Plumbing-Heating-Cooling Contractors—National Association; Precision Machined Products Association; Printing Industries of America; Puerto Rico Manufacturers Association; Resilient Floor Covering Institute; Restaurant Association of Maryland; Retailers Association of Massachusetts; Rhode Island Hospitality Association; Security Industry Association; Small Business & Entrepreneurship Council; Snack Food Association; Society of American Florists; Society of Chemical Manufacturers and Affiliates; Society of Glass & Ceramic Decorators Products; South Carolina Hospitality Association; South Dakota Retailers Association; Southeastern Lumber Manufacturers Association; Specialty Equipment Market Association; SPI: The Plastics Industry Trade Association; Tennessee Hospitality Association; Texas Association of Business; Texas Restaurant Association; Textile Care Allied Trades Association; The Greater El Paso Chamber of Commerce; Treated Wood Council; Tree Care Industry Association; U.S. Chamber of Commerce; U.S. Travel Association; Utah Food Industry Association; Utah Manufacturers Association; Utah Restaurant Association; Utah Retail Merchants Association; Ventura County Agricultural Association; Virginia Hospitality & Travel Association; Washington Restaurant Association; Washington Retail Association; West Virginia Manufacturers Association; Window & Door Manufacturers Association; Wisconsin Manufacturers & Commerce; Wisconsin Restaurant Association; Wood Machinery Manufacturers of America; Wyoming Lodging and Restaurant Association.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 342—HONORING THE LIFE AND LEGACY OF LAURA POLLÁN

Mr. RUBIO submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 342

Whereas Laura Pollán founded the Ladies in White (Damas de Blanco) movement to protest the mass arrest of peaceful dissidents in Cuba;

Whereas the Ladies in White is composed of wives and female relatives of imprisoned political prisoners, prisoners of conscience, and peaceful dissidents in Cuba;

Whereas every Sunday, Laura Pollán led the Ladies in White on peaceful marches to attend Mass;

Whereas Laura Pollán was often subjected to physical and verbal assaults during her weekly peaceful marches;

Wheras Laura Pollán brought international attention to the human- and civil-rights abuses in Cuba; and

Whereas Laura Pollán passed away on October 14, 2011: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes and honors Laura Pollán for her peaceful struggle to bring human rights and democracy to Cuba;

(2) honors the bravery of Laura Pollán and her dedication to human and civil rights in Cuba;

(3) offers heartfelt condolences to the family, friends, and loved ones of Laura Pollán; and

(4) expresses hope that in memory of Laura Pollán, peaceful dissidents in Cuba will no longer be incarcerated or subjected to human-rights abuses.

SENATE CONCURRENT RESOLUTION 33—REORGANIZING THE NEED TO IMPROVE PHYSICAL ACCESS TO MANY FEDERALLY FUNDED FACILITIES FOR ALL PEOPLE OF THE UNITED STATES, PARTICULARLY PEOPLE WITH DISABILITIES

Mr. BLUMENTHAL submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. CON RES. 33

Whereas in 2009, 12 percent of all people in the United States reported having some disability;

Whereas in 2008, 16.9 percent of veterans, amounting to more than 13,000,000 people, reported having a service-related disability to the Department of Veterans Affairs;

Whereas according to the Current Population Survey of the Bureau of the Census, the number of people in the United States that report having a disability is at a 20-year high;

Whereas the Act entitled ''An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped'', approved August 12, 1968 (42 U.S.C. 4151 et seq.), referred to in this preamble as the ''Architectural Barriers Act of 1968'', was enacted to ensure that certain federally funded facilities are designed and constructed to be accessible to people with disabilities and requires that physically handicapped persons have ready access to, and use of, post offices and other Federal facilities;

Whereas automatic doors, though not mandated by either the Architectural Barriers Act of 1968 or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), provide a greater degree of self-sufficiency and dignity for people with disabilities, and the elderly, who may have limited strength to open a manual door;

Whereas a report commissioned by the Architectural and Transportation Barriers Compliance Board (referred to in this preamble as the ''Access Board''), an independent Federal agency created to ensure access to federally funded facilities for people with disabilities, recommends that all new buildings used by the public should have at least 1 automated door at an accessible entrance, except for small buildings where adding such a door may be a financial hardship for the building owners;

Whereas States and municipalities have begun to recognize the importance of automatic doors in improving accessibility;

Whereas the laws of the State of Connecticut require automatic doors in certain shopping malls and retail businesses, the laws of the State of Delaware require an automatic door or calling device for newly constructed places of accommodation, and the laws of the District of Columbia have a similar requirement;

Whereas the Facilities Standards for the Public Buildings Service published by the General Services Administration requires automation of at least 1 exterior door for all newly constructed or renovated facilities managed by the General Services Administration, including post offices;

Whereas from 2006 to 2011, 71 percent of the complaints received by the Access Board regarding the Architectural Barriers Act of 1968 concerned a post office or other facility of the United States Postal Service;

Whereas the United States Postal Service employs approximately 596,000 people, making it the second-largest civilian employer in the United States;

Whereas approximately 7,000,000 people per day visit 1 of the more than 36,400 post offices in the United States; and

Whereas the United States was founded on principles of equality and freedom, and these principles require that all people, even those people with disabilities, are able to engage as equal members of society: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes the immense hardships that people with disabilities in the United States must overcome every day;

(2) reaffirms its support of the Act entitled ''An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped'', approved August 12, 1968 (42 U.S.C. 4151 et seq.), commonly known as the ''Architectural Barriers Act of 1968'' and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and encourages full compliance with such Acts;

(3) recommends that the United States Postal Service and Federal agencies install power-assisted doors at post offices and other federally funded facilities, as applicable, to ensure equal access for all people of the United States; and

(4) pledges to continue to work to identify and remove the barriers that prevent all people of the United States from having equal access to the services provided by the Federal Government.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1455. Mr. BROWN, of Ohio submitted an amendment intended to be proposed by him to the bill H.R. 2354, making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2012, and for other purposes; which was ordered to lie on the table.

SA 1456. Mrs. FEINSTEIN (for herself, Mr. LEVIN, and Mr. DURBIN) proposed an amendment to the bill S. 1867, 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.

SA 1457. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2354, making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2012, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1455. Mr. BROWN of Ohio submitted an amendment intended to be proposed by him to the bill H.R. 2354, making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2012, and for other purposes; which was ordered to lie on the table; as follows:

On page 47, line 13, strike ''$237,623,000'' and insert ''$227,247,000''.

On page 66, line 13, strike ''$58,024,000'' and insert ''$68,400,000''.

SA 1456. Mrs. FEINSTEIN (for herself, Mr. LEVIN and Mr. DURBIN) proposed an amendment to the bill S. 1867, 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; as follows:

On p. 360, between lines 21 and 22, insert the following:

(e) 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.

SA 1457. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2354, making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2012, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. ___. ONE-YEAR EXTENSION OF SCHEDULE FOR DISPOSITION OF WEAPONS-USABLE PLUTONIUM AT SAVANNAH RIVER SITE.

Section 4306 of the Atomic Energy Defense Act (50 U.S.C. 2566) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking ''2012'' each place it appears and inserting ''2013''; and

(ii) in subparagraph (B), by striking ''2019'' and inserting ''2020''; and

(B) in paragraph (3)—

(i) in subparagraph (C), by striking ''2012'' and inserting ''2013''; and

(ii) in subparagraph (D), by striking ''2017'' and inserting ''2018'';

(2) in subsection (b), by striking ''2012'' each place it appears and inserting ''2013'';

(3) in subsection (c)—

(A) in the matter preceding paragraph (1), by striking ''2012'' and inserting ''2013'';

(B) in paragraph (1), by striking ''2014'' and inserting ''2015''; and

(C) in paragraph (2), by striking ''2020'' each place it appears and inserting ''2021'';

(4) in subsection (d)—

(A) in paragraph (1)—

(i) by striking ''2014'' and inserting ''2015''; and

(ii) by striking ''2019'' and inserting ''2020''; and

(B) in paragraph (2)(A), by striking ''2020'' each place it appears and inserting ''2021''; and

(5) in subsection (e), by striking ''2023'' and inserting ''2024''.

NOTICES OF HEARINGS

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HARKIN. Mr. President, I wish to announce that the Committee on Health, Education, Labor, and Pensions will meet in open session on Thursday, December 8, 2011, at 9:45 a.m. in SD–106 to conduct a hearing entitled ''Tales from the Unemployment Line: Barriers Facing the Long-Term Unemployed.''

For further information regarding this hearing, please contact the committee staff on (202) 224–5441.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources.

The hearing will be held on Thursday, December 8, 2011, at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of this hearing is to consider the nomination of Arunava Majumdar, to be Under Secretary of Energy.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510–6150, or by email to allison__seyferth @energy.senate.gov.

For further information, please contact Sam Fowler at (202) 224–7571 or Allison Seyferth at (202) 224–4905.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEVIN. 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 1, 2011 at 10 a.m. in SD–106.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs, be authorized to meet during the session of the Senate on December 1, 2011, at 10 a.m., to conduct a hearing entitled ''Spurring Job Growth Through Capital Formation While Protecting Investors.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on December 1, 2011, at 10 a.m.,

to held a hearing entitled, ''U.S. Strategic Objectives Towards Iran.''

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on December 1, 2011, at 2:30 p.m. to conduct a hearing entitled ''Insider Trading and Congressional Accountability.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on December 1, 2011, at 2:15 p.m. in room 628 of the Dirksen Senate Office Building to conduct a hearing entitled ''Deficit Reduction and Job Creation: Regulatory Reform in Indian Country.''

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

COMMITTEE ON THE JUDICIARY

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on December 1, 2011, at 10 a.m., in SD–226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

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

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES AND INTERNATIONAL SECURITY

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security be authorized to meet during the session of the Senate on December, 1, 2011, at 10:30 a.m. to conduct a hearing entitled, ''The financial and Societal Costs of Medicating America's Foster Children.''

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

PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that Tiffany Griffin, a fellow in Senator BINGAMAN's office, be granted the privilege of the floor during today's session of the Senate.

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

Mr. REID. Mr. President, I ask unanimous consent that Roger Yang, a member of the staff of Senator MERKLEY, be granted the privilege of the floor today.

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

NATIONAL GUARD AND RESERVISTS DEBT RELIEF EXTENSION ACT OF 2011

Mr. MERKLEY. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 2192, which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2192) to exempt for an additional 4-year period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, in 2008, I was proud to join Senator DURBIN in support of the National Guard and Reservists Debt Relief Act, which President Bush signed into law. This last week I have been able to arrange on behalf of the Senate Judiciary Committee for expedited action on the bill's extension, and that the Senate is passing unanimously. I commend Chairman LAMAR SMITH and the House Judiciary Committee for moving this legislation, and Representative COHEN, the bill's author, for his leadership and attention to the issue. Without this measure, the authority we provided to help our Guard and Reserve families would expire. By taking this action we preserve the assistance this authority provides.

It is a privilege to work on behalf of the men and women who serve in the Vermont National Guard. They have and continue to make all Vermonters proud. I cannot say enough about the men and women who serve in the National Guard and Reserve. They and their families deserve the full support of Congress for the sacrifices they make. Especially now, where multiple conflicts have demanded even more of them, when so many have been called into active service, we need to keep them foremost in our thoughts.

Extending the protections of the National Guard and Reservists Debt Relief Act for another 4 years is the right thing to do. The bill the Senate passes today will exempt qualifying members of the Guard and Reserve from the harsh means test imposed in our bankruptcy laws a few years ago. As a result of Congress's enactment of a 2005 bankruptcy measure, passed at the behest of large banks and credit card companies, Americans who must make the difficult decision to seek the protection of the bankruptcy court now face onerous requirements to demonstrate that they are experiencing sufficient hardship to enter chapter 7 bankruptcy. Under the National Guard and Reservists Debt Relief Extension Act, qualifying members of the Guard and Reserve will be protected against the burden of this requirement for another 4 years.

In my view, no American, particularly in times of such economic hardship, should have this burdensome requirement of the so-called means test imposed upon them. The bankruptcy system was established to protect Americans and give them a fresh start. The 2005 enactment turned the law on its head. I opposed this provision in the Senate in 2005, and continue to have serious misgivings about a policy that presumes that Americans facing extreme financial hardships are abusing the bankruptcy process.

Passage of the National Guard and Reservists Debt Relief Extension Act is a step forward toward correcting our current policy.

I also note that passage of this legislation is another example of the good cooperation that exists between the Senate and House Judiciary Committees operating across the aisle and across the Capitol. Last night, the Senate passed H.R. 394, the Federal Courts Jurisdiction and Venue Clarification Act, a bill sponsored by Chairman SMITH to bring clarity to the operation of Federal jurisdictional and venue statutes, thereby helping to reduce wasteful litigation over these issues. This bipartisan bill was cosponsored in the House by Representatives by HOWARD COBLE, ranking member JOHN CONYERS, Jr., and HANK JOHNSON of Georgia. Companion legislation was introduced in the Senate by Senator KLOBUCHAR, who chairs the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, and was cosponsored by Senator SESSIONS, the ranking member on the subcommittee.

These two bills are just the most recent examples of legislation I have worked with Chairman SMITH to enact. Of course, we worked together to enact the Leahy-Smith America Invents Act to revitalize our patent laws. We worked together on authorizing the extension of the term of FBI Director Mueller, which required a statutory exception, and on reauthorizing the USA PATRIOT Act.

Other examples include H.R. 368, Representative HANK JOHNSON's bill to clarify removal provisions for matters filed in State courts against Federal agencies and officers; H.R. 398, Representative LOFGREN's bill to toll certain time periods for those in active service to our country; S.1637, Senator KLOBUCHAR's bill to clarify how time is calculated under the Federal Rules; and H.R. 2944, Chairman SMITH's bill to extend the authority of the U.S. Parole Commission.

In addition to these nine measures, we are continuing to work on a number of additional bills, including: S. 1639, Senator TESTER's bill to amend the American Legion charter; and S. 1541, Senator BENNET's bill to revise the Blue Star Mothers' charter.

I look forward to our continued collaborative relationship. Our successful efforts across the aisle and across the Capitol show that the partisan gridlock

that has become all too prevalent these days does not govern everywhere.

Mr. MERKLEY. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 2192) was ordered to a third reading, was read the third time, and passed.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. MERKLEY. Mr. President, I ask unanimous consent that on Monday, December 5, 2011, at 4:30 p.m., the Senate proceed to executive session to consider the following nominations: Calendar items Nos. 363, 364, 365, and 406, under the previous order.

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

ORDERS FOR MONDAY, DECEMBER 5, 2011

Mr. MERKLEY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 2 p.m. on Monday, December 5, 2011; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate be in a period of morning business until 4:30 p.m. with Senators permitted to speak therein for up to 10 minutes each; and that following morning business, the Senate proceed to executive session under the previous order.

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

PROGRAM

Mr. MERKLEY. Mr. President, the next rollcall vote will be Monday at 5:30 p.m. on confirmation of one of the judicial nominations. We expect the remaining three judges to be confirmed by consent.

As a reminder, cloture was filed on the nomination of Caitlin Joan Halligan, to be U.S. Circuit Judge for the District of Columbia. That cloture vote will occur at noon on Tuesday.

ADJOURNMENT UNTIL MONDAY, DECEMBER 5, 2011, AT 2 P.M.

Mr. MERKLEY. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 9:52 p.m., adjourned until Monday, December 5, 2011, at 2 p.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

MARILYN B. TAVENNER, OF VIRGINIA, TO BE ADMINISTRATOR OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, VICE DONALD M. BERWICK, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

RICHARD M. SCOTT

WITHDRAWAL

Executive message transmitted by the President to the Senate on December 1, 2011 withdrawing from further Senate consideration the following nomination:

DONALD M. BERWICK, OF MASSACHUSETTS, TO BE ADMINISTRATOR OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, VICE MARK B. MCCLELLAN, WHICH WAS SENT TO THE SENATE ON JANUARY 26, 2011.