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Judge Hollander, really exemplifies the spirit of public service. She is well known by lawyers and jurors alike in Maryland for her meticulous reasoning process and well-crafted legal opinions. She really is a model of a fair and impartial judge who will dispense equal justice under the law. I know Judge Hollander has also supported efforts to reduce recidivism and is a strong supporter of our drug treatment courts and juvenile diversion programs.

Judge Jim Bredar also comes to the Senate with a wide range of courtroom and litigation experience. He served as a Federal prosecutor in Colorado for 4 years before coming to Maryland and serving as a Federal public defender for 6 years. Since 1998, he has served as a U.S. magistrate judge for U.S. District Court for the District of Maryland, where he works closely with our judges of the U.S. District Court for the District of Maryland. He conducts preliminary proceedings in felony cases, all proceedings in petty offense cases, and all proceedings in misdemeanor and civil matters upon the consent of the parties. Judge Bredar has conducted over 700 mediation and settlement conferences in civil cases.

Judge Bredar has been a member of the Maryland Bar since 1995. The American Bar Association's Standing Committee on the Federal Judiciary evaluated Judge Bredar's nomination and rated him unanimously "well qualified," the highest possible rating.

With Judge Bredar, I see a nominee who is genuinely concerned about broadening the access to justice of Americans to their courts. He believes that we can do better with both our criminal and civil justice systems. I know of Judge's Bredar work as a mediator in our Federal court's alternative dispute resolution program, which has received high praise from Maryland lawyers and litigants alike.

The people of Maryland will be well served by having Judge Bredar and Judge Hollander on the Federal bench in Baltimore. I look forward to the Senate confirming these two outstanding nominations.

We are extremely pleased that we are now getting a chance to vote on the confirmation of Judge Hollander to the Maryland District Court. Senator MIKULSKI has taken the leadership in bringing forward the nominations that we strongly support, the two of us.

I would yield the time to the senior Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, it is with great pleasure that Senator CARDIN and I bring to the Senate Judge Ellen Hollander, an outstanding woman who is currently a member of the Maryland Court of Special Appeals;

has been deemed qualified, very qualified by the Maryland Bar, and every specialized bar in the State of Maryland.

She brings a sense of judicial temperament, great judicial competence, and a commitment to impartial justice. She will be a great addition to the Federal bench in Maryland and to the Federal bench of the United States. She does not live in an ivory tower. Her work on boards and commissions in the nonprofit areas shows a keen involvement in civic affairs. I urge that we adopt the nomination of Judge Hollander. I would hope that we could do it by voice.

Mr. LEAHY. Mr. President, we will now finally have a vote on the nomination of Ellen L. Hollander to serve on the U.S. District Court for the District of Maryland. Her nomination has been pending on the Senate's Executive Calendar since the Judicial Committee reported it unanimously on June 10, more than 6 months ago. Judge Hollander, a well-respected Maryland State judge for the last 16 years, was unanimously rated "well qualified" by the ABA Standing Committee on the Federal Judiciary and has the strong support of both of her home State Senators, Senator MIKULSKI and Senator CARDIN.

After the confirmations today, 30 Federal circuit and district court nominations favorably reported by the Judiciary Committee remain ready for final vote. These include 21 nominations reported unanimously and another 3 reported with strong bipartisan support and only a small number of "no" votes. These 24 nominations should have been confirmed within days of being reported.

In addition, 17 nominations ready for action on the Senate calendar are to fill judicial emergency vacancies. With judicial vacancies at historic highs, we should act on these nominations. We should do as we did during President Bush's first 2 years in office, when the Senate with a Democratic majority had up-or-down votes on all 100 judicial nominations favorably reported by the Judiciary Committee. That included controversial circuit court nominations reported during the lameduck session in 2002. In contrast, during this first Congress of President Obama's administration, the Senate has considered just 49 of the 80 nominations reported by the Judiciary Committee.

I congratulate Judge Hollander and her family on her confirmation today.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Ellen Lipton Hollander, of Maryland, to be United States District Judge for the District of Maryland.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Ellen Lipton Hollander, of Maryland, to be U.S. District Court Judge for the District of Maryland.

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

The PRESIDING OFFICER. The yeas and nays have been requested.

Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Louisiana (Ms. LANDRIEU) and the Senator from West Virginia (Mr. MANCHIN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from New Hampshire (Mr. GREGG), and the Senator from Utah (Mr. HATCH).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted "yea" and the Senator from Utah (Mr. HATCH) would have voted "yea."

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

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 280 Ex.]

#### YEAS—95

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

#### NOT VOTING—5

Bunning	Hatch	Manchin
Gregg	Landrieu	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table.

The President will be immediately notified of the Senate's action.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

#### SBIR/STTR REAUTHORIZATION ACT OF 1999—Continued

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, all consent agreements that I have been involved

in over the years have been imperfect, but this is the best we could do. I think it is a pretty good one.

I ask unanimous consent that at 3 p.m. today all postcloture time be considered expired and the Reid motion to concur with amendments be withdrawn; that no further amendments or motions be in order, and without further intervening action or debate the Senate proceed to vote on the Reid motion to concur in the House amendment to the Senate amendment on H.R. 2965; that upon disposition of the House message, the Senate then resume executive session and the START treaty and there be 4 minutes of debate prior to a vote in relation to the McCain amendment, No. 4814, with the time equally divided and controlled between Senators KERRY and MCCAIN or their designees; that upon disposition of the McCain amendment, Senator RISCH be recognized to offer an amendment, with any debate time prior to disposition of the House message with respect to H.R. 2965 equally divided and controlled between the leaders or their designees.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Mr. President, reserving the right to object, and I will object, 4 minutes is not adequate for my amendment. There are a couple of speakers, including the cosponsor, Senator BARRASSO.

Mr. REID. Mr. President, I say through the Chair to my friend, the Senator from Arizona, I agree. So tell me what time you think would be appropriate. It does not matter.

Mr. KYL. Mr. President, might I join in this colloquy?

I do not think there needs to be any reference to time for debate. If I could just make a brief statement, I think the purpose for this unanimous consent agreement was to allow Members, by unanimous consent, to speak as in morning business on the don't ask, don't tell bill prior to a vote on that act—

Mr. REID. At 3 o'clock.

Mr. KYL. At 3 o'clock, but that we would be on the treaty, and if people did not want to talk about the don't ask, don't tell, then we would be on the McCain-Barrasso amendment, and that debate would conclude before 3 o'clock, and then the vote on the McCain-Barrasso amendment would follow the vote on the don't ask, don't tell.

Mr. REID. I think that is totally appropriate. I would just add and say to my friend while the Chair is considering the consent request, one of the reasons we were able to get this agreement is we have worked pretty hard in the last few days, and people felt we should have the afternoon off after we finish this information. As far as I am concerned, I will be in my office. If people want more time, that is fine. But that was one of the conditions that some people wanted on your side, and that is fine with me.

We will come in about midday tomorrow to resume consideration of the START treaty.

Mr. KERRY. Mr. President, reserving the right to object, and I will not.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, so I now understand that we now have a revised request, which is that between now and the hour of 3 o'clock, there will be an opportunity for Senators to speak either on the amendment or on don't ask, don't tell, and following the vote at 3 o'clock on don't ask, don't tell, there would then be a vote on the McCain amendment. Is that correct? I agree with that.

Mr. MCCAIN. Is that agreeable to the manager?

Mr. KERRY. I think that makes sense.

Mr. REID. I would ask, Mr. President, that the request be modified to the effect here as has been indicated.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The request is agreed to.

The Senator from Washington.

Mrs. MURRAY. Thank you, Mr. President.

Mr. President, I come to the floor today—and before I speak, I ask unanimous consent that Senator BOXER of California be the next Democratic Senator speaking after I conclude and Senator HUTCHISON has concluded on the Republican side.

Mr. MCCAIN. Mr. President, I reserve the right to object. What is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is the motion to concur on H.R. 2965. That is the pending business. As I understand the request from the Senator from Washington, on the Democratic side Senator BOXER will be the next Democrat recognized.

Mrs. MURRAY. Following the Republican speaker.

Mr. MCCAIN. Maybe I am wrong, but I thought the time would be either on the don't ask, don't tell or the START treaty.

Mrs. MURRAY. That is correct. The Senator is correct. I am merely asking for—

The PRESIDING OFFICER. The time will be equally divided between now and 3 o'clock, and the Senators may speak on either subject.

Mr. MCCAIN. I thank the Chair.

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

The Senator from Washington is recognized.

Mrs. MURRAY. Thank you, Mr. President.

Mr. President, I come to the floor this afternoon to speak and join in the effort to repeal don't ask, don't tell.

This policy has failed in its intended goals. It has done a tremendous disservice to the men and women who want nothing more than to defend our country, and it is time for this policy to go. I want to begin this afternoon by

talking about a true hero from my home State of Washington named Margaret Witt.

She joined the Air Force in 1987 and served honorably for 18 years as a flight nurse—rising to the rank of major. She was described in reviews and by her peers as being an exemplary officer, an effective leader, and a skilled and caring nurse.

But in 2004 her superiors discovered she was a lesbian and, acting under don't ask, don't tell policy they suspended and ultimately discharged her. Margaret lost the job she had given her life to, and our country lost a talented and committed flight nurse.

She did not give up. She went to court. She called witnesses. She made her case. In September of this year, U.S. District Judge Ronald Leighton ruled that she must be reinstated. Judge Leighton said the government gave no compelling reason for dismissing Major Witt, and that the application of don't ask, don't tell was not shown to further the government's interest in promoting military readiness.

That was the right decision, and it was amazing news for Major Witt. She is now working with disabled veterans in Spokane, WA, but she says she is excited to get back in the air and back to helping the troops who need her.

Major Witt is a true hero. Her commitment to our country should be recognized and honored. But she should never have been put in this position. She has the skills, the experience, and the commitment to do her job. The fact that she is a lesbian does not change that one bit.

There are so many reasons to repeal don't ask, don't tell and to do it now. This policy destroys lives. We have all heard stories like Margaret's. There are thousands like it, and for every one we hear there are so many more who suffer silently, whose lives and livelihoods are devastated—not because of something they did but because of who they are: men and women who are kicked out of the military or who are forced to lie to everyone they work with, who go to sleep petrified they will be found out about and discharged, and who wake up dreading another day of mandated deceit and dishonesty.

It is wrong. It needs to end.

Don't ask, don't tell is depriving our armed services of talented men and women at a time when we need our best on the front lines defending America. We are fighting wars in Iraq and Afghanistan, and we cannot afford to lose critical assets simply because they are gay.

Finally, we also know that repealing don't ask, don't tell will not have an adverse impact on the military. We have heard from military leaders who support this repeal. The Pentagon recently came out with their report that showed that repealing this policy would not inhibit their ability to carry out the missions they are charged with.

In fact, that report said 70 percent of servicemembers believe repeal would have little to no effect on their units.

Repealing don't ask, don't tell is the right thing to do. It is right for our country. It is right for our military. It is right for Major Witt and thousands like her. It is right for people like Rebekah. She is a young woman from Spokane in my home State. She wrote me a letter a couple of months ago and told me she is a senior at Eastern Washington University, and her dream for years has been to join the U.S. Army. She wrote to me and said:

I believe the military is an honorable calling. One of self-sacrifice and dedication—and I would be proud to call myself a soldier.

But there was a problem. Rebekah told me the very sense of honor that called her to serve her country was preventing her from acting on her dream because she told me she is a lesbian. She is very proud of who she is. As long as the official policy of the United States Army is to ask her to bury that pride, to tell her to keep secret a large part of who she is, and to ask her to live what would essentially be a lie, she simply will not be able to serve our country.

Rebekah told me that nothing would make her happier than to be able to graduate this coming spring and start her journey standing up for our Nation. She does not want to feel that she should be ashamed of who she is, and she should not have to.

We need to repeal don't ask, don't tell so young women like Rebekah will not stop dreaming of growing up to serve our country, and so that every man and woman in our Armed Forces can serve their country openly and with pride. We have heard the stories of the lives this policy has ruined. We have heard from top-ranking military officials that it simply does not work. We have heard from servicemembers that they, too, want it to change. Today, this afternoon, with this historic vote, this country will move a step forward in being proud of every man and woman who serves their country.

For far too long, men and women with courage and commitment to serve our Nation have been asked to hide the truth about who they are. It is shameful. It is a bad policy. Today, it will end.

I look forward to the vote this afternoon and the courage of this Senate to stand up and do the right thing today.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

#### NEW START TREATY

Mrs. HUTCHISON. Mr. President, I rise today to talk about the START treaty. We have been debating the START treaty off and on throughout the last few days, and there will be an amendment voted on for the resolution after the 3 o'clock vote on don't ask, don't tell.

I wish to talk about the amendment and the treaty itself. This historic

treaty is seeking, of course, to limit the strategic long-range nuclear weapons that are currently in U.S. and Russian inventory for a total of 1,550 warheads for each country. While these limits require some reductions in the number of delivery vehicles and deployed warheads both countries possess, a change in the counting of warheads will allow both countries to cut hundreds of them on paper with no actual reductions. For example, under START I, each deployed delivery vehicle was counted as carrying a specified number of warheads regardless of how many warheads were actually equipped on the missile or bomber. New START abandons these rules, instead only counting the number of warheads actually equipped on deployed missiles. In addition, strategic bombers each count as one warhead regardless of how many warheads they are actually carrying.

I also have reservations because of how New START limits our ability to conduct extensive and robust verification activities to ensure compliance with the treaty. The ability to adequately and thoroughly verify the enforcement of the treaty is crucial for two reasons—not only to ensure that both parties are holding up their end of the bargain but also as it relates to possibly one party losing control of missiles they are not accounting for. It is said in many quarters that some of the deteriorating nuclear materials in Russia have somehow gotten through to rogue nations such as North Korea or Iran. So it is very important to have a verification system that keeps count.

I am concerned about the ability to conduct onsite inspections because it has been reduced in this agreement. Under START I, the United States conducted more than 600 inspections over the course of 15 years. In New START, that number has been substantially reduced to only 180 inspections over the course of 10 years.

There are only two basic types of inspections in New START. Type one inspections focus on sites with deployed and nondeployed strategic systems. Type two focuses on sites with only nondeployed strategic systems. Each side is allowed to conduct 10 type one inspections and 8 type two inspections annually. Under the previous START treaty, there were 12 types of onsite inspections as well as continuous onsite monitoring activities at a certain facility. Even though, as has been mentioned on this floor in the debate, there are fewer facilities, this is a pretty drastic reduction in the ability to actually have the onsite investigations. Because weapons inspectors will only have 10 opportunities per year to inspect just 2 to 3 percent of Russia's force, we will be more reliant than in previous agreements on the full cooperation of Russia.

I really don't know how we could have reached an agreement to substantially reduce our most effective method of enforcement. In fact, a recent State Department report issued by the Obama administration said:

Notwithstanding the overall success of START I implementation, a significant number of long-standing compliance issues that have been raised in the START I treaty's Joint Compliance and Inspection Commission remain unresolved.

Defense. I am also concerned that proposals under the New START treaty may restrict U.S. missile defense capabilities, which could threaten our national security. Of all of the concerns that have been raised, I think this is the most important. It also is part of the amendment we are going to consider this afternoon.

Russia and the United States each issued unilateral statements when they signed New START that clarified their position on the relationship between START and missile defenses.

The official Russian statement said:

The treaty can operate and be viable only if the United States refrains from developing its missile defense capabilities quantitatively or qualitatively.

Contrary to claims by the Obama administration that missile defense will not be negatively impacted, a review of the text of the treaty shows otherwise. The most obvious limitation on missile defense is found in article V, paragraph 3 of the treaty. It says this prevents converting existing intercontinental ballistic missiles, ICBMs, and submarine-launched ballistic missiles, SLBMs, into launchers for missile defense interceptors.

The administration says: Well, it is more expensive to actually convert than to create new ones.

Well, we need to have flexibility. Whether we convert or whether we create new ones should not be a limitation on the United States. U.S. planning and force requirements might have to change in the future to respond to evolving world threats during New START's tenure. It is important that our Nation be able to adjust our military defense systems if needed. We are not just talking about Russia now. We are talking about adjusting our missile defense capabilities against any other country in the world, including rogue nations we believe have nuclear capabilities. We are not sure how far developed they are, but we know North Korea is trying to have a ballistic missile with a nuclear warhead. We know Iran is too. We know Pakistan has them, and though Pakistan is an ally, it is a fragile government at this point.

Why would we in any way link our own missile defense capabilities with the evolving threats out there, regardless of the present good terms we have with Russia? Why would we do that? That is a unilateral capability that our country must insist we keep for our sovereign Nation.

The McCain amendment would take out of the preamble to this treaty:

Recognizing the existence of the interrelationship between strategic offensive arms and strategic defensive arms, that this interrelationship will become more important as strategic nuclear arms are reduced, and that current strategic defensive arms do not undermine the viability and effectiveness of the strategic offensive arms of the Parties.

We want to take that out. It is absolutely essential that we take this out of the preamble.

Mr. President, I ask unanimous consent to be added as a cosponsor of the McCain amendment.

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

Mrs. HUTCHISON. Mr. President, we need to ensure that our defenses are not in any way inhibited by this treaty because we must defend against countries that perhaps are not enemies of Russia, but they might be ours. And to in any way restrict our defenses is not necessary to ensure that we have mutual offensive lowering of numbers.

So I am very concerned about this particular segment. If we can adopt the McCain amendment, of which I am a cosponsor, it would take me a significant way toward believing this treaty would be worthy of ratification.

I am seriously concerned that although it is clear that a number of restrictions will be placed on the United States under this treaty, the same is not necessarily true for our partner to the treaty—Russia.

Dr. Keith Payne, a former Deputy Assistant Secretary of Defense for Forces Policy, has noted that New START's limitations are of little real consequence for Russia because Russia's aged Cold War strategic launchers already have been reduced below New START ceilings. Additionally, many defense analysts predict Russia will have fewer than 1,500 nuclear warheads by 2012.

Russian defense expert Mikhail Barabonov bluntly makes the same point. He says:

The truth is, Russia's nuclear arsenal is already at or even below the new ceilings.

Already at or even below the new ceilings.

At the time of the signing of the treaty, Russia had a total of just 640 strategic delivery vehicles—only 571 of them deployed . . . It therefore becomes evident that Russia needs no actual reductions to comply. If anything, it may need to bring some of its numbers up to the new limits, not down.

That brings me to the second major point that concerns me about the treaty; that is, the modernization capabilities for our warheads that are part of our arsenal. We can do something about this outside the treaty and still go forward with the ratification, but so far we have not had the assurances that would allow us to know our modernization could be done.

According to the 2010 Nuclear Posture Review, today's nuclear weapons have aged well beyond their originally planned life, and the nuclear complex has fallen into neglect. It has been 18 years since our arsenal has been tested.

I share the concerns of my colleague, Senator KYL, who has been a leader on this issue. We must ensure—and we can do it in a separate, signed ratification resolution—that the United States has a strong plan that provides for a nuclear modernization program that ensures that if we did need to deploy be-

cause a rogue nation that is not part of any treaties or is a part of a treaty but isn't going to comply—we need to ensure our deterrent is real. Our deterrent will be real if our warheads are assured of still being capable of being a deterrent, being deployed, being used in the very worst case circumstances.

As President Reagan said, trust, but verify when you are making treaties with other countries, especially this treaty that is going to have such consequences as one that might lower our capability to defend our country from a nuclear missile, a warhead on a missile that could be delivered to our country by a rogue nation.

This has nothing to do with Russia. We don't expect them to launch a missile against the United States, that is for sure. But we do know that there are other nations that are enemies of the United States, that are trying to get, and possibly have, nuclear warheads and the capability to deliver them.

So we need to assure, first and foremost, two things: that our nuclear capabilities are viable, which means we need a modernization program that we can be assured has an arsenal that can work; No. 2, we need to make sure our ability to maintain missile defense is not negatively impacted by this treaty. There is no reason to connect it to a treaty that is going to limit offenses. As long as our missiles are capable of being deployed, that is leverage we must have. But we certainly have no reason to lower our capability to defend our country unilaterally, which I cannot imagine that any administration—and certainly not the Senate—would sign or ratify a treaty that might take away our capability to defend our country. I would hate for it to be on our watch that we lowered the defenses of the United States, because we are being rushed into ratifying a treaty without the full capability to amend it, or that we don't make sure in every detail, as Senator KYL has said so many times, that we have preserved our capabilities to defend our country against any enemy; and secondly, that we have the capability to go on offense so that any country that might decide to send a nuclear warhead into our territory, or into anyplace where our troops are on the ground fighting for freedom, that that country or that group of rogue nations would know we could respond because our arsenal of weapons is viable.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I ask unanimous consent that the next two Democrats on the list be Senator LEAHY, followed by Senator SHAHEEN.

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

Mrs. BOXER. Mr. President, I want to respond to the comments of my friend from Texas, who was very passionate in her remarks, by saying it interested me that she raised the name of President Ronald Reagan, because a lot

of major players in his administration support this treaty—George Shultz, for one, and also James Baker. In addition, the current Director of National Intelligence, who is responsible for verification, supports this treaty. And LTG Patrick O'Reilly, head of the U.S. Missile Defense Agency, says that the New START treaty actually reduces constraints on the development of missile defense.

I think her comments were very articulate, but they are not correct, because, again, I will place into the RECORD the many leaders from former Republican administrations who are pressing us hard to get this treaty done. As a matter of fact, we haven't had boots on the ground to verify what the Russians are doing for a long time now. This treaty will make sure we can verify. But whether it is Defense Secretary Robert Gates, or Patrick O'Reilly, as I said, head of the U.S. Missile Defense Agency, or the Director of National Intelligence—you also have former Secretary of Defense James Schlesinger saying he doesn't believe this inhibits missile defense. You have the former Secretary of Defense under President Clinton, William Perry, being very strong on this, along with Secretary of State Henry Kissinger, and so on. In the Washington Post, Henry Kissinger, George Shultz, James Baker, Lawrence Eagleburger, and Colin Powell made the following statement. "New START preserves our ability to deploy effective missile defenses." The testimonies of our military commanders and civilian leaders make it clear that the treaty does not limit U.S. missile defense plans.

I think the biggest danger to our country is not acting on this. If we don't act, it is a danger to the national security of this Nation. I am very pleased to see the incredible bipartisan support outside of this Chamber and, I hope, inside this Chamber. I am very hopeful. But we will find out in the coming days.

I want to also talk about the two very critical votes we cast here moments ago, which are so important to large segments of our communities. The DREAM Act, which would give a path of legality to students who are outstanding in their communities and who want to join the military, or go to college, is an important bill. Because of the filibuster we needed 60 votes. We got 55 votes—a majority—but the Republican filibuster stopped us from passing it.

Today the dreams of young, talented students who grew up in America were crushed because of a filibuster. We have to make it clear to the people who follow this that the Republicans stopped us from passing the DREAM Act, even though we had a few of them join us. I say thank you to those on the other side. We got 55 votes. We had 90 percent of Democrats voting for it and less than 10 percent of Republicans—90 percent of Republicans voted against it. Today, dreams were crushed.

I believe in America. My mother was born in a foreign land and, by the grace of God, she was naturalized, and she kissed the ground of this country. I often think to myself, what if she had a foul-up in her papers somehow, what would have happened to me? Would I be a different person? No, I would be the same human being. America would be my country.

The reason I am so passionate on this is these are young people who would make our country stronger. As a matter of fact, our military says the DREAM Act is a recruiter's dream, because we get the best and the brightest to sign up for the military. In my State, where I am so proud of our incredible diversity, we have a group of young people who are ready to go to college there, start their own businesses there, get jobs there, form their families there, work in their communities. They already are.

I have shown on the floor of the Senate many times individuals who were caught in this limbo state. A lot of them are presidents of their student bodies. A students, leaders in their communities. Studies show that if the DREAM Act passes, the gross domestic product of our Nation will increase. There is a very good study, a recent study by USC, the University of Southern California, that is very clear on the point.

It seems to me what we did today by failing to end the filibuster, even though we had a strong majority vote, we hurt our country. Why did we hurt our country? Because our children are our future. These are very bright young people, who are very motivated. They would be the only ones to benefit from the DREAM Act.

I am here today with a message: I will never give up until we pass the DREAM Act.

On the good side today, from my perspective, we made some history. We did break a filibuster—a Republican filibuster—on the issue of ending discrimination in the military against gays and lesbians. We voted to end that filibuster and take up the issue of the repeal of don't ask, don't tell. I do believe, in a few hours, that policy will be gone.

There are moments in history that come to us, and for me to be here at this time—and I know I speak for a lot of colleagues—and cast a right for civil rights, cast a vote for justice, cast a vote for equality, and to cast a vote against discrimination is a high honor.

I have to say as a point of personal privilege, I was here when that policy went into effect. It was 1993 and I was a new Member of the Senate. I thought this was the wrong policy at that time. So I said to my staff: Can't we do something and stop this? We decided the best way to try to stop it was to say let's not codify this policy. Let's not put it into law. Let's have an amendment that says it is up to the executive branch. That way, the executive branch could repeal it if it didn't work, and it would be easier.

It is interesting because our thoughts were right on target, because our President does not support don't ask, don't tell, and he would, in a heartbeat, of course, remove it as a policy through Executive order. But because we had voted it into law, we had to act.

I decided to go back to the speech I made on that day, September 9, 1993, and take a look at some of the things I said about don't ask, don't tell. First, I said, on the question of codification—that is, putting don't ask, don't tell into law:

There is no historic precedent for the codification of the military personnel policy that prevents a whole class of Americans from serving their country in the Armed Forces.

I felt it was against precedent, and I said:

There is simply no compelling reason to believe we should break with history and codify such a policy.

I mentioned that, over the past four decades, Congress had declined to impose restrictive personnel policies on the military. I quoted a former Senate Armed Services Committee chairman, Barry Goldwater, who stated:

Banning loyal Americans from the Armed Forces because of their sexual orientation is just plain un-American.

I said the policy is a policy of out-right discrimination, which flies in the face of the very American values that the military has sworn to defend.

I lauded the courage of those military personnel who were willing to come forward and testify before Congress way back then. And, of course, fast forward to today, it is incredible that brave men and women serving in uniform in Iraq and in Afghanistan, who put their careers on the line, can stand up and be counted and speak truth to power about this issue.

I think this is an important point. The military has a very strict code of conduct, which it must have. So everybody in the military must adhere to it, whether you are heterosexual, homosexual, or whatever your orientation is; you have to live by the code of conduct. In 1993 we had just come through this horrible scandal called Tailhook. It was awful. You had a series of rapes, and you had a very bad circumstance, which was brought out into the public. Action was taken. So, clearly, heterosexuals in the military, when they misbehave in a sexual way, are going to be punished. It is the same way for improper homosexual behavior. It will not be tolerated.

That is the point. I said that don't ask, don't tell is a policy of discrimination based on your status instead of your behavior.

Here is something else I said in 1993:

It is easy to lose sight of the impact that policies have on people's lives. It is easy to label people that are different from us as "those people." We might be able to temporarily fool ourselves into thinking that those people are not part of our social fabric.

I read into the RECORD some writing of a German philosopher, who wrote about World War II, in which he said:

When the Nazis came for the Jews, I didn't speak up because I was not a Jew. And when the Nazis came for the gypsies, I didn't speak up because I was not a gypsy. And when the Nazis came for the mentally defective, I didn't speak up because I was not mentally defective. When the Nazis came for me, there was no one left to speak up.

So I said: Let's not do this to gay and lesbian people. Let's have a code of behavior that affects us all and does not divide us. We fool ourselves when we say that the gay and lesbian community is not part of our social fabric; that they are not human; that they do not have an effect on our lives. That isn't right. We are all God's children and they are our sons and our daughters.

So in a couple of hours, for me, this issue comes full circle. I got 33 votes that day in 1993 for my amendment not to codify don't ask, don't tell. I got 33 votes, and I was proud of that. I remember Howard Metzenbaum—may he rest in peace—said at that time: The Boxer amendment is a civil rights amendment, and I was proud. But I was so sad to lose badly—33 votes. Today—today—we have come a long way, and we have come a long way because people have put their fear aside and they came forward and they told their stories. They took the light and they focused it on the truth. We have come a long way because of their families who love them and have spoken out. We have come a long way because the military itself, in the Pentagon's recently released survey, said it doesn't matter. Seventy percent of our servicemembers said we don't care about sexual orientation.

So this is America at its best—when we open our arms to equality and freedom and justice.

In closing, I would say there is more work we have to do on this whole issue. There is still a lot of unfairness in our laws—partners not being able to have the same rights as married couples. That is another whole issue we will work on. But I am confident that as Americans we will move forward. When we started out, only White men of property could vote. We have struggled. All this is a struggle. It is not easy. The struggle for freedom is not easy. People have died for freedom in all these communities. It is in our history. But this will be a day that will go down in American history as a day we lifted a barrier, and America is stronger because of it.

I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Wyoming.

Mr. LEAHY. Mr. President, may I ask a question of the Senator from Wyoming, just for planning purposes? I am going to be recognized next. Approximately how long does the Senator think he will take?

Mr. BARRASSO. Mr. President, 10 to 12 minutes on the START treaty.

Mr. LEAHY. I thank my friend, and I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.



Mr. BARRASSO. Mr. President, I come to the floor to talk about the McCain-Barrasso amendment to the New START treaty, and I appreciate hearing all the strong and passionate support for this amendment from my colleagues on the issue of missile defense. We debated this yesterday, well into the evening, and we are going to be voting on this a little after 3 this afternoon.

I think it is important that the American people are given the opportunity to hear the implications of the New START treaty. The New START treaty significantly impacts America's national security and our nuclear deterrent. I believe this treaty places limitations on the ability of our Nation to defend itself—limitations I believe should not be in the treaty.

The preamble to the New START treaty provides an explicit link between strategic nuclear offensive weapons and strategic nuclear defensive weapons. It also implies the right of Russia to withdraw from the treaty based on U.S. missile defense that is beyond "the current strategic capabilities." Well, by specifying current strategic capabilities, the intent is clear: They are signaling that future U.S. capabilities could pose a problem. Russia does not want us to improve or to expand missile defense capabilities for the United States. For me, this is absolutely unacceptable.

The administration claims the language in the preamble has no legally binding significance. They claim it is simply a nonbinding concession to Russia—a nonbinding concession to Russia. Well, it is important to note that the New START treaty is not the first attempt by Russia to limit our national defense. Russia has wanted language limiting U.S. missile defense for a long time. They are looking for grounds to claim the U.S. missile defense program violates an international agreement.

Russian threats have had an impact on our own missile defense decisions in the past. This administration abandoned previous plans to deploy missile defense systems in Poland and the Czech Republic. It is evident the administration already receives considerable pressure from Russia to limit our Nation's missile defense activities. I believe the language in the treaty will only further add to that pressure and will impact U.S. decisionmaking on our own missile defense.

I wish to emphasize, again, that the United States must always remain in charge of our own missile defense capabilities, not Russia and not any other country. It is unacceptable for the United States to make any concessions on missile defense. Defending our Nation should be a top priority.

Many of my colleagues have come to the floor over and over to highlight this very point. We share a deep concern about the concessions the New START treaty provides to Russia, especially the limitations of our missile defense. There is no legitimate reason for

the inclusion of limitations to our national security in this treaty. The New START treaty is just the first step in allowing greater concessions on U.S. missile defense in future agreements.

I think it is also important to point out the continual change in the story by the administration—the one they have provided this Senate regarding the inclusion of missile defense language in the treaty. Originally, the Senate was told the New START treaty would not contain anything on missile defense. Then the Senate was informed there would be no reference to missile defense other than in the preamble of the treaty but certainly no limitations. Then we found that article V of the treaty contains a limitation on the conversion of ICBM and SLBM launchers into launchers for missile defense. The Senate has a treaty before it now on nuclear strategic offensive weapons with several limitations on missile defense. We are now being told not to worry about these limitations on our ability to defend ourselves in the New START treaty. The administration says: Well, it is only a statement of fact. They say: It isn't legally binding or this administration doesn't plan to use it or it is only an insignificant concession to the Russians.

I do not find any of these arguments comforting. This treaty sets a terrible precedent. The United States should not be placing any constraints on our ability to defend ourselves, no matter the type, the size or the length of time.

Significant disagreements exist between the United States and Russia on missile defense provisions in the New START treaty. Some argue it doesn't matter what Russia says about the issue. Well, I believe it is vital that we examine what Russia has said about this very matter. When two countries enter into a bilateral agreement, there needs to be an actual agreement—an agreement of what is said and an agreement of what it means. Discussing the disagreements between the two parties to the treaty is imperative, and it is part of the Senate's constitutional obligation. The two parties to this treaty—the United States and Russia—need to know how both parties will be acting and how they will both be interpreting the New START treaty. We cannot ignore the differences.

Some proponents of the treaty have argued that passing the McCain-Barrasso amendment will complicate ratification. I reject that idea. I reject the idea that the Senate's advice and consent duty is to take it or leave it. I believe the Senate's advice and consent role is either to accept the treaty or improve the treaty, and that is what this amendment does—it improves the treaty. We, as a Senate, cannot simply be a rubberstamp to treaties due to fears of fixing flaws and improving important provisions.

The Congressional Research Service published a study on the role of the Senate in the treaty process. It is titled "Treaties and Other International

Agreements: The Role of The United States Senate." On page 125, the study states:

Amendments are proposed changes in the actual text of the treaty. They amount, therefore, to Senate counteroffers that alter the original deal agreed to by the United States and the other country.

So should the Senate agree to strike the missile defense section of the preamble, we are simply asking the Russians to accept it. The ball is in Russia's court. The Russians can either accept or reject the Senate's counteroffer. If the text of the preamble is just a nonbinding statement of fact, then Russia should not have any problem in eliminating that portion of the preamble. But if Russia does have a problem with eliminating a so-called nonbinding statement of fact and Russia is willing to jeopardize the entire treaty over it, then every Member of the Senate should be concerned about the provision's impact.

The treaty's preamble, the Russian unilateral statement on missile defense, and remarks by senior Russian officials all show an attempt by Russia to limit or to constrain future U.S. missile defense capabilities. Let's take a look at the Russian unilateral statement. It shows how the Russians will act under the treaty. It states:

The treaty between the Russian Federation and the United States of America on the reduction and limitation of strategic offensive arms signed in Prague on April 8, 2010, can operate and be viable only if the United States of America refrains from developing its missile defense capabilities quantitatively or qualitatively.

That is the Russian unilateral statement. Russian Foreign Minister Lavrov stated the treaty contained "legally binding linkage between strategic offensive and strategic defensive weapons." He went on:

The treaty and all obligations it contains are valid only within the context of the levels which are now present in the sphere of strategic defensive systems.

To me those statements seem very clear. The negotiators have given in and they have allowed limitations on our missile defense capabilities. I have no doubt that Russia will threaten to withdraw from the treaty, should the United States expand its current nuclear capabilities.

There should be no problem in removing the language in the preamble when treaty proponents believe that it has no legally binding significance.

I have been sitting here, visiting and discussing this treaty with Members on both sides. This amendment only strikes a portion of the treaty that people who support the treaty have called nonbinding, legally insignificant, and one Senator called it a throwaway provision. Then they should throw it away. This Senate can ensure that there is no limit on U.S. missile defense by simply passing the McCain-Barrasso amendment. Our missile defense is worth the effort and the time to get it right.

The McCain-Barrasso amendment significantly improves the treaty and I

urge my colleagues to vote in favor of this very important amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

DON'T ASK, DON'T TELL

Mr. LEAHY. Mr. President, I know in a couple of hours we will be voting on repeal of don't ask, don't tell, now that we have been able to go past the filibuster of it. I wish to speak about that for a few minutes.

While partisan rancor seems to have seized the Senate on so many occasions this year, on at least this one count I am encouraged and I am hopeful. There is yet sufficient bipartisan agreement to repeal the discriminatory don't ask, don't tell policy before this Congress ends. I commend the Senators who have pledged to support the repeal. Of course I renew my own commitment in support of the effort. It is well past time to put an end to this discriminatory and harmful policy.

Today, in the Senate, the stage is set again for one of the major civil rights victories of our lifetimes. Years from now I hope historians will have good cause to remember that today is the day when the two parties overcame superficial differences to advance the pursuit of equal rights for all Americans. After much effort and just as much study and discussion, the Senate will finally proceed to an up-or-down vote on repealing this counterproductive policy.

For too long we have said let's vote maybe, we are not quite ready for a vote, let's get the filibuster going. I think most Americans expect Senators—after all there are only 100 of us—they expect us to come here and either vote yes or vote no, not vote maybe. A filibuster is voting maybe. To Senators who keep saying I want to think about it more, I want to go longer—we have had years of study. This afternoon it is time for every man and woman in this body to step forward and vote either yes or no. For those who still harbor concerns that enacting this repeal would somehow harm readiness, one simple fact is the clearest answer. Gay and lesbian Americans already serve honorably in the U.S. Armed Forces and they have always done so. There is no doubt that they have served in the military since the earliest days of the Republic. The only reason they could do so, then and now, even under today's discriminatory policy, is because they display the same conduct and professionalism that we expect from all our men and women in uniform. They are no different from anyone else. They should be treated no differently. As one combat veteran said: I don't care whether the soldier next to me is straight or not; I care whether he can shoot straight or not.

In ending this policy we are bringing to an end years of forced discriminatory and corrosive secrecy. Giving these troops the right to serve openly, allowing them to be honest about who they are, will not cause disciplined

servicemembers to suddenly become distracted on the battlefield. It is pandering to suggest that they would be.

But that is not only my view. The Chairman of the Joint Chiefs, Admiral Mullen, has said time and time again that this is the right thing to do, that it will not harm our military readiness.

Gay soldiers and straight soldiers have fought and died for our country throughout the history of this country. Gay soldiers and straight soldiers have fought and died for our country in Iraq and Afghanistan. I think of one of the editorial cartoons showing parents at a military graveyard and they are looking at the grave of their son. One says, "They didn't ask." And the other said, "They didn't tell."

Look at this—three coffins draped in flags. The caption is, "Which is the gay one?"

Like so many other Senators, I have walked on a quiet day through the graveyard at Arlington National Cemetery. I have seen dates going back long before I was born. I see people who have died in our world wars, died in Korea, died in Vietnam, who die now in Iraq and Afghanistan. I look at the names—some from my own State—and like everybody else who walks through, I think of the sacrifice of these people and the sacrifice of their families, the life that would not be lived, the children who might not know a parent, the brother who might not know a sister or sister who might not know a brother, parents who are burying their child. Of course in the natural order, children bury their parents. Here, parents have buried their child.

Does anybody look at those graves and say: Move this one because we just found out that soldier who died in battle was gay? If anybody asked to do that there would be an uproar in this country. So I ask why any question about them serving? Every member of our armed services should be judged solely on his or her contribution to the mission. Repealing don't ask, don't tell will ensure that we stay true to the principles on which our great Nation was founded.

We ask our troops to protect freedom around the globe. Isn't it time that we protect their basic freedoms and equal rights here at home? Throughout our history the Senate has shown its ability to reflect and illuminate the Nation's deepest ideals and the Nation's conscience. It is my hope the Senate will rise to this occasion by breaking through the partisan din and proceed to debate, as we have, and now vote on repealing the discriminatory and counterproductive policy.

I see my good friend and neighbor from across the Connecticut river, Senator SHAHEEN, and I see my friend and colleague—I apologize, I did not see him—the Senator from South Dakota. I know he is waiting. I will yield to him. It is my understanding Senator SHAHEEN will be recognized after Senator THUNE.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I wish to speak to the START treaty, more specifically to the McCain-Barrasso amendment which is the amendment that is currently under consideration and on which we will vote later this afternoon. I want to point out at the outset that you do not have to watch the news very often in this country to realize we live in a dangerous world. There are lots of countries around the world that are run by regimes that not only mistreat their own populations but would love to do harm to countries that are allies of ours, as well as to the United States. That is why a debate about an issue such as missile defense is so important. That is why this particular provision in the START treaty has drawn so much attention, so much concern by many of us who are concerned about the linkage it establishes between offensive strategic arms and defensive strategic arms.

The Senate made it abundantly clear at the outset of the negotiations on the New START treaty, specifically in section 1251 of the fiscal year 2010 National Defense Authorization bill, that there should be no limitations on U.S. ballistic missile defense systems. The New START treaty not only contains specific limitations on those systems, but also reestablishes an unwise linkage between offense and defense that was broken when the ABM Treaty came to an end.

We were told as recently as March 29, by Under Secretary Tauscher, "The treaty does nothing to constrain missile defense. This treaty is about strategic weapons."

I quote again, "There is no limit on what the United States can do with its missile defense systems."

And then quote again, "There are no constraints to missile defense."

Those were all quotes made by Secretary Tauscher on March 29. But these assertions are incorrect in two ways. No. 1, not only are there specific limits on some missile defense options—and I note article V, paragraph 3 of the treaty text itself—but, second, when viewed together with the treaty's preamble, Russia's unilateral statement and statements by senior officials all provide potential for Russia to intimidate the United States by threatening to withdraw from the treaty if the United States seeks to increase its missile defense capabilities.

The treaty's supporters are going to argue that the limit on converting offensive silos for missile defense is meaningless because we don't have any such plans. But the question I come back to is simply this: Why is there a limitation at all on missile defense in a treaty that is meant to deal with nuclear weapons? Why did we concede to the Russians on this important point and can we be sure we will never have such plans. After all, we have converted offensive silos to defensive silos—for defensive purposes—in the past.

My own view is that particular provision in the treaty text is a direct linkage between offensive and defensive arms. Then you have the preamble and unilateral signing statements that I think are even more telling when it comes to that connection that is drawn between—that interrelationship between offense and defense.

Far more pernicious is the treaty's preamble and the two unilateral signing statements by the Russians and by the United States. The preamble states, "The current strategic defensive arms do not undermine the viability and effectiveness of the strategic arms of the Parties."

The statement suggests that moving beyond current systems might undermine the viability and effectiveness of strategic systems and could provide grounds for withdrawal.

The administration says that either side can withdraw anyway. That is only partially true. The withdrawal clause in the treaty, as it has been in previous treaties, deals with extraordinary events and the preamble and unilateral statements make withdrawal more likely by building in an inevitable pretext.

So you have the preamble, the language in the preamble, you have the direct linkage in the treaty text itself, and then I also want to mention the other point which I think is equally important and that is the Russian unilateral signing statement makes clear Russia's legal opinion. Here is what it says.

The treaty between the Russian Federation and the United States of America on the reduction and limitation of strategic offensive arms signed in Prague on April 8, 2010, can operate and be viable only if the United States of America refrains from developing its missile defense capabilities quantitatively or qualitatively.

It further states:

The exceptional circumstances referred to in article XIV, the withdrawal clause of the treaty, include increasing the capabilities of the United States of America's missile defense system in such a way that threatens the potential of the strategic nuclear forces of the Russian Federation.

So the Russians have built into the treaty record their threat that improvement of U.S. missile defense creates the legal pretext for their withdrawal from the treaty. It can only be read as an attempt to exert political pressure to forestall continued development and deployment of U.S. missile defenses.

Was our response to that a firm rebuttal? The answer is no. Unlike the START I agreement where the United States said quite clearly that it did not agree with Russian statements linking that treaty to the U.S. status in the ABM treaty, we did not do that this time.

Instead, the State Department said, in response to the Russian unilateral statement:

The United States of America takes note of the statement on missile defense by the Russian Federation. The United States mis-

sile defense systems would be employed to defend the United States against limited missile launches, and to defend its deployed forces, allies and partners against regional threats. The United States intends to continue improving and deploying its missile defense systems in order to defend itself against limited attack, and as part of our collaborative approach to strengthening stability in key regions.

So it would appear that the U.S. position does not contradict the Russian position in the slightest. What then to make of the U.S. missile defense plan previously announced by Secretary Gates, which talks about the deployment of SM-3 missiles in Romania by 2015, Poland by 2018, and then in 2020 the deployment in Europe of the new SM-3 2B missile for the defense of Europe and the United States against ICBMs; is this still our position or is it now the position set forth in the signing statement and as recently briefed to the NATO-Russia Council in Lisbon where the SN03 2B missile was portrayed quite clearly as being "available" rather than "deployed" in the year 2020.

It is clear to me the administration is already coming under considerable pressure by the Russians to limit its missile defense activities in the very near future. Past experience would suggest this administration may be willing to alter its plans to accommodate the Russians, as it did in the case of previous plans to deploy missile defense systems in Poland and the Czech Republic.

How will it respond if the President's prized accomplishment, the START treaty, is at risk? I think it is very clear from the language in the preamble, the direct linkage in the treaty itself, and what the signing statements say, what the Russians' intentions are with regard to this particular issue, which is why it is so important this amendment get adopted.

This amendment the Senators from Arizona and Wyoming have offered would simply strike the language in the preamble that is causing so much concern. We have heard arguments on the floor of the Senate since we started debate on the START treaty that the preamble is nonbinding; in other words, it does not mean anything.

In fact, it was said yesterday by someone on the other side that it is throwaway language. Yet at the same time, it has been argued by others on the other side that it is a treaty killer. It cannot be both. It cannot be a throwaway that is not legally binding and a treaty killer at the same time.

Essentially, what they are saying is, it means nothing and it means everything. That is a direct contradiction. That is why it is so important this amendment be adopted, which would clarify once and for all, or separate and decouple or delink this connection that exists in this treaty between offensive and defensive arms.

I think the amendment that is before us right now gets at the very heart of the matter, and we all know the Rus-

sians and Americans have different views on missile defense. But the attempt to paper over or even ignore these differences in this treaty sets the stage for future misunderstandings or confrontations as the United States continues its missile defense activities, particularly in Europe.

Confusion about U.S. plans is equally dangerous. This is not an issue on which there should be ambiguity, on which there should be confusion, and on which there should be this kind of a difference of opinion.

So I would simply say, as we come here in an hour or so to a final vote on the McCain-Barrasso amendment, that I think it is important for the Senate in our important role when it comes to treaty ratification to make sure we are doing everything that is in the national security interests of the United States and allows us in the best way possible to defend this country and our allies.

If we are limiting in any way our ability when it comes to the issue of missile defense, we are putting in jeopardy and at risk America's national security interests. So this treaty should not be approved. It should not be approved certainly until some of these changes are made, and we can start today by eliminating the linkage and the connection that exists today in the preamble by striking and deleting that language from the preamble of this treaty and making it very clear that the United States intends to preserve all options available to us when it comes to missile defense.

As I said before, this is something—this linkage was broken years ago under the Bush administration. We should not establish now the precedent of allowing those issues to be linked and to give the Russians an opportunity and an excuse to withdraw from this treaty if the United States decides to proceed with what is in its own best national security interests.

So I would urge my colleagues on this amendment—this is an important amendment. We will hopefully have debate on other amendments. I have a couple of amendments to deal with the issue of delivery vehicles which I think is also a very important part of this treaty. But there probably is no more important piece of this treaty than the issue of missile defense when it comes to the vital national security interests of the United States.

So I hope Members will, when this vote comes up later today, vote in favor of the McCain-Barrasso amendment and make it clear that there is to be no linkage, no nexus, between strategic offensive arms and strategic defensive arms so we eliminate once and for all the ambiguity that exists with regard to this issue and allow us to proceed to other amendments on the treaty.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.



DADT

Mrs. SHAHEEN. Mr. President, I am here today to express my strong support for the repeal of the don't ask don't tell policy. The Senate took a significant step toward that repeal earlier today. I want to congratulate and thank Senators LIEBERMAN and COLLINS for their strong bipartisan leadership on this issue. I was proud to be a cosponsor of this bill, and I hope we will soon send it to the President for his signature.

It is not often that the Senate gets the opportunity with a single vote to right a wrong, but we have that opportunity here today. This is a historic vote, one for which this Senate will be remembered for a long time. This is our opportunity to fix an outdated, discriminatory and broken policy and to strengthen America's security. The United States, our military, and our security will be better off because of this legislation.

I completely agree with Defense Secretary Robert Gates, who strongly endorsed the repeal and urged the Senate to pass this legislation before the end of the year. Secretary Gates and America's military leadership understand that this discriminatory policy undermines our national security and diminishes our military readiness.

A nation at war is a nation that needs the best, most qualified service members we can find regardless of sexual orientation. At a time when nearly 150,000 American men and women are serving in combat overseas, and at a time when our military is stretched thin across the globe, we simply cannot afford to lose some of our finest soldiers.

Since the policy was instituted in 1993, more than 14,000 service members have been expelled from the military, and an estimated 4,000 service members per year voluntarily leave because of this discriminatory policy. One thousand of those expelled were badly needed specialists with vital mission critical skills, like Arabic speakers and other technical experts.

Don't ask, don't tell also ignores the realities of today's combat environment, where American soldiers are fighting next to allied troops from around the world. In fact, at least 12 nations allowing gays and lesbians to serve openly have fought alongside U.S. service members in Afghanistan. At least 28 countries, including our closest allies, Great Britain, Australia, Canada, and Israel, already allow open service.

Not only is this policy costing us critical capabilities, it is also unnecessarily costing us a significant amount of money. The military spends as much as \$43,000 to replace each individual charged under the don't ask, don't tell policy. At a time of extremely tight budgets with little money to go around, it just does not make sense to spend tens of thousands of dollars to investigate, try, and replace American soldiers based only on their sexual orientation.

Repeal of this policy has earned the backing of an overwhelming majority of America's Iraq and Afghanistan veterans and countless military leaders, including retired GEN Colin Powell, who says that attitudes and circumstances have changed since the policy was first instituted 17 years ago.

In addition, we now have a good understanding of what our own military men and women feel about the repeal of this policy. The military undertook one of the largest and most comprehensive reviews in its history to make sure those most affected by this change had their views heard and incorporated. The in-depth, 9-month review included a comprehensive survey that was sent to nearly 400,000 active duty and reserve component service members as well as 150,000 military spouses.

The review's final report, released several weeks ago, found that repealing this policy could be accomplished without undermining military readiness and can be initiated immediately. The report found that more than two-thirds of those questioned found that repeal would have no effect on cohesion, effectiveness, unit readiness, or morale.

We used to tell young Americans, "Don't ask what your country can do for you." Yet now we tell the very people who have answered that call, "don't ask, don't tell." This is a civil rights issue. It is a moral issue, and it is a national security issue. Today, the Senate has an historic opportunity to fix this broken and outdated policy.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, I rise to echo the words of the distinguished Senator from New Hampshire, Mrs. SHAHEEN, and her support of the repeal of don't ask, don't tell. It is important for our military, it is important for our values, it is important for human rights, it is important for our country.

As we know, for nearly 17 years Federal law has dictated that gay and lesbian Americans serving or hoping to serve in our Nation's military must be silent about their sexual orientation. If that silence were broken, they would face the grim consequences of an almost certain discharge.

The don't ask, don't tell policy, as it has become commonly known, is inconsistent with our American values. It has robbed the military of valuable personnel who can contribute to military readiness and fulfillment of missions at home and abroad. That is why I opposed this policy in the mid-1990s and have advocated for its repeal ever since.

Throughout this debate I have heard from many Ohioans, including members of our military, expressing profound opposition to the policy of don't ask, don't tell. Ohioans such as Cadet Katherine Miller, LTC Victor Fehrenback, who spoke with me at one of my Thursday morning coffees in the Capitol, MAJ Mike Almy, and many other advocates and servicemembers

have worked in their communities. They have walked the Halls of Congress to explain why don't ask, don't tell should be overturned.

Their experiences and that of those they represent are reminders that important battles remain in the fight for human rights and justice in our country. But we know for sure that history is on their side.

Today's vote will affirm what military leaders from Defense Secretary Gates to GEN Colin Powell to Chairman of the Joint Chiefs of Staff Michael Mullen have been saying for some time: Repeal of don't ask, don't tell will make our military stronger. With our Nation at war, it is especially important that our policies promote the recruitment and retention of the very best soldiers, regardless of their race, religion, sexual orientation or gender.

President Obama and Secretary Gates have conducted a year-long review—which many people in this Chamber in both parties, especially my Republican colleagues, asked for—on the impact of fully and openly integrating lesbian and gay Americans into the military. It is no surprise that the report concluded that open service poses no threat to our military readiness or effectiveness.

It is estimated that the don't ask, don't tell policy has cost the American people somewhere between \$300 and \$500 million to implement. It has resulted in the discharge of almost 14,000 soldiers—14,000 soldiers who were discharged not for performance but because of their sexual orientation. These 14,000 Americans include hundreds of Ohioans who offered to lay down their lives for this country. They deserve better than investigations and discharge. They deserve acceptance, affirmation and, most importantly, the right to serve openly and honestly in America's military.

The strength of our Nation is measured not just by the size of the economy or the might of our military, it is measured by acts consistent with our values, the very values our servicemembers defend and that define our Nation's greatness.

The repeal of don't ask, don't tell is a long overdue victory for our military, a victory for American values, a victory for human rights and, most important, a victory for the American people. I ask support of the measure, a resounding vote out of this Senate to go along with the House so the President can sign this bill and end this policy that has not served the American people well for much of two decades.

I yield the floor, suggest the absence of a quorum, and ask unanimous consent that time under the quorum be charged equally to both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KERRY. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. KERRY. Mr. President, it is my understanding that the Senator from Pennsylvania is here and wants to speak. Then, I think the Senator from New Jersey is on his way over to speak. Because there have been a number of speeches on the START treaty against it and a number of arguments laid out, I wish to have an opportunity to speak to them. I ask unanimous consent that at 2:30 I be permitted to speak for about 15 minutes.

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

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

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

Mr. CASEY. Mr. President, I rise to discuss the vote that will occur in a little more than an hour on the don't ask, don't tell policy. I have some basic thoughts about it, coming from a State where we have contributed probably as many or more soldiers to almost every major conflict we have had over the last 100 years. We are a State that has over 1 million veterans. We have lost soldiers most recently in the conflicts in Iraq and Afghanistan. In Iraq, our killed-in-action number was just below 200. At last count, it was about 197. In Afghanistan, it is now up to 61, 62 who have been killed in action. People in Pennsylvania know what war is about, what sacrifice is about, because so many families have contributed to that service and that sacrifice.

When it comes to this change in policy we are advocating, I wish to focus on two basic considerations. One is basic integrity and the other is valor. We have had a number of statements made by senior military leaders, part of this administration and others, who have called for repeal of the policy. Secretary Gates, Secretary of Defense for the Obama administration and for a good while under the administration of President Bush, said:

I fully support the President's decision. The question before us is not whether the military prepares to make this change but how we best prepare for it.

So said Secretary Gates.

Admiral Mullen, Chairman of the Joint Chiefs of Staff, said in pertinent part:

It is my personal belief that allowing gays and lesbians to serve openly would be the right thing to do. No matter how I look at this issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens. For me personally, it comes down to integrity.

His statement goes on from there.

Former Secretary of State Powell fully supports the change. I could go on

from there, and I know folks have cited military leaders in the debate. I keep coming back to this question. Secretary Mullen talked about integrity and a policy that forces young men and women to lie.

Former National Security Adviser Jim Jones said, quoting in pertinent part, that the don't ask, don't tell policy:

... has to evolve with the social norms. I think times have changed. The young men and women who wish to serve their country should not have to lie in order to do that.

I wish to focus on that part of it. How can a policy long endure in this country, especially as it relates to the military, that asks people to lie? Every day they have to get up and prepare themselves for service and sometimes literally for battle, a life and death battle. Every day this policy says: But you have to lie about it. You have to keep it a secret. You can't let anyone know. You have to lie.

How can a policy endure in this country that is based upon lying and not telling the truth? That is at the core of our Republic, whether you talk about the rule of law or no man or woman is above the law. All those statements, all that philosophy is undergirded by basic integrity, that we all try to live by the same rules. If we are not telling the truth and we are forcing folks who are willing to serve their country to put themselves in harm's way, which doesn't even begin to describe the sacrifice, some of these soldiers have not only served but been gravely, grievously wounded and some, of course, have been killed in action in the current conflicts and many before that, it is a basic question about integrity. Are we going to continue to support a policy that calls upon people to lie? I don't think the American people support that.

Secondly, the basic and related question of valor. We have public officials across the country, Members of Congress, public officials in our States who stand on Veterans Day and all kinds of days when we commemorate and pay tribute to those who have sacrificed, those who gave, as Lincoln said, the last full measure of devotion to their country. There are a lot of speeches given and commendations accorded to people who have served the country. But a lot of that will ring hollow if we are saying there is one group of soldiers whom we may not want to have in the military, and if we want them in, then they are going to have to lie about it. These are young men and women who are the definition, the embodiment of service and valor and courage. We can't just get up as a politician and give a speech about patriotism and then be willing to undermine our argument and undermine our military by saying we have to perpetuate a policy that doesn't work and is in conflict with who we are.

I want to read a quotation from someone who has served in the Congress for the last 4 years but someone

who has also served our country, someone I know, and he is a friend of mine—I put that on the record—but someone we are very proud of and the work he has done in both forms of service: as a Member of Congress and serving in our military, and that is, Congressman PATRICK MURPHY from Bucks County, PA. For some who do not know their geography, that is on the east side of our State. He has been here in the Congress for 4 years. He will be leaving this month. But he has been a champion of repealing this policy, and he speaks with an integrity and a commitment which I think is unmatched because he is not speaking about this policy theoretically, he is not speaking about this policy in a textbook sense, he is speaking and has fought for the change in this policy from the vantage point of someone who has served and who served in situations where he could have been killed, sometimes every day of the week.

Here is a part of what he has said. There are many things he has said about this, but he said:

The paratroopers from the 82nd Airborne Division in the Army that I served with back in Iraq in 2003 and 2004, they didn't care who you were writing letters back home to, if you had a boyfriend or a girlfriend. They care whether you can handle your assault rifle. Can you kick down a door? Can you do your job so you all come home alive?

That is the challenge he presents to all of us, Congressman PATRICK MURPHY, former member of the 82nd Airborne Division. This policy on the battlefield is not theoretical. It is consequential in at least one sense. If we continue the policy the way it is, we are going to be less effective on the battlefield. If we continue the policy the way it is, we are going to have less people serving at a time when we need extra help.

We need soldiers on the battlefield. We need to continue to have young men and women who will volunteer to serve, knowing that once they volunteer, this is not sending you to some base somewhere for a couple of years away from conflict—knowing that when you volunteer today—maybe this was not true 10 or 15 years ago—but today when you volunteer, the likelihood of you seeing combat is very high.

So there is a special category of valor and integrity for those who are willing to volunteer to serve their country, especially when they know they could be sent into a firefight.

You do not have to take the word of one or another Senator, but I think we can take the word and base our judgment upon the experience of a Member of Congress, in this case from the House, who has also served in the 82nd Airborne Division. We should remember his words, what folks at home will care about. They care about “whether you can handle your assault rifle.” “Can you kick down a door?” “Can you do your job so you all come home alive?”

When we speak about this policy, this is not theory. This is a debate, at

least, about two very important principles: valor, and whether we are going to affirm the valor of others who serve and are willing to serve; and whether we are going to have a policy based upon a core foundational principle of our democracy, which is integrity. That is the basic question we have before us.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BAYH). The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, it is time to stop discrimination. It is time to repeal don't ask, don't tell. This is a policy that should have been repealed long ago—long ago. It should have been repealed for its discriminatory nature. It should have been repealed because the Defense Department's own report makes it clear that those who pointlessly cling to this discriminatory, wrongheaded, shortsighted policy, by claiming the mantle of national security, have absolutely no ground—no ground—to stand on.

Don't ask, don't tell is a ridiculous notion, a bad policy, and a relic of a bygone era. It is keeping brave, able, educated, technically skilled, multilingual, trained soldiers, men and women who want nothing more than to defend their country from doing so.

We are preventing them from making our military even stronger, making it better, and contributing to what we need in a modern military force. In my view, a vote to repeal this antiquated policy is a smart vote. It is the right vote. It is the fair vote. It is a just vote. It is a vote to keep our military strong, keep good people in the military, who want to serve.

Americans who now must remain anonymous, such as an anonymous marine currently serving in Afghanistan says:

So far the military has been my source of work and income for the last 6 years. I don't want that all taken away from me and me being discharged anything but honorably.

He says:

We face the same challenges as all other marines or soldiers but with an extra burden.

Or another anonymous servicemember—a decorated Midwesterner, a shining example of an American marine, with a chest full of ribbons—like others, he risked his life, but, like other marines denying who they are, he was deeply apprehensive about seeking the medical care he needed when he got home for fear of being ousted and losing everything he had worked and sacrificed for, everything he had served for.

He suffered in silence, careful in whom he confided, saying:

You never know who you can trust.

An Arabic linguist—someone whose talents we sorely need against some of the enemies we have today—named Bleu Copas was discharged under don't ask, don't tell, even though he was never identified as gay and his accuser never revealed himself. Imagine that, in a country that values the rule of law

and justice, that your accuser never has to reveal themselves, never be subject to cross-examination, never testing the veracity, the truthfulness of what they are saying, and yet have this person be discharged.

This is no way to run a military. We are talking about patriots. We are talking about men and women who want to serve, who are serving, who yearn to serve, who put their lives on the line.

When a C-17 from the 436th Airlift Wing flies into Dover, DE, when rows of flag-draped coffins fill a hangar and the solemn dignity of fallen heroes brings silence and tears to all of us as a nation, do we ask the faith, the color, the sexual preference under those flags? I think not.

Listen to the arguments and rationale of those military leaders who know best.

Former Secretary of the Army Clifford Alexander said:

The policy is an absurdity and borderlines on being an obscenity. What it does is cause people to ask of themselves that they lie to themselves, that they pretend to be something that they are not. There is no empirical evidence that would indicate that it affects military cohesion.

Former Chairman of the Joint Chiefs of Staff, General Shalikashvili, said:

Within the military, the climate has changed dramatically since 1993. . . .

Conversations I've held with servicemembers make clear that, while the military remains a traditional culture, that tradition no longer requires banning open service by gays.

Three-star Retired LTG Claudia Kennedy said:

Army values are taught to soldiers from their earliest days in the Army. Those values are: Loyalty, duty, mutual respect, selfless service, honor, integrity and personal courage. We teach our soldiers that these are the values we expect them to live up to.

She goes on to say:

I believe that as an institution, our military needs to live up to the values we demand of the servicemembers. . . .

Military leaders need to respect all servicemembers. We need to recognize that loyalty and selfless service are exhibited equally, by servicemembers of every color, gender and sexual orientation.

I think about her words "selfless service." When you voluntarily, in an all-volunteer military, come forth as an American and say: I want to serve my country, I am willing to put my life in harm's way in behalf of the defense of the Nation and my fellow Americans, does that somehow get diminished—that selfless service get diminished—because you are gay?

I think about personal courage. When you are on the battlefield, and you are being shot at, and when you are protecting those who are in your company, and when you are injured, and when you are bleeding, does that personal courage get diminished because you are gay?

Certainly not. Certainly not.

And most convincingly, and to the point, Retired Navy VADM and U.S. Congressman JOE SESTAK said this:

We have to correct this. It's just not right. I can remember being out there in command, and someone would come up to you and start to tell you—and you just want to say, no, I don't want to lose you, you're too good, [too valuable].

Let's take the advice of these military leaders who know that this is a bad policy and it should be repealed. It is a policy that the Pentagon report itself says, if repealed, presents little risk to military readiness and cohesion, and little effect on morale.

In fact, 62 percent of servicemembers responded to the Pentagon's own survey that repeal of don't ask, don't tell would have a positive or no effect on morale.

The PRESIDING OFFICER. The Democrats' time is expired.

There is 15 minutes allocated to Senator KERRY. He is not on the floor.

Mr. MENENDEZ. As a member of that committee, I ask unanimous consent for 1 minute to finish this statement.

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

Mr. MENENDEZ. Thank you, Mr. President.

Let me close by quoting from a letter from the Human Rights Campaign. I think it puts it purposely and exactly:

. . . take a moment to truly comprehend the lives ruined over the last 17 years because of this discriminatory law. The soldiers, sailors, airmen, translators, doctors and more, whose military careers were ended, whose livelihoods were threatened, whose friendships were cut off, all because the forces of bigotry and fear held out for so long.

They can never get those years back. But I hope they know that their sacrifice meant something. Their courage and integrity helped a nation understand what it means to serve. And that, more than anything else, helped bring about this historic change.

That is the vote I hope we will have—one that creates historic change and honors the courage, the integrity, and the service of these men and women.

With that, Mr. President, I yield the floor.

Mr. KYL. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. KLOBUCHAR. Mr. President, I appreciate the Senator from Arizona and the Senator from Massachusetts allowing me to speak for a few minutes.

I wish to lend my strong support as a cosponsor of the repeal of don't ask, don't tell. I have always believed the commitment of our top military leaders is critical to successfully implementing the repeal of this policy. Since February of this year, we have heard testimony from Defense Secretary Gates as well as Chairman of the Joint Chiefs of Staff, ADM Mike Mullen. To

this day, both support the repeal of the policy.

Admiral Mullen outlined his concern with the policy pretty succinctly. He said:

No matter how I look at the issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens.

Our country is literally asking our servicemembers to lie.

Earlier this year, Secretary Gates called for a study of the repeal. That study involved comprehensive polls of the U.S. military. After the December release of the report on the implementation of the repeal, we know the majority of our military members—70 percent of Active-Duty military and National Guard and Reserve—have said this change will not have a negative impact on their ability to perform their duties.

So what we have is this: We have the support of the top brass of our military of the United States—something that was incredibly important to implementing this policy change. We have checked that box. We have the support of the majority of our soldiers in the field, who basically said they can live with this policy change or they can live with serving with a soldier who admits they are gay. The last thing we have is this body, this Chamber, and today is the day we checked that box. Today is the day we voted for the repeal.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent that the remaining Republican time be equally divided between Senators MCCAIN, KYL, and SESSIONS.

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

Mr. KERRY. Mr. President, before the Senator gets going, I think we have an understanding. Just so the record is clear, how much Republican time remains at this point?

The PRESIDING OFFICER. Just under 30 minutes.

Mr. KERRY. So it is my understanding they will each have about 10 minutes. I think Senator KYL and Senator SESSIONS will speak, at which point I will have an opportunity to speak, and then Senator MCCAIN, since it is his amendment, would have the last 10 minutes at that point.

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

Mr. KERRY. I thank the Chair.

Mr. KYL. Mr. President, during one of the last votes, a Member came to me and said: I have not been able to follow this debate. What exactly is the McCain-Barrasso amendment?

With all of the to-and-fro—having votes on different subjects, then going back to the START treaty, then going back to a vote on don't ask, don't tell, then finally a vote on the McCain-

Barrasso amendment—I thought it would be good to recapitulate a little bit on what exactly the McCain-Barrasso amendment is and why it is important.

What the amendment does is it removes language that relates to missile defense from the preamble. This treaty was supposed to be about offensive strategic weapons, not about missile defense. In fact, we were told by an administration spokesman that it wouldn't relate to missile defense, but sure enough, there the words are. Why are they there? They are there because the Russians insisted they be there. Why did they insist they be there? Because for decades the Russians have been fixated on U.S. missile defense, trying to find ways to reduce the effect of our missile defense on Russian strategic capabilities. They tried it at Reykjavik with President Reagan. He said no. They tried it again in the first START treaty. They tried it again in the Moscow Treaty of 2002. And they have tried it again here.

The difference between this treaty and the previous times is that the United States always pushed back and said: No, we are going to rely on missile defense. It is the moral thing to do. We are not going to get into quid pro quos with you where we have to reduce our missile defense if you reduce your strategic offensive weapons or some other agreement like that.

In the START I treaty, when the Russians said in their signing statement: We find this interrelationship, and the United States should not advance its missile defense capabilities, the United States pushed back strongly in our statement and said no, that would not be a grounds for withdrawal from the treaty and the Russians need to understand that. They never did withdraw even though we did withdraw from the ABM Treaty so we could build missile defenses.

Well, once again, they have put it in the preamble this time and then, in their signing statement, made very clear their intent that the interrelationship between the two means that if our missile defenses are ever developed to a point where they consider it qualitatively or quantitatively better than it is currently, then they would have the right to withdraw from the treaty; that that would qualify as one of the exceptional circumstances under article XIV, which is the withdrawal clause of the treaty. Why do they want to do that? Obviously to put pressure on the United States not to develop our missile defenses in a way they don't want. They will threaten to withdraw from the treaty if we begin to do that. Some Presidents—I suspect the existing President, for example—would therefore be very wary of going forward with missile defense plans if that means the Russians would withdraw from the treaty.

My colleague Senator KERRY says: Well, the preamble is a meaningless document. It is a throwaway docu-

ment. It doesn't mean that much. But he also says: However, if we change one comma in the preamble, it will be a treaty-killing amendment.

At first, I said: Well, both of those things can't be true. It can't be both meaningless and of ultimate importance, that it would kill the treaty if we changed it.

On reflection, I think Senator KERRY actually has it right, partially. To the United States, it is meaningless. Our negotiators didn't care what the Russians put in there. It doesn't mean anything to us, but it means everything to the Russians, and that is why I think Senator KERRY is right.

This would be a big problem for the Russians. Why is that so? Because even though we were willing to walk away from that commitment we had always made in the past that there wouldn't be this connection between defense and offense, the Russians got it in here, and it means everything to them because it creates the predicate for their withdrawal from the treaty, and that is what they are trying to establish.

I will close this point by quoting from Dr. Condoleezza Rice, who wrote an op-ed in the Wall Street Journal in which she said we needed to do something about this in our ratification process. She said there are legitimate concerns that must be addressed in the ratification process.

I am quoting now:

The Senate must make absolutely clear that in ratifying this treaty, the U.S. is not reestablishing the Cold War link between offensive forces and missile defenses. New START's preamble is worrying in this regard as it recognizes the interrelationship between the two.

What this language from Senators BARRASSO and MCCAIN does is simply remove that language from the preamble, thereby removing the thorn, removing the contention, the potential and I would say almost certain conflict that is due to arise between our two countries when the time comes that we do build a missile defense that the Russians don't want.

They say: We are going to withdraw from the treaty.

We say: You can't do that; that is not an extraordinary circumstance.

They say: Yes it is. We identified it as such at the time we signed the treaty, and we are going to leave the treaty.

And then the U.S. President has a dilemma: Do we pull back on our missile defenses or allow the Russians to withdraw from the treaty and all that will portend?

That is why this is important. The amendment cures the problem by simply removing that language from the preamble.

In the remaining time, I wish to briefly respond to four points the President made in his weekly address today relating generally to the same subject.

One of the first points he made is he talked about the number of nuclear

weapons—about 25,000 on each side—and the decades that have ensued since the Cold War. Those numbers have come down dramatically, and he said that progress would not have been possible without strategic arms control treaties.

Yes, it would have. It was happening anyway. Both sides were willing to draw both of their delivery vehicles and warheads down because they couldn't afford to keep them. In fact, after the end of the Cold War, the United States, under President Bush, said: We are reducing ours, and Russia, you can do whatever you want to do.

We knew they couldn't afford to keep theirs any more than we could keep ours, and they weren't reducing theirs.

The Russians came to us and said: Gee, we need a treaty.

We said: Why? We don't care how many you have. We are reducing ours.

Eventually, we said: OK. If you want a treaty, fine.

It was a three-page treaty, but it had no connections with missile defenses or anything the Russians wanted.

The point is, it didn't require a treaty for us to bring those levels down.

How about the delivery vehicles? This treaty actually fixes the number of delivery vehicles above where the Russians are right now. They could actually build up to the level of about 140, as I recall, to get up to the level of 700.

The point is, both countries are reducing the levels to the point that we need, not because of an arms control treaty but because it is in our national interests to do so.

Secondly, the President said that without this treaty, we will risk turning back the progress we have made in our relationship with Russia. I will just repeat what I have said before. Secretary Kissinger and others who have spoken to this point have always warned: Don't predicate the support for a treaty on improving your relationship with someone. The treaty should relate to reducing arms or whatever the subject of the treaty is. It should not be based on anything other than that or you get into a morass of always trying to please the other side and risking that they will withdraw from the treaty.

Third, the President said that it is about the safety and security of the United States of America. I have yet for anybody to tell me what threat we are reducing by agreeing with the Russians that both of us are going to reduce our delivery vehicles and warheads. Actually, the Russians don't have to reduce theirs; they could actually build up under the treaty. I don't think we see any big threat there.

Finally, the President said that every minute we drag our feet is a minute we have no inspectors on the ground at those Russian nuclear sites. We just talked about the fact that we have this reset relationship with the Russians, and we need to continue these good relationships, but we can't

trust them, so we have to get our folks on the ground verifying what is going on right now. As I pointed out before, the administration created this problem on its own. We could have had a bridging agreement. We could have simply extended the verification provisions of the previous START treaty, but the Russians didn't want to do that, we are told. Fine, they didn't want to do that. That doesn't mean we had to agree that we will abide by their wishes when it comes to verification.

My colleague says: Well, you can't get them to do something, so we signed the treaty the way the Russians wanted in this regard, and we just have to live with that. The administration might have to live with that, but the Senate is not a rubberstamp, and it seems to me the Senate has a right to say: You let the verification procedures lapse; you didn't have to do that.

Senator LUGAR had a bill that related to the extension of the legal regime whereby both sides would be able to continue to have presence in the other country. We knew that was a problem at the time. For some reason, the administration didn't pursue it—I suppose because the Russians said no, but that doesn't mean the U.S. Senate has to say: OK, the Russians just say no, and I guess we have to go along with that.

The point here is that I don't think any of the arguments President Obama has made require that we ratify this treaty this week. I would urge my colleagues to seriously consider what Dr. Condoleezza Rice has said, what Senator McCain and others have said here about the necessity of cleaning up this preamble so that we don't reestablish the link with missile defense and inhibit U.S. ability to proceed with missile defense plans in the future.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I would ask to be notified after 6 minutes.

I wish to thank Senator KYL and Senator McCain for their leadership on this issue and state that I believe the McCain amendment is perhaps the most critical amendment that will be raised during this debate because the future of missile defense is critically important for America.

I chaired the Subcommittee on Strategic Forces in the Armed Services Committee. I have been the ranking member of the subcommittee and a member of the committee for 12 years, and I know all of the history on this issue. It has gone on for a great deal of time.

I believe missile defense is critical to our national security. We have invested billions of dollars over 30-plus years developing it, and now that we are actually deploying it in Alaska and California, it is proving to be a shield that will work.

We had plans for a long time to deploy a site in Central Europe. The Bush administration negotiated with the

Poles and Czechoslovakia. They signed agreements that they would allow a radar base in the Czech Republic and a missile base in Poland.

When President Obama was elected, the Russians immediately started pushing back on our missile defense plans for reasons I have never fully understood. We are only talking about 10 defensive missiles against hundreds—hundreds, maybe thousands—of Russian missile and launch vehicles. It would in no way threaten their power. Some experts—and I am inclined to agree—thought it related more to the Russian concern about us having a defense relationship with Czechoslovakia and Poland, but I don't know. For some reason, it has been a big deal for them.

They have pushed back very hard. From the Bush administration, Doug Feith, in a Wall Street Journal article recently said—he negotiated in 2002—that they pushed back on it at that time. They said they would not sign a treaty unless we agreed not to proceed with missile defense. He said no deal. They insisted, and he said no deal. They said: We won't have a treaty if you don't agree. He said: Well, we won't have a treaty. We don't have a treaty with England, India, Pakistan, China, or France, who have nuclear weapons. We don't have to have a treaty with you. We are bringing our numbers down anyway, and you are, too. We would like to have a treaty, but we are not going to limit our missile defense. The Russians signed that treaty.

Now we come and they start the same bluster against the Obama administration, which, unfortunately, gave in. These negotiations started early in the year. The treaty negotiations started in March of 2009. By September of 2009, President Obama unilaterally announced, to the shock of our Polish and Czech allies, that we were not going forward with the Polish site—much to the delight of the Russians, who had achieved a significant victory in a negotiating point that had gone on for many years.

So to say that this treaty has nothing to do with missile defense is not correct. Did the Russians say, thank you, we will be glad to work with you on the treaty? No, they still wanted language in the treaty that put them in a position to walk away from this treaty any time they wanted to if we deployed a missile defense system in Europe. They got it in there, in the preamble. It leaves not just an ambiguity, as I said earlier, it is a misunderstanding, or a disagreement of a central issue. Repeated Russian statements indicate they believe that if we move forward quantitatively or qualitatively with a missile defense system, then they would have a right to get out of the treaty.

I can hear what would happen in the Senate if we start deploying a missile defense system in Europe. A lot of our colleagues would say: If we do that, the Russians will get out of the treaty. We can't do that. It will make it difficult.



In addition, the system we were going to deploy was a GBI two-stage missile in central Europe, Poland. The President stopped this. It was ready and able to be deployed by 2016. It is the same system we have in the United States, except it is two-stage instead of three. The National Intelligence Estimate shows that Iran can reach the United States with a ICBM, and now they are developing nuclear weapons, and they can do it by 2015. We were trying to get this system in by 2016. When they canceled this, it caused an uproar. The White House said: Don't worry, we have a new plan—one I had never heard about. We are going to do an SM-3 Block 2B. We are working on it. Well, have you started? No. Is it under development? We just conjured this up. It is a bigger, rounder missile than the existing SM-3, and it is quite different.

The PRESIDING OFFICER. The Senator used 6 minutes of his time.

Mr. SESSIONS. I thank the Chair. It is a different thing. It would be ready only by 2020. So I contend that this administration, as part of the negotiations over this treaty, in their too-anxious-desire to get this treaty, to reset the relationship with the Russians, which we of course want to do, made a very serious error in capitulating on the third site—sending shock waves among our sovereign nation allies in Central Europe, which used to be a part of the Soviet empire. They have made concessions that are significant.

As a matter of fact, they pretend it had nothing to do with the treaty, but I would say there is no doubt that the abandonment of the Polish site was a way to gain support of the Russians as part of the negotiations in this treaty. And we now have this ephemeral, chimeric vision of a 2020 entirely new missile system for Poland that may or may not ever reach fruition.

Those are my concerns. The McCain amendment would say let's get this straight with the Russians and make Congress know that if it requires a new negotiation with the Russians, so be it. Maybe we can reach an understanding. You could never enter into a treaty or any contract in which the parties have a serious misunderstanding or actual disagreement on a critical part.

I thank the Chair and reserve the remainder of the time on this side.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, would you inform me when I have used 4 minutes?

The PRESIDING OFFICER. Yes.

Mr. KERRY. Our colleagues are fighting against a phantom. All of this argument they have been going on for several days with is about language that has no binding impact on this treaty whatsoever. Senator KYL acknowledged that yesterday. He also acknowledged that if you change it, it requires this treaty to go back to the Russian Government, and then we don't have this treaty. We don't have any verification for whatever number

of months that follow. I will come back to that.

A moment ago, Senator KYL said the Russians didn't want to continue the verification methods of START. He somehow insinuates that because they didn't want to continue it, what we have here is something less than what we ought to have for ourselves.

We didn't want to continue the verification and process of START as it existed. In fact, the Bush administration was told that. He knows that. This is phantom debate, what we have going on here. The target is the treaty itself, not this language, because this language doesn't have any legal binding impact on the treaty. In a moment, I will share what impact it has.

Our friends on the other side of the aisle are supplanting their judgment for the judgment of Secretary Gates. We have the right to do that, and you can do that. But I ask people to weigh whether Secretary Gates, who was appointed by George Bush and held over by President Obama, has anything except the interests of our country at heart when he makes this statement in his testimony:

So, you know, the Russians can say what they want, but, as Secretary Clinton said, these unilateral statements are totally outside the treaty. They have no standing. They are not binding. They never have been.

Do you know what the Soviets said at the U.S.-Soviet negotiations on nuclear space arms concerning the interrelationship between strategic defensive weapons compliance with the treaty—and this is START I. They said:

In connection with the treaty between the United States of America and the Union of Soviet Socialist Republics on reduction and limitations of strategic defensive arms, the Soviet side states the following: This treaty may be effective and viable only under conditions of compliance with the treaty between the United States and the USSR on the limitation of antiballistic missile systems as signed May 26, 1972.

That was their signing statement, just like this signing statement. Guess what. The United States of America saw our national security interests in getting out from under the ABM Treaty. We got out from under the ABM treaty. This language, just like the language we are debating today, meant nothing at all. They stayed in the treaty. They didn't pull out. So we are debating something that has no impact whatsoever on this treaty.

Let me go a little further. Secretary Gates said further:

So from the very beginning of this process, more than 40 years ago, the Russians have hated missile defense.

It's because we can afford it and they can't. And we're going to be able to build a good one, and are building a good one, and they probably aren't.

And they don't want to devote the resources to it, so they try and stop us from doing it, through political means. This treaty doesn't accomplish that for them.

My God, after several days, either the Secretary of Defense—and how about LTG Patrick O'Reilly, whose job it is to defend the United States

against missile attack. He is the man who runs this agency day to day. You know what he said:

Relative to the recently expired START Treaty, New START Treaty [this treaty we are voting on] actually reduces constraints on the development of the missile defense program.

We have our own leader of the Missile Defense Agency telling us that this is an advantage for the United States of America.

The PRESIDING OFFICER. The Senator has used 4 minutes.

Mr. KERRY. I thank the Chair. Let me get to the heart of the argument about why this is so critical. The other side is trying to minimize this, saying you can't say that language has no legal binding authority, it is not that important, and turn around and say we can't change it. That is the nub of their argument—that we have to be able to change it because, if we don't change it, somehow nonbinding language is enough for us to say let's have no verification at all. It is a strange tradeoff.

Here is why it matters. Because the preamble is in the instrument that is transmitted to the Senate. Even though it is not the binding component of it, the rules by which we all play are that if you change a comma, or one word, that change has to go back to the Government of Russia, and they have to decide what they want to do. Why is that important relative to this language? Because the public position that they fought for in this negotiation was to achieve binding restraints on U.S. missile defense. That is what they wanted. And as Secretary Gates said—every general and admiral who has looked at this, including Admiral Mullen and General Chilton, have all said they didn't get that. They didn't win that point. We won that point. In any negotiation, when somebody needs something to be able to feel good, or deal with their own politics, sometimes you let them have a little something that is meaningless to you but may mean something to them. That is what we gave them. Take it away and you open this whole treaty. Then they have to figure out how they deal, in other terms, with those politics. I will wait until the classified session that we are going to have on Monday. I can't go into it here, but I will lay out why this treaty is good for the United States and why we believe reopening it would be dangerous. That is why this amendment is dangerous, because it will reopen this and will force—it doesn't constrain us in the least, and the extent to which that is true, I think, will be understood by a lot of colleagues in that session.

To make this even more clear, the President of the United States has written a letter today to Majority Leader HARRY REID and to Minority Leader MCCONNELL. In the letter, which Senator REID has shared with me, it says from the President:

The New START Treaty places no limitations on the development or deployment of

our missile defense programs. As the NATO Summit meeting in Lisbon last month underscored, we are proceeding apace with a missile defense system in Europe designed to provide full coverage for NATO members on the continent, as well as deployed U.S. forces, against the growing threat posed by proliferation of ballistic missiles. The final phase of the system will also augment our current defenses against intercontinental ballistic missiles from Iran targeted against the United States.

All NATO allies agreed in Lisbon that the growing threat of missile proliferation, and our Article 5 commitment of collective defense, requires that the Alliance develop a territorial missile defense capability.

It goes on to talk about that capability. Then he says this, which is critical with respect to this debate. This is the President's letter to the leadership:

In signing the New START Treaty, the Russian Federation issued a statement that expressed its view that the extraordinary events referred to in Article XIV of the Treaty include a "build-up in the missile defense capabilities of the United States of America such that it would give rise to a threat to the strategic nuclear potential of the Russian Federation." Article XIV(3), as you know, gives each Party the right to withdraw from the Treaty if it believes its supreme interests are jeopardized.

The United States did not and does not agree with the Russian statement. We believe that the continued development or deployment of U.S. missile defense systems, including qualitative and quantitative improvements to such systems, do not and will not threaten the strategic balance with the Russian Federation, and have provided policy and technical explanations to Russia on why we believe that to be the case. Although the United States cannot circumscribe Russia's sovereign rights under article XIV, paragraph 3, we believe the continued improvement and deployment of U.S. missile defense systems do not constitute a basis for questioning the effectiveness and viability of the New START treaty and, therefore, would not give rise to circumstances justifying Russia's withdrawal from the treaty.

Regardless of Russia's actions in this regard, as long as I am President and as long as the Congress provides the necessary funding, the United States will continue to develop and deploy effective missile defenses to protect the United States, our deployed forces, and our allies and partners. My administration plans to deploy all four phases of the EPAA. While advances of technology or future changes in the threat could modify the details or timing of the later phases of the EPAA—one reason this approach is called adaptive—I will take every action available to me to support the deployment of all four phases.

Sincerely, Barack Obama, President of the United States.

I think this letter speaks for itself. I think the facts are history. I think the testimony of Secretary Gates and all those others who have come before us that makes it clear the United States has no constraints on missile defense whatsoever, makes clear this amendment is not necessary, and this amendment carries with it dangerous implications for the ultimate ratification implication of the treaty.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. How much time do I have?

The PRESIDING OFFICER. About 13 minutes.

Mr. MCCAIN. I will reserve at least the last 3 minutes for my colleague, Senator KYL.

The PRESIDING OFFICER. Very good.

Mr. MCCAIN. As we all know, we will vote very quickly on the amendment to the New START treaty. I have offered this amendment along with the Senator from Wyoming, and this amendment is an important and seminal one. It is focused on a key flaw in the treaty—the inclusion in the preamble of the following clause. I wish to read it in full. We have read it before, and I don't understand how the letter the Senator from Massachusetts just read would not then force us to negate this part of the treaty, which says:

Recognizing the existence of the interrelationship between strategic offensive arms and strategic defensive arms, that this interrelationship will become more important as strategic nuclear arms are reduced, and the current strategic defensive arms do not undermine the viability and effectiveness of the strategic offensive arms of the Parties.

This language carries a lot of historical significance and strategic weight because it recognizes an interrelationship between nuclear weapons and missile defense. Some believe this type of linkage was appropriate during the Cold War, when the United States and the Soviet Union were existential enemies, with the means to annihilate each other. But it is not appropriate for today, when the United States and the Russian Federation, for all our differences, are not devoted to one another's destruction and when one of the greatest threats to our national security comes from rogue states such as Iran and North Korea, which are developing nuclear weapons and increasingly better means to deliver them. In today's world, with so many new and constantly evolving threats, the United States can't be limited in the development, deployment, and improvements of missile defense systems that we deem to be in our national security interest.

I am concerned, as are many of my colleagues, that the Russian Government believes this clause from the preamble confers a legal obligation on the United States which constrains our missile defenses. Ever since President Reagan proposed a Strategic Defense Initiative, the Russians have sought to limit our strategic defensive arms. They have sought to limit our missile defense programs through legal obligations, and failing that, with political commitments or agreements that could be cited to confer future obligations. Words matter. Words matter.

To open ourselves to this type of political threat by accepting an outdated interrelationship between nuclear weapons and missile defense is wrong. Furthermore, by saying that "current" missile defenses do not undermine the treaty's viability and effectiveness, this clause from the treaty's preamble

establishes that future missile defense deployments could undermine the treaty, thereby establishing a political threat the Russian Federation could use to try to constrain U.S. missile defenses. In short, we have handed the Russian Government the political tool they have sought for so long to bind our future decisions and actions on strategic defensive arms.

Imagine a world, a few years from now, when—God forbid—an Iran or North Korea or some other rogue state has developed and deployed longer range ballistic missiles and a deployable nuclear capability much earlier than we assessed. Imagine we are faced with a situation where unforeseen events compel us, for the sake of our national security and that of our allies, to improve our current systems or to develop and deploy new systems in order to counter a new and far greater threat than we expected. Then consider what the Russian Federation said in a unilateral statement at the signing of the treaty.

This is the statement of the Russian Federation—something that if the Senator from Massachusetts is correct, we should be able to clarify by asking for a statement from the Russian Federation repudiating what they said at the time of the signing statement. This is what they said:

The treaty between the Russian Federation and the United States of America on Measures for the Further Reduction and Limitation of Strategic Offensive Arms signed at Prague on April 8, 2010, may be effective and viable only in conditions where there is no qualitative or quantitative buildup in the missile defense system capabilities of the United States of America.

That is clear language. That is clear, unequivocal language, and I will repeat it:

... where there is no qualitative or quantitative buildup in the missile defense system capabilities of the United States of America. Consequently, the extraordinary events referred to in Article XIV of the Treaty also include a buildup in the missile defense system capabilities of the United States of America such that it would give rise to a threat to the strategic nuclear force potential of the Russian Federation.

That is a very clear statement. It is unequivocal as to what the Russian Federation is saying. One of the things Senator GRAHAM and I and others have said is: Hey, why don't we just drop a letter to the Russian Ambassador or to Vlad or whomever and ask them, clarify this, will you? Are you standing by your statement you made at the signing? Is that the Russian Federation's official policy that has not been revoked?

This is the Russian interpretation of what our two governments have agreed to in the preamble. They seem to believe this clause limits U.S. missile defense systems. They seem to believe the language in this clause about "the effectiveness and viability of the Treaty" means that any buildup or improvement in U.S. missile defense systems would undermine the treaty.

They seem to believe there is a clear and legally binding connection between what was agreed to in this clause of the preamble and article XIV of the treaty, which establishes the rights of the parties to withdraw from the treaty and the conditions under which they may do so.

In short, the Russian Government seems to believe this nonbinding political agreement is the pretext for a legal obligation under the treaty itself, and if the United States builds up its missile defense, Russia will withdraw from the treaty.

Let's listen to what the Russian leaders have said. I mean, this is not made up. This is what they have said.

The Russian Foreign Minister, on March 28, 2010—this year—said this:

The treaty and all obligations it contains are valid only within the context of the levels which are now present in the sphere of strategic defensive weapons.

What could be more clear? Here he says again, in April of 2010—April this year.

Linkage to missile defense is clearly spelled out in the accord and is legally binding.

I mean, if there is any clarification for that statement from the preamble, he just gave it—at least what the Russian version is.

Here is President Dmitry Medvedev on November 30—18 days ago.

Either we reach an agreement on missile defense and create a full-fledged cooperation mechanism, or if we can't come to a constructive agreement, we will see another escalation of the arms race. We will have to make a decision to deploy new strike systems.

Finally, here is Prime Minister Vladimir Putin on "Larry King Live." Larry, we will miss you. I have quoted him so many times. This was on "Larry King Live" on December 1, 2010.

If the counter missiles will be deployed in the year 2012 along our borders, or [2015], they will work against our nuclear potential there, our nuclear arsenal. And certainly that worries us. And we are obliged to take some actions in response.

This is a troubling situation. And it must be corrected by this body. Let me quote again from the recent op-ed by former Secretary of State Condoleezza Rice in the Wall Street Journal:

The Senate must make absolutely clear that in ratifying this treaty, the United States is not reestablishing the Cold War link between offensive forces and missile defenses. New START's preamble is worrying in this regard, as it recognizes the interrelationship of the two.

Now that is a statement by our former Secretary of State, who, by the way, wants this treaty ratified, but she also wants us to fix this. This amendment fixes it—this amendment.

I appreciate the letter from the President of the United States. I am very grateful for it. But the fact is, letters are letters and Presidents don't last forever. But binding treaties do, until they are either broken or they are revoked. To have right in the beginning, at the preamble, a clear and

unequivocal statement that any improvement in our defensive weapon missile systems will then be grounds for withdrawal from the treaty is not anything we should let stand.

The simplest way—

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. MCCAIN. I thank the Chair. Let me finish.

The Senator from Wyoming and I are proposing the amendment which will simply strike the language from the preamble itself. I urge my colleagues to support the amendment, and I yield the remainder of my time to the Senator from Arizona.

Mr. KYL. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Arizona has 2 minutes 10 seconds remaining.

Mr. KYL. Mr. President, is there any time remaining on the Democratic side?

The PRESIDING OFFICER. Twenty-five seconds.

Mr. KYL. Is there anyone who would like to take the 25 seconds?

Senator LEVIN will take the remaining 25 seconds?

Mr. LEVIN. If no one else wants it, I will be happy to take it.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, let me just say that General Chilton, who is the commander of our U.S. Strategic Command, told the Armed Services Committee on July 20:

As the combatant command also responsible for synchronizing global defense plans, operations, and advocacy, I can say with confidence that this treaty does not constrain current or future missile defense plans.

The McCain amendment would be a treaty killer, and for that reason alone the Senate should defeat it.

On the issue of the interrelationship of offensive and defensive arms, which is the text of the Preamble, President George W. Bush agreed that such an interrelationship exists. In a joint statement with President Putin of July 22, 2001, they said: "We agree that major changes in the world require concrete discussions of both offensive and defensive systems . . . We will shortly begin intensive consultations on the interrelated subjects of offensive and defensive systems."

As all our senior civilian and military officials acknowledge, the treaty does not limit our missile defense plans or programs. Gen. Kevin Chilton, the Commander of U.S. Strategic Command, told the Armed Services Committee on July 20th that "As the combatant command also responsible for synchronizing global missile defense plans, operations, and advocacy, I can say with confidence that this treaty does not constrain any current or future missile defense plans."

On the issue of ICBM silo conversion for missile defense, which the treaty prohibits, this is not a constraint on

our missile defense plans or programs. As Lieutenant Gen. Patrick O'Reilly, the Director of our Missile Defense Agency said on June 16th: "replacing ICBMs with Ground-Based Interceptors or adapting Submarine-Launched Ballistic Missiles to be an interceptor would actually be a setback—a major setback—to the development of our missile defenses."

On the subject of the unilateral statements, these are not part of the treaty and do not in any way constrain our missile defenses. We faced a nearly identical situation with the original START treaty, where Russia issued a unilateral statement saying that if we withdrew from the ABM Treaty, that would constitute grounds for their withdrawal from the START treaty. Guess what. We did withdraw from the ABM Treaty, but Russia did not withdraw from START. Our unilateral statement makes clear that we intend to develop and deploy missile defenses, regardless of the Russian statement.

The PRESIDING OFFICER. Time has expired.

The Senator from Arizona.

Mr. KYL. Mr. President, to say the treaty doesn't constrain the United States misses the point of the argument we have been trying to make over the course of the last day and a half.

What the Russians have done is establish a legal pretext for withdrawal from the treaty. They have been very clever about it, and up to the time we had been told the President had sent us a letter, there was no pushback from the United States.

I haven't seen this letter, so it is a little hard to comment on it. It has been given to us 15 minutes before the vote is supposed to start. It hasn't been shared with us. We have no idea what all it says. We have Senator KERRY's quotation of certain parts of it. It is obviously a last-ditch effort to try to win votes or preclude an amendment from passing. It shows the administration is scrambling and making it up as it goes along. That is not the way to deal with a serious subject such as this.

Does the letter commit to the GBI—or the ground-based missile—backup for the phased adaptive approach, as was originally announced? Well, I don't know whether it says that. Does it repudiate the signing statement of the United States Department of State issued by Secretary Tauscher, which of course conflicts with the letter and is the official position of the U.S. Government? Does it conflict with the briefing in Lisbon, where the phased adaptive approach was discussed, and revealed deployment of the first three phases but the fourth phase only being available? When will the deployment occur?

The letter, apparently, says we will have effective defenses—whatever that means. What does that mean? When would those effective defenses be deployed? Iran intelligence tells us they will have an ICBM by 2015—an ICBM that would require something like the GBI to intercept. But we are told the

GBI is—well, A, we are not told whether the GBI is a contingent backup plan; and, B, we are not told whether it will be ready before 2017, which I find strange. Because I think we already have 24 GBIs in Alaska and California, and I don't know why we can't build some more to deploy in Europe.

So I don't know what to make of this letter. Obviously, it comes at the last minute and hasn't been sent to us, and I don't see how we can base a vote on such a letter.

The PRESIDING OFFICER. I believe all time has expired. The Senator from Tennessee.

Mr. CORKER. Mr. President, I would like to just interject, with tremendous respect for my friend from Arizona, this letter is something that actually I have been seeking too. I know a number of us have asked the President to send this letter. I am glad he sent it.

I am going to support the McCain amendment and wish this was not in the preamble. I talked to General Cartwright yesterday who, by the way, has reiterated about what was said about the missile defense system. The preamble in no way limits it. But I wish to say this letter is something I am glad was sent. I asked for this letter, as numbers of people on our side have asked for.

Mr. LUGAR. If the Senator will yield, let me respond. The President sent a copy of the letter to Senator MCCONNELL, our leader. Both leaders got the letter.

The PRESIDING OFFICER. Under the previous order, all postcloture time has expired and the motion to concur with amendment No. 4827 is withdrawn.

The question now is on agreeing to motion to concur in the House amendment to the Senate amendment to H.R. 2965.

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

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. MANCHIN) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from New Hampshire (Mr. GREGG), and the Senator from Utah (Mr. HATCH).

Further, if present and voting, the Senator from Utah (Mr. HATCH) would have voted "nay," and the Senator from Kentucky (Mr. BUNNING) would have voted "nay."

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

The Chair will remind the galleries that expressions of approval or disapproval are not in order.

The result was announced—yeas 65, nays 31, as follows:

[Rollcall Vote No. 281 Leg.]

YEAS—65

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

NAYS—31

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

NOT VOTING—4

Bunning	Hatch
Gregg	Manchin

The motion was agreed to.

Mrs. BOXER. Mr. President, I move to reconsider the vote.

Mrs. MURRAY. Mr. President, I move to lay that motion upon the table.

The motion to lay upon the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. REID. I have spoken to the Republican leader. We are going to come in tomorrow around noon. I have spoken to Senator RISCH, who has an important amendment to offer on the START treaty. He has indicated he would need about 2 hours of debate. We would hope at or near 2 o'clock to have a series of at least three votes. And today, as we indicated earlier, we are basically through except for the wrap-up. We do have another vote.

#### EXECUTIVE SESSION

#### TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume debate on the START treaty, which the clerk will report.

The bill clerk read as follows:

Treaty with Russia on Measures for Further Reduction and Limitation of Strategic Offensive Arms.

Pending:

McCain/Barrasso amendment No. 4814, to amend the preamble to strike language regarding the interrelationship between strategic offensive arms and strategic defensive arms.

The PRESIDING OFFICER. There will be 4 minutes of debate equally divided on the McCain amendment.

The Senator from Wyoming.

Mr. BARRASSO. Mr. President, currently the New START treaty establishes limits on missile defense. Placing constraints on future U.S. defense capabilities should not be up for debate and should not be placed in a treaty on strategic offensive nuclear weapons. Russia is trying to force the United States to choose between missile defense and the treaty. If that is the case, I choose missile defense. We cannot tie our hands behind our back and risk the national security of our Nation and our allies.

This treaty is a bilateral agreement between Russia and the United States. It is clear that there is a disagreement about the actual agreement made. Russia continues to claim that the treaty successfully limits our ability to defend ourselves. Supporters of the treaty claim the limitation on missile defense in the preamble is not binding and that it is legally insignificant and a throwaway provision.

We are talking about the preamble. Like the preamble to the Constitution, "we the people," this is meaningful. Some things we hold dear. The safe and the smart decision would be to eliminate the disagreement by getting rid of that provision entirely.

I urge all colleagues to support the McCain-Barrasso amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, this amendment is unnecessary because, as General Chilton, who is the commander of U.S. Strategic Command, said:

I can say with confidence that this treaty does not constrain any current or future missile defense.

Secretary Gates has said that what the Russians wanted to achieve was a restraint. He said this treaty doesn't accomplish that for them.

Even though the language is completely nonbinding, has no requirement in it whatsoever, this amendment requires us to go back to Russia, renegotiate the treaty, open whatever advantages or disadvantages they may perceive since the negotiation exists, and we would go through a prolonged negotiation. We have no verification whatsoever today because that ceased on December 5 of last year. We need to hold this treaty intact and pass it.

I yield whatever remaining time I have to the chairman of the Armed Services Committee.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, every one of our military leaders has said to the Armed Services Committee and I believe they have reiterated to the Foreign Relations Committee that there