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 deployment 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.

Mr. ALEXANDER. Madam President, ratifying this treaty would extend the policies of President Nixon, President Reagan, President George H.W. Bush, President George W. Bush, as well as Democratic Presidents.

I ask unanimous consent to have printed in the RECORD the statements of the last six Republican Secretaries of State, all of whom support ratification of the treaty.

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

[From the Washington Post, Dec. 2, 2010]

THE REPUBLICAN CASE FOR RATIFYING NEW START

(By Henry A. Kissinger, George P. Shultz, James A. Baker III, Lawrence S. Eagleburger, and Colin L. Powell)

Republican presidents have long led the crucial fight to protect the United States against nuclear dangers. That is why Presidents Richard Nixon, Ronald Reagan and George W. Bush negotiated the START I, START II and START II agreements. It is why President George W. Bush negotiated the Moscow Treaty. All four recognized that reducing the number of nuclear arms in an open, verifiable manner would reduce the risk of nuclear catastrophe and increase the stability of America’s relationship with the Soviet Union and, later, the Russian Federation. The world is safer today because of the decades-long effort to reduce its supply of nuclear weapons.

As a result, we urge the Senate to ratify the New START treaty signed by President Obama and Russian President Dmitry Medvedev. It is a modest and appropriate continuation of START I, which expired almost a year ago. It reduces the number of nuclear weapons that each side deploys while enabling the United States to maintain a strong nuclear deterrent and preserve the flexibility to deploy those forces as we see fit. Along with our obligation to protect the homeland, the United States has responsibilities to allies around the world.

The commander of our nuclear forces has testified that the 1,550 warheads allowed under this treaty are sufficient for all our missions. Each of our former nuclear commanders agree. The defense secretary, the chairman of the Joint Chiefs of Staff and the head of the Missile Defense Agency—all originally appointed by a Republican president—argue that New START is essential for our national defense.

We also analyze a recommendation about the exact timing of a Senate ratification vote. That is a matter for the administration and Senate leaders. The most important thing is to have bipartisan support for the treaty, as previous nuclear arms treaties did.

Although each of us had initial questions about New START, administration officials have been clear, candid and open in answering our questions. We believe there are compelling reasons Republicans should support ratification.

First, the agreement emphasizes verification, providing a valuable window into Russia’s nuclear arsenal. Since the original START expired last December, Russia has not allowed inspections about changes in its strategic nuclear arsenal, and the United States has been unable to conduct on-site inspections. Each day that passes we get a less complete picture into Russia’s activity with its strategic nuclear arsenal, making it more difficult to carry out their nuclear deterrent mission.

Second, New START reduces our ability to deploy effective missile defenses. The testimonies of our military commanders and civilian leaders make clear that the treaty does not limit U.S. missile defense plans. Although the treaty prohibits the conversion of existing launchers for intercontinental and submarine-based ballistic missiles, our military leaders say they do not want to do that because it is more expensive and less effective than building new ones for defense purposes.

Finally, the Obama administration has agreed to provide for modernization of the infrastructure essential to maintaining our nuclear arsenal, as the negotiations has become part of the negotiations in the ratification process. The administration has put forth a 10-year plan to spend $84 billion on the Energy Based Weapons Complex. Much of the credit for getting the administration to add $14 billion to the originally proposed $70 billion for modernization programs goes to Sen. John Kerry, the Massachusetts Democrat who has been vigilant in this effort. Implementing this modernization program in a timely fashion would be important in ensuring that our nuclear arsenal is maintained appropriately over the next decade and beyond.

Although the United States needs a strong and reliable nuclear force, the chief nuclear danger today comes not from Russia but from rogue states such as Iran and North Korea and the potential for nuclear material to fall into the hands of terrorists. Given those pressing dangers, some question why an arms control treaty with Russia matters. It matters because it is in both parties’ interest that there be transparency and stability in their strategic nuclear relationship.

It also matters because Russia’s cooperation will be needed if we are to make progress in rolling back the Iranian and North Korean nuclear programs. Russian help will be needed to continue our work to secure “loose nukes” in Russia and elsewhere. And Russian assistance is needed to improve the situation in Afghanistan, a breeding ground for international terrorism.

Obviously, the United States does not sign arms control agreements just to make friends. Any treaty must be considered on its merits. But we have here an agreement that is clearly in our national interest, and we should confirm the Senate’s judgment of not ratifying it.

Whenever New START is brought up for debate, we encourage our friends to focus on national security. There are plenty of opportunities to battle on domestic political issues linked to the future of the American economy. With the dual threats of unemployment and a growing federal debt bomb, we anticipate significant conflict between Democrats and Republicans. It is, by far, the national interest to ratify New START.

Mr. ALEXANDER. Madam President, I will vote to ratify this treaty. The vote we are about to have today is about whether to end debate. The majority’s decision to jam through other matters during this lame duck session has poisoned the well, driven away Republican votes, and jeopardized ratification of this important treaty.

Nevertheless, this treaty was presented to the Senate after 12 hearings in two committees and many briefings. The Foreign Relations Committee reported the treaty to the Senate on September 16 in a bipartisan vote of 14 to 4. For several months, there have been intensive efforts to develop a realistic plan and the funding for nuclear modernization. That updated plan was reported on November 17. The Senate voted to proceed to the treaty last Wednesday. I voted no because I thought there should still be more time allowed for amendment and debate.

Despite the flawed process, I believe the treaty and the nuclear modernization plan make our country safer and more secure. It will allow us to resume inspection and verification of disarmament of nuclear weapons in Russia. The head of our missile defense system says the treaty will not hamper our missile development program—and if it does, we can withdraw from the treaty. All six former Republican Secretaries of State support ratification of this treaty. Therefore, I will vote to ratify the New START treaty and during the next several years vote to fund the nuclear modernization plan.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The ACTING PRESIDENT pro tempore. Morning business is closed.

MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 3082, which the clerk will report.

The bill clerk read as follows:

Motion to concour in the House amendment to the Senate amendment, with an amendment to H.R. 3082, an act making appropriations for military construction, Department of Veterans Affairs and Related Agencies, for the fiscal year ending September 30, 2010, and for other purposes.

Pending: Reid motion to concur in the amendment of the House to the Senate amendment, with an amendment to H.R. 3082, an act making appropriations for military construction, Department of Veterans Affairs and Related Agencies, for the fiscal year ending September 30, 2010, and for other purposes.

Reid amendment No. 4886 (to amendment No. 4885), to change the enactment date.

Reid amendment No. 4887 (to amendment No. 4886), to change the enactment date.

Reid amendment No. 4888 (to (the instructions) amendment No. 4887), of a perfecting nature.
Today the Senate will consider a 73-day continuing resolution, which will fund the government through March 4 of next year. This is a clear CR that is $1 billion above the spending level for fiscal year 2010. It meets the most basic needs of the Federal Government, and will allow Congress the time necessary to reauthorize a full omnibus next year. Most importantly, this temporary funding measure will avoid a government shutdown, which would be a terrible thing for the American people. That is the last thing any responsible Member of this body wishes for.

As I have previously stated, it is deeply unfortunate that we were unable to take up and pass the omnibus bill. An omnibus, as opposed to a CR, assumed responsibility for the spending decisions that are the most basic responsibilities of Congress. I regret that our colleagues on the other side of the aisle, many of whom helped to craft the omnibus, failed to support it in the end. It was a far superior alternative to this short-term CR. The omnibus better protected our national security and would have brought a responsible conclusion to the fiscal year 2011 appropriations process.

The CR we have before us allows for a limited number of adjustments for programs that would lose either their funding or their authorization between now and March 4. The CR will also prevent the layoff of thousands of Federal workers and contractors during the holiday season. When the 112th Congress convenes in January, I hope the Senate and the House will find a way to move forward in a responsible manner to conclude work on the fiscal year 2011 appropriations process. To do so, we will require a good-faith effort from Members of both parties to reach reasonable compromises on a range of issues. I hope that despite the current political environment, we can find a way to work together to fund critical priorities that will strengthen our economy and protect our Nation’s security. That is what the American people expect of us, and they deserve no less. But for now, I urge my colleagues to support this 10-week continuing resolution.

The ACTING PRESIDENT pro tempore. By unanimous consent the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on the motion to concur in the House amendment to the Senate amendment to H.R. 3082, with amendment No. 4885, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll. The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from New Hampshire (Mr. GREGG).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 82, nays 14, as follows:

[Roll Call Vote No. 288 Leg.]

YEAS—82

Akaka
Alexander
Dodd
Cornyn
Corker
Coons
Collins
Conrad
Coons
Corker
Corzine
Dodd
Dorgan
Durbin
Ensign
Enz

NAY—14

Burr
Chambliss
Crapp
Crapo
DeMint

NOT VOTING—1

Bayh
Brownback

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 82, the nays are 14. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

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

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

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.
Mr. REID. Madam President, if I could have the attention of the Senators, I have had a number of conversations with the Republican leader today. The collective goal is to move forward with the schedule as we know what it is. Senate Majority Leader Senator INOUYE has 10 minutes, and the farewell speech of our friend Senator SPECTER is going to be this morning. We hope to have agreement that at around 2 o'clock today, we will vote on a quorum call. We will vote on the motion to concur on the continuing resolution and vote on cloture on the treaty. We don’t have that down in writing yet, but that is the goal, so everyone understands. We will have four to five votes this afternoon around 2 o’clock. That would point us toward the final surge on this most important treaty. I had conversations with Senator KERRY and Senator KYL this morning. I think there is a way clear to complete this by the time tomorrow.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

FAREWELL TO THE SENATE

CLOSING ARGUMENT

Mr. SPECTER. Madam President, this is not a farewell address but, rather, a statement of the activity for more than a decade has been carrying on the Senate’s glorious tradition. The Washington Post noted that presiding over the Senate was like a jury of my colleagues and the American people outlining my views on how the Senate and, with it, the Federal Government arrived at its current condition of partisan gridlock, and my suggestions on where we are on that pressing problem and the key issues of national and international importance.

To make a final floor statement is a challenge. The Washington Post noted the poor attendance at my colleagues’ farewell speeches earlier this month. That is really not surprising since there is hardly anyone ever on the Senate floor. The days of lively debate with many Members on the floor are long gone. Abuse of the Senate rules has stripped Senators of the right to offer amendments. The modern filibuster requires only a quorum call. But that is not the way it was when SenatorCharlesDOOD and I were privileged to enter the world’s greatest deliberative body 30 years ago. Senators on both sides of the aisle engaged in collegial debate and found ways to find common ground on the Nation’s pressing problems.

When I attended my first Republican moderates luncheon, I met Mark Hatfield, John Chafee, Ted Stevens, Mac Mathias, Bob Stafford, Bob Packwood, Chuck Percy, Bill Cohen, Warren Rudman, Alan Simpson, Jack Danforth, John Warner, Nancy Kassebaum, Slade Gorton, and I found my colleague John Heinz there. That is a far cry from later years when the moderates could fit into a telephone booth.

On the other side of the aisle, I found many Democratic Senators willing to move to the center to craft legislation—Scoop Jackson, Joe Biden, Dan INOUYE, Lloyd Bentsen, Fritz Hollings, Pat Leahy, Dale Bumpers, David Boren, Russell Long, Pat Moynihan, George Mitchell, Sam Nunn, Gary Hart, Bill Bradley, and others. They were carrying on the Senate’s glorious tradition.

The Senate’s deliberate cerebral procedures have served our country well. The Senate stood tall in 1805 in acquitting Supreme Court Justice Samuel Chase in impeachment proceedings and thus upholding the independence of the Federal judiciary. The Senate stood tall in 1868 to acquit President Andrew Johnson in impeachment proceedings, and that preserved the power of the Presidency. Repeatedly in our 223-year history, the Senate has cooled the passions of the moment to preserve the institutions embodied in our Constitution which have made the United States the envy of the world.

It has been a great privilege to have had a voice for the last 30 years in the great debates of our nation. How we allocate our resources among economic development, national defense, education, environmental protection, and NIH funding; the Senate’s role in foreign policy as we exercise it now on the planet is one of the most important of civil rights, as we demonstrated last Saturday, eliminating don’t ask, don’t tell; balancing crime control and defendants’ rights; and how we have maintained the quality of the Federal judiciary. In 14 Supreme Court nominations I have participated in but the 112 Pennsylvanians who have been confirmed during my tenure on the Federal district courts or the Third Circuit.

On the national scene, top issues are the deficit and the national debt. The deficit commission has made a start. When raising the debt limit comes up next year, that will present an occasion to pressure all parties to come to terms on future taxes and expenditures, to realistically deal with these issues.

The Next Congress should try to stop the Supreme Court from further eroding the constitutional mandate of separation of powers. The Supreme Court has been eating Congress’s lunch by invalidating legislation with judicial activism after nominees commit under oath in confirmation proceedings to respect congressional factfinding and procedures. The recent decision in Citizens United is illustrative. Ignoring a massive congressional record and reversing recent decisions, Chief Justice Roberts and Justice Alito repudiated their confirmation testimony given under oath and provided the key votes to permit corporations and unions to secretly pay for political advertising, thus effectively undermining the basic democratic principle of the power of one person, one vote. Chief Justice Roberts promised an end to activist justices. Then he moved the bases.

Congress’s response is necessarily limited in recognition of the importance of judicial independence as the foundation of the rule of law, but Congress could at least require televising the Court proceedings to provide some transparency to inform the public about what the Court is doing since it has the final word on the cutting issues of the day. Brandeis was right when he said that sunlight is the best disinfectant.

The Court does follow the election returns, and the Court does judicially notice societal values as expressed by the people. Policy decisions that 75 percent of the American people favor televising the Court when told that a citizen can only attend an oral argument for 3 minutes in a chamber holding only 300 people. Great Britain, Canada, and States supreme courts permit television.

Congress has the authority to legislate on this subject, just as Congress decides other administrative matters such as what cases the Court must hear, time limits for decisions, number of Justices, the day the Court convenes, and the number required for a quorum. While television cannot provide a definitive answer, it could be significant and may be the most that can be done consistent with life tenure and judicial independence.

Additionally, I urge Congress to substantially increase funding for the National Institutes of Health. When NIH funding was increased from $12 to $30 billion annually and $10 billion added to the stimulus package, significant advances were made on medical research. It is scandalously—absolutely scandalous—that a nation with our wealth and research capabilities has not done more. Forty years ago, the President of the United States declared war on cancer. Had that war been pursued with the diligence of other wars, most forms of cancer might have been conquered.

I also urge colleagues to increase their activity on foreign travel. Regrettably, we have earned the title of ugly Americans by not treating other nations with proper respect and dignity.

My experience on congressional delegations to China, Russia, India, NATO, Jerusalem, Damascus, Bagdad, Kabul, and elsewhere provided an opportunity for eyeball-to-eyeball discussions with world leaders about our values, our expectations, and our willingness to engage in constructive dialogue. Since 1984, I have visited Syria almost every year, and my extensive conversations with Hafiz al-Assad and Bashar al-Assad have convinced me there is a realistic opportunity for a peace treaty between Israel and Syria, if encouraged by vigorous U.S. diplomacy. Similar meetings I have been privileged to have with Muammar Qadhafi, Yasser Arafat, Fidel Castro, Saddam Hussein, and Hugo Chavez have indicated that candid respectful dialogue with our toughest adversaries can do much to improve relations among nations.
Now I will shift gears. In my view, a principal reason for the historic stature of the U.S. Senate has been the ability of any Senator to offer virtually any amendment at any time. This Senate Chamber provides the forum for unlimited debate with a potential to acquaint the people of America and the world with innovative proposals on public policy and then have a vote on the issue. Regrettably, that has changed in recent years because of abuse of the Senate rules by both parties.

The Senate rules allow the majority leader, through the right of his first recognition, to offer a series of amendments to prevent any other Senator from offering an amendment. That had been done infrequently up until about a decade ago and lately has become a common practice, and, again, by both parties.

By precluding other Senators from offering amendments, the majority leader protects his party colleagues from taking tough votes. Never mind that we were sent here and are paid to make tough votes. The inevitable and understandable consequence of that practice has been the filibuster. If a Senator cannot be an amendment to a bill without being provided an opportunity to modify it. That practice has led to an ignominious, determined minority to filibuster and to deny 60 votes necessary to cut off debate. Two years ago on this Senate floor, I called the practice tyrannical.

The decade from 1995 to 2005 saw the nominees of President Clinton and President Bush stymied by the refusal of the other party to have a hearing or floor vote on judicial and executive nominees. Then, in 2005, serious consideration was given by the Republican caucus to changing the long-standing Senate rule by invoking the so-called nuclear or constitutional option. The plan called for Vice President Cheney to rule that 51 votes were sufficient to impose cloture for confirmation of a judge or executive nominee. If formally proposed in the 109th Congress. Important positions are left open for months, and the Senate agenda today is filled with unacted-upon judicial and executive nominees, and many of those judicial nominees there is an emergency backlog. Since Judge Bork and Justice Thomas did not provoke filibusters, I think the Senate can do without them on judges and executive officeholders. There is a sufficient safeguard of the public interest by requiring a simple majority on an up-down vote. I would also change the rule requiring 30 hours of postcloture debate and the rule allowing the secret hold, which requires cloture to bring the nomination to the floor. A Senator to disclose his or her hold to the light of day would greatly curtail this abuse.

While political gridlock has been facilitated by the Senate rules, I am sorry to say partisanship has been increased greatly by other factors. Senators have gone into other States to campaign against incumbents of the other party. Senators have even opposed their own party colleagues in primary elections in areas where there is an emergency backlog. Since Judge Bork and Justice Thomas did not provoke filibusters, I think the Senate can do without them on judges and executive officeholders. There is a sufficient safeguard of the public interest by requiring a simple majority on an up-down vote. I would also change the rule requiring 30 hours of postcloture debate and the rule allowing the secret hold, which requires cloture to bring the nomination to the floor. A Senator to disclose his or her hold to the light of day would greatly curtail this abuse.

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too much. The model for an elected official's independence in a representative democracy has never been stated more accurately, in my opinion, than it was in 1774 by Edmund Burke, in the British House of Commons, when he said: "The Ans [the word representative's] unbiased opinion, his own judgment, his enlightened conscience . . . [including his vote] ought not to be sacrificed to you, to any man or any set of men living.

But, above all, we need civility. Steve and Cocky Roberts, distinguished journalists, put it well in a recent column, saying:

Civility is more than good manners. . . . Civility is a state of mind. It reflects respect for your opponents and for the institutions you serve together . . . . This polarization will make civility in the next Congress more difficult—and more necessary—than ever.

A closing speech has an inevitable aspect of nostalgia. An extraordinary experience for me is coming to an end. But my dominant feeling is pride in the great privilege to be a part of this very unique body with colleagues who are such outstanding public servants. I have written and will write elsewhere about those hours, and I do not say farewell to my continuing involvement in public policy, which I will pursue in a different venue. Because of the great traditions of this body and because of its historic resilience, I leave with great hope for the future of our country, a great optimism for the continuing vital role of the Senate in the governance of our democracy.

I thank my colleagues for listening.

(Applause. Senators rising.)

The PRESIDING OFFICER. Mr. UDALL of New Mexico. Cloture having been invoked, the motion to refer falls.

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

The PRESIDING OFFICER. The clerk calls the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

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

TRIBUTE TO RETIRING SENATORS

AREN SPECTER

Mr. CASEY. Mr. President, I wish to offer some comment in furtherance of what Senator SPECTER told us about this great institution. I wanted to spend a moment talking about his service to the Commonwealth of Pennsylvania.

What I came to the Senate in 2007 as a Senator-elect, one of the first things I did was go to see Senator SPECTER. He asked me at that time to go to lunch. From the moment I arrived in the Senate, he made it very clear to me that not only did the people of Pennsylvania need, but he expected as well, that we work together.

From the beginning of his service in the Senate, way back when he was elected in 1980 all the way up to the present moment, he has been a Senator who was focused on building bipartisan relationships and, of course, focusing on Pennsylvania priorities. I am honored to have worked with him on so many priorities, whether it was veterans or workers, whether it was dairy farmers or the economy of Pennsylvania or whether it was our soldiers or our children or our families. We have worked on so many priorities. He has been singular, unprecedented achievement.

That bipartisan wasn't just a sentiment; it was bipartisanship that led to results. I wish to point to one example of many I could list: the funding for the National Institutes of Health, that great bulwark and generator of discoveries that cures diseases and creates jobs and hope for people often without hope because of a disease or a malady of one kind or another. That bipartisanism Senator SPECTER demonstrated every day in the Senate has achieved results for Pennsylvania, for sure, in terms of jobs and opportunity and hope, but also results for the Nation as well.

I know we are short on time, but I wanted to make one note about the history of his service. No Senator in the history of the Commonwealth—and we have had senators depending on how you count those who have been elected and served, but of those 55, no Senator has served longer than Senator SPECTER. I recall the line—I think it is attributed to Abraham Lincoln, but it is a great line about what years mean and what service means, and I will apply the analogy to Senate service. The line goes something like this: It is not the years in a life, it is the life in those years. I am paraphrasing that. The same could be said of the clerk. It is not just that he served 30 years. That alone is a singular, unprecedented achievement.

In fact, the Senator he outdistanced in terms of years of service was Abraham Lincoln, but it is a great line about what constitutes a contribution to the Senate at many times people without power.

Thank you, Senator SPECTER.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to join my colleagues in noting the farewell address of Senator Arlen Specter is an inspiring moment in the Senate. It has been my great honor to serve with Senator SPECTER and to be a member of the Senate Judiciary Committee with him as well. I think of his contribution to the Senate at many levels. I certainly appreciate what he did for the Senate and for the Nation Senator SPECTER. He chaired two committees and served on that committee, particularly when it came to the hearings involving the appointment of new Supreme Court Justices. Without fail, Senator SPECTER at those hearings would always have dazzling insight into the current state of the law and the record of the nominee. I couldn’t wait for him each time there was a hearing to see what his tack would be. It always reflected a thoughtful reflection on the historic moment we faced with each nomination he asked, the positions he took, the statements he made, all made for a better record for the United States as the
Senate proceeded to vote on those historic nominations.

But there is one area he touched on ever so slightly that I believe is equal to his mark on the Senate Judiciary Committee. This man, Senator ARLEN SPECTER, helped in so many respects and in some efforts by Senator TOM HARKIN, has done more to advance the cause of medical research in his time than virtually any other Member of the Congress. He had a single-minded determination to advance medical research and to put the investment in the National Institutes of Health. On the House side, Congressman John Porter joined him in that early effort—John Porter of Illinois—but time and again ARLEN SPECTER would have as his last bargaining chip on the table, whenever there was a negotiation, that we needed to put more money in the National Institutes of Health. I know he was probably inspired to that cause by many things, but certainly by his own impending death, where he had successfully battled so many medical demons and is here standing before us as living proof that with his self-determination and the advancement of science, we can overcome even some of the greatest diseases and maladies that come our way.

He was, to me, a role model many times as he struggled through cancer therapy and never missed a bell when it came to presiding over a committee hearing or coming to the floor to vote. There were times when all of us knew he was in pain. Yet he never let on. He did his job and did it with a gritty determination, and I respect him so much for it. That personal life experience, I am sure, played some role in his determination to advance medical research.

So as he brings an end to his Senate career, there are countless thousands who wouldn’t know the name ARLEN SPECTER who have been benefited by this man’s public service and commitment to medical research. I thank him for that as a person, as does everyone in this Chamber who has benefited from that cause in his life.

I also think, as I look back on his work on the stimulus bill when he was on the other side of the aisle, that it took extraordinary courage and may have cost him a Senate seat to step forward and say, I will join with two other Republicans to pass a bill for this new President. Senator Specter wanted recognition to comment briefly about some of the initiatives, in 1982, after being elected in the Senate he has graced this institution with an extraordinary intelligence, a determination, and a belief that the national good should rise above any party cause. I am going to miss ARLEN SPECTER and I thank him for being my friend.

I yield the floor. The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. COCHRAN. Mr. President, I was pleased to have the opportunity to hear most of the remarks made this morning by my friend and colleague from Pennsylvania and others who have spoken on the occasion of his retirement from the Senate.

I couldn’t help but remember when he was campaigning in his first race for the Senate and I had been asked to be available to help out in some campaigns that year. I was a brandnew Senator and didn’t know a lot of the protocols, but when ARLEN SPECTER wanted me to come up and speak in Pennsylvania somewhere during his campaign, I decided I would accept the invitation, although I was a little apprehensive about it, about how it would be received as a Republican from Mississippi going up and helping this new candidate who was running on the Republican ticket too. His wife Joan was a member of the city council in Philadelphia, as I recall—very well respected. Anyway, I enjoyed getting to know Senator Specter and his wife better during those early campaign events. Then, after he was elected, he asked me to make one more trip up. He could not go to Erie, PA, and keep an invitation that he wanted to accept and speak to a retired group of businessmen. These were older gentlemen who had been prominent in Pennsylvania business and political life, I worried about it—that they would not respond as much about what he had put up there and nearly froze to death. I thought this is just a payback for the Civil War, I guess, that ARLEN never got to express. He was going to do his part to help educate me and refine me in ways of modern America. But that led to an entire career here working alongside him on both sides of the aisle, which I have enjoyed very much.

We have all learned from him the commitment that he makes to the job, the seriousness of purpose that he brings to committee work, and he has truly been an outstanding leader in the Senate, through personal performance and his serious and impressive record of leadership.

In closing, to express those thoughts today and wish ARLEN well in the years ahead. We will still have a friendship that will be appreciated. I look forward to continuing that relationship.

I yield the floor. The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly about the START Treaty, the consideration of which is now pending before the Senate, and to urge my colleagues to move forward to ratify this important treaty.

I have long been interested in the relationship between the United States and, at that time, the Soviet Union, following the end of World War II, with the emergence of our Nation and the Soviets emerging as the two great world powers.

In college, after the war, I devoted a good bit of study to U.S.-U.S.S.R. relations. I wrote a senior thesis on it as a major in political science and international relations, and I have continued that interest throughout my tenure in the Senate. One of my first initiatives, in 1982, after being elected in 1980, was to propose a resolution calling for a summit meeting between the President of the United States and the head of the Soviet Union.

I had a practice of making Saturday afternoon speeches—or Saturday morning speeches—on the radio. One day I listened in and heard him talk about the tremendous destructive power which both the U.S. and U.S.S.R. had, and how they had the capacity to destroy each other. Of course, that capacity became the basis of the mutual assured destruction period. But it seemed to me that what ought to be done was there ought to be a dialog and an effort to come to terms about the START Treaty, the consideration of which is now pending before the Senate, and to urge my colleagues to move forward to ratify this important treaty.

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My resolution was resisted by one of the senior Senators, Senator John Tower of Texas, who was chairman of the Armed Services Committee. When I proposed the resolution, it brought Senator Tower to the floor with a very real threat that he might vote with his home state, which was then charging my resolution and challenging my knowledge on the subject.

Early on, after being elected and starting to serve in 1981, I had traveled to Grand Forks, ND, to see the Missileman from Grand Forks. Senator Lugar, who has said to us here about our nuclear submarine fleet, and I went to Edwards Air Force Base in California to look at the B-1B, the B-1 bomber, at that time. I was prepared to take on these issues.

Senator Tower opposed it, offered a tabling motion, and standing in the well of the Senate, as if it was yesterday, I can remember that Senator Lugar walked down the aisle from the door entering this Chamber and voted no. He started to walk up the aisle to the Republican cloakroom.

Senator Tower chased him and said: Paul, you don’t understand. This is a tabling motion. I am looking for an “aye.”

Laxalt turned and said: I understand it is a tabling motion, and I voted the way I wanted to, no. I want the resolution to go forward.

Senator Tower said: Well, ARLEN SPECTER is trying to tell the President what to do. He is the director of the Senate observers group in Geneva around 1987. Then our record is plain that we have approved by decisive numbers three very important treaties. START I was approved by the Senate in 1992, with a vote of 93 to 6. The START II treaty was approved in 1996 by a vote of 87 to 4. The Moscow Treaty of 2003 was approved by a vote of 95 to 0.

We have heard extensive debate on the floor of the Senate. People have questioned, on the basis of the START II treaty, that this treaty does not deal with these collateral issues. This treaty is, directly stated, an extension of the treaty which has been in effect up until the present time and has worked so very well.

I yield the floor.

Mr. SESSIONS. Mr. President, I see my other colleagues. I do wish to talk about one or two judicial nominees, but I want to say first how much I appreciate Senator SPECTER.

I have had the honor to serve with the Senate Judiciary Committee with Senator SPECTER the entire time I have been in the Senate—going on 14 years. I guess. No one has a clearer legal mind. The clarity of his thought and expression is always impressive to me. And as someone who practiced law, I see the great lawyer skills he possesses.

Also, I note that he has not just today but throughout his career defended the legitimacy of the powers of the Senate. He was very articulate over the past number of years in criticizing the abuse of filling the tree, where bills can be brought up and amendments are not allowed. He has believed that is an unhealthy trend in the Senate, and he has been one of the most effective advocates in opposition to it.

He sponsored and helped pass the Armed Career Criminal Act. He was one of the leaders in that. Having been a longtime prosecutor in Philadelphia, I like to tease our good friend Senator LEAHY that he was a prosecutor, but it was in Vermont. Senator SPECTER had to deal with a lot of crime in Philadelphia and was consistently reelected there for his effectiveness and is a true source of insight into crime in America and has been an effective advocate for fighting crime.
I note also that he has a good view about a Senator. He respects other Senators. He was talking with me one time or I was sharing with him my concern about a matter, and he used a phrase I heard him use more than once: Well, you are a U.S. Senator. In other words, if you do not like it, stand up and defend yourself. He respected that, even if I would disagree.

I remember another time Senator SPECTER was on the floor. I had arrived in the Senate. I wanted him to do something—I have long since forgotten Senator, I don’t need your advice on what.

He looked right at me, and he said: Senator, I don’t need your advice on how to conduct myself back home politically.

I learned a lesson from that. I never told another Senator that, I say to Senator SPECTER. Who am I to tell you how to conduct yourself politically back home in the State of Pennsylvania?

Senator SPECTER chaired the Judiciary Committee during the confirmations of Chief Justice Roberts and Justice Alito. He was the leading Republican chair at that time. He raised questions about the nominees. But as chairman of the committee, with the votes and support of his Republican colleagues, he protected our rights, he protected our interests. He did not back down one time on any action by the other party that would have denied the ability to move that nomination forward to a vote and protect the rights of the parties on our side.

Those are a few things that come to mind when I think about the fantastic service he has given to the Senate. He is one of our most able Members, one of our most effective defenders of senatorial prerogative and independence, one of our crime fighters without par, and one of the best lawyers in the Senate, a premier Senator over the last 2 or 3 weeks. I think there is a lot of wisdom we can apply to our work going forward.

I thank Senator SPECTER very much for his service. I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. BENNET. Mr. President, I rise in support of the New START treaty. I do so for several reasons.

First, of course, the treaty is essential for national security. It promotes transparency and stability between the two countries that possess the majority of the world’s nuclear weapons. It will decrease the likelihood of a nuclear weapon falling into the hands of a rogue nation.

For the residents of my State, the treaty is close to home, literally. Alaska and Russia are less than 3 miles apart at the closest point in the Bering Sea. Commerce, scientific, educational, and cultural exchanges are commonplace between Alaska and our Russian neighbors. So peaceful coexistence is vital to us with Russia. This is an abstract concept to my constituents; it is a way of life.

The second reason this treaty is personal for Alaskans is because of our close proximity to North Korea. When North Korea exercises its political muscle by firing test missiles or threatening to attack the United States, Alaskans get nervous because we are most directly in the line of fire.

Thankfully, my home State is home to the ground-based defense system. Based at Fort Greely, this sophisticated system of more than 2 dozen ground-based interceptors is maintained and operated by highly trained members of the Alaska National Guard. I was pleased to show Defense Secretary Robert Gates this state-of-the-art system last year. I worked with my colleagues on both sides of the aisle to make sure this system gets the resources and funding it warrants to protect us. I will continue to do that.

I would be troubled if the New START treaty impacted our Nation’s missile defense system. I know some of my colleagues on the other side of the aisle would equally concern. Fortunately, such concerns are unfounded. I am confident nothing in this treaty will limit our ability to defend ourselves and our allies against a ballistic missile attack from a rogue nation.

The preamble of this treaty simply acknowledges the relationship between offensive and defensive strategic arms and verifies that current defensive strategic arms do not undermine the offensive forces. The preamble is non-binding. There is no action or inaction arising from this statement.

The section of the treaty prohibiting conversion of missile silos or launchers for ballistic missile defense purposes does not impact us. It is not something we are planning to do. In fact, we are in the process of converting a missile defense field in Alaska to field interceptors. The field will have seven spare silos to deploy more interceptors if we need them. We are moving forward with the phased adaptive approach to protect our allies, with the two-stage interceptor as a hedge.

The unilateral statement by Russia also is non-binding and is not even part of the treaty. Our obligations of Senate statements make it clear that this treaty will not constrain missile defense in any way and that we will continue improving and deploying missile defense systems to protect us and our allies. There are instances of Senate treaty are unprecedented. The right to withdraw has been stated in many previous treaties—the nonproliferation treaty and the START treaty. Those statements did not stop the Senate from ratifying those treaties. The language in the New START treaty should not either. In fact, this treaty actually helps missile defense because it lessens restrictions on test targets that were in the previous treaty. We will have more flexibility in the future.

We have heard from our national security leaders that this treaty does not constrain ballistic missile defense in any way. Secretary of State Hillary Clinton, Secretary of Defense Robert Gates, Chairman of the Joint Chiefs of Staff Mike Mullen, Missile Defense Agency Director LTG Patrick O’Reilly, former Strategic Commander GEN Kevin Chilton, and countless others confirm that this treaty in no way limits our ballistic missile defense plans. We cannot disregard the views of our Nation’s most senior military and civilian leaders on this critical issue because of politics.

We have had almost 7 months to consider this treaty. We have had numerous hearings and briefings—more on this treaty than any other single item I have been involved in since I have been here. In that time, I heard no current or former national security leader say this treaty is a detriment to ballistic missile defense. What they say and what we know is that the New START treaty will strengthen national security and will not constrain ballistic missile defense.

For all of these reasons, I urge a prompt approval of this vital treaty for our Nation and our world.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BENNET. Mr. President, I ask unanimous consent that my statement and that of Senator UDALL appear as in the record and that the time be charged postcloture.

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

NOMINATION OF BILL MARTINEZ

Mr. BENNET. Mr. President, I rise today to state my strong support for the nomination of Bill Martinez to serve on the U.S. District Court for the District of Colorado. Having recommended his candidacy to the President, along with my colleague Senator UDALL, I believe he is eminently qualified for the Federal bench.

Bill was nominated to serve on the U.S. District Court for the District of

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Colorado in February of this year. His nomination cleared the Senate Judiciary Committee in April. Since then, he has been in a state of limbo awaiting a final vote allowing him to serve. That is why I am very grateful for the hard work of the Judiciary Committee, both Democrats and Republicans, who moved this nomination forward and are trying to finish it before the end of the 111th Congress.

Our State has two vacancies on the federal court. Both vacancies are over 2 years old, with one close to 3 years old. Because there are only seven Federal judgeships in our State, the other judges are facing ever-growing case loads, resulting in significant backlogs for those seeking justice.

In fact, the administrative office of the courts has declared the vacancy situation in Colorado a judicial emergency. It is important that we move these nominations forward to prevent further backlogs and judicial emergencies due to work with my colleagues on both sides of the aisle to make sure we can work together to confirm judicial nominees such as Bill Martinez in a timely manner.

I believe, after careful review of Bill Martinez’s qualifications, my colleagues will see this is someone well worth confirming. Bill is currently at a law firm in Denver, where he primarily represents plaintiffs in Federal and State courts and before arbitrators and administrative agencies. He is certified as an AAA arbitrator in employment disputes.

Prior to starting his own firm, he was a regional attorney of the U.S. EEOC in its Denver district office. Senator Udall will be going into more detail regarding this nominee.

There, Bill had responsibility for the Commission’s legal operations and Federal court enforcement litigation in the office’s six-State jurisdiction.

Before joining the EEOC, Bill worked in private practice on employment, securities and commercial litigation. I know some want to focus on his pro bono work and try to make political assumptions about him from a small portion of his career. But I know Bill, and he is the sum of a lot of great work in the public and private sectors.

For example, while at the EEOC Bill was in charge of an age discrimination class action suit that resulted in a settlement of $50 million. He represented several individuals who were laid off engineers. This is one of the largest ever age discrimination class actions.

Bill began his career at the Legal Assistance Foundation of Chicago, representing indigent clients and other individuals seeking low- or no-cost counsel. This is a nominee whose breadth of legal experience has spanned the profession, and I think for that reason alone he should be confirmed.

Over the course of his legal career, Bill has been lead or colead counsel in complex litigation, resulting in 18 published opinions from Federal and State courts in Colorado and Illinois. Bill’s time as a litigator and advocate has provided him with the necessary skills and perspective to deal with the diverse docket that comes before U.S. district court judges.

Beyond his distinguished legal skills, Bill’s personal story is a tribute to this country and embodies the American dream. He is an immigrant success story. Bill was born in Mexico and immigrated with his family to the United States at a young age. He was the first in his family to attend college and law school. I believe, after careful review of Bill Martinez’s qualifications, my colleagues will see this is someone well worth confirming.

I urge my colleagues to vote for Bill’s nomination. He is a model nominee for the Federal legal system.

UDALL will be going into more detail regarding this nominee. He is a model nominee for the Federal legal system.
Specifically, the President plans to request $7.6 billion for FY 2012 (an increase of $0.6 billion over the planned FY 2012 funding level included in the FY 2011 FNYSN). Thus, in two years for this program requested will have increased by $1.2 billion, in nominal terms, over the $6.4 billion level appropriated in FY 2010. Altogether, the request is for $41.6 billion for FY 2012-2016 (an increase of $4.1 billion over the same period from the FY 2011 FNYSN).

Given the extremely tight budget environment facing the federal government, these requests to the Congress demonstrate the priority the Administration’s places on maintaining the nation’s security and effectiveness of the deterrent.

3. NNSA—Program Changes and New Requirements since submission of the 1251 Report

A. Update to Stockpile Stewardship and Sustainment

Surveillance—Surveillance activities are essential to enabling continued certification of the reliability of the stockpile without nuclear testing. Surveillance involves withdrawing weapons from deployment and subjecting them to laboratory tests, as well as using joint testing to assess their reliability. These activities allow detection of possible manufacturing and design defects as well as material degradation over time. NNSA has recommended from the National Laboratory directors, the DoD, the STRATCOM Strategic Advisory Group, and the JASON Defense Advisory Panel that the nuclear warhead/bomb surveillance program should be expanded. In response to this broad-based advice, NNSA has reviewed the stockpile surveillance program. From FY 2005 through FY 2009, funding for surveillance activities, when adjusted for inflation, fell by 27 percent. In recognition of the serious concerns raised by chronic underfunding of these activities, beginning in FY 2010, the surveillance budget has been increased by 50 percent, from $158 million to $239 million. In the FY 2012 budget, the President will seek to sustain this increase throughout the FNYSN. This level of funding will assure that the required surveillance activities can be fully sustained. NNSA—Weapon System Life Extension—The Administration is committed to pursuing a fully funded Life Extension Program for the nuclear weapons stockpile. The FY 2011 budget submission and the NPR outlined initial plans. Since May 2010, additional work has further defined the requirements to extend the life of the following weapon systems:

- W76—The Department of Defense has finalized its assessment of the number of W76 warheads recommended to remain in the stockpile to carry out current guidance. The number of W76-1 life-extended warheads to be produced in FY 2012-2016. NNSA is building into its FY 2011 budget plans. NNSA, with the support of the DoD, has adjusted its plan accordingly to ensure the W76-1 build is completed in FY 2012, an adjustment of one year that is endorsed by the Nuclear Weapons Council. This adjustment will not affect the timelines for B61 or W78 life extensions. The LEWAC report will give the life of the program at $255 million annually.

- B61—NNSA began the study on the nuclear portion of the B61 life extension in August 2011, six months ahead of the FYNSP period (FY 2013 through FY 2016).

- B88—The Design Phase for the B88 life extension will be completed in FY 2012.
Accountability Office, as well as a “root
cause” analysis conducted by the Depart-
ment of Energy in 2008, have found that ini-
tiating construction before designs are large-
cy complex can lead to increased costs and
schedule delays. In response to these re-
views, and in order to assure the best value
for the taxpayers, NNSA has concluded that
reaching the 80% engine design stage before
establishing a project baseline for these fac-
tilities is critical to the successful pursu-
ance of these capabilities.

The ten-year funding plan reported in the
1251 Report reflected cost estimates for these
two facilities that were undertaken at a very
early stage of design (about 10% complete),
were preliminary, and could not therefore
provide the basis for valid, longer-range cost
estimates. The designs of these two facilities
are now about 45% complete; the estimated
costs of the facilities have escalated. Re-
ponsible stewardship of the taxpayer dollars
required to fund these facilities requires
close examination of requirements of all
types and to understand their associated
costs, so that NNSA and DoD can make in-
formed decisions about these facilities. To
this end, NNSA, in cooperation with the
DoD, is carrying out a comprehensive review
of the safety, security, environmental, and
programmatic impacts that drive the costs
of these facilities. In parallel with, and in
support of this effort, separate inde-
pendent reviews are being conducted by the
Corps of Engineers and the DOE Chief Finan-
cial Officer’s Cost Analysis Office. In addi-
tion, the Secretary of Energy is convening
his own review, with support from an inde-
pendent group of senior experts, to evaluate
facility requirements.

The overriding focus of this work is to en-
sure that UPF and CMRR are built to
achieve needed capabilities without incur-
ing cost overruns or scheduling delays. We
expect that construction project cost bas-
elines for each project will be established in
FY 2013 after 90% of the design work is com-
pleted. At the present time, the range for the
Total Project Cost (TEP) for CMRR is $3.7
billion to $5.8 billion and the TPC range for
UPF is $4.2 billion to $6.5 billion. TPC esti-
mates include Project Engineering and De-
sign, Construction, and Other Project Costs
from inception through completion. Over the
FYNSF period (FY 2012–2016) the Administra-
tion will increase funding by $340 million
compared with the amount projected in the
FY 2011 FYNSF for these two facilities.

At the early stage in the process of esti-
mating costs, it would not be prudent to as-
sume we know all of the annual funding re-
quirements based on the current designs and
as more information is known about
them, the designs will be matured.

Funding requirements will be reconsidered
on an ongoing basis as the designs mature
and as more information is known about
costs. While innovative funding mechanisms,
such as forward funding, may be useful in
the future for providing funding stability to
these projects, at this early design stage, we
will build to a more complete under-
standing of costs. NNSA has determined that
it would not yet be appropriate and possibly
counterproductive to pursue such mecha-
nisms until we reach the 90% design point.

As planning for these projects proceeds,
NNSA and OMB will continue to review all
appropriate options to achieve savings and
efficiencies in the construction of these fa-
cilities.

The combined difference between the low
and high estimates for the UPF and CMRR
facilities ($4.4 billion) results in a range of
$4.6 billion to $4.9 billion in the estimate as
shown in Figure 3. Note that for the high estimate, the facili-
ties would reach completion in FY 2023 for
CMRR and FY 2024 for UPF. For each facili-
ty, functionality would be attainable by FY 2020
even though completion of the total
projects would take longer.

Readiness in the Technical Base of Facili-
ties (RTBF)—Operations and Maintenance
In order to implement an increased scope
of work for stockpile activities, especially
surveillance and the ongoing life extension
programs (LEPs), the following will be sup-
ported:

NNSA—Full experimental facility avail-
ability to support ongoing subcritical and
other experiments necessary for certification
of life extension technologies.

Funds are included in the FY 2012 request
to fully cover anticipated needs for
flood prevention.

SNL—Replacement of aging and failing
equipment at the Tonopah Test Range in Ne-
vada to facilitate the increasing pace of op-
érations support for the B61; and Micro-
electronics, engineering test, and surveillance
actions at SNL to support the B61, W76 and
W78 that require additional equipment main-
tenance in facilities and the need to operate
ing engineering test facilities that currently op-
erate in a budgetary constrained mode.

LLNL, LANL, and Y-12—Investments in in-
frastructure and construction, including sup-
port for Site 300, PF-4, and Nuclear Facili-
ties Risk Reduction.

Kansas City—Investment sufficient to
meet LEP needs for the W76-1, B-61, and W78/
88 while preparing and completing the move
to the KCRIMS site at Botts Road.

Savannah River—Sufficient investment to
ensure that availability of tritium supplies
adequate for stockpile needs is assured.

Pantex—Funds are included in the FY 2012
request to fully support the TA–55 Reinvestment
Project at Pantex, $35 million for the Nuclear Facilities
Risk Reduction Project at Y-12, $20 million
for the Test Capabilities Revitalization
Project at Sandia, as well as $9.8 million for the
Transuranic Waste Facility and $30 million
for the TA–55 Reinvestment Project at
LANL.

RTBF: Construction Management—Be-
cause of the unprecedented scale of construc-
tion that NNSA is initiating, both in the nu-
clear weapons complex and in non-prolifera-
tion activities, the Administration recog-
nizes that stronger management structures
and oversight processes will be needed to
prevent cost growth and schedule slippage.
NNSA will work with DoD, OMB, and other
affected parties to analyze current processes
and to consider options for enhancements.

C. Pension Cost Growth and Alternative
Mitigation Strategies

NNSA has a large contractor workforce
that is covered by defined-benefit pension
plans for which the U.S. Government as-
sumes liability. Portfolio management deci-
sions, such as moving or merging programs, can
result in significant cost savings. However,
NNSA recognizes that stronger management
structures and oversight processes will be
needed to prevent significant program costs
and new statutory requirements have caused
large increases in pension costs.

The Administration is fully committed to
holding these programs solvent without
harming the base programs. The Administra-
tion will therefore cover total pension reim-
bursements of $675 million for all of NNSA's
stockpile programs for FY 2022. This will bring
the NNSA total below the amount provided in
FY 2011. Over the five year period FY 2012 to
FY 2016, the Administration will provide a total of $1.5 billion above the FY 2011 level.
About three-quarters of this funding is asso-
ciated with Weapons Activities and is in-
cluded in the funding totals for those pro-
grams noted above.

The Administration will conduct an inde-
pendent study of these issues using the ap-
propriate statutory and regulatory frame-
work to inform longer-term decisions on pen-
sion reimbursements. The Administration is
evaluating multiple approaches to determine
the best path to cover pension plan contribu-
tions, while minimizing the impact to mis-
sion. Contractors are evaluating mitigation
strategies, such as analyzing plan changes,
identifying alternative funding strategies,
and seeking increased participant contribu-
tions. Also, contractors have been directed
to look into other human resource areas
where savings can be achieved, in order to
help fund pension plan contributions.

3. Summary of NNSA Stockpile and Infra-
structure Costs

A summary of estimated costs specifically
related to the Nuclear Weapons Stockpile,
the supporting infrastructure, and critical
science, technology and engineering is pro-
vided in Table 1.

<table>
<thead>
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<th>TABLE 1—Ten-Year Projections for Weapons Stockpile and Infrastructure Costs</th>
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<tr>
<td>Directed Stockpile</td>
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<tr>
<td>Science Technology &amp; Engineering Campaigns</td>
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<tr>
<td>Readiness in Technical Base &amp; Facilities</td>
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<tr>
<td>Other Weapons</td>
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<tr>
<td>Secure Transportation</td>
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<tr>
<td>Subtotal, Weapons</td>
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<tr>
<td>Contractor Pension Cost Growth</td>
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<td>Total, Weapons</td>
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Numbers may not add due to rounding.
* Anticipated costs for contractor pension plans have been calculated only through FY 2016. For FY 2017-2020, uncertainties in market performance, interest rate movements, and portfolio management make prediction of actual additional pension liabilities, assets, and contribution requirements unreliable.
The Administration remains committed to the sustainment and modernization of U.S. strategic delivery systems, to ensure continuing capabilities in the face of evolving challenges and technological developments. DoD’s estimates of costs to sustain and modernize delivery systems will be updated as part of the President’s FY 2012 budget request; until this budget request is finalized, figures provided in the May 2010 1251 Report remain the best available cost estimates.

The following section of this report provides the latest information on DoD’s efforts to meet that goal, including expected timelines for key decisions.

**Strategic Submarines (SSBNs) and Submarine-Launched Ballistic Missiles (SLBMs)**

As the NPR and the 1251 Report note, the United States will maintain continuous at-sea deployments of SSBNs in the Atlantic and Pacific Oceans, as well as the ability to surge additional submarines in crisis. The current Ohio-class SSBNs, have had their service life extended by a decade and will commence retirement in FY 2027. DoD plans a transition between the retiring Ohio-class SSBNs and the new generation of submarines. Projecting a lead ship that creates no gap in the U.S. sea-based strategic deterrent capability.

Current key milestones for the SSBN replacement program include:

- Research, development, test, and evaluation (RDT&E) began in FY 2010 and continues with the goal of achieving 10 percent greater productivity prior to starting procurement than the USS VIRGINIA class had before procurement started.
- In FY 2011, DoD will begin the detailed design and advanced procurement of critical components.
- In FY 2019, the Navy will begin the seven-year construction period for the new SSBN lead ship.
- In FY 2026, the Navy will begin the three-year strategic certification period for the lead ship; and
- In FY 2029, the lead ship will commence active strategic at-sea service.

**The Analysis of Alternatives (AoA)** considered three platforms concepts for the Ohio-class Replacement: VIRGINIA-Insert, OHIO-Like, and a New Design. DoD is currently evaluating the advantages and disadvantages of each concept, including cost tradeoffs, with the goal of meeting military requirements at an affordable cost. An initial milestone decision is expected by the end of calendar year 2010 to inform the program and budget moving forward.

After the initial milestone design decision is made, DoD will be able to provide any adjuaments to the estimated total costs for the Ohio-class replacement program. Thus, today’s estimated total costs for FY 2011 through FY 2020, are the same as reported in the 1251 Report: a total of approximately $29.4 billion with $11.6 billion for R&D and $17.8 billion for design and procurement.

As noted in the 1251 Report, the Navy plans to sustain the Trident II D5 missile, as carried on Ohio-class Fleet SSBNs as well as the next generation SSBN, through a least 2042 with a robust life-extension program.

**Intercontinental Ballistic Missiles (ICBMs)**

As stated in the Nuclear Posture Review, while a decision on an ICBM follow-on is not needed for several years, preparatory analysis is important and is in fact now underway. This work will consider a range of deployment options, with the objective of defining a cost-effective approach for an ICBM follow-on that will meet continued reductions in U.S. nuclear weapons while promoting stable deterrence. Key milestones include:

The Capabilities-Based Assessment (CBA) for the ICBM follow-on system is underway. By late 2011, the study plan for the AoA, including the scope of options to be considered, will be complete.

In 2012, the AoA will begin.

In FY 2014, the AoA will be completed, and DoD will recommend a proposal ahead for an ICBM follow-on to the President.

The Air Force is funding the ongoing CBA effort at approximately $26 million per year.

Given the timelines about missile configuration and basing prior to the completion of the AoA, DoD is unable to provide costs for its potential deployment and procurement at this time. However, DoD expects to be able to include funding for RDT&E for an ICBM follow-on system in the FY 2013 budget request, based on initial results from the AoA.

The Air Force plans to sustain the Minuteman III through 2030. That sustainment includes substantial ongoing life extension be-determined. Fact finds to provide any necessary updates to cost estimates along with the President’s budget submission for FY 2012.

The Air Force plans to retain the B-1B fleet through 2027. DoD is committed to the modernization of the heavy bomber force. Thus, the question being addressed in DoD’s ongoing long-range study is part of a follow-on heavy bomber, but the appropriate type of bomber and the timelines for development, production, and deployment. The long-range strike study, which is also considering related investments in electronic attack, intelligence, surveillance and reconnaissance, air- and sea-delivered cruise missiles, and prompt global strike, will be completed in time to inform the President’s budget submission for FY 2012.

As stated in the May 2010 1251 Report, pending the long-range strike study, estimated costs for a follow-on bomber for FY 2011 through FY 2015 are $1.7 billion and estimated costs beyond FY 2015 are to-bills. Fact finds to provide any necessary updates to cost estimates along with the President’s budget submission for FY 2012.

The Air Force plans to make planned upgrades and life extensions to the fleet. The B-2 fleet is being upgraded through three top priority acquisition programs: the Responsive Program (RMP), Extremely High Frequency (EHF) Satellite Communications and Computers, and Defensive Management System (DMS), as well as multiple smaller sustainment initiatives.

**Air Launched Cruise Missile (ALCM)**

DoD plans to sustain a heavy bomber leg of the strategic Triad for the indefinite future, and is committed to the modernization of the heavy bomber force. Thus, the question being addressed in DoD’s ongoing long-range study is part of a follow-on heavy bomber, but the appropriate type of bomber and the timelines for development, production, and deployment. The long-range strike study, which is also considering related investments in electronic attack, intelligence, surveillance and reconnaissance, air- and sea-delivered cruise missiles, and prompt global strike, will be completed in time to inform the President’s budget submission for FY 2012.

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Mr. CORKER. Mr. President, there has been a lot of discussion about many things—and I will get to missile defense in just one moment—but I don’t think there is anything, as it relates to nuclear issues, that threatens our national security more than our not being able to pursue defense spending.

In closing, I thought it important for you to know that over the last two years, my Administration has worked closely with officials from the defense discretionary spending in any future budget requests, funding for nuclear modernization in the NNSA weapons activities account will be considered on the same timeline as defense spending.

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Mr. CORKER. Mr. President, as we look to the future, we need to get our priorities straight. We need to be clear on our national security just by having this debate, and I would say we have sought and received commitments that otherwise we would not have received if it were not for the discussion of this treaty.

The two are very related. I have heard a lot of people say there is no real relationship between the two. There is a lot of relationship between the two, in that I think Americans want to know if we are going to limit ourselves to 1,550 warheads, that we know they operate, we know they can be delivered, and we know the thousands of warheads we have that are not deployed are warheads that will be kept up.

We have talked a lot about missile defense, and I just wish to say I have been through every word of this treaty, I have been through every word of the annexes, I have been through every word of the protocols, and I have been in countless briefings and there is nothing in this treaty that limits our missile defense other than the fact that we cannot convert ICBM launchers that we use on the offense for missile defense into defense. If military leaders do not want to do. That is the most expensive way of creating a missile defense system. That is something they do not want to do.

So a lot of discussions have been brought up in the preamble something was stated that was non-binding. How do we clear that up? We clear that up by virtue of a letter the President has sent to us absolutely committing to the missile defense system that is now being deployed in Europe, absolutely committing to a national defense system. People might say: Well, but that is no commitment. I have reasonable assurance that by the time this debate ends we will codify, as part of the resolution of ratification, the operative words in the President’s language committing to all four phases of our adaptive missile system in Europe, committing to those things we need to do as relates to our national defense. It is a part of the resolution of ratification. I would say to you that I doubt very seriously we would have received the types of commitments, the strident commitments from the President as relates to missile defense today, if we were not debating this treaty.

Mr. President, I ask unanimous consent that Senator LAMAR ALEXANDER be added as a cosponsor to my amendment, amendment No. 4904, dealing with the President’s language becomes a part of this resolution of ratification.

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

Mr. CORKER. Mr. President, let me conclude by saying it is obviously up to us, as Senators. We are the ones who have the right and the responsibility and the privilege to take up the types of matters we are taking up today. It is up to us to do the due diligence, to have the intelligence briefings, to look at the intelligence that is out there, to look at what this treaty itself says, and to look at what our force structure is. That is our responsibility. It is up to each of us, the 100 of us in this body, to decide whether we ratify this treaty. But I think it is also at least interesting to get input from others.

One of the things our side of the aisle likes to do is we like to listen to military leaders and what they have to say about the things—Afghanistan or Iraq—and certainly the issue of how we enter into nuclear treaties with other countries.

I will ask to have printed in the record a letter to Senator KERRY from the Chiefs of Staff about their firm commitment for the START treaty on the basis that it increases our national security.

I ask unanimous consent to have printed in the RECORD this letter dated December 20 from ADM Mike Mullen, Chairman of our Joint Chiefs.

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

Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

Mr. CHAIRMAN, Thank you for your letter of December 20 asking me to reiterate the positions of the Joint Chiefs of Staff on ratification of the New START Treaty and several related questions.

This treaty has the full support of your uniformed military, and we all support ratification. Throughout its negotiating, Secretary Clinton and Secretary Gates emphasized that professional military perspectives were thoroughly considered. During the development of the treaty, I was personally involved, to include two face-to-face negotiating sessions and several conversations with my counterpart, the Chief of the Russian General Staff, Gen Makarov, regarding key aspects of the treaty.

The Joint Chiefs and I—as well as the Commander, U.S. Strategic Command—believe the treaty achieves important and necessary balance between four critical aims. It allows us to retain a strong and flexible American nuclear deterrent that will allow us to maintain our capability at low-level nuclear forces. It helps strengthen openness and transparency in our relationship with Russia. It will strengthen the U.S. leadership role in reducing the proliferation of nuclear weapons. And it demonstrates our national commitment to reducing the worldwide risk of a nuclear incident resulting from proliferation.

More than a year has passed since the last START inspector left Russian soil, and even if the treaty were ratified by the Senate in the few days, months before inspectors could return. Without the inspections that would resume 60 days after entry into force of the treaty, our understanding of Russia’s nuclear posture will continue to erode. An extended delay in ratification may eventually force an inordinate and unwise shift of scarce resources from other high priority requirements to maintain adequate awareness of Russian nuclear forces. Indeed, new features of the treaty’s inspection protocol will provide increased transparency for both parties and the chance to contribute to greater trust and stability.

The Joint Chiefs and I are confident that the treaty does not in any way constrain our ability to pursue missile defenses. We are equally confident that the European Phased Adaptive Approach to missile defense...
Mr. CORKER. Mr. President, I would like to point out, too, just for clarification, if you look at the makeup of our Joint Chiefs—Admiral Mullen, General Cartwright, General Schwartz, General Casey, Admiral Roughead—every single one of these gentlemen was appointed by a Republican President. In addition to them, we have General Amos. My sense is, based on some of the comments he has made over the course of time, that General Amos, alongside the other general officers, has leaned toward ratification of the New START Treaty. But all of these people have firmly stated their support for this treaty.

In closing, I will also ask unanimous consent that the statement of Robert Gates, Secretary of Defense and the Republican President, head of our Defense Department, where yesterday he said:

The treaty will enhance the strategic stability at lower numbers of nuclear weapons, provide a rigorous inspection regime including on-site access to Russian missile silos, strengthen our leadership role in stopping the proliferation of nuclear weapons, and provide the necessary flexibility to structure our strategic nuclear forces to best meet the national security interests.

I ask unanimous consent that this be printed in the RECORD.

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

From the U.S. Department of Defense, News Release, Dec. 21, 2010

Statement by Secretary Robert Gates on the New START Treaty

I strongly support the Senate voting to give its advice and consent to ratification of the New START Treaty.

The treaty will enhance strategic stability at lower numbers of nuclear weapons, provide a rigorous inspection regime including on-site access to Russian missile silos, strengthen our leadership role in stopping the proliferation of nuclear weapons, and provide the necessary flexibility to structure our strategic nuclear forces to best meet national security interests.

This treaty stands on its merits, and its prompt ratification will strengthen U.S. national security.

Mr. CORKER. There has been a lot of discussion about the role of the Senate in this ratification. There are a lot of things that go into the ratification of a treaty. I have laid out a number of reasons why this treaty is in our country’s national interests.

As we move through a process such as this, I try to make sure all of the t’s are crossed and i’s are dotted that can possibly be crossed and dotted to ensure that, as a U.S. Senator, feel comfortable that the type of agreement we are entering into is one that is in the best interests of our country. I have done that over the last year working on nuclear modernization. Again, my hat is off to Senator Kyl and his great leadership in that regard. I have done that over the course of this last year as we have looked at missile defense. We spent incredible amounts of time in our committee making sure people on our side of the aisle had tremendous input into the ratification of this treaty. We have worked through to make sure that if we are going to have fewer warheads deployed—again, we have thousands more that are not deployed—that we, in fact, can assure the American people that they will operate, that they are actually there for our national security.

The question for me and for all of us who care so deeply about our country’s national security is, Will we say yes? I firmly believe that signing this treaty, that ratifying this treaty, and that all the things we have done over the course of time as a result of this treaty are in our country’s national interest, and I am here today to state my full support for this treaty. I look forward to its ratification, and I hope many others will join me in that process.

I yield the floor.

Mr. UDALL of Colorado. Mr. President, before I begin the focus of my remarks and the reason I came to the floor, I wish to commend the Senator from Tennessee for his thoughtful remarks and what I think is a thoughtful and important position he is taking on the START treaty. I listened with great interest, and I learned additional information about the importance of putting this treaty in effect. I also acknowledge the Senator’s concerns about missile defense, about tactical nuclear weapons, and the other concerns that have been raised in this very important and obviously historic debate on the floor of the Senate. I thank the Senator from Tennessee for his leadership.

Tributes to Retiring Senators

ARLEN SPECTER

I also wanted to associate myself with the remarks of Senator BENNET, the Senator from Colorado, in regard to Senator SPECTER’s farewell address to the Senate. In particular, I think Senator Specter laid out a thoughtful and comprehensive way we can change the Senate rules in the upcoming 112th Congress in ways that respect the rights of the minority but also provide the Senate with some additional ways to do the people’s business.

Mr. President, the Presiding Officer spent significant time on finding a way forward for the Senate. I look forward to the debate that will begin when we convene in just a couple of weeks for the 112th Congress.

Nomination of William Martinez

Let me turn to the reason I came to the floor. Initially, I want to urge my colleagues to support an outstanding nominee to the Federal bench, Mr. William Martinez. Bill’s story is an inspirational one, and I will share that with you in a moment, but I wanted to first talk about why there is such an urgency to confirm this fine nominee.

The situation in our Colorado District Court is dire, and I don’t use that word lightly. There are currently five judges on the court and two vacancies, both of which are rated as judicial emergencies by the Administrative Office of the U.S. Courts. These five judges have been handling the work of seven judges for nearly 2 years. It has
been over 3 years since our court had a full roster of judges. I know the Presiding Officer is familiar with the need for a fully stocked Federal bench as a former attorney general.

There is even more to the story. In 2008, based on the significant caseload in Colorado, the Judicial Conference of the United States recommended the creation of an eighth judgeship on the Colorado District Court. This was a pending situation, but I know it is not unique just to Colorado. Of the 100 current judicial vacancies, 46 are considered judicial emergencies—almost half of those vacancies. I understand the Senate has confirmed just 53 Federal circuit and district court nominees since President Obama was elected, including the judges over the last weekend. This is half as many as were confirmed in the first 2 years of the Bush administration and represents a historic low, which, no matter how we look at it, is very detrimental to our system of justice.

Bill Martinez was nominated in February of this year, had a hearing in March, and was referred favorably by the Judiciary Committee to the full Senate. So today his nomination has been sitting on the Senate’s Executive Calendar for over 8 months.

I am not going to complain about partisan delays, although I know this continues to plague the Senate. Instead, I hope that we might improve the nomination process. I want my colleagues to hear the real effect of imposing these delays on nominees.

The people of Colorado deserve well-qualified justices, but what the Senate put Bill Martinez through should make each of us question where our priorities are—and I say that because, unlike other judicial nominees before the Senate, Bill Martinez’ life has been turned upside down because of this delay in his confirmation. While many other nominees—and I don’t begrudge them this—continued their judicial careers because they were sitting on the bench, he has essentially had to dismantle his legal practice to put aside and having to cease his work, obviously, as a career in law, becoming the first member of his family to attend college. He received undergraduate degrees in both environmental engineering and political science from the University of Illinois and earned his law degree from the University of Chicago.

As a lawyer, Bill has become an expert in employment and civil rights law. He first began his legal career in Illinois, where he practiced with the Legal Assistance Foundation of Chicago, litigating several law reform and class action cases on behalf of indigent and working-class clients. For the last 14 years he has practiced immigration law and previously served as a regional attorney for the U.S. Equal Employment Opportunity Commission in Denver.

As you can imagine, over the years Bill has been a very active member of the Denver legal community. During the 1990s, he was an adjunct professor of law at the University of Denver College of Law and has been a mentor to minority law students. He is currently a vice chair of the Colorado Supreme Court’s Office of Conduct for the U.S. District Court for the District of Colorado, and he has been a board member and officer of the faculty of Federal Advocates.

Bill also sits on the board of directors of the Colorado Hispanic Bar Association, where he serves as the chair of the bar association’s Ethics Committee. More recently, he was appointed by the Colorado Bar Association to the board of directors of Colorado Legal Services and by the chief judge for his state’s District Court to the Judicial Ethics Advisory Board.

Like all of us, I believe in a strong, well-balanced court system that serves the needs of our citizens. Bill Martinez will bring that sense of balance because of his broad legal background, professionalism, and his outstanding intellect. I am proud to have recommended Bill, and I am certain that once confirmed he will make an outstanding judge.

Before I conclude, I do want to give special acknowledgment to my general counsel, Alex Harman, who has worked night and day on this nomination. Alex has worked tirelessly to see that Bill Martinez receives the vote he deserves, and I want to acknowledge him here on the floor of the Senate.

I ask my colleagues to give their full support to this extraordinary candidate and vote to confirm his nomination to the Colorado District Court as a new Federal judge.

I yield the floor.
magistrate. Judge James Carr, the chief U.S. district judge at the time of her nomination, lauded Judge Pearson as "a splendid choice . . . eminently well-qualified by intelligence, experience . . . and judicial temperament."

Judge and Senator George Voinovich, who now is the chief U.S. district judge, is just as supportive of her nomination.

Support for that nomination extends throughout the State. The other day when I gave some remarks in the wake of Senator Voinovich’s decision to address I neglected to mention how much I appreciated Senator Voinovich’s cooperation in the process of selecting candidates for nomination to the Federal bench.

Senator Voinovich and I did something, and I do not know if any other Senator in this body does this, any other pair of Senators—I do know nobody in Ohio has done this—I asked Senator Voinovich, as the Senator from the President’s party—and, generally, by tradition, the Senator who suggests nominees to the President—I asked Senator Voinovich to be part of the selection system with me. We chose 17 people. We chose 17 people from northern Ohio to interview Southern District of Ohio potential judges, and 17 people in southern Ohio—central and southern Ohio—to interview prospective judges for the Northern District.

These panels, one of them was a Republican majority, the other was a Democratic majority. I believe, by one vote. These panels met, took this job very seriously. Each of the 17 people was given the name of a candidate, one of the people who was applying to interview, references and all that. Each candidate got an hour in front of the 17-member committee, this Commission we appointed, and were subjected, after filling out a very lengthy questionnaire, testifying, an hour in front of this panel of 17 very distinguished judges, some who are lawyers, some, I believe, former judges, all people who were very interested in the Federal judiciary. Anybody who came out of that had to have a strong supermajority recommendation from the 17. I then interviewed the top three, made the selection, cleared it with Senator Voinovich, and brough to the name forward.

That produced Judge Timothy Black, who has been confirmed, sits in the Southern District. It also produced Judge Benita Pearson. A similar selection committee, not identical but a similar selection committee, enabled me, helped me come to the conclusion to reappoint a Bush appointee to the U.S. marshal’s job in Cleveland, Pete Elliott, to appoint the first African-American U.S. marshal in the State, and confirm the first female U.S. marshal in the Southern District of Ohio, Cathy Jones, and then the first African-American U.S. attorney in Columbus, and a very qualified U.S. attorney in Cleveland.

So that is the process we have in Ohio to make sure we get the best qualified people. As I said, they put in a tremendous amount of time and energy and I wish to thank those 17 members of each of those Commissions, the 34 people who served again from both parties, prominent jurists and lawyers and community activists, to come up with Judge Pearson and others.

Judge Pearson currently resides in Akron but was born in Cleveland. I got a chance to meet her mother and many of her family and friends almost 1 year ago when she testified before the Judiciary Committee. They were understandably proud of her, her achievements, and the honor of her nomination, certainly, but I got the sense they were most proud of her as a daughter, as a sister, as a family member. Nobody being a CPA would help her in the judiciary as a judge. She said you can tell stories with numbers. She smiled when she said it. She, clearly, had kind of thought through what this means to be a Federal judge and what qualifications she brings. Throughout her career. Judge Pearson has litigated and presided over a range of criminal and civil matters, including housing, public corruption cases. In addition to her work as a magistrate judge since 2008, her legal experience includes serving as an adjunct professor at Cleveland State University, her bachelor's degree from Georgetown. Before law school, she spent several years as a certified public accountant. I asked her how she views Judge Pearson as an invaluable asset to Ohio's judicial system. I urge my colleagues, this afternoon, to quickly confirm her in her new position as U.S. district judge for the Northern District of Ohio.

There is a select Senate, two people on my staff who have gone above and beyond the call of duty: Mark Powden, my chief of staff, who has, almost weekly, spoken with Judge Pearson, talking about the delays and what is going to get this back on track and how are we going to get her confirmed. I appreciate the work Mark Powden has done. And Patrick Jackson in her office, who, while all this was going on, was getting married. He got married earlier this month, and he was doing that at the same time were doing all this. I am grateful to both of them. I thank my colleagues.

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

The PRESIDING OFFICER. The clerk will call the roll. The legislative clerk proceeded to call the roll.

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

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

LITTORAL COMBAT SHIP

Mr. SHELBY. Mr. President, I rise today in support of the Navy's acquisition strategy to purchase 20 littoral combat ships, LCS.

The Navy's plan would allow 20 littoral combat ships to be awarded to two shipyards: Austal, which will build 10 ships in Mobile, AL, and Lockheed Martin, which will build 10 ships in Wisconsin.

Under the new procurement strategy, our sailors will receive the ships they need to operate in shallow waters and
Mr. SESSIONS. Mr. President, I rise to speak on the President’s nomination of Mr. William Martinez to the United States District Court for Colorado. I will oppose the nomination, and I have several reasons for doing so. He has a lot of good friends and people who respect him and like him, but we are trying to make a decision about a lifetime appointment to that federal district court. There are some concerns with this nomination that are serious and, in particular, trends of the President to nominate individuals with judicial philosophies outside the mainstream.

There is one reason in particular that concerns me about Mr. Martinez. It is his lifelong affiliation with the American Civil Liberties Union and the questions we asked him about that were answered insufficiently for me.

We have had a number of ACLU nominees. I have supported some and opposed others. The ACLU is a very left-wing organization. It seeks openly to defy the will of the American people in many lawsuits while at the same time they endeavor to undermine and oppose traditions and institutions that make up the very fabric of our culture, our national identity, and who we are as a people, assuming those things are significant and only pure philosophical traditions and institutions that make up the very fabric of our culture, national identity, and who we are as a people, assuming those things are in fact significant and only pure philosophical traditions and institutions that make up the very fabric of our culture, national identity, and who we are as a people, assuming those things are in certain ways significant. It is fair and appropriate to ask questions about this nominee and about this organization and whether the nominee agrees with them or why, if they don’t agree, they are a member.

There is one reason in particular that concerns me about Mr. Martinez. It is his lifelong affiliation with the American Civil Liberties Union and the questions we asked him about that were answered insufficiently for me.
clearly respond and repeatedly refused to answer questions in a direct and clear manner. For example, at his hearing I asked whether he agreed with the ACLU’s position that the death penalty was unconstitutional in all circumstances. He refused to answer. Instead, he said that the Supreme Court has held the death penalty constitutional, adding:

What my view would be as a sitting Federal district judge is something that would be quite different from my views as a personal citizen or an advocate or a litigant and member of the ACLU.

I asked him whether he personally thinks the death penalty violates the Constitution and whether he had ever expressed that view. He again failed to answer, stating only that he had never expressed any view.

So I put the question to him again, and again he did not answer.

Let me stop and say why I think this is a critical issue. The Constitution was passed as a unified document with 10 amendments. The American people ratified it. Some people, in recent years, have come up with the ingenious idea that they could disqualify and execute death penalty without a vote of the people, without the popular will to change laws that exist all over the country. They decided they could change it by finding something in the Constitution that would say the death penalty was wrong, and they reach out to the provision that says you should not have cruel and unusual punishment. They said the death penalty is cruel and unusual and is unconstitutional, which is not sound. Let me be respectful.

What is that not a sound policy? There are multiple references in the Constitution to a death penalty. It talks about capital crimes, taking life without due process, it is in the Constitution. How could one say, when there are multiple provisions explicitly providing for the death penalty, how could we reach over here and take a position on cruel and unusual punishment which was designed to prevent people from being hung on racks and tortured and that kind of thing? But that is the ACLU position.

This nominee, who is going to be given a lifetime appointment, the power to interpret the Constitution on this very real issue of national import that is important to how we provide for the death penalty, how could we reach over here and take a position on cruel and unusual punishment which was designed to prevent people from being hung on racks and tortured and that kind of thing? But that is the ACLU position.

Meanwhile, the ACLU has taken positions far to the left of the mainstream America and the ideals and values the majority of Americans hold dear. Roger Baldwin, the ACLU’s founder, was openly vocal about his support and belief in “socialism, disarmament, and for abolishing the State itself as an instrument of violence and compulsion.”

He was quoted as saying:

I seek social ownership of property, the abolition of the profit motive, and sole control by those who produce wealth. Communism is the goal.

Mr. Baldwin’s influence and impact on the ACLU could not be overstated. As former ACLU counsel Arthur Hays says:

The American Civil Liberties Union is Roger Baldwin.

As I mentioned earlier, the ACLU opposes the death penalty under any circumstances, even for child rapists. They filed a brief recently in Kennedy v. Louisiana. Mr. Baldwin could not apply the death penalty to a child rapist regardless of the severity of the crime or the criminal history unless the child died from his or her injuries. Here the defendant had raped his own 8-year-old stepdaughter and caused horrific injuries that a medical expert said were the most severe he had ever seen. The defendant had done the same thing to another young girl within the family a few years earlier. Even President Obama, whom we case argued before the Supreme Court, said he opposed that view. Yet President Obama continues to nominate a host of ACLU lawyers to the Federal bench and presumably has some sort of sympathy with the views they have been taking.

In recent years, the ACLU has lobbied on behalf of sex offenders, including suing an Indiana city on behalf of a repeat sex offender who was barred from the city’s park after he admitted talking to children who played there. Efforts to prevent sex offenders who had admitted that they thought about sexually abusing the children in the park, the ACLU sued to give him full access to the park and the children. I agree with the mayor of the city who said:

Parents need to be able to send their children to a park and know they are going to be safe, not being window shopped by a predator.

I would hope all nominees would share this view rather than the ACLU’s position on the subject. Although many view the ACLU as a neutral defender of the Bill of Rights, the ACLU takes a very selective view of the rights it advocates.

That is just a fact. Otherwise, if they were defending the Constitution and what it says plainly, they would defend the constitutionality of the death penalty. It should not take them 2 seconds to figure that out. They have an agenda.

And as it explains on its Web site, the ACLU openly disagreed with the Supreme Court’s landmark ruling in the Heller case—the right to keep and bear arms—in Washington because the ACLU does not believe the second amendment confers an individual right to keep and bear arms. So the lawyers might disagree on that. But if this institution, this ACLU, is so committed to constitutional rights and opposes the power of the State, why would they not read the plain words of the second amendment: The right to keep and bear arms shall not be infringed. Why wouldn’t they defend that individual right of free Americans to be armed and oppose the power of the State to take away what has historically been an American right? I think it represents and reveals a political agenda as part of this organization.

It also has a selective view of what exactly is protected by the first amendment. It has done some good work on the first amendment, the ACLU has, but it has gone to great lengths to limit freedom of religion, as provided for in the first amendment, suing religious organizations and groups such as the Salvation Army and even individuals and supported the removal of “In God we trust” from the Pledge of Allegiance and “in God we trust” from our currency. It sued the Virginia Military Institute to stop the longstanding tradition of mealtime prayer for cadets. You do not have to bow your head if you go to lunch and somebody wants to have a prayer. Nobody makes you pray. But if other people want to take a moment before they partake of their meal and, say, acknowledge a bit of appreciation for the blessings they have received, what is wrong with that? I do not believe it violates the first amendment.

The Constitution says that you cannot establish a religion in America, and we cannot prohibit the free exercise of religion either. The establishment clause and the free exercise clause are both in that amendment. But the ACLU only sees one. They see everything as an establishment of religion.
The ACLU has also argued for the removal of religious symbols and scriptures from national parks and monuments and cemeteries that have stood for years regardless of how innocuous they may be. I am very surprised we do not have the ACLU filing a lawsuit to deal with those words right over that door: “In God We Trust.” It won’t be long. They will want to send in gendarmes with chisels to chisel it off the wall. It is an extreme view of the first amendment, and I think, in part of what we understood the Constitution to be about. The reference in a public forum to a “higher being” is not prohibited by the Constitution—except in the minds of some extremists.

So the ACLU has argued for the removal of all vestiges of Christmas, going so far as to sue school districts to bar them from having Santa Claus at school events and threatening to sue if Christmas carols are sung anywhere on school property.

In addition, the ACLU has sought to limit or remove the rights of children to salute the U.S. flag, recite the Pledge of Allegiance, and openly pray. It has sued the Boy Scouts—I am honored to be an Eagle Scout—one time in my life—and government entities that have supported this honorable institution. It has sued them.

It has fought for the rights of child pornographers and against states seeking to protect and distribute or limit children’s exposure to it. The ACLU absolutely not only opposes adult pornography laws, they oppose laws that prohibit child pornography, which is where so much of the problem of pedophilia occurs.

The ACLU has sought to overturn the will of the people by challenging numerous State laws that define marriage as between a man and a woman and has encouraged city mayors across the country to openly defy State law by granting same-sex marriage licenses, even in contradiction to law.

It has vehemently opposed the 1996 Defense of Marriage Act, calling it “a deplorable act of hostility unworthy of the United States Congress.” That passed a year before I came here—not too long ago. It just said that if one State allows a marriage to be between members of the same sex, another State would not be forced to acknowledge it. That is what the Defense of Marriage Act did, and it passed here not too many years ago.

The ACLU has consistently opposed all restrictions on abortion—all restrictions—including the partial-birth abortion, the Unborn Victims of Violence Act, and statutes requiring parental notification before a minor child can have an abortion. If they want to defend the innocent against wrongdoing, what about defending a child partially born? If their life is taken from them? The ACLU’s extreme view on abortion would force even religious health care providers—doctors and nurses—to perform abortions as a condition of Medicare or Medicaid reimbursement eligibility. A doctor could not say: I will treat you, but I don’t do abortions. Oh, if you take Medicare or Medicaid money, then under the ACLU’s position, you would have to do so.

According to the ACLU:

There is no basis for a hospital to impose its own religious criteria on a patient to deny [her] emergency care.

So this type of religious liberty is not, I think, what the Founders said. I do not think a hospital that is founded on personal values and has certain moral values should be required to give them up as a capitulation to State domination, which is what they were asking for actually, having the State be able to tell a hospital that did not believe in abortion.

What about other issues that may come up, such as end-of-life issues. Hospitals ought to be able to have—and doctors and nurses able to have moral views about those matters and not do something they think is wrong and not have to give up their practice or their hospital in order to comply with what this group thinks is the right thing to do.

So those are some of the examples of the ACLU’s out-of-the-mainstream point of view. It is no secret that this administration shares this kind of legal reasoning. This is, of course, one of the groups who we have seen, and this kind of reasoning and legal thought is well to the left of and out of touch with the American people and, I think, for the most part, established law. It seeks to impose its liberal progressive agenda any way it can, including by filing lawsuits and having judges—unselected lifetime appointed judges who have been pipped through the Senate—ratify what the people who filed the suits want to achieve as a matter of policy, not being about the subject disputes and decide them narrowly but to try to use the courts as a vehicle to advance an agenda. That is what has really been at the core of the debate in recent years over judicial nominations.

So it is not surprising that many of the President’s judicial and executive branch nominees have been deeply involved in the ACLU—many of them. For example, President Obama’s first nominee, Judge David Hamilton, who now sits on the Seventh Circuit, was a leading member of the ACLU for 12 years and served as a board member.

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can promote visions. I have to tell my colleagues, they are not appointed to be vision promoters. They are appointed to decide the strict matters of law and fact, to the best of the ability the Lord gives them.

We cannot simply by and allow that heritage of law that benefits us so greatly, the American rule of law and the greatest strength this Nation has, in my opinion, to be altered by promoting a judiciary that is agenda oriented. Any individual—regardless of the position to which they have been nominated, to what kind of court position they are nominated to—who demonstrates unwillingness to subordinate their personal views, religious, political, ideological, social, liberal, or conservative. Conservatives can't promote their views, either—if they can't be faithful to the law and the Constitution, they should not be on the bench.

I am not going to support such nominees and no Senator should support them. I have given it a lot of thought. I know Mr. Martinez has had a long affiliation with the ACLU. He refused to give clear answers to these questions I posed to him. I am not convinced that those views, which I think are outside legitimate constitutional theory, have been objected to and are not by Mr. Martinez—indeed, it appears he supports them because he has not with clarity rejected a single one. He has not made any defense to participating in an organization that openly advocates these kinds of legal views.

Mr. Martinez: Do you believe the Constitution prohibits the death penalty? They said, No. Even though they were part of an organization and some of them—a lot—have been confirmed and I have voted for a number of them, but I am not able to vote for this one.

I have to say this: We are paid to judge and to vote, and when it comes down to some of the positions taken by the ACLU—let's take the one that the Constitution does not allow the death penalty—are so extreme and are so nonlegal that if a person can't understand that, I have serious doubt that they can understand any other significant constitutional principle.

Therefore, I have concluded I would not be able to support the nominee, although I respect my colleagues who think he will do well. I certainly don't think he is a bad person. I think he is an able lawyer with a wonderful background, but his legal history evidence an approach to law that I think is outside the mainstream and I will oppose the nomination. We are not blocking a vote. We will allow him to have a clear vote and the Senators will cast their vote based on how they conclude it should be decided.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER (Mr. MANCHIN). The Senator from Ohio.

NEW START TREATY

Mr. VOINOVICH. Mr. President, I rise today to discuss the Senate's deliberation of the New START treaty and the treaty's implications for our friends and allies in Eastern and Central Europe and, more importantly, the national security of the United States.

On November 17, I came to the Senate floor with concerns about the treaty and the President's reset policy. Following my remarks, I received a significant amount of feedback—some positive, some critical—and throughout my deliberations on the treaty, my intention was to contribute to advancing this important debate in a meaningful way.

First, I wish to make it clear I remain concerned about the direction of Russia in terms of its commitment to human rights and an effort to reassert its influence over what Russia considers Eastern and Central Europe, their sphere of influence—those countries I often describe as the captive nations. One cannot ignore the statement of Vladimir Putin when he described the collapse of the Union as the greatest geopolitical catastrophe of the 20th century.

Two years ago, after listening to Russia's Foreign Minister Sergey Lavrov at the German Marshall Fund Forum, I concluded that Russia's internal political dynamic suggested that its people were deeply concerned by the growth in U.S. influence through NATO expansion and incursion into their part of the world. The Russian Foreign Minister there was a post-Cold War promise, once the Iron Curtain came down, to not interfere in the region.

As one of the leaders in helping the captive nations movement and to this day regrettting the way our brothers and sisters in these countries were treated during the postwar conferences at Yalta and Tehran—I must say I never thought the wall would come down or their curtain torn, but once it did, I did everything I could to ensure these newly democratized countries were invited to join NATO. In 1998, as chairman of the National Governors Association, I worked to get a resolution passed encouraging the United States to invite Poland, the Czech Republic, and Hungary to join the alliance. As the commander of our nuclear forces has never thought the wall would come down or their curtain torn, but once it did, I did everything I could to ensure these newly democratized countries were invited to join NATO. In 1998, as chairman of the National Governors Association, I worked to get a resolution passed encouraging the United States to invite Poland, the Czech Republic, and Hungary to join the alliance. As the commander of our nuclear forces has

One of the proudest moments as a Senator was when I joined President Bush, Secretary of State Powell, Secretary of Defense Rumsfeld, Chairman of the Joint Chiefs of Staff General Myers at the NATO summit in Prague on November 21, 2002. I was in the room when NATO Secretary General Lord Robinson officially announced the decision to invite Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia into NATO. I mention all of this history for a simple reason. I don't think there is a Member of the Senate more wary of the intentions of Russia toward the former captive nations than I.

So it brings me back to the subject of the treaty now pending before the Senate. I take the Senate's constitutional advice and consent duties very seriously. Since the treaty was signed in April, I have attended numerous meetings and classified briefings on the treaty. I suspect I have spent at least 10 to 12 hours on it. Since I last spoke on this floor about the treaty in November, I have very serious consultations with a number of former Cabinet Secretaries, ambassadors, and experts from the intelligence community, including former Secretaries of State Albright, Powell, and Rice, seeking their views to effect on our bilateral relationship with Russia, as well as our relationship with our Eastern and Central European allies. While some of those I met with had concerns about specific technical aspects of the treaty, I continually heard that we should ratify the treaty. I believe it is noteworthy that five former Republican Secretaries of State, including Kissinger, Shultz, Baker, Eagleburger, and Powell, in a December 2, 2010, Washington Post opinion piece urged the Senate:

... to ratify the New START Treaty signed by President Obama and Russian President Dmitry Medvedev. It is a modest and appropriate continuation of the START I treaty that expired almost a year ago.

These former Republican Secretaries of State described some of the outstanding issues with the treaty, but describe convincingly, in my opinion, why ultimately it is in our national interest to ratify the treaty.

Mr. President, I ask unanimous consent that the op-ed piece from the Washington Post be printed in the RECORD.

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

[From the Washington Post, Dec. 2, 2010]

THE REPUBLICAN CASE FOR RATIFYING NEW START

(By Henry A. Kissinger, George P. Shultz, James A. Baker III, Lawrence S. Eagleburger and Colin L. Powell)

Republican presidents have long led the crucial fight to protect the United States against nuclear dangers. That is why Presidents Richard Nixon, Ronald Reagan and George H.W. Bush negotiated the SALT I, START I and START II agreements. It is why President George W. Bush negotiated the Moscow Treaty. All four recognized that reducing the number of nuclear arms in an open, verifiable manner would reduce the risk of nuclear catastrophe and increase the stability of the nuclear-armed world, and thereby reduce the risk of nuclear weapons. The world is safer today because of the decades-long effort to reduce its supply of nuclear weapons.

As a result, we urge the Senate to ratify the New START treaty signed by President Obama and Russian President Dmitry Medvedev. It is a modest and appropriate continuation of the START I treaty that expired almost a year ago. It reduces the number of nuclear weapons that each side deploys, while enabling us to maintain a strong nuclear deterrent and preserve the flexibility to deploy those forces as we see fit. Along with our obligation to maintain the homeland security and has responsibilities to allies around the world. The commander of our nuclear forces has
testified that the 1,550 warheads allowed under this treaty are sufficient for all our missions—and seven former nuclear commanders agree. The defense secretary, the chairman of the Joint Chiefs of Staff, and the head of the Missile Defense Agency—all originally appointed by a Republican president—argue that New START is essential for our national security.

We do not make a recommendation about the exact timing of a Senate ratification vote. That is a matter for the administration and Senate leaders. What is most important is that thing is to have bipartisan support for the treaty, as previous nuclear arms treaties did. Although we have not heard much from the majority about New START, administration officials have provided reasonable answers. We believe there are compelling reasons Republicans should support ratification.

First, the agreement emphasizes verification, providing a valuable window into Russia’s nuclear arsenal. Since the original START expired last December, Russia has not been required to provide notifications about changes in its strategic nuclear arsenal, and the United States has been unable to conduct on-site inspections. Every day, America’s understanding of Russia’s arsenal has been degraded, and resources have been diverted from national security tasks to try to fill gaps left by the lack of timely on-site inspections.

Second, New START preserves our ability to deploy effective missile defenses. The testimonies of our military commanders and civilian leaders make clear that the treaty does not limit U.S. missile defense plans. Although the treaty prohibits the conversion of any of the warheads for intercontinental and submarine-based ballistic missiles, our military leaders say they do not want to do that because it is more expensive and less effective than building new ones for defense purposes.

Finally, the Obama administration has agreed to provide for modernization of the infrastructure essential to maintaining our nuclear arsenal. Funding these efforts has become part of the negotiations in the ratification process. The administration has put forth a plan to spend $84 million over five years for the Energy Department’s nuclear weapons complex. Much of the credit for getting the administration to add $14 billion to the originally proposed $30 billion for modernization goes to Sen. Jon Kyl, the Arizona Republican who has been vigilant in this effort. Implementing this modernization program in a timely fashion would be important in ensuring that our nuclear arsenal is maintained appropriately over the next decade and beyond.

Although the United States needs a strong and reliable nuclear force, the chief nuclear danger today comes not from Russia but from rogue states such as Iran and North Korea and the potential for nuclear material to fall into the hands of terrorists. Given those pressing dangers, some question why an arms control treaty with Russia matters. It matters because it is in both parties’ interest that there be transparency and stability in their strategic nuclear relationship. It also matters because Russia’s cooperation will be needed if we are to make progress in rolling back the Iranian and North Korean programs. Russian help will be needed to continue to secure “loose nukes” in Russia and elsewhere. And Russian assistance is needed to improve the situation in Afghanistan, a breeding ground for international terrorism.

Obviously, the United States does not sign arms control agreements just to make friends. Any treaty must be considered on its merits. But we have here an agreement that is clearly in our national interest, and we should consider the ramifications of not ratifying it.

When New START is brought up for debate, we encourage all senators to focus on national security. There is plenty of opportunity to dominate political issues linked to the future of the American economy. With our country facing the dual threats of rising federal debt, we anticipate significant conflict between Democrats and Republicans. It is, however, in the national interest to ratify New START.

Mr. VOINOVICH. Mr. President, I believe many of these experts remain concerned, as do I, that a failure to ratify the treaty would be exploited by those factions in Russia who wish to revert back to our Cold War posture. Such a failure could easily be used by those factions to play on Russian nationalism, which I fear, from what I have heard from some people, is bordering on paranoia. Since I last spoke about the treaty, a number of new START allies have come out and supported the treaty because they believe the treaty’s approval should help advance other issues related to Russia, including the lack of compliance with the Conventional Forces in Europe Treaty, tactical nuclear weapons, and cooperation on missile defense.

For example, during his recent visit to Washington, Polish President Bronislaw Komorowski has stated he supports the treaty’s ratification. And at a press conference conclusion of the NATO Lisbon Summit, Hungarian Foreign Minister Janos Martonyi stated:

My country has a very special experience with Russia, and also a special geographic location. We advocate ratification of START. It is in the interest of my nation, of Europe and most importantly for the transatlantic alliance.

During this press conference, Lithuania’s Foreign Minister pointed out that he saw the treaty as a prologue to additional discussions with Russia about other forms of nuclear arms in the region such as tactical nuclear weapons. About three weeks ago, I received a call from President Zatlers, the President of Latvia, urging me: Mr. Senator, please ratify the START treaty.

Still, as history has taught us, the United States must make clear in regard to our relationship with Russia that it will not be at the expense of our current NATO allies. Thus, I was pleased to see President Obama provided the leaders of our Central and European allies public reassurance regarding the U.S. commitment to article V of the North Atlantic Treaty during the recent NATO summit in Lisbon which, by the way, was one of the best NATO summits I think that has been held in the last dozen years. The President reaffirmed this commitment in his December 18, 2010 letter to the majority and minority leaders. In that letter from the President has been circulated among my colleagues. It is very clear on where the President stands.

This NATO Summit meeting in Lisbon last month underscore, we are proceeding with a missile defense system in Europe designed to provide full coverage for NATO members on the continent, as well as for U.S. forces, against the growing threat posed by the proliferation of ballistic missiles. I know that some of my colleagues are concerned with issues related to the treaty, including modernization of our nuclear infrastructure, missile defense, and verification, and I will discuss each of these issues to explain why I believe they have been adequately addressed.

Still, as others have pointed out—and I reiterate—Senator Kyl has made a valiant effort to ensure we modernize the U.S. nuclear infrastructure. I have worked with Senator Kyl on reviewing the treaty. I believe his hard work has led to nuclear modernization receiving the attention it deserves. It is long overdue. I remember Pete Domenici talking about the fact that we needed to do something about it and, frankly, I ignored Sen-A.K. Domenici.

In a December 1, 2010, letter to Senators KERRY and LUGAR, the National Lab Directors from Lawrence Livermore, Los Alamos, and Sandia stated:

We are very pleased by the update to the Section 1251 report, as it would enable the laboratories to execute our requirements for measuring our national infrastructure, ensuring a safe, secure, reliable, and effective stockpile under the Stockpile Stewardship and Management Plan.

I ask unanimous consent to have that letter printed in the RECORD.

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

December 1, 2010.

Hon. John Kerry,
Hon. Richard Lugar,
Chairman and Ranking Member, Senate Committee on Foreign Relations, U.S. Senate, Washington, D.C.

Dear Chairman Kerry and Ranking Member Lugar: This is a joint response to the letter received November 30, 2010, by each of us in our current roles as directors of the three Department of Energy/National Nuclear Security Administration (NNSA) laboratories—Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Sandia National Laboratories.

We are very pleased by the update to the Section 1251 Report, as it would enable the laboratories to execute our requirements for ensuring a safe, secure, reliable and effective stockpile under the Stockpile Stewardship and Management Plan. In particular, we are pleased because it clearly responds to many of the concerns that we and others have brought to your attention in the Section 1251 Report update—for enhanced surveillance, pensions, facility construction, and Readiness in Technical Base and Facilities (ITBF) among other programs—by establishing a workable funding level for a balanced program that sustains the science, technology and engineering base. In summary, we believe that the proposed budgets provide support to sustain the safety, security, reliability and effectiveness of America’s nuclear deterrent within the limit of 1550 deployed strategic warheads established by the New START Treaty with adequate confidence and acceptable risk.
The President signed the treaty in April. It is now December, and we are coming up on 1 full year without any verification regime in place. I believe we should work to get this treaty done because these verification procedures are extremely important to all who believe this. I recently received a letter from Bulgaria’s Ambassador to the United States, Elena Poptodorova. I have known her a long time and worked with her to get Bulgaria into NATO. She wrote:

A failure to swiftly ratify the treaty would mean discontinuation of the verification regime that could result in negative consequences in the nuclear disarmament, especially taking into consideration the significant strategic nuclear advantage of Russia. In my view, it will also put at risk the future cooperation with Russia and will impede the negotiations on priorities, such as conventional forces and tactical nuclear weapons in Europe. In my view, it will also put at risk the future cooperation with Russia and will impede the negotiations on priorities, such as conventional forces and tactical nuclear weapons in Europe. It is of utmost importance that Russia be kept at the negotiating table beyond the scope of the New START Treaty, in particular on issues like Iran, Afghanistan and other global security challenges.

I ask unanimous consent that her letter be printed in the RECORD.

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


Dear Senator, I am writing to you on an urgent note regarding the pending ratification of the New START.

Firstly, I would like to reiterate the strong support of the Bulgarian government for the treaty. As you may know, already on the margins of the NATO Summit, the Bulgarian Foreign Minister Nickolay Mladenov, together with his colleagues from Denmark, Latvia, Lithuania, Hungary and Norway, explicitly pointed out that the treaty is in the interest of Europe and global security. I firmly believe that it is indeed key to the national security interest of each country as well as to the stability of the transatlantic alliance.

Secondly, Bulgaria shares the assessment that the treaty allows the United States to maintain a viable and robust nuclear deterrent and to keep modernizing its nuclear weapons complex. It is crucial that it does not put any constraints on the US missile defense programs and allows for the deployment of effective missile systems.

Furthermore, a failure to swiftly ratify the treaty would mean discontinuation of the verification regime that could result in negative consequences in the nuclear disarmament. Especially taking into consideration the significant strategic nuclear advantage of Russia. In my view, it will also put at risk the future cooperation with Russia and will impede the negotiations on priorities such as conventional forces and tactical nuclear weapons in Europe. It is of utmost importance that Russia be kept at the negotiating table beyond the scope of the New START. In particular on issues like Iran, Afghanistan and other global security challenges.

I strongly urge you, dear Senator, to consider the arguments and act in favor of a swift ratification of the New START. The new treaty is yet another step toward guarantees that the United States leadership is absolutely essential in this respect.

I trust I will be taken in good faith.

Yours sincerely,

Elena Poptodorova, Ambassador.

Mr. VOINOVICH. Mr. President, a number of experts I have consulted have pointed out—and I have agreed with—the need for the President to provide public assurances regarding the U.S. commitment to a robust missile defense system. So I was pleased with the President’s letter to our leadership reiterating such support. Here I quote directly from the President’s letter:

Pursuant to the National Missile Defense Act of 1999, it has long been the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the United States from single-missile attacks, including qualitative and quantitative improvements to such systems, some access to telemetry and onsite inspections—that will give us important insights into Russian strategic nuclear forces and how they operate those forces. We will understand Russian strategic nuclear forces much better with the treaty that would be the case without it.

These former military commanders go on to state that the U.S. nuclear armaments—again, I think this is for all of us as American people to realize—will continue to be a formidable force that will ensure deterrence, and give the President, should it be necessary, a broad range of military options.

I ask unanimous consent that letter sent to the Foreign Relations Committee be printed in the RECORD.

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

Dr. George Miller, Lawrence Livermore National Laboratory.

Dr. Michael Anastasio, Los Alamos National Laboratory.

Dr. Paul Hommert, Sandia National Laboratories.

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Furthermore, a failure to swiftly ratify the treaty would mean discontinuation of the verification regime that could result in negative consequences in the nuclear disarmament. Especially taking into consideration the significant strategic nuclear advantage of Russia. In my view, it will also put at risk the future cooperation with Russia and will impede the negotiations on priorities such as conventional forces and tactical nuclear weapons in Europe. It is of utmost importance that Russia be kept at the negotiating table beyond the scope of the New START. In particular on issues like Iran, Afghanistan and other global security challenges.

I strongly urge you, dear Senator, to consider the arguments and act in favor of a swift ratification of the New START. The new treaty is yet another step toward guarantees that the United States leadership is absolutely essential in this respect.

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Yours sincerely,

Elena Poptodorova, Ambassador.

Mr. VOINOVICH. Mr. President, I also bring to my colleagues’ attention a July 14, 2010, letter to Senators Levin, Kerry, McCain, and Lugar, from former commanders of the Strategic Air Command and U.S. Strategic Command. Again, I hope my colleagues will read that letter. They list three reasons for support of the treaty. I quote from their second and third reasons:

The New START Treaty contains verification and transparency measures—such as data exchanges, periodic data updates, notifications, unique identifiers on strategic systems, some access to telemetry and onsite inspections—that will give us important insights into Russian strategic nuclear forces and how they operate those forces. We will understand Russian strategic nuclear forces much better with the treaty than
would be the case without it. For example, the treaty permits on-site inspections that will allow us to observe and confirm the number of warheads on individual Russian missiles; we cannot do that with just national technical means of verification. That kind of transparency will contribute to a more stable relationship between our two countries. It will also give us greater predictability than strategic uncertainty, so that we can make better-informed decisions about how we shape and operate our own forces.

Third, although the New START Treaty will require U.S. reductions, we believe that the post-treaty force will still present a survivable, robust and effective deterrent, one fully capable of deterring attack on both the United States and America’s allies and partners. The Department of Defense has said that it will, under the treaty, maintain 14 Trident ballistic missile submarines, each equipped to carry 20 Trident D-5 submarine-launched ballistic missiles (SLBMs). As two of the 14 submarines are normally in long-term maintenance without missiles on board, the U.S. Navy will deploy 240 Trident SLBMs. Under the treaty’s terms, the United States will also be able to deploy up to 420 Minuteman III intercontinental ballistic missiles (ICBMs) and up to 60 heavy bombers equipped for nuclear armaments. That will continue to be a formidable force that will ensure deterrence and give the President, should it be necessary, a broad range of military options.

We understand that one major concern about the treaty is whether or not it will affect U.S. missile defense plans. The treaty provides for the interrelationship between offense and defense; this is a simple and long-accepted reality. The size of one side’s missile defenses can affect the strategic balance in a way that is not apparent to the other. But the treaty provides no meaningful constraint on U.S. missile defense plans. The prohibition on placing missile defense interceptors in ICBM or SLBM launchers does not constrain us from doing so in the future.

The New START Treaty will contribute to a more stable U.S.-Russian relationship. We strongly endorse its early ratification and entry into force.

Sincerely,

GENERAL LARRY WELCH, USAF, Ret.
GENERAL JOHN CHAIN, USAF, Ret.
GENERAL LEE BUTLER, USAF, Ret.
ADMIRAL HENRY CHILES, USN, Ret.
GENERAL EUGENE HARIGER, USAF, Ret.
ADMIRAL JAMES ELLIS, USN, Ret.
GENERAL BENNIE DAVIS, USAF, Ret.

Mr. VOINOVICH. Mr. President, I also ask unanimous consent to have printed in the Record a September 7, 2010, opinion piece from the Wall Street Journal by former Secretary of State George Shultz, who served under President Reagan. I think all of us who are familiar with George Shultz’s record have high respect and regard for him.

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

[From the Wall Street Journal, Sept. 7, 2010]

LEARNING FROM EXPERIENCE ON ARMS CONTROL

(By George P. Shultz)

The New START treaty provides an instructive example of how it works at it, an important element of arms control treaties can be improved by building on past treaties and their execution.

I remember well the treaty on Intermediate-Range Nuclear Forces (INF), as I had a hand in negotiating the treaty and in getting implementation started. Our mantra at that time was “Trust but verify." Ronald Reagan, to the point that Soviet leader Mikhail Gorbachev would join in: “ Trust but verify." When Reagan insisted on, and we obtained, on-site inspection of the critical elements in the treaty: the destruction of all missiles and a method of ensuring that new ones were not produced. This critical element in the treaty built on an earlier one. The Stockholm Agreement of 1986 was the first U.S.-Soviet agreement to call for on-site observation of military maneuvers. Although not as intrusive as a close look at nuclear facilities, it was, nevertheless, an important conceptual breakthrough. The result was a process of attribution derived from access to telemetry—that is, the data transmitted from flight tests of missiles. This allowed for a cap on the maximum number of warheads that could be delivered, which was the number attributed in Start.

Periodic on-site inspections of the missile sites were part of the INF Treaty, but the experience of both sides was that this process, conducted in a fragmented way, disrupted normal operations and so was unnecessarily burdensome. The Strategic Offensive Reduction Treaty (SORT), negotiated in 2002 under the George W. Bush administration, simply relied on the Start verification regime. In a joint declaration, President Bush and President Vladimir Putin agreed on the desirability of greater transparency, but they left it at that. Along came the New START treaty, signed by President Barack Obama and Russian President Dmitry Medvedev on April 8, 2010. People responsible for monitoring the original Start treaty were included in the negotiations, so operating experience was present at the table. The result was a further advancement, building on previous measures already in place under the Start treaty. On-site inspection now allows the total number of warheads on deployed missiles literally to be counted.

Thus, up-close observation is substituted for the telemetry that was essential in the original Start treaty. But some cooperation in shared telemetry was included in the New START treaty. This provides some additional transparency and can serve, over time, as a confidence-building measure. It is an example of how cooperation will occur so that the principle is retained.

The New START treaty, like others before it, was built on previous experience. And, like earlier treaties, it provides a building block for the future. As lower levels of warheads are negotiated, the importance of transparent verification increases and the precedent and experience derived from New START will ensure that a literal counting process will be required. The New START sets a precedent for the future in its provision for on-site observation of nondeployed nuclear systems—important since limits on non-deployed warheads will be lifted.

The problem of interruptions in operations posed by the original Start treaty and identified by the executors of the treaty on both sides was addressed in the treaty in a way that gives more information but is less disruptive. First of all, a running account in the form of regular data exchanges is provided every six months on a wide range of information about their strategic forces, and numerous inspection procedures have been consolidated.

The United States will have the right to select, for purposes of inspection, from all of Russia’s treaty-limited deployed and nondeployed delivery vehicles and launchers at the choice of 18 inspectors for the life of New START. It is also important that each deployed and nondeployed intercontinental ballistic missile and submarine-launched ballistic missile (SLBM) or heavy bomber will have assigned to it a unique code identifier that will be included in notifications any time that the treaty in force. The treaty establishes procedures to allow inspectors to confirm the unique identifier during the inspection process.

The notification of changes in weapon systems—for example, movement in and out of deployed status—will provide more information about the status of Russian strategic forces under this treaty than was available under Start. Information provided in notifications will complement and be checked by on-site inspection as well as by imagery from satellites and other assets which collectively make up each side’s national technical means of verification.

Having been involved in the Stockholm Treaty when a breakthrough in on-site inspection was made and when intrusive on-site inspection of key events was a major element of the INF Treaty, I believe that the New START treaty will continue to evolve, especially since the New START treaty includes some improved formulations that bode well for the future. Seeing is not believing, but it helps. Learning is not limited to what you get from experience, but it helps.

The original START treaty expired last December. The time has come to start seeing again, with penetrating eyes, and to start learning from the new experience.

Mr. VOINOVICH. In his piece, the Secretary discusses the importance of verification and closes with this thought:

The original START Treaty expired last December. The time has come to start seeing again, with penetrating eyes, and to start learning from the new experience.

In other words, that the provisions in terms of verification are new compared to the old START treaty.

Finally, I ask my colleagues to take note of Secretary Rice’s statement that “the treaty helpfully restates on-site verification of Russian nuclear forces, which laid the groundwork for the implementation of the original START treaty last year. Meaningful verification was a significant achievement of Presidents
Moscow contends that only current U.S. missile-defense plans are acceptable under the treaty. But the U.S. must remain fully free to explore and then deploy the best defenses—not just today. This includes pursuing both potential qualitative breakthroughs and quantitative increases.

I have personally witnessed Moscow’s tendency to interpret interference as a binding commitment. The Russians need to understand that the U.S. will use the full-range of American technology and talent to improve our ability to intercept and destroy the ballistic missiles of hostile countries. Russia should be reassured by the fact that its nuclear arsenals are sophisticated and large to be degraded by our missile defenses. In addition, the welcome agreements on missile-defense cooperation reached in Lisbon recently mean that the U.S. and Russia can improve transparency and allow Moscow and Washington to work together in this field. After all, a North Korean or Iranian missile is not a threat only to the United States, but to international stability broadly.

Ratification of the treaty also should not be sold as a way to buy Moscow’s cooperation on other issues. The men in the Kremlin know that loose nukes in the hands of terrorists—some who operate in Russia’s unstable and tumultuous south—also should give our governments a reason to work together beyond New Start and address the threat from tactical nuclear weapons, which would be harder to limit and therefore harder to monitor and control. Russia knows too that a nuclear Iran in the volatile Middle East or the further development of North Korea’s arsenal is not in its interest. Russia lives in those neighborhoods. That helps explain Moscow’s toughening stance toward Tehran and its longstanding concern about Pyongyang.

The issue before the Senate is the place of New Start in America’s future security. Nuclear weapons will be with us for a long time. After this treaty, our focus must be on stopping dangerous proliferators—not on further reductions in the U.S. and Russian strategic arsenals, which are really no threat to each other or to international stability.

A modern but smaller nuclear arsenal and increasingly sophisticated defenses are the right bases for U.S. nuclear security (and that of our allies) going forward. With the right commitments and understandings, ratification of the New Start treaty can contribute to this goal. If the Senate enters into those commitments and understandings into the record of ratification, New Start deserves bipartisan support, whether in the lame-duck session or next year.

Mr. VOINOVICH. Mr. President, in my opinion, the jury has returned its verdict, and the overwhelming evidence is that the Senate should ratify the treaty. Support for the treaty is widespread among the U.S. and our allies. It is evident to understand that nuclear proliferation is the greatest international threat to our children and grandchildren.

Mr. President, I urge my colleagues to support this treaty. I am prayerful that we may stand together to demonstrate that we have come together on a bipartisan basis to do something that needs to be done, and something that liberals, conservatives, Republicans and Democrats, can come together on to make a difference for the future.

I yield the floor.

The PRESIDENT. Mr. President, very shortly, the Senate will be voting on the continuing resolution that will fund the operations of our Federal Government through March—I think, if I am not mistaken, through March 4. I want to take this time to take a look at what happened recently with our appropriations bill, the so-called omnibus bill, that was defeated by our colleagues on the other side of the aisle.

Again, without getting into who caused what and did what to whom first, which is a game we play a lot around here, the fact remains that none of our appropriations bills were passed this year, even though our subcommittees and appropriations committees passed all of our bills. We passed them through the Appropriations Committee and brought them to the Senate for consideration, but they were not taken up on the floor. Again, we can go into all the reasons why yes, why no. But the bottom line is that there was no action, it was without action, that they weren’t; therefore, they weren’t passed.

At the end of the year, a week ago, Leader REID wanted to put together all the bills that have been passed out of conference with both Republican and Democratic support. Of the 13 bills—and I could be a little mistaken—only 1 or 2 had any minor changes or votes against them in committee. They were almost all unanimous by Republicans and Democrats.

So to keep the government going, we had this omnibus—in other words, putting all the bills together in one package and passing that. My friends objected to that. Because that was objectionable, we now or having a continuing resolution to continue the funding from last year on into fiscal year 2011 until March.

When the Republicans killed this Omnibus appropriations bill last week, certain things happened. For example, they chose to close Head Start classrooms that serve 65,000 low-income children. By killing the omnibus, my friends on the other side of the aisle decided to cut childcare subsidies for low-income working families. They rejected the opportunity to provide lifesaving drugs to people living with AIDS, who are on waiting lists for lifesaving medication. They passed on the chance to provide 4 million more meals to seniors in need.

All of these programs would have received badly needed increases in the appropriations bill, but my friends on the other side of the aisle said no. They insisted on just keeping the present funding until March.

Here is another result of killing the omnibus: Millions of American students who receive Pell grants—low-income students—to go to college no...
longer know if they will be able to afford college next year.

We cannot let that happen. The continuing resolution we will vote for in a few minutes includes a provision that would close the so-called Pell grant shortfall and ensure there is no cut to the Pell grants to our poor students.

The Pell Grant Program is the backbone of our nation's financial aid system. More than 9 million low-income students and middle-income students use these grants toward a postsecondary education or vocational training.

People might say: Why has the Pell grant grown so much over the last few months? When the economy is bad, more people tend to go to college and more people in lower income brackets tend to go to college and try to better themselves. That means the cost of providing Pell grants goes up, even when the maximum Pell grant award a person can receive stays the same.

Right now, the maximum Pell grant award is $5,550 a year. Nearly 90 percent of the students who receive that level come from families whose annual income is less than $40,000 for a family of four. Without Pell, most of them would have no chance of receiving a postsecondary education. This is truly a program for low-income students and families seeking to better themselves.

The omnibus bill that was killed last week would have provided the additional funding to close that shortfall, to keep the maximum grant at $5,550. That was $5.7 billion. Again, that money did not just fall from the sky. Other programs across the Federal Government were cut to offset that spending. We appropriators decided that maintaining Pell was so important that it was worth reducing or eliminating other programs, which we did.

When my friends on the other side killed the omnibus, they put the Pell Grant Program in jeopardy and endangered the future of millions of our most disadvantaged students. According to the recent estimates from OMB, if we do not close the Pell shortfall before February, the maximum award will drop by $1,840, and the Pell grants of all those students with a family income of less than $40,000 will fall by 33 percent—from $5,550 to $3,710 next school year. An estimated 350,000 students who currently receive Pell grants would get nothing, zero. Their entire grant would be cut off. Why do I say that? Because if the award drops by $1,840, if your Pell grant was $1,800, you get nothing. So 350,000 students will get no Pell grants whatsoever. That is the situation facing students all over the country today.

We are 4 days away from Christmas. More than 9 million students who depend on Pell grants do not know if their financial aid will be drastically cut or if they will get any financial aid at all. Hopefully, in about 10 minutes, we are going to change that because I am hopeful we will all join together today in supporting this continuing resolution because as a part of the continuing resolution, we close that Pell grant shortfall so we can undo or redo what was undone by not taking up the omnibus bill.

We can keep the government running, but we can also make this fix. It is so important to do that now because of certain rules and regulations that go into effect after the first of the year that will drastically impinge on the Pell Grant Program unless we take this action today.

I hope all Republicans and Democrats will join in supporting the continuing resolution and so do more than 9 million American students who depend on Pell grants for their college education.

Again, I point out that other appropriations will not be settled even if we pass the continuing resolution today. Those actions are kicked down the street until March 4 when the continuing resolution expires.

We are going to face a tough situation on March 4. My friends on the other side of the aisle have said that their plan is to cut nonsecurity-related appropriations, to cut everything except defense, homeland security, military construction, and VA by $100 billion. When you exclude all that and you want to cut $100 billion, that is a 21-percent cut from everything else.

Do Republicans really want to cut 21 percent from childcare subsidies for working families in this economy—a 21-percent cut? Do you really want to cut 21 percent from job training programs in this economy? Do you really want to cut 21 percent from programs that educate disadvantaged children, title I programs, in this economy? Do our friends on the other side of the aisle want to cut 21 percent from the AIDS drug assistance program? Do you want to cut 21 percent from senior and meals programs? Do we want to cut 21 percent from the Social Security Administration in this economy?

That is what is coming down the pike on March 4. We kick the ball down the field a little bit, but on March 4, the battle will be joined again.

If my friends on the other side of the aisle try to decimate these programs that are so critical to the well-being of so many families in this country—children, working parents who need childcare, the elderly who rely on a lot of these meals—I had it happen in my own family. Meals on Wheels keeps people from going to the hospital, lets them stay at home and get a decent diet, senior meals programs; job training programs so people can train for new jobs—all part of getting our country back up again. If they are going to cut 21 percent from all this, I want to say there is going to be a battle. We are not going to sit back and let these programs be decimated, these programs that mean so much to so many families.

In the meantime, we have to keep the government running, and that is what the continuing resolution is all about. As I said, what is so important is to make sure the Pell grant shortfall is closed, which it is on this continuing resolution.

I urge all my colleagues to support the continuing resolution and hopefully when March 4 comes, again we can agree on a bipartisan basis not to decimate so many programs that help so many people in our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

NOMINATION OF BENITA Y. PEARSON

Mr. COBURN. Mr. President, I ask unanimous consent to have printed in the RECORD two letters that have been received by the Senate in regard to the nomination of Judge Benita Pearson—one from the National Cattlemen's Beef Association; the other from the Farm Animal Welfare Coalition.

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

NATIONAL CATTLEMEN'S BEEF ASSOCIATION


Hon. HARRY REID, Senate Majority Leader, Capitol Building, Washington, DC.

Hon. MITCH MCCONNELL, Senate Republican Leader, Capitol Building, Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL:
The National Cattlemen's Beef Association (NCBA) opposes the nomination of Judge Benita Pearson to the United States District Court for the Northern District of Ohio. After reviewing the evidence she gave to the Senate Judiciary Committee earlier this year, we believe that Judge Pearson's connections to the Animal Legal Defense Fund (ALDF) would make it hard for her to be an impartial judge in cases regarding actions by animal activists. ALDF is an activist organization involved in numerous federal lawsuits and advocates giving animals the same legal rights as humans.

NCBA expects the Senate to confirm judges who can hear cases and make decisions based on facts and law, rather than judges with strong biases that could lead to legislating from the bench. While we continue to discover more about Judge Pearson's animal activist work, we think her connection to ALDF alone is enough to block her nomination in order for Senators to do more research into her background and character.

NCBA is the nation's oldest and largest national trade association representing U.S. cattle producers with more than 140,000 direct and affiliated members. On behalf of our producers, we urge you to oppose the nomination of Judge Benita Y. Pearson to the United States District Court for the Northern District of Ohio.

Sincerely,

STEVE FOGLESONG,
President.
Ms. Pearson stated she does not use the term "animal rights" and is "not an advocate for animal rights" but "an advocate for doing what is in the best interest of animals." She cannot explain on what sources of information she relies when determining what is "the best interest of animals," but simply her belief the law "is intended to advance the best interest of animals and humans."

While it is not a judge's role to legislate from the bench—and we are gratified Ms. Pearson appears to concur—judicial decisions set precedent and can precipitate legislation and regulations. It is unsettling that in Ms. Pearson's written responses to direct questions by Senate Judiciary Committee members Sens. Charles Grassley, Jeff Sessions and Tom Coburn, she simply restates existing law as relates to animal rights, animal standing, etc. Hence, we do not get a clear picture of her views regarding animal rights and legal standing.

We would welcome a meeting with Ms. Pearson to discuss these concerns. Thank you for consideration of our views. Please feel free to contact any of the organizations listed on this letter or FAWC's coordinator, Steve Kopperud, at 202-776-0071 or skopperud@poldir.com.

Mr. COBRUN. Mr. President, I wish to spend a short time addressing the remarks of my friend from Iowa.

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

Mr. COBRUN. Mr. President, the situation we find ourselves in is that no appropriations bills came to the floor. We did not control that. If that had been under Senate control you then would have come to the floor—and they should. No matter who is in charge, they should come. I think he agrees with that. But I will address the greater issue we have in front of us.

Our Nation has a very short time with which to reassess and reprioritize what is important in our fiscal matters. That period of time, I believe, is shorter than many of my colleagues believe. But I have not been wrong in the past 6 years as to where we are coming.

I have been saying it for 6 years. We are now there.

The fact is everything is going to have to be looked at—everything every project, for every Senator, every position, every program—if we are to solve the major problems that are facing this country.

We all want to help everybody we can, but the one thing that has to be borne in mind as we try to help within the framework of our supposed limited powers is that we are for the country. The things that are coming upon us in the very near future will limit our ability to act if we do not act first.

I take to heart my colleague's very real concern for those who are disadvantaged in our country. It is genuine. It is real. We are going to have a choice to help them or we are going to have a choice to make a whole lot more people disadvantaged. What we have to do is try to figure out how compassion we can carry with us and still have a country left. That is the question that is going to come before us.

I have no doubt we will have great discussions over the next few years on what those priorities are. But we cannot wait to make those priorities. We are going to have to squeeze wasteful spending from the Pentagon. We have no choice. We have to do this with which to make the hard choices in front of us. And it does not matter what happened in the past. What is going to matter is what happens in the future and whether we have the courage to meet the test that is getting ready to face this country.

There is a lot of bipartisan work going on right now behind the scenes in the Senate planning for next year to address those issues.

I say to my colleague from Iowa, the way to have the greatest impact on that issue is to join with us to, No. 1, agree with the severity of the problem and the urgency of the problem, and then let's build a framework on how we solve it. Knowing everybody is going to get what they want.

RUSSELL FEINGOLD

Mr. President, I wish to take 2 more minutes to pay a compliment to one of my colleagues.

When I came to the Senate, I visited almost every Member of the Senate on the other side of the aisle. I had a wonderful visit with the Senator from Wisconsin. We actually—although we are totally opposite in our philosophical leanings—had a wonderful time visiting together.

Senator Feingold is my idea of a great Senator. I want to tell you why.

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Senator Feingold is my idea of a great Senator. I want to tell you why.
Mr. LEVIN. Mr. President, I support the continuing resolution. One of the many reasons is that the Navy’s urgent request for authority for the littoral combat ship, (LCS)—program is included.

The original LCS acquisition plan in 2005 would have had the Navy buying both types of LCS vessels for some time while the Navy evaluated the capabilities of each vessel. At some time in the future, the Navy would have had the option to down select to building one type of vessel. But in any case, the Navy would have been operating some number of each type of LCS vessel in the fleet, which means that the Navy would have been dealing with two shipyards, two supply chains, two training pipelines, etc. Last year, after the bids came in too high, the Navy decided upon a winner-take-all acquisition strategy to procure the fiscal year 2010 vessels under a fixed-price contract, with fixed-price options for two ships per year. The revised strategy included obtaining the data rights for the winning ship design and competing for a second source for the winning design starting in fiscal year 2012. Again, the Navy made this course correction because the Navy leadership determined that the original acquisition strategy was unaffordable.

Earlier this year, the Navy released the solicitation under that revised strategy and has been in discussion with the contractor teams and evaluating those proposals since that time. The bids came in, the competition worked, and the prices were lower than the Navy had expected. Both teams have made offers that are much more attractive than had been expected, and both are priced well below the original, noncompetitive offers.

The Navy has now requested that we approve a different LCS acquisition strategy, taking advantage of the low bids received from the industry. This strategy is strong. The Armed Services Committee held a hearing on the subject of the change in the Navy’s acquisition strategy. We heard testimony from the Navy that, after having reviewed the proposals from both LCS contractors, the Navy determined that the original acquisition strategy was unaffordable.

The Navy testified that continuing the winner-take-all down select would save roughly $1.9 billion, compared with what had been budgeted for the LCS program in the Future Years Defense Program, or FYDP.

The Navy further testified that revising the acquisition strategy to accept the offers from both LCS contractor teams, rather than down selecting to one design and starting a second source building the winning design, would save $2.9 billion, or $1 billion more than the program of record, and would allow the Navy to purchase an additional LCS vessel during the same period of the FYDP—20 ships rather than 19 ships.

The Navy also testified that additional operation and support costs for maintaining two separate designs in the fleet for their service life over 40 to 50 years, using net present value calculations, would be much less than the additional saving that could be achieved through buying both the ships during the FYDP period—approximately $250 million—. Operation and support costs during the construction and ship building. In the past, when there were problems with developing the right combat capability on a ship, this almost inevitably caused problems in the construction program. In the case of the LCS, the combat capability largely resides in the mission packages that connect to either LCS vessel through defined interfaces. What that means is that changes inside the mission packages should not translate into changes during the ship construction schedule—and, they are interchangeable. And whatever is happening in the mission package development program would apply equally to either the down select strategy or the dual source strategy.

In terms of the proposal’s effects on the industrial base and on competition, I believe that there would be a net positive. The Navy would have the opportunity to continue to compete the design of the combat ship, (LCS),—program is in.

Some have raised the possibility that this change in the continuing resolution could cause problems in the shipbuilding program and lead to unexpected cost growth, and thereby fail to achieve the extra savings the Navy is projecting. In some other shipbuilding programs that might be a concern, but I believe that the Navy’s fundamental architecture of the LCS program divorces changes in the mission package changes that perturb the ship design and ship construction. In the past, when there were problems with developing the right combat capability on a ship, this almost inevitably caused problems in the construction program. In the case of the LCS, the combat capability largely resides in the mission packages that connect to either LCS vessel through defined interfaces. What that means is that changes inside the mission packages should not translate into changes during the ship construction schedule—and, they are interchangeable. And whatever is happening in the mission package development program would apply equally to either the down select strategy or the dual source strategy.

In terms of the proposal’s effects on the industrial base and on competition, I believe that there would be a net positive. The Navy would have the opportunity to continue to compete the design of the combat ship, (LCS),—program is in.
 provision in the continuing resolution, CR. That provision—which, according to the Congressional Budget Office, CBO, and the Congressional Research Service, CRS, could cost taxpayers as much as $2.9 billion more than the current acquisition strategy—simply does not reflect the CR. But once again we are looking at a cloture vote on a piece of “must-pass” legislation where the majority leader has filled the amendment tree and no amendments will be allowed.

The crunch is that all of the deficiencies affecting LCS’ lead ships have not been identified and fully resolved and “has the combined capability of the LCS seaframes and mission modules been sufficiently demonstrated so that increasing the Navy’s commitment to seaframes at this time would be appropriate?” Those questions, and others, that GAO, CRS and CBO raised last week, are salient and should be answered definitively before we approve of the Navy’s proposal. Every one of those questions conceded that more time would help Congress get those answers.

The continuing resolution provision is about 40 percent complete; “New LCS 3” in 2010 is about 80 percent complete; “New LCS 7th LCS” funded in 2008—Canceled by Navy in Nov 2007, because of cost and schedule growth; “New LCS 8th LCS” funded in 2009—Cancelled by Navy in Mar 2007, because of cost and schedule growth; “New LCS 6th LCS” funded in 2007—Canceled by Navy in Sep 2008, because projected costs too high; “New LCS 5th LCS” funded in 2006—Canceled by Navy in Dec 2010 is about 80 percent complete; “New LCS 4.”

When the Navy first made its proposal to Congress just over 6 weeks ago, it failed to provide Congress with basic information we need to decide whether it should approve the Navy’s request—money for the actual bid prices, which would tell us how realistic and sustainable they are, and specific information about how capable each of the yards are of delivering the ships as needed, on time and on budget. Why don’t we have that information? Because it’s sensitive to the going competition.

Last week, in testimony before the Senate Armed Services Committee, the General Accountability Office, GAO, the Congressional Research Service, CRS, and the Congressional Budget Office, CBO, raised important questions that Congress should have answers to before it considers approving the proposal.

Those questions included not only “how much more (or less) would it cost for the Navy to buy LCS ships under its proposal?” but also “how much would the cost be to operate and maintain two versions of LCS, under the proposal?” The CBO also asked “how confident can we be that the Navy will be able to stay within budgeted limits and deliver promised capability on schedule—given that all of the deficiencies affecting LCS’ lead ships have not been identified and fully resolved and “has the combined capability of the LCS seaframes and mission modules been sufficiently demonstrated so that increasing the Navy’s commitment to seaframes at this time would be appropriate?”

Those questions, and others, that GAO, CRS and CBO raised last week, are salient and should be answered definitively before we approve of the Navy’s proposal. Every one of those questions conceded that more time would help Congress get those answers. And, considering this provision in connection with a Continuing Resolution, brought up at the 11th hour; during a lame-duck session; outside of the congressional budget-review period; and without specific information or the opportunity for full and open debate by all interested Members, does not give us that time. Buying into this process would be an abrogation of our constitutional oversight responsibility.

From 2005 to 2010, we have sunk $8 billion into the LCS program. And, what do we have to show for it? Only two boats commissioned and one boat christened—one of which have been shown to be operationally effective or reliable—and a trail of blown cost-caps and schedule slips. I suggest that, having made key decisions on the program hastily and ill-informed, we in Congress are partly to blame for that record. But, with the cost of the program now believed to be about $11 billion, we can start to fix that—by not including this ill-advised provision in the CR.

I ask unanimous consent that my December 10, 2010, letter to the chairman and ranking member of the Appropriations Committee, asking them not to include the LCS provision in any funding measure, a letter from the Project on Government Oversight to Senator Levin and me, and the exchange of letters between me and the Chief of Naval Operations, CNO, be printed in today’s RECORD.

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

CHIEF OF NAVAL OPERATIONS, NAVY PENTAGON, WASHINGTON, DC, November 22, 2010.

Hon. JOHN S. MCCAIN, Ranking Member, Committee on Armed Services, U.S. Senate, Washingon, DC.

DEAR SENATOR MCCAIN: Thank you for affording me the opportunity to discuss the Littoral Combat Ship (LCS) program. This program is vital to the force structure of the United States Navy, and I am committed to its success. The Navy tackled aggressively and overcame the program’s past cost and schedule challenges, encouraging affordability of this new critical warfighting capability.

The Department has taken action on all four of the recommendations of the August 2010 General Accountability Office (GAO) LCS report. The Navy has been operating both LCS designs and has begun sharing data. There are mechanisms in place to ensure design corrections identified in building and testing the first four ships are incorporated in the operating ships, ships under construction, and ships yet to be awarded.

The Navy will update the Test and Evaluation Master Plan (TEMP) for LCS in 2010 to reflect the Program of Record following the Milestone B (MS B) decision. The Navy will seek to authorize a down-select to a ten-boat buy and evaluate and produce LCS seaframes and mission modules following the MS B decision.

The Navy has completed a robust independent cost analysis of the LCS lifecycle using estimating best practices and submitted this estimate to the Office of the Secretary of Defense (OSD) for comparison with the Low-Cost Assessment and Program Evaluation (CAPE) group independent estimate. These recommendations and the Department’s responses apply to both the down-select or the dual block-buy approach and the Department’s concurrence and related actions with the recommendations (included in Appendix III of the August GAO report) will not change in either case.

As you know, Navy has taken delivery of the first two ships and the third and fourth ships are under construction. The performance of the USS FREEDOM (LCS 1) and USS INDEPENDENCE (LCS 2) and their crews are extraordinary and affirm the need and urgent need for these ships. For the Fiscal Years (Fy’s) 2010-2014 ships, Navy has been pursuing the conceptually authorized dual block-buy approach for the continued commissioning of four LCS that Navy can deliver within the FY’s 2010-2015 (with fixed-price type contracts, competitive and incentivizing both the government and the shipbuilder to aggressively pursue further efficiencies and tightly suppress any appetite for change. Navy will routinely report on the program’s progress and control over future ship awards through the annual budget process.

The agility, innovation and willingness to seize opportunities displayed in this LCS competition reflect exactly the improvements to the way we do business that the Department requires in order to deliver better value to the taxpayer and greater capability to the warfighter.

I greatly appreciate your support for the LCS Program. As always, if I can be of further assistance, please let me know.

Sincerely,

G. ROUGHEAD, Admiral, U.S. Navy.

PROJECT ON GOVERNMENT OVERSIGHT, Senator Armed Services Committee, Senate Russell Office Building, Washington, DC.

DEAR CHAIRMAN LEVIN AND RANKING MEMBER McCAIN, The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that champions good government reforms. POGO’s investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable,
open, and ethical federal government. We are troubled by a rushed proposal to change the Navy Littoral Combat Ship (LCS) sea frame acquisition strategy.

The challenge facing Congress of its proposal to change its acquisition strategy for LCS on November 3, 2010. The proposed strategy, under which the Navy intends to buy up to 20 sea frame ships, represents a substantial change from the current strategy. Currently, the Navy's strategy is to "down select" (i.e., choose a winner) to one yard before awarding a contract and hold another competition later to build a total of 19 ships—only 10 of which are now authorized under law. To implement the new strategy, Congress must provide funding for the Navy to acquire sea frames for LCS ships and wants Congress to do so by mid-December.

Congress should require that the Navy give it more time to get answers to the serious questions raised by, among others, the Congressional Research Service (CRS) in its November 29, 2010, report (attached) and the Government Accountability Office (GAO) in reports issued in August and December 2010. As CRS asked:

"Does the timing of the Navy's proposal provide Congress with enough time to adequately assess the relative merits of the down select strategy and the dual-award strategy? Does the Navy ask the two contractor teams to extend their bid prices for another, say, 30 or 60 or 90 days beyond December 14, so as to provide more time for congressional review of the Navy's proposal?" Congress needs time to consider whether the Navy's new plan is fiscally responsible or whether it increases costs that already exist in the program. Congress should require that the Navy ask the two contractor teams to extend their bid prices up to 90 days beyond December 14. The two contractor teams are led by, respectively, Lockheed Martin and Austal USA.

The Navy's justification for its new strategy is the purportedly low prices that both bidders have submitted in the current competition. But it is not clear if these low bids are reasonable. The use of fixed-price contracts won't necessarily prevent an underperforming shipyard from simply rolling its losses into its prices for follow-on ships. There can be no doubt that the LCS program has a significant cost problem. For example, the sea frames were originally intended to cost about $220 million each. But the ones built and under construction have ballooned to about $600 million each. Without any real data indicating that the program is likely to perform adequately in the future (the Navy has failed to meaningfully implement many of GAO's recommendations in its August report), the Navy wants Congress's help to lock the program into 20 ships over the next five years. The Navy has not demonstrated the combined capabilities of the LCS sea frame(s) with its mission packages. It's important to bear in mind that the LCS sea frame is inherently a "truck." The LCS's combat effectiveness derives from its modular "plug-and-play" mission packages (e.g., anti-submarine, mine-countermeasures, and surface warfare). The LCS program has been struggling with developmental challenges with these mission packages that have led to postponed testing. As the GAO states, "Until mission packages are proven, the Navy risks investing in a fleet of ships that does not deliver promised capability." Without effective mission packages, the LCS program is likely constrained to self-defense as opposed to mission-related tasks.

Furthermore, it is likely that other shipyards could provide as capable ships as LCS sea frames as the two that would be awarded contracts under the dual-award strategy. Some, including CRS, have asked whether other shipyards will be frozen out of the LCS program—even after the first 20 ships have been built. For that reason, we believe that the Navy's proposal Congress should carefully evaluate whether it may in fact stifle, rather than encourage, competition throughout the program. This is a clear departure from the recently enacted weapons systems acquisition reform law.

This is not the first time the Navy has given Congress insufficient time to evaluate its LCS acquisition strategy. The last time the Navy asked Congress to approve its LCS acquisition strategy was in 2002. The Navy gave "little or no opportunity for formal congressional review and consideration" of the Navy's acquisition strategy, according to CRS. This is deja vu all over again. The taxpayers deserve the careful consideration of Congress.

In sum, Congress should not approve the Navy's acquisition strategy without a clear picture of the likely costs and risks. Furthermore, Congress should not allow the Navy to go forward with its acquisition strategy. We appreciate your review of this letter and your time, and look forward to working with you on the Littoral Combat Ship Program. If you have any questions, please do not hesitate to contact Nick Schwellenbach.

Sincerely,

DANIELLE BRIAN, Executive Director.

U.S. Senate,
Committee on Armed Services,

HON. DANIEL INOUYE,
Chairman, Senate Committee on Appropriations,
Washington, DC.

Hon. THOMAS D. DAVIS III,
Vice Chairman, Senate Committee on Appropriations,
Washington, DC.

Dear Chairman Inouye and Vice Chairman Cochran:
The House-based Full-Year Continuing Appropriations Act, 2011 (H.R. 3082) contains a provision that would authorize the Department of the Navy to acquire 20 Littoral Combat Ships (LCS) in lieu of the 10 that were authorized under the National Defense Authorization Act, 2010. As you finalize consideration of the bill, you wanted me to express my opposition to including this provision in the Omnibus Appropriations Bill or any other stop-gap funding measure that you may be considering.

As you know, the Navy first conveyed to the Senate its proposal that gave rise to this provision just a few weeks ago, and the competition for the LCS ship construction contract is still open. As such, not only has the Senate been given an unusually short time to review such an important proposal but the provision has been inserted without any data (on cost and capability, for example) it needs to consider the proposal carefully because they remain source-selection sensitive. Moreover, the Navy has provided the full text of the proposal released by the General Accountability Office (GAO) and the Congressional Research Service (CRS) just yesterday raise a number of salient concerns about it. In the aggregate, those concerns indicate the proposal needs more careful and open deliberation than was allowed by excluding it in the late cycle Omnibus or continuing resolution.

In particular, the GAO identified a full range of uncertainties (relating to, for example, mission capabilities and support costs, mission-package development) that would determine whether the proposal will realize estimated savings—savings that, in the opinion of the Congressional Budget Office (CBO) suggests that the Navy may have overstated. GAO also negatively assessed the Navy's implementation of some of the recommendations it made in its August 2010 report—recommendations with which the Department has not concurred. GAO observed that "decisionmakers do not have a clear picture of the various options available to them related to choosing between the down-select and dual award strategies."

Similarly posing a number of important questions on, for example, the potential relative costs and risks of the two strategies, the proposal's impact on the industrial base, and its effect on competition) in its recent review of the proposal, CRS too noted that strategy alternatives to the third quarter (when it presented Congress with a difficult choice about how to buy LCS ships late in Congress' budgetary process cycle—all budget hearings and often after needed bills have been written. Given the foregoing, without the basic information and the time necessary for the Senate to discharge its oversight responsibilities with respect to the Navy's proposal responsibly and transparently, I oppose including this provision in the any funding measure that you may be considering.

Thank you for your consideration.

Sincerely,

JOHN MCCAIN, Ranking Member.

U.S. Senate,
Committee on Armed Services,

Admiral GARY ROUGHEAD, USN,
Chief of Naval Operations,
Navy Pentagon, Washington, D.C.

About a month ago, the Navy first proposed that Congress let it fundamentally change how it buys Seaframes under the Littoral Combat Ships (LCS) program—a program that has had serious difficulty on cost, schedule and performance.

However, in August 2010 and again just today, the General Accountability Office (GAO) issued a report raising serious concerns about the program. In today's report, GAO also conveyed critical concerns about the Navy's implementation of its recommendations.

When you and I met, on November 18, 2010, I asked that you describe how the Navy has implemented GAO's recommendations. In that regard, your letter of November 22, 2010, was unhelpful. Not only did it cite what the Navy will do to implement GAO's recommendations as examples of action it had already taken, most of the action items it described didn't even correspond to GAO's actual recommendations. Indeed, the whole thrust of the Navy's proposal appears basically inconsistent with the recommendation that the Navy not buy excess quantities of LCS. Moreover, the lack of full and open debate and its effect on competition) in its recent review of the proposal, CRS too noted that strategy alternatives to the third quarter (when it presented Congress with a difficult choice about how to buy LCS ships late in Congress' budgetary process cycle—all budget hearings and often after needed bills have been written. Given the foregoing, without the basic information and the time necessary for the Senate to discharge its oversight responsibilities with respect to the Navy's proposal responsibly and transparently, I oppose including this provision in the any funding measure that you may be considering.

Thank you for your consideration.

Sincerely,

DANIELLE BRIAN, Executive Director.

U.S. Senate,
Committee on Armed Services,
by all interested Members; and without full information. I respectfully suggest that neither this program nor the Navy’s shipbuilding enterprise have been served well by Congress’ making decisions in this way in the past. I, therefore, respectfully ask that this process not be repeated.

Thank you for your visit. I look forward to continuing to work with you in support of our sailors.

Sincerely,

JOHN MCCAIN,  
Ranking Member.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC; December 10, 2010.

Hon. John McCain,  
Ranking Member, Committee on Armed Services, U.S. Senate, Washington, DC.

Dear Senator: As you know, the Navy is planning to acquire a fleet of 55 littoral combat ships (LCSs), which are designed to counter submarines, mines, and small surface craft in the world’s coastal regions. Two of those ships have already been built, one each of two second-generation LCS designs: a monohull built jointly by Lockheed Martin and Marinette Marine in Wisconsin and an all-aluminum trimaran built by Austal in Alabama. A total of 19 ships (one of each type) under construction. The remaining 51 ships would be purchased from 2010 through 2031. In response to your request, the Congressional Budget Office (CBO) analyzed the cost implications of the Navy’s existing plan for acquiring new LCSs and a new plan that it is currently proposing:

Existing “Down-Select” Plan: In September 2009, the Navy asked the two builders to submit fixed-price-plus-incentive bids to build 10 ships, 2 per year from 2010 to 2014, beginning with funds appropriated for 2010. The Navy planned to award the two versions of the LCS, awarding a contract for those 10 ships to the winning bidder, and then, through another competition, to introduce a second yard to build 5 more ships of that same design from 2012 to 2014. In 2015, the Navy would purchase 4 more ships; the acquisition strategy for those vessels has not been specified. A total of 19 ships of the design would be purchased by 2015 (see Table 1). Any shipyard could bid in that second competition except the winner of the contract for the first 10 ships.

CBO’s analysis suggests the following conclusions:

Table 1—LCS Procurement Under Different Acquisition Plans, 2010 to 2015

<table>
<thead>
<tr>
<th>(Number of ships procured)</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Down-Select Plan</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Winner Austal</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Second Builder Austal</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>Lockheed Martin/Marinette</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marine</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>30</td>
</tr>
</tbody>
</table>

by all interested Members; and without full information. I respectfully suggest that nei...
have access to that information. Thus, CBO’s estimates do not incorporate any benefits of competition that may have arisen as a result of the Navy’s existing down-select acquisition strategy—benefits the Navy argues would be locked in by the fixed-price-plus-incentive contracts.

CBO estimates that the down-select plan would cost the Navy about $580 million per ship—compared with an estimated cost of $591 million per ship under the dual-award plan (see Table 2). Contributing to that difference is a lower efficiency that would result from having two yards produce one ship per year in 2010 and 2011, rather than having one yard produce two ships per year. Given the uncertainties that surround such estimates, that difference, of less than 2 percent, is not significant.

CBO’s estimates of the cost for the down-select and dual-award strategies are higher than the Navy’s, by $50 million and $2.0 billion, respectively, because the contractors’ prices are apparently much lower than the amounts CBO’s cost-estimating model would have predicted and the research that the Navy predicted in its 2011 budget. (CBO’s model is based on well-established cost-estimating relationships, and it incorporates the Navy’s experience with the first four LCSs.) For example, the Navy’s estimate of the average cost for one ship in each of the two yards in 2010 and 2011 is lower than CBO’s estimate of what the average cost would be to build (presumably, more efficiently) two ships in one yard. And those lower costs carry through to the years when each yard would be building two ships per year. In addition, again according to the Navy, the contractors were willing to accept a change in the number of ships purchased per year in 2010 and 2011 without increasing the total cost of the ships. The Naval Sea Systems Command, who oversaw the program, achieved a substantial savings in the cost of materials because, under the block buy, the Navy would be committing to purchase 10 ships from one or both shipyards. With the dual-award strategy, the Navy is attempting to capture the lower prices offered by both builders for 20 ships, rather than just for 10 ships under the down-select strategy.

With the Navy in possession of contract bids, it is not clear that CBO’s cost-estimating model reflects a better price for the LCS costs through 2015 than the Navy’s estimates. Still, the savings compared with the Navy’s estimates are not likely to be realized if the Navy changes the number of ships that are purchased after the contract has been let or makes design changes to address technical problems, regardless of which acquisition strategy the Navy pursues. Inflation or other escalation clauses in the contract could also add to costs.

Although CBO estimates that the dual-award plan would be slightly more costly, that approach might also provide some benefits. In materials delivered to the Congress about the down-select plan, the Navy stated, “There are numerous benefits to this approach including stabilizing the LCS program and the industrial base with award of 20 ships; increasing efficiency, and more robust training infrastructure; and reducing the likelihood of significant delays in the LCS program.”

CBO did not evaluate those potential benefits.

IMPLICATIONS OF THE TWO ACQUISITION PLANS FOR COSTS BEYOND 2015

A Navy decision to buy both types of ships through 2015 would have cost implications beyond 2015. But whether those long-term costs will be higher or lower would depend on at least three aspects of the Navy’s decision:

Which of the two ship designs the Navy would select (or whether it kept to its original down-select plan);

Whether the Navy will buy one or both types of ships after 2015; and

Whether the Navy decides eventually to develop a common combat system for both types of ships or to keep the two combat systems (one for each type of ship) that it would purchase under the dual-award approach.

CBO cannot estimate those costs beyond 2015 because it does not know what the Navy is likely to do with those ships. For example, if the Navy pursued its original down-select strategy and chose the ship with lower total ownership costs (the costs of purchasing and operating the ships), switching to the dual-award strategy would increase the overall cost of the program because the Navy would then be buying at least 10 more ships that have higher total ownership costs. Conversely, if the Navy were to choose the ship with higher total ownership costs under the down-select strategy, the dual-award strategy might produce an overall savings. However, some of those savings would be offset by the extra overhead costs of employing a second shipyard and by other types of additional costs described below. Added costs would also arise if the Navy selected the dual-award strategy through 2015 and then decided to build both types of ships after 2015 to complete the 55-ship fleet rather than selecting only one type, in keeping with its current plans.

The dual-award strategy might entail higher costs to support full training and maintenance programs for the two ship designs. Under the down-select strategy, the Navy would need training, maintenance, and support facilities to support a fleet of 35 LCSs of the winning design. Facilities would be required for both the Pacific Fleet and the Atlantic Fleet—essentially one on each coast of the continental United States. A more modest set of facilities would be required to support the two ships of the losing LCS design, which the Navy could presumably centralize.

Under a dual-award strategy, the Navy would buy at least 12 ships of each type, with an additional 31 ships of either or both designs purchased after 2015. To ensure the new ship is more robust training, maintenance, and support program would be required for the version of the LCS that would have lost under the down-select strategy. The Navy has said that those costs are relatively small and more offset by the savings generated by the shipyards’ bids, but CBO did not have the data to independently estimate those additional costs.

Finally, another, potentially large, cost would hinge on whether the Navy decides in 2016 or later to select a common combat system for both LCSs to replace the two versions of the ship use different combat systems. If the Navy decided to have both versions of the LCS operate with the same combat system, the costs of installing the new system on 12 of the LCSs already equipped with an incompatible system.
the wrong decision for our country, and I am glad that the continuing resolution will preserve funding for this program through March.

Though misinformation has been spread about the costs of the alternate engine competition, reports from the Government Accountability Office, the Congressional Budget Office, and independent analysts suggest that it is highly likely to save taxpayer dollars. According to Government Accountability Office testimony, the Congress can reasonably expect to recoup investment costs over the life of the program faster than the so-called "Great Engine War" of the F-16 program was any example, the F-35 alternate engine might even yield 30 percent cumulative savings for acquisition, 16 percent savings in operations and support, and 21 percent savings over the life cycle of the aircraft. Not only would we sacrifice these potential savings by killing the F-35 alternate engine program, but that decision would waste the investment we have already made in a competitive second engine. Ending fighter engine competition for the F-35 is bound foolish without ever being penny wise.

GAO also points to several possible nonfinancial benefits of engine competition, including better system performance, increased reliability and improved contractor responsiveness. News reports about the broader F-35 program reveal what happens when we sole-source crucial large, multyear defense programs. The F-35 faces a range of unanticipated delays and overruns. Even the independent panel on the 2010 Quadrennial Defense Review—led by President Clinton’s Defense Secretary, William Perry, and President Bush’s National Security Adviser, Stephen Hadley—strongly advocated dual-source competition in major defense programs. Without competition, the American people will keep paying more and more to buy less and less.

Without competition, our country’s strike aircraft would be one engine problem away from fleet-wide grounding. Putting all of our eggs in the single engine basket would elevate risks to our troops and their missions. Imagine our soldiers in Afghanistan stranded without air support simply because we were not wise enough to diversify the program to avoid engine-based groundings. With their lives on the line, we cannot afford to be irresponsible with this program.

The continuing resolution appropriately maintains funding for the alternate engine program. It does not allow for so-called new starts, but neither does it bring programs to a premature end without the debate and full consideration that the Congress is willing to give to programs they deserve. The alternate engine program will rightly continue, and I expect that when programs receive scrutiny during budget consideration next spring, the same will also be the case.

Engine competition is the right thing to do because it is the smart thing to do. Although some have stressed the up-front costs, taxpayers stand to save more money over the life of the F-35 program by maintaining competitive alternatives. Most importantly, we will purchase a better and more reliable product for the people who risk their lives to defend our country. New engine competition that ensures the best product for the troops at the best price for the taxpayer.

Ms. MIKULSKI. Mr. President, I rise to speak about the appropriations process and the need to return it to regular order. I come to the floor very bitter that we have to pass this continuing resolution. CR. The power of the purse is our constitutional prerogative. I am for regular order. Regular order is the most important reform to avoid continuing resolutions and omnibus bills.

Regular order starts with the Appropriations subcommittees and then full committee marking up 12 individual bills. Chairman ROYCE has led these bills out of Committee for the last 2 years, as Chairman Byrd did before him. Then the full Senate considers 12 bills on the floor and all Senators have a chance to amend and vote on the bills. This, however, has not happened since the passage of the regular order means trillion dollar omnibuses or continuing resolutions. If a bill costs a trillion dollars, then opponents ask why can’t we cut it by 20 percent—what will it matter? But we are dealing in practical terms by not authorizing, which is advisory. There are real consequences. If we are really going to tackle the debt, the Appropriations Committee must be at the table. Tackling the debt can’t be done just through Budget and Finance Committees alone.

What are the real life consequences of this CR? Well, this CR means that it will be harder to keep America safe. Under this CR the FBI cannot hire 126 new agents, scientists and analysts it needs to strengthen national security and counter terrorist threats. The FBI’s cyber security efforts will also be stalled, even while our Nation faces a growing and pervasive threat overseas from hackers, cyber spies and cyber terrorists. Cyber security is a critical component to our Nation’s infrastructure, but this CR doesn’t allow the FBI to hire 63 new agents, 46 new intelligence analysts and 54 new professional staff to fight cyber crime. The DEA want to hire 57 new agents and 64 new prosecutors to reduce the flow of drugs and fight violence and strengthen immigration enforcement along the Southwest border.

Under this CR, we leave immigration courts struggling to keep pace with over 400,000 immigration court cases expected in 2011 because they cannot add Immigration Judge Teams who decide deportation and asylum cases. We cannot hire 145 new FBI agents and 157 new prosecutors for U.S. attorneys to go after identity theft fraud and scammers and schemers who prey on America’s hard working, middle class families and destroy our communities and economy. We miss the chance to add at least 75 new U.S. deputy marshals to track down and arrest the roughly 135,000 fugitive, unregistered child sexual predators hiding from the law and targeting children.

The Continuing Resolution stifles innovation and workforce development. In September, Norm Augustine and the National Academy of Sciences updated the 2005 "Rising Above the Gathering Storm" report, sounding the alarm that the U.S. is still losing ground in science that fuels innovations, and brings us new products and new companies. Everyone says they are for science, but it appears that no one wants to pay for it. So, under this CR, our science agencies, like the National Institute of Standards and Technology, NIST, and the National Science Foundation, NSF, will be flat funded. For NSF, this would mean 800 fewer research grants, and 7,000 fewer scientists and technicians working in labs across the country on promising research in emerging fields like cyber security and nanotechnology. Under a CR, we will let the world catch up by not making new investments in science education. We can’t just lose the race, open avenues of discovery and win the Nobel Prize. We will also lose the technicians who are going from making steel and building ships to the new, innovation-based manufacturing economy, creating the next high tech products. We will also lose the pipeline in technical education in key fields like cyber security. Under this CR, we cannot expand the supply of cyber security specialists who are responsible for protecting U.S. Government computers and information. We miss the opportunity to triple funding for the NSF program to train cyber professionals for Federal careers, which has brought us more than 1,100 cyber warriors since 2002 and of whom more than 90 percent take jobs with Federal agencies.

I am also disappointed we will be passing this CR because I believe in the separation of powers established by the Constitution. Congress should not cede power to the Executive Branch, regardless of which party it is in the White House. The Constitution gives the power of the purse to Congress. I will not cede the power to meet compelling human or community needs or create jobs for America and for Maryland. I don’t want to lose my ability to say no to the billions of dollars in the budget that are not consistent with the Constitution, the law and targeting children.

On the Appropriations Committee, we did our work by reporting 12 separate bills to the full Senate, but none came to the Senate floor. My Committee, Justice, Science— or CIS—Subcommittee held 6 hearings with 14 witnesses to examine agencies’ budget requests and policies. We heard from 4 inspectors general, IGs, from our major departments and agencies: Todd Zinser at Commerce, Glenn Fine at Justice, Linda Thomas-Greenfield at State, David Walson at NSF and Susan Lerner at CIT. I listened to agencies’ officials, representatives of organizations from sheriffs to scientists

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and interested Senators. My CJS Subcommittee worked in a bipartisan way to craft a bill that makes America safer, invests in the American workforce of the future and is frugal and gets value for taxpayer dollars. Under this CR, agencies are forced to work on a status quo basis—provided by Congress—instead of fulfilling our constitutional duty of the power of the purse, we are leaving it to the Executive Branch to make key funding decisions with minimal direction from Congress.

As I travel around Maryland, people tell me that they are mad at Washington. Families are stretched and stressed. They want a government that’s on their side, working for a strong economy and a safer country. They want a government that is as frugal and thrifty as they are. They want to return to a more constitutionally based government. This CR is not the solution.

Some Members might say that a CR is OK, it will save money, it doesn’t matter. After all, the CR provides less funding for CJS, it doesn’t do it smarter because the CR is essentially a blank check for the executive branch. Regular order provides direction, telling the government to be smart, frugal, making thoughtful and targeted cuts and modest increases where justified—not government on autopilot.

For example, my CJS appropriations bill tells agencies to cut reception and representation funds by 25 percent; eliminate excessive banquets and conferences; cut overhead by at least 10 percent—by reducing non-essential travel, supply, rent and utility costs; increase funding to IGs, the taxpayers’ watchdogs at the agencies, and have those IGs do random audits of grant funding to find and stop waste and fraud; and notify the committee when project costs grow by more than 10 percent so that we have an early warning system on government erruns. These reforms are lost in any CR.

We should refocus on the Appropriations Committee. Many Senators have only been elected for the first time in the last 6 years, so most have never seen regular order and don’t know what Appropriations Committee is supposed to be. The Appropriations Committee is “the guardian of the purse,” which puts real funds in the Federal budget, provides less funding for CJS, and the Appropriations Committee earlier this year.

Because of the opposition to the Omnibus, our Department of Homeland Security and first responders across the country will not have the resources they need to anticipate, thwart, and respond to these threats: The Transportation Security Administration will not be able to purchase new explosive-tracing equipment or hire more intelligence officers and canine teams. We won’t be able to hire more Federal air marshals, who have been stretched thin since the Christmas Day bomb plot was foiled. Our airports and seaports won’t get new equipment to detect radiation and nuclear material. We will have fewer resources to secure air cargo and eliminate threats like the package bombs from Yemen. We will have less funding to secure our rail and transit systems, which are prime targets for terrorists—as we’ve seen everywhere from Madrid and Russia to DC and New York. The Homeland Security and Customs Enforcement may have to cut back investments into human trafficking, drug smuggling and identity theft. There will be fewer Customs officers on duty to keep dangerous cargo and terrorists out of our country. Our ability to prepare for natural disasters and other emergencies will suffer. Fewer local fire departments will receive needed assistance to pay for equipment and training.

Beyond homeland security, the Republicans’ actions will leave our troops worse prepared and our children without the education they deserve.

The Omnibus crafted by Senator Inouye, on the other hand, responsibly met all of those needs. And it did so at the same level as proposed by the Republican leader in the Appropriations Committee earlier this year. In June, 40 Republicans voted to support funding the government at this level. Moreover, the Omnibus was crafted on a bipartisan basis and included earmarks and other spending requested by Republicans.

It is the height of hypocrisy and cynicism for our Republican colleagues to attack this bill that was wasteful to the Omnibus, which included a quarter billion dollars more for border security than the CR. Republicans killed the DREAM Act—on the alleged basis that we should secure the border first. They are clearly more concerned with handing a defeat to our President and to congressional Democrats than with governing in a responsible way. Republicans have put politics first and it is our duty to secure our homeland security and our children that will pay the price.

In the aftermath of the wreckage caused by the Republicans’ opposition to the Omnibus and the fact that the Appropriations Committee was faced with the challenge of drafting a slimmed-down continuing resolution that would not leave the country vulnerable. This was an extremely difficult task, but Senator Inouye was able to craft a bill that provides the most vital resources our government needs to function over the next few months. This was no small feat and I commend the chairman for his tireless work on this bill and throughout this year’s appropriations process.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. Mr. President, I rise in response to Senator Sessions’ comments about a nominee to the US Court of Appeals for the 11th Circuit. I have found the appointment of Bill Martínez as Circuit Judge well-deserved. Mr. Martínez has upheld the rule of law and the Constitution in his service as a district court judge and would make an excellent appellate court judge. Mr. Martínez would make an excellent Circuit Judge.

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and interested Senators. My CJS Subcommittee worked in a bipartisan way to craft a bill that makes America safer, invests in the American workforce of the future and is frugal and gets value for taxpayer dollars. Under this CR, agencies are forced to work on a status quo basis—provided by Congress—instead of fulfilling our constitutional duty of the power of the purse, we are leaving it to the Executive Branch to make key funding decisions with minimal direction from Congress.

As I travel around Maryland, people tell me that they are mad at Washington. Families are stretched and stressed. They want a government that’s on their side, working for a strong economy and a safer country. They want a government that is as frugal and thrifty as they are. They want to return to a more constitutionally based government. This CR is not the solution.

Some Members might say that a CR is OK, it will save money, it doesn’t matter. After all, the CR provides less funding for CJS, it doesn’t do it smarter because the CR is essentially a blank check for the executive branch. Regular order provides direction, telling the government to be smart, frugal, making thoughtful and targeted cuts and modest increases where justified—not government on autopilot.

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empathy standard. I wanted to clarify for the record three points of misinformation.

Bill Martinez did not work for the ACLU. He served on an advisory board regarding cases in Denver. Several Bush appointees were members of the Federalist Society and contributors to other conservative litigation centers and were confirmed just a few years ago. Bill Martinez is not the ACLU, and we ought to be careful to avoid setting false premises.

From the Martinez Hearing:

Senator Sessions: Have you ever acted as counsel in a matter on behalf of the ACLU? If so, please provide the Committee with a citation for each case, a description of the matter, and a description of your participation in that matter.

Martinez Response: No.

Senator Sessions claimed he was dissatisfied with Bill Martinez’s response regarding the death penalty, stating that he was not clear in his beliefs. This is misleading and the record states otherwise.

From the Martinez Hearing:

Senator Sessions: Please answer whether you personally believe that the death penalty violates the Constitution.

Martinez Response: It is clear under current Supreme Court jurisprudence that, with very limited exceptions, the death penalty does not violate the Eighth Amendment to the U.S. Constitution.

Senator Sessions also claimed that Bill Martinez stated empathy can be taken into consideration with legal decisions. This is misleading and the record states otherwise.

From the Martinez Hearing:

Senator Sessions: Do you think it’s ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Martinez Response: No.

Let me end on this note. Bill Martinez is a man of high character, he is a good man, and he will make an excellent Federal judge. Let us vote to confirm Bill Martinez to the Colorado U.S. District Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BINGHAM). Under the previous order, the Senate will go into executive session to consider the following two nominations, which the clerk will report.

The legislative clerk read the nomination of Benita Y. Pearson, of Ohio, to be United States District Judge for the Northern District of Ohio.

The legislative clerk read the nomination of William Joseph Martinez, of Colorado, to be United States District Judge for the District of Colorado.

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Who yields time? The Senator from Alabama.

Mr. SESSIONS. Mr. President, is there an agreement as to the time?

The PRESIDING OFFICER. The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, President Obama nominated William J. Martinez to fill a judicial emergency vacancy on the District of Colorado last February. Mr. Martinez is a well-respected legal practitioner in Denver who has the strong support of both of his home State Senators. The statements earlier today from Senator UDALL and Senator