

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

The motion to lay on the table was agreed to.

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

The VICE PRESIDENT. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that there be no other amendments, motions, or points of order in order in relation to the treaty or the resolution of ratification; that the Senate immediately proceed with no intervening action or debate to a vote on the Resolution of Advise and Consent to Ratification, as amended, to the New START Treaty, Treaty Document No. 111-5; that if the resolution is adopted, the motion to reconsider be laid upon the table and the President of the United States be immediately notified of the Senate's action; that upon disposition of the New START treaty, the Senate proceed to a vote on confirmation of the nomination of Calendar No. 1089, Mary Helen Murguia, of Arizona, to be a U.S. circuit judge for the Ninth Circuit; that if the nomination is confirmed, the motion to reconsider be laid upon the table and the President be immediately notified of the Senate's action; that following the vote on the Murguia nomination, the Senate immediately proceed to a vote on Calendar No. 934, Scott M. Matheson, Jr., of Utah, to be a U.S. circuit judge for the Tenth Circuit; that if the nomination is confirmed, the motion to reconsider be laid upon the table and the President be immediately notified of the Senate's action; further, that upon disposition of the Matheson nomination, I ask unanimous consent that the Senate proceed to the consideration of the following judicial nominations en bloc: Calendar Nos. 1119, 1120, and 1139, that is, Kathleen M. O'Malley, Beryl Alaine Howell, and Robert Leon Wilkins; that the nominations be confirmed en bloc, the motion to reconsider be considered made and laid upon the table en bloc, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The VICE PRESIDENT. Is there objection?

Without objection, it is so ordered.

The question is on the adoption of the resolution of ratification, as amended, to the treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

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

The VICE PRESIDENT. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), and the Senator from Kentucky (Mr. BUNNING).

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

The yeas and nays resulted—yeas 71, nays 26, as follows:

[Rollcall Vote No. 298 Ex.]

## YEAS—71

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

## NAYS—26

|           |           |           |
|-----------|-----------|-----------|
| Barrasso  | Graham    | McConnell |
| Burr      | Grassley  | Risch     |
| Chambliss | Hatch     | Roberts   |
| Coburn    | Hutchison | Sessions  |
| Cornyn    | Inhofe    | Shelby    |
| Crapo     | Kirk      | Thune     |
| DeMint    | Kyl       | Vitter    |
| Ensign    | LeMieux   | Wicker    |
| Enzi      | McCain    |           |

## NOT VOTING—3

|      |           |         |
|------|-----------|---------|
| Bond | Brownback | Bunning |
|------|-----------|---------|

The VICE PRESIDENT. On this vote, the yeas are 71, the nays are 26. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification, as amended, is agreed to.

The resolution of ratification agreed to is as follows:

## TREATY APPROVED

Treaty with Russia on Measures for Further Reduction and Limitation of Strategic Offensive Arms (Treaty Doc. 111-5).

Resolution of ratification as amended:

*Resolved, (two-thirds of the Senators present concurring therein),*

That the Senate advises and consents to the ratification of the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol, including Annex on Inspection Activities to the Protocol, Annex on Notifications to the Protocol, and Annex on Telemetric Information to the Protocol, all such documents being integral parts of and collectively referred to in this resolution as the "New START Treaty" (Treaty Document 111-5), subject to the conditions of subsection (a), the understandings of subsection (b), and the declarations of subsection (c).

(a) CONDITIONS.—The advice and consent of the Senate to the ratification of the New START Treaty is subject to the following conditions, which shall be binding upon the President:

(1) GENERAL COMPLIANCE.—If the President determines that the Russian Federation is

acting or has acted in a manner that is inconsistent with the object and purpose of the New START Treaty, or is in violation of the New START Treaty, so as to threaten the national security interests of the United States, then the President shall—

(A) consult with the Senate regarding the implications of such actions for the viability of the New START Treaty and for the national security interests of the United States;

(B) seek on an urgent basis a meeting with the Russian Federation at the highest diplomatic level with the objective of bringing the Russian Federation into full compliance with its obligations under the New START Treaty; and

(C) submit a report to the Senate promptly thereafter, detailing—

(i) whether adherence to the New START Treaty remains in the national security interests of the United States; and

(ii) how the United States will redress the impact of Russian actions on the national security interests of the United States.

(2) PRESIDENTIAL CERTIFICATIONS AND REPORTS ON NATIONAL TECHNICAL MEANS.—(A) Prior to the entry into force of the New START Treaty, and annually thereafter, the President shall certify to the Senate that United States National Technical Means, in conjunction with the verification activities provided for in the New START Treaty, are sufficient to ensure effective monitoring of Russian compliance with the provisions of the New START Treaty and timely warning of any Russian preparation to break out of the limits in Article II of the New START Treaty. Following submission of the first such certification, each subsequent certification shall be accompanied by a report to the Senate indicating how United States National Technical Means, including collection, processing, and analytic resources, will be utilized to ensure effective monitoring. The first such report shall include a long-term plan for the maintenance of New START Treaty monitoring. Each subsequent report shall include an update of the long-term plan. Each such report may be submitted in either classified or unclassified form.

(B) It is the sense of the Senate that monitoring Russian Federation compliance with the New START Treaty is a high priority and that the inability to do so would constitute a threat to United States national security interests.

(3) Reductions.—(A) The New START Treaty shall not enter into force until instruments of ratification have been exchanged in accordance with Article XIV of the New START Treaty.

(B) If, prior to the entry into force of the New START Treaty, the President plans to implement reductions of United States strategic nuclear forces below those currently planned and consistent with the Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions, signed at Moscow on May 24, 2002 (commonly referred to as "the Moscow Treaty"), then the President shall—

(i) consult with the Senate regarding the effect of such reductions on the national security of the United States; and

(ii) take no such reductions until the President submits to the Senate the President's determination that such reductions are in the national security interest of the United States.

(4) TIMELY WARNING OF BREAKOUT.—If the President determines, after consultation with the Director of National Intelligence, that the Russian Federation intends to break out of the limits in Article II of the New START Treaty, the President shall immediately inform the Committees on Foreign Relations and Armed Services of the

Senate, with a view to determining whether circumstances exist that jeopardize the supreme interests of the United States, such that withdrawal from the New START Treaty may be warranted pursuant to paragraph 3 of Article XIV of the New START Treaty.

(5) UNITED STATES MISSILE DEFENSE TEST TELEMETRY.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the New START Treaty does not require, at any point during which it will be in force, the United States to provide to the Russian Federation telemetric information under Article IX of the New START Treaty, Part Seven of the Protocol, and the Annex on Telemetric Information to the Protocol for the launch of—

(A) any missile defense interceptor, as defined in paragraph 44 of Part One of the Protocol to the New START Treaty;

(B) any satellite launches, missile defense sensor targets, and missile defense intercept targets, the launch of which uses the first stage of an existing type of United States ICBM or SLBM listed in paragraph 8 of Article III of the New START Treaty; or

(C) any missile described in clause (a) of paragraph 7 of Article III of the New START Treaty.

(6) CONVENTIONAL PROMPT GLOBAL STRIKE.—(A) The Senate calls on the executive branch to clarify its planning and intent in developing future conventionally armed, strategic-range weapon systems. To this end, prior to the entry into force of the New START Treaty, the President shall provide a report to the Committees on Armed Services and Foreign Relations of the Senate containing the following:

(i) A list of all conventionally armed, strategic-range weapon systems that are currently under development.

(ii) An analysis of the expected capabilities of each system listed under clause (i).

(iii) A statement with respect to each system listed under clause (i) as to whether any of the limits in Article II of the New START Treaty apply to such system.

(iv) An assessment of the costs, risks, and benefits of each system.

(v) A discussion of alternative deployment options and scenarios for each system.

(vi) A summary of the measures that could help to distinguish each system listed under clause (i) from nuclear systems and reduce the risks of misinterpretation and of a resulting claim that such systems might alter strategic stability.

(B) The report under subparagraph (A) may be supplemented by a classified annex.

(C) If, at any time after the New START Treaty enters into force, the President determines that deployment of conventional warheads on ICBMs or SLBMs is required at levels that cannot be accommodated within the limits in Article II of the New START Treaty while sustaining a robust United States nuclear triad, then the President shall immediately consult with the Senate regarding the reasons for such determination.

(7) UNITED STATES TELEMETRIC INFORMATION.—In implementing Article IX of the New START Treaty, Part Seven of the Protocol, and the Annex on Telemetric Information to the Protocol, prior to agreeing to provide to the Russian Federation any amount of telemetric information on a United States test launch of a conventionally armed prompt global strike system, the President shall certify to the Committees on Foreign Relations and Armed Services of the Senate that—

(A) the provision of United States telemetric information—

(i) consists of data that demonstrate that such system is not subject to the limits in Article II of the New START Treaty; or

(ii) would be provided in exchange for significant telemetric information regarding a

weapon system not listed in paragraph 8 of Article III of the New START Treaty, or a system not deployed by the Russian Federation prior to December 5, 2009;

(B) it is in the national security interest of the United States to provide such telemetric information; and

(C) provision of such telemetric information will not undermine the effectiveness of such system.

(8) BILATERAL CONSULTATIVE COMMISSION.—Not later than 15 days before any meeting of the Bilateral Consultative Commission to consider a proposal for additional measures to improve the viability or effectiveness of the New START Treaty or to resolve a question related to the applicability of provisions of the New START Treaty to a new kind of strategic offensive arm, the President shall consult with the Chairman and ranking minority member of the Committee on Foreign Relations of the Senate with regard to whether the proposal, if adopted, would constitute an amendment to the New START Treaty requiring the advice and consent of the Senate, as set forth in Article II, section 2, clause 2 of the Constitution of the United States.

(9) UNITED STATES COMMITMENTS ENSURING THE SAFETY, RELIABILITY, AND PERFORMANCE OF ITS NUCLEAR FORCES.—(A) The United States is committed to ensuring the safety, reliability, and performance of its nuclear forces. It is the sense of the Senate that—

(i) the United States is committed to proceeding with a robust stockpile stewardship program, and to maintaining and modernizing the nuclear weapons production capabilities and capacities, that will ensure the safety, reliability, and performance of the United States nuclear arsenal at the New START Treaty levels and meet requirements for hedging against possible international developments or technical problems, in conformance with United States policies and to underpin deterrence;

(ii) to that end, the United States is committed to maintaining United States nuclear weapons laboratories and preserving the core nuclear weapons competencies therein; and

(iii) the United States is committed to providing the resources needed to achieve these objectives, at a minimum at the levels set forth in the President's 10-year plan provided to the Congress pursuant to section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84).

(B) If appropriations are enacted that fail to meet the resource requirements set forth in the President's 10-year plan, or if at any time more resources are required than estimated in the President's 10-year plan, the President shall submit to Congress, within 60 days of such enactment or the identification of the requirement for such additional resources, as appropriate, a report detailing—

(i) how the President proposes to remedy the resource shortfall;

(ii) if additional resources are required, the proposed level of funding required and an identification of the stockpile work, campaign, facility, site, asset, program, operation, activity, construction, or project for which additional funds are required;

(iii) the impact of the resource shortfall on the safety, reliability, and performance of United States nuclear forces; and

(iv) whether and why, in the changed circumstances brought about by the resource shortfall, it remains in the national interest of the United States to remain a Party to the New START Treaty.

(10) ANNUAL REPORT.—As full and faithful implementation is key to realizing the benefits of the New START Treaty, the President shall submit a report to the Committees on Foreign Relations and Armed Services of the Senate not later than January 31 of each

year beginning with January 31, 2012, which will provide—

(A) details on each Party's reductions in strategic offensive arms between the date the New START Treaty entered into force and December 31, 2011, or, in subsequent reports, during the previous year;

(B) a certification that the Russian Federation is in compliance with the terms of the New START Treaty, or a detailed discussion of any noncompliance by the Russian Federation;

(C) a certification that any conversion and elimination procedures adopted pursuant to Article VI of the New START Treaty and Part Three of the Protocol have not resulted in ambiguities that could defeat the object and purpose of the New START Treaty, or—

(i) a list of any cases in which a conversion or elimination procedure that has been demonstrated by Russia within the framework of the Bilateral Consultative Commission remains ambiguous or does not achieve the goals set forth in paragraph 2 or 3 of Section I of Part Three of the Protocol; and

(ii) a comprehensive explanation of steps the United States has taken with respect to each such case;

(D) an assessment of the operation of the New START Treaty's transparency mechanisms, including—

(i) the extent to which either Party encrypted or otherwise impeded the collection of telemetric information; and

(ii) the extent and usefulness of exchanges of telemetric information; and

(E) an assessment of whether a strategic imbalance exists that endangers the national security interests of the United States.

(11) STRATEGIC NUCLEAR DELIVERY VEHICLES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President intends to—

(A) modernize or replace the triad of strategic nuclear delivery systems: a heavy bomber and air-launched cruise missile, an ICBM, and an SSBN and SLBM; and

(B) maintain the United States rocket motor industrial base.

(12) TACTICAL NUCLEAR WEAPONS.—(A) Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that—

(i) the United States will seek to initiate, following consultation with NATO allies but not later than one year after the entry into force of the New START Treaty, negotiations with the Russian Federation on an agreement to address the disparity between the non-strategic (tactical) nuclear weapons stockpiles of the Russian Federation and of the United States and to secure and reduce tactical nuclear weapons in a verifiable manner; and

(ii) it is the policy of the United States that such negotiations shall not include defensive missile systems.

(B) Not later than one year after the entry into force of the New START Treaty, and annually thereafter for the duration of the New START Treaty or until the conclusion of an agreement pursuant to subparagraph (A), the President shall submit to the Committees on Foreign Relations and Armed Services of the Senate a report—

(i) detailing the steps taken to conclude the agreement cited in subparagraph (A); and

(ii) analyzing the reasons why such an agreement has not yet been concluded.

(C) Recognizing the difficulty the United States has faced in ascertaining with confidence the number of tactical nuclear weapons maintained by the Russian Federation and the security of those weapons, the Senate urges the President to engage the Russian Federation with the objectives of—

(i) establishing cooperative measures to give each Party to the New START Treaty

improved confidence regarding the accurate accounting and security of tactical nuclear weapons maintained by the other Party; and

(ii) providing United States or other international assistance to help the Russian Federation ensure the accurate accounting and security of its tactical nuclear weapons.

(13) DESIGN AND FUNDING OF CERTAIN FACILITIES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President intends to—

(A) accelerate to the extent possible the design and engineering phase of the Chemistry and Metallurgy Research Replacement (CMRR) building and the Uranium Processing Facility (UPF); and

(B) request full funding, including on a multi-year basis as appropriate, for the Chemistry and Metallurgy Research Replacement building and the Uranium Processing Facility upon completion of the design and engineering phase for such facilities.

(14) EFFECTIVENESS AND VIABILITY OF NEW START TREATY AND UNITED STATES MISSILE DEFENSES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate, and at the time of the exchange of instruments of ratification shall communicate to the Russian Federation, that it is the policy of the United States to continue development and deployment of United States missile defense systems to defend against missile threats from nations such as North Korea and Iran, including qualitative and quantitative improvements to such systems. Such systems include all phases of the Phased Adaptive Approach to missile defenses in Europe, the modernization of the Ground-based Midcourse Defense system, and the continued development of the two-stage Ground-Based Interceptor as a technological and strategic hedge. The United States believes that these systems do not and will not threaten the strategic balance with the Russian Federation. Consequently, while the United States cannot circumscribe the sovereign rights of the Russian Federation under paragraph 3 of Article XIV of the Treaty, the United States believes continued improvement and deployment of United States missile defense systems do not constitute a basis for questioning the effectiveness and viability of the Treaty, and therefore would not give rise to circumstances justifying the withdrawal of the Russian Federation from the Treaty.

(b) UNDERSTANDINGS.—The advice and consent of the Senate to the ratification of the New START Treaty is subject to the following understandings, which shall be included in the instrument of ratification:

(1) MISSILE DEFENSE.—It is the understanding of the United States that—

(A) the New START Treaty does not impose any limitations on the deployment of missile defenses other than the requirements of paragraph 3 of Article V of the New START Treaty, which states, “Each Party shall not convert and shall not use ICBM launchers and SLBM launchers for placement of missile defense interceptors therein. Each Party further shall not convert and shall not use launchers of missile defense interceptors for placement of ICBMs and SLBMs therein. This provision shall not apply to ICBM launchers that were converted prior to signature of this Treaty for placement of missile defense interceptors therein.”;

(B) any additional New START Treaty limitations on the deployment of missile defenses beyond those contained in paragraph 3 of Article V, including any limitations agreed under the auspices of the Bilateral Consultative Commission, would require an amendment to the New START Treaty which

may enter into force for the United States only with the advice and consent of the Senate, as set forth in Article II, section 2, clause 2 of the Constitution of the United States;

(C) the April 7, 2010, unilateral statement by the Russian Federation on missile defense does not impose a legal obligation on the United States; and

(D) the preamble of the New START Treaty does not impose a legal obligation on the Parties.

(2) RAIL-MOBILE ICBMS.—It is the understanding of the United States that—

(A) any rail-mobile-launched ballistic missile with a range in excess of 5,500 kilometers would be an ICBM, as the term is defined in paragraph 37 of Part One of the Protocol (in the English-language numbering), for the purposes of the New START Treaty, specifically including the limits in Article II of the New START Treaty;

(B) an erector-launcher mechanism for launching an ICBM and the railcar or flatcar on which it is mounted would be an ICBM launcher, as the term is defined in paragraph 28 of Part One of the Protocol (in the English-language numbering), for the purposes of the New START Treaty, specifically including the limits in Article II of the New START Treaty;

(C) if either Party should produce a rail-mobile ICBM system, the Bilateral Consultative Commission would address the application of other parts of the New START Treaty to that system, including Articles III, IV, VI, VII, and XI of the New START Treaty and relevant portions of the Protocol and the Annexes to the Protocol; and

(D) an agreement reached pursuant to subparagraph (C) is subject to the requirements of Article XV of the New START Treaty and, specifically, if an agreement pursuant to subparagraph (C) creates substantive rights or obligations that differ significantly from those in the New START Treaty regarding a “mobile launcher of ICBMs” as defined in Part One of the Protocol to the New START Treaty, such agreement will be considered an amendment to the New START Treaty pursuant to Paragraph 1 of Article XV of the New START Treaty and will be submitted to the Senate for its advice and consent to ratification.

(3) STRATEGIC-RANGE, NON-NUCLEAR WEAPON SYSTEMS.—It is the understanding of the United States that—

(A) future, strategic-range non-nuclear weapon systems that do not otherwise meet the definitions of the New START Treaty will not be “new kinds of strategic offensive arms” subject to the New START Treaty;

(B) nothing in the New START Treaty restricts United States research, development, testing, and evaluation of strategic-range, non-nuclear weapons, including any weapon that is capable of boosted aerodynamic flight;

(C) nothing in the New START Treaty prohibits deployments of strategic-range non-nuclear weapon systems; and

(D) the addition to the New START Treaty of—

(i) any limitations on United States research, development, testing, and evaluation of strategic-range, non-nuclear weapon systems, including any weapon that is capable of boosted aerodynamic flight; or

(ii) any prohibition on the deployment of such systems, including any such limitations or prohibitions agreed under the auspices of the Bilateral Consultative Commission, would require an amendment to the New START Treaty which may enter into force for the United States only with the advice and consent of the Senate, as set forth in Article II, section 2, clause 2 of the Constitution of the United States.

(c) DECLARATIONS.—The advice and consent of the Senate to the ratification of the New START Treaty is subject to the following declarations, which express the intent of the Senate:

(1) MISSILE DEFENSE.—(A) It is the sense of the Senate that—

(i) pursuant to the National Missile Defense Act of 1999 (Public Law 106-38), it is the policy of the United States “to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate)”;

(ii) defenses against ballistic missiles are essential for new deterrent strategies and for new strategies should deterrence fail; and

(iii) further limitations on the missile defense capabilities of the United States are not in the national security interest of the United States.

(B) The New START Treaty and the April 7, 2010, unilateral statement of the Russian Federation on missile defense do not limit in any way, and shall not be interpreted as limiting, activities that the United States Government currently plans or that might be required over the duration of the New START Treaty to protect the United States pursuant to the National Missile Defense Act of 1999, or to protect United States Armed Forces and United States allies from limited ballistic missile attack, including further planned enhancements to the Ground-based Midcourse Defense system and all phases of the Phased Adaptive Approach to missile defense in Europe.

(C) Given its concern about missile defense issues, the Senate expects the executive branch to offer regular briefings, not less than twice each year, to the Committees on Foreign Relations and Armed Services of the Senate on all missile defense issues related to the New START Treaty and on the progress of United States-Russia dialogue and cooperation regarding missile defense.

(2) DEFENDING THE UNITED STATES AND ALLIES AGAINST STRATEGIC ATTACK.—It is the sense of the Senate that—

(A) a paramount obligation of the United States Government is to provide for the defense of the American people, deployed members of the United States Armed Forces, and United States allies against nuclear attacks to the best of its ability;

(B) policies based on “mutual assured destruction” or intentional vulnerability can be contrary to the safety and security of both countries, and the United States and the Russian Federation share a common interest in moving cooperatively as soon as possible away from a strategic relationship based on mutual assured destruction;

(C) in a world where biological, chemical, and nuclear weapons and the means to deliver them are proliferating, strategic stability can be enhanced by strategic defensive measures;

(D) accordingly, the United States is and will remain free to reduce the vulnerability to attack by constructing a layered missile defense system capable of countering missiles of all ranges;

(E) the United States will welcome steps by the Russian Federation also to adopt a fundamentally defensive strategic posture that no longer views robust strategic defensive capabilities as undermining the overall strategic balance, and stands ready to cooperate with the Russian Federation on strategic defensive capabilities, as long as such cooperation is aimed at fostering and in no way constrains the defensive capabilities of both sides; and

(F) the United States is committed to improving United States strategic defensive capabilities both quantitatively and qualitatively during the period that the New

START Treaty is in effect, and such improvements are consistent with the Treaty.

(3) CONVENTIONALLY ARMED, STRATEGIC-RANGE WEAPON SYSTEMS.—Consistent with statements made by the United States that such systems are not intended to affect strategic stability with respect to the Russian Federation, the Senate finds that conventionally armed, strategic-range weapon systems not co-located with nuclear-armed systems do not affect strategic stability between the United States and the Russian Federation.

(4) NUNN-LUGAR COOPERATIVE THREAT REDUCTION.—It is the sense of the Senate that the Nunn-Lugar Cooperative Threat Reduction (CTR) Program has made an invaluable contribution to the security and elimination of weapons of mass destruction, including nuclear weapons and materials in Russia and elsewhere, and that the President should continue the global CTR Program and CTR assistance to Russia, including for the purpose of facilitating implementation of the New START Treaty.

(5) ASYMMETRY IN REDUCTIONS.—It is the sense of the Senate that, in conducting the reductions mandated by the New START Treaty, the President should regulate reductions in United States strategic offensive arms so that the number of accountable strategic offensive arms under the New START Treaty possessed by the Russian Federation in no case exceeds the comparable number of accountable strategic offensive arms possessed by the United States to such an extent that a strategic imbalance endangers the national security interests of the United States.

(6) COMPLIANCE.—(A) The New START Treaty will remain in the interests of the United States only to the extent that the Russian Federation is in strict compliance with its obligations under the New START Treaty.

(B) Given its concern about compliance issues, the Senate expects the executive branch to offer regular briefings, not less than four times each year, to the Committees on Foreign Relations and Armed Services of the Senate on compliance issues related to the New START Treaty. Such briefings shall include a description of all United States efforts in United States-Russian diplomatic channels and bilateral fora to resolve any compliance issues and shall include, but would not necessarily be limited to, a description of—

(i) any compliance issues the United States plans to raise with the Russian Federation at the Bilateral Consultative Commission, in advance of such meetings; and

(ii) any compliance issues raised at the Bilateral Consultative Commission, within thirty days of such meetings.

(7) EXPANSION OF STRATEGIC ARSENALS IN COUNTRIES OTHER THAN RUSSIA.—It is the sense of the Senate that if, during the time the New START Treaty remains in force, the President determines that there has been an expansion of the strategic arsenal of any country not party to the New START Treaty so as to jeopardize the supreme interests of the United States, then the President should consult on an urgent basis with the Senate to determine whether adherence to the New START Treaty remains in the national interest of the United States.

(8) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in condition (1) of the resolution of advice and consent to the ratification of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter Range Missiles, together with the

related memorandum of understanding and protocols (commonly referred to as the “INF Treaty”), approved by the Senate on May 27, 1988, and condition (8) of the resolution of advice and consent to the ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (commonly referred to as the “CFE Flank Document”), approved by the Senate on May 14, 1997.

(9) TREATY MODIFICATION OR REINTERPRETATION.—The Senate declares that any agreement or understanding which in any material way modifies, amends, or reinterprets United States or Russian obligations under the New START Treaty, including the time frame for implementation of the New START Treaty, should be submitted to the Senate for its advice and consent to ratification.

(10) CONSULTATIONS.—Given the continuing interest of the Senate in the New START Treaty and in strategic offensive reductions to the lowest possible levels consistent with national security requirements and alliance obligations of the United States, the Senate expects the President to consult with the Senate prior to taking actions relevant to paragraphs 2 or 3 of Article XIV of the New START Treaty.

(11) FURTHER STRATEGIC ARMS REDUCTIONS.—

(A) Recognizing the obligation under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow on July 1, 1968, “to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament and on a treaty on general and complete disarmament under strict and effective international control,” and in anticipation of the ratification and entry into force of the New START Treaty, the Senate calls upon the other nuclear weapon states to give careful and early consideration to corresponding reductions of their own nuclear arsenals.

(B) The Senate declares that further arms reduction agreements obligating the United States to reduce or limit the Armed Forces or armaments of the United States in any militarily significant manner may be made only pursuant to the treaty-making power of the President as set forth in Article II, section 2, clause 2 of the Constitution of the United States.

(12) MODERNIZATION AND REPLACEMENT OF UNITED STATES STRATEGIC DELIVERY VEHICLES.—In accordance with paragraph 1 of Article V of the New START Treaty, which states that, “Subject to the provisions of this Treaty, modernization and replacement of strategic offensive arms may be carried out,” it is the sense of the Senate that United States deterrence and flexibility is assured by a robust triad of strategic delivery vehicles. To this end, the United States is committed to accomplishing the modernization and replacement of its strategic nuclear delivery vehicles, and to ensuring the continued flexibility of United States conventional and nuclear delivery systems.

THE VICE PRESIDENT. Under the previous order, the President will be immediately notified of the Senate’s consent to the resolution of ratification.

MR. ENZI. Mr. President, I rise today to explain why I voted against the New START treaty. The U.S. Senate is the deliberative body of Congress. Our forefathers created the Senate so issues of this magnitude are thoroughly considered with all of the facts and with a careful eye on all possible future con-

sequences. With previous treaties of this magnitude, the full Senate has been allowed over a full year to consider what the treaty would require of not only Russia but also the United States. That hasn’t happened here, and it is a disconcerting trend.

The executive branches of both the Russian and the U.S. governments stated they will not take actions during the negotiations of this treaty that would be contrary to the spirit of the treaty. Both the Russian and U.S. governments recognize the treaty’s implementation will take time. The need to get this treaty right is paramount.

I am concerned that I haven’t had all of my specific questions answered about the treaty. Although members of the Foreign Relations Committee have had the opportunity to consider this treaty and ask many questions, the full Senate has not had the chance to have all of their questions answered. Forcing through a treaty without detailed scrutiny by the full Senate is not how our government should work.

Even with post-Cold War threats and adversaries, the nuclear balance between the United States and Russia remains a cornerstone to global non-proliferation. That’s why each member of the Senate must determine if he or she believes this treaty will make our Nation safer. We can only do so if we have all the information about the treaty, and we can only make it better if we have the opportunity to fully amend the treaty.

During debate, we were repeatedly told that amending the treaty would kill it. That’s just not true. Going back and forth on treaties is not new. As with the original START, which was signed in 1991, the U.S. Senate did not accept the first version and required that a better treaty be created.

We offered amendments that would have simply required that Russia be more involved in the changes this treaty will require, stressing the importance to the Russian government to create a safe global atmosphere similar to the United States. Those amendments were rejected. Only two amendments, one about modernization of the nuclear weapons complex and one stating that missile defense will proceed, were accepted by unanimous consent. The other amendments were either not considered or failed. It is now up to the Russian Duma to consider the suggested changes by the Senate’s amendments and approve them or not. Both countries should be willing to work hard on this front and the best treaties, just like legislative bills, are those that are thoroughly considered by all involved with a willingness to comprehensively address all concerns and needs.

Beyond the issues of Senate processes, I have concerns about certain provisions in this treaty. It is impossible to fully consider this treaty without being able to review the full negotiating record, which has not been provided to all senators. Summaries have

been provided, but summaries do not include the specific information on how the full implementation of this treaty will be done.

As a founding member of the Senate ICBM Coalition, I strongly believe that all three legs of the nuclear triad—missiles, submarines, and bombers—must be maintained in order to retain a highly reliable and credible deterrent nuclear force. This need is even greater as we potentially draw down some of our nuclear forces through the New START treaty. I have worked with other members in the ICBM Coalition and with the administration to encourage them to ensure the treaty does not harm the triad. I appreciated the information provided by the administration on the treaty and the opportunity to meet on this issue during the floor debate. However, I remain deeply concerned about the implications the treaty will have on our country's national security, particularly its potential effects on the current missile force structure. Without the specific information on how the administration is going to implement the treaty and concrete assurances that the current missile force structure of 450 deployed and non-deployed silos be maintained, I remain skeptical of this agreement.

F.E. Warren Air Force Base in Cheyenne, WY, helps the United States maintain one leg of the triad by operating part of the ICBM force. It is my obligation as a Senator from Wyoming to know what effects this treaty will have on the missile defense missions in my home state. I also respect and watch out for the servicemembers in the 90th Space Command and 20th Missile Command who work hard to ensure our country has a strong missile defense. I have not yet been able to get a firm commitment from my Senate colleagues and the administration on a concrete number of missiles that will be maintained under this treaty.

Furthermore, the treaty will require unilateral reductions from the United States with no similar requirements for Russia. Instead, the Russian government is actually given room to build up its nuclear forces with more modern capabilities.

Regardless of this agreement, the United States has not thoroughly addressed the modernization of our country's nuclear capabilities. I have spoken with those involved in the treaty negotiations regarding U.S. modernization. I was told that the modernization efforts are in the works and the funding for these activities is planned. I support this more focused modernization approach. Part of the need for U.S. modernization is to address our Nation's tactical weapons capabilities. As currently written, the treaty will leave Russia in a 10-1 advantage in tactical nuclear weapons. This is disconcerting and modernization must be a priority.

I have concerns about verifiability as well. Former Secretary of State James Baker has described the treaty's verification regime as weaker than its prede-

cessor. If the United States is going to make reductions to our capabilities under this treaty, we should ensure that Russia is doing the same and following the treaty as closely as our country will. We should not settle for some verification—we must require full verification. Second best will do the United States no good in terms of intelligence and response capabilities.

Back in 2002, I traveled to Russia with the University of Georgia to talk about nonproliferation. At that time, I expressed serious concerns not only about Russia's capabilities to secure their nuclear complex, but also to ensure that their nuclear scientists and their knowledge did not become available to bad actors like al-Qaida. Ensuring that Russia continues to keep their capabilities and know-how secure is imperative and cannot be left to second best.

Our two nations may approach nuclear agreements with different goals, but the fact that the United States and Russian governments maintain a dialogue is a highly positive fact. We need and want the cooperation of our counterparts in Russia in both bilateral and multilateral efforts. This is highlighted in the United Nations Security Council discussions on nuclear weapons development in Iran, North Korea, and other actors.

We want and need to create a safer world while maintaining our defensive capabilities for ourselves and our allies. By forcing debate on this treaty during the lame duck session, I do not believe we were able to fully address all concerns in the detail that was warranted. We needed to be sure the treaty does what we expect it to do without any surprises. I am not convinced we will not see any surprises in the future. Thus, I voted against the New START treaty.

#### NOMINATION OF MARY HELEN MURGUIA TO BE A U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The VICE PRESIDENT. Under the previous order, the question occurs on the following nomination, which the clerk will report.

The assistant legislative clerk reported the nomination of Mary Helen Murguia, of Arizona, to be a U.S. Circuit Judge for the Ninth Circuit.

The VICE PRESIDENT. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I support the nomination of Judge Mary Murguia to the Ninth Circuit Court of Appeals.

Judge Murguia has served on the Federal district court in Arizona for a decade and has a distinguished record that has earned the respect of the legal community in Arizona.

Perhaps most telling is the high regard in which Judge Murguia is held by her colleagues on the district court; they come from different backgrounds and were appointed by presidents of both parties, but they all speak very highly of her.

Judge Murguia was approved by the Judiciary Committee by a vote of 19 to 0. That unanimous vote is an indication of the strength of her record.

Finally, as I mentioned at Judge Murguia's hearing, Judge Murguia's brother Carlos is the first Latino to serve as Federal district court judge in Kansas. Judge Murguia was the first Latina to be appointed to the Federal district court in Arizona and she and Carlos are the only brother and sister sitting as Federal judges in the United States.

I am confident that Judge Murguia is a person of integrity who will do her best to be a fair and objective judge.

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

The VICE PRESIDENT. Is there a sufficient second?

There is a sufficient second.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, today, the Senate is finally being allowed to consider a judicial nomination that has been stalled since August—the nomination of Judge Mary Murguia of Arizona to serve on the United States Court of Appeals for the Ninth Circuit. I would understand the resistance to considering the nomination if President Obama had selected someone opposed by her home state Senators. But both Republican home state Senators support this nomination. Unlike his predecessor, President Obama has worked with home state Senators, including Republican Senators. Despite all his efforts, this consensus nominee has been stalled for months and months while awaiting final Senate action.

When the nomination was considered by the Judiciary Committee before the August recess, it was reported unanimously. Every Republican and every Democrat, all 19 members of the Judiciary Committee, voted in favor of her nomination. Still, she has been stalled for months and months. This is part of the dangerous pattern perpetrated the past two years as President Obama's highly-qualified judicial nominees have been stalled from final Senate action for extended periods. This is another example of the unnecessary delays that have led to a judicial vacancies crisis throughout the country. Judicial vacancies have skyrocketed to over 100 while nominations are forced to languish without final Senate action. In fact, President Obama's nominees have been forced to wait on average six times longer to be considered than President Bush's judicial nominees reported by the Judiciary Committee during the first 2 years of his Presidency.

When the Senate is finally allowed to take action, most of his nominations are confirmed by overwhelming bipartisan majorities or unanimously. Final Senate action on dozens of President Obama's judicial nominations has been delayed without explanation or good reason and then confirmed unanimously. The most outrageous examples