help communities get back on track for recovery and economic revitalization in the wake of a major disaster. Communities use these disaster relief funds to repair damaged public infrastructure, such as sewer and drinking water systems, and States use the EDA grants to create and coordinate efficient disaster response and recovery plans.

Additionally, local governments and nonprofits can lend EDA disaster relief funds to businesses to help our private sector to rebuild and to grow. Congress has recognized the value of this program in the past. During the past 5 years, we have provided more than $550 million in EDA emergency disaster relief funds. This includes $500 million in emergency supplemental funding for EDA in 2008 to respond to the hurricanes that devastated the South and the heavy rains that caused massive flooding throughout the Midwest.

When these areas were in need, Congress came together and extended a helping hand. Unfortunately, we have to do so again now. The funding in my amendment complies with the disaster relief provisions included in the Budget Control Act and is not offset with cuts from other programs in the bill. When disaster strikes, victims don't want us to reach for the budget ax, they want us to help them rebuild and recover.

We all recognize our country faces serious fiscal challenges, but we cannot put a price on human lives. Nothing is more important than protecting our communities, our families, and our economy. Hurricane Irene and many other natural disasters hit our country this year, causing widespread damage that is going to require a massive rebuilding effort. The American people are looking to us, to the Federal Government, to lend a helping hand.

I point again to the picture of what a disaster such as this can do, where water is virtually up to the second floors, and this was repeated across the State of New Jersey and in many other States as a result of hurricane Irene.

With that, I urge my colleagues to support this amendment. Although there are squabbles about funding for various programs, at no time is the help more urgently needed than now—again, right after these storms have hit, leaving terrible devastation and people urging and pleading with us to give them the help. I urge my colleagues to support the amendment.

With that, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, we have worked long and hard this whole week trying to move forward on the legislation dealing with our appropriations bills. It has been difficult, and one reason it has been difficult is this is kind of a new area we are working in; that is, legislating. I was very impressed to see Senator MIKULSKI talk with great clarity about how nice it was for her to again be legislating.

But we are not there yet. We were hoping to have a number of votes today—tonight—but we haven't been able to do that. We are getting close. Our staffs are working very hard to come up with an agreement we hope we can do tonight, to set up a series of four to six votes in the morning and then, hopefully, a pathway to completing this legislation.

We have other issues. Always we have to do more than one thing at a time. So we will move forward, the Republican leader and I, on filing a couple of cloture motions that we are going to set up for votes either Friday or hopefully we can get them done tomorrow.

Mr. MCCONNELL. If I can make just a couple remarks.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. We do have a number of amendments pending, and we are working our way in the direction of getting back to a normal process. I share the majority leader's hope and his view that we will have a number of votes, hopefully tomorrow, as a result of an agreement we are working on.

TEACHERS AND FIRST RESPONDERS BACK TO WORK ACT OF 2011—MOTION TO PROCEED

Mr. REID. Mr. President, I move to proceed to Calendar No. 204, S. 1723.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 204, S. 1723, a bill to provide for teacher and first responder stabilization.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the motion to proceed to Calendar No. 204, S. 1723, Teachers and First Responders Back to Work Act.

Harry Reid, Robert Menendez, Daniel Inouye, Herb Kohl, Sheldon Whitehouse, Jack Reed, Jeff Bingaman, Barbara Mikulski, Patty Murray, Debbie Stabenow, Richard Durbin, Sherrod Brown, Richard Blumenthal, Bernard Sanders, Robert Casey, Jr., Jeff Merkley, Patrick Leahy, Tom Harkin.

Mr. REID. I ask unanimous consent that the mandatory quorum call under rule XXII be waived.

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

Mr. REID. Mr. President, I withdraw my motion to proceed to Calendar No. 204.

The PRESIDING OFFICER. The motion is withdrawn.

The minority leader.

WITHHOLDING TAX RELIEF ACT OF 2011—MOTION TO PROCEED

Mr. MCCONNELL. Mr. President, I ask unanimous consent to proceed to Calendar No. 205, S. 1726, and I send a cloture motion to the desk.

CLOTURE MOTION

The PRESIDING OFFICER. Without objection, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 1726, the Withholding Tax Relief Act of 2011.

James Inhofe, David Vitter, Mike Crapo, Kelly Ayotte, Roy Blunt, Johnny Isakson, Jeff Sessions, Mike Lee, Saxby Chambliss, Tom Coburn, Jon Kyl, Susan Collins, Ron Johnson, Pat Roberts, Richard Burr, Lamar Alexander.

Mr. MCCONNELL. I now withdraw my motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

The majority leader.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT OF 2012—Continued

Mr. REID. Mr. President, as I indicated earlier, we have tried most all day to have some votes. We were unable to do that. We are not going to have any more votes tonight. I have spoken with the Republican leader. We have done the best we can for today. There will be more business on the floor this evening; hopefully, we will be able to set up some votes tomorrow. So I apologize to everyone for not being able to have some votes or to have some way of moving forward, but we have done, as I indicated, the best we can.

I guess the good news is some people will be able to watch the World Series.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from New York.

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

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

AMENDMENT NO. 869

Mrs. GILLIBRAND. As you know, Mr. President, Hurricane Irene and

Tropical Storm Lee left a trail of devastation all across New York. I saw firsthand the impact that they left on our communities: complete homes ruined, entire streets 7 feet of water, all people's belongings on their front yard, small businesses basically uncertain as to whether they could rebuild, whether they could rehire employees, crumbling bridges, washed-out roads, heating oil soaking into buildings and into the ground, farms with no feed for livestock, crops and livelihoods vanishing in a single day.

This farm in Middleburgh is just a snapshot of what our farmers are facing. Debris covers the land, most crops washed away. Whatever was left, contaminated. The Van Allers, who own this farm, told me that the worst sound they had ever heard was their cows suffering as the water rose.

This year has been unprecedented disasters striking agricultural regions all across the United States, not just in New York. In order to help these rural agricultural communities rebuild in my State and across the country, I am offering an amendment No. 869 to fund the backlog of State applications for the Emergency Conservation Program and the Emergency Watershed Program.

I call up this amendment now. This funding will help more than half the States in this Nation with the disasters they have experienced so far this year, from the flooding in the Midwest to the droughts in Texas to the devastation that happened all across New York State. This is emergency funding that will help our farmers and our businesses survive. I urge my colleagues to support this amendment to reduce the backlog of eligible projects that are needed desperately right now by these families and these farms to rebuild.

We wish to bring up amendment No. 869.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New York [Mrs. GILLIBRAND], for herself and Mr. SCHUMER, proposes an amendment numbered 869.

Mrs. GILLIBRAND. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To increase funding for the emergency conservation program and the emergency watershed protection program)

On page 83, between lines 9 and 10, insert the following:

SEC. ____. (a) Notwithstanding any other provision of this Act—

(1) the amount provided under section 732 for the emergency conservation program for expenses resulting from a major disaster designation pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is increased by $48,700,000; and

(2) the amount provided under section 732 for the emergency watershed protection program for expenses resulting from a major disaster designation pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is increased by $61,200,000.

(b) The additional amounts provided under subsection (a)—

(1) are designated by Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D));

(2) are subject to the same terms and conditions as any other amounts provided under section 732 for the same purposes; and

(3) shall remain available until expended.

Mrs. GILLIBRAND. I wish to add Senators LEAHY, CASEY, and SANDERS as cosponsors to this amendment, along with Senator SCHUMER and myself.

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

Mrs. GILLIBRAND. Mr. President, I yield the floor.

Mr. CONRAD. Mr. President, I wish to offer for the RECORD the Budget Committee's official scoring of H.R. 2112, the Department of Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for fiscal year 2012, as reported.

The bill, as considered by the Senate, includes the text of two other committee-reported appropriations bills: S. 1572, the Departments of Commerce, Justice, and Science and Related Agencies Appropriations Act for fiscal year 2012; and S. 1596, the Departments of Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for fiscal year 2012.

The bill is divided into three divisions, each representing the reported legislative text from a subcommittee. Each division, therefore, will be considered separately for budget enforcement purposes.

Division A of the bill—Agriculture, Rural Development, Food and Drug Administration, and related agencies appropriations—provides $1.8 billion in security discretionary budget authority and $18.3 billion in nonsecurity discretionary budget authority for fiscal year 2012, which will result in new outlays of $14.7 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for division A will total $23 billion.

Division A of the bill includes a total of $266 million in budget authority designated as being for disaster relief for the Emergency Conservation Program, the Emergency Forest Restoration Program, and the Emergency Watershed Protection Program. Pursuant to section 106(d) of the Budget Control Act, an adjustment to the Appropriations Committee's 302(a) allocation has been made for this amount in budget authority and for the outlays flowing therefrom.

Funding in division A of the bill matches the subcommittee's section 302(b) allocation for security and nonsecurity budget authority and for overall outlays. No budget points of order lie against division A of the bill.

Division B of the bill—Commerce, Justice, Science and related agencies appropriations—provides $78 million in security discretionary budget authority and $52.8 billion in nonsecurity discretionary budget authority for fiscal year 2012, which will result in new outlays of $37.7 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for division B will total $63.5 billion.

Division B of the bill includes a total of $135 million in budget authority designated as being for disaster relief for the Economic Development Administration. Pursuant to section 106(d) of the Budget Control Act, an adjustment to the Appropriations Committee's 302(a) allocation has been made for this amount in budget authority and for the outlays flowing therefrom.

Funding in division B of the bill is $6 million below the subcommittee's section 302(b) allocation for security budget authority but matches the allocation for nonsecurity budget authority and for overall outlays. No budget points of order lie against division B of the bill.

Division C of the bill—Transportation, Housing and Urban Development, and related agencies appropriations—provides $57.6 billion in nonsecurity discretionary budget authority for fiscal year 2012, which, when combined with transportation obligation limitations in the bill, will result in new outlays of $46.4 billion. When outlays from prior-year budget authority and transportation obligation limitations are taken into account, discretionary outlays for the division C will total $122.7 billion.

Division C of the bill includes a total of $2.3 billion in budget authority designated as being for disaster relief including $1.9 billion for the Federal Highway Administration's Emergency Relief Program and $400 million for the Community Development Block Grant Program. Pursuant to section 106(d) of the Budget Control Act, an adjustment to the Appropriations Committee's 302(a) allocation has been made for this amount in budget authority and for the outlays flowing therefrom.

Funding in Division C of the bill matches the subcommittee's section 302(b) allocation for nonsecurity budget authority and is $196 million below the subcommittee's allocation for overall outlays. No budget points of order lie against division C of the bill.

I ask unanimous consent that the table displaying the Budget Committee scoring of the bill be printed in the RECORD.

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

H.R. 2112, 2012—AGRICULTURE, COMMERCE-JUSTICE-SCIENCE, AND TRANSPORTATION-HUD APPROPRIATIONS [1]

[Spending comparisons—Senate-Reported Bill (in millions of dollars)]

	Security	Non-Security	Total
Division A: Department of Agriculture, and Rural Development, Food and Drug Administration, and Related Agencies Act, 2012			
Senate-Reported Bill:			
Budget Authority	1,750	18,296	20,046

H.R. 2112, 2012—AGRICULTURE, COMMERCE-JUSTICE-SCIENCE, AND TRANSPORTATION-HUD APPROPRIATIONS [1]—Continued

[Spending comparisons—Senate-Reported Bill (in millions of dollars)]

	Security	Non-Security	Total
Outlays	—	—	23,038
Senate 302(b) Allocation:			
Budget Authority	1,750	18,296	—
Outlays	—	—	23,038
Division A Compared To:			
Senate 302(b) allocation:			
Budget Authority	0	0	—
Outlays	—	—	0
Division B: Departments of Commerce and Justice, and Science and Related Agencies Appropriations Act, 2012			
Senate-Reported Bill:			
Budget Authority	78	52,752	52,830
Outlays	—	—	63,517
Senate 302(b) Allocation:			
Budget Authority	84	52,752	—
Outlays	—	—	63,517
Division B Compared To:			
Senate 302(b) allocation:			
Budget Authority	−6	0	—
Outlays	—	—	0
Division C: Departments of Transportation, Housing and Urban Development and Related Agencies Appropriations Act, 2012			
Senate-Reported Bill:			
Budget Authority	—	57,550	57,550
Outlays	—	—	122,721
Senate 302(b) Allocation:			
Budget Authority	—	57,550	—
Outlays	—	—	122,917
Division C Compared To: Senate 302(b) allocation:			
Budget Authority	—	0	—
Outlays	—	—	−196

[1] Divisions A, B, and C of Senate amendment 738 to H.R. 2122 include the Senate-reported legislative text of the respective Appropriations bills listed above.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 812

Mr. SESSIONS. Mr. President, I would like to speak on amendment number 812, which would prohibit the Patent and Trademark Office from using funds to implement Section 37 of the America Invents Act, more commonly known as the ''Medco Fix.''

The Medco fix was a bailout for a well-connected law firm—WilmerHale—and its malpractice insurer to the tune of $214 million, and the essence of special interest legislation that will result in increased costs for the government, hospitals and consumers. I offered an amendment to the America Invents Act to strike this special interest fix and it was narrowly defeated by a vote of 51 to 47.

This saga began in 2001, when WilmerHale apparently missed a routine deadline for submitting to the PTO a patent term extension (PTE) application on behalf of its client Medco. The PTO denied the application, concluding it was not filed in a timely manner. Legal deadlines like this exist for a reason. They provide certainty not only to the litigants in a particular matter but also to the public. Every day in courts across America where a deadline is missed the result is the same. Claim is dismissed the remedy available to the harmed party is a malpractice claim against the offending attorney.

Yet, in the 10 years since WilmerHale's malpractice, Medco never sued the law firm. Instead, in February 2011, the parties agreed to a settlement whereby the firm would pay Medco $214 million, of which $99 million will be paid by the firm's malpractice insurer.

WilmerHale also immediately paid $18 million up front to cover Medco's litigation and lobbying expenses over the past decade. The settlement was tied to their success in getting either the PTO or Congress to grant an extension of Medco's patent term before June 2015, when the extension period overturning the PTO decision would otherwise expire.

Both the company and its law firm have spent millions of dollars and many years lobbying Congress to change the rules and to politically fix their legal mistake. Unfortunately—in my view—they succeeded.

One of the many reasons I oppose this special interest fix is because I believe it is unnecessary, unwise and dangerous for Congress to interfere with ongoing litigation, which is what happened here. It goes against historical precedent and sound policy for Congress to directly interfere with active judicial proceedings on behalf of one party over another. Here, the U.S. District Court for the Eastern District of Virginia had already ordered the PTO to ''consider'' Medco's application timely filed and adopt an interpretation of the word ''date'' in the statute that includes a ''next business day'' construction rather than ''calendar day'' as the PTO argued. Although the PTO did not appeal the decision, a generic company, APP Pharmaceuticals, intervened in the case with an appeal to the Federal Circuit Court of Appeals. At the time that Congress was considering the America Invents Act, oral arguments before the appeals court already had been scheduled for just a few weeks later. The court had not even had the chance to hear arguments when some of my colleagues were arguing that the Medco fix merely enshrined in statute the holdings of the courts.

However, it is my understanding that APP—the intervening party—pointed out to the appeals court that even if the Medco fix applied to this appeal, according to the language of the America Invents Act, it would not take effect for one year from the date of enactment. Indeed, the America Invents Act provides that, unless otherwise specified, all provisions are to take effect one year after the date of enactment and no special effective date is provided for the Medco fix. Should we now expect them to come to Congress for a fix for lobbying malpractice?

Given this, the Federal Circuit postponed oral argument, ordered the parties to file briefs regarding the impact of the effective date, and then rescheduled the argument for November 15th. I would point out to my colleagues who so forcefully insisted on this fix that the Federal Circuit's actions demonstrate that this is by no means merely technical. The court is reviewing this very question of law, both for effectiveness and to determine whether Congress has the power to revive a patent once it has expired and entered the public domain.

As I have said many times before, this body should not be intruding on the jurisdiction of the judicial branch. Today, I am offering an amendment to right this wrong and to allow the Federal Circuit, without interruption, to fulfill its constitutional role in deciding a pure question of law.

Mr. President, there is no unanimous consent, I know, to bring up amendment No. 812, which I have submitted. It is a very important amendment. It is something I will insist on through every appropriate power an individual Senator has to get an amendment to be voted on. Hopefully it will be coming up tomorrow or the next day. Let me again summarize it briefly.

Amendment 812 would prohibit the Patent and Trademark Office from using funds to implement section 37 of the America Invents Act, more commonly known as the Medco fix. When the patent bill moved through the Senate and the House—that took a decade—efforts were made to reverse a decision by the Patent and Trademark Office that had declared a major Boston law firm had failed to file a document in time to preserve a patent for their client Medco and, as a result of that, Medco was to lose its patent sooner than otherwise would be the case. Generic manufacturers would be able to manufacture the drug and it was asserted that it would cost $214 million as a result of this error.

If a doctor makes an error, the doctor gets sued for malpractice. If lawyers make errors, they get sued for malpractice. They have malpractice insurance. Apparently they had some insurance.

At any rate, it appears millions of dollars, or hundreds of millions of dollars, were set aside for lobbying and other efforts to politically reverse the patent office during a time while the matter was litigated in court. When the patent bill came up a few months ago it was contended that this is the only vehicle to fix this problem and we needed to fix it. The House voted not to put it in their bill. Then somehow a new vote was obtained, and by the narrowest of margins the House put it in and it came to the Senate.

I had been objecting for a decade, and I objected and others objected, and we had a vote and by the margin of 51 to 47 it was decided not to amend the patent bill that the House had passed and to pass it just as the House did, although many people told me they agreed with me that this Medco fix intervening in ongoing litigation should not occur, but changing the patent bill would send it back to the House and endanger the passage of the bill.

I was disappointed then. But what we discovered is that the litigation continues. It is now before the U.S. Court of Appeals. The Court of Appeals is taking arguments on a number of issues that relate to this. It is a very real problem. It is a matter that ought

to be decided by the courts, not politicians. If some special relief act is to be utilized—and sometimes those can be—it can't be utilized while a party still has litigation ongoing. Only after the litigation is exhausted can someone appeal for a special relief act. In essence, that is what Medco is asking for.

I do not think it is right. I practiced law for a long time. I know how the system works. I know at this fine law firm in Boston, every day the first thing they look at when somebody sues one of their clients is: Did the person file a lawsuit too late? If they did, they will dismiss it. Every judge who sees a motion to dismiss for lack of timely filing objectively looks at it. If it is 1 day, 1 hour, 1 minute late, you are out. That is the rule of law in America. It doesn't make any difference if you are the widow lady or if you are the head of some company or if you are a big drug company or a big law firm. That is justice in America.

I do not think this is a good thing for us to do. Now that we have this legislation before us, it is germane and appropriate, because it has patent language in it, for us to fix this decision we sort of got forced into making and to have a vote on it as part of this bill. What we know is that the language of the patent act that we passed, the America Invents Act, would not take effect for 1 year from the date of enactment. During that time the litigation continues. Congress ought not intervene. Congress ought to let the courts decide. Then if the only remedy in Congress would be to file for a special relief act, Congress could consider it or not based on the circumstances of the case.

I do believe it is a very important issue. I truly believe Congress is unwise, very unwise, to begin to step into ongoing litigation involving highly competent parties with large amounts of money and start taking sides in that litigation. I believe it would be wrong.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

NOMINATION OF HEATHER HIGGINBOTTOM

Mr. SESSIONS. Mr. President, time has been set aside for the Heather Higginbottom nomination. I hadn't intended to speak tonight, but it has been suggested that we might get started on that to provide more time tomorrow for other business in the Senate. So I will share my remarks tonight for the record, and hopefully we can have more of a good discussion tomorrow.

The Constitution makes it very clear that it is the President who nominates. Confirmation does not occur, however, without the consent of the Senate. In Federalist No. 76, Alexander Hamilton wrote:

> To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.

In other words, the Senate does have a duty to evaluate the President's nominees.

Unfortunately, the situation we face today with the nomination of Heather Higginbottom to be the Deputy Director for the Office of Management and Budget is one of those cases. I do not know her personally, but let me state from the outset that I have no questions about her character. She has many admirers. Senator KERRY, for whom she worked, is an admirer, and I respect that. The President certainly seeks her appointment and has asked me to try to see that the appointment moves along. I respect his desire to have an up-or-down vote and have agreed that we would have this vote and have so agreed for some time. But my concern is with the nominee's budgetary experience. It is the lack of experience that causes me to voice my opposition.

Let me first mention that the Office of Management and Budget has the primary responsibility to assist the President in overseeing the preparation of the Federal budget. This is a huge responsibility. In helping the President formulate his spending plan, OMB must evaluate the effectiveness of agency programs, policies, and procedures, assess competing funding demands among all of these agencies, and set the priorities and help the President.

OMB is not in charge—the President is—but in reality OMB is the agency that raises the concerns with overspending with the various Federal agencies. They submit their requests, and then the OMB says yea or nay. It is a very serious matter because very important people are asking for money. Sometimes you just have to say no to very prominent Cabinet people. The Cabinet people can appeal to the President, but they don't do it often. They recognize that OMB is the place where most of these matters have to be decided. OMB speaks on behalf of the President.

Ms. Higginbottom's experience points to someone who has been on the wrong side, however, of fiscal restraint. Instead of crafting policies to decrease spending, she has been focused on new programs to increase spending.

In her Budget Committee questionnaire, she was asked about her qualifications for the job. She cited her legislative and political experience. I believe she worked in a Presidential campaign at one point but cited no direct budgetary knowledge and provided no examples of developing a budget.

In one prehearing question, I asked Ms. Higginbottom:

> Your background is in education and public policy. Outside of your legislative and political experience, have you acquired any budget training, including classes or continuing education?

She responded with one sentence:

> I have not taken any formal continuing education classes on the budget.

I asked her whether she was the primary budget staffer during her tenure in the Senate. She essentially gave a nonanswer to that. It doesn't appear that she was deeply involved as a general office Senate staffer in budgetary matters, not the primary staffer and not a staffer whose Senator served on the Budget Committee.

In another prehearing question, she was asked whether, as a nation, we needed to focus on deficit reduction rather than new spending. She responded by deferring to the President's fiscal year 2012 budget, stating that it ''begins the challenging but essential process of adjusting spending to achieve fiscal sustainability immediately with a 5-year freeze of nonsecurity discretionary spending.'' Now, this is the same budget that adds to the debt every single year and has substantial deficits every single year.

During her confirmation hearing before the Budget Committee, on which I was the ranking Republican, she continued to use President Obama's incorrect formulations. I use that phrase kindly. She testified that President Obama's fiscal year 2012 budget—the one he submitted in January—would pay down the debt and ''puts us on a path to stabilize our debt.'' But this is the same budget proposal that, by OMB's own estimate, has a deficit of approximately $800 billion in year 10 of the 10-year budget, and not a single deficit in the 10 years of this budget that was submitted to us falls below $600 billion. I would just note that, for example, $600 billion is larger than any deficit President Bush ever had. So in the 10 years, the lowest budget deficit projected by President Obama's own Office of Management and Budget is $600 billion—the lowest.

Surely a more experienced, skilled, and serious nominee, one who is acquainted with the great debt threat we have in America, would recognize that these deficits are irresponsible, and one can't say we are living within our means or we are on a path to stabilize our debt.

You cannot say that. Even Treasury Secretary Geithner, when he testified before the Budget Committee, said the President's budget would be ''unsustainable'' if Congress passed it as written.

But the Senate Budget Committee was not the only forum in which Ms. Higginbottom was given an opportunity to highlight her experience. She had a hearing before the Homeland Security and Governmental Affairs Committee. They asked about her qualifications also, which they indicated were lacking.

Senator COLLINS said in her opening statement:

> The nominee's background, while impressive in many respects, does not include a

great deal of experience in budget process or financial analysis.

Senator SCOTT BROWN used his first question to deal with her experience. He said:

I notice from your resume you have some great political experience and some really good policy experience. I was wondering if you'd share with the committee, you know, what type of accounting and budgetary experience you have.

Well, she first attempted to avoid the question, talking about her general legislative and policy experience. Senator BROWN interrupted her and got to the heart of the matter:

So I guess my original question is, what type of budgetary and accounting experience do you have?

Ms. Higginbottom responded that she was not an accountant and that her goal was to implement the President's policy agenda through the budgetary process. I would note that the President's policy agenda seems to be primarily to continue extraordinary new and expanded ''investments''—spending—in many, many areas of our government.

After opportunities to prove she was qualified through prehearing questions and through testimony at two confirmation hearings, she was reported out of the Homeland Security and Governmental Affairs Committee and the Budget Committee on a party-line vote. Our Democratic colleagues in both committees voted her out with the majorities they had. Because of her lack of experience, not one Republican voted for her.

So now a number of my colleagues have argued that the criticism is based not on a lack of experience but on her age, that somehow she is being unfairly treated because of that. She is young—young for this job—but the age allegation is not correct.

After her confirmation hearing in the Budget hearing, I sent her a followup question:

Some of my Democratic colleagues, during your confirmation hearing before the Budget Committee, indicated that when some of us questioned your experience, that we were using ''experience'' as a code word for age. The experience I am concerned about is actual budget experience. In a prehearing question, I asked you the following:

''Your background is in education and public policy. . . . have you acquired any budget training, including classes or continuing education?''

You responded in this way:

''I have not taken any formal continuing education classes on the budget.''

I asked if these facts had changed, and she basically said no. She said:

''For over a decade, I have worked at the highest levels of policymaking in the United States Senate and the White House. This work has included, but was not limited to, the budgetary implications of those policies.''

Not budget but policy issues and budgetary implications of those policies.

So the answer to the question I asked is no, clearly. She simply does not have the kind of serious budgetary experience to be the Deputy Director at an office that manages a government that is spending $3,700 billion this year and taking in about $2.3 trillion—borrowing 40 cents of every $1 we spend.

This is a most august position, and it requires a person who can have the confidence and judgment to say no to people who always want to spend more.

Arguably, she would be the least qualified Deputy Director in decades. The last two nominees in this position had a combined 21 years of budget and finance experience. For example, Rob Nabors, the most recent nominee before her, served 8 years on the House Appropriations Committee and 6 years at the Office of Management and Budget. Steve McMillin, the nominee before him, served 3 years on the Senate Banking Committee and 4 years at the Office of Management and Budget. You learn something operating out of the Office of Management and Budget. That prepares you to have a leadership role there. Combined, Ms. Higginbottom does not have 1 year of budget or finance experience. Over the last 20 years, nominees for this position have had an average of 6.5 years of experience. Well, in certain circumstances, in certain times, maybe less experience is OK. But at a time when this Nation has never faced a more serious debt threat, we need real, august, serious leadership.

Mr. Erskine Bowles, who cochaired President Obama's fiscal commission, which issued a most serious report to us, warned that if the United States fails to take significant action on debt reduction, the country would face ''the most predictable economic crisis in its history.''

We are borrowing 40 cents of every $1 we spend. Our Nation's gross debt is larger than our entire economy. The last thing we need now is someone who does not have the gravitas to say no to those who always tend to want to spend more. That is just one of the jobs OMB has—to say no.

When the Secretary of the Interior or the Secretary of Energy comes before the department, asking for approval of their budget which calls for more spending, a responsible OMB Director or his Deputy must be able to say no. Looking at President Obama's fiscal year 2012 budget, I am sorry to say this duty has not been met by Mr. Lew, the Director. And I cannot see he is going to get much strength and support for doing the right thing from this nominee.

I supported Director Lew, but I have been disappointed in his leadership. When the President submitted his budget to Congress, Director Lew came before the Budget Committee and made some of the most indefensible claims I have heard in public life. He did. Director Lew said the President's budget would allow us to live within our means, begin to pay down our debts, and spend only money we are taking in each year. Not one of those claims was true. Multiple fact-check organizations checked them and found them to be false. Even by OMB's own reckoning, the deficit would never be smaller than $600 billion at any point in the 10-year budget window. We would not be paying down our debt. We are not going to be spending only money we are taking in each year under the President's budget.

What would happen to a CEO of a corporation if they told potential investors: Well, we are living within our means. We will begin to pay down our debt. We are going to only spend money we are taking in each year. Invest in our company. And people invested in the company, and they found out that there was no budget plan in place that showed anything less than huge deficits for the entire next decade and that the company was borrowing 40 cents of every $1 that it was spending? What would happen then? I am telling you, he would be sued, if not prosecuted for fraud.

So this is the kind of leadership we have. I am not happy with it. The American people should not be happy with it. They came in to spend, not look the American people in the eye and tell them of the grave financial crisis we are facing in America.

Erskine Bowles, heading the commission appointed by President Obama, told us. He told us we are on an unsustainable path. It threatens our economic future; that we are facing the most predictable financial crisis in our history. When asked when that crisis might occur, when might we have economic damage arising from our debt, he said 2 years, maybe a little less, maybe a little more. Alan Simpson, his Cochairman, said: I think it could be less—less than 1 year.

This is not a game we are playing here. We do not need government officials spinning that we are living within our means and paying down our debt. We are running up debt in a fashion never, ever, ever before done in this Nation. It is unsustainable, and it is so dangerous because it is systemic, and it is hard to get off this trend. It is demographics. It is a lot of different reasons. But it is very serious, and we need leaders in OMB who are watching every single dime that is being spent, looking for every effort and place that savings can be effected. That is what we need, and I just do not feel as though this nominee fits that bill. She is a good person. She is, apparently, a good staffer, has a lot of friends. But the position of Deputy Director of OMB is a grave position. It has august responsibilities. It requires a most serious person who is willing to take strong stands and say no to people who, all too often, want to spend more and more.

When asked about our financial situation, in one of her answers she made reference to the first stimulus bill, the Recovery Act, so-called. This is what the nominee said:

Fortunately, Recovery Act spending has been extraordinarily transparent,

enabling the public to assess the job impacts of the various programs funded. Overall, the data demonstrate that the Recovery Act has delivered as promised by creating and saving millions of jobs across the country, and has been an essential factor in rescuing the American economy.

Well, I know the nominee is a friend and ally of the President, and I am willing to give her a vote, and I suppose she will be confirmed. But I just want to say that I think that is a bit of a Pollyannaish description of the success of the stimulus bill. It just did not meet those standards, and I do feel as though she has been less than rigorous in her understanding of these difficult financial issues that our Nation faces. So I encourage my colleagues to join me in opposing the nomination.

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

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

Mr. REID. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, after consultation with the Republican leader, the Senate proceed to a series of votes in relation to the following amendments: Vitter No. 769, as modified; Webb No. 750; Merkley No. 879, as modified with the changes that are at the desk; Brown of Ohio No. 874, as modified with the changes that are at the desk; Moran No. 815; and Grassley No. 860; that there be no amendments or points of order against any of the amendments prior to the votes other than budget points of order; that there be 2 minutes equally divided in the usual form prior to each vote; that the Vitter, Webb, Merkley, Brown, and Grassley amendments be subject to a 60 affirmative vote threshold; and that all after the first vote be 10 minutes; further, that the following amendments be considered agreed to this evening: Sanders No. 816, Coburn No. 793, and Coburn No. 798, as modified with the changes that are at the desk; finally, that the following first-degree amendments filed by Senator COBURN be in order to be called up and made pending during tomorrow's session: Nos. 794 through 797; 799 through 801; and 833.

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

The amendment (No. 816) was agreed to.

The amendments (Nos. 793 and 798), as modified, were agreed to, as follows:

AMENDMENT NO. 793

(Purpose: To ensure transparency in federally attended and funded conferences, including the cost to taxpayers for food, drinks, and hotel stays associated with federally funded conferences of more than $20,000)

On page 209, after line 2 insert the following:

SEC. _____. The provisions of sections 517(c), 531, and 538 shall apply to all agencies and departments funded by divisions A, B, and C.

AMENDMENT NO. 798, AS MODIFIED

At the appropriate place, insert the following:

SEC. ____. Notwithstanding section 701, none of the funds made available by this Act may be used to purchase new passenger motor vehicles, except for national security, law enforcement needs, public transit, safety, and research: Provided further, all agencies and departments funded by divisions A, B, and C of this Act shall send to Congress at the end of the fiscal year a report containing a complete inventory of the total number of vehicles owned, permanently retired, and purchased during fiscal year 2012 as well as the total cost of the vehicle fleet, including maintenance, fuel, storage, purchasing, and leasing.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on amendment No. 738 to H.R. 2112, an Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

Harry Reid, Herb Kohl, Daniel Inouye, Sheldon Whitehouse, Jack Reed, Robert Menendez, Jeff Bingaman, Barbara Mikulski, Patty Murray, Debbie Stabenow, Richard Durbin, Sherrod Brown, Richard Blumenthal, Bernard Sanders, Robert Casey, Jr., Jeff Merkley, Patrick Leahy, Tom Harkin.

CLOTURE MOTION

Mr. REID. Mr. President, I have another cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on H.R. 2112, an Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

Harry Reid, Herb Kohl, Daniel Inouye, Sheldon Whitehouse, Jack Reed, Robert Menendez, Jeff Bingaman, Barbara Mikulski, Patty Murray, Debbie Stabenow, Richard Durbin, Sherrod Brown, Richard Blumenthal, Bernard Sanders, Robert Casey, Jr., Jeff Merkley, Patrick Leahy, Tom Harkin.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum call under rule XXII be waived with regard to both cloture motions.

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

MORNING BUSINESS

TRIBUTE TO CARL H. LINDNER JR.

Mr. MCCONNELL. Mr. President, I rise to mourn the passing of a great American and a man who did much to benefit the people of Kentucky as well as his native Ohioans, Mr. Carl Henry Lindner Jr. Carl Lindner was greater Cincinnati's most successful entrepreneur and a self-made billionaire. He passed away this October 17. He was 92 years old.

Carl Lindner was born in Dayton, OH, in 1919, the son of a dairyman. He quit high school to help out in his father's dairy store. That store grew into United Dairy Farmers, a chain of dairy and convenience stores that many northern Kentuckians frequent to this day to buy their famous ice cream.

Mr. Lindner made much of his fortune in the banking and insurance business. His name became famous across northern Kentucky and Ohio and nationwide as the owner of the Cincinnati Reds from 1999 to 2005, when he also served as that organization's CEO. Carl Lindner also in the past bought and sold Kings Island amusement park, Provident Bank, and the Cincinnati Enquirer newspaper.

Always the optimist, Carl was famous for carrying with him cards that he would hand out to anyone he met, with motivational sayings printed on them. One frequent version of this card would read, ''Only in America! Gee, am I lucky!''

Carl put his great wealth to use benefitting his community, bringing thousands of high-paying jobs to Cincinnati and northern Kentucky. He has been called a ''one-man chamber of commerce.''

He also generously gave millions of dollars a year to various charitable causes, including, but certainly not limited to, the Lindner Center of HOPE behavioral health center, the University of Cincinnati College of Law, the Cincinnati Museum Center at Union Terminal, the Cincinnati Symphony Orchestra, the Cincinnati Reds, the Western & Southern Open, Fort Washington Way, the Bond Hill/Roselawn library, the West End YMCA, and the necklace lights on the cables of the Roebling Suspension Bridge.

I had the benefit of knowing Carl quite well. He was an amazing man, and his loss will be deeply felt by many. Elaine and I send our condolences to his wife Edyth, his sons Carl III, Craig, and Keith, his 12 grandchildren and 5 great-grandchildren, and many other beloved family members and friends.

The passing of Mr. Carl Henry Lindner Jr. is a true loss for the people of northern Kentucky, Ohio, and the Nation. I know my Senate colleagues join me in remembering and honoring Carl for his very American success story, his service to his community, and the example he leaves behind for others of a full life well lived.