the second highest court in the land. No one has debated that in any other way. It is so important. It is no wonder why. Here is what former DC Circuit Chief Judge Patricia Wald said of the court's caseload: ''The DC Circuit hears the most complex, time-consuming, labyrinthine disputes over regulations with the greatest impact on ordinary Americans' lives.''

It is unfortunate that Republicans are filibustering another talented and dedicated public servant nominated to service on this crucial court.

Georgetown law professor Nina Pillard is the next victim of what the Republicans are doing. She graduated magna cum laude from Yale and attended Harvard Law School. For 5 years she litigated individual and class action racial discrimination cases as an attorney for the NAACP Legal Defense Fund.

She served as Deputy Assistant Attorney General and Assistant Solicitor General. Support for her confirmation is bipartisan. Two top Justice Department officials from the Bush era, Assistant Attorney General Viet Dinh and former FBI Director William Sessions, have supported her nomination.

Professor Pillard is also faculty co-director of the Supreme Court Institute at Georgetown, which helps attorneys to argue cases before the High Court. She brings a wealth of knowledge to the job. She has argued nine cases before the Supreme Court and has written briefs for another 25. Her arguments helped open the Virginia Military Institute to women in 1997 and beat back a constitutional challenge of the Family and Medical Leave Act.

She is qualified and dedicated. It is truly a shame that Republicans would filibuster this nomination for unrelated political reasons. The DC Circuit is currently operating with only 8 of its 11 seats. While Senate Republicans are blocking President Obama's nominees to this vital court, they were happy to confirm judges to the DC Circuit when President Reagan and both President Bushes were in office.

Republicans have already blocked two exceedingly qualified nominees to the DC Circuit, Caitlin Halligan and Patricia Millett. I hope my Republican colleagues will not block another qualified nominee when we vote on cloture on this matter next week. This nominee deserves a fair confirmation process and a simple up-or-down vote.

RESERVATION OF LEADER TIME

Mr. REID. Would the Chair announce the business of the day.

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

EMPLOYMENT NON-DISCRIMINATION ACT OF 2013

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 815, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 815) to prohibit employment discrimination on the basis of sexual orientation or gender identity.

Pending:

Reid amendment No. 2014 (to the language proposed to be stricken by the committee substitute), to change the enactment date.

Reid amendment No. 2015 (to amendment No. 2014), of a perfecting nature.

Reid motion to recommit the bill to the Committee on Health, Education, Labor, and Pensions with instructions to report back forthwith, Reid Amendment No. 2016, to change the enactment date.

Reid amendment No. 2017 (to (the instructions of the motion to recommit) Amendment No. 2016), of a perfecting nature.

Reid amendment No. 2018 (to amendment No. 2017), of a perfecting nature.

Reid (for Toomey/Flake) amendment No. 2013, to strike the appropriate balance between protecting workers and protecting religious freedom.

Collins (for Reid) amendment No. 2020 (to amendment No. 2013), to change the enactment date.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I come to the floor today to discuss the topic of religious freedom. This issue is an important component in the debate on the legislation that we are currently considering, but it's also an issue that defines, I believe, who we are as a Nation as well as the rights granted to us in the Constitution.

To paraphrase what Thomas Jefferson said in 1807, for Americans, he said, 'Among the most inestimable of our blessings' is the blessing 'of liberty to worship our Creator in the way we think most agreeable to His will; a liberty deemed in other countries incompatible with good government and yet proved by our experience to be its best support.'

From Jefferson's time to today, freedom of religion has been a core American principle, a principle our founding fathers put their lives on the line for and a principle that generations of Americans in uniform have defended so that we can all enjoy this cherished freedom. Unfortunately, this principle of religious freedom is under attack across our country today. Though in many cases these attacks may be subtle, make no mistake, we are seeing the free exercise of religion and freedom of speech constrained and restricted.

We have seen it in the administration's rule regarding church-affiliated groups to facilitate insurance coverage that includes contraceptives and abortion-inducing drugs despite their deeply held religious beliefs.

I think about my alma mater, Wheaton College in Illinois, which is a school from which Billy Graham graduated years ago.

I appreciate the Senate's Majority Leader and Minority Leader's reference to his life as he celebrates his 95th birthday. Billy Graham had an important impact on my life and millions of people—not just Americans, but people around the world. I appreciate the recognition that has been given here by our leaders.

I also think about Indiana-based University of Notre Dame. Despite conscious objections and the clearly outlined standards of these colleges and universities—the College's Community Covenant at Wheaton and the values of the University of Notre Dame—they have been told by the government that they are not considered religious institutions and must comply with the Health and Human Services Mandate.

Let me describe a little bit the thread of faith that runs through every aspect of a school like Wheaton College and the values of faith expressed frequently in a number of ways by the University of Notre Dame. If you tune into the Notre Dame football programs on Saturday afternoons, as I do every week, or intend to do, you will see an ad by Father Jenkins, President of Notre Dame, that talks about the component and element of faith that is essential to the beliefs of what the University of Notre Dame is trying to address through its education process.

Whether it is professors or students, administrators or groundskeepers or others that thread of faith and values runs through the university and throughout my alma mater as well. There's such a thing as, it's been described by former president of Wheaton College, as umbrella universities—those [universities] that have a faith component perhaps in a theological school or a religious program. The thought is well, certainly, they can exercise their constitutional rights guaranteed by the First Amendment. But what about the doorkeeper or receptionist at the administration building or the coaches of the teams or the professors? Sure the professor of theology and the professor of religion, but what about the professor of science, professor of economics, or the professor of business, how does that apply? Or what about the groundskeepers or those who serve the meals in the cafeterias to the students? Well, there are those types of institutions, and there is an argument that it is not systemic, it is not the thread that runs through every aspect of the program. And this applies to homeless shelters and faith-based institutions across America. Some are secular related. Some are a mix of secular-religious. And some are systemically faith-based where a thread of faith runs through every aspect of their program or the institution.

So what we're talking about here is a situation where institutions of education, like Wheaton College and the University of Notre Dame, or faith-based institutions reaching out through homeless shelters, food kitchens, any number of programs provided by faith-based institutions or individuals engaged in this that believe that the thread of faith is important to their success and that's why they're there.

These faith-based institutions have been told by the government that they're not considered religious institutions and must comply with the

Health and Human Services Mandate. Last year administration officials said they worked out a compromise on this rule, but the fact is the mandate still exists. These institutions should not have to facilitate insurance coverage for products that are counter to their moral beliefs. In my opinion, to require faith-based institutions to betray the fundamental tenets of their beliefs and accept this violation of their First Amendment rights guaranteed by the Constitution is simply wrong.

I think about the health care professionals who have been required to participate—required by the government—to participate in medical procedures that violate their rights of conscience and their deeply held religious beliefs about the meaning of life and when life begins.

I think about the recent efforts in many States to force churches and religious professionals into performing rituals or ceremonies that run counter to their faith.

So what is at stake here is of extreme significance. Established in our nation's founding days and sustained for over 200 years, this principle is at the very core of our system of government, as Jefferson was trying to say.

We can't pick and choose when to adhere to the Constitution and when to cast it aside for cheap political prerogatives. We must consistently stand for these timeless constitutional granted privileges and rights.

The legislation before us raises very serious concerns regarding religious freedom. The so-called protections from religious liberty in this bill are vaguely defined and do not extend to all organizations that wish to adhere to their moral or religious beliefs in their hiring practices.

For example, the religious beliefs of faith-based childcare providers and small business owners would be disregarded under this legislation. Faith-based daycare providers could be forced to hire individuals with views contrary to the faith and incorporated values of these daycare providers. Do we really want to support policies that discriminate against an employer's religious beliefs and require employers to hire individuals who contradict their very most deeply held religious beliefs?

This bill also would allow employers to be held liable to workplace environment complaints opening the door to the silencing of employees who express their deeply held beliefs. This possibility runs counter to everything America stands for in the realm of free speech.

Now I know there have been some efforts, including amendments offered by my colleagues, Senator TOOMEY from Pennsylvania and Senator PORTMAN from Ohio, to clarify the existing religious protections in this bill. Some Members believe that these amendments go too far. I frankly believe they don't go far enough. However, they are at least a first step, and I will support these two measures not to make a bad bill better, but to highlight the importance of the freedom of religion principle involved in this legislation.

Let me quote from Jay Sekulow, Chief Counsel for the American Center for Law and Justice. He wrote this:

> A steadfast commitment to one's religious scruples was once lauded as a virtue, but in the current public discourse, religious objectors are often chastised as seeking special treatment that would impose their values on others. The apparent unpopularity of the expression of religious values through actions or words brings to mind Justice Oliver Wendell Holmes' observation that: ''We should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death and the Supreme Court's more recent reminder that the First Amendment protects expression, be it of the popular variety or not.'''

The Supreme Court's recent reminder and I quote again, ''the First Amendment protects expression, be it of the popular variety or not.'' It is an important thing for us to remember from a very respected Supreme Court judge.

I oppose discrimination of any kind, and that includes discrimination against individuals or institutions for their faith and values, which often gets lost and has been lost in this discussion. So there's two types of discrimination here we're dealing with and one of those goes to the very fundamental right granted to every American through our Constitution, a cherished value of the freedom of expression and religion. And I believe this bill diminishes that freedom.

So I feel it's vital for this body to stand up for our country's long-standing right to the freedom of religion and speech. For these reasons, I am not able to support this current legislation, and I hope my colleagues would stand with me in protecting our religious freedom and oppose this legislation.

Mr. President, with that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold his suggestion for the absence of a quorum.

Mr. COATS. I will, and I apologize for not recognizing my colleague, who is standing in the back row. My eyesight is not as good as it used to be.

Mr. FRANKEN. I can see my colleague from Indiana.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Mr. President, I rise today in strong support of the Employment Non-Discrimination Act.

In many towns, cities, and States across our country, it is still perfectly legal to fire someone simply because they are gay. One can be a hard worker who shows up on time and gets exemplary performance reviews, but if a person's boss discovers that he or she is gay or transgender or suspects it, he can fire a person for being who they are or for whom they love, and there is nothing the person can do about it.

That is a terrible injustice for Americans who happen to be LGBT. It violates the principle that we are all equal under the law. We all deserve the chance to work hard and to prove ourselves, regardless of our race, color, religion, sex, national origin, disability, age, sexual orientation, or gender identity.

Many Americans do not realize it remains legal to discriminate against LGBT Americans in the workplace. In one recent poll, eight in ten Americans believe it is already illegal under Federal law to fire or refuse to hire someone because of their sexual orientation or gender identity. Doesn't that tell us something about how obviously right ENDA is?

The debate we are having in the Senate today is about whether we should ensure LGBT Americans don't suffer discrimination in the workplace. I have long been a supporter of ENDA, and enacting it into law is something we should have done a long time ago. In fact, 17 years ago, it came within one vote of passing in the Senate.

Making ENDA law will be the next significant step in the fight for equality for LGBT Americans. After decades of struggle, we have achieved a number of huge victories in rapid succession: ending don't ask, don't tell; overturning the Federal ban on same-sex marriage recognition; the achievement of marriage equality in more and more of our States, including my home State of Minnesota.

While we are debating ENDA in the Senate today, equality in the workplace is, in fact, something we achieved in Minnesota over two decades ago. In 1993, the Minnesota State legislature amended our State's human rights act to protect Minnesota's workers from discrimination based on their sexual orientation or gender identity. At the time only a few States prohibited discrimination based on sexual orientation, and Minnesota was the first State to include protections for transgender workers.

We have had this law in effect now for over 20 years in Minnesota, and what has been the result? Well, for LGBT Minnesotans it has meant they do not have to live in fear of being fired or discriminated against in hiring just because of who they are or because of whom they love. That is a big deal.

But if you are not an LGBT Minnesotan, very little has changed. Some people, including House Speaker BOEHNER, are opposing ENDA because they claim it will cause frivolous lawsuits and be bad for business. The Minnesota experience shows these fears are unfounded. There has not been a flood of lawsuits because the rights of LGBT Minnesotans are wisely respected. And with 19 Fortune 500 companies, Minnesota has become an ever better place to work and do business. Minnesota is basically the same as it was before this law was passed, except that it is better because LGBT Minnesotans are free from discrimination at work.

Let me give you one example. Last year, a vice president from General Mills—the Minnesota-based company

that is one of the world's largest food companies and which currently employs 35,000 people and makes Cheerios—spoke at a Senate Health, Education, Labor, and Pensions Committee hearing about General Mills' support for making sure that the same legal protections people have in Minnesota are extended to workers all across the United States.

The General Mills vice president spoke about how the company's policy of inclusion has contributed to its innovation and growth. He said:

> Employees who are members of the GLBT community are incredible contributors to our enterprise. Absent their unique perspectives, talents, and gifts, we would be less competitive and successful. Simply said, talent matters. Now more than ever, American business needs to leverage the ingenuity of all sectors for our nation. Discriminatory barriers to top talent just don't make business sense.

And there are many other large employers headquartered in Minnesota—Target, Supervalu, U.S. Bancorp, Xcel Energy, Medtronic, 3M, Cargill, Best Buy, and many others—who have put in place companywide policies against discrimination on the basis of gender identity and sexual orientation wherever their other factories or businesses or stores may be.

Minnesota's small businesses have also reported on the positive effects of Minnesota's human rights law. For instance, Nancy Lyons is the owner of a small 70-person Minneapolis business that develops software. Nancy says the protections and peace of mind her employees get from not living in fear positively impact every aspect of their lives, from their productivity at work to their family lives.

It is long past time that LGBT employees around the country be guaranteed the same rights they have had in Minnesota for 20 years. In Minnesota, our law has given LGBT Minnesotans peace of mind and freedom from discrimination at work and improved the overall climate in our State for those individuals, for families, and for businesses. I look forward to the Senate passing this bill, and I hope the House will take it up and pass it as well.

Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

OBAMACARE

Mr. VITTER. Mr. President, I come to the Senate floor today to urge my colleagues again to focus on an important issue in the overall ObamaCare debate; and that is how Washington fares under ObamaCare, and does Washington live by the same rules, the same laws it passes on the rest of America?

All across the country, as we see daily in news reports, Americans are struggling with real issues and real challenges created by ObamaCare. We need to fix those issues and those challenges. We need to get it right. But at the same time as that is going on in the real world, Washington—leaders here—basically get an exemption, a carveout, special treatment, a subsidy. That is particularly egregious and particularly unfair when ordinary Americans suffer under these very real challenges.

That is why I have introduced my No Washington Exemption from ObamaCare bill, and that is why I continue to work hard with many other Members—we have significant coauthors here and in the House—to get that passed.

With regard to Congress, the ObamaCare statute actually got it right. And with regard to Congress, all we are asking for is that we live by the statute, live by the law. That statutory language says clearly that every Member of Congress and all of our congressional official staff go to the exchanges for our health care and be treated just like other Americans going to the exchanges—many of them being forced off plans, employer plans they like, and having to go to the exchanges—no special treatment, no special exemption or carveout or subsidy.

The problem is that after the law passed—I guess it was a classic case of what NANCY PELOSI said: We need to pass the law in order to figure out what is in it—because after ObamaCare passed with that specific statutory language, a lot of folks on Capitol Hill read it, figured out what was in it, and said: Oh, you know what. We can't have this. We can't live with this. And then they furiously started lobbying for a way out, for an end-run around: And sure enough, they got it. The Obama administration issued a special rule for Congress to take all of that financial sting out of the provision.

The rule basically said two things, both of which I think are outrageous and contrary to the statute itself. First of all, it said: I know the law says all official staff go to the exchanges. But we don't know who that is. We don't know who official staff are. So we are going to leave it up to each individual Member of Congress to designate who is official staff who must go to the exchanges for their health care.

Well, I think that is flat-out ridiculous. The law, the statute, clearly says all official congressional staff. To create this opportunity for exemption, where each individual Member designates staff as official or not, is silly. That designation, by the way, happened last week, and some Members have actually said: None of my staff is official. I have no official staff for purposes of this section, so none of my staff go to the exchanges. That is outrageous. Other Members said: Well, my personal office staff is official but committee staff, no; leadership staff, no. That is outrageous too.

The second thing this illegal rule did to get around the impact of this provision of ObamaCare is to say: Well, for Members and staff who do go to the exchanges, they get to take with them a huge taxpayer-funded subsidy—a big subsidy no other American at that income level gets. That is not in the ObamaCare statute either, and that is contrary to the ObamaCare statute. In fact, that specific language was considered for inclusion and was not put in—proof that was not the intent of that section of ObamaCare.

I believe that is outrageous as well and defeats the whole purpose of the section, which is to make sure Members of Congress and our staff walk in the same shoes as other Americans, 8 million-plus of whom are being forced off coverage they like and being forced on to that ObamaCare exchange.

That is why I have joined with others to push this No Washington Exemption from ObamaCare language.

As I mentioned, one key element is this election that this illegal rule creates, where every individual Member of Congress determines who on their staff goes to the exchange or does not. As I said, in some cases, Members say: I have no official staff. Nobody has to live by the law, nobody has to live by this mandate, which is particularly outrageous.

To add insult to injury, these individual decisions by every Member of Congress are not public. This is all secretive. This is hidden from the public. Some Members have said what they are doing through the press, but the full information, each individual Member's election in this regard is not public.

So as soon as that loophole was created, I filed another bill, another piece of legislation, that simply says we are going to make all of these decisions public. Everybody has a right to know how each Member of the Senate, how each Member of the House is handling the situation. That is my Show Your Exemptions bill, which I filed about 10 days ago.

I think it should be a no-brainer. I think it should be beyond debate. Whatever you think about the underlying issue, whatever you think about ObamaCare, shouldn't this decision of each individual Member be made public? Shouldn't the public have a right to know? That is why I filed this bill, and that is why I am pushing for a vote on this bill.

Getting a vote on that proposal will be a key priority of mine, particularly when we consider the drug compounding bill in the near future and when we consider the Department of Defense authorization bill. It is going to be my key priority: to get a simple vote on that simple proposal. Again, I believe that should be a no-brainer, that this information—which does involve how taxpayer dollars are being treated, which does involve how congressional offices are handling the situation—that information one way or the other be made public. You do not need to editorialize about it. Everybody can make up their own mind about what they think about the underlying issue, about what they think about ObamaCare, but shouldn't that information be made public?

We need to vote on that proposal, and I urge us to move and agree quickly to

have a vote, either in the context of the drug compounding bill or the Defense authorization bill over the next few weeks. Those are probably going to be the only opportunities for a vote this calendar year. I think it is certainly fair and reasonable to get that vote, have the American people be able to see that information, and that is the only opportunity I am likely to have in the Senate this calendar year.

Again, whatever my colleagues think about the underlying issue, certainly whatever we all think about ObamaCare, I would hope we can all agree—that election, that information, how each individual Member of the Senate, each individual Member of the House, handles the situation should be made public. It certainly involves public policy and taxpayer dollars and how we run Congress. It should be made public.

I urge my colleagues—Republicans and Democrats—to unite around that reasonable, commonsense proposal and get that information out to the public, as it should.

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

Excuse me. I withhold my suggestion of the absence of a quorum, but I do yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

BUDGETARY WASTE

Mr. FLAKE. Mr. President, after weeks of budgetary wrangling and a government shutdown that had the country on edge, last week marked the beginning of the bicameral budget conference. I commend my colleagues who are meeting on the issue and are trying to reconcile the goals of wildly different budget outlines. That is no easy task. I think we all know that. However, we all know that shoveling more IOUs into our $17 trillion debt is simply unsustainable.

No matter on which side of the aisle we sit, I hope we can all agree that America's present fiscal trajectory is untenable and that our Nation's future depends on turning these economic issues around. There is no secret formula. At a minimum, Congress should abide by the budget control framework which has produced some of the most meaningful discretionary spending reductions in decades. Beyond that, we have to slow the rising costs of entitlement programs in order to achieve significant long-term deficit reduction.

Sadly, some seem fixated on spending beyond the BCA's cap for next year. Some of our colleagues have suggested that the spending discipline we achieved with the sequester should be replaced with revenue increases. Now, we all know that sequestration is a blunt instrument for reducing spending, but this desire to replace it by driving up taxes is based on an incorrect assessment. Washington has a spending problem, not a revenue problem. In 2013 the government spent some $3.5 trillion. We are on track to spend another $3.7 trillion in 2014. Before anyone starts to look at tax hikes, we should realize that we are nowhere near cutting our budget to the bone. In fact, there is a lot of fat left in a lot of agencies. These budgets deserve to get the knife. But do not just take my word for it. The administration, our colleagues in the Congressional Budget Office, the Government Accountability Office, and numerous concerned-taxpayer organizations have also posed examples of wasteful spending that should be eliminated.

If the sequester's bluntness has taught us anything, it is that Congress ought to jump at the chance to make smart, surgical spending cuts. To that end, I intend to take 5 minutes each week for the coming weeks to highlight some of the wasteful spending programs that still, even in times of economic belt-tightening, lurk in our Federal budget.

Today I would like to highlight some of the programs in the U.S. Department of Agriculture. With a budget request of $146 billion in 2014, the USDA rounds out the top five most expensive Federal agencies. Many programs within the USDA provide valuable services, including meat inspection, crop data collection, and managing the agricultural safety net. But the USDA also has its own agency-level homeland security department, pays for Sunkist to advertise overseas, and underwrites an astonishing number of zero-down-payment suburban home mortgages. That is the USDA.

The most obvious place to realize significant savings in the USDA is with the Federal Crop Insurance Program. Here is a program in which the taxpayers cover the majority of the risk. It pays private insurance agents commissions to sell and administer individual policies. It funds the oversight of the program and, on top of all of that, subsidizes policyholders' premiums. That is a pretty good deal if you can get it.

In 2012 taxpayers spent more than $7 billion to subsidize this program. In 2010—one of the better recent crop years—when the USDA took in a record $2.5 billion more than it paid in claims, the Federal Crop Insurance Program still cost taxpayers $3.7 billion. That is because taxpayers foot the bill for roughly two-thirds of each premium, leaving the policyholder only to cover the remaining third.

Congress could reap significant savings just by reducing the percentage the taxpayers have to spend to subsidize these premiums. In fact, according to CBO, simply rolling back the percentage of taxpayer subsidy in the program to pre-2000 levels would shave more than $40 billion in spending from the pre-2013 farm bill baseline. To that end, I have introduced the Crop Insurance Subsidy Reduction Act, which would do just that.

There are a number of other places at USDA where Congress can find savings. Surely one of those is USDA's own Office of Homeland Security, created in the post-9/11 security glut. This department is supposedly responsible for providing oversight and coordination for USDA's preparation and response to matters of homeland security importance. A $1 million program such as this may be easily lost in the President's $4 trillion budget, but there is an entire agency in the Federal Government tasked with the same objective and funded with the tens of billions of taxpayer dollars.

Another place to find savings at USDA is in the Market Access Program, which has spent $1.4 billion since 2006 and looks to collect another $200 million in taxpayer funds in 2014. This program has spent billions of tax dollars on overseas advertising campaigns that benefit some of the most deep-pocketed corporations around, including McDonalds, Nabisco, Welch's Foods, and Sunkist.

When it comes to questionable budgetary items at USDA, the single-family housing direct and guaranteed loan program takes the cake. This obscure but growing home loan program writes and guarantees mortgages for low- and moderate-income families in rural and suburban areas. These loans are 100 percent financed and require no down payment. While home buyers in big cities are not eligible for these loans, residents of many fast-growing towns and suburbs—some within 30 miles of this very building—are receiving those kinds of subsidies. Do not be fooled into thinking these loans are for rustic farmhouses either. They are specifically designed to finance your standard home, and, inexplicably, the USDA discourages buyers from using them to purchase farms or ranches. This is the USDA discouraging us from using these subsidies to purchase farms and ranches but, rather, regular homes.

Since 2006 the USDA—remember, that is the Department of Agriculture—has spent nearly $10 billion on single-family housing direct loans. While it did not show up in the budget, home loan guarantees by the USDA have also put taxpayers on the hook for another $118 billion. The agency has requested another $320 million to fund single-family housing direct loans in 2014 and plans to issue another $24 billion in guarantees. To put the figures in perspective, the entire Department of Housing and Urban Development submitted a budget request of $47 billion.

When we have such egregious examples of waste, why should we demand more of the taxpayers' money?

In the coming weeks I hope my colleagues on the budget conference committee, along with the President and Members of Congress and various fiscal organizations, will consider some of the proposals I am offering to eliminate this wasteful spending. A good start would be sowing the seeds of fiscal restraint at the Department of Agriculture.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I ask unanimous consent to have a short colloquy with the distinguished Senator from Arizona and the Senator from Wisconsin.

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

Mr. MERKLEY. Mr. President, I appreciate so much the comments of my colleague from Arizona on the challenges inherent in getting our budget under control. I particularly appreciated over the last few days the conversation we have had about the Employment Non-Discrimination Act.

I would like to say that the Senator from Arizona has brought particular value in expressing concerns about how we make sure businesses have the guidance they will need to implement this act effectively, particularly as this act embraces an area—that is, transgender discrimination—that was not part of the act considered in the House of Representatives.

Mr. FLAKE. Mr. President, I appreciate the work the Senator from Oregon did with my office this week to try to arrive at language we could put into an amendment. We were not able to get that amendment.

When I voted for ENDA in the House in 2007, as the Senator mentioned, it did not contain the provisions with regard to gender identity. Those added provisions have concerned me in terms of potential costs of litigation or compliance. I still have those concerns. I hope that as we work through the process, as this bill moves on to the House, we can find ways to make sure employers can implement these provisions in a way that is reasonable and proper.

I also thank the Senator from Wisconsin for working with my office on these issues as well. I have a better appreciation for what needs to be done and what we can do with this legislation as it moves through the process.

I yield to the Senator from Wisconsin.

Ms. BALDWIN. Mr. President, I would like to express my appreciation and gratitude to the Senator from Arizona for his very thoughtful and careful approach to considering this legislation. I enjoyed working with the Senator during our days in the House of Representatives and remember well the vote the Senator cast back in 2007 after great study and reflection.

I think we find ourselves in the position we are in right now, with an expanded bill that has protections for both sexual orientation and gender identity, because of the leadership of the Senator from Oregon.

To the point of the concerns that have been raised in this colloquy, there has been a really exhaustive amount of research done on those States that have passed similar pieces of legislation at the State level and how they chose to move forward on employment protections on the basis of sexual orientation and gender identity. I have discussed with the Senator from Oregon on numerous occasions the approach most States have taken and the success these bills have had in helping to keep all of our employment decisions based on work ethic, character, and loyalty, and the subjects on which they should be focused.

I look forward to working on this measure in the future, and I thank both the Senators from Arizona and the Senator from Oregon for their focus on ENDA.

Mr. MERKLEY. Mr. President, I look forward to that conversation as well. The State of Wisconsin was one of the first or maybe the first in the Nation to bring an end to workplace discrimination. Oregon has a fully inclusive bill that has worked very well. We have worked out a great partnership with the businesses of Oregon in making sure there is satisfactory guidance for them. I look forward to bringing that experience into this conversation about the concerns of the Senator from Arizona. I echo the appreciation for the thoughtful dialog we have had over the past few days and look forward to future dialog as we continue to try to make this bill ending discrimination in the workplace work well for businesses across the Nation and certainly for the millions of LGBT Americans who will have the opportunity to break these chains of discrimination and more fully participate in our national economic life.

Mr. FLAKE. I thank both the Senator from Oregon and the Senator from Wisconsin for working with me and look forward, as this process goes on, to making sure the provisions in the legislation work for employers as well as for employees. I appreciate the work and the assistance the Senator has given our office. I thank the Senator.

Mr. MERKLEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

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

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

WOMEN'S RIGHTS

Mrs. MURRAY. Mr. President, I thank Senator BLUMENTHAL and Senator BOXER, who will be joining me in this conversation in a few minutes.

I think that now more than ever, after we have emerged from this very damaging and completely unnecessary government shutdown, the American people want us to focus on jobs and the economy. That is what every poll says, that is what all of our constituents say, and that is absolutely what is needed at a time when families continue to struggle to make ends meet.

Instead of working with us across the aisle on jobs and economic growth, it seems as if some Republicans are now focused on something else entirely—politics. In fact, in a short while, the senior Senator from South Carolina is going to be introducing a bill that is blatantly political, a bill that not only undermines a woman's access to her doctor but also restricts an array of reproductive health services.

Today we wish to make it abundantly clear; that is, that this extreme, unconstitutional abortion ban is an absolute nonstarter. It is going nowhere in the Senate and those Republicans know it.

I want to think that over the last 40 years, since the historic decision of Roe v. Wade, we have moved on from debating this issue. I wish to think that after four decades many of those who want to make women's health care decisions for them have come to grips with the fact that Roe v. Wade is settled law. After all, the many signs of progress are all around us.

This year a record 20 women are serving in this body. One year ago yesterday women's power and voice at the ballot box was heard loudly and clearly. In fact, last year when Republican candidates running for office thought that rape was a political talking point, that idea and their candidacies were swiftly rejected, thanks in large part to the voices of women. Only this week we saw women in Virginia resoundingly reject the Republican candidate for Governor and his misguided and outdated agenda for women's health.

Sometimes it is tempting to think that times have indeed changed, that maybe politicians have realized that getting between a woman and her doctor is not their job, that it is possible that rightwing legislators have a newfound respect for women's health care.

The truth is that the drumbeat of politically driven extremist and unconstitutional laws continues to get louder. Apparently some of our colleagues on the other side of the aisle want to make some noise about this so that their adoring audience of rightwing radio hosts, columnists, and activists is satisfied.

In fact, here is an example of how blatantly political this restrictive ban is. One of the actual participants in the press conference to introduce their bill today had this to say to Politico about the strategy behind doing this. She said: ''It's a much better thing to be campaigning on rape and incest these days.''

That is an insult to women everywhere, and it is most certainly not what the Senator from South Carolina has called ''a debate worthy of a great democracy.''

This is a debate we have had. A woman's access to her own doctor is settled law. We are not going to let attacks on Roe v. Wade such as this one change that.

I wish to remind all of those who are even considering supporting this bill that real women's lives and the most difficult health care decisions they could ever possibly make are at stake.

I wish for us to consider the story that Judy Nicastro from my home State shared so bravely with the New York Times last summer. In an op-ed she wrote only days after the House passed a bill that was virtually identical to the one that is being introduced today, Judy talked about being

faced with every pregnant woman's worst nightmare. In describing the news that one of the twins she was carrying was facing a condition where only one lung chamber had formed and that it was only 20 percent complete, Judy captured the anguish that countless women in similar positions have faced. She wrote:

My world stopped. I loved being pregnant with twins and trying to figure out which one was where in my uterus. Sometimes it felt like a party in there with eight limbs moving. The thought of losing one child was unbearable.

She went on to say:

The M.R.I., at Seattle Children's Hospital, confirmed our fears: the organs were pushed up into our boy's chest and not developing properly. We were in the 22nd week.

Under the bill that is being introduced, the decision Judy ultimately made through painful conversations with her family and consultation with her doctors would be illegal.

The decision to make sure, as she put it, ''our son was not born only to suffer'' would be taken from her and given to politicians.

I am here to provide a simple reality check. We are not going back. We are not going back on settled law. We are not going to take away a woman's ability to make her own decisions about her own health care and her own body. Women are not going back to a time when laws forced them into back alleys and made them subject to primitive and unsanitary care. Senators such as me, Senator BOXER, Senator BLUMENTHAL, and others who join me in opposing this effort are not going to go anywhere.

Advocates and doctors who treat women every day and know that their health care must be protected are not going to go anywhere. Women who continue to believe that their health care decisions are theirs alone are not going anywhere.

By the way, the Constitution is not going anywhere. Therefore, this bill is not going anywhere. This bill, as attacks on Roe v. Wade before it, will eventually be lost to history. But millions of American women will not forget. I welcome our colleagues on the floor to this debate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. BLUMENTHAL. I thank my colleague from the State of Washington for her eloquence and leadership on this issue, as I do my colleague from California. She has been steadfast and strong in support of a woman's right to make choices about reproductive rights. She is absolutely right; we are not going away.

This bill that will be introduced later today from our colleague from South Carolina—as much as we respect him—is a nonstarter because it is nonsensical and unconstitutional. This bill was passed by the House of Representatives earlier this year. We could not have been clearer then, and we should be very clear now, that it is inappropriate, unwise, and unfair. It remains so today and will be so for as long as we are here.

This bill essentially leaves any woman who needs an abortion for health reasons—and I stress, for health reasons—after 20 weeks of a pregnancy with no options—none. It punishes doctors with up to 5 years in prison for providing a service that the doctor believes, in his or her professional judgment, in his or her medical opinion, is best for her and her family. Those decisions are what the Constitution protects, what Roe v. Wade guarantees, what the right of privacy preserves in the right to be left alone.

Quite simply, this bill is bad for women, and it criminalizes medical professionals who would try to do what is right. I have a long history in law enforcement, and this sort of ban, which would leave women in completely desperate circumstances with no options is shortsighted, misguided, and illegal. We should not be here talking about proposals that would degrade and disgrace the Constitution, but about job measures, economic growth bills, and measures to solve the immense challenges that confront us in dealing with budget issues. I thank the Senator from Washington State for the great work that she is doing on those issues.

We should be debating the issues that concern and confront the American people at this historic challenging time—not a measure that will be struck down by the courts because it is so plainly unconstitutional and so clearly bad policy—not only for women but for men, families, and for all of us.

We have seen bill after bill in recent times stalled by disagreements over health care. We have seen the Federal Government shut down over health care. Now we see another legislative attempt to win, essentially, political points at the expense of risking the health and welfare of women and children in this country. The attack on women's health care must stop.

We are here in the midst of a busy legislative session to restate the fact that this bill is going nowhere. My colleagues and I will not allow this bill to put women's lives at risk, and to put their health care in jeopardy with politically motivated attempts at destroying constitutionally protected rights. That is why we are elected to this body, to take a stand and speak out, to protect the people who are most vulnerable, and to make sure that women who are at risk can be allowed to make personal private decisions about their health and their bodies without obtrusive interference from the government.

These decisions should be made by women, their families, the medical profession, and whomever else they wish to consult, not by politicians.

I yield the floor for my colleague from California

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. It is very good to see the Presiding Officer in the chair.

Since the Senator has arrived, we have cast some landmark votes for laws that are so critical and for candidates who are so critical. We are about to have a moment in history where we are going to expand opportunities for the LGBT community, expand protection for them so no longer will they face fear in the workplace.

If we have an overwhelming vote—which I hope we will have—it will send a message to Speaker BOEHNER that he should join with us. After all, what is the purpose that we should serve here? It is really making life better for people. It certainly is protecting our people.

This leads me to the reason I am here at the request of Senator MURRAY. It is because we need to speak out against the bill that will shortly be introduced. It is ironic, because as we are about to end discrimination on a whole group of worthy people, this bill attacks another group of people, the majority of this country, women.

We are here to say that the extreme and dangerous 20-week abortion ban is not going anywhere in the Senate—not on our watch. Anyone who knows this knows we mean what we say and say what we mean.

The American people continue in election after election to reject the war on women. They did it in race after race in the 2012 cycle, and they did it in these local and State-wide races only a couple of days ago.

The American people, regardless of party, want us to focus on issues that make a difference in their lives, such as creating jobs, reforming our immigration system, keeping college affordable for students, and rebuilding an infrastructure that is failing us. They don't want to take us back to the last century and open up battles that have long ago been fought in 1973.

I see my friend from Iowa, a real champion of Roe v. Wade, a decision that was made by the Court that was a very tough decision. They really did take a moderate view of balancing all of the interests.

We have a bill being introduced today that has been shopped around by the most extreme elements in our country that would essentially say Roe v. Wade doesn't make any difference, and it opens up a direct assault on women's health, a direct assault on Roe v. Wade, a direct assault on doctors.

It is a radical bill. It is an abortion ban. It offers no health exception, no help for women facing cancer, facing kidney failure, facing blood clots or other tragic complications during a pregnancy, no exception for rape or incest when folks are too scared to report that they were raped or they were a victim of incest. It throws trusted doctors into jail for 5 years simply for providing needed health care to their patients.

I wish to tell you who opposes this: the American Congress of Obstetricians

and Gynecologists. They said that these restrictions are ''dangerous to patients' safety and health.''

I want to speak about Judy Shackelford. Four months into her pregnancy, she developed a pregnancy-induced blood clot in her arm. The only guarantee that she wouldn't die and leave behind her 5-year-old son was for Judy to end that pregnancy. She and her husband made that very difficult decision.

No Senators were in the room when she made that decision with her husband. No Governor was in the room. No President was in the room. This was a personal decision she made with her husband, her god, and her doctor. That is how it ought to be. If a family decides they are going to save the life of their mom, that should be respected.

Christie Brooks of Virginia, when pregnant with her second child, after her 20-week ultrasound found out that her daughter would be born with a severe structural birth defect and the baby would suffocate at birth. She made the incredibly difficult decision to end that pregnancy. She wouldn't be allowed to do that under this radical ban.

We need to decide who we stand up and fight for. Is it some ideological rightwing agenda or is it for the people, the families, the loving families that we represent?

What is best for them? That is it.

So we are going to stop this dangerous bill. We are going to stop this dangerous attack on women in its tracks. We are sending a clear message—and I thank Senator MURRAY for organizing us today—that we will protect women and their families across America.

I thank the Chair. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. TOOMEY. 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. TOOMEY. Mr. President, I rise today to address an amendment I have pending on the ENDA bill which we will vote on soon. This is an amendment I have offered on my own behalf and that of Senators FLAKE and MCCAIN, who have joined me in this effort, and I thank them for that.

It occurs to me that sometimes in our work a tension can arise between important competing American values, and two vitally important American values are, I believe, somewhat in tension in some aspects of this bill. First, one great enduring and important value for all Americans is equality. This bill today clearly makes a strong stand for greater equality.

I believe, and I think most Americans share the view, that every individual is entitled to dignity and respect and fairness, and that individuals ought to be judged based on their merits, on their character, and on their abilities. A person's sexual orientation is irrelevant to their ability to be a good doctor or engineer or athlete or a Federal judge. That is why I have supported acknowledging that reality.

I supported 17 years ago, in the writing of the charter of the city government of Allentown, a provision that would ban discrimination on the basis of sexual orientation in the hiring for that city. I supported an end to don't ask, don't tell, because I thought it was an inappropriate infringement on the freedom of gay and lesbian persons serving in the military. I believe there are more legal protections that are appropriate to prevent employment discrimination based on sexual orientation. So these are an important set of values.

Another obvious and vitally important American value is freedom, and particularly religious freedom. The First Amendment guarantee of the free exercise of religion means that religious groups, even in the course of secular services, can, for instance, choose to hire employees who agree with their religion, employees who will promote that religion. And of course, the First Amendment applies even when we don't necessarily agree with the views of that religion or that faith.

What we have tried to do in this legislation and in other context is to strike an appropriate balance between the tension that arises between these sometimes competing values. The sponsors of this bill have made a very thoughtful, credible effort to strike that balance. In fact, the sponsor of this bill and I agree on what at least an important aspect of that important balance ought to look like, and specifically I believe the agreement is that religious institutions, including those engaging in some secular activities, should be exempt from the requirements of this bill if it violates the tenets of their faith.

The goal of my amendment is to simply make sure the bill actually achieves what the drafters intended. The Senator from Oregon, who is the chief sponsor of the bill, has stated correctly, in terms of its intent, that the bill ''broadly exempts from its scope houses of worship as well as religiously affiliated organizations.'' This exemption, which covers the same religious organizations already exempted from the religious discrimination provisions of title VII of the Civil Rights Act of 1964 should ensure that religious freedom concerns do not hinder the passage of this critical legislation.

Other groups that are advocates for this legislation have similarly observed that the provisions of title VII would ensure the exemption of faith-based institutions. There are examples where circuit courts have ruled, in interpreting title VII of the Civil Rights Act, that affiliated organizations would in fact get this exemption. Examples include a gymnasium run by the Mormon Church, Christian elementary schools and universities, a Presbyterian-operated retirement home, a Seventh Day Adventist hospital, a Jewish community center, and there are others.

So I acknowledge it is absolutely true it is the case there are Federal courts that have respected the religious freedom of these institutions to be exempted from the religious hiring mandates of the Civil Rights Act and, presumably, that would apply in the case of ENDA because of the way the legislation is crafted.

The problem that concerns me is that there are other cases where other courts have come to a different conclusion, and they have not recognized religious institutions the same way. There is a lack of uniformity across our country, across the different districts that ultimately interpret the application of title VII of the Civil Rights Act.

In fact, over the years, different courts have interpreted the language quite differently, and so we have these two problems, in my view, if we leave the underlying legislation as it is. One is that Americans will live under not two but multiple different standards. The 12 circuits that apply the title VII exemptions have already adopted four different tests for determining whether an institution qualifies for the religious exemption.

The second problem is that employers and workers don't necessarily have predictability even within a circuit that has its own test, which differs from another circuit. And the reason is the tests themselves are somewhat subjective and somewhat unpredictable. They have multiple factors. For example, the Third Circuit, which includes my State of Pennsylvania, has nine factors; and as the court explained, not all factors will be relevant in all cases, and the weight given each factor may vary from case to case. The result is that in a single case decisionmakers looking at the same set of facts can reach very different conclusions.

In the absence of my amendment, my concern is there will be no uniform, predictable national standard for determining when a religious entity, a religious organization, is exempt from the bill. There are a couple of examples that illustrate my point.

In a case called the EEOC v. Kamehameha Schools—that is a Hawaiian word. My pronunciation may not be correct. This is a 1993 decision—there were two schools created by a charitable trust to help orphans and poor children. The trust instructed ''the teachers . . . shall forever be persons of the Protestant religion.'' The schools shall provide a good education ''and also instruction in morals.''

The schools hired only Protestant teachers. They held themselves out as Protestant schools. They required all the students to take religious classes. They offered Bible studies and worship services, and they had a cooperative relationship with one specific Protestant church.

The district court found the schools were religious and, therefore, they were covered and they qualified for the exemption. But the Ninth Circuit Court, considering the exact same set of facts, found the opposite and decided the schools were secular. The Ninth Circuit acknowledged the schools' original principle was providing religious instruction, but they essentially ruled that since some students were not Protestant and since the schools offered courses that were not religious in nature—the schools taught math and they taught social studies—for those reasons they would not qualify for the exemption and the schools were required to hire non-Protestant teachers.

Another example—and I only have two—is a Methodist orphanage founded by the Methodist Church. The board of trustees were Methodist and they had close ties to the Methodist Church. The district court eventually held that many of the orphanage's day-to-day activities of caring for children were simply not necessarily religious, and so the home was not exempt. But initially, the district court had actually found for the Methodist orphanage. It was the Fourth Circuit that reversed it, sent the case back with instructions they reconsider this.

The district court had an interesting comment in this. It stated its opinion by declaring that it remains somewhat confused as to the proper interpretation, but it would do its best. So if a Federal judge can't tell what the test is, how could workers? How could an employer? How could an institution based on faith?

My amendment really is a modest attempt to ensure the bill actually achieves what I believe its authors and sponsors and supporters intend. It would continue to guarantee equality to workers, but it would protect religious groups' rights to the free exercise of their religion. And it would ensure all Americans would live under the same rule, the same formulation, with predictability and certainty. It would clarify that ENDA's religious exemption applies to religious hospitals, schools, charities, and other organizations that are owned by, controlled by, or officially affiliated with a church or religious group covered by ENDA's current exemption.

What this does is simply ensures we get close to striking a good, sensible balance between the equality in the workforce that is the principle motivation for this bill and the religious freedom I feel very strongly about and I think many of my colleagues do as well.

I want to commend everybody who has put in a lot of hard work on a careful and thoughtful effort here, and I hope my fellow Senators will join me in supporting this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I ask unanimous consent that I be permitted to speak for up to 5 minutes in opposition to the Toomey amendment and that the Senator from Wisconsin also have 2 minutes to speak in opposition.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HARKIN. Mr. President, over the course of this debate, we have documented the tremendous business community support for this bill, including over 100 major companies. A key reason for that support is that ENDA is closely modeled on title VII of the civil rights law. Employers are familiar with the law, they understand how to comply with the law, and it provides certainty.

The many Fortune 500 companies that have employment nondiscrimination policies in place have modeled their policies on the nondiscrimination requirements of title VII. Unfortunately, by proposing an entirely new definition of businesses that would qualify for an exemption from the Employment Non-Discrimination Act, this amendment calls into question that very certainty. ENDA already exempts the same religious organizations that qualify for an exemption under title VII of the Civil Rights Act.

Under current law, the exemption includes not only houses of worship—churches, synagogues, and mosques—but also religious schools and religiously affiliated hospitals. The exemption in this bill passed the House of Representatives on a broad bipartisan basis, 402 to 25, in 2007.

In determining what organizations should qualify for religious exemption, most courts have also said that where the primary activity of the organization is commerce or profit, despite strongly held religious beliefs by the owners, the organization may not discriminate in hiring. That is what this amendment, I believe, seeks to change. This amendment would allow entities that are ''officially affiliated'' with a religious society to discriminate on the basis of sexual orientation and gender identity. This is a new term that is undefined in the text of the amendment and could lead to thousands of for-profit businesses being allowed to discriminate.

Some examples that have been suggested could qualify for the exemption could be a private employer whose only ''affiliation'' with a religious society is receiving a regular newsletter from that society or a private employer who sponsors a fundraiser for a religiously affiliated nonprofit or a private employer who provides goods and services to a religious organization. Again, this amendment would open the floodgates for all kinds of lawsuits. Courts would be inundated trying to figure out what does ''officially affiliated'' mean because there is no definition to that. The definitions we had before provide that kind of certainty to our business owners.

Our Nation's civil rights laws require those who participate in commercial activity must adhere to the broad principles of fairness and equal treatment. In potentially allowing secular commercial businesses to discriminate in hiring and other employment practices on the basis of sexual orientation or gender identity, this amendment threatens to gut the fundamental premise of ENDA that all workers should be treated equally and fairly.

So while I urge my colleagues to oppose this amendment, I wish to note that the sponsor of the amendment supported beginning debate of the bill. His amendment is one that goes directly to the substance of the bill that we are debating and not an unrelated issue. So I wish to compliment the author, Senator TOOMEY. This is the way we should operate in the Senate.

As many know, I have been advocating for rules changes since 1995. One thing I have always adhered to is that it is the right of the minority to be able to offer relevant germane amendments to a bill. The author of this amendment has adhered to that. This is certainly relevant. This is certainly germane. That is why I compliment him for providing us with a way the Senate should work. But the amendment, I believe, is ill-defined. It would open the floodgates for all kinds of new cases. It would disrupt businesses all over America. So for that reason I urge my colleagues to oppose the amendment by the Senator from Pennsylvania.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Ms. BALDWIN. Mr. President, the bill before us today, the Employment Non-Discrimination Act, contains a very carefully negotiated bipartisan religious exemption provision. The amendment before us right now significantly expands that provision, and I rise to share why I believe it would be unwise to do so and urge my colleagues to oppose the amendment.

Religious organizations are not touched by this legislation. They can use an individual's sexual orientation or gender identity in their employment decisions if they choose to. ENDA does apply, however, to businesses and entities that are not primarily religious in purpose and character.

Just as with other civil rights legislation and in laws protecting individuals from discrimination on the bases of race, sex, national origin, religion, age, and disability, a capable employee in a nonreligious business should not be fired—or not hired—because of his or her boss's religious beliefs.

The amendment offered by Senator TOOMEY would broaden this exemption to allow an employer to be exempt from ENDA if it is affiliated with a particular religious organization, even if it engages primarily in secular activities. Allowing this type of exemption could be interpreted so broadly that it could negate the bill and its important protections for American workers.

The provision of this bill that this amendment seeks to modify is the product of a long and significant bipartisan negotiation and compromise.

I ask unanimous consent for 2 additional minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Ms. BALDWIN. I am a former Member of the House of Representatives, and I worked very closely with faith groups and civil rights advocates over the months leading up to consideration of ENDA in 2007 to arrive at the religious exemption compromise in the bill we are considering today. In fact, this current language in the bill before us passed the House of Representatives on a broad bipartisan basis of 402 to 25 as a floor amendment during our consideration of ENDA in 2007. It is a bipartisan compromise supported by many religious organizations, including the Presbyterian Church, the United Methodist Church, and the United Synagogue for Conservative Judaism.

Over 40 religious organizations wrote to endorse this bill with a letter that reads:

Any claims that ENDA harms religious liberty are misplaced. ENDA broadly exempts from its scope houses of worship as well as religiously affiliated organizations. This exemption—which covers the same religious organizations already exempted from religious discrimination provisions of title VII of the Civil Rights Act of 1964—should ensure that religious freedom concerns don't hinder the passage of this critical legislation.

I ask my colleagues to oppose this amendment and then join together on a historic day to vote in support of the Employment Non-Discrimination Act.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Under the previous order, the motion to recommit S. 815, the pending amendments to the underlying bill, and amendment No. 2020 offered by the Senator from Maine (Ms. COLLINS) for the Senator from Nevada (Mr. REID) are withdrawn.

Under the previous order, the question is on agreeing to amendment No. 2013 offered by the Senator from Nevada (Mr. REID) for the Senator from Pennsylvania (Mr. TOOMEY).

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Pennsylvania (Mr. CASEY) is necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Oklahoma (Mr. COBURN).

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

The result was announced—yeas 43, nays 55, as follows:

[Rollcall Vote No. 230 Leg.]

YEAS—43

Alexander	Fischer	Paul
Ayotte	Flake	Portman
Barrasso	Graham	Pryor
Blunt	Grassley	Risch
Boozman	Hatch	Roberts
Burr	Heller	Rubio
Chambliss	Hoeven	Scott
Coats	Inhofe	Sessions
Cochran	Isakson	Shelby
Corker	Johanns	Thune
Cornyn	Johnson (WI)	Toomey
Crapo	Lee	Vitter
Cruz	McCain	Wicker
Donnelly	McConnell	
Enzi	Moran	

NAYS—55

Baldwin	Heinrich	Murray
Baucus	Heitkamp	Nelson
Begich	Hirono	Reed
Bennet	Johnson (SD)	Reid
Blumenthal	Kaine	Rockefeller
Booker	King	Sanders
Boxer	Kirk	Schatz
Brown	Klobuchar	Schumer
Cantwell	Landrieu	Shaheen
Cardin	Leahy	Stabenow
Carper	Levin	Tester
Collins	Manchin	Udall (CO)
Coons	Markey	Udall (NM)
Durbin	McCaskill	Warner
Feinstein	Menendez	Warren
Franken	Merkley	Whitehouse
Gillibrand	Mikulski	Wyden
Hagan	Murkowski	
Harkin	Murphy	

NOT VOTING—2

Casey	Coburn

The PRESIDING OFFICER. Under the previous order requiring 60 votes for adoption of the amendment, the amendment is rejected.

Under the previous order, the committee-reported substitute amendment, as amended, is agreed to.

CLOTURE MOTION

Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 815, a bill to prohibit employment discrimination on the basis of sexual orientation or gender identity.

Harry Reid, Tom Harkin, Jeff Merkley, Patrick J. Leahy, Tom Udall, Mark Begich, Brian Schatz, Al Franken, Barbara Boxer, Richard J. Durbin, Christopher A. Coons, Tammy Baldwin, Debbie Stabenow, Benjamin L. Cardin, Sheldon Whitehouse, Patty Murray, Barbara Mikulski, Kirsten E. Gillibrand

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on S. 815, a bill to prohibit employment discrimination on the basis of sexual orientation or gender identity, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant bill clerk called the roll.

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

Mr. DURBIN. I announce that the Senator from Pennsylvania (Mr. CASEY) is necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Oklahoma (Mr. COBURN).

The yeas and nays resulted—yeas 64, nays 34, as follows:

[Rollcall Vote No. 231 Leg.]

YEAS—64

Ayotte	Hatch	Murray
Baldwin	Heinrich	Nelson
Baucus	Heitkamp	Portman
Begich	Heller	Pryor
Bennet	Hirono	Reed
Blumenthal	Johnson (SD)	Reid
Booker	Kaine	Rockefeller
Boxer	King	Sanders
Brown	Kirk	Schatz
Cantwell	Klobuchar	Schumer
Cardin	Landrieu	Shaheen
Carper	Leahy	Stabenow
Collins	Levin	Tester
Coons	Manchin	Toomey
Donnelly	Markey	Udall (CO)
Durbin	McCain	Udall (NM)
Feinstein	McCaskill	Warner
Flake	Menendez	Warren
Franken	Merkley	Whitehouse
Gillibrand	Mikulski	Wyden
Hagan	Murkowski	
Harkin	Murphy	

NAYS—34

Alexander	Enzi	Paul
Barrasso	Fischer	Risch
Blunt	Graham	Roberts
Boozman	Grassley	Rubio
Burr	Hoeven	Scott
Chambliss	Inhofe	Sessions
Coats	Isakson	Shelby
Cochran	Johanns	Thune
Corker	Johnson (WI)	Vitter
Cornyn	Lee	Wicker
Crapo	McConnell	
Cruz	Moran	

NOT VOTING—2

Casey	Coburn

The PRESIDING OFFICER. On this vote, the yeas are 64, the nays are 34. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Under the previous order, cloture having been invoked on S. 815, the time until 1:45 p.m. will be equally divided between the two leaders or their designees.

The Senator from Ohio.

Mr. BROWN. Madam President, I rise today to discuss the need to protect all Americans from workplace discrimination. The vote that the Presiding Officer from North Dakota just announced was a tremendous victory for civil rights in our country; it was a tremendous victory for all people, gay and straight. It will mean a more productive workplace. It will mean better work conditions. It will mean an expansion of human rights. And what is not to celebrate about that?

I worked on this bill as a cosponsor starting almost 15 years ago—more than 15 years ago—in the House of Representatives, and I am thrilled to have been able to vote for it today, as I know 60-plus of my colleagues were, and I am hopeful the House of Representatives decides to do the same.

Earlier this year people of different genders, ethnicities, and ages gathered outside of the Supreme Court wanting to be there when civil rights history

was made when the Defense of Marriage Act was declared unconstitutional. Clergy, people in collars, parents with children, students, seniors—everyone in between—were there too. The steps of the Supreme Court that morning were filled with people who represented every walk of life in our great country; so, too, must our laws.

Today and every day far too many Americans still go to work fearing they can be fired for who they are and whom they love. This needs to stop now. That is why the Senate needs to pass—later today, I hope—the Employment Non-Discrimination Act and the House needs to bring up ENDA for a vote. ENDA would protect LGBT Americans from workplace discrimination. It is currently legal—this is what I think the public does not always hear and what I think Speaker BOEHNER needs to hear—it is currently legal in 29 States to discriminate based on sexual orientation. Think about that. Twenty-nine States—in this great country, with this Constitution, with this Bill of Rights—29 States allow gay Americans to be fired solely on the basis of their sexual orientation. In 2013 you can still be fired for whom you love in 29 States. It is legal to do that.

We have laws protecting Americans from workplace discrimination based on the color of their skin, as we should; based on their religion, as we should; based on whether they are a man or a woman, as we should; or whether they have a disability, as we should have those laws in place.

We should offer these same protections to LGBT Americans. We currently do not protect or workers, though, from being fired for whom they love. It is morally wrong. We are not living up to the basic moral standards. We teach our children the Golden Rule: that we are to treat others as we would want to be treated. This country was not built on the ideal that only some people deserve equality and justice. We know that no one should be discriminated against simply because of who they are.

Many Fortune 500 companies and small businesses have already taken steps to protect their employees because they know it is right. In a meeting a few months ago, I listened to a Cincinnati-based engineer from Procter & Gamble discuss the importance of ENDA. She said, simply: People should be able to bring all of themselves to work, not needing to hide herself or her family in the workplace. She gets it. Unsurprisingly, so does her employer, Procter & Gamble, an American icon.

Passing ENDA makes good economic sense. In a competitive global economy, it is essential that businesses attract talented, hard-working employees. That is difficult to do when discrimination is allowed. If we want to create jobs and compete on a global level, then we need all workers from all walks of life to be contributing to the economy. Purposefully leaving out a portion of our workforce only puts us behind in that global competition.

We have already made progress in the fight for equality, but we need to continue to move forward. We repealed don't ask, don't tell. This June the Supreme Court held the Defense of Marriage Act—which five of my Senate colleagues voted against in 1996, a few of us in the House voted against—as unconstitutional. As a result, couples are able to legally marry in many States across the country, the newest of which is Illinois. We must continue this progress to create a most just, inclusive Nation. Dr. King once said, ''Injustice anywhere is a threat to justice everywhere.'' Workers fought for the right to organize, woman for the right to vote, African Americans fought for equal justice, and now LGBT Americans of all backgrounds are fighting for equality. They are entitled to the support of their government, of all of us, in that fight.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HEINRICH.) The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. 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. BROWN. Mr. President, I ask unanimous consent that all time, including the time during quorum calls, be equally divided between both sides.

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

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

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

OBAMACARE

Mr. CORNYN. During the first few years after it became the law, the Affordable Care Act was known to most Americans as mainly a set of promises. Americans were repeatedly told that ObamaCare, once it began to take full effect—that coverage would expand, premiums would go down, and everyone who liked their existing health care coverage could keep it.

When the President and my friends across the aisle described it this way, ObamaCare sounded too good to be true. Unfortunately, the promises really have turned out to be too good to be true. After spending years listening to hollow assurances about what ObamaCare would or would not do, the past 5 years have taught us a lot, maybe only the tip of the iceberg, about the realities of what ObamaCare actually looks like.

We have learned that no fewer than 3.5 million Americans have already received cancellation notices from their insurance coverage because of the new law. We have learned that millions more will receive those same types of notices in the foreseeable future.

We have learned that the administration and, in fact, the Senate, knew that was going to happen in 2010 because we had a vote on the Congressional Review Act of the regulation which would have expanded the grandfather clause, and it was defeated in a party-line vote with all Republicans voting to expand the grandfathering provision and all our Democratic colleagues voting against.

What we learned, when they launched the ObamaCare Web site—which has been perhaps the most visible image of ObamaCare—was they did it before they could guarantee the information people would put in it would be secure. That includes both your tax information, your Social Security, and your mental health and physical health conditions. We learned yesterday from Secretary Sebelius that the navigators, who are the people who have been hired to help people navigate the Affordable Care Act and get signed up, were hired without performing any kind of background check. To the surprise of a lot of people, Secretary Sebelius answered a very direct question about that. I asked her in the Finance Committee: Is it possible a person could be a navigator and be a convicted felon? She said it is ''possible.'' Because there is no criminal background check.

In other words, America's top health care officials believe it is possible that convicted felons could be collecting some of our most sensitive personal information—our Social Security numbers, tax information, and sensitive medical data. Yet this administration continues to insist upon refusing a proper vetting system. It is bad enough the Web site is entirely dysfunctional—that will get fixed sooner or later—but the fact is this same Web site could, in the interim, become a magnet for fraud and identity theft.

Many of us who were skeptics about the President's extravagant promises of ObamaCare once implemented have been expressing our concerns for years. But as skeptical as I was about ObamaCare when it passed the Senate on Christmas Eve in 2009, it is even worse than many of us predicted—certainly worse than we imagined.

With millions of Americans getting cancellation notices from their insurance companies, we are finding out their premiums are about to go up and not down. It is important to remember exactly why this is happening. Thanks to the regulations our friends across the aisle continue to support, ObamaCare has allowed Washington bureaucrats to define what constitutes an acceptable health insurance policy in the individual and small group market. In other words, it has allowed Washington bureaucrats to force hard-working American families to pay for health care coverage they do not want and they do not need.

I have heard from my constituents in Texas who are absolutely furious and, in some cases, absolutely desperate

about losing their coverage or being forced to pay higher premiums they simply can't afford in order to buy coverage they do not need.

The underlying conceit of ObamaCare is that individuals and their families can't be trusted to choose the right health insurance coverage for themselves so they must turn those decisions over to the bureaucracy in Washington to do it for them.

Some have heard us talk about a government takeover of the health care system. This is what a government takeover of a health care system looks like—when you lose the choices that should be available to you as an American citizen—to decide what kind of policy you need at a price you can afford—because of this monstrosity of a law. That is a government takeover.

The main objective of ObamaCare, we were told, was to provide coverage for all Americans. Yet the Congressional Budget Office has made it clear ObamaCare fails even in that objective. They estimate about 30 million people will still remain uncovered by the year 2023 when ObamaCare has been fully implemented. Thirty million people. OK, explain to me again, what was the purpose of this exercise? We were going to bring costs down and cover people without insurance, and everyone would be able to keep the insurance they had if they liked it. Yet none of that ends up being true. All of that ends up being false.

As I said yesterday, the cost of ObamaCare far outweighs the benefits. It would have been a lot smarter for us to figure out how to deal with the people who are uninsured and get them insured without raising costs or prejudicing the rights of people who had policies they already liked.

If Congress were to choose at some point to actually dismantle ObamaCare in its entirety, which I think we ought to do, we ought to start over and enact an alternative health care reform bill aimed at solving the problem not creating new ones. These reforms could include revising the Tax Code so that individuals could buy their own health insurance on the same tax terms as if it were employer provided.

We would allow people to actually buy in the health care market nationally and form pools to share risks. That would help bring down the costs. It would increase competition.

We also ought to expand the use of tax-free health savings accounts for people who decide they want to buy a high-deductible catastrophic health insurance policy because it is pretty cheap, and in the meantime they want to set money aside each month in a health savings account. Maybe they will need it for health care and maybe they won't, but they get to do that tax free. And if they don't use it, they can use that as part of their retirement. We ought to expand that.

We ought to make health care price and quality information a lot more transparent. One of the most successful health care programs I have seen pass the Congress—though we made some mistakes with it and we should have offset the cost—is the prescription drug plan, Medicare Part D. It has actually worked better than any of us thought it would because it is not a government takeover. It created competition between competing prescription drug companies that had to compete based on quality and price. The result has been the price has gone down roughly 30 percent under the projected costs when it was passed.

That is the kind of transparency and choice that is produced from quality information and that leaves the choices to people individually and not to the government.

And yes, we ought to crack down on frivolous medical malpractice lawsuits. We have seen in Texas that reducing the costs of frivolous medical malpractice lawsuits in turn helps to protect against defensive medicine, where doctors make clinical decisions based not on their best medical judgment but based on their aversion to litigation risk.

We ought to use high-risk pools to ensure people with preexisting conditions can get covered. This is one of the biggest misrepresentations I have heard about ObamaCare. Some of our colleagues have said: Well, the only way you can get preexisting conditions covered is to take ObamaCare hook, line, and sinker. That is clearly not true. Virtually all of our States have high-risk programs for people with preexisting conditions. They may need to be better funded—and we ought to look to try to shore them up—but it would be better to fix the problems we know exist rather than creating more problems.

We ought to give the States more flexibility to deal with Medicaid. Medicaid is designed as a safety net program for people who can't afford to buy their own health insurance. I see the Senator from Maine on the floor, and she was very intimately involved in this when she was the insurance commissioner for her State. Medicaid, unfortunately, pays doctors about half of what private health insurance does to reimburse them for their costs, so many doctors have to restrict their practice and their ability to see new Medicaid patients.

In Texas, only about one-third of the doctors will see a new Medicaid patient because they simply can't afford to do so. So we need to have additional freedom to improve Medicaid and to shore it up while providing competition and consumer choice to bring down costs in Medicare.

Mr. President, such reforms would give us a health care system with much lower costs, much better coverage, and much greater access to quality care. Those are the sorts of reforms we should have embraced in 2009 and 2010 but did not. We missed our chance back then, but there is no good reason we have to accept ObamaCare or nothing. As a matter of fact, we should take this opportunity, as we see the promises of ObamaCare being broken and not living up to the expectations of its strongest proponents, to turn to these other sensible ways to lower costs, increase coverage, and improve access.

As the law's deficiencies become more and more evident, I hope my friends across the aisle will join with us, Republicans and Democrats alike, to replace ObamaCare with something better.

Mr. MCCAIN. Mr. President, today I will cast my vote in support of S. 815, the Employment Non-Discrimination Act. This vote is consistent with my firm belief that workplace discrimination—whether based on religion, gender, race, national origin, or sexual orientation—should not be tolerated in America.

As my colleagues know, this legislation expands Federal employment discrimination protections, provided under the Civil Rights Act, to include sexual orientation. Under this bill, employers with more than 15 employees would be subject to new Federal regulations for hiring, firing, or promoting an individual on the basis of sexual orientation.

Many of my colleagues raised concerns about how the bill's language failed to provide adequate protections for religious businesses, schools, charities, and other institutions. In order to address these concerns, I worked with Senator PORTMAN of Ohio and Senator AYOTTE of New Hampshire to offer an amendment to further protect the constitutional rights and religious freedoms of religious organizations. Our amendment prevents retaliation on religious employers by Federal, State, and local governments based on the fact that these employers are exempt from the non-discrimination requirements of ENDA. I am pleased that this amendment was agreed to without opposition.

I have always believed that workplace discrimination—whether based on religion, gender, race, national origin, or sexual orientation—is inconsistent with the basic values that America holds dear. With the addition of the amendment I cosponsored with Senators PORTMAN and AYOTTE strengthening protections for religious institutions, I am pleased to support this legislation.

Ms. MIKULSKI. Mr. President, today the Senate is voting on the Employment Non-Discrimination Act—a bill that I am proud to cosponsor. Americans believe that hard-working people should be rewarded for their efforts and commended for their skills. Yet all throughout our Nation individuals are being held back at work or even fired—not because they are incompetent but because of their sexual orientation or gender identity.

I firmly believe people should be judged based on their individual skills, competence, and unique talents and nothing else. Sexual orientation does

not affect job performance, so it should not be a consideration, and the vast majority of Americans agree. In fact, an overwhelming 73 percent of Marylanders support the Employment Non-Discrimination Act.

The Employment Non-Discrimination Act would close a significant gap in our civil rights laws. It would ensure that people are judged on the quality of their work, not on sexual orientation or gender identity. Job discrimination on the basis of race, ethnicity, gender, or religion has long been prohibited; however, it is still legal to hire and fire a person based on their sexual orientation. This is an outrageous practice for a country that prides itself on equal rights for all.

Today, when I look back at the civil rights movement of the 1960s, I am shocked by how modest the demands of the African American community actually were. If we can pass this piece of legislation, in the future we will look back and think what a modest, obvious step it was and wonder why it took so long. This bill does not bestow special rights; it simply offers gay, lesbian, bisexual, and transgender Americans the same protection against unfair discrimination in the workplace as other groups—no more, no less.

Currently, 21 States and the District of Columbia have passed laws that prohibit job discrimination on the basis of sexual orientation. In addition, hundreds of companies have implemented nondiscrimination policies that include sexual orientation.

Gay Americans are part of the American mosaic and are entitled to the same rights and freedoms as every other American citizen. Change in civil rights comes slowly, but we are long overdue in making sure they have protection against unfair discrimination in the workplace. My hope is that someday we will look back on this and wonder what took us so long. We all deserve to live in an environment where people are treated fairly and with the dignity they deserve, and today I urge my colleagues to vote for this important bill.

Mr. LEVIN. Mr. President, this Nation began not as merely a plot of land, or as a group of people united by language or ethnicity. It began with an idea: ''That all men are created equal.'' Our story since Thomas Jefferson wrote those words has been a story of progress toward honoring what has been called ''the immortal phrase.''

Today, this Senate can move our Nation one important step forward in honoring the truth of those words by finally passing the Employment Non-Discrimination Act, or ENDA. We can help ensure that no American is deprived of the opportunity to work—the opportunity to succeed—as all of us want to succeed merely because of sexual orientation or gender identity, just as we have acted to protect that opportunity against discrimination based on age, race, color, religion, national origin or disability.

This legislation is carefully crafted to protect the sincere religious beliefs many Americans hold. It embodies a simple but powerful American ideal: On the job, what matters is your work, not your gender or skin color or faith or your sexual orientation any other extraneous matter.

There may have been times in the past when the Congress pushed Americans into new and perhaps uncomfortable territory in the march toward equality. But today, the law lags public opinion in this area. Public opinion polls show that roughly 7 in 10 Americans believe workplace discrimination against gays, lesbians and transgendered individuals should be against the law. In fact, they think it already is—according to one poll, 80 percent of Americans believe such discrimination is already a violation of Federal law. Support for ENDA is not confined to one region of the country—polls show that majorities in every State in the union support it. So, passage of ENDA is not some bold social experiment or engineering process. It is what the American people want and are ready for.

That is as true today as it was in 1996, the last time the Senate held a vote on this measure. Even then, a majority of Americans supported it, and just as it is today, it enjoyed the support of a diverse group of religious and business organizations. Then, as today, American businesses recognized that discrimination on the basis of sexual orientation or gender identity is just bad business.

This is also not a partisan issue. This legislation is on the brink of passage here because members of both parties have shown principled leadership and dedication.

But the ultimate reason I have supported this legislation for decades now is not related to public opinion polls or endorsement letters from churches and corporations, though those are heartening and welcome. Simply, it is wrong to deny employment to anyone who can do the job, just because of their sexual orientation. ''All men are created equal'' means giving every American the opportunity to earn what their talents and dedication allow, to provide for themselves and their families. Denying anyone that right is at odds with the ideals on which this country was founded and on which it depends to this day.

I strongly support this legislation. I urge my Senate colleagues to support it, and upon Senate passage, I urge the leaders of the House of Representatives to recognize just how far behind the American people they have fallen on this issue, and bring the Employee Non-Discrimination Act to the House floor for a vote.

Mr. LEAHY. Mr. President, the Senate has a historic opportunity today to take discrimination out of the workplace by casting a vote for the Employment Non-Discrimination Act. Today's vote has been 20 years in the making, and it is long overdue for Congress to extend these protections to all American workers. Years from now we will look back on this remedy as another substantial milestone on our Nation's everlasting quest to achieve a more perfect union—a quest to realize more completely the motto engraved in Vermont marble above the Supreme Court building that declares: ''Equal Justice Under Law.''

We now have protections for workers from discrimination on the basis of race, sex, religion, national origin and disability, as we should. Yet there are no Federal protections from discrimination on the basis of sexual orientation or gender identity. In 29 States, it is still legal for an employer to fire employees based on their sexual orientation, and in 33 States employees can be fired based on their gender identity. Maintaining the status quo would keep in place a system that supports a second class of workers in a majority of States. This runs counter to our founding values. It is time to remedy that.

As the son of Vermont printers, I learned at an early age the primary importance of the First Amendment. The First Amendment in our Bill of Rights is the foundation of our democracy and our way of life. It is one of the most defining principles of our national character. It helps preserve all of our other rights. By guaranteeing a free press and the free exercise of religion, it ensures an informed electorate and the freedom to worship God and to practice our religion as we choose—or to practice no religion at all.

Religious freedom does not end with the vital protections afforded by the First Amendment. The bill before us contains important protections for religious organizations by ensuring that they can continue to make significant faith-based employment decisions. The carefully crafted religious exemption in this legislation is consistent with the freedoms guaranteed by the Constitution.

All Americans deserve civil rights protections under our Constitution, which, in addition to the First Amendment, also ensures due process and equal protection. In previous legislative debates like the one before us today, Congress has protected and bolstered these rights by passing legislation to fill gaps in our Federal laws. This includes passing legislation to protect the practice of religion without discrimination, to prevent pay discrimination based on sex, and to serve openly in the military. By passing the remedy before us today, we will take another significant step forward in taking discrimination out of our laws and ensuring the equal treatment of lesbian, gay, bisexual, and transgender Americans.

I thank Chairman HARKIN and Senators MERKLEY and COLLINS for their leadership on this significant, overdue, and bipartisan antidiscrimination remedy. I also am mindful and appreciative of the leading role that Senator Jim

Jeffords of my State of Vermont took in advancing this remedy during his time in this body. And I thank Majority Leader REID for making this a priority for the Senate. I know that my late friend Senator Kennedy is smiling down on this chamber today as we advance his efforts to end employment discrimination. Today we can honor his legacy with this historic vote.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, we are about to make history in this Chamber by passing the Employment Non-Discrimination Act, more commonly known as ENDA. We will establish the principle that the right to work free from discrimination is a fundamental right of each and every American regardless of age, race, gender, religion, disability, national origin, and now, finally, sexual orientation.

It has taken a long time to get to this day. More than 10 years ago I was proud to join a life-long champion of civil rights, the late Senator Ted Kennedy, as a cosponsor of ENDA. That was back in 2002. Over the years our country has rightly taken a stand against workplace discrimination in a wide variety of forms. It is past time we close this gap for our LGBT employees. The time to pass this bill has come.

I thank Senators MERKLEY and KIRK for taking up the cause and for moving this bill forward. Senator KIRK, along with Senators HATCH and MURKOWSKI, led Republican support for this bill during its consideration by the HELP Committee.

I also acknowledge the work of the chairman of the committee TOM HARKIN in bringing this bill to the floor.

Other Senators who helped to improve this bill include Senators PORTMAN, AYOTTE, HELLER, HATCH, and MCCAIN, in their effort to draft strong antiretaliation language. Their amendment, which was adopted unanimously, improves this bill by strengthening the protections for religious institutions that are legitimately exempted under ENDA.

I thank each of those Senators and others, such as Senator FLAKE, for their willingness to work with the sponsors and cosponsors of this legislation. Senator TOOMEY also has worked hard.

Mr. President, all Americans deserve a fair opportunity to pursue the American Dream. ENDA is simply about the fundamental right to work and to be judged according to one's abilities, qualifications, and job performance. Much of corporate America has already voluntarily embraced LGBT protections because they know that doing so helps them attract and retain the best and the brightest employees.

Nearly two dozen States have versions of ENDA. In fact, in my home State of Maine, it has been the law for nearly a decade. Simply put, ENDA is about fairness and workplace equality. Today, I am confident the Senate will affirm that principle and will say to everyone in this country the workplace is simply no place for discrimination.

Mr. HARKIN. Mr. President, today the Senate is sending a clear message that all Americans are entitled to earn a living free from discrimination and to be judged in the workplace based on qualifications, ability, and integrity.

The Employment Non-Discrimination Act is simple and clear. It states that private businesses, public employers, and labor unions cannot make employment decisions—hiring, firing, promotion, or compensation—because of a person's actual or perceived sexual orientation or gender identity. The bill is modeled on title VII of the Civil Rights Act, a law that has been in place for almost 50 years. It is a law that is well understood by employers and is strongly supported by employers.

More than 50 years ago, with the Civil Rights Act, we took the first steps to eliminate discrimination at work. Since that time we have ensured that the employers may not discriminate on the basis of race, sex, national origin, religion, or age. In 1990 with passage of the Americans with Disabilities Act we ensured that Americans were not discriminated against on the basis of a disability. Today, for the first time, the Senate goes on record prohibiting discrimination at work on the basis of sexual orientation and gender identity.

Yesterday I entered into a colloquy with Senator LEAHY, the distinguished chairman of the Judiciary Committee with regard to Senate amendment No. 2012. I would like to further clarify my response to Senator LEAHY. As Senator LEAHY clearly set forth in his question to me, this amendment simply says that you cannot retaliate against an organization solely because it qualifies for the exemption under section 6(a) of ENDA. The amendment is not intended to undermine in any way current or future Federal, State, or local civil rights protections—States and localities can still enforce their own nondiscrimination laws for violations within their jurisdiction, regardless of whether an entity is exempt under the national ENDA legislation.

We have had a very collaborative process on this bill, and I would like to take this opportunity to thank all of those who have made that possible first, to the sponsors of the bill, Senator MERKLEY, Senator KIRK, Senator BALDWIN, and Senator COLLINS, all of whom have put in many hours behind the scenes working to build support for this bill and make passage today a reality. Thank-yous also go to their staff: Jeremiah Bauman, Cade Clurman, Amber Shipley, John Kane, Katie Brown, and Betsy McDonnell.

On my HELP Committee staff I would like to thank Beth Stein, Lauren McFerran, Chris Williamson, and Pam Smith. I would also like to thank the HELP Committee minority staff who also worked to get this bill through a very collaborative process: Kyle Fortson, Kai Hirabayashi, and David Cleary. A special thank-you goes to Dan Goldberg, who recently left my HELP Committee staff but did a tremendous job on this bill up through the committee markup. I commend all of the staff for helping to make final passage of this bill a reality.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I ask unanimous consent for 5 minutes to speak to this bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MERKLEY. Mr. President, I thank my colleague who preceded me who has summarized the bipartisan collaboration to bring this bill to this point that we will be voting on in just a few minutes. No one has done more than she to advance this conversation over many years. I thank the Senator from Maine for those incredible efforts on behalf of ending discrimination and advancing liberty and opportunity.

Today the Senate will vote to break the chains of discrimination that hold back millions of LGBT Americans from the full promise of liberty—liberty, that freedom to participate fully in our society, in the public square to the voting booth, to the school, to the workplace; liberty, that quality deeply rooted in our national journey and embedded in our Declaration of Independence '' . . . that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness;'' liberty, the declared mission of our Nation in the preamble to the Constitution: We, the people, in order to form a more perfect union and secure the blessings of liberty to ourselves and our posterity, do ordain and establish a Constitution of the United States of America.

But the march to liberty has been long, with numerous battles along the way: the fight to end slavery that President Lincoln figured so prominently in, the fight to end racial discrimination, the fight to end gender discrimination, the fight to end discrimination against our seniors, and the fight that continues today with this bill to end discrimination based on sexual orientation and gender identity.

Discrimination diminishes the potential of the individual and it diminishes the potential of our Nation. Senator Ted Kennedy said this succinctly when he helped introduce in 2009 a predecessor of the bill we will be voting on today. Senator Ted Kennedy said: ''The promise of America will never be fulfilled as long as justice is denied to even one among us.'' He spoke these words just 20 days before he passed away. It is appropriate to quote Ted Kennedy because he led the fight for this bill since its first introduction in 1994. I think he would be tremendously pleased with the bipartisan vote of affirmation against discrimination which we will soon be taking.

Along the course of the two decades many have helped on this bill, whose footsteps no longer echo in these Halls, and to all of those champions of liberty who have participated in this process I say thank you.

There are many champions of liberty still in this body who have been fighting toward this moment, and I wish to make sure I acknowledge them: Senator HARKIN, who championed many elements, including ending discrimination against those with disabilities and who steered this bill through his committee; Senator HARRY REID and the leadership team who worked together to enable this moment in the calendar to have this debate and to advocate this bill; Senator TAMMY BALDWIN, who brought in energy from the House and the powerful voice of her personal experience to bear on this debate; Senator COLLINS, who just spoke, who has done so much for so long to make this happen, and in the first 2 years of 2009 and 2010 was the lead cosponsor. She passed the baton to Senator KIRK, who has carried that baton forward in the most admirable way. Senators MURKOWSKI and HATCH joined to help this bill come out of committee and helped create the momentum; Senators PORTMAN, AYOTTE, HELLER, TOOMEY, and HATCH engaged to help make sure the religious exemption which we developed with the right hand is not taken away with the left hand, to reinforce the integrity of the title VII religious exemption; Senator FLAKE, who brought forward ideas on how to make sure the guidance would be there to help businesses understand how to implement this act.

There are a lot of coalition groups that have done a tremendous amount of work. Well done. Every conversation such as this takes advocates inside the Chamber and advocates outside the Chamber but a particular acknowledgement of the Human Rights Campaign.

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

Mr. MERKLEY. I ask unanimous consent for 1 more minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MERKLEY. There are two staff members on my team who have labored on this whom I wish to personally acknowledge: Scott Rosenthal, who carried this organizational responsibility for a number of years, and my legislative director Jeremiah Bowman, who provided over these last few months this critical organizing stage.

I look forward to this vote for liberty, this vote for freedom, this vote for opportunity, and this vote for a fairer and just America.

The PRESIDING OFFICER. Under the previous order, all postcloture time is yielded back.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Under the previous order, the question is, Shall the bill (S. 815), as amended, pass?

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Pennsylvania (Mr. CASEY) is necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Wyoming (Mr. BARRASSO), the Senator from Oklahoma (Mr. COBURN), and the Senator from Alabama (Mr. SESSIONS).

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

The result was announced—yeas 64, nays 32, as follows:

[Rollcall Vote No. 232 Leg.]

YEAS—64

Ayotte	Hatch	Murray
Baldwin	Heinrich	Nelson
Baucus	Heitkamp	Portman
Begich	Heller	Pryor
Bennet	Hirono	Reed
Blumenthal	Johnson (SD)	Reid
Booker	Kaine	Rockefeller
Boxer	King	Sanders
Brown	Kirk	Schatz
Cantwell	Klobuchar	Schumer
Cardin	Landrieu	Shaheen
Carper	Leahy	Stabenow
Collins	Levin	Tester
Coons	Manchin	Toomey
Donnelly	Markey	Udall (CO)
Durbin	McCain	Udall (NM)
Feinstein	McCaskill	Warner
Flake	Menendez	Warren
Franken	Merkley	Whitehouse
Gillibrand	Mikulski	Wyden
Hagan	Murkowski	
Harkin	Murphy	

NAYS—32

Alexander	Enzi	Moran
Blunt	Fischer	Paul
Boozman	Graham	Risch
Burr	Grassley	Roberts
Chambliss	Hoeven	Rubio
Coats	Inhofe	Scott
Cochran	Isakson	Shelby
Corker	Johanns	Thune
Cornyn	Johnson (WI)	Vitter
Crapo	Lee	Wicker
Cruz	McConnell	

NOT VOTING—4

Barrasso	Coburn
Casey	Sessions

The bill (S. 815), as amended, was passed, as follows:

S. 815

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Employment Non-Discrimination Act of 2013''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to address the history and persistent, widespread pattern of discrimination on the bases of sexual orientation and gender identity by private sector employers and local, State, and Federal Government employers;

(2) to provide an explicit, comprehensive Federal prohibition against employment discrimination on the bases of sexual orientation and gender identity, including meaningful and effective remedies for any such discrimination;

(3) to invoke congressional powers, including the powers to enforce the 14th Amendment to the Constitution, and to regulate interstate commerce pursuant to section 8 of article I of the Constitution, in order to prohibit employment discrimination on the bases of sexual orientation and gender identity; and

(4) to reinforce the Nation's commitment to fairness and equal opportunity in the workplace consistent with the fundamental right of religious freedom.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission.

(2) COVERED ENTITY.—The term ''covered entity'' means an employer, employment agency, labor organization, or joint labor-management committee.

(3) DEMONSTRATES.—The term ''demonstrates'' means meets the burdens of production and persuasion.

(4) EMPLOYEE.—

(A) IN GENERAL.—The term ''employee'' means—

(i) an employee as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii) a State employee to which section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)) applies;

(iii) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 411(c) of title 3, United States Code; or

(iv) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

(B) EXCEPTION.—The provisions of this Act that apply to an employee or individual shall not apply to a volunteer who receives no compensation.

(5) EMPLOYER.—The term ''employer'' means—

(A) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has 15 or more employees (as defined in subparagraphs (A)(i) and (B) of paragraph (4)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986;

(B) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 applies;

(C) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 or section 411(c) of title 3, United States Code; or

(D) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

(6) EMPLOYMENT AGENCY.—The term ''employment agency'' has the meaning given the term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(7) GENDER IDENTITY.—The term ''gender identity'' means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

(8) LABOR ORGANIZATION.—The term ''labor organization'' has the meaning given the term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

(9) PERSON.—The term ''person'' has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(10) SEXUAL ORIENTATION.—The term ''sexual orientation'' means homosexuality, heterosexuality, or bisexuality.

(11) STATE.—The term ''State'' has the meaning given the term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

(b) APPLICATION OF DEFINITIONS.—For purposes of this section, a reference in section 701 of the Civil Rights Act of 1964—

(1) to an employee or an employer shall be considered to refer to an employee (as defined in subsection (a)(4)) or an employer (as defined in subsection (a)(5)), respectively, except as provided in paragraph (2) of this subsection; and

(2) to an employer in subsection (f) of that section shall be considered to refer to an employer (as defined in subsection (a)(5)(A)).

SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.

(a) EMPLOYER PRACTICES.—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's actual or perceived sexual orientation or gender identity; or

(2) to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee, because of such individual's actual or perceived sexual orientation or gender identity.

(b) EMPLOYMENT AGENCY PRACTICES.—It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual or to classify or refer for employment any individual on the basis of the actual or perceived sexual orientation or gender identity of the individual.

(c) LABOR ORGANIZATION PRACTICES.—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment, or would limit such employment or otherwise adversely affect the status of the individual as an employee or as an applicant for employment because of such individual's actual or perceived sexual orientation or gender identity; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) TRAINING PROGRAMS.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the actual or perceived sexual orientation or gender identity of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) ASSOCIATION.—An unlawful employment practice described in any of subsections (a) through (d) shall be considered to include an action described in that subsection, taken against an individual based on the actual or perceived sexual orientation or gender identity of a person with whom the individual associates or has associated.

(f) NO PREFERENTIAL TREATMENT OR QUOTAS.—Nothing in this Act shall be construed or interpreted to require or permit—

(1) any covered entity to grant preferential treatment to any individual or to any group because of the actual or perceived sexual orientation or gender identity of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any actual or perceived sexual orientation or gender identity employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such actual or perceived sexual orientation or gender identity in any community, State, section, or other area, or in the available work force in any community, State, section, or other area; or

(2) the adoption or implementation by a covered entity of a quota on the basis of actual or perceived sexual orientation or gender identity.

(g) NO DISPARATE IMPACT CLAIMS.—Only disparate treatment claims may be brought under this Act.

(h) STANDARDS OF PROOF.—Except as otherwise provided, an unlawful employment practice is established when the complaining party demonstrates that sexual orientation or gender identity was a motivating factor for any employment practice, even though other factors also motivated the practice.

SEC. 5. RETALIATION PROHIBITED.

It shall be an unlawful employment practice for a covered entity to discriminate against an individual because such individual—

(1) opposed any practice made an unlawful employment practice by this Act; or

(2) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 6. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.

(a) IN GENERAL.—This Act shall not apply to a corporation, association, educational institution or institution of learning, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) pursuant to section 702(a) or 703(e)(2) of such Act (42 U.S.C. 2000e–1(a), 2000e–2(e)(2)) (referred to in this section as a ''religious employer'').

(b) PROHIBITION ON CERTAIN GOVERNMENT ACTIONS.—A religious employer's exemption under this section shall not result in any action by a Federal agency, or any State or local agency that receives Federal funding or financial assistance, to penalize or withhold licenses, permits, certifications, accreditation, contracts, grants, guarantees, tax-exempt status, or any benefits or exemptions from that employer, or to prohibit the employer's participation in programs or activities sponsored by that Federal, State, or local agency. Nothing in this subsection shall be construed to invalidate any other Federal, State, or local law (including a regulation) that otherwise applies to a religious employer exempt under this section.

SEC. 7. NONAPPLICATION TO MEMBERS OF THE ARMED FORCES; VETERANS' PREFERENCES.

(a) ARMED FORCES.—

(1) EMPLOYMENT.—In this Act, the term ''employment'' does not apply to the relationship between the United States and members of the Armed Forces.

(2) ARMED FORCES.—In paragraph (1) the term ''Armed Forces'' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) VETERANS' PREFERENCES.—This title does not repeal or modify any Federal, State, territorial, or local law creating a special right or preference concerning employment for a veteran.

SEC. 8. CONSTRUCTION.

(a) DRESS OR GROOMING STANDARDS.—Nothing in this Act shall prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law, provided that the employer permits any employee who has undergone gender transition prior to the time of employment, and any employee who has notified the employer that the employee has undergone or is undergoing gender transition after the time of employment, to adhere to the same dress or grooming standards as apply for the gender to which the employee has transitioned or is transitioning.

(b) ADDITIONAL FACILITIES NOT REQUIRED.—Nothing in this Act shall be construed to require the construction of new or additional facilities.

SEC. 9. COLLECTION OF STATISTICS PROHIBITED.

The Commission and the Secretary of Labor shall neither compel the collection of nor require the production of statistics on actual or perceived sexual orientation or gender identity from covered entities pursuant to this Act.

SEC. 10. ENFORCEMENT.

(a) ENFORCEMENT POWERS.—With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act—

(1) the Commission shall have the same powers as the Commission has to administer and enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c),

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), respectively;

(2) the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(3) the Board (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) shall have the same powers as the Board has to administer and enforce the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1));

(4) the Attorney General shall have the same powers as the Attorney General has to administer and enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c);

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), respectively;

(5) the President, the Commission, and the Merit Systems Protection Board shall have

the same powers as the President, the Commission, and the Board, respectively, have to administer and enforce chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title; and

(6) a court of the United States shall have the same jurisdiction and powers as the court has to enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c) in the case of a claim alleged by such individual for a violation of section 302(a)(1) of such Act (42 U.S.C. 2000e–16b(a)(1));

(C) the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)); and

(D) chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title.

(b) PROCEDURES AND REMEDIES.—Except as provided in section 4(g), the procedures and remedies applicable to a claim alleged by an individual for a violation of this Act are—

(1) the procedures and remedies applicable for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(2) the procedures and remedies applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)) in the case of a claim alleged by such individual for a violation of such section;

(3) the procedures and remedies applicable for a violation of section 201(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in the case of a claim alleged by such individual for a violation of such section; and

(4) the procedures and remedies applicable for a violation of section 411 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of such section.

(c) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleged by a covered employee (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) for a violation of this Act, title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleged by such a covered employee for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

(d) NO DOUBLE RECOVERY.—An individual who files claims alleging that a practice is an unlawful employment practice under this Act and an unlawful employment practice because of sex under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall not be permitted to recover damages for such practice under both of—

(1) this Act; and

(2) section 1977A of the Revised Statutes (42 U.S.C. 1981a) and title VII of the Civil Rights Act of 1964.

(e) MOTIVATING FACTOR DECISIONS.—On a claim in which an individual proved a violation under section 4(h) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

(1) may grant declaratory relief, injunctive relief (except as provided in paragraph (2)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 4(h); and

(2) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.

SEC. 11. STATE AND FEDERAL IMMUNITY.

(a) ABROGATION OF STATE IMMUNITY.—A State shall not be immune under the 11th Amendment to the Constitution from a suit brought in a Federal court of competent jurisdiction for a violation of this Act.

(b) WAIVER OF STATE IMMUNITY.—

(1) IN GENERAL.—

(A) WAIVER.—A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th Amendment to the Constitution or otherwise, to a suit brought by an employee or applicant for employment of that program or activity under this Act for a remedy authorized under subsection (d).

(B) DEFINITION.—In this paragraph, the term ''program or activity'' has the meaning given the term in section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4a).

(2) EFFECTIVE DATE.—With respect to a particular program or activity, paragraph (1) applies to conduct occurring on or after the day, after the date of enactment of this Act, on which a State first receives or uses Federal financial assistance for that program or activity.

(c) REMEDIES AGAINST STATE OFFICIALS.—An official of a State may be sued in the official capacity of the official by any employee or applicant for employment who has complied with the applicable procedures of section 10, for equitable relief that is authorized under this Act. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).

(d) REMEDIES AGAINST THE UNITED STATES AND THE STATES.—Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States or a State for a violation of this Act, remedies (including remedies at law and in equity, and interest) are available for the violation to the same extent as the remedies are available for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) by a private entity, except that—

(1) punitive damages are not available; and

(2) compensatory damages are available to the extent specified in section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

SEC. 12. ATTORNEYS' FEES.

(a) DEFINITION.—For purposes of this section, the term ''decisionmaker'' means an entity described in section 10(a) (other than paragraph (4) of such section), acting in the discretion of the entity.

(b) AUTHORITY.—Notwithstanding any other provision of this Act, in an action or administrative proceeding for a violation of this Act, a decisionmaker may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, to the same extent as is permitted under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c), the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.), or chapter 5 of title 3, United States Code, whichever applies to the prevailing party in that action or proceeding. The Commission and the United States shall be liable for the costs to the same extent as a private person.

SEC. 13. POSTING NOTICES.

A covered entity who is required to post a notice described in section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10) may be required to post an amended notice, including a description of the applicable provisions of this Act, in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964. Nothing in this Act shall be construed to require a separate notice to be posted.

SEC. 14. REGULATIONS.

(a) IN GENERAL.—Except as provided in subsections (b), (c), and (d), the Commission shall have authority to issue regulations to carry out this Act.

(b) LIBRARIAN OF CONGRESS.—The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees and applicants for employment of the Library of Congress.

(c) BOARD.—The Board referred to in section 10(a)(3) shall have authority to issue regulations to carry out this Act, in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384), with respect to covered employees, as defined in section 101 of such Act (2 U.S.C. 1301).

(d) PRESIDENT.—The President shall have authority to issue regulations to carry out this Act with respect to covered employees, as defined in section 411(c) of title 3, United States Code, and applicants for employment as such employees.

SEC. 15. RELATIONSHIP TO OTHER LAWS.

This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or regulation or any law or regulation of a State or political subdivision of a State.

SEC. 16. SEVERABILITY.

If any provision of this Act, or the application of the provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of the provision to any other person or circumstances shall not be affected by the invalidity.

SEC. 17. EFFECTIVE DATE.

This Act shall take effect on the date that is 6 months after the date of enactment of this Act and shall not apply to conduct occurring before the effective date.

● Mr. CASEY. Mr. President, I was with my wife today, who was recovering from surgery, but had I been present I would have proudly cast my vote in favor of the Employment Non-Discrimination Act (ENDA). As a cosponsor of ENDA, I am grateful for today's bipartisan Senate vote, and I was pleased to vote for cloture earlier this week.

Despite the progress our Nation has made in ensuring equality for all, more than one in five lesbian, gay, bisexual or transgender employees have experienced workplace discrimination. That is completely unacceptable and Congress is long overdue in extending workplace protections to the LGBT community. Workers should be judged on the quality of the job they do, not who they are. I applaud today's vote and hope that the House of Representatives will quickly follow the Senate and work in a bipartisan way to send this legislation to the President for signing.●

DRUG QUALITY AND SECURITY ACT—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Indiana.