Maahdi army and will refuse to adequately supply hospitals in Sunni areas. We have repeated examples where the ministries of Iraq are not only nonfunctional but deliberately so. Until they help them, or someone helps them, there won't be a government to rally around for the Iraqi people because the Government provides nothing to them.

This is a long list of items that has to be accomplished. I am not confident, after the President's speech, that any of this will be done by the Iraqi Government, nor am I confident at all that an additional 20,000 troops in Baghdad will make a decisive military difference. I believe the President has to go back to the drawing board to craft a truly changed strategy that will be consistent with our strategic objectives in the region, consistent with our resources, and consistent with the will and desires of the American people. I hope he does that.

I yield the floor and 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. DURBIN. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. DURBIN. Mr. President, at this time I yield back any remaining morning business time.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

LEGISLATIVE TRANSPARENCY AND ACCOUNTABILITY ACT OF 2007

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1, which the clerk will report by title.

The legislative clerk read as follows:

A bill (S. 1) to provide greater transparency in the legislative process.

Pending:

Reid amendment No. 3, in the nature of a substitute.

Reid amendment No. 4 (to amendment No. 3), to strengthen the gift and travel bans.

DeMint amendment No. 11 (to amendment No. 3), to strengthen the earmark reform.

DeMint amendment No. 12 (to amendment No. 3), to clarify that earmarks added to a conference report that are not considered by the Senate or the House of Representatives are out of scope.

DeMint amendment No. 13 (to amendment No. 3), to prevent government shutdowns.

DeMint amendment No. 14 (to amendment No. 3), to protect individuals from having their money involuntarily collected and used for lobbying by a labor organization.

Vitter/Inhofe amendment No. 9 (to amendment No. 3), to place certain restrictions on the ability of the spouses of Members of Congress to lobby Congress.

Vitter amendment No. 10 (to amendment No. 3), to increase the penalty for failure to comply with lobbying disclosure requirements.

Leahy/Pryor amendment No. 2 (to amendment No. 3), to give investigators and prosecutors the tools they need to combat public corruption.

Gregg amendment No. 17 (to amendment No. 3), to establish a legislative line item veto.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 11

Mr. DURBIN. Mr. President, I come to the Chamber to discuss DeMint amendment No. 11 which relates to earmark reform.

First, let me say that I welcome the Senator's efforts to strengthen this bill. We certainly all have a mutual interest in making this process more transparent. Senator DEMINT, in his amendment language, adopts the language passed by the House in several important ways. As we move through the process, we are going to work together to ensure that the earmark provisions are carefully crafted and as strong as possible.

Unfortunately, overall the DeMint language is not ready for this bill. The DeMint amendment defines earmarks to include amounts provided to any entity, including both non-Federal and Federal entities. The Reid-McConnell definition which is before the Senate covers only non-Federal entities. On its face, the DeMint language may sound reasonable. After all, I have no problem announcing to the world when I have secured funding for the Rock Island Arsenal in my State. But the DeMint language is actually unworkable because it is so broad.

What does the Appropriations Committee do? It allocates funds among programs and activities. Every appropriations bill is a long list of funding priorities. In the DeMint amendment, every single appropriation in the bill—and there may be thousands in any given appropriations bill—would be subject to this new disclosure requirement, even though in most cases the money is not being earmarked for any individual entity. How did we reach this point in the debate?

There is a concern expressed by some that there is an abuse of the earmark process. When you read the stories of some people who have been indicted, convicted, imprisoned because of earmarks, it is understandable. There was a corruption of the process. But as a member of the Senate Appropriations Committee, I tell my colleagues that by and large there is a race to the press release. Once you put an earmark in to benefit someone in a bill, you are quick to announce it—at least I am because I have gone through a long process evaluating these requests and come up with what I think are high priorities. So there is transparency and there is disclosure.

The purpose of our debate here is to consider reasonable changes in the rules to expand that disclosure. Senator DEMINT is talking about something that goes way beyond the debate that led to this particular bill. We are not talking in his amendment about money that goes to non-Federal entities—private companies, for example—or States or local units of government. Senator DEMINT now tells us that we have to go through an elaborate process when we decide, say, within the Department of Defense bill that money in an account is going to a specific Federal agency or installation. That is an expansion which goes way beyond any abuse which has been reported that I know of. Frankly, it would make this a very burdensome responsibility.

If I asked the chairman, for example, to devote more funds to the Food and Drug Administration to improve food safety—think of that, food safety, which is one of their responsibilities—that is automatically an earmark under the new DeMint amendment, subject to broad reporting requirements. No one can be shocked by the suggestion that the Food and Drug Administration is responsible for food safety. They share that responsibility, but it is one of theirs under the law. So if I am going to put more money into food safety, why is that being treated as an earmark which has to go through an elaborate process? I think that begs the question. Every request, every program, money for No Child Left Behind, for medical research at the National Cancer Institute, for salaries for soldiers, for combat pay for those serving in Iraq, for veterans health programs, every one of them is now considered at least suspect, if not an odious earmark, under the DeMint amendment. It is not workable. It goes too far.

In other instances, the DeMint amendment does not go far enough. To pass this amendment at this time could, down the road, harm the Senate's efforts to achieve real earmark reform.

Many of us on the Appropriations Committee happen to believe that the provisions in tax bills, changes in the Tax Code, can be just as beneficial to an individual or an individual company as any single earmark in an appropriations bill. If we are going to have transparency in earmark appropriations, I believe—and I hope my colleagues share the belief—that should also apply to tax favors, changes in the Tax Code to benefit an individual company or a handful of companies. The DeMint amendment does not go far enough in terms of covering these targeted tax benefits. The language already in the Reid-McConnell bipartisan bill strengthens the earmark provisions passed by the Senate last year by also covering targeted tax and trade benefits. The Reid-McConnell language on targeted tax benefits is superior to the DeMint amendment. The DeMint amendment, in fact, weakens this whole aspect of targeted tax credits and their disclosure.

Reid-McConnell covers ''any revenue provision that has practical effect of

providing more favorable tax treatment to a particular taxpayer or a limited group of taxpayers when compared with other similarly situated taxpayers.'' That is the language from which we are working. Consider what it says: favorable tax treatment to a particular taxpayer or a limited group of taxpayers compared to others similarly situated. That is a pretty broad definition. It means that if you are setting out to give 5, 10, 15, or 20 companies a break and several hundred don't get the break, that is a targeted tax credit which requires more disclosure, more transparency.

The DeMint amendment covers revenue-losing provisions that provide tax credits, deductions, exclusions, or preferences to 10 or fewer beneficiaries or contains eligibility criteria that are not the same for other potential beneficiaries. The Senate should not be writing a number such as 10 into this law or into the Senate rules, creating an incentive for those who want a tax break to find 11 beneficiaries to escape the DeMint amendment.

The Reid-McConnell amendment establishes a definition with flexibility so that facts and circumstances of the particular tax provision can be considered. There may be instances when a tax benefit that helps 100 or even 1,000 beneficiaries should be considered a limited tax benefit. Our bill provides that. The DeMint amendment weakens it and means that more of these targeted tax credits will escape scrutiny.

Second, in the interest of full disclosure, the Reid-McConnell approach requires that the earmark disclosure information be placed on the Internet 48 hours before consideration of the bills or reports that contain earmarks. The DeMint amendment does not have a similar provision. Why would he want to weaken the reporting requirement? That is, in fact, what he does. Under the DeMint amendment, information about earmarks must be posted 48 hours after it is received by the committee, not 48 hours before consideration of the bill. In the case of a fast-moving bill, it is possible that the information could be made public only after the vote has already been taken. So this provision actually weakens reporting requirements.

Finally, it is important that the House and Senate have language that works for both bodies. Technical changes are probably needed in the current language in both bills, changes that may come about during the course of a conference. Adopting the imperfect House language wholesale, as Senator DEMINT suggests, would make it more difficult for us to work out our differences in conference. The better course would be to address the final language in conference and not get locked into any particular words at this moment.

We need strong reforms in the earmarking process. The Reid-McConnell bipartisan amendment does that. Unfortunately, DeMint amendment No. 11 weakens it—first, in exempting more targeted tax credits instead of being more inclusive; second, in weakening reporting requirements already in this amendment; and finally, tying the hands of conferees by adopting House language that has already been enacted by that body.

The Reid-McConnell substitute is an excellent first step. I am afraid the DeMint amendment does not improve on that work product but detracts from it. To adopt this amendment will only take us backward in this process. I urge the Senate to oppose the DeMint amendment No. 11. Let's keep working on this issue together on a bipartisan basis.

AMENDMENT NO. 13

I would also like to discuss DeMint amendment No. 13. This amendment on the surface seems like a harmless amendment. Nobody wants a Government shutdown. But in truth, what amendment No. 13 does is encourage Congress to abdicate its appropriations responsibility and fund the Government on automatic pilot at the lowest levels of the previous year's budget or the House- and Senate-passed levels. That is what we are in the process of doing for this fiscal year. It is painful. But the results could be disastrous if it becomes the policy of our country. Funding the Government by continuing resolutions does not allow Members to adequately work for a consensus to adjust funding for new challenges and changing priorities. The responsibility to appropriate was duly outlined for the legislative branch by our forefathers in our Constitution. It is a duty we should not abandon by handing it over to some automatic process.

The Senator from South Carolina has argued that this amendment is needed so that Congress should not feel the pressure to finish appropriations bills on time. He is plain wrong. If there is anything we need, it is the pressure to finish on time. If we are under that pressure, it is more likely we will respond to it. But if we are going to glide into some automatic pilot CR that absolves us from our responsibility of passing appropriations bills, we will find ourselves in future years facing the same mess we face this year, when many of the most important appropriations bills were not enacted before the last Congress adjourned.

Our constituents look to us to complete our appropriations bills on time, not make it easy to govern by stopgap measures that underfund important priorities such as education, transportation, and health care. Incidentally, the last time Congress completed its appropriations process on time was the 1995 fiscal year. Rather than abdicate our responsibility, we need to focus on fulfilling that duty under the Constitution. I believe this DeMint amendment is not responsible. It signals our willingness to throw in the towel before the fight has even started.

I urge my fellow Senators to oppose this amendment, send a clear message to the American people that we are ready to accept our responsibilities and not avoid them.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, I am not quite prepared to make all of my remarks about the amendments, but I did happen to be in the Chamber, and Senator DURBIN was kind enough to open the discussion on two of my amendments, which I greatly appreciate. I am somewhat disappointed, however, that my colleague is not completely informed about these amendments.

I will start with the amendment that attempts to more accurately define what an earmark is. My colleague went to great pains to continuously describe this as the DeMint amendment, the DeMint language. Unfortunately, I am not sure if he knows, but this is the language which the new Speaker of the House, NANCY PELOSI, has put in this lobbying reform bill in order to make it more honest and transparent. I believe she has a very thoughtful approach. She campaigned on this, along with a number of Democrats and Republicans. We do need to disclose and make transparent every favor we do for an entity.

I am beginning to get disappointed in this process because I did believe in a bipartisan way that we were going to come together to try to do things to show the American people that we were going to spend their money in an honest way and that was not wasteful. But as we look back on some of the scandals, the first one that comes to mind, obviously, is the Abramoff scandal—using Indian money to try to buy influence on Capitol Hill.

Yesterday there was a thoughtful amendment by Senator VITTER that would have attempted to get the Indian tribes to play by the same rules everyone else in America plays by, that they have regulated contributions that are disclosed. The reason we had the scandal with Abramoff is the Indian tribes are not regulated by the Federal Election Commission. They can give unlimited amounts, unaccounted for, and it corrupted our process. The amendment yesterday very simply said: Let's just have everyone follow the same rules. Yet that was voted down, primarily by my Democratic colleagues. I hope they will rethink that. We would like to bring that amendment back to the floor and make sure there is adequate discussion because it is hard for me to believe that anyone who wants to clear up the corruption in Washington would overlook that a big part of the corruption was caused by unlimited donations by lobbyists from Indian tribes.

Now we have another problem. We are talking about earmark reform. We use language here many times in the Chamber that I don't think Americans understand. When we talk about earmarks, we are talking usually about lobbyists who come and appeal on behalf of some organization or business

or whatever for us to do them a favor with taxpayer money. It may be a municipality that wants a bridge. It may be a defense contractor that wants a big contract from us. And if we put that money in an appropriations bill designated just for them, it is an earmark. That is a Federal earmark. NANCY PELOSI had the wisdom to see that a lot of the problems we have had came from lobbyists asking for favors that went to Federal, as well as State, and other types of earmarks.

What other corruption comes to mind as we think about last year? Duke Cunningham. The corruption there was a Federal earmark. The underlying bill we are discussing today would not have included that. It would not have been disclosed. Senator DURBIN said that should not be disclosed, when most of the problems that we have come from that particular type of earmark.

I think if you look at this in the big picture, we are talking about trying to let the American people know how we are spending their money. When we designate their money as a favor to different people and entities across this country, we want to let them know what we are doing so we can defend it, so they can see it. But what is a dirty little secret in the Senate and in the House is that while we are making this big media display of reforming earmarks and lobbying, 95 out of every 100 earmarks are in the report language of bills that come out of conference which are not included in the current discussion of transparency for earmarks.

So the case my dear friend Senator DURBIN has made today is that we want to disclose these particular favors for 5 out of every 100 earmarks in this Senate. That is not honest transparency. If we are going to do it, let's look at what the new Speaker of the House has asked us to do. If we are going to go through this process and if we are going to change the laws and try to tell the American people that now you can see what we are doing, let's don't try to pull the wool over their eyes. Speaker PELOSI is right. Many in this Chamber know I don't often agree with Speaker PELOSI, but she is the new Speaker. One of her first and highest priorities was to do this ethics reform bill right. At the top of the list is, if we are going to talk about the transparency to the American people, let's be honest and show them the way we are directing the spending of their money. I agree with her. I am here to defend her language on behalf of the Democratic colleagues on the House side that let's not try to pull the wool over the American people's eyes and tell them we are cleaning up these scandals when what we are doing here would not have affected the Abramoff scandal, the Cunningham scandal, or any of the scandals we have talked about in the culture of corruption in this Congress. Let's at least be honest with the reform we are saying is going to clean up this place. We are not being honest now. Speaker PELOSI has the right idea.

Let me mention one other thing, the other amendment my colleague was nice enough to bring up. It is what we call the automatic continuing resolution. I have been in Congress now for 8 years. This is my ninth year. Every year, we get toward the end of the year and we have not gotten all of our appropriations done; it comes down to the last minute and they are saying we have to vote on this and we have to pass it or we are going to shut down the Government. So we create this crisis. Then we don't know what is in all of the bills. They are just coming out of conference and we have to vote on them, and most of us go home in December and find out about all of the earmarks and the favors that were put in the bills. We find it out later because we are not even given time to read them. We create this crisis and force people to vote on bills when they don't know what is in them. We are forced to vote on things that should not be in them so we won't close down the Government.

We need to stop playing this game at the end of the year that forces us to accept what lobbyists and Members and staff have worked out that we don't even know about. If we are serious about decreasing the power of lobbyists in this place, we need to take the pressure off passing bad bills at the end of every year. This is a very simple idea.

You will notice, despite what has been said, we passed a continuing resolution at the end of last year and didn't pass our appropriation bills. Of course, as you look around, you see the country is still operating just fine. The thing we don't have is 10,000 new earmarks. I would make the case we need a system that if we are not able to have ample debate and discussion about appropriations, we don't have all this fanfare about closing down the Government every year and scaring our senior citizens and our veterans that something is not going to come that they need. Let's have a simple provision that if we cannot get our work done and agree on what needs to be done and what should be in these bills, then we will have a continuing resolution until we can work it out. We will fund everything at last year's level, so that there is no crisis, there is just responsibility.

That is what is missing here. When we put things into crisis mode, we cannot see what needs to be seen, or tell America what needs to be told about these bills, and we pass bills and find out later we have done things that embarrass us and diminish the future of our country.

This is a simple amendment. I am very disappointed in my Democratic colleague who wants to help us, I believe sincerely, clean up the way lobbying works in this place by making things more transparent to the American people, but these two amendments—one will disclose all earmarks and the other will take the crisis out of every year and allow us to pass responsible legislation.

Mr. President, I will have more to say later and I am sure other Members will also before these amendments come to a vote. Unfortunately, I have been told that my colleagues don't even want these bills to come to a vote. They want to try to table them so we will limit the debate.

I will reserve the rest of my time and yield the floor right now, and we will discuss more about these amendments after lunch.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I know the Senator from Texas wishes to speak. I will only be a minute.

I ask unanimous consent that at 2 p.m. today the Senate proceed to vote in relation to the DeMint amendment No. 11, to be followed by a vote in relation to amendment No. 13, regardless of the outcome of the vote with respect to amendment No. 11; that there be 2 minutes of debate equally divided before the first vote and between the votes; further, that at 12:30 p.m. today, Senator BYRD be recognized to speak for up to 25 minutes, and that Senator KYL then be recognized for up to 15 minutes; and that no second-degree amendments be in order to either amendment prior to the vote. Senator DEMINT would have up to 45 minutes under his control.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. FEINSTEIN. I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I wish to clarify that the time Senator DEMINT has utilized would be counted against the 45 minutes under his control.

Mrs. FEINSTEIN. That is my understanding.

Mr. BENNETT. Thank you.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

AMENDMENTS NOS. 24 AND 25 EN BLOC

Mr. ENSIGN. Mr. President, I ask unanimous consent that the pending amendments be laid aside, and I send two amendments to the desk.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada (Mr. ENSIGN) proposes amendments numbered 24 and 25, en bloc, to amendment No. 3.

Mr. ENSIGN. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 24

(Purpose: To provide for better transparency and enhanced Congressional oversight of spending by clarifying the treatment of matter not committed to the conferees by either House)

On page 3, strike line 9 through line 11 and insert the following:

''(a) IN GENERAL.—A point of order may be made by any Senator against any item contained in a conference report that includes or consists of any matter not committed to the conferees by either House.

(1) For the purpose of this section, ''matter not committed to the conferees by either House'' shall be limited to any matter which:

(A) in the case of an appropriations Act, is a provision containing subject matter outside the jurisdiction of the Senate Committee on Appropriations;

(B) would, if offered as an amendment on the Senate floor, be considered ''general legislation'' under Rule XVI of the Standing Rules of the Senate;

(C) would be considered ''not germane'' under Rule XXII of the Standing Rules of the Senate; or

(D) consists of a specific provision containing a specific level of funding for any specific account, specific program, specific project, or specific activity, when no such specific funding was provided for such specific account, specific program, specific project, or specific activity in the measure originally committed to the conferees by either House.

(2) For the purpose of this section, ''matter not committed to the conferees by either House'' shall not include any changes to any numbers, dollar amounts, or dates, or to any specific accounts, specific programs, specific projects, or specific activities which were originally provided for in the measure committed to the conferees by either House.

AMENDMENT NO. 25

(Purpose: To ensure full funding for the Department of Defense within the regular appropriations process, to limit the reliance of the Department of Defense on supplemental appropriations bills, and to improve the integrity of the Congressional budget process)

At the appropriate place, insert the following:

SEC. . SENATE FIREWALL FOR DEFENSE SPENDING.

(a) For purposes of Section 301 and 302 of the Congressional Budget Act of 1974, the levels of new budget authority and outlays and the allocations for the Committees on Appropriations shall be further divided and separately enforced under Section 302(f) by—

(1) DEFENSE ALLOCATION.—The amount of discretionary spending assumed in the budget resolution for the defense function (050); and

(2) NONDEFENSE ALLOCATION.—The amount of discretionary spending assumed for all other functions of the budget.

Mr. ENSIGN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

AMENDMENTS NOS. 25 AND 26 EN BLOC

Mr. CORNYN. Mr. President, I send two amendments to the desk.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Texas (Mr. CORNYN) proposes amendments numbered 26 and 27, en bloc, to amendment No. 3.

Mr. CORNYN. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 26

(Purpose: To require full separate disclosure of any earmarks in any bill, joint resolution, report, conference report or statement of managers)

At the appropriate place, insert the following:

''(a) IN GENERAL.—It shall not be in order to consider a bill, joint resolution, report, conference report, or statement of managers unless the following—

''(a) a list of each earmark, limited tax benefit or tariff benefit in the bill, joint resolution, report, conference report, or statement of managers along with:

''(1) its specific budget, contract or other spending authority or revenue impact;

''(2) an identification of the Member of Members who proposed the earmark, targeted tax benefit, or targeted tariff benefit; and

''(3) an explanation of the essential governmental purpose for the earmark, targeted tax benefit, or targeted tariff benefit, including how the earmark, targeted tax benefit, or targeted tariff benefit advances the 'general Welfare' of the United States of America;

''(b) the total number of earmarks, limited tax benefits or tariff benefits in the bill, joint resolution, report, conference report, or statement of managers; and

''(c) a calculation of the total budget, contract or other spending authority or revenue impact of all the congressional earmarks, limited tax benefits or tariff benefits in the bill, joint resolution, report, conference report, or statement of managers;

is available along with such bill, joint resolution, report, conference report, or statement of managers to all Members and the list is made available to the general public by means of placement on any website within the senate.gov domain, the gpo.gov domain, or through the THOMAS system on the loc.gov domain at least 2 calendar days before the Senate proceeds to it.''.

AMENDMENT NO. 27

(Purpose: To require 3 calendar days notice in the Senate before proceeding to any matter)

At the appropriate place, insert the following:

SEC. ___. NOTICE OF CONSIDERATION.

(a) IN GENERAL.—No legislative matter or measure may be considered in the Senate unless—

(1) a Senator gives notice of his intent to proceed to that matter or measure and such notice and the full text of that matter or measure are printed in the Congressional Record and placed on each Senator's desk at least 3 calendar days in which the Senate is in session prior to proceeding to the matter or measure;

(2) the Senate proceeds to that matter or measure not later than 30 calendar days in which the Senate is in session after having given notice in accordance with paragraph (1); and

(3) the full text of that matter or measure is made available to the general public in searchable format by means of placement on any website within the senate.gov domain, the gpo.gov domain, or through the THOMAS system on the loc.gov domain at least 2 calendar days before the Senate proceeds to that matter or measure.

(b) CALENDAR.—The Secretary of the Senate shall establish for both the Senate Calendar of Business and the Senate Executive Calendar a separate section entitled ''Notices of Intent to Proceed or Consider''. Each section shall include the name of each Senator filing a notice under this section, the title or a description of the legislative measure or matter to which the Senator intends to proceed, and the date the notice was filed.

(c) WAIVER AND APPEAL.—This section may be waived or suspended in the Senate only by an affirmative vote of ⅗ of the Members, duly chosen and sworn. An affirmative vote of ⅗ of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

Mr. CORNYN. Mr. President, I will not debate the amendments at this time. I appreciate the courtesies extended by the managers. I will come back later when it is appropriate to debate these particular amendments.

I yield the floor.

Mrs. FEINSTEIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. 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. CORNYN. Mr. President, I understand now might be a convenient time for the Senate to consider some debate on the amendments I have just offered, Nos. 26 and 27.

I think the preeminent value, when we talk about ethics debate, that we ought to be focusing on is transparency. It has been said time and time again that the old saying is ''sunlight is perhaps the best disinfectant of all.'' The fact is, the more Congress does on behalf of the American people that is transparent and can be reported and can be considered by average Americans in how they determine and evaluate our performance here, the better, as far as I am concerned.

I am proud to be a strong advocate for open government and greater transparency. Senator PAT LEAHY, now the chairman of the Senate Judiciary Committee, and I have been cosponsors of significant reform of our open government laws. We only had modest success last Congress. We were able to get a bill voted out of the Judiciary Committee. But it is my hope, given the sort of bipartisan spirit in which we are starting the 110th Congress and given Senator LEAHY's strong commitment to open government, as well as my own, that we will be able to make good progress there.

This amendment No. 27 is all about greater transparency that is healthy for our democracy and essential if we are to govern with accountability and good faith. I offer this amendment with the goal of shining a little bit more light on the legislative process in this body and actually giving all Members of the Senate an ability to do their job better.

Specifically, this amendment would require that before the Senate proceeds

to any matter, that each Senator receive a minimum of 3 days' notice and that, more importantly, the full text of what we will consider will be made available to the public before we actually begin our work on it.

What happens now is that in the waning hours of any Congress, we have a procedure—known well to the Members here but unknown to the public, perhaps—known as hotlining bills. In other words, presumably noncontroversial matters can be so-called hotlined, and that is placed on the Senate's calendar and voted out essentially by unanimous consent.

The problem is this mechanism, which is designed to facilitate the Senate's work and move relatively noncontroversial matters, is increasingly the subject of abuse. For example, in the 109th Congress, there were 4,122 bills introduced in the Senate. In the House there were 6,436 bills. Of course, many of these bills run hundreds of pages in length. The problem is, as I alluded to a moment ago, in the final weeks of the 109th Congress, I was told there were 125 matters called up before the Senate for consideration, many of which included costs to the taxpayers of millions of dollars, including an astonishing 64 bills in the final day and into the wee hours of Saturday morning before we adjourned. In fact, as the chart I have here demonstrates, in the last 5 days of the 109th Congress, there was a total of 125 bills hotlined. As I mentioned, some of these are relatively noncontroversial matters, but some of them spent millions of dollars of taxpayers' money.

I would think that at a very minimum Senators would want an opportunity to do due diligence when it comes to looking at the contents of this legislation and determining whether, in fact, it is noncontroversial and in the public interest or whether, on the contrary, someone is literally trying to slip something through in the waning hours of the Congress in a way that avoids the kind of public scrutiny that is important to passing good legislation and making good policy.

Mr. President, I have in my hands a letter in support of this amendment from an organization called ReadtheBill.org, which I ask unanimous consent be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. CORNYN. Mr. President, I know this perhaps seems like a small thing, but small things can have dramatic consequences.

Let me give an example. Senator X introduces a bill called the Clean Water Access Act sometime this year. For whatever reason, this bill doesn't get a hearing or the hearing is held perhaps with just a modest number of Members actually attending—in other words, it doesn't get a lot of attention. The bill is one of the thousands of bills introduced. And let's say my staff or your staff, Mr. President, or other Members' staff don't really have this bill on the list of priorities, of things to do; it is not one of the most urgent priorities because it looks as though perhaps there is not a lot of interest in the legislation. The bill never gets a vote in committee or on the floor, so Senator X decides: I have an idea. I will hotline the bill at the end of the year, at the very end of the Congress in the last few hours. What this amendment would do would be to impose a very commonsense requirement—let's give adequate notice that this is legislation which Senator X intends to move—so that the appropriate scrutiny and consideration may be given to the bill.

Of course, a notice goes out under the current rule, and the Senator's staff alerts the Senator to some concern that unless that happens, it passes by default. That is right, this is essentially an opt-out system. If the Senator does not object within an hour or two, the bill goes out by unanimous agreement.

My proposal is that there be simply a modest notice period before the Senate proceeds to a measure for Senators and their staff to review the legislation and so the American people and various groups that may have an interest in it could scrutinize it before we actually consider it and pass it in the waning hours, perhaps, of a Congress. I don't know who could really have a legitimate objection to such a requirement. I look forward to hearing from any of my colleagues who have some concerns about it, and perhaps I can address those concerns and we can work together to pass this important, although simple and straightforward, amendment.

I believe this amendment is certainly common sense and a good government and open government approach, which is conducive to allowing us to do our job better. So I ask my colleagues for their enthusiastic support, and maybe if not their enthusiastic support, at least their vote in support of this amendment at the appropriate time.

AMENDMENT NO. 26

Mr. President, I have also offered Senate amendment No. 26. This is another amendment designed to offer greater sunshine and this time on the earmark process. This is an amendment which I have offered in the spirit that Senator DEMINT, the junior Senator from South Carolina, has offered but with a little bit of additional twist that I would like to explain.

The current bill requires that all future legislation include a list of earmarks and the names of the Senators who requested them. Again, I know we talk in terms of legislative-ese and, of course, an earmark is something not otherwise provided for within the Federal appropriations bills but is specifically requested by a Member of Congress—a Senator or a Congressman—to be included.

Frankly, there are some earmarks that are very positive and very much in the public interest, but there are others that have been the subject of abuse, and I don't need to go into that in any great detail.

It is a fact that the American people have grown very concerned about the abuse of earmarks here, again, primarily because there is not adequate scrutiny, adequate sunshine on this process, causing them grave concerns about the integrity of the entire appropriations process.

My amendment would add a requirement that the budgetary impact for each earmark be included, as well as a requirement that the total number of earmarks and their total budgetary impact be identified and disclosed. The goal is that when we are considering legislation, we will have a summary document that details the number of earmarks, the total cost of those earmarks, and a list of the earmarks, along with their principal sponsor. I believe this will allow us, again, to do our job more diligently and with greater ease.

We will also create a fixed baseline from which we can proceed in the future and will further allow the American public, as well as our own staff, to be able to analyze the impact of these earmarks on the budgeting process.

Consider that the Congressional Research Service studies earmarks each year and identifies earmarks in each appropriations bill. Through that study, one can see both the total number of earmarks and the total dollar value of those earmarks have grown significantly over the last decade. The total number of earmarks, for example, doubled from 1994 to 2005, and the number appears to likely go up in 2006 as well. The problem is that getting this data after voting on the legislation is not particularly helpful after the fact. By requiring that all legislation contain a list of each earmark, the cost of each earmark, and the total number and cost of earmarks in the legislation as a whole, we empower our staffs and, more importantly, the American people, and ourselves to make better decisions.

As I said, this is not a broadside attack against all earmarks. Some earmarks are good government, but not all earmarks are good government. What this would do is give us the information we need to evaluate them, to have some empirical baseline we can use to evaluate how this impacts Federal spending and the integrity of the appropriations process.

There is one other little element of this amendment I would like to highlight. This amendment would also require an explanation of the essential governmental purpose for the earmark or a targeted tax benefit or targeted tax tariff benefit, including how the earmark targeted tax benefit or targeted tariff benefit advances the general welfare of the United States of America. This requirement—again, something I think most people would assume would be part of the analysis

and deliberative process Congress would undertake anyway—is an important reform for the Congress, and it is certainly appropriate on the subject of ethics reform.

Take, for example, these situations: In the fiscal year 2004 budget, there was a $725,000 earmark for something called the Please Touch Museum; $200,000 of Federal taxpayers' money was appropriated by an earmark for the Rock and Roll Hall of Fame. Even those who like rock and roll may question the appropriateness of taxpayers' money being spent to subsidize the Rock and Roll Hall of Fame. Mr. President, $100,000 was spent for the International Storytelling Center.

In 2005, $250,000 was spent in an earmark for the Country Music Hall of Fame. I myself am partial to country music. I like country music, but I think many might question whether it is appropriate that Federal taxpayers' dollars be spent by an earmark, here again largely anonymous because it is not required to be disclosed who the Senator is under current law, who has requested it, but a quarter of a million dollars of taxpayers' money has been spent for that purpose.

Another example: $150,000 for the Grammy Foundation and $150,000 for the Coca-Cola Space Science Center.

These are just a couple of quick examples, but I think they help make the point; that is, under the status quo, there is simply not enough information, not enough sunshine shining on the appropriations process and particularly the earmark process which has been the subject of so much controversy, and yes, including some scandal leading up to this last election on November 7. If there is one certain message I think all of us got on November 7, it is that the American people want their Government to work for them and not for special interests.

One of the best things we can do, rather than passing new rules, is to shine more sunlight on the process. With more sunlight comes greater accountability, and I think in many ways it provides a self-correcting mechanism. In other words, people are not going to be doing things they think they can sneak through in secret out in the open. So it has the added benefit of sort of a self-policing or self-correcting mechanism as well.

So I would commend both of these amendments for the Senate's consideration. At the appropriate time, I will ask for a vote, working, of course, with the floor managers on this bill.

Mr. President, I yield the floor.

EXHIBIT 1

READTHEBILL.ORG,
Washington, DC, January 11, 2007.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: ReadtheBill.org Education Fund commends you for your leadership in proposing an amendment to S. 1 that would prohibit floor consideration of legislation and conference reports before senators and the public had more time to read them. If implemented in Senate rules, this Cornyn amendment would be a significant improvement over current Senate rules, and over Senate practice during the 109th Congress.

ReadtheBill.org respects the openness of the sponsors of S. 1 to additional improvements on the floor. As proposed, S. 1 would amend Senate rule XXVIII to prohibit consideration of conference reports before they have been publicly available online for 48 hours. S. 1 would improve on current Senate rules. However, S. 1 would NOT cover legislative measures or matters on their first consideration by the Senate (as opposed to final conference reports). This is a major failing of S. 1. It's crucial to find and fix questionable provisions early in the legislative process. By the time a bill emerges from conference committee in its final form, it can be too late to fix even its worst provisions. Yes, the conference report can be posted online. But a conference report can gather the political momentum of a runaway train. Posting the manifest for each train car may reveal a sinister or illicit cargo. But it's too late to do more than wave an arm before the train is long gone.

That is why it is so important to take time to read bills early in the legislative process, before their first floor consideration by the Senate. The Cornyn amendment would cover ALL measures or matters (but no amendments), prohibiting their consideration until they had been printed in the Congressional Record for three calendar days and posted publicly online for two calendar days. ReadtheBill.org endorses the substance of the Cornyn amendment.

The Cornyn amendment would be a vital step toward ReadtheBill.org's ultimate goal of amending the standing rules of the Senate and House to require legislation and conference reports to be posted online for 72 hours before floor debate. As work on this bill continues, ReadtheBill.org looks forward to working closely with you to craft the most practical, enforceable amendment that moves toward this goal.

Non-partisan and focused only on process, ReadtheBill.org is the leading national organization promoting open floor deliberations in Congress.

Sincerely,

RAFAEL DEGENNARO,
Founder & President.

Mr. THOMAS. Mr. President, I would like to speak in general, so I ask unanimous consent that the current amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, I wish to speak in general about the bill, not on the specific amendments, about what I think we are doing and the importance, frankly, of what we are doing. We are talking, of course, about ethics, about how we function within this body, and I hope we can keep that in mind. We are not talking about Federal law. We are not talking about rules and laws dealing with contributions. We are talking about how we operate within this body.

I happen to be a member of the Ethics Committee, and I have been very impressed, frankly, with what we are doing now. That is not to say we can't do some more, and indeed we should, but the fact is we have really gone along fairly well here. We haven't had any real problems particularly. We are reacting largely to some of the problems that have happened on the other side of the Capitol, and they could happen here, so they are appropriate. So I believe we need to evaluate where we are now with the rules and regulations we have with the Ethics Committee, which is designed to enforce them, and try to maintain our focus on those kinds of things.

I think we have gotten into things that become Federal law in terms of, for instance, political contributions. Well, that is really not an ethics issue; that is a Federal issue with relation to what is done there. So it seems to me the real overriding opportunity for us is to increase the transparency of how we function and the accountability and to spend more time with the Members and with the staff in terms of familiarizing ourselves with what the rules are. We have lots of rules. Quite frankly, as I came onto this committee, I was a little impressed with all there is that most of us haven't had much time or opportunity to take a look at.

So really what we need is transparency and accountability, and that is what we are doing. I am pleased that we are, but I want to suggest that we keep in mind the role of what we are doing, the role of ethics, and try to maintain some limits on the kinds of things we do and hold it to what we are doing. As I said, our record has been pretty good. I think the key is transparency and accountability, so I hope we can hold it to that.

I think we need to understand that even though there have been things that have happened in the Capitol that we don't like, the fact is the people who have done most of those things, many of them, are in jail. They have acted against the law. The Jack Abramoff thing, which has brought much of this about, was wrong and bad and has been dealt with and is being dealt with. I think we need to keep that in mind and try to define the difference between ethics and behavior here and legal activities that affect everyone.

So again, I say ethics is something for which each of us is responsible. As representatives of our people, we are responsible for it. So if we have transparency, that is one of the keys. And we should understand that what we are doing is dealing with ethics rules. When this is all over, we ought to be able to take another look at the total of our rules and hold what we are doing here on the floor to that effort. We can do that.

There are a good many reforms in S. 1, and I am pleased we are talking about earmarks, which is one topic of reform. There needs to be more public information. There needs to be more information to Members as to what earmarks are. On the other hand, if I want to represent things that are important to my State or your State or anyone else's State, we need from time to time to have an opportunity to suggest that here is an issue in this budget

which needs to be dealt with. Now, it needs to be done early on. It needs to be transparent. Everyone needs to know about it. We need to avoid the idea of putting things in during the conference committee meetings. After all, Members' opportunities have passed. That is wrong. But I think the idea that Members have an opportunity to have some input into the distribution of funding for their States is reasonable. So I think, again, transparency is the real notion, and the conference reports ought to be available on the Internet.

Banning gifts, of course, is good. I think we need to be a little careful about what gifts are and whom they are from.

I just had an opportunity to meet with someone who is a realtor in Wyoming. He came in to talk about problems for realtors. He is not a lobbyist; he is a realtor. Now, am I supposed to be a little careful to talk to somebody from Wyoming? How else am I going to know what the issues are for the various groups? Even though they have an association and he is probably a member of it, he is not a lobbyist. So I think we need to be sure we identify some of the differences that are involved.

We ought to talk about holds. I think there is nothing wrong with having a distribution of what the holds are when we are putting them together in Congress and then putting them in the CONGRESSIONAL RECORD. Again, that is something which should be public.

Travel. I think there is nothing wrong, with major travel, with having some sort of preapproval from the Ethics Committee. That is a reasonable thing to do. We each have different problems with travel. Some States are quite different from others. Charters can be made to different places, so we need to have some flexibility there. Again, I say one of the keys is to have some annual ethics training, some annual ethics information so people know what it is all about. I would venture to say that before this discussion started, if you talked about what is in our ethics rules, most of us wouldn't be able to tell you much about them. We need to do more of that.

There needs to be public disclosure of lobbying, there is no question, and that is a good thing and we need to do that.

The idea of an independent ethics office troubles me a good deal. We are talking about our behavior among ourselves as Members, and the idea of having some non-Member office overseeing our operation just doesn't seem to make sense to me. If any of you have not had the opportunity to see all of the things that our Ethics Committee staff goes through, I wish you would take a look at it. There is a great deal that goes on.

So in sum, I am generally saying that I hope—and I think our leaders on this issue have done this—we stay with what it is we are seeking to do; that is, take a look at our rules and regulations and how we abide by them, how we understand them, how we enforce them, and how we have opportunities to see them, and that there is transparency from them. That is what we are talking about. When we start getting off into so many things that really are much beyond ethics and get into the laws—for instance, as I said, campaign contributions—that is another issue. It is a good issue, but it is not this issue. So I hope we are able to do that.

Those are the points I wanted to make. We are going to be going forward, and I am glad we are. I hope we don't spend too much time on this because I think our real challenge is to focus on what it is we are really seeking to do and not let us spend a lot of time on things that are inappropriately in this bill. Our main goal, it seems to me, is greater transparency, a set of rules we can understand, the opportunity to know what those are, and then, of course, to have an opportunity within our own jurisdiction to enforce them.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

Under the previous order, the Senator from West Virginia is recognized for up to 25 minutes.

IRAQ

Mr. BYRD. Mr. President, last night in his address to the Nation, the President called for a ''surge'' of 20,000 additional U.S. troops to help secure Baghdad against the violence that has consumed it. Unfortunately, such a plan is not the outline of a brave new course, as we were told, but a tragic commitment to an already failed policy; not a bold new strategy but a rededication to a course that has proven to be a colossal blunder on every count.

The President never spoke words more true than when he said, ''The situation in Iraq is unacceptable to the American people.'' But the President, once again, failed to offer a realistic way forward. Instead, he gave us more of his stale and tired ''stay the course'' prescriptions. The President espoused a strategy of ''clear, hold, and build''—a doctrine of counterinsurgency that one of our top commanders, GEN David Petraeus, helped to formulate. Clear, hold, and build involves bringing to bear a large number of troops in an area, clearing it of insurgents, holding it secure for long enough to let reconstruction take place. But what the President did not say last night is that, according to General Petraeus and his own military experts, this strategy of ''clear, hold, and build'' requires a huge number of troops—a minimum of 20 combat troops for every 1,000 civilians in the area. If we apply that doctrine to Baghdad's 6 million people, it means that at least 120,000 troops will be needed to secure Baghdad alone. Right now, we have about 70,000 combat troops stationed all throughout Iraq. Even if they were all concentrated in the city of Baghdad, along with the 20,000 new troops that the President is calling for, we would still fall well short of what is needed.

But let us assume that the brave men and women of the U.S. military are able to carry out this Herculean task and secure Baghdad against the forces that are spiraling it into violence. What is to keep those forces from regrouping in another town, another province, even another country—strengthening, festering, and waiting until the American soldiers leave to launch their bloody attacks again? It brings to mind the ancient figure of Sisyphus, who was doomed to push a boulder up a mountainside for all of eternity, only to have it roll back down as soon as he reached the top. As soon as he would accomplish his task, it would begin again, and this would go on endlessly. I fear that we are condemning our brave soldiers to a similar fate, hunting down insurgents in one city or one province only to watch them pop up in another. For how long will U.S. troops be asked to shoulder this burden?

Over 3,000 American soldiers have already been killed in Iraq; over 22,000 have been wounded. Staggering. Hear me—staggering. And President Bush now proposes to send 20,000 more Americans into the line of fire beyond the 70,000 already there.

The cost of this war of choice to American taxpayers is now estimated to be over $400 billion. That means $400 for every minute since Jesus Christ was born. That is a lot of money.

Hear me now. Let me say that, again. The cost to American taxpayers of this war of choice is now estimated to be over $400 billion, and the number continues to rise. When I say number, I am talking about your taxpayer dollars. That ain't chicken feed. One wonders how much progress we could have made in improving education or resolving our health care crisis or strengthening our borders or reducing our national debt or any number of pressing issues with that amount of money. Man, we are talking about big dollars. And the President proposes spending more money, sending more money down that drain.

On every count, an escalation of 20,000 troops is a misguided, costly, unwise course of action. I said at the beginning we ought not go into Iraq. I said that, and I was very loud and clear in saying it. I stood with 22 other Senators. I said from the beginning we ought not to go into Iraq. We had no business there. That nation did not attack us, did it? I said from the beginning I am not going down that road and I didn't and I am not going to now.

This is not a solution. This is not a march toward ''victory.''

The President's own military advisers have indicated we do not have enough troops for this tragedy to be successful. It will put more Americans in harm's way than there already are. It will cost more in U.S. taxpayers' money—your money. You, who are looking through those lenses, looking at the Senate Chamber, hear what I have to say. Many commanders have already said that ours is an Army that is at its breaking point. It is a dangerous idea.

Why, then, is the President advocating it? This decision has the cynical smell of politics to me, suggesting that an additional 20,000 troops will alter the balance of this war. It was a mistake to go into Iraq. Now we want to pour 20,000 more of your men and women, your sons and daughters, into this maelstrom, this sausage grinder, this drainer of blood and life.

We won't alter the balance of this war. It is a way for the President to look forceful, a way for the President to appear to be taking bold action. But it is only the appearance of bold action, not the reality, much like the image of a cocky President in a flight suit declaring ''mission accomplished'' from the deck of a battleship. Remember that?

This is not a new course. It is a continuation of the tragically costly course we have been on for almost 5 years now. Too long. I said in the beginning, I won't go; it is wrong; we should not attack that country which has never invaded us or attacked us. Those persons who attacked this country were not Iraqis, right? Somebody says I am right.

It is simply a policy that buys the President more time, more time to equivocate, more time to continue to resist any suggestion that the President was wrong to enter our country into this war in the first place. This war, in this place, at this time, in this manner, and, importantly, calling for more troops, gives the President more time to hand the Iraq situation off to his successor in the White House. The President apparently believes he can wait this out, that he can continue to make small adjustments here and there to a misguided policy while he maintains the same trajectory until he leaves office and it becomes someone else's problem.

If you are driving in the wrong direction, anyone knows, as you will not get to your destination by going south when you should be going north, what do you do? What should you do? You turn around. I see the Presiding Officer is following me. I saw him use his arm like that. He did just what I did, before I did it. You turn around and get better directions.

This President—I speak respectfully when I speak of the President. I speak respectfully of the President; that is my intention—this President is asking us to step on the gas in Iraq full throttle while he has not clearly articulated where we are going. What is our goal? What is our end game? How much progress will we need to see from the Iraqi Government before our men and women come home? I should think that is what the fathers and mothers of our American troops would want to know. What is our goal? What is our end game? In the first place, why are we there in Iraq? Why are we asking for more troops now? How much progress will we need to see from the Iraqi Government before our men and women come home? How long will American troops be stationed in Iraq, to be maimed and killed in sectarian bloodshed?

The ultimate solution to the situation in Iraq is political and would have to come from the Iraqis themselves. The Iraqi Government will have to address the causes of the insurgency by creating a sustainable power-sharing agreement between and among Sunnis, Shias, and Kurds, and it is far from clear that the Government has the power or the willingness at this point. But as long as American troops are there to bear the brunt of the blame and the fire, the Iraqi Government will not shoulder the responsibility itself. And Iraq's neighbors, especially Iran and Syria, won't commit to helping to stabilize the country as long as they see American troops bogged down and America losing credibility and strength. Keeping the United States Army tied up in a bloody, endless battle in Iraq plays perfectly into Iran's hands and it has little incentive to cease its assistance to the insurgency as long as America is there. America's presence in Iraq is inhibiting a lasting solution, not contributing to one.

Let me say that again. I should repeat that statement. Iraq's neighbors, especially Iran and Syria, won't commit to helping to stabilize the country as long as they see America bogged down and losing credibility and strength. Keeping the United States Army tied up in a bloody, endless battle in Iraq plays perfectly into Iran's hand and it has little incentive to cease its assistance to the insurgency as long as America is there. America's presence in Iraq is inhibiting a lasting solution, not contributing to a lasting solution.

The President has, once again, I say respectfully, gotten it backwards. What I hoped to hear from the President were specific benchmarks of progress that he expects from the Iraqi Government and a plan for the withdrawal of American troops conditioned on those benchmarks. Instead, we were given a vague admonition that the responsibility for security will rest with the Iraqi Government by November, with no suggestion of what that responsibility will mean or how to measure that Government's capacity to handle it.

The President is asking us—you, me, you, you out there, you who look around this Chamber today—asking us once again to trust him while he keeps our troops mired in Iraq. But that trust was long ago squandered. I weep for the waste we have already seen—lives, American lives, Iraqi lives, treasure, time, good will, credibility, opportunity—wasted, wasted. Now the President is calling for us to waste more. I say enough, enough. If he will not provide leadership and statesmanship, if he does not have the strength of vision to recognize a failed policy and to chart a new course, then leadership will have to come from somewhere else. Enough waste, enough lives lost on this misguided venture into Iraq.

I said it was wrongheaded in the beginning and I was right. Enough time and energy spent on a civil war far from our shores while the problems Americans face are ignored. Yes, while the problems that you, the people out there, face—you, the people on the plains and mountains and in the hollows and hills, your problems—we wallow in debt and mortgage our children's future to foreigners. That is what we are doing. We are continuing. We are asking now for more, more, more. Not: Give me more, more, more of your kisses but more, more of your money, more, more of your lives. Enough. It is time to truly change course. Mr. President, it is time to look at the compass, time to change course and start talking about how we can rebalance our foreign policy and bring our sons and daughters home—bring our sons and daughters home.

There are a lot of people making political calculations about the war in Iraq, turning this debate into an exercise of political grandstanding and point scoring. But this is not a political game. This is a game of life and death. This is asking thousands more Americans to make the ultimate sacrifice for a war that we now know, beyond a shadow of a doubt, was a mistake. We had no business going into Iraq. We had no business invading a country that never posed an imminent threat, a serious threat to our own country.

There were those of us who cautioned against the hasty rush to war in Iraq. And I have some credibility on that score. I cautioned against it, yes. And there were others in this Senate Chamber who stood against the hasty rush to war in Iraq. Unfortunately, our cries, like Cassandra's, went unheeded. Like Cassandra, our warnings and our fears proved to be prophetic—proved to be prophetic.

But we are not doomed to repeat our mistakes. We ought to learn from the past. We must understand—and understand it now, and understand it clearly—that more money and more troops—more American troops, more American lives lost in Iraq—are not the answer.

The clock—there is the clock above the Presiding Officer's chair. There it is. There is the clock. There is another one behind me on this wall. These clocks are running, running, running

on our misadventure. And I can say that with credibility because I said it was a misadventure in the beginning—our misadventure into Iraq.

Enough time has been wasted, Mr. President. Enough. Enough. Hear me: Enough. Enough time has been wasted.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. OBAMA). My understanding is, under the previous order, the Senator from Arizona is recognized for up to 15 minutes.

IRAQ

Mr. KYL. Mr. President, I suppose it was inevitable, the criticism of the President's announcement last night. But I ask: What happened to all of the promises of last week, the talk of bipartisanship, the talk of trying to work together, especially on the biggest challenge of our time, this challenge to our national security? Where is the unity that we need at this time for this issue more than at any other? I am disappointed by the attacks on President Bush's strategy, particularly because they come primarily from people who have offered no alternative. It seems to me that threatening to cut off funding for our troops, as some have done, while not giving the President's Iraq strategy a chance, is the worst kind of partisan politics.

When dealing with issues of war and peace, and trying to devise a strategy that will result in the least harm to Americans, with the greatest chance of success, it seems to me we should be trying to find common ground.

The critics of the President throughout last year called for a new strategy and interpreted the election results of 2006 as substantially a repudiation of the President's strategy and confirmation that there needed to be a new strategy.

After consulting with Members of Congress, with generals, with retired generals, with other experts, the Baker-Hamilton Commission, and many others, the President has come up with another strategy, and he announced that strategy last night. It seems to me that we at least owe him the opportunity to see whether that strategy can work before immediately attacking it as a policy that is bound to fail, especially, as I said, because I have seen no alternative.

The only alternative is that we withdraw. There are a lot of different ways that we would withdraw, and timetables for withdrawal, but they all come down to withdrawing. That suggests that leaving the Iraqi forces to establish the stability and peace that is required in Iraq is likely to be more successful than the Iraqi troops combined with U.S. troops—a proposition which, it seems to me, is incredible on its face. So where is the alternative strategy for success?

Now, one of our colleagues, earlier this morning, said:

> We are in a hole in Iraq, and the President says the way to dig out of this hole is to dig deeper. Does that make sense, when you are in a hole, you get out by digging deeper? This is a reckless plan. It is about saving the Bush Presidency. It is not about saving Iraq.

Well, let me talk about the two elements of that—first, the analogy, which I think breaks down. I have used it before. It is a good analogy in certain situations. But it is a little bit like saying that when the first wave of our boys hit the Normandy beaches, because many of them were dying, that it made no sense to add more forces, to land the rest of our troops on the beach. And that, of course, was not the case.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. KYL. Mr. President, I will be happy to yield to the distinguished Senator from West Virginia.

Mr. BYRD. Those of us who disagreed with the plan to go into Iraq in the beginning—and now who disagree with the request that we put more troops into Iraq—we are not talking about the Normandy beach. That was an entirely different matter.

What are we fighting for over here in Iraq? Why are the American people sending their boys and girls into Iraq, a country that has not attacked us? Why are we sending our boys and girls to have their blood spilled in that faraway country? For what? For what are we spending these billions of dollars?

I cannot understand it. I say that most respectfully to the distinguished Senator, who is my friend.

Mr. KYL. Mr. President, I would say to the distinguished Senator from West Virginia, the Senator asked that question in his remarks a few minutes ago, and I had written down that is a fair question. I am prepared to answer that question, and I would like to answer that question. If the Senator would allow me just to finish the point I was making earlier, I will answer that question.

Mr. BYRD. Yes. Very well. I thank the Senator.

Mr. KYL. I might say, by the way, that is the central question, and it has not been adequately answered to date. I will concede that to my friend from West Virginia. But there is an answer, I believe, that justifies, that warrants our participation, and I will make that point.

The point I wanted to make before is that simply because you are having a problem achieving something does not mean it is wrong to try to figure out a new strategy to win. And sometimes applying more force can supply that element, that missing element.

Mr. BYRD. Mr. President, will the Senator yield for a question?

Mr. KYL. Yes, of course, I will be happy to.

Mr. BYRD. What is it we are seeking to achieve by putting more troops into Iraq?

Mr. KYL. Mr. President, first of all, I ask unanimous consent that the time used by the Senator from West Virginia not count against the time I was given.

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

Mr. KYL. Secondly, since the Senator has remained on the Senate floor and asked that question a second time, I will go ahead and move to answer that question, and then come back to the other points I was going to make a moment ago.

Basically, the Senator asked two questions: Why are we there in the first place; and, secondly, how is this strategy supposed to enable us to achieve the victory we seek to achieve?

Let me answer that second question first, briefly, because the President talked about this last night. The concept that the President outlined was one that he had developed, or our forces in Iraq had developed with the Maliki government. And it was predicated on a commitment that the President received from the Iraqi Government that it would be willing to do some things differently in the future.

Specifically, what? We appreciate until peace and stability come to Iraq, it is not going to be possible for that Iraqi Government to engage in the political and economic reforms that will be necessary for that society to move forward.

How does one achieve peace and stability? For most of the country there is relative peace. But everyone agrees in Baghdad itself there is great conflict and killing. So the President talked last night about a division of the city into nine specific regions, bringing in more troops from the Iraqi Government, twice as many more as the United States would bring in, in order not just to clear those areas of the killers, as the President called them, but to hold the areas, to prevent them from coming back in and then causing harm to the innocent Iraqi civilians.

The Maliki government had talked about doing this in the past. But when we did the clearing, the killers were allowed to come back and continue their bad action right after we left. We established checkpoints and curfews, and the Iraqi Government said they would like for us to eliminate those checkpoints and curfews. We would arrest these killers and put them in jail, but the Iraqi Government would let them back out. In other words, it was doing things that were antithetical to our ability to consolidate the original victory we obtained by clearing those areas of the killers.

The President obtained a commitment from Maliki that this would change, so the strategy now would be with Iraqi troops taking the lead and American troops assisting, to clear the areas and hold them, and hold the killers responsible, keep them from killing again, and go after the militias, especially in Baghdad, that were doing most of this killing.

Now, that would require some additional troops in Baghdad, and the President talked about the number of troops that would be provided for that. He said the other area where troops

would be provided would be in Al Anbar Province, to the west, where the al-Qaida terrorists had basically developed a tremendous amount of strength and taken over parts of that area, and some additional troops would be needed there.

There were other elements of the President's speech. There were well over 20, as I counted them, of different parts of this strategy. But the key elements were the ones I just mentioned. So that is the role these additional troops are supposed to play.

Now, to the more fundamental question that the Senator asked, if one only looks at Iraq in a vacuum, I can easily understand why one would come to the conclusion that with the death and destruction there, and the harm to our own troops, it does not make sense for us to be there.

But Iraq is not in a vacuum. Iraq is part of a larger war. And this is one thing that both Osama bin Laden and George Bush agree on, probably the only thing: Both of them have called the battle in Iraq critical to achieving victory in the ultimate—the President calls it the war against terrorists; bin Laden calls it the holy jihad. But, in either case, they understand that the loser in this battle in Iraq is not likely to be able to prevail in the larger global war.

In bin Laden's case, he is talking about the war to establish the califate, and he says that Baghdad will be the capital of the califate. This is the area that will be ruled by Sharia, the strict law of his interpretation of Islam. The U.S. concept of victory is a peaceful, stable Iraq that can maintain its society and borders and be an ally with us in the war against the terrorists.

Our security there is identified in two ways. First, because of the al-Qaida and other terrorists who, as I said, have done a tremendous amount of damage in Al Anbar Province and who initiated a lot of the conflict between the Shiites and the Sunnis, among other things, by bombing one of the most holy of the Shiite mosques; they have initiated a lot of this terrorism. We have to be able to defeat al-Qaida and the other terrorists in Iraq.

Secondly, we cannot lose the momentum we have gained in this war against these terrorists in places such as Jordan and Egypt and Saudi Arabia and Pakistan and Afghanistan and Yemen and other places. From a situation where they were actually helping terrorists, we have gotten to a point where they are actually helping us to find and root out and capture or kill the terrorists. Were we to leave Iraq a failed state, it would not only be a devastating—I will use the word—Holocaust for the people of Iraq, especially anyone who tried to help us or participated with the Iraqi Government, but it would be a horrible blow to our national security because it would reverse the momentum we have gained in the war against the terrorists and cause these other states to begin to hedge their bets in working with us because it is a dangerous neighborhood. It would be evident that we have no stomach to stay there and that the terrorists, therefore, can move back in, can use those as a base of operation and continue, then, to work against the states of Afghanistan, Pakistan, Saudi Arabia, and the like. In fact, Saudi Arabia has already talked about trying to provide funding for Sunnis in Iraq. Iran is providing assistance to Shiites in Iraq. These are the reasons why it is more than a battle for Iraq but, rather, to continue the momentum we have gained in dealing with these radicals all throughout that region.

Mr. BYRD. Will my friend yield?

Mr. KYL. I am happy to yield, again, to my friend.

Mr. BYRD. He used these words: ''We have no stomach to stay there.'' The question is, How long and at what cost? Stay there how long? How long are the American taxpayers and mothers and fathers going to put up with the use of their sons and daughters and their money? How long are they going to continue to want to—I shouldn't say it that way—how long are they going to continue to put up with this expenditure of blood and money and for what? I thank my friend for yielding. I hope I don't appear to be discourteous in any way.

Mr. KYL. Mr. President, the Senator from West Virginia has, again, asked the most fundamental of all questions. I am going to have to take some time to go into more detail about my answer to the question. But I think I have tried to answer one of the two questions: What is the U.S. security interest in achieving victory in Iraq?

We know that the world in that region would be thrown into absolute chaos, with probably hundreds of thousands of casualties, if not more, if we leave Iraq a failed state. Even more directly to America's interests and to answer the question of how long will Americans support this effort is the danger that our momentum in the war on terror will be set back and will be dealt a tremendous blow if we leave Iraq a failed state and the terrorists are able to then move out from there and again become dominant in places such as Afghanistan and Pakistan, the Wahabis, and Saudi Arabia and so on. That would be a terrible blow to the progress we have made against these terrorists.

Osama bin Laden has a saying about the weak horse and the strong horse. It has always been his view that we are a weak horse because we get out when the going gets tough—in Lebanon, in Vietnam, and in Mogadishu. He believes that just as he thinks he threw the Soviets out of Afghanistan, he can throw the United States out of all of this part of the world because we are the weak horse. If we confirm to the people in that region that he is right, because we will not stay in Iraq because of the difficulties we have confronted, then we will only validate the view that he has propounded and make it much more difficult for us to confront terrorists.

To the question of how long Americans will continue to support this, I suspect that the answer is only so long as they believe there is a prospect for success and only so long as the hidden costs of failure remain hidden. We have not done as good a job as we need to, to say: All right, maybe this new strategy of President Bush won't work. He believes it will. There are new commitments from the Iraqi Government that suggest it will. We are going to be doing things differently. We believe this has a chance to succeed. We know one thing for sure; that is, the alternative, withdrawal, is a guarantee for failure. And what will that failure bring? Who wants the blood on his or her hands of the hundreds of thousands of people who are likely to be killed as a result of our leaving Iraq a failed state? Who wants to then ask the question of why it is that terrorists began to spread their evil ideology throughout that part of the world to be more effective in potentially attacking the United States, when, in fact, we have had them on the run? The evidence of what we did in Somalia is a good illustration. The fact that the London bombing about 6 months ago was thwarted is another good illustration of the fact that when we have good intelligence and when we have the ability to take the fight to the enemy, we make ourselves more secure.

I appreciate the questions of the Senator from West Virginia. They go to the heart of this debate. I would hope that we will have the opportunity soon to expand on these questions and the answers to them and engage in the kind of debate that we haven't had up to now and this country needs in order to be able to make the decision of what kind of support it wants to give to the President or whether it wants to accept other points of view.

I didn't deliver quite the remarks I intended, but I appreciate the comments of the Senator from West Virginia. I would be happy to engage in that discussion in the future.

Mr. BYRD. I thank the Senator for his comments.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. I ask unanimous consent to ask the Senator from Arizona a question.

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

Mr. COBURN. The question I have is, The distinguished Senator from West Virginia asked the question: How long and at what price? But that is a false choice. Because if we leave Iraq and we walk away, we are going to be fighting this battle again. So it is not about how long and at what price; it is, when are we going to have this battle again? I believe that is up for debate. What the American people lack is the understanding that if we walk out now, we are going to put young men and women

again at risk, at far greater numbers and at far greater cost in the future, as we empower the terrorists. I wonder if the Senator from Arizona may comment.

Mr. KYL. In response to the Senator from Oklahoma, that is the point I raised at the very end. It is not only a question of whether the President's new strategy has a chance to succeed, as he believes it does, but what is the alternative. If the alternative is leaving Iraq a failed state, I have barely scratched the surface of identifying the horrors that that would represent and the dangers to American national security that it would involve. We need to do a better job of articulating that alternative. As I see it, that is the only alternative that has been put forward to the President's new strategy.

AMENDMENTS NOS. 11 AND 13

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. Mr. President, am I correct in my understanding that I control the time between now and 2 o'clock.

The PRESIDING OFFICER. Under the previous order, that is correct.

Mr. DEMINT. I thank the Chair.

I am here to discuss two amendments that will be voted on at 2 o'clock. I see my colleague, Senator COBURN, is here to speak on one of them. I will make a few comments and then yield some time to him.

This whole debate about lobbying and ethics reform is very important to this Congress. We know from the last election that the American people are concerned about how we spend our money, about corruption. The closer we looked at it as Congressmen and Senators, the clearer it became that the practice we have of earmarking, which is providing some favor with tax dollars to some group or entity around the country, has begun to corrupt the process. The scandals we saw on the House side were mostly related specifically to a lobbyist basically buying an earmark, a favor we consider scandalous in the Senate.

The new Speaker of the House, NANCY PELOSI, in a thoughtful proposal, H.R. 6, provided a clear definition of what these earmarks or favors are, so that when we begin to develop reform of the earmarking process, we can target those things that are the problem.

That is what my amendment is about. The bill that is on the floor of the Senate now defines earmarks in a way that only includes about 5 percent of the total earmarks. It would not have included the type of earmarks that got Congressman Duke Cunningham in trouble. It would not have included the Abramoff type of scandal either. We often disagree, but as we start this new session, there is a new climate of bipartisanship, the need to cooperate, Republicans and Democrats. But it is also important, between the House and the Senate, that when we think the House gets it right, whether it is Republican or Democrat, we should take an honest look at it. In this case, Speaker PELOSI has it right on the earmarks.

I would like to speak more about it. Before I do, I will yield whatever time Senator COBURN would like.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I don't think you can have a discussion on earmarks until you set the predicate for what is really going on. It is not dishonorable to want to help your home State. The vast majority of those things that are considered earmarks are not bad projects. They are not dark. They have a common good that most people would say would be adequate.

The question about earmarks is, What has evolved through the years and what have they become? I believe earmarks have been the gateway drug to the lack of control of the Federal budget. The proof of that is, look at who votes against appropriations bills. I will promise you, there won't be Senators in this body who have an earmark in a bill that will vote against the appropriations bill. What does that say? Does that mean everything in that bill was good; they agree with the bill?

What it means is, they have an earmark in the bill. And if they vote against it, the next time they want an earmark, they won't get it. So you have the coercion of using earmarks to control votes.

Our oath is to do what is in the best long-term interest of our country. No matter what our political philosophy, we are all Americans.

We can all agree about that. And whether we are liberal or conservative, we don't want any money wasted. But as we spend money on things that are earmarks that are not bad but definitely should not be a priority when we are fighting a war and have a gulf catastrophe and a budget deficit of $300 billion we are passing on to our children, we get the priorities all out of whack. Priorities are what the American people said they wanted us back on, and they wanted us back on it together.

The bill that is on the floor, as the Senator from South Carolina said, addresses only 5 percent of that problem—5 percent of the earmarks. The Congressional Research Service looked at that—12,318, of which 534 would fall under the bill that is on the floor—correction, 12,852 is the total and there are 12,318 that this bill would not apply to at all. It would have no application to it at all.

The other problem with earmarks is there has to be sunshine. Fixing the problem to make everybody think we fixed it versus really fixing it is what this bill does. It is a charade, as far as earmarks are concerned. There is nothing wrong with wanting an earmark or for me wanting to bring something to Oklahoma. I have chosen not to do that because I cannot see how Oklahoma can be helped with an earmark when we are borrowing $300 billion from our kids and grandkids. I cannot see how that priority can be greater when it undermines the future standard of living of our children and grandchildren. But to put this bill up without the House version—and even it doesn't go far enough because it doesn't list who the sponsor is until after it is passed. In other words, you don't know who the sponsor is until after the bills come through.

We need to be honest with the American people. The only way we are ever going to get our house in order fiscally is to have complete transparency on what we are doing, so they can see it. Today the President of the Senate and I passed a bill that will, after the fact, create transparency so that everybody will know where all the money went. But it does nothing before the fact. We need the discipline to control the spending and to not use this tool of earmarks as a coercive tool with which we get votes on appropriations bills that are spending more money than we have.

This last year, a subcommittee I chaired in the last Congress had 46 oversight hearings where we identified over $200 billion in discretionary waste, fraud, or duplication. We ought to be taking up those things. We ought to be eliminating that. We can do tremendous work.

The other thing that is important in the earmark discussion is that you don't have an earmark if it is authorized. When it is authorized, that means a committee of the Senate—a group of our peers—looked at it and said this is a priority and something that should be done; therefore, it is no longer an appropriations earmark because it has been approved by the committee of jurisdiction.

The best way to eliminate earmarks is to bring them into the sunlight, get them authorized, and allow Appropriations to fund them. That way, we have 100-percent sunshine and the American people know what we are doing, and we defend that in the public, open arena of committee hearings. We should not be afraid to do what is right, what is open, what is honest, and what is transparent for the American public. They deserve no less than that.

The earmark provision that is in the bill in the Senate that we are debating right now is cleaning the outside of the cup while the inside stays dirty. We should not let that happen. There is no doubt in my mind that Senator DEMINT's amendment is going to lose.

So the question has to come to the American public, are you going to hold the Senate accountable for acting as though they are fixing something when they are not? Anybody who votes for this bill, with the language in it the way it is today, is winking and nodding to the American people and saying we fixed it. But we didn't. Everybody here knows it won't be fixed with the language as it sits today. So it is going to

require the American people to have great oversight over us to see who votes for this bill. If you are voting for this bill, you don't want to change the way business is done here; you want to leave it exactly the way it is and leave everything alone. So you want to tell everybody you fixed it when you didn't. That smacks of a lack of integrity in this body that belies its history.

I yield back my time.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, I thank my colleague for his persistence and hard work on a very commonsense issue. Many times in this Chamber, and in the House, we assume on our side that if the Democrats have an amendment, there is always some trick in it and they are trying to get us to take a vote and make us look bad; we don't trust each other. I wish to make an appeal that on this one amendment—this amendment No. 11 we have talked about—there is no trick. It is the exact language Speaker NANCY PELOSI put in their ethics bill, because everybody there—many Republicans and Democrats—agree that if we are going to at least have a pretense of changing the culture here, we need to be fully transparent and open and honest in what we are talking about.

As Senator COBURN said, many earmarks are good projects; they help people and organizations. The problem we have is that in order to get a few of those things that are good and necessary, we have to vote for thousands and thousands of earmarks that are not Federal priorities, and many of them, once disclosed, become an embarrassment to us. I think it has made the American people jaded about what we do here.

This is an opportunity to at least work together on one thing. The problem we had—and Senator COBURN mentioned this—in 2006 is that in the appropriations bills there were 12,852 earmarks. I am sure there are many that could be defended. But the biggest problem we have as a Congress is that behind these thousands of earmarks are thousands and thousands of lobbyists who have been paid to come up here and influence us in a way that would include a favor for their client in the bill. Again, many of these are legitimate. But what we have done to ourselves and our country—it drives me crazy to see a little town in South Carolina that is paying a lobbyist firm over $100,000 a year because that firm has promised them they can come up here and get a Federal earmark for a million dollars or more. What a great return—pay $100,000 and get a million dollar earmark. We see little colleges, associations, and businesses hiring lobbyists, hoping to get a particular earmark. So we have thousands of lobbyists in this town who are here to try to influence us to do a favor on behalf of their client. Much of this is legitimate, but our oath and our reason for being here is for the good of this country. We cannot do business with thousands and thousands of special interests who are here to influence us, and we have a system that actually makes it difficult for us not to go along with that, as Senator COBURN has pointed out.

This amendment is very simple. It doesn't create any kind of rigorous process for disclosure, which has been claimed here today by the other side. It simply says if we are going to create a transparent, well-disclosed process of the earmarks we are putting into a bill, all of them are disclosed, not just some small definition that includes only 5 out of 100 earmarks. We have already said there were only 534 out of about 12,800, so we cannot pretend to be putting a stop to the corrupting process of money here in the Congress if we try to convince the American people that somehow we have done some good. If we look at the corruption we are trying to get rid of, Duke Cunningham on the House side was influenced by lobbyists to get a Federal earmark from the Department of Defense. That would not have been included in the bill that is here on the Senate side. But it would be in NANCY PELOSI's language. We could stop the corruption before it ever happens.

We have a real opportunity to do something that is significant. If we are going to spend weeks and weeks—which ultimately we are—with ethics and lobbying reform and transparency, if we get to the end of this and we have something that does not appear remotely honest to the American people, I think we will all be ashamed of the process we went through. Unfortunately, yesterday, we voted down an amendment that would bring another bit of honesty to this organization. We had the big scandal we talked about in the last election, Abramoff. The problem there is that Indian tribes in America are allowed to give unregulated amounts of unaccountable money to Congress to buy influence, and that is what happened in that case.

We had an amendment yesterday that would have asked the Indian tribes to play by the same rules every other group in America plays by, but we voted it down. That means that in the future Indian tribes, with all their casinos and money, are going to continue to flood Congress with money and the American people don't know what it is buying, where it is coming from. It is senseless to go through an ethics reform bill and overlook something that obvious.

Today, we have something equally as obvious. We have a proposal to identify and make transparent the earmarks that come through the appropriation bills. It is something the House has agreed on, and Speaker PELOSI has made it a top priority. This is not a partisan trick. This is a commonsense disclosure provision that will be good for this body.

Mr. COBURN. Will the Senator yield for a moment?

Mr. DEMINT. Yes.

Mr. COBURN. Mr. President, I will make a point. There is nobody down here defending the other side.

Mr. DURBIN. I am here.

Mr. COBURN. I would love to have a debate on the basis of why the amendment that is in this substitute should not cover the other 95 percent of the earmarks. I ask the Senator from Illinois, what is the basis for only covering 5 percent of the earmarks in the bill.

Mr. DURBIN. I thank the Senator from Oklahoma.

The PRESIDING OFFICER. Time is controlled by the Senator from South Carolina.

Mr. DEMINT. I yield to Senator DURBIN so he may answer the question.

Mr. DURBIN. Mr. President, there are two problems, at least, with the amendment. First, we try in the bipartisan Reid-McConnell earmark reform to include not only appropriations earmarks but also tax benefits. It is the same deal. You either send a million dollars to a corporation in an appropriations earmark or in a tax benefit. So we include both. The language of Senator DEMINT's amendment, unfortunately, waters that down and weakens it.

Secondly, we have more stringent reporting requirements in the Reid-McConnell amendment than in the DeMint amendment. There is no reason to walk backward here. We are moving forward toward reform of earmarks. I don't know if it was a drafting error or what, but the DeMint amendment makes language on tax earmarks weaker and the reporting requirements weaker as well.

Mr. DEMINT. I thank the Senator. Reclaiming my time, I would be happy to work with the Senator on that. We include earmarks related to special tax treatment and special tariffs. I know there was discussion in the House. Again, Speaker PELOSI and the Democrats decided on this definition because they believe strongly in it. I do, too. We are certainly willing to work on that.

The strategy today to table this amendment that would move from 5 percent of earmarks to 100 percent does not seem to be an open and honest part of the process to get at a better ethics reform bill.

Mr. COBURN. Will the Senator yield?

Mr. DEMINT. Yes.

Mr. COBURN. I make the point, if you got better reporting on 5 percent and no reporting on 95 percent, you have nothing. That is the whole point. Before the Senator from Illinois came down, I said it is not dishonorable to ask for an earmark. Most of them are good projects. I made that point. But to not have 95 percent of the earmarks reported, whether strong or weak, and say we are going to report 5 percent of the earmarks and report them strongly is not cleaning anything up.

Mr. DURBIN. Will one of the Senators yield?

Mr. DEMINT. I yield.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator. As I said, this is getting perilously close to debate in the Senate, which hardly ever happens.

Mr. DEMINT. Mr. President, I thank the Senator for being here.

Mr. DURBIN. I am glad to be here with my colleague. The difference is this: I have had a passion for a long time about the fight for global AIDS. I believe we need to appropriate the funds that the President promised and for which I applauded him to fight the global AIDS epidemic.

Every year I try to plus up and increase the amount of money that goes to fight global AIDS. I have been successful. I am proud of it. I think it is something I have done that has made a difference in the world.

That, under the Senator's definition, is an earmark. It is not an earmark as we have traditionally understood it. The money is not going to a private company, individual or private entity. The money is going to a Federal agency.

To add to this earmark reform language, all the money that goes to Federal agencies may give the Senator some satisfaction, but it is just creating voluminous, unnecessary paperwork.

Can we not focus on where the abuses have occurred, where the earmarks have gone to special interest groups, businesses, and individuals? Let's get that right. The rest of it is what an appropriations bill is all about.

Mr. DEMINT. In the interest of continued debate, I yield to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from South Carolina yields to the Senator from Oklahoma.

Mr. COBURN. Mr. President, first, that is not an earmark program. It is not an earmark. Everybody knows it is not an earmark. It is the 95 percent that is in the report language that nobody knows about and on which we are not going to report.

The American people deserve transparency. The Senator is good. Senator DURBIN is very good, and I understand debating with him is difficult, but he is not to the point. The point is, that is not an earmark. It is a great move to the side. That is not an earmark. Items authorized are not earmarks. That is the point I made before the Senator from Illinois came to the floor.

All we have to do to get rid of the earmark program is to authorize them in an authorizing committee. Let a group of our peers say they are good. But we don't want to do that. We want to continue to hide this 95 percent that is hidden in the report language that the American public isn't going to know about until an outside group or some Senator raises it to say: Look at this atrocious thing.

Mr. DURBIN. Mr. President, will the Senator yield?

Mr. COBURN. I would like to finish. The point being, let's not send a false message to the American public. This provision that is in this bill is a sham in terms of cleaning up earmarks, and if you are going to defend it, then you are going to have to defend it to the American public.

It will not eliminate 95 percent of the earmarks, it will not make them transparent, and they will never know until after the fact who did it, why, when, and what lobbyist got paid for it.

Mr. DEMINT. Mr. President, reclaiming my time. I am running short. I believe I have until 2 o'clock.

The PRESIDING OFFICER. That is correct. The Senator from Illinois has asked if the Senator from South Carolina will yield for a response.

Mr. DEMINT. I will yield in a moment. I appreciate the Senator from Illinois staying with us because I want to mention another amendment and give him some comment. I do appreciate the opportunity for some debate.

I would like to summarize to make a key point. Nothing in this amendment would limit, in any way, our ability to earmark bills. We could have 12,000 next year, if we want. The main point of this is that if we are going to have 12,800 some-odd earmarks we have a way to show the American people what these earmarks are, where they are going, and who sponsored them so they can see what we are doing.

We know what that would do. It would, first of all, reduce a lot of the earmarks if they were disclosed. It would allow Members to know when we have earmarks. Many times, the 95 percent or so we are voting on are in a conference report, and we haven't seen them. We are not eliminating earmarks, we are disclosing them and making them transparent, which is key to any lobby reform.

Let me mention another amendment we talked about earlier today. It is referred to as an automatic continuing resolution, and I am sure a lot of folks don't know exactly what we are talking about. Every year we go through a process of appropriating money for different Government programs. We have 11 or so different bills, if that is the way we divide it this year. We have to have those done, or supposed to, by the end of our fiscal year in order for the Government to continue operations. But 24 out of the last 25 years, the Congress, under the control of both Republicans and Democrats, has not finished all its appropriations bills before the end of our fiscal year, and we have had to have a continuing resolution to avoid the Government shutting down. We have done that every year I have been in the House and in the Senate.

What that does at the end of every year is create a crisis. We have to vote for the continuing resolution, we have to get it done, and that is when many of these earmarks are slipped in. That is when many times we are told that if we want to keep the Government operating, we need to vote for this resolution, even though we don't know what is in it yet.

Every year we frighten senior citizens, veterans, and other people depending on Government programs that somehow their service is going to be interrupted because the Government is going to close down.

It is completely unnecessary to do this every year. We know, in the last years, it is not unusual for us to pass a continuing resolution in the middle of the night and put it on a jet airplane and fly it to the other part of the world so the President can sign it at the last minute so we won't send all our Federal employees home and cut services around the country. It is a game we play every year that encourages bad legislation, it encourages unnecessary earmarks, and it encourages us to operate with blinders on because we don't know what we are voting on. This is not a partisan trick because the Democrats could be in charge, we could have a Democratic President.

This amendment is, again, very simple. If we have not passed the appropriations bills at the end of the fiscal year that applies to certain agencies of Government, those agencies continue to operate at the budget they had the previous year. At whatever time during the year we pass the appropriations bill that funds them, then that circumvents the automatic CR, and we continue with the new level funding. This would take the crisis out of the end of every year.

What is effective blackmail, where you vote for this or the Government is going to close down, we don't need to do that. What we need is an orderly, transparent process that the American people can see and that we as Members can see.

This amendment would continue the operation of Government until we are able to get our business done, and then we would continue business as usual.

Again, it is simple, commonsense legislation that does not cost the country anything. In fact, I think it will save us millions and millions of dollars when we do our business correctly.

If the Senator from Illinois has some response, I will be glad to yield.

Mr. DURBIN. Mr. President, if the Senator will be kind enough to yield.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I have been speaking with our colleague from Oklahoma. On some of this, I say to the Senator, we may be able to reach an understanding. As I understand it, from the original language of the bill which referred to earmarks as non-Federal spending, that language ''non-Federal'' is stricken, leading us to conclude that it applies to Federal earmarks as well.

The Senator from Oklahoma says he believes the distinction should be whether the program is authorized. That is not in the language of the amendment of the Senator from South Carolina.

It is important for us, if we are going to change the Senate rules, to explore

in some detail the language we use. Although the Senator's intent may be noble, I am opposing it as currently written because I think we need to tighten it and make sure we achieve what we want to achieve.

The final point I will make is, as disappointing as the underlying bill may be to some, to others, I think it is a positive step forward. It is going to result in more required transparency and disclosure than currently exists.

If the Senator feels we should move beyond it, perhaps at another time we can, but let's do it in a manner that achieves exactly what the Senator has described on the floor. I think the language presented to us does not achieve that.

Mr. DEMINT. Mr. President, I appreciate the Senator's transparency. I have been around long enough to know exactly what is going to happen. If we have a transparent provision for 5 percent of earmarks, but if we do them another way, such as in report language, they are not transparent, and this is going to encourage more perversion of the way we do business because what is going to happen is we are going to push more and more of our earmarks into report language in conference bills that we don't know is there and the American people don't know is there.

We know how this place operates, and we are going to choose the path of least resistance. If we don't have to disclose it if it is in report language, but we do if it is in the bill, then we are actually going to do harm to the process.

I will tell the Senator from Illinois this: He mentioned a Senate rule. We are not talking about a Senate rule. We are talking about a statute of law we are passing that will go to conference with the House. The Senator, obviously, as a member of the majority, will have ample opportunity to change this provision, but I think it would be a good signal to America, to the House, to our colleagues in the Senate that if we adopt this amendment today, and if there are ways to improve it in conference, I am certainly open to that. But to table this amendment and to say we don't even want to discuss or vote on an amendment that creates more disclosure and honesty in the process, I think does harm to what we are trying to do today.

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. DEMINT. Yes.

Mr. DURBIN. Mr. President, I say to the Senator, having served in the House and Senate on Appropriations Committees and having been fortunate to chair a subcommittee in the House and now in the Senate, I would like to make this point which I think the Senator's amendment misses.

We cannot authorize a program with committee report language—we cannot authorize a program with committee report language. I learned long ago that unless we have bill language, actually creating a law, we are not authorizing the creation of a program. The Senator's language says:

> The term ''congressional earmark'' means a provision or report language authorizing or recommending a specific amount.

It is not legally possible in a committee report to authorize a program.

Mr. DEMINT. Mr. President, I thank the Senator. The Senator from Illinois is right. We don't authorize, but the Senator also mentioned the word ''recommending.'' Ninety-five percent of the earmarks produced by this Congress are in report language and conference reports that actually do not have the force of law, that are recommended but have been carried out by the executive branch for years just for fear of retribution from the Congress because we talked to the President about this.

There is no reason why these should not be disclosed. There is no reason the American people should not know they are there. We are not limiting the number that can be there. We are not suggesting we change the authorizing process.

Mr. COBURN. Mr. President, will the Senator yield?

Mr. DEMINT. I yield to the Senator from Oklahoma.

Mr. COBURN. I want to put in the RECORD this idea of Federal entity, non-Federal entity. Let me give my colleagues examples of Army Corps of Engineers' earmarks in report language:

Six hundred thousand dollars to study fish passage, Mud Mountain, WA;

Two hundred and seventy-five thousand dollars to remove the sunken vessel State of Pennsylvania from a river in Delaware;

Five hundred thousand dollars for the collection of technical and environmental data to be used to evaluate potential rehabilitation of the St. Mary Storage Unit facilities, Milk River Project, MT;

Five million dollars for rural Idaho environmental infrastructure. Nowhere will you find in that bill what that is for. The American people ought to know what that is for. We ought to know what that is for.

One million and seventy-five thousand dollars for a reformulation study of Fire Island Inlet to Montauk Point, NY;

One hundred and fifty thousand dollars for the Teddy Roosevelt Environmental Education Center;

One million two hundred and fifty thousand dollars for the Sacred Falls demonstration project in Hawaii;

Two million dollars for the Desert Research Institute in Nevada.

None of those are authorized. Nobody will hold anybody accountable for those earmarks. Nobody will know it happened unless we bring it up on the floor, and then we would not have the power to vote because the coercive power of appropriations in this Congress is, if you don't vote for it, you won't get the next earmark you want; you will be excluded from helping your State on a legitimate earmark.

The American people better pay attention to the vote on tabling this amendment because anybody who votes to table this amendment wants to continue the status quo in Washington as far as earmarks.

Mr. LEVIN. Mr. President, I will vote to table the DeMint amendment. This amendment would strike earmark reform language in the Reid-McConnell bipartisan substitute and replace it with provisions which contain, among other things, a definition of earmarked tax benefits which is weaker than the Reid-McConnell language.

The DeMint amendment would define a tax benefit as an earmark only if it benefits 10 or fewer beneficiaries. This leaves open a loophole for earmarks aimed at benefitting very small groups of people, perhaps as few as 11 or 15 or 50 taxpayers. It would be relatively easy to circumvent the DeMint language and the intent of the tax earmark language in the bill.

The bipartisan Reid-McConnell language, on the other hand, defines a tax benefit as an earmark if it ''has the practical effect of providing more favorable tax treatment to a limited group of taxpayers when compared with similarly situated taxpayers.'' This is stronger language—a limited group can be far more than 10.

I am hopeful that this bill will come back from conference committee containing strong and effective earmark reform provisions from both the House and the Senate bills.

Mr. DEMINT. Mr. President, I will give the Senator from Illinois the last word.

The PRESIDING OFFICER. The Senator from Illinois has 2 minutes.

Mr. DURBIN. Mr. President, let me say at the outset that committee report language cannot authorize something that is not legal, no matter what we put in committee report language. This has to be put in bill language.

So referring to a committee report—trust me, after more than 20 years serving on appropriations committees, committee report language is akin to sending a note to your sister—it doesn't mean much. But when it comes to the actual expenditure of money, you want bill language and it is there.

Let me, also, say that the money the Senator is talking about is being transferred, I assume—I don't know those particular projects—to other governmental entities. They could be counties, they could be States, they could be cities. These governmental entities are receiving this money.

What we are talking about, the most egregious cases that have led to the greatest embarrassment on Capitol Hill involves the people who represent private interest groups who come here and receive these earmarked funds. Those people are subject to full disclosure under the underlying bill. That is what this is all about.

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

The PRESIDING OFFICER. Under the previous order, there will now be 2

minutes of debate equally divided in relation to the DeMint amendment No. 11. Who yields time?

The PRESIDING OFFICER. The Senator from South Carolina is recognized for 1 minute.

Mr. DEMINT. Which amendment is this?

The PRESIDING OFFICER. Amendment No. 11.

Mr. DEMINT. Mr. President, this is what we call the Nancy Pelosi amendment; it is in her honor. I appreciate the opportunity for debate. I appreciate my colleague from Illinois joining us in some give and take. I think there is a temptation to make this more than it is. It is not a new set of regulations. It is applying the same transparency we are trying to apply to 5 percent of earmarks to all the earmarks so that we will not only be honest as a body, but we will appear honest to the American people.

I think all of us know if we walk out of here and the media shines a light on what we have done, and if it becomes obvious that most of the earmarks we pass are completely overlooked by our ethics and lobbying reform bill, then it will be seen for the sham that it really is. We are investing too much of our time and too much of the interests of our country in this idea of ethics reform——

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

Mr. DEMINT. I thank the President for his patience.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 1 minute.

Mr. DURBIN. Mr. President, I urge my colleagues to vote for a motion to table. We have a good underlying bipartisan bill that will bring about significant reform in the earmark process. The DeMint amendment would weaken the bill in two specific instances.

When it comes to targeted tax benefits, his definition, regardless of the source, is not as strong as the underlying bill, which means the targeted tax benefits that benefit special interest groups will not receive the same full disclosure under DeMint that they will under the underlying bill.

Second, for reasons I don't understand, he removes the requirement of posting these earmarks on the Internet 48 hours in advance. That is a good safeguard. Why he has removed it I don't know, but it weakens the underlying bill.

I urge my colleagues to vote for the motion to table. I will work with my colleagues from South Carolina and Oklahoma in the hopes that we can find some common ground.

Mr. President, I move to table the DeMint amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senator was necessarily absent: the Senator from Kansas (Mr. BROWNBACK).

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

The result was announced—yeas 46, nays 51, as follows:

[Rollcall Vote No. 5 Leg.]

YEAS—46

Akaka	Domenici	Murray
Baucus	Dorgan	Nelson (NE)
Bayh	Durbin	Pryor
Bennett	Feinstein	Reed
Biden	Hatch	Reid
Bingaman	Kennedy	Rockefeller
Boxer	Klobuchar	Salazar
Brown	Kohl	Sanders
Bunning	Lautenberg	Schumer
Byrd	Leahy	Smith
Cardin	Levin	Stabenow
Carper	Lincoln	Voinovich
Casey	Lott	Whitehouse
Clinton	McCaskill	Wyden
Conrad	Menendez	
Dodd	Mikulski	

NAYS—51

Alexander	Enzi	McConnell
Allard	Feingold	Murkowski
Bond	Graham	Nelson (FL)
Burr	Grassley	Obama
Cantwell	Gregg	Roberts
Chambliss	Hagel	Sessions
Coburn	Harkin	Shelby
Cochran	Hutchison	Snowe
Coleman	Inhofe	Specter
Collins	Isakson	Stevens
Corker	Kerry	Sununu
Cornyn	Kyl	Tester
Craig	Landrieu	Thomas
Crapo	Lieberman	Thune
DeMint	Lugar	Vitter
Dole	Martinez	Warner
Ensign	McCain	Webb

NOT VOTING—3

Brownback	Inouye	Johnson

The motion was rejected.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 13

The PRESIDING OFFICER. There are 2 minutes of debate actually divided prior to the vote on the DeMint amendment, No. 13.

Who yields time?

Mrs. FEINSTEIN. Madam President, I ask for order.

The PRESIDING OFFICER. There will be order in the Chamber.

The Senator from South Carolina is recognized.

Mr. DEMINT. Madam President, it is my understanding I am speaking in defense of amendment No. 13, which we call the automatic continuing resolution.

The PRESIDING OFFICER. That is correct.

Mr. DEMINT. I wish to appeal to my fellow Senators to remember that over the last 25 years, 24 of those years we were not able to complete the appropriations process before the end of the fiscal year. As you know, every year we have a crisis situation here. We are all familiar with the end of the year crisis where we have to vote for a bill or we are going to close down the Government or parts of the Government. We sign a continuing resolution and that night, many times, we are flying to other parts of the world so the President can sign it.

This amendment is a very simple idea. If we are not able to finish an appropriations bill before the end of the fiscal year, it simply continues the Government under last year's funding. That way, we do not have to have a crisis and vote on bills we have not read and that we are embarrassed about 3 weeks later, and we do not have to threaten Federal employees or senior citizens that their services will be cut off.

Please support this amendment. It is simple common sense to continue the operations of Government until we can complete our business.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COCHRAN. Madam President, this amendment essentially provides for an automatic continuing resolution in the event any annual appropriations bill is not enacted prior to the beginning of the fiscal year.

In this fiscal cycle we have passed three continuing resolutions to fund the programs for which appropriations bills have not yet been enacted. Those continuing resolutions have been free of extraneous matter, and have been passed by the House and Senate without particular difficulty.

My desire to enact the regular appropriations bills on time does not stem from fear of our inability to enact a continuing resolution. I do not see that the need to pass continuing resolutions creates a ''crisis atmosphere'' as some have portrayed.

Rather, the pressure to pass the annual spending bills stems from a sincere desire—at least on this Senator's part—to fulfill Congress's constitutional obligation to exercise the power of the purse. It stems from our desire to make intelligent decisions about programs that deserve more funding than was provided in the prior year, and to reduce or cut off funding for other programs that aren't working, or which are a lower priority within the constraints of the budget resolution.

Mr. President, if Senators feel that biennial budgeting is wise, then let us enact a biennial budget. If Members feel that the amount of discretionary spending should be reduced for certain programs, then let us debate amendments to the appropriations bills or to the budget resolution. But let's not abdicate our responsibilities by putting the whole operation on autopilot.

Finally, I would observe that at the end of the last Congress it was not the continuing resolution that was laden with extraneous items. It was rather the tax bill that contained a host of disparate and costly items, many of which were new to members of the Senate. And what was one of the primary

drivers of that tax legislation? The need to extend expiring tax breaks. I wonder how Senators would feel about a formula-driven approach to automatically extend expiring tax provisions?

This isn't a position that I am advocating, but it illustrates the point that a continuing resolution is not a ploy by the Appropriations Committee to pressure Members into supporting appropriations bills.

We don't need an automatic formula of this sort. What we need to do is get to work, debate legislation, move it through in the regular order, and get it done. We should not abdicate our responsibilities and put government on autopilot.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Madam President, while this amendment is well intended, I believe it will make the circumstance even worse, because it will put Government on automatic pilot.

Madam President, more seriously, the automatic CR proposed by the Senator guarantees funding levels; therefore, CBO would score the proposal as effectively prefunding the 2008 bills. Thus, if adopted, this amendment will be scored by the Congressional Budget Office with increasing direct spending by hundreds of billions of dollars. The last time CBO scored this bill, this proposal, they put an estimate of $566 billion on this amendment.

The pending amendment deals with matters within the jurisdiction of the Committee on the Budget. I therefore raise a point of order that the pending amendment violates section 306 of the Congressional Budget Act of 1974.

Mr. DEMINT. We get lots of scores around this place. This is not spending. Pursuant to section 904(c)(1) of the Congressional Budget Act, I move to waive the point of order, and I ask for the yeas and nays.

The PRESIDING OFFICER (Ms. CANTWELL). Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senator is necessarily absent: The Senator from Kansas (Mr. BROWNBACK).

The yeas and nays resulted—yeas 25, nays 72, as follows:

[Rollcall Vote No. 6 Leg.]

YEAS—25

Allard	Ensign	Martinez
Bunning	Enzi	McCain
Burr	Graham	McConnell
Chambliss	Grassley	Sessions
Coburn	Hatch	Stevens
Corker	Inhofe	Thune
Cornyn	Isakson	Vitter
DeMint	Kyl	
Dole	Lott	

NAYS—72

Akaka	Dorgan	Nelson (FL)
Alexander	Durbin	Nelson (NE)
Baucus	Feingold	Obama
Bayh	Feinstein	Pryor
Bennett	Gregg	Reed
Biden	Hagel	Reid
Bingaman	Harkin	Roberts
Bond	Hutchison	Rockefeller
Boxer	Kennedy	Salazar
Brown	Kerry	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shelby
Cardin	Landrieu	Smith
Carper	Lautenberg	Snowe
Casey	Leahy	Specter
Clinton	Levin	Stabenow
Cochran	Lieberman	Sununu
Coleman	Lincoln	Tester
Collins	Lugar	Thomas
Conrad	McCaskill	Voinovich
Craig	Menendez	Warner
Crapo	Mikulski	Webb
Dodd	Murkowski	Whitehouse
Domenici	Murray	Wyden

NOT VOTING—3

Brownback	Inouye	Johnson

The PRESIDING OFFICER. On this vote, the yeas are 25, the nays are 72. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The Senator from South Carolina.

Mr. DEMINT. Madam President, if I could have a brief moment to address the majority.

We had a good debate on my first amendment, amendment No. 11, to expand the definitions of earmarks in a way that the American people could understand and see. I appreciate the Senator from Illinois participating in a good and open debate. The motion was to table that amendment, but, with bipartisan support, we defeated the motion to table. And as a customary way of courtesy, I think, in the Senate, we normally accept a voice vote for amendments that are not tabled.

I ask unanimous consent that amendment be accepted.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I see the managers on the floor at this time. I do not wish to interrupt the flow of the discussion. I would like to speak briefly on another matter, to speak for a very few minutes.

Mr. BENNETT. Madam President, if I could be recognized to take care of a few housekeeping details, we would then listen to the Senator from Massachusetts.

Mr. KENNEDY. Madam President, I yield for that purpose.

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

The Senator from Utah.

AMENDMENTS NOS. 19, 28, AND 29 EN BLOC

Mr. BENNETT. Madam President, I ask unanimous consent to set the pending amendment aside and call up amendments Nos. 19, 28, and 29 en bloc.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. MCCAIN, proposes an amendment numbered 19 to amendment No. 4.

The Senator from Utah [Mr. BENNETT], for Mr. MCCAIN, for himself, Mr. FEINGOLD, and Mr. GRAHAM, proposes an amendment numbered 28 to amendment No. 3.

The Senator from Utah [Mr. BENNETT], for Mr. MCCAIN, for himself, Mr. FEINGOLD, and Mr. GRAHAM, proposes an amendment numbered 29.

Mr. BENNETT. Madam President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 19

(Purpose: To include a reporting requirement)

On page 8, line 4 of the amendment, strike ''expense.''.'' and insert the following: ''expense.

''(i) A Member, officer, or employee who travels on an aircraft operated or paid for by a carrier not licenced by the Federal Aviation Administration shall file a report with the Secretary of the Senate not later than 60 days after the date on which such flight is taken. The report shall include—

''(1) the date of such flight;

''(2) the destination of such flight;

''(3) the owner or lessee of the aircraft;

''(4) the purpose of such travel;

''(5) the persons on such flight (except for any person flying the aircraft); and

''(6) the charter rate paid for such flight.''.

On page 9, line 21 of the amendment, strike ''committee pays'' and insert the following: ''committee—

''(I) pays''

On page 10, line 5 of the amendment, strike ''taken.'' and insert the following: ''taken; and

''(II) files a report with the Secretary of the Senate not later than 60 days after the date on which such flight is taken, such report shall include—

''(aa) the date of such flight;

''(bb) the destination of such flight;

''(cc) the owner or lessee of the aircraft;

''(dd) the purpose of such travel;

''(ee) the persons on such flight (except for any person flying the aircraft); and

''(ff) the charter rate paid for such flight.''.

AMENDMENT NO. 28

(Purpose: To provide congressional transparency)

On page 4, strike line 11 through line 10, page 5, and insert the following:

that portion of the conference report that has not been stricken and any modification of total amounts appropriated necessary to reflect the deletion of the matter struck from the conference report;

(B) the question shall be debatable; and

(C) no further amendment shall be in order; and

(3) if the Senate agrees to the amendment, then the bill and the Senate amendment thereto shall be returned to the House for its concurrence in the amendment of the Senate.

(c) SUPERMAJORITY WAIVER AND APPEAL.—This section may be waived or suspended in the Senate only by an affirmative vote of ⅗ of the Members, duly chosen and sworn. An affirmative vote of ⅗ of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(d) ANY MATTER.—In this section, the term ''any matter'' means any new matter, including general legislation, unauthorized appropriations, and non-germane matter.

SEC. 102A. REFORM OF CONSIDERATION OF APPROPRIATIONS BILLS IN THE SENATE.

(a) IN GENERAL.—Rule XVI of the Standing Rules of the Senate is amended by adding at the end the following:

''9.(a) On a point of order made by any Senator:

''(1) No new or general legislation nor any unauthorized appropriation may be included in any general appropriation bill.

''(2) No amendment may be received to any general appropriation bill the effect of which will be to add an unauthorized appropriation to the bill.

''(3) No unauthorized appropriation may be included in any amendment between the Houses, or any amendment thereto, in relation to a general appropriation bill.

''(b)(1) If a point of order under subparagraph (a)(1) against a Senate bill or amendment is sustained—

''(A) the new or general legislation or unauthorized appropriation shall be struck from the bill or amendment; and

''(B) any modification of total amounts appropriated necessary to reflect the deletion of the matter struck from the bill or amendment shall be made.

''(2) If a point of order under subparagraph (a)(1) against an Act of the House of Representatives is sustained when the Senate is not considering an amendment in the nature of a substitute, then an amendment to the House bill is deemed to have been adopted that—

''(A) strikes the new or general legislation or unauthorized appropriation from the bill; and

''(B) modifies, if necessary, the total amounts appropriated by the bill to reflect the deletion of the matter struck from the bill;

''(c) If the point of order against an amendment under subparagraph (a)(2) is sustained, then the amendment shall be out of order and may not be considered.

''(d)(1) If a point of order under subparagraph (a)(3) against a Senate amendment is sustained, then—

''(A) the unauthorized appropriation shall be struck from the amendment;

''(B) any modification of total amounts appropriated necessary to reflect the deletion of the matter struck from the amendment shall be made; and

''(C) after all other points of order under this paragraph have been disposed of, the Senate shall proceed to consider the amendment as so modified.

''(2) If a point of order under subparagraph (a)(3) against a House of Representatives amendment is sustained, then—

''(A) an amendment to the House amendment is deemed to have been adopted that—

''(i) strikes the new or general legislation or unauthorized appropriation from the House amendment; and

''(ii) modifies, if necessary, the total amounts appropriated by the bill to reflect the deletion of the matter struck from the House amendment; and

''(B) after all other points of order under this paragraph have been disposed of, the Senate shall proceed to consider the question of whether to concur with further amendment.

''(e) The disposition of a point of order made under any other paragraph of this rule, or under any other Standing Rule of the Senate, that is not sustained, or is waived, does not preclude, or affect, a point of order made under subparagraph (a) with respect to the same matter.

''(f) A point of order under subparagraph (a) may be waived only by a motion agreed to by the affirmative vote of three-fifths of the Senators duly chosen and sworn. If an appeal is taken from the ruling of the Presiding Officer with respect to such a point of order, the ruling of the Presiding Officer shall be sustained absent an affirmative vote of three-fifths of the Senators duly chosen and sworn.

''(g) Notwithstanding any other rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a general appropriation bill or an amendment between the Houses on a general appropriation bill violate subparagraph (a). The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some or all of the provisions against which the Senator raised the point of order, then only those provisions against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this paragraph. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order, in accordance with subparagraph (f), as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

''(h) For purposes of this paragraph:

''(1) The term 'new or general legislation' has the meaning given that term when it is used in paragraph 2 of this rule.

''(2)(A) The term 'unauthorized appropriation' means an appropriation—

''(i) not specifically authorized by law or Treaty stipulation (unless the appropriation has been specifically authorized by an Act or resolution previously passed by the Senate during the same session or proposed in pursuance of an estimate submitted in accordance with law); or

''(ii) the amount of which exceeds the amount specifically authorized by law or Treaty stipulation (or specifically authorized by an Act or resolution previously passed by the Senate during the same session or proposed in pursuance of an estimate submitted in accordance with law) to be appropriated.

''(B) An appropriation is not specifically authorized if it is restricted or directed to, or authorized to be obligated or expended for the benefit of, an identifiable person, program, project, entity, or jurisdiction by earmarking or other specification, whether by name or description, in a manner that is so restricted, directed, or authorized that it applies only to a single identifiable person, program, project, entity, or jurisdiction, unless the identifiable person, program, project, entity, or jurisdiction to which the restriction, direction, or authorization applies is described or otherwise clearly identified in a law or Treaty stipulation (or an Act or resolution previously passed by the Senate during the same session or in the estimate submitted in accordance with law) that specifically provides for the restriction, direction, or authorization of appropriation for such person, program, project, entity, or jurisdiction.''.

(b) LOBBYING ON BEHALF OF RECIPIENTS OF FEDERAL FUNDS.—The Lobbying Disclosure Act of 1995 is amended by adding after section 5 the following:

''SEC. 5A. REPORTS BY RECIPIENTS OF FEDERAL FUNDS.

''(a) IN GENERAL.—A recipient of Federal funds shall file a report as required by section 5(a) containing—

''(1) the name of any lobbyist registered under this Act to whom the recipient paid money to lobby on behalf of the Federal funding received by the recipient; and

''(2) the amount of money paid as described in paragraph (1).

''(b) DEFINITION.—In this section, the term 'recipient of Federal funds' means the recipient of Federal funds constituting an award, grant, or loan.''.

(c) PROHIBITION ON OBLIGATION OF FUNDS FOR APPROPRIATIONS EARMARKS INCLUDED ONLY IN CONGRESSIONAL REPORTS.—

(1) IN GENERAL.—No Federal agency may obligate any funds made available in an appropriation Act to implement an earmark that is included in a congressional report accompanying the appropriation Act, unless the earmark is also included in the appropriation Act.

(2) DEFINITIONS.—For purposes of this subsection:

(A) The term ''assistance'' includes an award, grant, loan, loan guarantee, contract, or other expenditure.

(B) The term ''congressional report'' means a report of the Committee on Appropriations of the House of Representatives or the Senate, or a joint explanatory statement of a committee of conference.

(C) The term ''earmark'' means a provision that specifies the identity of an entity to receive assistance and the amount of the assistance.

(D) The term ''entity'' includes a State or locality.

(3) EFFECTIVE DATE.—This subsection shall apply to appropriation Acts enacted after December 31, 2007.

SEC. 103. EARMARKS.

The Standing Rules of the Senate are amended by adding at the end the following:

''RULE XLIV

''EARMARKS

''1. In this rule—

''(1) the term 'earmark' means a provision that specifies the identity of an entity (by

AMENDMENT NO. 29

(Purpose: To provide congressional transparency)

On page 4, strike line 11 through line 2, page 5, and insert the following:

that portion of the conference report that has not been stricken and any modification of total amounts appropriated necessary to reflect the deletion of the matter struck from the conference report;

(B) the question shall be debatable; and

(C) no further amendment shall be in order; and

(3) if the Senate agrees to the amendment, then the bill and the Senate amendment thereto shall be returned to the House for its concurrence in the amendment of the Senate.

(c) SUPERMAJORITY WAIVER AND APPEAL.—This section may be waived or suspended in the Senate only by an affirmative vote of ⅗ of the Members, duly chosen and sworn. An affirmative vote of ⅗ of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(d) ANY MATTER.—In this section, the term ''any matter'' means any new matter, including general legislation, unauthorized appropriations, and non-germane matter.

SEC. 102A. REFORM OF CONSIDERATION OF APPROPRIATIONS BILLS IN THE SENATE.

(a) IN GENERAL.—Rule XVI of the Standing Rules of the Senate is amended by adding at the end the following:

''9.(a) On a point of order made by any Senator:

''(1) No new or general legislation nor any unauthorized appropriation may be included in any general appropriation bill.

''(2) No amendment may be received to any general appropriation bill the effect of which will be to add an unauthorized appropriation to the bill.

''(3) No unauthorized appropriation may be included in any amendment between the Houses, or any amendment thereto, in relation to a general appropriation bill.

''(b)(1) If a point of order under subparagraph (a)(1) against a Senate bill or amendment is sustained—

''(A) the new or general legislation or unauthorized appropriation shall be struck from the bill or amendment; and

''(B) any modification of total amounts appropriated necessary to reflect the deletion of the matter struck from the bill or amendment shall be made.

''(2) If a point of order under subparagraph (a)(1) against an Act of the House of Representatives is sustained when the Senate is not considering an amendment in the nature of a substitute, then an amendment to the House bill is deemed to have been adopted that—

''(A) strikes the new or general legislation or unauthorized appropriation from the bill; and

''(B) modifies, if necessary, the total amounts appropriated by the bill to reflect the deletion of the matter struck from the bill;

''(c) If the point of order against an amendment under subparagraph (a)(2) is sustained, then the amendment shall be out of order and may not be considered.

''(d)(1) If a point of order under subparagraph (a)(3) against a Senate amendment is sustained, then—

''(A) the unauthorized appropriation shall be struck from the amendment;

''(B) any modification of total amounts appropriated necessary to reflect the deletion of the matter struck from the amendment shall be made; and

''(C) after all other points of order under this paragraph have been disposed of, the Senate shall proceed to consider the amendment as so modified.

''(2) If a point of order under subparagraph (a)(3) against a House of Representatives amendment is sustained, then—

''(A) an amendment to the House amendment is deemed to have been adopted that—

''(i) strikes the new or general legislation or unauthorized appropriation from the House amendment; and

''(ii) modifies, if necessary, the total amounts appropriated by the bill to reflect the deletion of the matter struck from the House amendment; and

''(B) after all other points of order under this paragraph have been disposed of, the Senate shall proceed to consider the question of whether to concur with further amendment.

''(e) The disposition of a point of order made under any other paragraph of this rule, or under any other Standing Rule of the Senate, that is not sustained, or is waived, does not preclude, or affect, a point of order made under subparagraph (a) with respect to the same matter.

''(f) A point of order under subparagraph (a) may be waived only by a motion agreed to by the affirmative vote of three-fifths of the Senators duly chosen and sworn. If an appeal is taken from the ruling of the Presiding Officer with respect to such a point of order, the ruling of the Presiding Officer shall be sustained absent an affirmative vote of three-fifths of the Senators duly chosen and sworn.

''(g) Notwithstanding any other rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a general appropriation bill or an amendment between the Houses on a general appropriation bill violate subparagraph (a). The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some or all of the provisions against which the Senator raised the point of order, then only those provisions against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this paragraph. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order, in accordance with subparagraph (f), as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

''(h) For purposes of this paragraph:

''(1) The term 'new or general legislation' has the meaning given that term when it is used in paragraph 2 of this rule.

''(2)(A) The term 'unauthorized appropriation' means an appropriation—

''(i) not specifically authorized by law or Treaty stipulation (unless the appropriation has been specifically authorized by an Act or resolution previously passed by the Senate during the same session or proposed in pursuance of an estimate submitted in accordance with law); or

''(ii) the amount of which exceeds the amount specifically authorized by law or Treaty stipulation (or specifically authorized by an Act or resolution previously passed by the Senate during the same session or proposed in pursuance of an estimate submitted in accordance with law) to be appropriated.

''(B) An appropriation is not specifically authorized if it is restricted or directed to, or authorized to be obligated or expended for the benefit of, an identifiable person, program, project, entity, or jurisdiction by earmarking or other specification, whether by name or description, in a manner that is so restricted, directed, or authorized that it applies only to a single identifiable person, program, project, entity, or jurisdiction, unless the identifiable person, program, project, entity, or jurisdiction to which the restriction, direction, or authorization applies is described or otherwise clearly identified in a law or Treaty stipulation (or an Act or resolution previously passed by the Senate during the same session or in the estimate submitted in accordance with law) that specifically provides for the restriction, direction, or authorization of appropriation for such person, program, project, entity, or jurisdiction.''.

(b) LOBBYING ON BEHALF OF RECIPIENTS OF FEDERAL FUNDS.—The Lobbying Disclosure Act of 1995 is amended by adding after section 5 the following:

''SEC. 5A. REPORTS BY RECIPIENTS OF FEDERAL FUNDS.

''(a) IN GENERAL.—A recipient of Federal funds shall file a report as required by section 5(a) containing—

''(1) the name of any lobbyist registered under this Act to whom the recipient paid money to lobby on behalf of the Federal funding received by the recipient; and

''(2) the amount of money paid as described in paragraph (1).

''(b) DEFINITION.—In this section, the term 'recipient of Federal funds' means the recipient of Federal funds constituting an award, grant, or loan.''.

(c) PROHIBITION ON OBLIGATION OF FUNDS FOR APPROPRIATIONS EARMARKS INCLUDED ONLY IN CONGRESSIONAL REPORTS.—

(1) IN GENERAL.—No Federal agency may obligate any funds made available in an appropriation Act to implement an earmark that is included in a congressional report accompanying the appropriation Act, unless the earmark is also included in the appropriation Act.

(2) DEFINITIONS.—For purposes of this subsection:

(A) The term ''assistance'' includes an award, grant, loan, loan guarantee, contract, or other expenditure.

(B) The term ''congressional report'' means a report of the Committee on Appropriations of the House of Representatives or the Senate, or a joint explanatory statement of a committee of conference.

(C) The term ''earmark'' means a provision that specifies the identity of an entity to receive assistance and the amount of the assistance.

(D) The term ''entity'' includes a State or locality.

(3) EFFECTIVE DATE.—This subsection shall apply to appropriation Acts enacted after December 31, 2007.

Mr. BENNETT. Senator MCCAIN will have appropriate comments to make on these amendments at some future time.

AMENDMENT NO. 25, AS MODIFIED

Madam President, I, also, ask unanimous consent that amendment No. 25, offered by Senator ENSIGN, be modified in the form I send to the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

At the appropriate place, insert the following:

SEC. ___. SENATE FIREWALL FOR DEFENSE SPENDING.

For purposes of sections 301 and 302 of the Congressional Budget Act of 1974, the levels of new budget authority and outlays and the allocations for the Committees on Appropriations shall be further divided and separately enforced under section 302(f) of the Congressional Budget Act of 1974 in the following categories:

(1) For the defense allocation, the amount of discretionary spending assumed in the budget resolution for the defense function (050).

(2) For the nondefense allocation, the amount of discretionary spending assumed for all other functions of the budget.

Mr. BENNETT. Thank you, Madam President.

I thank the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I intend to, briefly—if the Senator has a consent request, I will be glad to yield for that purpose.

Mr. VITTER. Madam President, if the Senator would yield, I have a very similar 30-second housekeeping matter.

Mr. KENNEDY. Madam President, I yield for that purpose.

Mr. VITTER. I appreciate it.

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

The Senator from Louisiana.

AMENDMENT NO. 9, AS MODIFIED

Mr. VITTER. Madam President, I request to go to the regular order regarding the Vitter amendment No. 9 and send a revision of that amendment to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 51, between lines 12 and 13, insert the following:

SEC. 242. SPOUSE LOBBYING MEMBER.

(a) IN GENERAL.—Section 207(e) of title 18, United States Code, as amended by section 241, is further amended by adding at the end the following:

''(5) SPOUSES.—Any person who is the spouse of a Member of Congress and who was not serving as a registered lobbyist at least 1 year prior to the election of that Member of Congress to office and who, after the election of such Member, knowingly lobbies on behalf of a client for compensation any Member of Congress or is associated with any such lobbying activity by an employer of that spouse shall be punished as provided in section 216 of this title.''.

Mr. VITTER. Thank you, Madam President.

I thank the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

IRAQ

Mr. KENNEDY. Madam President, Iraq is the overarching issue of our time. American lives, American values, America's role in the world is at stake.

As the November election made clear, the American people oppose this war, and an even greater number oppose sending more troops to Iraq.

The American people are demanding a change in course in Iraq. Instead, the President is accelerating the same failed course he has pursued for nearly 4 years. He must understand Congress will not endorse this course.

The President's decision to send more American troops into the cauldron of civil war is not an acceptable strategy. It is against the advice of his own generals, the Iraq Study Group, and the wishes of the American people and will only compound our original mistake in going to war in Iraq in the first place.

This morning, the Secretary of State testified that the Iraqi Government ''is . . . on borrowed time.'' In fact, time is already up. The Iraqi Government needs to make the political compromises necessary to end this civil war. The answer is not more troops, it is a political settlement.

The President talked about strengthening relations with Congress. He should begin by seeking authority from Congress for any escalation of the war.

The mission of our Armed Forces today in Iraq no longer bears any resemblance whatsoever to the mission authorized by Congress in 2002. The Iraq war resolution authorized a war against the regime of Saddam Hussein because he was believed to have weapons of mass destruction, an operational relationship with al-Qaida, and was in defiance of the U.N. Security Council resolutions.

Not one Member of Congress—not one—would have voted in favor of the resolution if they thought they were sending American troops into a civil war.

The President owes it to the American people to seek approval for this new mission from Congress. Congress should no longer be a rubberstamp for the President's failed strategy. We should insist on a policy that is worthy of the sacrifice of the brave men and women in uniform who have served so gallantly in Iraq.

President Bush has been making up his mind on Iraq ever since the election. Before he escalates the war, the American people deserve a voice in his decision.

He is the Commander in Chief, but he is still accountable to the people. Our system of checks and balances gives Congress a key role in decisions of war and peace.

We know an escalation of troops into this civil war will not work. We have increased our military presence in the past, and each time the violence has increased and the political problems have persisted.

Despite what the President says, his own generals are on the record opposing a surge in troops.

Last November 15, 2006, General Abizaid was unequivocal that increasing our troop commitment is not the answer.

He said:

I've met with every divisional commander—General Casey, the corps commander, General Dempsey—we all talked together. And I said, ''in your professional opinion, if we were to bring in more American troops now, does it add considerably to our ability to achieve success in Iraq?'' And they all said no.

On December 29, General Casey said:

The longer we in the U.S. forces continue to bear the main burden of Iraq's security, it lengthens the time that the government of Iraq has to take the hard decisions about reconciliation and dealing with the militias. . . .They can continue to blame us for all of Iraq's problems, which are at base their problems.

Time and again our leaders in Vietnam escalated our military presence, and each new escalation of force led to the next. We escalated the war instead of ending it. And similar to Vietnam, there is no military solution to Iraq, only political. The President is the last person in America to understand that.

We must not only speak against the surge in troops, we must act to prevent it.

I thank the Chair and yield the floor.

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

The PRESIDING OFFICER (Mr. CARPER). Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

AMENDMENT NO. 30 TO AMENDMENT NO. 3

(Purpose: To establish a Senate Office of Public Integrity.)

Mr. LIEBERMAN. Mr. President, I now ask that amendment No. 30 be called up.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN], for himself, Ms. COLLINS, Mr. OBAMA, Mr. MCCAIN, Mr. FEINGOLD, Mr. KERRY, and Mr. CARPER, proposes an amendment numbered 30 to amendment No. 3.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. LIEBERMAN. Mr. President, I am proud to offer this amendment, along with Senators COLLINS, OBAMA, MCCAIN, and the occupant of the Chair, the distinguished Senator from Delaware, Mr. CARPER.

This amendment would create a Senate Office of Public Integrity. The matter before the Chamber now is to reform the rules by which Senate ethics and the conduct of lobbyists are governed. It is the contention of those of us who sponsor this amendment that reform of the rules is critically necessary and important following the scandals of recent years. But it is also important to reform the enforcement process by which those rules are applied.

If we are about the business of restoring the public's trust in this institution and its Members and the willingness of this great institution to independently and aggressively investigate allegations of misconduct among Members and then to hold those Members accountable, it seems to me we can no longer be comfortable or content with a process that allows us to investigate charges against us and then reach a judgment about what the response should be to us.

The office that would be created by this amendment would investigate allegations of Member or staff violations of Senate rules or other standards of conduct. It would present cases of probable ethics violations to the Select Committee on Ethics of the Senate which would retain the final authority, consistent with tradition and law.

This office of public integrity would make recommendations to the Ethics

Committee that it report to appropriate Federal or State authorities any substantial evidence of a violation by a Member or staff of any law applicable to the performance of his or her duties or responsibility.

Finally, the Senate office of public integrity, a new office that would be created by this amendment, would approve or deny approval of privately funded trips for Members or staff, subject to the review of the Ethics Committee.

I called up this amendment to inform our colleagues that this group of cosponsors was going to go forward with the amendment and to urge that our colleagues take a look at it, consider it, ask us questions about it, and that we look forward to a full debate on it next week.

Earlier, I failed to say that Senators FEINGOLD and KERRY are also cosponsors of the amendment.

Having introduced it, called it up, I now ask unanimous consent that this amendment be set aside.

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

Mr. LIEBERMAN. I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I was not sure this would come up. I know it has been an issue that has been discussed. But in view of the vote on this issue when we dealt with S. 1 in the previous Congress, I thought perhaps it would not come up. Because in the previous Congress, this was defeated 67 to 30. While we have had some turnover in the Senate, we haven't had a sufficient turnover to obviate 67 votes. Even if every new Senator who has come would vote with the 30, that would probably take them to 40 and is still not enough to pass.

We had a vigorous debate about this in the previous Congress. I don't need to rehearse too many of the issues that were discussed. Just for the record, the Senate does have a record of dealing with its own Members. Under the Constitution, it is the Senate that is charged with punishing its Members for misconduct. And the Senate has done that historically and sometimes courageously.

Interestingly enough, the majority has dealt with Members of the majority. Senator Packwood, who was a valued Member of this body, chairman of the Senate Finance Committee, one of the most prestigious positions a Senator can hold, the master of his craft—I don't know of many Senators who knew the finances of this country any better than Senator Packwood—engaged in activity which the Ethics Committee unanimously decided was inappropriate. Our current Republican leader, Senator MCCONNELL, was at the time the chairman of the Ethics Committee and recognized that the removal of Senator Packwood would undoubtedly, as it did, result in the shift of a seat from the Republican side to the Democratic side. I don't think you will find any more loyal partisan to the Republicans than Senator MCCONNELL.

In that position, with existing procedures, not requiring any office of public integrity, Senator MCCONNELL, as chairman of the Ethics Committee, led a unanimous vote out of the Ethics Committee against the interests of Senator Packwood, and Senator Packwood resigned. He was, indeed, replaced by Senator WYDEN, a Democrat. The Republicans had a seat which they lost and have never gotten back.

On the other side of the aisle, Senator Torricelli was dealt with by the Ethics Committee in a manner that caused him to resign his nomination and, therefore, any hope he may have had of reelection. We have a history in this body of dealing with our Members who act inappropriately with the existing procedures.

S. 1 is all about transparency. Most of the debate has been about transparency, getting more information out. The more information we get out, the better prepared we are within our existing procedures to deal with those of our Members who may or may not act as they should.

For all of those reasons, the Senate, by a vote of 67 to 30, said: We are capable under the present circumstances, under the present rules, under the present structure, to deal effectively with those Members who act inappropriately. I would expect the vote would be very close to the same this time. There is much more that can be said and that has been said. But given the history of this, that is probably a sufficient statement on my part.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend from Utah. I was thinking, there is much more that could be said and much that has been said. Undoubtedly next week much more will be said. The vote was 67 to 30 last time. Those of us who support this remain undaunted in our belief that we can improve the process. The process of ethics and ethical adjudications has been, with all respect, more problematic in the other body of the Congress, but we have an opportunity here, as we consider and I believe pass what will be landmark legislation with regard to the attempt of this great legislative body to set the highest standards of conduct for itself and those who interact with us, to also complete the mission while we are doing so by raising the independence of the enforcement process, still leaving the Senate Ethics Committee, composed of Senators, with the final judgment on what should happen in every case.

First, about the vote last year, I suppose the most general response I would offer is that hope springs eternal and the power of reason of our arguments will touch some of our colleagues. Secondly, we do have some new Members who are very focused on this legislation and upgrading the rules by which we govern ourselves and the process by which those rules are enforced.

Finally, a lot of things have been said here about Iraq and the message the people were sending last year about Iraq. It seems to me they were sending at least as strong a message about the way we in Congress do our business. I saw one public opinion survey or exit poll that showed more people said they voted based on what were ethical wrongdoings here in Congress than on any other issue. I begin this debate to indicate to our colleagues that my cosponsors and I intend to go forward with this amendment next week.

I thank my friend from Utah for beginning what I know will be a serious and elevating discussion.

I yield the floor and 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. DEMINT. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. KLOBUCHAR). Without objection, it is so ordered.

Mr. DEMINT. Madam President, I would just like a few minutes to address the Senate. I have some deep concerns about some things that are going on.

I have been really encouraged since the new majority took over. We have had some great bipartisan meetings, and we have talked about trying to create a new spirit of cooperation here in the Senate and to work together. I think a lot of us have been trying to do that, and it has been going reasonably well.

Today I had the opportunity to offer an amendment, an amendment that will contribute to the transparency of what we call earmarks or the favors that sometimes lobbyists and Members work out where we put money in bills for specific things. We just wanted to make that transparent and to include all earmarks, not just a few.

We had a good debate. I have to admit it was the most fun I have had since I have been in the Senate. I was given 45 minutes of time before the vote at 2 o'clock, and Senator COBURN came down to speak on my behalf. Senator DURBIN asked me to yield, and I gave him all the time he wanted. I even yielded the last 2 minutes and gave him the last word. We had a good debate about it.

The majority had decided to try to table that amendment so we wouldn't have a vote, so the motion was to table the DeMint amendment. We had a good vote. It is always exciting to see how votes come in. When they held up the final sheet, 51 had voted not to table the amendment and 46 had voted to table it. It wasn't a partisan vote. It wasn't party line at all. That is what was kind of unusual.

Again, I think the spirit of what we have been trying to do is not just to

look at the party but to look at the issue. I think a lot of folks decided that if we are going to have disclosure of earmarks, let's have disclosure of all of them, and this one happens to take it from 5 percent to 100.

But I would like to thank some of my colleagues, my Democratic colleagues who thought about this amendment, who listened to the debate, including Senator LANDRIEU and Senator KERRY, Senator CANTWELL, Senator WEBB, Senator TESTER, Senator HARKIN, Senator FEINGOLD, Senator OBAMA, and my good friend Senator LIEBERMAN, who took the time to listen to the debate and decided that this shouldn't be tabled, that we should have a vote on it. Normally what happens in the Chamber—in fact, I have never seen it done any other way—is if a motion to table fails, then the majority would accept the amendment as a voice vote because the will of the Senate has spoken and a majority have expressed their support of that amendment.

But something happened on the way to civility and camaraderie here today. Instead of the normal procedure of the majority conceding that Republicans and Democrats wanted to pass this amendment, they did not agree when I asked that the amendment be accepted. They objected. Now I am told that after a lot of backroom work, they want to bring the amendment back to the floor, and apparently they have convinced some of my colleagues to change their votes. I have to say, I know when I was in the House, I saw my party guilty of that, after a Medicare vote being open 3 hours and arm-twisting and all kinds of carrying on.

I think we all decided after the last election that maybe the American people didn't want us to do business that way. I think the will of the Senate has spoken on this amendment, and I think the issue is bigger than on my particular amendment; it is, if we are going to have ethics reform, let's be ethical about the process of voting on this reform. We had a good, open, and honest debate.

The amendment is simple and clear. It is actually NANCY PELOSI's amendment from the House side which has been vetted and voted on and discussed. I am aware there is some misinformation now going on about the amendment, but I would just encourage my colleagues—I would encourage my Republican colleagues because some of them voted against this—even if they don't like the amendment, let's support the idea of just following normal courtesies here in the Senate.

I have often heard, since I came from the House side, that the Senate is a much different place, that we are civil, we respect each other's rights. I am afraid a lot of that is slipping away here. I would just like to make an appeal today that my colleagues accept this amendment. The will of the Senate has spoken. It obviously can be worked on and improved in conference. The majority will control the conference. I think it will speak well for the Senate that we are willing to shine the light of day onto all of our earmarks so the American people can see it.

So, Madam President, I thank you for the opportunity to speak, and I yield the floor.

Mr. DEMINT. Madam President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

Mr. DEMINT. I object.

The PRESIDING OFFICER. The clerk will continue to call the roll.

The legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names.

[Quorum No. 2 Leg.]

DeMint	Klobuchar
Durbin	Reid,

The PRESIDING OFFICER. A quorum is not present. The majority leader is recognized.

Mr. REID. I move to instruct the Sergeant at Arms to request the attendance of absent Senators. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Connecticut (Mr. DODD), the Senator from Hawaii (Mr. INOUYE), and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senator was necessarily absent: the Senator from Kansas (Mr. BROWNBACK).

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

The result was announced—yeas 90, nays 6, as follows:

[Rollcall Vote No. 7 Leg.]

YEAS—90

Akaka	Dole	Martinez
Alexander	Domenici	McCaskill
Allard	Dorgan	McConnell
Baucus	Durbin	Menendez
Bayh	Enzi	Mikulski
Bennett	Feingold	Murkowski
Biden	Feinstein	Murray
Bingaman	Graham	Nelson (FL)
Bond	Grassley	Nelson (NE)
Boxer	Gregg	Obama
Brown	Hagel	Pryor
Bunning	Harkin	Reed
Burr	Hatch	Reid
Byrd	Hutchison	Roberts
Cantwell	Inhofe	Rockefeller
Cardin	Isakson	Salazar
Carper	Kennedy	Sanders
Casey	Kerry	Schumer
Chambliss	Klobuchar	Sessions
Clinton	Kohl	Smith
Cochran	Kyl	Snowe
Coleman	Landrieu	Specter
Collins	Lautenberg	Stabenow
Conrad	Leahy	Stevens
Corker	Levin	Sununu
Cornyn	Lieberman	Tester
Craig	Lincoln	Thomas
Crapo	Lugar	Thune
Vitter	Warner	Whitehouse
Voinovich	Webb	Wyden

NAYS—6

Coburn	Ensign	McCain
DeMint	Lott	Shelby

NOT VOTING—4

Brownback	Inouye
Dodd	Johnson

The motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

The majority leader is recognized.

AMENDMENT NO. 11

Mr. REID. Mr. President, these are the times when some of us who have served in the House yearn for the House procedures. But we are in the Senate. We live by the Senate procedures, and we have to work our way through this.

Everyone keep in mind, the underlying legislation that is bipartisan in nature, sponsored by the Democratic and Republican leaders, is good legislation. It is a significant step forward to anything that has happened in this country since Watergate: ethics reform, lobbying reform, earmark reform—a very sound piece of legislation.

I am going to be patient and listen to what others have to say. I do not know exactly, but I think we have 12 amendments that are pending, maybe 13, and we are going to try to work our way through those.

I have told my friend Senator DEMINT that I know his heart is in the right place. He believes in what he is doing. But this amendment he has offered is going to take a little more time.

Everyone should understand that the DeMint amendment strikes the definition of ''earmark'' in the underlying Reid-McConnell substitute and replaces it with language that is basically the House-passed definition.

I am happy to see the House doing their 100 hours and moving things along very quickly. I admire and respect that. But having served in that body, I know how quickly they can move things and, frankly, sometimes how much thoughtful consideration goes into matters that are on that House floor.

With this matter Senator DEMINT is trying to change, a lot of time went into this—a lot of time—weeks of staff working so that Senator MCCONNELL and I could agree to offer something in a bipartisan fashion.

The earmark provision is good. It is in the underlying bill. If we have an opportunity to vote on the DeMint amendment, I hope it is rejected because the definition that Reid-McConnell has is very much preferable to what Senator DEMINT is trying to do with the ''earmark'' definition.

I repeat, the underlying legislation that deals with earmarks was very carefully vetted by—and I repeat—weeks of work by our respective staffs. And it is stronger in various ways than DeMint.

The underlying Senate definition of ''earmark'' was included in last year's ethics bill. We have refined and defined it a little better now. The relevant committees worked with us on a bipartisan basis. We added language to the underlying section dealing with earmarks that passed 90 to 8 last year.

First, we added language to address the Duke Cunningham situation. Congressman Cunningham wrote his earmarks without actually naming the specific defense contractors he intended to receive Federal contracts. And he never mentioned the defense contractors, but there is only one defense contractor in the world that met his specific definition of that legislation. Under DeMint that would not have to be listed.

Under the new definition in the Reid-McConnell substitute, a Member cannot evade the disclosure requirement by clever drafting. They cannot do that. An earmark is present if the entity to receive Federal support is named or if it is ''described in such a manner that only one entity would qualify.''

Second, the substitute includes an improved definition of ''targeted tax benefit.'' Under the DeMint definition, a tax benefit would only qualify as an earmark if it benefited ''10 or fewer beneficiaries.'' But that leaves open the possibility of drafting mischief. And what kind of mischief could you draft? For example, someone could easily write a provision for 11 or 15 or 50 beneficiaries to evade the definition.

The Reid-McConnell definition says a tax earmark is anything which ''has the practical effect of providing more favorable tax treatment to a limited group of taxpayers when compared with similarly situated taxpayers.'' This subjective standard will capture more earmarks, by far, than the rigid DeMint definition—this ''10 or fewer beneficiaries.''

Actually, the Reid-McConnell definition is based on the definition of ''targeted tax benefit.'' Where did we come up with this? Senator JUDD GREGG, in his line-item veto bill. That is where we got that. I do not like the line-item veto bill, but I like his definition of ''targeted tax benefit.'' That is where we got that. I think Senator GREGG has found a sensible definition for this illusive concept.

Third, the Reid-McConnell substitute requires Members to certify they have no personal financial stake in the earmark. This seems to be a commonsense requirement that was not in the underlying bill. We added that to it.

It is important that the Senate rules be amended slowly and with careful bipartisan deliberation. My friend, the distinguished Senator from North Carolina—South Carolina—north, south; they are close together—the distinguished Senator from South Carolina has said this is exactly like the House provision. I say to my friend that is one of the problems I have with it because I, frankly, do not think they spent the time we have on this.

The House can change its rules at will, and they do. We cannot. The Senate is a continuing body. Our rules are permanent. It takes 67 votes to change a Senate rule. So when we write a Senate rule, we write it in concrete.

Earmark disclosure will be a major change in the way the Senate works. We should adopt the Reid-McConnell version rather than the House version in the DeMint amendment.

If we need to revisit the issue later, we can do that. I would appeal to my friend from South Carolina. I repeat: I know you are doing this because you think it is the right thing to do. But take the opportunity to look at what is here. It is better than the House version—so much better.

I have only touched upon why it is better than the House version. And, frankly, as we all know, we are going to have to do some work in conference. If the House version is what we send over there, there is no way in the world to improve this.

So I would say to my friend: Let's take another look at this. Do we need to vote on this? I hope not. This should not be a partisan issue. This bill is not meant to be partisan. That is why we worked so hard. One of the hardest provisions staff had to work on to get MCCONNELL and me to agree was this earmark provision. Senator MCCONNELL and I are members of the Appropriations Committee—well, I used to be for 20 years. I know the appropriations process very well. I think, with all due respect, the DeMint amendment will weaken the earmark provision. Let's see what we come up with with the underlying amendment that REID and MCCONNELL submitted to the Senate.

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

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from South Carolina is recognized.

Mr. DEMINT. Thank you, Mr. President.

Mr. President, I see that the majority leader was discussing this bill. While I have a number of Members sitting here, if I could respond to the majority leader. I very much appreciate his consideration. I appreciate what happened today. We had a good debate. Some of you listened. We had a good vote on the motion to table, and we won that vote.

As any of you know, if you have ever been through the process of trying to get an amendment up and trying to develop the support you need, to win a vote like that, it is a good day in the Senate.

I am afraid it is starting to feel a little like the House. I remember when I was in the House when the Medicare bill would not pass, the Medicare Part D, and we kept the vote open for 3 hours twisting arms, changing minds until the Republicans got what they wanted. I had hoped the Senate would be different. Our rules are different. We can't hold the vote open that long. But by using tabling and then bringing it back up, as we are doing now, we are doing exactly the same thing.

I will take exception to the House and NANCY PELOSI not taking the time to work this through. I think anyone who looks at the language will see that the Senate version only deals with 5 out of 100, 5 percent of the earmarks that we pass. We have a chart from last year, when there were 12,800 earmarks. Under the Senate provision, only about 500 would be included. The public is not going to believe that we are disclosing earmarks. So if we are going to disclose earmarks, let's disclose them all.

The House did have the good sense, after seeing what that did to the ethical appearance of the House, when the Medicare bill was held open for 3 hours until the majority got what it wanted, to have in their ethics rules that you cannot—I will just read the rule. It says: Clause 2(a) of rule 20 is amended by inserting after the second sentence the following sentence: A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote.

They know what that does to the appearance and the culture of the House. We didn't hold the vote open, but it has been less time than was held open for that Medicare vote, and we are back here revoting something after some arms have been twisted. If that is the culture we want in the Senate, I think we should stop saying that we have a higher culture than the House.

I believe Speaker PELOSI is sincere in wanting to disclose what we are doing so the American people will know how we are spending their money. This is not a careless amendment. It is something that has been done with a lot of thought. We won this vote fair and square. It is going to happen to all of you. If this is how you want fellow Members treated, if any amendment we offer can be tabled and if you win your amendment, the majority can go off and twist some arms and change some minds and we can have another vote, if that is how we are going to do business, then I think it is time the American people know it, and we might as well set this whole ethics bill aside because it is all pretense anyway.

I appreciate the opportunity to have a few people sitting here listening, but I can assure you that this amendment will improve this bill, and it will improve the perception of this Senate if we pass it.

I thank the Chair.

Mrs. HUTCHISON. Will the Senator yield?

Mr. DEMINT. I yield.

Mrs. HUTCHISON. I wanted to ask the Senator from South Carolina, what

is the difference in his amendment from the underlying bill, and how does it improve the transparency we are all seeking?

Mr. DEMINT. I thank the Senator. I welcome any input into this amendment. We have adopted the exact language that Speaker PELOSI insisted on just for the definition of ''earmarks.'' The most important part to remember is, in the Senate bill, no matter what we do with transparency, it only applies to 5 percent of the earmarks. It doesn't apply to Federal earmarks, the type of earmarks that got Duke Cunningham in trouble. Those need to be disclosed. It doesn't apply to report language in conference reports which include 95 percent of all the earmarks we do. So there is no way for the media or the public to look in on what we do, regardless of how we try to do transparency on that 5 percent and say that we are doing anything to make this place more transparent. That is the main difference.

We can get into the tax provisions. We used the definition the House did, but we do include tax-based earmarks or tariff-based earmarks. Again, in conference, we have the opportunity to work together and change it. But if we defeat this bill with misinformation right now and it doesn't go to conference as part of the mix, the public is going to know from day one that this idea of being open and transparent is just a scam. If we are going to do it, let's do it to all the earmarks, and then let's discuss what the best way is to do it.

Mrs. HUTCHISON. Would the Senator say that the earmarks that are covered in his amendment would include an earmark to a Federal agency as well as an earmark for a private university or some other private entity? Is that what he is saying, that he wanted to cover all the earmarks whether they are a specific earmark for a particular city and an agency such as the Corps of Engineers, a specific water project in a city? You just want that earmark to be known, who the sponsor is, just as if it were an earmark for funding for health research at a university; is that correct?

Mr. DEMINT. The Senator has it right. We are not saying whether earmarks are good or bad. We are not saying that we have some and not others. All we are saying is that earmarks are designated spending. Whether it be Federal, non-Federal, or report language, it should be disclosed in the same way. This chart shows the number of earmarks in the 2006 budget of 12,852. The Senate bill would apply to only 534 of those. So if we are going to have disclosure of earmarks—and that is up to the Senate to decide—if we are going to say we are going to have disclosure, I think we need to include the 12,318 that we don't want to tell people about. People will not believe we are transparent. I think that is what both sides of the aisle want. That is the only thing this amendment does; it doesn't limit earmarks. It doesn't change anything except it defines them in a way that is open and honest.

Mrs. HUTCHISON. I thank the Senator for the explanation. I think it is an excellent amendment. I thank him for bringing it to the floor.

Mr. REID. I couldn't hear the Senator. I am sorry. What did the Senator say?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 38 TO AMENDMENT NO. 3

Mrs. FEINSTEIN. Mr. President, is there an amendment pending?

The PRESIDING OFFICER. Yes, there is.

Mrs. FEINSTEIN. I ask unanimous consent that the amendment be set aside.

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

Mrs. FEINSTEIN. I send an amendment to the desk on behalf of the ranking member and myself.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself and Mr. BENNETT, proposes an amendment numbered 38 to amendment No. 3.

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

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

The amendment is as follows:

(Purpose: To permit attendance of meetings with bona fide constituents)

At the appropriate place, insert the following:

SEC. ___. FREE ATTENDANCE AT A BONA FIDE CONSTITUENT EVENT.

(a) IN GENERAL.—Paragraph 1(c) of rule XXXV of the Senate Rules is amended by adding at the end the following:

''(24) Subject to the restrictions in subparagraph (a)(2), free attendance at a bona fide constituent event permitted pursuant to subparagraph (h).''.

(b) IN GENERAL.—Paragraph 1 of rule XXXV of the Senate Rules is amended by adding at the end the following:

''(h)(1) A Member, officer or, employee may accept an offer of free attendance at a convention, conference, symposium, forum, panel discussion, dinner event, site visit, viewing, reception, or similar event, provided by a sponsor of the event, if—

''(A) the cost of any meal provided does not exceed $50;

''(B)(i) the event is sponsored by bona fide constituents of, or a group that consists primarily of bona fide constituents of, the Member (or the Member by whom the officer or employee is employed); and

''(ii) the event will be attended by a group of at least 5 bona fide constituents or individuals employed by bona fide constituents of the Member (or the Member by whom the officer or employee is employed) provided that an individual registered to lobby under the Federal Lobbying Disclosure Act shall not attend the event; and

''(C)(i) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member's, officer's, or employee's official position; or

''(ii) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

''(2) A Member, officer, or employee who attends an event described in clause (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual if others in attendance will generally be similarly accompanied or if such attendance is appropriate to assist in the representation of the Senate.

''(3) For purposes of this paragraph, the term 'free attendance' has the same meaning as in subparagraph (d).

''(4) The Select Committee on Ethics shall issue guidelines within 60 days after the enactment of this subparagraph on determining the definition of the term 'bona fide constituent'.''.

Mrs. FEINSTEIN. Mr. President, this amendment on behalf of Senator BENNETT and myself speaks to a problem that we see with this bill. And that is when you meet with a very small group of people, say, 10 or less, bona fide constituents, no lobbyists present, and you have a sandwich or there is a lunch, somebody puts food in front of you, maybe you eat two bites of it, maybe you don't eat any of it, maybe you eat all of it—we all know we have been through that—you are illegal unless there is some provision that you can accept the lunch.

How many times have I gone to a speaking engagement, got involved, something is put in front of me. I don't touch it or maybe I touch it or maybe something is offered to me, maybe I eat one of it, maybe I eat two of it. It is hard to tell. With respect to these small, bona fide constituent events, one should be able to accept the meal, if one chooses, as long as the value of the meal is under $50. It seems to me that this is a reasonable amendment. The lobbyist is excluded, cannot be present. It is a bona fide constituent event. You can go to them at a Member's home. It can be a coffee. It can be a dinner. They happen all the time. I candidly see nothing wrong with it.

Sometimes you have events where people bring little amounts of food that are shared. To put a pricetag on all of this, to have to decide whether it is de minimis or not, whether it is equal to a baseball cap or a cup of coffee is extraordinarily difficult in the real world where we operate. That is the purpose of this amendment.

I yield to the ranking member.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I thank the chairwoman for her consideration of this. As I pointed out in my opening statement when we got to consideration of this bill, virtually every American has an association with an

entity that employs a lobbyist. If you go to the rotary club, there is a lobbyist for the rotary club here in Washington. If you go to the Girl Scouts, the Girl Scouts have a lobbyist in Washington. If you go to the PTA, they have a lobbyist here in Washington. A bill that says you can't accept anything from any institution or corporation or organization that has a lobbyist means that if the Girl Scouts come by and give you some cookies and you eat those cookies in the presence of the Girl Scouts who are there, you have violated the law. You have taken something, taken a gift from someone who is connected to an organization that employs a lobbyist. And the chairman heard what I had to say on this. We worked on it together. We have been working on it for the past couple of days and came up with a commonsense solution that removes the concern about this situation. I salute her and thank her for the way in which she has worked with me. We have something on which we both agree. We understand it is fairly widely accepted throughout the body. I am more than happy to act as a cosponsor to this amendment and hope the Senate will adopt it.

Mrs. FEINSTEIN. Mr. President, I misspoke. The way we have this drafted, it is at least 5—I think I said 10—it is at least 5 constituents. I hope that is not a problem for anyone.

I thank the ranking member. It has been a pleasure to work with him. I think we both feel similarly about this. This issue of what you accept at a meal is a difficult issue, dependent upon where you are and where you are located. I think this is fair, in view of the nature of events covering all States, low cost of living, rural and urban States. So it is at least five bona fide constituents—that is a member of the State, not a professional lobbyist, although a professional lobbyist can also be a constituent. For the purpose of this bill, they are excluded. I hope this will be agreed to. I know there are some Members who want to look at this. It is at the desk. I urge them to come down right away and look at it because we would like to voice vote it.

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

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

AMENDMENT NO. 20 TO AMENDMENT NO. 3

Mr. BENNETT. Mr. President, I ask unanimous consent that the pending amendment be set aside and that amendment No. 20 be called up and that it be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT] proposes an amendment numbered 20 to amendment No. 3.

The amendment is as follows:

(Purpose: To strike a provision relating to paid efforts to stimulate grassroots lobbying)

Strike section 220 of the amendment (relating to disclosure of paid efforts to stimulate grassroots lobbying).

The PRESIDING OFFICER. The Senator from South Dakota.

AMENDMENT NO. 37 TO AMENDMENT NO. 3

Mr. THUNE. Mr. President, I ask unanimous consent that the pending amendment be set aside and that amendment No. 37 be called up.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE] proposes an amendment numbered 37 to amendment No. 3.

Mr. THUNE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require any recipient of a Federal award to disclose all lobbying and political advocacy)

At the appropriate place, insert the following:

SEC. ____. DISCLOSURE OF POLITICAL ADVOCACY BY THE RECIPIENT OF ANY FEDERAL AWARD.

The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282) is amended by adding at the end the following:

"SEC. 5. DISCLOSURE OF POLITICAL ADVOCACY BY THE RECIPIENT OF ANY FEDERAL AWARD.

''(a) IN GENERAL.—Not later than December 31 of each year, an entity that receives any Federal award shall provide to each Federal entity that awarded or administered its grant an annual report for the prior Federal fiscal year, certified by the entity's chief executive officer or equivalent person of authority, and setting forth—

''(1) the entity's name;

''(2) the entity's identification number; and

''(3)(A) a statement that the entity did not engage in political advocacy; or

''(B) a statement that the entity did engage in political advocacy, and setting forth for each award—

''(i) the award identification number;

''(ii) the amount or value of the award (including all administrative and overhead costs awarded);

''(iii) a brief description of the purpose or purposes for which the award was awarded;

''(iv) the identity of each Federal, State, and local government entity awarding or administering the award and program thereunder;

''(v) the name and entity identification number of each individual, entity, or organization to whom the entity made an award; and

''(vi) a brief description of the entity's political advocacy, and a good faith estimate of the entity's expenditures on political advocacy, including a list of any lobbyist registered under the Lobbying Disclosure Act of 1995, foreign agent, or employee of a lobbying firm or foreign agent employed by the entity to conduct such advocacy and amounts paid to each lobbyist or foreign agent.

''(b) OMB COORDINATION.—The Office of Management and Budget shall develop by regulation 1 standardized form for the annual report that shall be accepted by every Federal entity, and a uniform procedure by which each entity is assigned 1 permanent and unique entity identification number.

''(c) WEBSITE.—Any information received under this section shall be available on the website established under section 2(b).

''(d) DEFINITIONS.—In this section:

''(1) POLITICAL ADVOCACY.—The term 'political advocacy' includes—

''(A) carrying on propaganda, or otherwise attempting to influence legislation or agency action, including, but not limited to monetary or in-kind contributions, endorsements, publicity, or similar activity;

''(B) participating or intervening in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office, including but not limited to monetary or in-kind contributions, endorsements, publicity, or similar activity;

''(C) participating in any judicial litigation or agency proceeding (including as an amicus curiae) in which agents or instrumentalities of Federal, State, or local governments are parties, other than litigation in which the entity or award applicant—

''(i) is a defendant appearing in its own behalf;

''(ii) is defending its tax-exempt status; or

''(iii) is challenging a government decision or action directed specifically at the powers, rights, or duties of that entity or award applicant; and

''(D) allocating, disbursing, or contributing any funds or in-kind support to any individual, entity, or organization whose expenditures for political advocacy for the previous Federal fiscal year exceeded 15 percent of its total expenditures for that Federal fiscal year.

''(2) ENTITY AND FEDERAL AWARD.—The terms 'entity' and 'Federal award' shall have the same meaning as in section 2(a).''.

Mr. THUNE. Mr. President, I wish to speak briefly to this amendment before asking that it be set aside.

Currently, Federal grant recipients are generally prohibited from using their Federal grant funds to lobby Congress or to influence legislation or appropriations. Current law also generally prohibits 501(c)(4) civic leagues and social welfare organizations from all lobbying activities, even with their own funds, if they receive a Federal grant, loan or award. But these prohibitions do not prevent Federal grant recipients from lobbying or engaging in political advocacy. Most Federal grant recipients are free to use other parts of their budget, beyond their Federal grant, for lobbying or political advocacy. Even 501(c)(4) organizations whose prohibitions are more stringent can simply incorporate an affiliated organization to engage in lobbying activities or political advocacy.

While the appropriateness of Federal grant recipients engaging in any lobbying or political advocacy, even with their own funds, could be debated, the least we should ask these Federal grant recipients is that they disclose their lobbying and political advocacy activities. Federal grant recipients who are engaging in lobbying should register under the current public disclosure requirements for lobbyists. The public

should also have a right to know if recipients of Federal grants are engaging in political advocacy and to what extent.

In the wake of last year's transparency legislation, information on Federal grants and their recipients will soon be on a publicly available and searchable database. This amendment builds on that concept by requiring Federal grant recipients to disclose any and all political advocacy activities. The amendment would also require a good-faith estimate of the grantee's expenditures on political advocacy.

This, in my view, is a fairly straightforward amendment that adds to the transparency of organizations that engage in political advocacy and lobbying and I think sheds further light on the whole process of getting involved in Federal issues by organizations that actually are receiving Federal funding. I believe that is something the American people would like to see happen.

The Transparency Act that was passed last year, as I said earlier, will bring about disclosure of those organizations. They will have to now disclose, those who receive Federal funds.

All this amendment does is take that a step further and say that those organizations that receive Federal funds need to disclose if they are engaging in a form of political advocacy and to what extent—in other words, how much money are they spending on those types of activities.

The definition of ''political advocacy'' in the amendment is pretty straightforward, but it has to do with:

(A) carrying on propaganda, or otherwise attempting to influence legislation or agency action, including, but not limited to monetary or in-kind contributions, endorsements, publicity, or similar activity;

(B) participating or intervening in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office, including but not limited to monetary or in-kind contributions, endorsements, publicity, or similar, activity;

(C) participating in any judicial litigation or agency proceeding (including as an amicus curiae) in which agents or instrumentalities of Federal, State, or local governments are parties, other than litigation in which the entity or award applicant—

(i) is defendant appearing in its own behalf;

(ii) is defending its tax-exempt status; or

iii) is challenging a government decision or action directed specifically at the powers, rights, or duties of that entity or award applicant. . . .

This is a fairly straightforward amendment. I am simply trying to shine additional light on this process. It is in line with the thinking behind this underlying bill; that is, bringing greater transparency, greater accountability to the process of lobbying and the whole exercise that we undertake around here and outside organizations undertake in trying to influence Federal legislation and Federal issues.

Mr. President, I yield the floor, and I ask unanimous consent that the amendment be set aside.

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

AMENDMENT NO. 40 TO AMENDMENT NO. 3

Mr. STEVENS. Mr. President, I ask that the pending amendment be set aside, and I have an amendment to offer.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 40 to amendment No. 3.

Mr. STEVENS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with. I intend to explain it at a later date. There may be a technical change I have to make to this amendment.

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

The amendment is as follows:

(Purpose: To permit a limited flight exception for necessary State travel)

On page 8, line 14, after ''entity'' insert ''or by a Member of Congress, Member's spouse or an immediate family member of either''.

On page 10, after line 5, insert the following:

(4) LIMITED FLIGHT EXCEPTION.—Paragraph 1 of rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following:

''(h) For purposes of subparagraph (c)(1) and rule XXXVIII, if there is not more than 1 regularly scheduled flight daily from a point in a Member's State to another point within that Member's State, the Select Committee on Ethics may provide a waiver to the requirements in subparagraph (c)(1) (except in those cases where regular air service is not available between 2 cities) if—

''(1) there is no appearance of or actual conflict of interest; and

''(2) the Member has the trip approved by the committee at a rate determined by the committee.

In determining rates under clause (2), the committee may consider Ethics Committee Interpretive Ruling 412.''.

(5) DISCLOSURE.—

(A) RULES.—Paragraph 2 of rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following:

''(g) A Member, officer, or employee of the Senate shall—

''(1) disclose a flight on an aircraft that is not licensed by the Federal Aviation Administration to operate for compensation or hire, excluding a flight on an aircraft owned, operated, or leased by a governmental entity, taken in connection with the duties of the Member, officer, or employee as an officeholder or Senate officer or employee; and

''(2) with respect to the flight, file a report with the Secretary of the Senate, including the date, destination, and owner or lessee of the aircraft, the purpose of the trip, and the persons on the trip, except for any person flying the aircraft.

This subparagraph shall apply to flights approved under paragraph 1(h).''.

(B) FECA.—Section 304(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)) is amended—

(i) by striking ''and'' at the end of paragraph (7);

(ii) by striking the period at the end of paragraph (8) and inserting ''; and''; and

(iii) by adding at the end the following:

''(9) in the case of a principal campaign committee of a candidate (other than a candidate for election to the office of President or Vice President), any flight taken by the candidate (other than a flight designated to transport the President, Vice President, or a candidate for election to the office of President or Vice President) during the reporting period on an aircraft that is not licensed by the Federal Aviation Administration to operate for compensation or hire, together with the following information:

''(A) The date of the flight.

''(B) The destination of the flight.

''(C) The owner or lessee of the aircraft.

''(D) The purpose of the flight.

''(E) The persons on the flight, except for any person flying the aircraft.''.

(C) PUBLIC AVAILABILITY.—Paragraph 2(e) of rule XXXV of the Standing Rules of the Senate is amended to read as follows:

''(e) The Secretary of the Senate shall make available to the public all disclosures filed pursuant to subparagraphs (f) and (g) as soon as possible after they are received and such matters shall be posted on the Member's official website but no later than 30 days after the trip or flight.''.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. VITTER. 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. VITTER. Mr. President, I stand to use this opportunity to again focus us on what I think is a very significant issue in this ongoing ethics and lobbyist debate, and that is the unfortunate practice, in my opinion, and the very clear and huge opportunity for abuse that exists when spouses of sitting Members, Senate or House, are lobbyists and act as lobbyists.

Now, the underlying bill and the underlying substitute, as we all know, have a prohibition on this issue, and it simply says in that case the spouse lobbyist can't directly lobby the Member he or she is married to, and that is good. I hope we all agree with that. I hope that is a no-brainer, an absolute minimum we would all agree to.

I have an amendment on which I look forward to voting in the very near future. It is amendment No. 9. That would broaden that in a way that I think is absolutely necessary. That would simply be a broadening to say that a spouse cannot lobby any Member of Congress, House or Senate. I think that is necessary if we are going to get real, if we are going to get serious in this ethics and lobbying debate, and if this bill is going to be a meaningful attempt to right grievous wrongs we have seen, including in the last couple of years.

The Presiding Officer came from the House of Representatives, as did I. Unfortunately, as we know, there have been these abuses. Really, the abuses fall into two categories; there are not just one but two real dangers we are talking about. One is that a lobbyist who is married to a sitting Member clearly has unusual access to other Members of Congress—forget about his

or her spouse but to other Members. You can't tell me if a lobbyist is going in to see a Member and he happens to be married, say, to a female Member who is chair of a committee on which that other Member sits, that doesn't cross the other Member's mind. You can't tell me that is not part of the equation; that is not part of the backdrop on that lobbying relationship. Clearly, that spouse lobbyist is going to have extraordinary, unusual access to all Members, or many Members, not simply the Member to whom he or she is married.

Of course, there are all sorts of social occasions where we get together, as we should, as families, with spouses. So there is that very real issue. But there is a second very real issue which, in my opinion, is even more serious and more pernicious and that is the clear opportunity for moneyed interests, special interests, to write checks directly into the family bank account of a Member through the lobbyist spouse.

I wish I could stand here and say that this was a hypothetical. I wish I could stand here and say that this was a solution searching for a problem in the real world. I can't. This has happened. This does happen. There have been cases, including in the House, that have been in the press in the last year or two where this does happen, and spouses are making big salaries from interests that have very important matters before Congress and before the Member to whom that lobbyist spouse is married.

This is not theoretical. This is not a solution looking for a problem. This is real and this is real abuse. It is simply a bribe by another name because it is a conduit to send significant amounts of money to the family bank account—the same family bank account that the Member, of course, lives on and relies on and enjoys.

I think this is a very serious issue. Clearly, if we are bringing up a bill that is about two things, ethics and lobbying, you can't ignore this issue. This issue is right in the middle of it. It is all about lobbying. It is all about ethics. It is all about both of those things, that this whole debate is about.

Let me point out that in my amendment I do include an exception. I think it is a fair exception. I can make an argument to have no exceptions, and I was tempted to do that. I wanted to bend over backwards to be fair and meet any legitimate questions out there. There is an exception if the spouse lobbyist was a lobbyist a year or more before the marriage happened, and/or before the Member's first election to Congress happened. In that situation, I think what it would mean is that this spouse had a real, bona fide career and was doing this and built up that practice, way before the marriage relationship ever happened or the representation relationship—membership in the House or Senate—ever happened. I think that legitimately is a different situation than the others.

Again, I can make the argument for no exceptions. I can certainly understand the sentiment: get rid of that exception. But in an abundance of trying to meet reasonable questions, reasonable objections, I included that exception.

I urge all of my colleagues, Democrat and Republican, to take a hard look and then to vote for the amendment because this goes to the heart of what we are talking about. This has been a real abuse. It is subject to continuing abuse. If we do not address it, this exercise, frankly, is not going to have much credibility in the eyes of the American people. If we do not address it, we are not going to be doing enough to restore the confidence of the American people in this institution and the institution across the Rotunda, the House of Representatives.

This has to be at the center of our debate, and I look forward to continuing the debate. I will be happy to answer any objections or questions and continue that debate in the next day or two and look forward to a vote on this very central amendment. I will specifically talk to the majority leader about a vote. He has not responded yet. Certainly, I cannot imagine a reasonable, fair debate on this question of ethics and lobbying and yet we do not at least vote on this issue of spouses lobbying Congress. Of course, I hope we vote the right way and forbid it.

Mr. President, I look forward to the continuation of this discussion and the vote and I yield the floor.

Mrs. FEINSTEIN. Mr. President, 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.

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

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

Mrs. FEINSTEIN. Mr. President, I announce that there will be no more rollcall votes tonight. However, I caution Members, there will be possibly two rollcall votes, certainly one, tomorrow morning. No more rollcall votes tonight.

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.

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

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

AMENDMENT NO. 38, AS MODIFIED

Mrs. FEINSTEIN. Mr. President, I ask that amendment No. 38 be the pending business.

The PRESIDING OFFICER. The amendment is now pending.

Mrs. FEINSTEIN. Mr. President, I have a modification at the desk, and I ask the amendment be modified.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment (No. 38), as modified, is as follows:

At the appropriate place, insert the following:

SEC. ___. FREE ATTENDANCE AT A BONA FIDE CONSTITUENT EVENT.

(a) IN GENERAL.—Paragraph 1(c) of rule XXXV of the Senate Rules is amended by adding at the end the following:

''(24) Subject to the restrictions in subparagraph (a)(2), free attendance at a bona fide constituent event permitted pursuant to subparagraph (h).''.

(b) IN GENERAL.—Paragraph 1 of rule XXXV of the Senate Rules is amended by adding at the end the following:

''(h)(1) A Member, officer, or employee may accept an offer of free attendance in the Member's home state at a convention, conference, symposium, forum, panel discussion, dinner event, site visit, viewing, reception, or similar event, provided by a sponsor of the event, if—

''(A) the cost of meals provided the Member officer or employee does not exceed $50;

''(B)(i) the event is sponsored by bona fide constituents of, or a group that consists primarily of bona fide constituents of, the Member (or the Member by whom the officer or employee is employed); and

''(ii) the event will be attended primarily by a group of at least 5 bona fide constituents of the Member (or the Member by whom the officer or employee is employed) provided that an individual registered to lobby under the Federal Lobbying Disclosure Act shall not attend the event; and

''(C)(i) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member's, officer's, or employee's official position; or

''(ii) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

''(2) A Member, officer, or employee who attends an event described in clause (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual if others in attendance will generally be similarly accompanied or if such attendance is appropriate to assist in the representation of the Senate.

''(3) For purposes of this paragraph, the term 'free attendance' has the same meaning as in subparagraph (d).''

Mrs. FEINSTEIN. Mr. President, I believe both sides are in agreement with the modification.

We are prepared to voice vote the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 38), as modified, was agreed to.

Mr. BENNETT. Mr. President, I move to reconsider the vote.

Mrs. FEINSTEIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mrs. FEINSTEIN. Mr. President, I wish to clarify that this exception applies only when there are at least five constituents attending the event with a Member and at least half of the group in attendance are constituents.

Thank you very much.

Mr. President, 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.

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

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

AMENDMENT NO. 42 TO AMENDMENT NO. 3

Mrs. FEINSTEIN. Mr. President, I send an amendment to the desk on behalf of Senator ROCKEFELLER and Senator FEINSTEIN.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself and Mr. ROCKEFELLER, proposes an amendment numbered 42 to amendment No. 3.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit an earmark from being included in the classified portion of a report accompanying a measure unless the measure includes a general program description, funding level, and the name of the sponsor of that earmark)

On page 7, after line 6, insert the following:

''4. It shall not be in order to consider any bill, resolution, or conference report that contains an earmark included in any classified portion of a report accompanying the measure unless the bill, resolution, or conference report includes, in unclassified language to the greatest extent possible, a general program description, funding level, and the name of the sponsor of that earmark.''.

Mrs. FEINSTEIN. Mr. President, a brief explanation, and then I wish to set aside the amendment. But essentially what this amendment does is very simple. It relates to classified earmarks and simply says:

It shall not be in order to consider any bill, resolution, or conference report that contains an earmark included in any classified portion of a report accompanying the measure unless the bill, resolution, or conference report includes, in unclassified language, to the greatest extent possible, a general program description, funding level, and the name of the sponsor of that earmark.

Mr. President, I ask unanimous consent that this amendment be set aside.

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

Mrs. CLINTON. Mr. President, yesterday evening I voted to table an amendment that would have prohibited authorized committees and leadership PACs from employing the spouse or immediate family members of any candidate or Federal officeholder connected to the committee. I appreciate the concerns raised by Senator VITTER regarding allegations of abuse in this area, and believe action should be taken when the Senate Rules Committee undertakes comprehensive campaign finance reform later this year. I look forward to working with Chairwoman FEINSTEIN and the rest of my colleagues at that time to deal with the concerns raised by Senator VITTER.

Mrs. FEINSTEIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators allowed to speak therein for up to 10 minutes each.

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

HONORING OUR ARMED FORCES

CORPORAL JASON DUNHAM

Mrs. CLINTON. Mr. President, I rise today to recognize the honorable and heroic actions demonstrated by the late Marine Cpl Jason Dunham of Scio, NY.

Today, the President of the United States presented the Medal of Honor, the Nation's highest decoration for combat heroism, to the family of Cpl Jason Dunham during a ceremony in the White House.

Cpl Jason Dunham was 22 years old in mid-April of 2004 and serving in Husaybah, Iraq. An Iraqi terrorist attacked Dunham, and Dunham selflessly acted to shield his squad members from a hand grenade blast. The blast severely wounded Dunham and he was flown to Bethesda Naval Hospital outside of Washington, DC where he died April 22, 2004.

Corporal Dunham is the first marine to earn the Medal of Honor in more than 30 years and one of only two U.S. service members to be awarded the medal since the wars in Afghanistan and Iraq began.

Corporal Dunham's actions in Iraq were truly humbling and worthy of the greatest honor. This medal is a fitting tribute to a true hero who made the ultimate sacrifice on behalf of his Nation and the marines with whom he proudly served.

I was honored to have sponsored the legislation last year to designate the U.S. Postal Service facility located at 4422 West Sciota Street in Scio, NY, as the ''Corporal Jason L. Dunham Post Office''.

Today, as their son is honored as the incredible hero that he was, I send my thoughts and prayers to Corporal Dunham's family and to all the brave men and women of our Armed Forces.

AGJOBS

Mr. CRAIG. Mr. President, the last Congress worked long and hard to resolve one of the most contentious issues of our time: immigration. As many of our colleagues know, while a number of border enforcement measures were enacted, we did not complete all the critical elements of a comprehensive strategy on immigration reform.

Yesterday, I joined with Senators FEINSTEIN, KENNEDY, MARTINEZ, VOINOVICH, and BOXER in reintroducing legislation to address a very important piece of that unfinished business: the establishment of a workable, secure, effective temporary worker program to match willing foreign workers with jobs that Americans are unwilling or unable to perform.

Our legislation is specific to U.S. agriculture because this economic sector, more than any other, has become dependent for its existence on the labor of immigrants who are here without legal documentation. The only program currently in place to respond to a lack of legal domestic agricultural workers, the H–2A guest worker program, is profoundly broken. Outside of H–2A, farm employers have no effective, reliable assurance that their employees are legal.

The bill we reintroduced is called AgJOBS—the Agricultural Job Opportunity, Benefits, and Security Act. This bill was part of the comprehensive immigration legislation passed last year by the Senate. Today's version incorporates a few language changes that update, but do not substantively amend, that measure.

We are reintroducing AgJOBS to fix the serious flaws that plague our country's current agricultural labor system. Agriculture has unique workforce needs because of the special nature of its products and production, and our bill addresses those needs.

Our bill offers a thoughtful, thorough, two-step solution. On a one-time basis, experienced, trusted workers with a significant work history in American agriculture would be allowed to stay here legally and earn adjustment to legal status. For workers and growers using the H–2A legal guest worker program, that program would be overhauled and made more streamlined, practical, and secure.

This legislation has been tested and examined for years in the Senate and House of Representatives, and it remains the best alternative for resolving urgent problems in our agriculture that require immediate attention. That is why AgJOBS has been endorsed by a historic, broad-based coalition of more than 400 national, State, and local organizations, including farmworkers, growers, the general business community, Latino and immigration issue groups, taxpayer groups, other public interest organizations, State directors of agriculture, and religious groups.

We all want and need a stable, predictable, legal workforce in American agriculture. Willing American workers deserve a system that puts them first in line for available jobs with fair market wages. All workers should receive