United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, WEDNESDAY, JANUARY 21, 2009 No. 12

Senate

The Senate met at 12 noon and was called to order by the Honorable ROBERT P. CASEY, Jr., a Senator from the Commonwealth of Pennsylvania.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, the giver of true freedom, awaken in us a new appreciation for our Nation that we may apply ourselves to keeping alive a real sense of liberty.

Thank You for our Nation's Founders, their ideals, their principles, and their sacrifices. Thank You, Lord, for the long progression of statesmen and patriots who have guarded our rights and healed our land. Thank You for the peaceful transition of power that took place in our Capitol yesterday. Lord, we also thank You for the members of the Senate staff who serve behind the scenes and work into the evening sustaining our well-being. In an hour where great issues are at stake, may those who serve on Capitol Hill rise to meet the challenges and strive to be faithful.

We pray in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROBERT P. CASEY, Jr. led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 21, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT P. CASEY, Jr., a Senator from the Commonwealth of Pennsylvania, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. CASEY thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will proceed to executive session to consider the nomination of HILLARY CLINTON to be Secretary of State. There will be up to 3 hours of debate equally divided and controlled between the two leaders or their designees. The designee I have on this side is the chairman of the Foreign Relations Committee, Senator JOHN KERRY.

The Senate will recess from 12:45 until 2:15 p.m. today to allow for the weekly caucus luncheons. We tried to make it clear last night, but if we did not, for further clarification I ask unanimous consent that the time during the recess not count against the time reserved for debate on the nomination.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, upon disposition of the Clinton nomination, the Senate will resume consideration of the Lilly Ledbetter Fair Pay Act and debate the pending Hutchison amendment. We hope to complete the vote on that today. I understand there are other Senators who have amendments to offer. I ask they be ready to offer them sometime this afternoon or this evening. In addition, the managers are working on an arrangement to consider additional amendments in order to complete any action on this bill. This bill is open for amendment when we finish the Clinton nomination, so I hope people are ready to work on that.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF HILLARY RODHAM CLINTON TO BE SECRETARY OF STATE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate shall proceed to executive session to consider the following nomination which the clerk will report.

The assistant legislative clerk read the nomination of HILLARY RODHAM CLINTON, of New York, to be Secretary of State.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 3 hours of debate equally divided and controlled between the leaders or their designees.

The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of the following nomination: HILLARY RODHAM CLINTON of New York to be Secretary of State.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KERRY. Mr. President, I further ask unanimous consent that if there

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are quorum calls to be placed during the course of this equally divided time, those quorum calls will be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KERRY. Mr. President, yesterday—a historic day—we swore in a new President who has the vigor and the vision to restore America's place in the world. I think we would all agree that yesterday he made very inspiring and bold statements about America and how we will invite the world to join us in the efforts to restore our values, in a sense, to the center stage of that debate, but also to join in a renewed effort to find peace and end conflict. I thought his words, particularly to the Muslim world, were very important. We hope, obviously, to be able to move on those initiatives as rapidly as possible. Already, the new administration is taking crucial, long-awaited steps to embark on a new era of moral leadership and global outreach.

It is an understatement to say these are challenging times. We are fighting two wars and the threat of terrorism, as we all know, is as strong as ever. As the President said, we labor under gathering clouds and raging storms of the severest economic crisis of our lifetime. At such a moment, it is essential that we provide the President with the tools and the resources he needs to effect change. That starts by making sure he has the national security team he has chosen in place as soon as possible. Even this afternoon, the President will follow through on promises he has made to sit down on day one with his national security team, particularly with the military leadership, in order to talk about Iraq, Afghanistan, Pakistan, and the wars we are involved in. That team includes HILLARY CLINTON as Secretary of State.

I think everyone can agree that at her confirmation hearing, Secretary-designate HILLARY CLINTON demonstrated an impressive grasp of the numerous complex foreign policy issues we face and she demonstrated why she is going to make such an effective Secretary of State. She has the stature to project America's leadership globally and to help build alliances at home and abroad. That is going to be vital to our success in the years ahead.

Now, I understand the concerns that were raised about fundraising activities of the Clinton Foundation. Let me start by saying that Secretary-designate CLINTON and former President Clinton have voluntarily entered into an ethics review and disclosure process with respect to donations to former President Clinton's foundation that goes well beyond any requirements under the law or any applicable ethics regulations. This is an unprecedented situation none of us can contest, nor would we. There is no existing blueprint on which to draw here. Secretary-designate CLINTON and former President Clinton have gone to considerable lengths to create a new review process tailored to these particular circumstances.

Senator LUGAR, myself, and others on the Foreign Relations Committee expressed our own concerns about aspects of this new arrangement. We went through a thorough review of the relevant agreements that Senator CLINTON and former President Clinton have entered into. We submitted numerous questions for the record, and they were very direct and blunt questions. We examined this issue extensively in the lead-up to Senator CLINTON's nomination hearing, and then again at the hearing itself. Senator LUGAR at quite some length expressed why he saw some issues here and expressed some concerns, but at the same time could not have been more clear about his support—enthusiastic support—for Senator CLINTON assuming these responsibilities. The conclusion we reached was whatever the concerns some in this body may have—and we don't contest the legitimacy of believing that, as Senator LUGAR said, perhaps going further would have cleared some of the questions that still exist—but that doesn't mean that on the other side there is an automatic—that there is a problem. So in essence, none of these questions call into question at all Senator CLINTON's fitness, readiness, and appropriateness in serving as Secretary of State. Senator LUGAR, in his very clearly stated view with respect to this issue, offered a series of well-thought-out additional proposals, and he made clear that notwithstanding those proposals—which in his heart and in his mind he felt would have simply made this much clearer—he nevertheless was clear about his intention, without those being put in place, that he felt it was important that Senator CLINTON be confirmed. It is noteworthy that after a very lengthy discussion about review and disclosure and after the full consideration by the committee itself, the Foreign Relations Committee passed her nomination out and brought it here to the floor by a vote of 16 to 1.

Now, as we think about this issue, for anybody who is not yet decided about what they may or may not do, context is very important. The Clinton Foundation does extraordinary, worthwhile, lifesaving work in areas such as HIV/AIDS, global climate change, and economic development in some of the most impoverished corners of this planet. It is important to remember that the Clintons do not in any way personally benefit financially from the actions of the foundation. So there is none of the sort of traditional notion of financial conflict of interest. It doesn't exist because there is no personal financial interest by either of them. Moreover, according to Secretary-designate CLINTON, all donations to the Clinton Foundation, including donations to the Clinton Global Initiative, will be disclosed publicly. So nothing relevant to the measurement of a potential conflict is being withheld from the public. Transparency is critically important here, obviously, because it allows the American people, the media, and those of us here in Congress with an oversight responsibility to be able to judge for ourselves that no conflicts, real or apparent, exist.

Senator CLINTON was also very clear personally at the hearing and in her answers to the questions for the record in saying that she fully understands her obligation and her interest in avoiding any kind of unwelcome distraction. I take her at her word. I hope the rest of our colleagues will do so also.

I understand that Senator LUGAR and some others have requested that large donations from foreign entities ought to be disclosed more frequently than the once-a-year requirement outlined in the agreement. I happen to agree that that would have been preferable, but the bottom line is that the desired deterrent effect still exists, and the bottom line is the public will still know, albeit in a different time frame, but it will know what the situation is. Furthermore, all contributions by foreign governments will be subject to a review process by the State Department's ethics officials. This review will occur prior to the receipt of any such contribution, and Senator CLINTON has made it clear that the process has been designed to avoid even the appearance of a conflict of interest. As all of us know, the appearance of a conflict under the law is always as critical as the reality of a conflict. It stands at the same level of scrutiny and, therefore, I think her statement is a very important one.

It is important to note that the pledges for future contributions by foreign governments will also be subject to this same review process. That was an issue of particular interest to me and some other members of the committee, and I appreciate the willingness of Secretary-designate CLINTON and the foundation to address the issues during the discussions we had over the memorandum of understanding leading up to the hearing. Again, I and others preferred that those pledges might have also been subject to disclosure requirements. Still, we take comfort in the fact that they are going to be subject to the ethics review process and subject also, frankly, to the stated interest Senator CLINTON expressed before the committee of avoiding any kind of conflict or perception issue, and I am confident she is going to bend over backward to try to make sure that happens.

So, in the end, I fully respect the questions that have been raised. I acknowledge that some members of the committee felt that perhaps the final product could have expressed more, but the final product is not contained entirely within the framework of the four corners of the agreement. It is contained in the framework of the hearings and it is contained also in the expressions made publicly by Senator

CLINTON about what she intends to do as a matter of personal oversight in this effort to live up to the standards that have been expressed.

So I am confident that significant and sufficient checks and balances exist and that we should proceed forward and overwhelmingly—I hope unanimously but certainly overwhelmingly—confirm Senator CLINTON. She needs to assume these responsibilities and begin serving the country as our Secretary of State. And while the Senate ponders the ethical implications of Senator CLINTON's charitable work and President Clinton's charitable work, we need to remember that the world is moving at a fast pace. There isn't time to delay American engagement in ongoing crises. Gaza is waiting, the Middle East is waiting, Pakistan, Afghanistan, and a host of other issues, and our Secretary of State needs to be in place and empowered to engage in discussions that have been waiting all these months and weeks now, where President Obama has made so clear that we only have one President at a time. Well, now we have that President and that President needs and deserves his security team.

So I hope my colleagues will join me in appreciating the larger importance of this moment, put aside those concerns with an appropriate, obvious sort of further expression of them but move forward to allow President Obama and his Secretary of State to confront the multiple crises and challenges that are going to be the measure of our achievement as a country and as a Senate and Congress over the course of the next few years.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Mr. President, I appreciate the comments of the distinguished chairman of the Foreign Relations Committee, and I find I agree with virtually all of them, so I wish to make clear at the outset that this is an opportunity for us, over the next few hours, to talk about what ought to be our goal and that is to confirm a new Secretary of State who will be able to do the Nation's work and be able to avoid any perceived conflict of interest as a result of the fundraising by her husband's foundation.

I appreciate particularly the good-faith acknowledgement of the concerns of the Senator from Massachusetts. They were also expressed by Senator LUGAR. I think the concerns were acknowledged by both the Clinton Foundation and by Senator CLINTON herself in entering into a memorandum of understanding with the transition team of the now President Obama administration.

I know we all realize this, but it is important to say again that yesterday was a historic day, with the inauguration of the 44th President of the United States. Among the many things President Obama said, and that I agree with, I was particularly glad to hear him say we should do our business in the light of day because only then can we restore the vital trust between the people and their Government. I am someone who has long believed that our Government is too opaque to most of the people we work for, and as an advocate of open government, I agree with him 1,000 percent. I pledge to him and to my colleagues across the aisle that if there are things we can do, such as working together, as Senator LEAHY and I have on Freedom of Information Act reform, to improve the openness and transparency of our Government, we ought to be all about that. As we know, the foundation of our legitimacy comes from the consent of the governed—the people of this country. If they do not know what their Government is doing or if certain things are hidden from their view, they cannot consent, and they operate in a less-than-legitimate way.

I wish President Obama and his administration well. His success will mean America's success. But if we are going to restore trust between the American people and their Government, we need to be careful that the reality matches the rhetoric. My concern is not whether our colleague, Senator CLINTON, is qualified to be Secretary of State—she is, and I intend to vote for her confirmation—but I believe it is very important to flesh out some of the concerns that have been raised, legitimately, by Senator KERRY, Senator LUGAR, and others that I think bear some public discussion and some debate in the Senate.

I argued to Senator CLINTON yesterday—or I didn't argue to her, but I explained my position to her; that I thought greater transparency would make it better for her as she enters this new job as Secretary of State because any cloud or question that remains because of the lack of transparency or lack of disclosure I think hurts her and hurts the Obama administration at a time when we want to see it succeed. Of course, the concern is that, as she explained to me, any rule we have should not just apply to her and the former President, and I told her that is fine with me; that we would be glad to work together to try to come up with something that would make this kind of disclosure across the board.

I agree with the Senator from Massachusetts, having a former President of the United States running a foundation such as this and to have his spouse as Secretary of State is an unusual and perhaps unprecedented event, giving rise to these unusual and unprecedented concerns. But many taxpayers make frequent disclosures to the Government on a monthly or quarterly basis. I don't see why the Clinton Foundation could not do so on a more frequent basis, as suggested by Senator LUGAR, the ranking member on the Foreign Relations Committee. I don't see any particular hardship for her—or, excuse me, for the foundation—to do something that taxpayers are required to do regularly—file monthly or quarterly reports. And, of course, all of us who run for office are familiar with the fact we have to file campaign finance reports so the public can know who is contributing to our campaigns and be attuned to any concerns that may arise.

I wish to be clear that my concerns are not with the charitable activities of the Clinton Foundation, which I and others admire. But we should not let our respect for Senator CLINTON or our admiration for the many good works of the Clinton Foundation blind us to the danger of perceived conflicts of interest caused by the solicitation of hundreds of millions of dollars from foreign and some domestic sources. The perception and reality must be that the office of the Secretary of State, as viewed around the world, is beyond reproach.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the New York Times, dated December 19, 2008, immediately following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CORNYN. The title of that article is: ''In Clinton List, a Veil Is Lifted on Foundation.''

As many of our colleagues know, when this memorandum of understanding was entered into, for the first time the Clinton Foundation revealed the source of its some $500 million worth of contributions over the last 10 years. Many of them were unremarkable, but some of them were troubling, raising the very issue we are discussing today—contributions from foreign nations, for example, from the Kingdom of Saudi Arabia directly to the foundation. Clearly, Senator CLINTON, as Secretary of State, as our chief diplomat, is going to be dealing with the country and the Kingdom of Saudi Arabia.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of the Clinton Foundation's select foreign sources of contributions following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. CORNYN. Mr. President, that list includes the State of Kuwait, the State of Qatar, and various foreign individuals.

In the article I mentioned a moment ago from the New York Times, there is just one example of the perception of conflict of interest that I think ought to give all of us concern. Last year, in the last Congress, we voted to support a civilian nuclear technology arrangement with the country of India, and I voted for it. But one of the problems, for example, is that one of the individuals who was lobbying for that was a politician in India who gave between $1

million and $5 million to the foundation. That individual was actually lobbying Congress to pass that very same bill at the same time he is making a significant contribution to the foundation.

Now, I am not suggesting anything untoward or improper about that, but I am pointing out the very real example of a perception of conflict of interest, which is something that I think we all would hope to avoid.

There is also a list of other contributors, domestic contributors, including some of the financial services industry on Wall Street, which has been the beneficiary of various Government bailouts during the course of the last few months during the economic crisis.

Mr. President, I ask unanimous consent to have printed in the RECORD that list at the end of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 3.)

Mr. CORNYN. Mr. President, Senator LUGAR, who is admired by all of us for his knowledge and experience on the Foreign Relations Committee, explained the likelihood of a conflict of interest. He said that the Clinton Foundation exists as a temptation to any foreign entity or government that believes it can curry favor through a donation, and obviously that creates a potential perception problem with any action taken by the Secretary of State in relation to foreign givers of their country. I share Senator LUGAR's concerns, as I have explained here. I concur with his commonsense solution that during Senator CLINTON's tenure as Secretary of State, the foundation should actually refuse all contributions from foreign sources. That would take care of that particular problem outright.

Senator KERRY, as he said in those hearings and reiterated today, pointed out that Senator LUGAR wasn't speaking from a partisan perspective, he was speaking for the committee. In other words, this is not a partisan matter. This is a matter of serious concern regarding public policy. It is a matter of record that, as I said, the transition team, Senator CLINTON, and the foundation agreed to a memorandum of understanding. Of course, this does not require disclosure of past contributions with any sort of real detail, which would be helpful to the observer. It does require annual disclosure, and I think that was a very positive step in the right direction. But simply stated, the fundraising restrictions of disclosure statements I don't think go far enough. It is in the Nation's interest for the Clinton Foundation to refuse foreign-sourced donations while Senator CLINTON serves as Secretary of State.

If the foundation refuses to do so—and I realize Senator CLINTON has limited control, if any, over what the foundation does—I think there should be other options available that would reduce the likelihood of real or perceived conflicts of interest. Senator LUGAR himself has recommended several disclosure requirements. For example, he suggested that gifts of $50,000 or more to the Clinton Foundation from any foreign source, including individuals, should be submitted to the agreed-upon State Department ethics review process.

I would alert my colleagues to the fact that the agreement between the Obama team and the foundation only commits the foundation to submit for State Department review those gifts from foreign governments and government-controlled entities. As Senator LUGAR aptly pointed out, in many foreign countries the tie between the government and private citizens is blurred. Individuals with close connections to the government or governing families often act as surrogates for those governments. Consequently, contributions from foreign governments or foreign-controlled companies are not the only foreign contributions that could raise serious conflicts of interest.

I would go further and require that every pledge or donation be made publicly available online within a short time—perhaps a week. If we did it on a monthly basis, that would be far better than what the MOU currently provides.

The foundation's agreement to make disclosures once a year is simply not enough in order to achieve that kind of transparency President Obama talked about yesterday that will help give the American people more confidence in their Government. That is not doing business in the light of day in a way that restores that vital trust, to do it only annually, after the fact. This is only one example of some of the improvements that could be made.

In short, I remain concerned that Senator—soon to be Secretary of State—CLINTON's diplomatic work will be encumbered by the global activities of the Clinton Foundation under these circumstances—not their good and charitable work, which I certainly support, but the contributions they raise from these various sources that are not transparent, not subject to prompt disclosure. Obviously, I think it is important that the Senate discuss and debate this in the context of her nomination, not wait until the inevitable conflict or crisis arises.

Mr. President, I also ask unanimous consent to have printed in the RECORD a New York Times editorial, a Washington Post editorial, and a Los Angeles Times editorial, which identify some of these same concerns, at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 4.)

Mr. CORNYN. In short, I was encouraged by my conversation with Senator CLINTON yesterday in the Rotunda following the inaugural ceremonies where she said she would be open to a requirement that really was an across-the-board disclosure requirement that was not just targeted at her and the Clinton Foundation. I think there is a meaningful basis upon which to further discuss this, negotiate it, and it would be my intention, working with other colleagues here, to produce legislation, as we flesh that out, which might accomplish that in the days ahead.

EXHIBIT 1

[From the New York Times, Dec. 19, 2008]

IN CLINTON LIST, A VEIL IS LIFTED ON FOUNDATION

(By Peter Baker and Charlie Savage)

WASHINGTON.—Former President Bill Clinton has collected tens of millions of dollars for his foundation over the last 10 years from governments in the Middle Fast, tycoons from Canada, India, Nigeria and Ukraine, and other international figures with interests in American foreign policy.

Lifting a longstanding cloak of secrecy, Mr. Clinton on Thursday released a complete list of more than 200,000 donors to his foundation as part of an agreement to douse concerns about potential conflicts if Senator Hillary Rodham Clinton is confirmed as secretary of state in the Obama administration.

The donor list offers a glimpse into the high-powered, big-dollar world in which Mr. Clinton has traveled since leaving the White House as he jetted around the globe making money for himself and raising vast sums for his ambitious philanthropic programs fighting disease, poverty and climate change. Some of the world's richest people and most famous celebrities handed over large checks to finance his presidential library and charitable activities.

With his wife now poised to take over as America's top diplomat, Mr. Clinton's fundraising is coming under new scrutiny for relationships that could pose potential conflict-of-interest issues for Mrs. Clinton in her job. Some of her husband's biggest backers have much at stake in the policies that President-elect Barack Obama's incoming administration adopts toward their regions or business ventures.

Saudi Arabia alone gave to the foundation $10 million to $25 million, as did government aid agencies in Australia and the Dominican Republic. Brunei, Kuwait, Norway, Oman, Qatar and Taiwan each gave more than $1 million. So did the ruling family of Abu Dhabi and the Dubai Foundation, both based in the United Arab Emirates, and the Friends of Saudi Arabia, founded by a Saudi prince.

Also among the largest donors were a businessman who was close to the onetime military ruler of Nigeria, a Ukrainian tycoon who was son-in-law of that former Soviet republic's authoritarian president and a Canadian mining executive who took Mr. Clinton to Kazakhstan while trying to win lucrative uranium contracts.

In addition, the foundation accepted sizable contributions from several prominent figures from India, like a billionaire steel magnate and a politician who lobbied Mrs. Clinton this year on behalf of a civilian nuclear cooperation agreement between India and the United States, a deal that has rankled Pakistan, a key foreign policy focus of the incoming administration.

Such contributions could provoke suspicion at home and abroad among those wondering about any effect on administration policy.

Matthew Levitt, a senior fellow at the Washington Institute for Near East Policy, said donations from ''countries where we have particularly sensitive issues and relations'' would invariably raise concerns about

whether Mrs. Clinton had conflicts of interest.

''The real question,'' Mr. Levitt said, ''is to what extent you can really separate the activities and influence of any husband and wife, and certainly a husband and wife team that is such a powerhouse.''

Mr. Clinton's office said in a statement that the disclosure itself should ensure that there would be ''not even the appearance of a conflict of interest.''

Stephanie Cutter, a spokeswoman for Mr. Obama, said the president-elect had chosen Mrs. Clinton for his cabinet because ''no one could better represent the United States.''

''Past donations to the Clinton foundation,'' Ms. Cutter said, ''have no connection to Senator Clinton's prospective tenure as secretary of state.''

Repuclians have addressed the issue cautiously, suggesting that they would examine it but not necessarily hold up Mrs. Clinton's confirmation as a result. Senator Richard G. Lugar of Indiana, the top Republican on the Foreign Relations Committee, which will consider her nomination, was in Russia on Thursday and unavailable for comment, according to Mr. Lugar's office.

But in an interview on Nov. 30 on ''This Week'' on ABC, Mr. Lugar said Mr. Clinton's activities would raise legitimate questions, adding, ''I don't know how, given all of our ethics standards now, anyone quite measures up to this who has such cosmic ties.''

Still, he indicated that he would vote for Mrs. Clinton and praised Mr. Obama's team for doing ''a good job in trying to pin down the most important elements'' in its agreement with Mr. Clinton.

To avoid potential conflicts, the Obama team, represented by its transition co-chairwoman, Valerie Jarrett, signed a memorandum of understanding on Dec. 12 with the William J. Clinton Foundation, represented by its chief executive, Bruce R. Lindsey. The five-page memorandum, provided to reporters on Thursday, required Mr. Clinton to disclose his past donors by the end of the year and any future contributors once a year.

The memorandum also requires that if Mrs. Clinton is confirmed, the Clinton Global Initiative, an offshoot of the foundation, will be incorporated separately, will no longer hold events outside the United States and will refuse any further contributions from foreign governments. Other initiatives operating under the auspices of the foundation would follow new rules and consult with State Department ethics officials in certain circumstances.

Federal law does not require former presidents to reveal foundation donors, and Mr. Clinton had until now declined to do so, arguing that many who gave expected confidentiality. Other former presidents have taken money from overseas sources, including President George Bush, whose son has sat in the Oval Office for the last years. The elder Mr. Bush has accepted millions of dollars from Saudi, Kuwaiti and other foreign sources for his own library.

Mr. Clinton's foundation has raised $500 million since 1997, growing into a global operation with 1,100 paid staff members and volunteers in 40 countries. It said it had provided medicine to 1.4 million people living with H.I.V./AIDS, helped dozens of cities reduce heat-trapping gases and worked to spread economic opportunity.

Mr. Clinton's advocates said that the disclosure on Thursday showed he had nothing to hide and that most of his largest contributors were already known.

Yet while unprecedented, the disclosure was also limited.

The list posted on the foundation's Web site—www.clintonfoundation.org—did not provide the nationality or occupation of the donors, the dates they contributed or the precise amounts of their gifts, instead breaking down contributors by dollar ranges. Nor did the list include pledges for future donations. As a result, it is impossible to know from the list which donations were made while Mr. Clinton was still president or while Mrs. Clinton was running for president.

Many benefactors are well-known Americans, like Stephen L. Bing; Alfonso Fanjul; Bill Gates; Tom Golisano, a billionaire who ran for New York governor; Rupert Murdoch; and Barbra Streisand. Bloomberg L.P., the financial media empire founded by Mayor Michael R. Bloomberg of New York, contributed, as did Freddie Mac, the mortgage company now partly blamed for the housing market collapse.

Another potentially sensitive donation came from Blackwater Training Center, part of the private security firm hired to protect American diplomats in Iraq. Five of its guards have been indicted for their roles in a 2007 shooting that left 17 Iraqi civilians dead.

The potential for appearances of conflict was illustrated by Amar Singh, a politician in India who gave $1 million to $5 million. Mr. Singh visited the United States in September to lobby for a deal allowing India to obtain civilian nuclear technology even though it never signed the Non-Proliferation Treaty. He met with Mrs. Clinton, who he said assured him that Democrats would not block the deal. Congress approved it weeks later.

Other donors have connections with India, a potential flashpoint because of tensions with Pakistan. Among them was Lakshmi Mittal, a steel magnate and, according to Forbes magazine, the fourth-richest person in the world. Mr. Mittal, who donated $1 million to $5 million, was involved in a scandal in 2002 in London, where he lives. After Mr. Mittal made a large donation to the Labor Party, Prime Minister Tony Blair helped him persuade Romania to sell him its state steel company.

Another donor was Gilbert Chagoury, a businessman close to Gen. Sani Abacha of Nigeria, widely criticized for a brutal and corrupt rule.

Mr. Chagoury tried during the 1990s to win favor for Mr. Abacha from the Clinton administration, contributing $460,000 to a voter registration group to which Democratic officials steered him, according to news accounts. He won meetings with National Security Council officials, including Susan E. Rice, who is now Mr. Obama's choice to be ambassador to the United Nations.

EXHIBIT 2

CLINTON FOUNDATION—SELECT FOREIGN SOURCES

$10M–25M: Kingdom of Saudi Arabia.

$5M–10M: Government of Norway.

$1M–5M: Sheikh Mohammed H. Al-Amoudi—Saudi/Ethiopian businessman; Nasser Al-Rashid—Saudi businessman; Dubai Foundation—partnership between Harvard Med and Dubai; Friends of Saudi Arabia; Lakshmi N. Mittal—Indian businessman; State of Kuwait; State of Qatar; Taiwan Economic and Cultural Office; The Government of Brunei Darussalam; The Sultanate of Oman; Zayed Family—Zayed bin Sultan Al Nahyan was former president of UAE.

$500K–1M: Walid A. Juffali—Saudi billionaire; Kjell I. Rokke—Norweigan businessman; Soros Foundation; The Swedish Postcode Lottery.

$250K–500K: Abbas Al-Yousef; Carlos Bremer Gutierrez—CEO of Mexican corporation; China Overseas Real Estate Development; Gustavo Cisneros & Venevision—Venezuelan businessman and his company; Rolando Gonzalez-Bunster—CEO of Int'l power company; Ajit Gulabchand—Indian business executive; Vinod Gupta—Indian business executive; Hanwah Engineering and Construction Corporation—Chinese corporation; Hanwah L&C Corporation—Chinese corporation; Lalit Suri (deceased)—Indian hotel entrepreneur; US Islamic World Conference; Niklas Zennstrom—Swedish entrepreneur.

$100K to 250K: Aker Kvaerner ASA—Norweigan corporation; Hamza B. Al Kholi—Saudi businessman; Alibaba.com Corporation—Chinese corporation; Credit Suisse—Swiss financial services corporation; India Today Group; Karlheinz Koegel—German businessman; Lata Krishnan—Indian entrepreneur; National Opera of Paris; The Monte dei Paschi di Siena—Italian bank; Poju Zabludowicz—Finnish businessman.

EXHIBIT 3

$1M to $5M: Citi Foundation; Entergy; Sterling Stamos Capital Management, LP; The Wal-Mart Foundation.

$500K to $1M: Bank of America Foundation; Hewlett Packard Company; ICAP Services North America; Pfizer Inc; Procter & Gamble; Sanyo North America Corporation; The Anheuser-Busch Foundation.

$250K to $500K: American International Group, Inc. (AIG); Energy Developments and Investments Corporation; Google; Microsoft Corporation; Orbitex Management Inc.; The Coca-Cola Company.

$100K to $250K: Charles Schwab & Co.; Citigroup Inc.; FedEx Services; Hyundai Motor America; Lehman Brothers Holdings Inc.; Merrill Lynch & Company Foundation, Inc.; Bay Harbour Management; Visa Inc.

$50K to $100K: General Motors Corporation.

EXHIBIT 4

[From The New York Times, Jan. 11, 2009]

BILL CLINTON'S DONORS

In the likely event that Senator Hillary Rodham Clinton is confirmed as secretary of state, the last thing she will need is a distracting ethics controversy.

That is why Mrs. Clinton's confirmation hearing, now scheduled to begin on Tuesday before the Senate Foreign Relations Committee, must cover wider terrain than pressing world issues. It should address the awkward intersection between Mrs. Clinton's new post and the charitable and business activities of her husband, former President Bill Clinton.

Last month, Mr. Clinton disclosed the names of more than 200,000 donors to his foundation. It was a positive step toward the transparency that Mr. Obama insisted on before selecting Mrs. Clinton. But it also reinforced concerns about potential conflicts of interest ahead.

The roster of donors to Mr. Clinton's presidential library and global foundation enterprises include million-dollar-plus contributions from governments in the Middle East, tycoons from India, Nigeria, Ukraine and Canada, and international figures with interests in the policies Mrs. Clinton will be helping to write and carry out.

The five-page accord signed by representatives of Mr. Clinton and Mr. Obama could use tightening. For example, the wording calls for disclosure of ''new contributors'' to Clinton Foundation programs. It does not necessarily require disclosing the size of their gifts or the dates they were made. Disclosure of Mr. Clinton's charitable fund-raising and relevant private fees should be done monthly, or at least quarterly, not just once a year.

The overarching principle should be prompt disclosure of the amount and source of all payments to any Clinton charity or to Mr. Clinton personally by any person or entity with a political or economic interest, real

or perceived, in State Department decisions. Ideally, the White House counsel's office would be assigned a larger role than envisioned in screening Mr. Clinton's speaking and consulting deals before any check is received.

Mr. Clinton has agreed to reduce his fundraising and administrative role in the Clinton Global Initiative. The international project will no longer accept contributions from foreign governments or hold big events outside the United States once Mrs. Clinton is installed. These are prudent moves. The committee must decide if they are sufficient, given Mr. Clinton's continuing ties.

During her confirmation hearing, Mrs. Clinton must make it emphatically clear that past and future supporters of her husband or his work will not get favored treatment by the State Department. Avoiding the appearance of favoritism will be as important as the fact.

We believe that Mrs. Clinton has the potential to be a superb secretary of state. We also value Mr. Clinton's work since leaving the White House to help advance the fight against AIDS, malaria, malnutrition and other global ills. He has agreed to greater transparency and more restrictions than any former president, going beyond what law requires. That does not alter the committee's duty to scour the plans for workability and loopholes.

Everyone should recognize that there is no perfect solution for Mrs. Clinton's particular spousal dilemma. And, realistically, no set of rules, however well-meaning or tightly drafted, can substitute for the exercise of sound judgment and proper restraint. But they can help.

[From the Washington Post, Jan. 9, 2009]

QUID PRO CLINTON?—POTENTIAL CONFLICTS OF INTEREST COULD HAUNT PRESIDENT-ELECT OBAMA

In a letter to the editor Tuesday, Bruce Lindsey, chairman and chief executive of the William J. Clinton Foundation, took us to task for an editorial last month suggesting that former president Bill Clinton suspend fundraising for his foundation upon the confirmation and during the tenure of his wife, Sen. Hillary Rodham Clinton (D–NY)), as secretary of state. Mr. Lindsey called our suggestion ''shortsighted and dangerous.'' But not to see the appearance of a conflict of interest is shortsighted and potentially dangerous for one person who has enough to worry about: President-elect Barack Obama.

The good works of Mr. Clinton or his foundation are not in question. His work to lessen or eliminate the suffering brought about by HIV/AIDS and to address the challenges presented by climate change is impressive. So is his ability to raise vast sums for his foundation to tackle these issues. The money comes from sources in the United States and abroad. What has always been worrisome is that such prodigious fundraising could set up the potential of someone looking to curry favor with Ms. Clinton by making a sizable donation to Mr. Clinton's organization. Even the appearance of a conflict could call into question the motives of both Clintons and the donor.

A prime example emerged this week as a result of Mr. Clinton disclosing his contributors as part of an agreement with Mr. Obama that smoothed Ms. Clinton's nomination. The New York Times reported Sunday that upstate New York developer Robert J. Congel gave $100,000 to Mr. Clinton's foundation in November 2004, one month after enactment of a law, first supported by Ms. Clinton in 2000, that gave Mr. Congel access to tax-exempt ''green bonds'' to build the Destiny USA shopping complex in Syracuse. Nine months later Ms. Clinton secured $5 million in funding for road construction at the complex. We hasten to point out that Ms. Clinton was joined by other members of the New York delegation in urging passage of both bills, including the state's senior senator, Charles E. Schumer (D).

While Mr. Clinton's fundraising has been an appearance of a conflict waiting to happen with his wife a senator, it will only get worse and more troublesome once Ms. Clinton is confirmed as secretary of state. Per the agreement with Mr. Obama, a list of who is bankrolling the foundation will be released once a year. Only new donations from foreign governments will be examined by government ethics officials. And there is no prior review of donations from foreign companies or individuals or those in the United States with interests overseas. Mr. Clinton's continued globetrotting while collecting checks along the way could embarrass the administration on multiple, sensitive and dangerous fronts.

[From the Los Angeles Times, Jan. 14, 2009]

THE CLINTON CONNECTIONS—THE FORMER PRESIDENT SHOULD KEEP HIS FOUNDATION AT ARM'S LENGTH WHILE HIS WIFE HOLDS A CABINET POST.

Hillary Rodham Clinton, whose confirmation as secretary of State is a foregone conclusion after a three-hour love-fest of a hearing before the Senate Foreign Relations Committee on Tuesday, will probably do a fine job in the post—as long as her husband can keep his wallet zipped.

Former President Clinton's charitable foundation has the potential to haunt both his wife and the Obama administration, and not just because it has a history of accepting donations from tyrants and corrupt businessmen. Foreign governments, including Saudi Arabia, Australia, the Dominican Republic and Kuwait, have given millions to the Clinton Foundation, which might complicate Hillary Clinton's dealings with those countries—and could lead to a perception, justified or not, that one way to influence U.S. policy is to slip a few bucks to the secretary of States husband's charity. Given the importance of perception in international relations, that's no small concern.

Bill Clinton has a troubling history of doing favors for his political donors, and although his charity's work is beyond reproach—it has contributed millions to fighting AIDS and climate change around the world—the foundation's connection to enterprises that personally enrich both Clintons is murky. Many of its donors also have paid hundreds of thousands of dollars in speaking fees to the former president. Then there are highly questionable donations, such as the $500,000 he was paid by a Japanese American business for a speech he never gave, and that he later donated to the foundation, as reported in Tuesday's Times by Andrew Zajac.

The Obama administration struck a deal with the foundation aimed at improving transparency and avoiding conflicts, but it doesn't go far enough. Though the names of future donors will be released, it will be on an annual basis, and foreign govemments will be subject to review by federal ethics officers only if they're new donors.

The best way out of this mess would be for Bill Clinton to divorce himself from all of his foundation's fundraising activities for as long as Hillary Clinton is secretary of State; he can consider it partial atonement to his long-suffering wife. If he won't, the foundation should at least reveal its donors in real time, as the contributions are received, and should follow a suggestion made Tuesday by Sen. Richard G. Lugar (R–Ind.) and forswear new foreign contributions. That won't end potential conflicts from U.S.-based donors with international interests, but it's a start.

Mr. CORNYN. I see there are other colleagues here who wish to speak. I yield the floor and reserve the remainder of our time.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I yield 5 minutes to the Senator from Florida and then, after that, if I may yield to the Senator from Arizona and the Senator from Maine for comments.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KERRY. I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, there is an example of another one of our Senators in this body who is now assuming a very high and important position in the Government. The President and the Vice President have sprung forth from this Chamber. How honored we are, it having just been announced that Senator SALAZAR has resigned since he has been confirmed as Secretary of the Interior.

The issue before us is Senator CLINTON. The Senator from Texas has laid out his concerns and has said he finds the arrangement unusual. I appreciate his remarks. He has noted the good works of the Clinton Foundation. This Senator would think this arrangement is unusually good—for reasons. What has the Clinton Foundation done? It is not as if the spouse of a high-level new Secretary of State is in a foundation or a corporation of some nefarious kind of activity. Indeed, this is the kind of activity, as noted by the Senator from Texas, that is extraordinarily good.

For example, the Clinton Foundation has helped millions of people around the world. Mr. President, 1.4 million people living with HIV/AIDS now have access to lifesaving drugs. Because of this foundation's efforts and the former President's efforts to lower the cost of those antiretroviral drugs, 71 countries have access to these lifesaving medicines, which represents more than 92 percent of the people living on this planet with HIV.

I will give another example: 425,000 Rwandans are served by four health facilities that have been strengthened by the Clinton Foundation.

Because of these efforts, they have increased countries' human resource capacity to deliver care and treatment to their people, and it has helped prevent the transmission of disease from mothers to their children.

Take for example the Clinton Climate Initiative. It is working with 40 of the world's largest cities, both in the United States and around the globe, to reduce greenhouse gas emissions and combat global warming—something in which the next speaker, the Senator from Arizona, has been so intimately involved. These Clinton programs are

fostering sustainable development in Africa and Latin America.

As Americans, we can clearly applaud the efforts of the former President and his exceptional humanitarian work he has accomplished over the years that he has been a private citizen and that he has worked on through the Clinton Foundation.

We were reminded yesterday, with the inaugural celebration and the inaugural activities, of the importance of getting the national security team in place and getting it in place fast. The President laid out the imminent crises he is having to face. We need a Secretary of State in place. Senator CLINTON's integrity and her record of service are clear. We should not delay any longer, and we ought to confirm her quickly to be our next Secretary of State.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KERRY. Mr. President, before I yield to the Senator from Arizona, Mr. LUGAR, who would normally be here as the ranking member, the distinguished ranking member, who is one of our most respected voices on foreign policy, is not feeling well, so he is not here right now. But he has asked me to personally make sure his comments are printed in the RECORD in full. I wish to share just 30 seconds here. He says:

> In my judgment she is an extremely well qualified nominee who is deserving of confirmation. Her presence at the helm of the State Department could open unique opportunities for U.S. diplomacy and could bolster efforts to improve foreign attitudes toward the United States.

He goes on to talk about her relationship with world leaders at the time and her understanding of U.S. foreign policy.

• Mr. LUGAR. Mr. President, I wish to comment on the nomination of Senator HILLARY CLINTON to be Secretary of State. In my judgment she is an extremely well qualified nominee who is deserving of confirmation. Her presence at the helm of the State Department could open unique opportunities for U.S. diplomacy and could bolster efforts to improve foreign attitudes toward the United States. She has longstanding relationships with many world leaders that could be put to great use in the service of our country. Her time in the Senate has given her a deep understanding of how U.S. foreign policy can be enriched by establishing a closer relationship between the executive and legislative branches. She is fully prepared to engage the world on a myriad of issues that urgently require attention.

Given Senator CLINTON's remarkable qualifications, President Obama's strong confidence in her, and pressing global issues, which I do not need to enumerate, I favored having our friend confirmed yesterday by unanimous consent. Relevant points of concern about conflicts of interest arising from the fundraising of the Clinton Foundation were made during her confirmation hearing. In my judgment, only Senator CLINTON and President Clinton, themselves, have the ability to avoid these problems. At the hearing, I strongly urged Senator CLINTON to ensure that no conflict of interest problems arise. She stated that she would do so, and I am confident that she understands the importance of this commitment.

Nevertheless, I recognize that some colleagues who do not serve on the Foreign Relations Committee shared similar concerns about the potential for conflicts of interest. They wanted an opportunity to discuss these concerns, and the Senate gives them that right. The Foreign Relations Committee and the Senate have oversight responsibility over anything that might add or detract from U.S. foreign policy. The Obama Transition and Senator CLINTON implicitly recognized this Senate responsibility when they forwarded their memorandum of understanding addressing Clinton Foundation activities to the Foreign Relations Committee for its review.

I understand that the Clinton's are proud of the Clinton Foundation, and I applaud the work it has done. I also understand that the foundation is devoted to many ongoing projects and beneficiaries. President Clinton has given a great deal of time and energy to this enterprise, and he and other leaders of the foundation are reluctant to accept changes or restrictions that they perceive as potentially inhibiting its momentum.

But this understandable concern for the work of the foundation does not trump the vital business of U.S. foreign policy that will be directed by Senator CLINTON. The work of the Clinton Foundation is a unique complication for Senator CLINTON's service that will have to be managed with great care and transparency.

The point I attempted to make during the hearing and in other communications leading up to the hearing was that the Clinton Foundation exists as a temptation for any foreign entity or government that believes it could curry favor through a donation. As such, it sets up potential perception problems with any action taken by the Secretary of State in relation to foreign givers or their countries. There need be no wrongdoing on the part of anyone to generate controversy or misperceptions. Every new foreign donation that is accepted by the foundation comes with the risk that it will be connected in the global media to a proximate State Department policy or decision. Foreign perceptions are incredibly important to U.S. foreign policy, and mistaken impressions or suspicions can deeply affect the actions of foreign governments toward the United States. Moreover, we do not want our own Government's deliberations distracted by avoidable controversies played out in the media. The bottom line is that even well intentioned foreign donations carry risks for U.S. foreign policy.

At the hearing, I recommended that the only certain way to eliminate this risk would be for the Clinton Foundation to forswear new foreign contributions and rely on its large base of U.S. donors during Senator CLINTON's time as Secretary of State.

Alternatively, I suggested that the Clinton Foundation could enhance public confidence and minimize risks of conflict of interest with a few additional transparency commitments, none of which would threaten the operations of the Clinton Foundation. Inconveniences for the foundation or a reduction in some types of donations that have been accepted in the past are small prices to pay when balanced against the serious business of U.S. foreign policy that affects the security of every American. If there is the slightest doubt about the appearance that a donation might create, the foundation should not take it. If there are issues about how a donation should be disclosed, the issues should be resolved by disclosing the donation sooner and with as much specificity as possible.

In particular, I suggested three additional commitments that the Clinton Foundation could make in the interest of transparency. First, all donations of $50,000 or more in a given year from any source should be disclosed immediately upon receipt, rather than waiting up to 12 months to list them in the annual disclosure. Second, pledges from foreign entities to donate more than $50,000 in the future should be disclosed both at the time the pledge is made and when the donation eventually occurs. Third, gifts of $50,000 or more from any foreign source, including individuals, should be submitted to the State Department ethics official for the same ethics review that will be applied to donations from foreign governments. This is especially important because the lines between foreign governments and foreign individuals are often blurred. For example, conflicts of interest could arise from a donation from a Gazprom executive or a member of the Saudi Royal family as easily as from the governments of Russia and Saudi Arabia.

Since the inception of the Clinton Foundation in 1997, 499 donors have given $50,000 or more, an average of less than one per week. So the administrative burden of these additional transparency commitments would be minimal. But adopting them would yield substantial transparency benefits with regard to the donations that are most likely to raise issues.

In answers to questions for the record, Senator CLINTON offered no reasons why these additional disclosure items would not be beneficial. Instead, answers stated that the MOU went beyond what other spouses of cabinet officials have done to limit their Foundations and that there is no law or ethics regulations requiring further steps. These statements are true, but beside the point.

First, the issues surrounding the fundraising of the Clinton Foundation and its impact on Senator CLINTON's service as Secretary of State are not primarily legal. The imperative here is protecting U.S. foreign policy, not satisfying a legal or ethical requirement. If a transparency measure would help guard against donations that could jeopardize Senator CLINTON's participation in some matters, prejudice foreign opinion against U.S. policies, or generate public controversies, it should be embraced. Each proposal should be judged on its own merits, rather than rejecting suggestions on the basis that enough has been done. Is it, or is it not a good idea to subject all foreign donations greater than $50,000 to the State Department ethics review process, for example.

Second, following precedents established by other foundations is unsatisfying given that this case far exceeds previous cases in magnitude and risk. Senator CLINTON will be the Secretary of State—the top foreign policy official of the United States after the President. President Clinton is one of the most recognizable personages and prolific fundraisers in the world. As an ex-President, he is regarded as having personal influence with members of our Government and other governments. Moreover, we have already seen in the December disclosure of past donors that the Clinton Foundation has received tens of millions of dollars from foreign governments, government-controlled entities, foreign businesses and others who may have interests affected by State Department policy. Other cases lack this extraordinary confluence of a Secretary of State with responsibility for foreign policy, a globally recognized ex-President spouse who has raised money in every corner of the world, and a foundation that has implemented an aggressive foreign fundraising strategy.

Furthermore, we should be clear that the MOU is a negotiated, political agreement that involved both the Obama Transition and the Clinton Foundation exerting leverage and making compromises. There is nothing wrong with this. But we should not confuse it with a document produced by ethics experts seeking to construct the most effective arrangement for avoiding conflicts of interest. These negotiations produced a useful, good-faith agreement, but not one beyond improvement. It represents a beginning, not an end. Its success will require that all parties make the integrity of U.S. foreign policy their first principle of implementation.

I am hopeful that Senator CLINTON and the Clinton Foundation will take time to reexamine their position on these items. If they do, I believe they will see that they could reap substantial transparency and public confidence benefits by going beyond what the MOU requires them to do. More importantly, all involved should recognize that protecting the foreign policy of the United States from conflict of interest appearances far outweighs the relatively minimal impact additional transparency measures might have on the operations of the Clinton Foundation.●

The ACTING PRESIDENT pro tempore. The senior Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I thank my colleague, the distinguished chairman of the Foreign Relations Committee. I will speak briefly. I know the Senator from Maine would like to say a few words.

I really believe we should move forward with the nomination of our former colleague—I guess our still present colleague—Senator HILLARY CLINTON, to take up the urgent and important duties she holds, which are to meet some very serious challenges. We should not delay. I do not have to remind you, Mr. President, or anyone else in this body that we are in two wars. There is a very fragile cease-fire in the Gaza now between the Israelis and Hamas. The situation in North Korea seems to have deteriorated again with the paradoxical and unpredictable behavior of the North Korean dictator and Government. I think we need to immediately, or as soon as possible this morning, by voice vote, move forward with the nomination and confirmation of the Senator from New York to be the next Secretary of State.

I remind all my colleagues, we had an election and we also had a remarkable and historic time yesterday as this Nation has come together in a way it has not for some time. I, like all good politicians, pay attention to the President's approval ratings. They are very high. But more important, I think the message the American people are sending us now is they want us to work together and get to work. I think we ought to let Senator CLINTON—who is obviously qualified and obviously will serve—get to work immediately.

I ask unanimous consent that at the completion of the remarks any of my colleagues might have, we vitiate the vote at 4:30 and proceed by voice vote to a confirmation of Senator HILLARY CLINTON to be the next Secretary of State for the United States of America.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. KERRY. Mr. President, reserving the right to object, I am in a very strange position here of wanting to protect the prerogatives of the minority, which is an important part of how we work here but at the same time completely supporting the Senator from Arizona.

I will balance this out for a moment.

Mr. MCCAIN. Will the Senator yield? While the unanimous consent request is being considered, perhaps my other colleagues could speak?

Mr. KERRY. If we could ask for forbearance for the unanimous consent, perhaps it would be more appropriate if Senator CORNYN or someone from the other side of the aisle were willing to lodge that objection because I am personally very uncomfortable doing so.

Mr. MCCAIN. Let me say to my colleague, I just had a conversation with Senator CORNYN. He does not object to that.

Mr. KERRY. I was going to ask for the same thing at the end of the comments, but I wanted to first see if he was prepared to clear it. Mr. President, could I ask if the Senator will withhold his unanimous consent request for a moment and if the Senator from Maine could be permitted to speak? We will see if we can jump through this hoop.

Mr. MCCAIN. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, I rise today in strong support of the confirmation of Senator HILLARY CLINTON to be our next Secretary of State. Last Thursday, the Senate Foreign Relations Committee overwhelmingly approved Senator CLINTON to become our Nation's top diplomat. I rise today to echo the committee's approval and to urge my colleagues to vote in favor of her confirmation.

Senator CLINTON's many years of public service make her an outstanding nominee for Secretary of State. In her confirmation hearing, the ranking member of the Senate Foreign Relations Committee, Senator LUGAR, spoke of Senator CLINTON as ''the epitome of a big leaguer,'' who has remarkable qualifications for the post of Secretary of State. The committee chairman, Senator KERRY, shared his faith in her qualifications and abilities, having seen her ''diplomatic acumen up close.'' He also said that Senator CLINTON did an outstanding job in her testimony before the committee, as those of us who observed the hearings can affirm.

Senator CLINTON is the ''first'' First Lady of the United States elected to public office. As First Lady, she traveled the world for 8 years, visiting more than 80 countries. In doing so, she took an active role in helping to carry out our Nation's foreign policy and was an advocate for our Nation. She not only met with foreign leaders at the highest levels of government, but she made it a hallmark of her trips to visit villages, clinics, and other remote areas, learning firsthand the importance of a foreign policy founded at the most basic levels of humanity.

During my service in the Senate, I have had the opportunity to work very closely with Senator CLINTON on a number of issues, particularly since we both serve as fellow members of the Armed Services Committee. We have worked together tirelessly to improve the detection, assessment, and treatment of traumatic brain injury among wounded servicemembers.

We also cochaired the Alzheimer's Task Force and have worked together to increase funding for research into this devastating disease.

Senator CLINTON and I have had the opportunity to travel with Senator

MCCAIN to Iraq and Afghanistan. I witnessed her world knowledge and authoritative approach to foreign policy. I have seen her tireless work ethic and intelligence up close, as well as her ability to engage with colleagues across the aisle to get the job done and to meet the needs of the American people.

I will always remember one meeting in particular that we had together in Afghanistan. Senator CLINTON and I broke off from the group to go meet with a group of Afghan women from all walks of life. I was so impressed with Senator CLINTON's engagement with these women, with her genuine interest and the details of their lives, whether it was their access to health care or the education for their children. She was very engaged in the conversations despite the fact that we had traveled all night and were extremely tired.

Her caring, her compassion came across in her conversations with these women. I know these qualities—her caring, her compassion, her commitment, her extraordinary preparation and intelligence—will serve her well and will serve our country well as Secretary of State.

Today our Nation faces many pressing challenges abroad. The challenges are many, not only in Afghanistan and Iraq but security in the Middle East and the safety of the people of Israel, and the dangerous situation in Pakistan. I am encouraged by Senator CLINTON's commitment to a foreign policy and a national security strategy that is built on bipartisan consensus and executed with nonpartisan commitment and confidence. She has promised a foreign policy based on principles and pragmatism, not rigid ideology; facts and evidence, not emotion or prejudice.

I urge my colleagues to join me in voting in favor of her confirmation, and I echo the suggestion of Senator MCCAIN that we get on with this as she is an extraordinary nominee and deserves our support.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the Senator from Arizona and the Senator from Maine for their important comments, with which I agree. I understand the Senate is under a prior order to actually recess.

I ask unanimous consent that we allow one more speaker, the Senator from South Carolina, at which time the Senate would recess for the caucus lunches and return, I believe, at 2:15.

Mr. MCCAIN. Mr. President, would the Senator yield for a question?

Mr. KERRY. I would be happy to yield for a question.

Mr. MCCAIN. Do you think it is possible, if we can get it cleared, to perhaps have this unanimous consent vote before breaking for lunch?

Mr. KERRY. I think it is possible if the Senator can persuade three members of his caucus that they do not need to speak on this issue. If that can happen in the next 5 minutes, I believe it is possible for us to move forward.

I think the Senator's cloakroom has those names and, obviously, to protect their right to be able to speak, we need to check with them. But that is the only thing standing between our ability to confirm the nomination before the recess.

Mr. MCCAIN. I will follow up with another question for my colleague; that is, if we are unable to do it in the next few minutes, perhaps we could, for sure, during the lunch break, be ready to go at the conclusion of the lunch break.

Mr. KERRY. I think that would be terrific. Again, if all three Senators would raise this issue at the caucus, at their caucus luncheon, we ought to be able to come back and expedite the confirmation. We are prepared to vote now. We were prepared to vote yesterday. I might add, Senator LUGAR was encouraging our moving by unanimous consent yesterday. So we are a day overdue, and we are ready to proceed.

With that, I would yield such time as the Senator from South Carolina might consume.

The ACTING PRESIDENT pro tempore. Without objection, the request is agreed to.

The Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, I thank the committee chairman. I want to recognize the work the committee did. I thought the hearings were very important for the country. They were well done. They were timely held. Any concerns about conflicts of interest, there will be a process in the future, if that happens to be a concern, to go through the committee. I have a lot of confidence in the committee to provide oversight.

But having said that, I have a lot of confidence in Senator CLINTON to be a good Secretary of State. We have a new President. We had a tough campaign. The campaign is over, but the wars are not. The challenges facing the country are enormous, domestically and internationally.

I think this new President deserves to have his team in place. I could not think of a better choice for Secretary of State, and he has many to choose from. So he has made his choice; the committee has acted. I do hope the Senate can act expeditiously after lunch. Everyone deserves to have their say. I respect the chairman preserving the ability of Senators to have their say.

I intend to vote for Senator CLINTON. I have had the pleasure of serving with her, traveling throughout the world. I know she understands the world; people understand her. There is no place in the world that she cannot go that people do not have, I think, a very favorable impression of her. She will help execute a foreign policy that is going to be difficult. I want it to be bipartisan where it can.

If we can get this done today, it will be good for the country. She will do an outstanding job. I have a lot of confidence in the committee to make sure that any potential conflict of interests are fairly dealt with.

With that, I hope this afternoon we can do it by voice vote. But let's get it done. This country needs a Secretary of State right now, this minute, engaging the world because we have young men and women throughout the world in harm's way, and they need an advocate on the world stage.

There is no better advocate I can think of than Senator HILLARY CLINTON. She can do an outstanding job. I appreciate the chairman allowing me to speak on her behalf, and I enthusiastically will support her.

COMMUNICATION FROM SENATOR KEN SALAZAR

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the following communication, which the clerk will report.

The assistant legislative clerk read as follows:

U.S. SENATE,
Washington, DC, January 20, 2009.

Hon. JOE BIDEN,
Vice President of the United States, President of the Senate, U.S. Capitol, Washington, DC.

DEAR VICE PRESIDENT BIDEN: I hereby resign as United States Senator for the State of Colorado immediately, in order to undertake the responsibilities of United States Secretary of the Interior. Enclosed is a letter to the Governor of Colorado concerning the same.

Sincerely,

KEN SALAZAR,
U.S. Senator.

RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:52 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARDIN.)

EXECUTIVE SESSION

NOMINATION OF HILLARY RODHAM CLINTON TO BE SECRETARY OF STATE—Continued

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. May I ask how much time remains with respect to the Clinton nomination?

The PRESIDING OFFICER. There is 57 minutes on the majority and 76 minutes on the Republican side.

Mr. KERRY. It is my understanding the Senator from South Carolina wishes to speak.

We have had some discussion with a few of our colleagues on the other side of the aisle. I understand there are two or three folks who want to speak, at which point I am prepared to move forward immediately to a vote on this nomination. That is our current plan, unless somebody else had a reason they wanted to speak.

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

Mr. DEMINT. Mr. President, the Senator is correct. I believe there are a few Republicans who wish to make comments, and I believe everyone is agreeable to move directly to the vote.

Senator CLINTON is uniquely and highly qualified for the job of Secretary of State. She has been very open and forthright in her answers to questions at the committee hearings and to my questions asked in private conversations and in the dozens of questions I submitted to her for written response. I believe she honestly wants what is best for the Nation. I will do my best to support her in that endeavor.

As a member of the Senate Foreign Relations Committee, I voted to send her nomination to the full Senate because I believe she has earned the right to an up-or-down vote. Senator CLINTON will be confirmed today. There is not much doubt about that. She will be sworn in and, when she is, she will have my prayers for her success. At the committee level, I said she not only had the potential to be a good Secretary of State but a great Secretary of State. But her success will be determined by more than just her considerable intellect and experience. It will also be determined by the policies she pursues. This is one area that concerns me.

Based on her testimony, her answers to questions and her public statements, I believe she will take our foreign policy in a direction that erodes our national independence and surrenders sovereignty to international powers. I am deeply concerned that she will take aim at decades-old policies intended to protect the sanctity of life. These policies ensure that our foreign assistance dollars do not fund abortion and are not used to lobby foreign nations to repeal laws that protect unborn children. The United States is certainly an economic, political, and military superpower. But we have also strived to be more, to be a moral superpower. Our unwavering adherence to principles of freedom and human dignity are what truly set us apart. These pro-life regulations contribute to that moral leadership.

Some will argue that we should expect these policies from Senator CLINTON, given that President Obama has very strong views supporting unrestricted abortion. I understand that. To some degree, I believe he should be allowed to surround himself with individuals who share his views, even when they are misguided. Within reason, I may even support a nominee who has certain views I disagree with. I do not plan to slow up this nomination, but I find it difficult to support a nominee who I know will pursue policies so contrary to American sovereignty and the dignity of the human person. I will continue to try to persuade Secretary of State CLINTON and President Obama to modify their positions. That obviously will not happen before the vote today.

One matter I had hoped would be resolved before the vote today is the Clinton Foundation and its initiatives. I urged Senator CLINTON at the hearing, as others did, to do whatever she could to eliminate any doubt about the foundation's fundraising and a potential conflict of interest with foreign nations. I believe this problem can be very easily fixed, if the foundation agrees to refuse all foreign donations and fully discloses all contributions on line immediately, as long as Senator CLINTON is Secretary of State. To date, Senator CLINTON has not agreed.

Let's be clear. Senator CLINTON does not have to provide this disclosure to be confirmed. She already has the votes. As far as I know, the law does not require this disclosure. In fairness, the foundation plans to provide disclosure far beyond what is required legally, but we are in new waters today, the first time the spouse of a former President is stepping into such an important role. In a world where bribes, kickbacks, and pay-to-play are too often the normal way of doing business, the United States must stand apart. As President Obama said yesterday, those of us who manage the public's dollar will be held to account. We must do our business in the light of day, because only then can we restore the vital trust between a people and their government. That is why I believe additional steps should be taken to eliminate this potential conflict. This will help Senator CLINTON be a Secretary of State who is above reproach. It is essential that our Secretary be seen as treating nations fairly, and I have every belief that Senator CLINTON can be a fair Secretary of State. But it is not enough that we treat other nations fairly. They must know that they are being treated fairly. If there is suspicion that certain nations or international players are gaining advantage by virtue of contributions to the Clinton Foundation or its initiatives, that will compromise our new Secretary's effectiveness. This is why I believe only full and immediate public disclosure and refusal of all foreign donations is the only solution.

The memorandum of understanding signed by the foundation leaves a lot of discretion to Senator CLINTON. During her confirmation hearings, Senator LUGAR presented a request for more acceptable disclosures, and Senator KERRY, as chairman, supported these recommendations. Unfortunately, Senator CLINTON has not agreed to follow even these modest recommendations. For these reasons, I will be voting against the nomination today. But I will do so with nothing but sincere hope and goodwill toward our new Secretary of State and prayer for her success, as she takes the helm of the State Department.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the Senator for his comments and for the concerns he has expressed which I think I have addressed earlier in my opening comments and which Senator LUGAR also has addressed.

It is my understanding that there was one other Senator who wished to speak.

I suggest the absence of a quorum, with the understanding, as before, that time will be charged against both sides equally.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KERRY. Mr. President, Senator VITTER wanted to speak. I know he was scheduled for later, but it would be great if he was able to get down here. We have no other Members on our side who want to speak, so we could proceed to an immediate vote and hopefully do it by consent which would expedite matters here and make it simpler for colleagues. I hope our colleagues on the other side of the aisle will cooperate with us.

In the meantime, I yield such time as the Senator from New York may consume.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I thank Senator KERRY for his leadership on this issue. We look forward to continued leadership on many different issues from Senator KERRY.

I rise in favor of HILLARY CLINTON's nomination to be Secretary of State. It has been said: HILLARY CLINTON is the ideal candidate, particularly during these troubled times, for Secretary of State. I thank my colleagues on both sides of the aisle for the cooperation we are getting so that we can move this resolution quickly. These are difficult times. Yesterday our country entered a new era in its relationship with the rest of the world. President Obama laid out a daunting task to return the United States to its historic role as a moral leader of the international community and HILLARY CLINTON is exactly the right person for the job. She has studied the issues of foreign policy over the years. She has outstanding relationships with the leaders of the world. She also has that internal gyroscope that will lead her to balance the very legitimate security needs of the United States along with the need to be a moral leader. That is not easy to do. But HILLARY CLINTON has shown her ability to synthesize different parts of a difficult problem in a way that produces real results.

The country and the world need a new U.S. foreign policy, one championed by a strong and consultative leader. HILLARY CLINTON is exactly the

right person for the job. Her abilities as a prudent and effective policymaker have been proven in the dual crucibles of national scrutiny and international pressure. And through all of this time, she has demonstrated a steadiness of character, a soundness of judgment and strength that will make her an exceptional leader.

We can't wait too long. I would have hoped that we could have unanimously supported this nomination and moved it yesterday. But colleagues have the right to delay only for a short period of time. I am glad that delay is about to end. As a country, as a world, we need HILLARY RODHAM CLINTON as Secretary of State, given her intelligence, her strength, her compass, and her ability to get things done.

I urge my colleagues to move quickly. I don't want to delay this further. I remind them of her vast international experience, negotiating aid packages in Asia, pushing democratic reforms in the Soviet Bloc, promoting peace plans in Northern Ireland and Serbia. But HILLARY CLINTON will combine a fresh look at our foreign policy with lots of experience and the know-how to get it done.

I can tell my colleagues from serving with HILLARY for 8 years as Senator—and I will regret that our partnership as Senator is ending—there is no one better to do this job. We should move the nomination quickly. We should then all get behind Senator CLINTON and President Obama, and there will be a great foreign policy team.

In all of her many roles as a public servant, HILLARY has always shown the insight to see to the heart of a problem, the courage to tackle it, and the talent to solve it.

In her years as First Lady, Senator CLINTON was one of the country's most important and best-loved ambassadors.

She traveled to over 80 countries, meeting with heads of state from the Czech Republic to Nepal.

She served as a representative to the United Nations, addressing forums around the world.

She has negotiated aid packages in Asia, pushed democratic reforms in the former Soviet Bloc, and promoted peace plans in Northern Ireland and Serbia.

But HILLARY didn't just meet with world leaders. She has met with the private citizens around the world whose lives are shaped by international decisions.

She has met survivors of the Rwandan genocide, with advocates for social justice and women's rights in Pakistan, with the families of children kidnapped in Uganda.

And after serving her country 8 years as First Lady, when most people retire, HILLARY stepped up and has served as a vital and powerful advocate on behalf of the people of New York.

Going from the White House to White Plains, HILLARY has continued to show just as much acumen in her dealings with national and global leaders, as she shows empathy and interest in the needs of private individuals around New York.

From her time 30 years ago with the Children's Defense Fund, to her commitment while in the White House to improving women's rights at home and abroad, to her indefatigable efforts in the Senate to fight poverty and disease in the developing world, HILLARY has dedicated her career to improving the lives of the country's and the world's least fortunate people.

I cannot think of anyone who, as Secretary of State, could do as much as good for the people of the world, or as much to restore the world's faith in our leadership.

Senator CLINTON has important work waiting for her in Foggy Bottom, and the country and the world cannot afford to wait for her leadership any longer.

I am sad to see HILLARY leave the Senate, but I am confident that she will be a brilliant Secretary of State.

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. KERRY. 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. KERRY. Mr. President, I yield 3 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Thank you, Mr. President.

Mr. President, I rise today to speak on the nomination of Senator HILLARY RODHAM CLINTON to be Secretary of State. I would like to make a few brief points why I think her nomination is important and why I think she will do an outstanding job in this very important position. I want to begin, though, by saying something about President Clinton's charitable efforts and what they have meant to our State and to our region and what I think they have meant to the world at large.

We have seen in our own lifetime many Presidents come and go from the Oval Office. Many of them leave and you do not hear much from them. Some of them spend their time in very worthy causes. But, to my mind, no past President has taken on such an ambitious agenda as President Bill Clinton to help ease the suffering and pain in this world. He could have spent his time doing many things, but he has challenged himself and his contacts around the world—businessmen, philanthropists, women engaged in social organizational work around the world—to make this a better community. He has done it masterfully and with the strength and networking capabilities that perhaps only a President of this Nation has.

In the State of Louisiana, which I represent, we have seen firsthand the benefit of that work, as he has raised private dollars, foundation dollars to come to the aid of Katrina and Rita survivors: $130 million in funding to the gulf coast region, which was devastated by not two storms but actually four counting Ike and Gustav; and not just for Louisiana and Mississippi but for the State of Texas, where JOHN CORNYN hails from, which has been particularly helped by the efforts not just of the Clinton Foundation but the Clinton-Bush foundation or the Bush-Clinton foundation that raised $130 million for tremendously helpful causes.

Just a few notes: Mr. President, $30 million was awarded to 38 higher education institutions to keep those doors open, when homes were destroyed, jobs were lost, and families were scattered to States all over America; $40 million went to nonprofit groups working on reconstruction efforts; $25 million was awarded to rebuild over 1,000 houses; and $35 million was given to general nonprofits.

As of January 16, 2009, another one of President Clinton's funds—the Bush-Clinton Gulf Coast Fund—has raised over $2 million for additional help to towns and neighborhoods.

In the aftermath of Hurricane Ike—the fourth of the storms that have struck our coast in these 3 years—the Clinton Climate Initiative helped to catalyze a cooperative effort between the public and private sector to transport 4.5 million gross cubic yards of green waste to 9 sites in order for it to be composted as opposed to dumped into landfills.

The Clinton Foundation, via the Clinton Global Initiative, has received commitments valued at over $103 million to work on climate protection initiatives and health technology initiatives in the State of Texas, as well as to enhance the quality of life of Texas-Mexico border residents.

As a Senator who represents the storm survivors of Louisiana, I am incredibly grateful for President Clinton's hard work for our communities.

Not only has Senator HILLARY RODHAM CLINTON herself been one of the first Senators on the ground to the gulf coast, sharing her expertise, her knowledge, and her passion for recovery, but President Clinton himself.

Mr. President, I know I have only been given 3 minutes. I ask unanimous consent for an additional 1 minute because I would like to add, I say to Senator KERRY, if I could, that I hear so many people from the other side coming down and expressing their philosophy that they are just appalled that Democrats sometimes rely on Government to do it all.

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

Ms. LANDRIEU. Well, here is an example of a former President who is not relying on Government to do it all, who realizes the combined treasuries of all the governments in the world cannot stop, perhaps, the AIDS crisis or lift women out of poverty or educate

girls who have not been educated in centuries. So he has taken it upon himself to raise private dollars and foundations. Yet the same group who complains that Government cannot do it all—when somebody tries to leverage the strength of the private sector, they have to clobber him anyway. I think part of it is not so much the words they say, but perhaps this gives them an ability to do some fundraising they may have to do for the coming elections, which is really very disturbing based on the passionate comments of President Obama yesterday about how he would like to get past this partisan era we have been in.

Just a word about Senator CLINTON herself. Not only on the international front is she an expert, and our President needs a very smooth transition on the international front given the two wars we are facing, the crisis in the Mideast, and the economic crisis at home, but I want to spend my last minute saying how personally proud I am of the work she has done in this country and abroad helping women and children, particularly orphans, particularly children who find themselves, because of war or famine or disease or other terrible causes, separated from their families and in this country left for years in limbo in foster care or in a foster care system that is broken and is still yet to be fixed. Senator CLINTON herself has been a champion for these children, both foster care children and orphans around the world. I think as the Secretary of State, although she is going to be busy with many great issues of the world, her heart is big enough to find a space and to keep a space for orphans and other children. As far as I am concerned, they may be an afterthought to many big policy leaders today, but I would like to paraphrase a quote that says: Children may be an afterthought today, but they are 100 percent of our future, and paying a little attention to them will help this world keep a steady course.

As First Lady, Senator CLINTON led numerous efforts to increase awareness about and support for youth aging out of foster care, and to increase the number of children who are adopted out of foster care. She partnered with the late John Chaffee and JAY ROCKEFELLER to develop and pass the Adoption and Safe Families Act in 1997. This law is credited for fundamentally shifting the U.S. foster care system away from the archaic notions that trapped children in foster care for years to child-focused policies that resulted in children finding safe, loving, and permanent homes. After the passage of that legislation, foster adoptions increased 64 percent nationwide—from 31,030 the year the law passed to 51,000 last year.

As a Senator she has continued to push for legislation that benefits children in foster care. Under her leadership, the 110th Congress took up and passed legislation that provides Federal support for family members who take on the responsibility of caring for children who would otherwise continue to live in foster care. She worked tirelessly to enhance efforts to incentivize States to continue their success in finding families for older children, children with special needs, and large sibling groups.

I have no doubt that she will carry these passions with her to her new assignment as Secretary of State and that the orphans of the world will be better for it.

President Obama took the oath of office with the U.S. fighting two wars, a simmering crisis in the Middle East and the need for a seamless transition to address the threats and challenges to the United States.

He needs his national security team confirmed and ready to work immediately.

The outgoing Bush administration understood the importance of a smooth national security transition and worked closely with the Obama administration towards that goal. Republicans in the Senate should do no less.

Yesterday, President Obama spoke eloquently about—and the American people responded so vigorously to—the need to set aside partisan posturing in these challenging times and come together to advance our collective interests. It is a shame that the President's call is being ignored at this critical time.

Any delay for partisan political purposes denies the President of the team that he needs to preserve and protect our national security.

I look forward to Senator CLINTON becoming our new Secretary of State.

Mr. President, I ask unanimous consent that an article from Politico dated January 15, 2009, about President Clinton's charity work helping Senator VITTER's home State—our State of Louisiana that we represent—be printed in the RECORD.

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

[From Politico, Jan. 15, 2009]

BILL'S CHARITY WORK HELPED VITTER'S STATE

(BY GLENN THRUSH)

There's a small, but biting irony in David Vitter's solo ''no'' vote against Hillary, which was based on conflicts-of-interest concerns about Bill Clinton's foundation.

It just so happens that the ex-president's charitable efforts have been more focused on Vitter's home state of Louisiana than just about any other place in America, with $130.6 million in funding flowing to the Gulf region through the Bush-Clinton Katrina Fund, according to records.

A partial breakdown: About $30 million was awarded to 38 higher education institutions; $40 million went to non-profits working on reconstruction in Alabama, Louisiana and Mississippi; $25 million was awarded to 1,151 houses of worship and organizations assisting the faith community; and $35.6 million was given to 42 other non-profits for various services.

Some noteworthy BCKF Louisiana grants: $550,000 to the storm-damaged Delgado Community College in New Orleans and $1.89 million to Xavier University, also in NOLA.

Ms. LANDRIEU. Mr. President, I thank my colleague from Massachusetts for giving me the opportunity to speak in this series of speakers.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I thank the Senator from Louisiana for her personal and important observations. I know they will be much appreciated by her colleague and our friend, Senator CLINTON.

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

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

The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, could I ask, how much time is there still divided?

The PRESIDING OFFICER. The majority has 39 minutes, the Republicans have 64 minutes.

Mr. KERRY. Mr. President, I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, it is such a pleasure to be here, and I want to say to my chairman, Senator KERRY, how much I wish him the best in his new position.

I am a very proud member of the Foreign Relations Committee, and I want to talk a little bit about HILLARY CLINTON and her qualifications to be Secretary of State and, more than that, our need to see her confirmed as swiftly as possible this afternoon.

Many of my constituents are visiting for the great inaugural celebration we witnessed yesterday. They played a role in it. Many of them have talked to me and asked: Well, why hasn't HILLARY CLINTON been confirmed already? Why has there been any delay? She is obviously so well qualified.

I answered: Well, several of my colleagues on the other side had some issues with disclosure of Clinton Foundation donations. And I believe we will deal with that.

I think it is important to point out that President Clinton has agreed to disclose so much regarding his foundation. Other Presidents do not disclose anything. I think if there is any problem, we will have transparency and we will know.

What my constituents are saying to me is this: Look, we need a strong and respected Secretary of State who is knowledgeable on day one. They basically say there are two reasons for that, and I agree with them. The first reason is, there are so many hot spots in the world and so many complicated issues out there for the next Secretary

of State. HILLARY CLINTON—having run for President, having been a United States Senator, having served on the Armed Services Committee—is supremely ready for these challenges. Whether it is winding down the war in Iraq, which our President says he will do responsibly and soon; whether it is making sure we don't lose Afghanistan to the Taliban and set that nation back; whether it is the terrible crisis between Israel and the Palestinians; whether it is turmoil in Africa, genocide in Darfur, the war on terror in general, or the need to win over the hearts and minds of people around the globe, all of these things are out there for our new President, President Obama, to address. He needs someone to help him shoulder that burden. He is going to count on HILLARY CLINTON to do that. He is going to count on Senator KERRY in his new position, all of us on the committee and all of us in the Senate, as well as House leaders to do that.

HILLARY CLINTON understands all of these hot spots. She also understands the fact that there is one President and she will work with him and for him and for the American people. After all, she was in the White House and she knows the President sets foreign policy. She understands that. So she is supremely ready.

The other reason my friends from California have stated is this: We need someone with that prestige, with that recognition, with that charisma because we have so many problems at home to which our President has to attend. And HILLARY CLINTON has that sense of, frankly, star quality, the ability to gain attention and respect. President Obama couldn't do the work himself. If he had to fly all over the world, he couldn't take the time he needs to fight this deepening recession.

President Obama is inheriting massive problems. These problems didn't happen in a day; they happened over the last 8 years. It is going to take time to get out of some of the mess. President Bush had a surplus; he has put us deeply in debt. Pay as you go is gone. Our new President has to deal with that.

President Bush made no progress on health care. Our new President has to deal with it. On the environment, we have gone backwards. I know the chairman understands this. He serves on the committee on which I am privileged to serve as well, the Committee on Environment and Public Works.

Mr. President, I ask unanimous consent for 1 more minute.

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

Mrs. BOXER. So where are we? We have this string of problems, and our new President has to focus on getting people back to work, on making sure that Social Security and Medicare are strong, that our kids are educated, and that global warming is addressed in the right way. That is just the partial list. We also want to make sure our small businesses thrive. President Obama is inheriting that list of problems: debt, deficit, unemployment, the worst economy since the Great Depression. He needs someone such as HILLARY CLINTON to help shoulder the burden on foreign policy.

So I hope we get a tremendous vote for HILLARY CLINTON. She deserves it. I wish to thank my chairman again for yielding me the time.

Mr. KERRY. Mr. President, I thank the Senator from California. I appreciate it very much.

It is my understanding the Senator from Tennessee wishes to speak, but he wishes to speak in morning business. On the other hand, we don't want to delay the march of the clock. So I ask unanimous consent that the time used by the Senator from Tennessee be charged to the other side.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Tennessee is recognized.

THE ECONOMY

Mr. CORKER. Mr. President, I rise to speak as in morning business, and I thank the chairman for allowing me to do so. If someone comes in to speak on the subject matter, I will defer.

As is the Senator from California, I am very concerned about our economy. I know there is going to be a stimulus package forthcoming. I am very concerned about that. I am afraid what we are doing right now as a country is addressing the recession—a severe recession—in the standard way people like to respond to recessions. I think we are potentially doing that without addressing the real issue, which is the credit markets in our country.

I know over the last 6 months we have wrestled with ways of dealing with the credit markets in our country. I wish to tell my colleagues it is my belief the boards of banks throughout our country are in boardrooms today and are in conversations throughout the country talking about the fact that their banks are actually insolvent. They know they are insolvent, but because of the way gap financing accrues to banks who make whole loans, they are able to actually meter those losses out over quarters into the future, knowing that today they are insolvent.

What we have done through TARP funding is put money through capital injection into these banks. In their intelligent self-interests they have hoarded that money because they know they have losses coming in the future that would cause their banks to be insolvent if they recognized those losses today.

What concerns me is our country is quickly getting to the point where our resources are limited more than they have ever been, where we are borrowing huge amounts of money—and certainly we have been doing that for some time—and we are getting to a point in time where there is not a lot of power left for us to solve problems. So what I hope will happen over this next 30 days as we wrestle with this issue—which is serious and which is affecting people throughout this country; which is harming households and people who are just trying to work for a living—is that we will solve the root cause of this problem, which is our credit problem.

It is my belief we have trillions of dollars that are going to be lost in the credit market. Much of that is being driven by housing. These two issues have to be dealt with together. I fear we are going to look at a spending package that candidly isn't going to make its way into the economy until long after many predict this may be over. In the interim, what we are going to do is create a zombie banking system where, in essence, banks are just there metering out losses but not doing the productive things that need to occur.

It is my belief we have a number of banks in this country—large banks, banks that we know and respect—that need to be seized, that right now need to get down to a base level where normal investors would be willing to invest in these banks. The longer we put this off, the longer we are going to be away from actually solving the root cause of this problem.

This President is inheriting these problems. I in no way assess these problems to him. Many Presidents—most Presidents—deal with issues they had no idea they were going to deal with. I know this President is looking at a spending package. Candidly, there may be some need for capital investment in infrastructure. However, if we do not deal with the root issue—and that is the fact that much of our banking system is insolvent and recognize that as adults—and cause the assets to be written down to their real level as we do with derivatives, but we do not do that on whole loans—we give banks a break, if you will. We let them meter those out. If we do not deal with that, everything we do here to deal with our economy, in my opinion, will be for naught. It will be a total waste.

What concerns me is we are quickly getting to the point again where we are going to have fewer and fewer resources available to deal with that. The United Kingdom just recently realized that the policies they were putting in place were causing their currency to devalue rapidly.

I realize we are not there yet today as a country. I hope what we will do as a body—and as a country—is tell the American people we realize many of our financial institutions are insolvent. We realize the problem could be trillions of dollars, and until that issue is dealt with in a serious and real way, anything else we do for the economy is for naught.

It takes a functioning financial system for every small business—for every barbershop, beauty salon, for every large business—for all of us to get our payroll checks processed; it takes that

for this economy to function. In order for our financial markets to stabilize, we have to deal with the issue of housing, which we have not yet done. It is my hope this body will take up this serious business.

I have to say, in deference to the chairman who has been on the floor talking about our new Secretary of State, I listened to his comments today in the Finance Committee and I thought his comments were dead on. I know he referred to some editorials that were written over the weekend that said exactly the kinds of things we are talking about right now. I talk to investors on Wall Street who are involved in these institutions in major ways. They know they are insolvent. They know we are just pushing this down the road.

I think we owe this to these young people up front whose last day is tomorrow. We owe this to Americans across this country who depend upon us to do mature and adult-like things. We owe this to the country, to face up to the realities of these major losses, these major insolvencies, its effect on the economy for years to come, and do something about that first before we deal with things that will possibly stimulate the economy if, in fact, we actually had a functioning financial system. We all know of small businesses all across this country that are being denied loans. We know of businesses that are actually doing the right things, but banks are calling letters of credit and other things because they want the money in so they can again meter out the losses.

So I thank my colleague for allowing me to speak as in morning business. I know we have important business at hand. I look forward to supporting Secretary of State-designate CLINTON later today. I thank my colleague for his courtesy, and I yield the floor.

Mr. FEINGOLD. Mr. President, the next administration will be faced with the difficult task of building a smarter U.S. foreign policy that restores America's image abroad and security at home. Senator HILLARY CLINTON's distinguished record and testimony before the Senate Foreign Relations Committee demonstrate that she is the right person to lead this effort. Her experience, intelligence and thoughtfulness make her an excellent choice to be our most senior diplomat and to lead a stronger and more effective State Department.

I do share some of the concerns that have been expressed about the potential for a conflict of interest between her work as our incoming Secretary of State and the Clinton Foundation. I hope that Senator CLINTON will make every effort to avoid even the appearance of such a conflict of interest, if confirmed.

Senator CLINTON brings many strengths to this position, and I am pleased to support her nomination. It has been a pleasure working with Senator CLINTON as a Senate colleague, and I look forward to working closely with her in a new capacity.

Mr. DODD. Mr. President, today I rise in support of the nomination of our colleague, the junior Senator from New York, Mrs. HILLARY RODHAM CLINTON, as our next Secretary of State.

It is a position to which I am confident she will be confirmed shortly—and in which I know she will serve extraordinarily well.

Before I speak about the qualifications that Senator CLINTON brings to this most important position at such a crucial juncture in our history, I want say a few words about the spirit of openness and cooperation that she demonstrated throughout the confirmation process.

As a member of the Senate Foreign Relations Committee for more than a quarter century—having closely reviewed her nomination—Senator CLINTON and her husband have taken unprecedented steps and gone above and beyond what we have asked of them. That she has speaks not only to Senator CLINTON's personal integrity, but to her commitment to the office of Secretary of State.

Senator CLINTON will serve during a period crucial to restoring America's moral authority—making clear to the world our virtue, our noble intentions and—as we were reminded by our new President, Barack Obama, yesterday—all that we still represent to so many around the globe.

As we all know, Senator CLINTON has a history of redefining roles and inspiring people around the world. Certainly, she did when she first rose to the national stage as First Lady, taking on issues previously unfamiliar to that position, often in new ways—children's issues, healthcare, women's rights.

To those who had known her, none of that was surprising. Indeed, long before she became First Lady or Senator, she had been a tenacious legal advocate for children and families, fostering hope in a wide cross-section of the American people. Little wonder, then, that she gained that following of passionate supporters that we saw on the campaign trail last year.

For the last 8 years, Senator CLINTON has represented the State of New York and has given her constituents a daring and tenacious advocate in Washington, putting a special focus on improving her State's economy—specifically that of upstate New York which is not only hit harder by recessions but often remains a bystander during times of economic expansion.

That she so naturally became this kind of advocate speaks volumes about her affinity for the less fortunate—her beliefs about the nature of public service and the kind of priorities she will bring as Secretary of State.

I have said that it also is a testament to President Obama that he nominated his one-time rival to such a critical post. But perhaps it says more about the nominee herself—about her commitment to bringing change to this country.

I have been privileged to serve alongside Senator CLINTON. In assuming the position of Secretary of State, Senator CLINTON assumes a responsibility—that of being our representative to friends and enemies alike. Her judgment and temperament will be critical to restoring international relationships which have been so badly tarnished in recent years.

So, let me join my colleagues in saying thank you to the junior Senator from New York. I know her tenacity and talent will serve our country extraordinarily well in the coming years, as it has throughout her lifetime. I urge my colleagues to confirm her and I wish her the best of luck.

Mrs. FEINSTEIN. Mr. President, I rise today in support of the nomination of HILLARY RODHAM CLINTON to serve as Secretary of State.

HILLARY CLINTON is a tireless and fearless public servant.

She is a woman of strength and compassion with a powerful voice.

And I look very much forward to confirming her as our next Secretary of State.

I have known HILLARY for 16 years—since the time when she was First Lady.

I was delighted to see HILLARY CLINTON sworn into our small but ever-growing cadre of female Senators in January 2001, and I have greatly admired her work here in the Senate.

Senator CLINTON has rolled up her sleeves and worked forcefully to represent the people of New York during the past 8 years.

She worked side-by-side with her Empire State colleagues to shepherd New Yorkers through the challenges of recovering from the tragedies of the attacks of September 11.

She has been an active and diligent member of the Senate Armed Forces Committee, doing her homework and asking the tough questions.

In 2004, she was asked by the Department of Defense to join the Transformation Advisory Group to the Joint Forces Command—the only Senator to serve in that capacity.

I know that Senator HILLARY CLINTON will leave behind a large void when she leaves the Halls of this Chamber.

But her next role—as Secretary of State—presents tremendous challenges and opportunities.

The new Obama administration will usher in a new era of American foreign policy, and help rebuild our image around the world.

HILLARY CLINTON understands the value, and very great need for, a foreign policy that is guided by smart, robust diplomacy—rather than belligerent threats.

She has already visited more than 80 countries, and has formed important relationships with a number of world leaders.

I am confident that she will ably continue to represent the values and interests of our great country in the capitals of the world as Secretary of State.

There is no doubt that the foreign policy challenges we face as a nation and global community are great: the wars in Iraq and Afghanistan, and the great need to transition our forces; a resurgent Iran; the long-simmering Israeli-Palestinian conflict, which boiled over in recent weeks with tragic consequences; threats of nuclear proliferation and terrorism; ongoing instability in Southeast Asia; the need to confront climate change; the terrible atrocities in Darfur and the Congo; millions of global citizens who face a grim reality of hunger, thirst, poverty, and sickness; and the need to improve the plight of women around the world.

As HILLARY remarked during a press conference when her nomination was formally announced on December 1, 2008:

> America cannot solve these crises without the world, and the world cannot solve them without America.

I am confident that HILLARY CLINTON will rise to the occasion—and work hand-in-hand with President Obama and his national security team to help address these tremendous challenges.

Ms. SNOWE. Mr. President, I rise today to voice my strong support for the confirmation of my highly esteemed colleague and good friend, Senator HILLARY RODHAM CLINTON, as the next Secretary of State.

When Senator CLINTON arrived in the U.S. Senate in 2001, she had very large shoes to fill—those of the late and admired Senator from New York, Daniel Patrick Moynihan—but filled them she did and with tremendous distinction and accolades from both sides of the aisle. And over time, our colleague was rightly lauded and recognized for her unwavering work ethic, her expansive and detailed command of the issues, and her care for her constituents. And in 2007, Senator CLINTON began what would become a historic, Presidential campaign that was an inspiration to many and especially women. The fact is, throughout her remarkable trajectory of public service, HILLARY CLINTON has encountered immense challenges with intelligence, resilience, and resolve—traits that will stand our colleague in great stead as our Nation's 67th Secretary of State.

Indeed, the international environment facing our next chief diplomat is daunting. The world today is rife with crises that, if inadequately addressed, could lead to geopolitical instability and human suffering that spans both the globe and generations. Continuing nuclear programs in North Korea and Iran threaten the very existence of some of our closest allies and undermine decades of nonproliferation efforts. A maelstrom of conflicts as bloody as it is complex stretches across the heart of Africa, compounding heartbreaking poverty with unspeakable acts of violence. And inaction on global climate change has stymied a long-overdue coordinated international response, imperiling every coastline, crop and country on the planet.

Tackling these desperate problems will be a difficult, and, at times, thankless job. But if there is a Senator within this body who is equal to that task, it is certainly Senator CLINTON. In her work on the Senate Committee on Armed Services, she has demonstrated an exhaustive understanding of the global security environment confronting the United States and its allies. As a fellow founding member of the Senate Women's Caucus on Burma and in her tireless support for legislation urging intensive diplomatic efforts to halt the genocide in Darfur, Senator CLINTON has demonstrated not merely a deep-seated humanity, but a visceral and personal commitment to speak for the oppressed and fight for the defenseless.

On a personal note, today's vote is indeed a bittersweet moment—when we will offer our consent to President of the United States—also a former colleague, to tap another extraordinary Member to help guide our country and the free world at a perilous time. Senator CLINTON's counsel and exceptional commitment to public service will be sorely missed in this august Chamber. Yet we take heart and no small measure of pride in knowing that her indefatigable intellect is being called into service beyond these walls to the benefit of not just an administration, or one country, but an entire community of nations seeking peace and prosperity for their citizens.

And so, as we look ahead to the future success of our good friend, I wish her Godspeed.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I recognize the Senator from Mississippi for 1 minute.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, I am pleased to support the nomination of Senator HILLARY CLINTON to be Secretary of State. Her service as the Senator from New York for the past 8 years has been proof of her impressive ability to effectively and thoughtfully contribute to the governance of our Nation. I have enjoyed working with her in the Senate, and I look forward to continuing that relationship in her role as Secretary of State.

Our Nation is confronted with serious global challenges, and it is imperative that we work to develop comprehensive strategies and expand our diplomatic efforts in search of peace. President Obama has a tremendous task before him. The wars in Iraq and Afghanistan, stabilizing the Middle East, securing nuclear material from terrorists are all critical to our own national security. Senator CLINTON's experience as First Lady of the United States, her record in the Senate, and her commitment to the people of this Nation have demonstrated her capabilities to lead our Nation's foreign policy and diplomatic agenda.

I urge the Senate to approve her nomination. I thank the Senator, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I thank the distinguished Senator from Mississippi, who has been here a long time and is a good judge of these issues and of character, and we appreciate his comments very much.

Mr. President, we are awaiting Senator SPECTER, who I understand wants to speak. So I ask unanimous consent that the time—since there is more of it now on the other side, without speakers—the time of the quorum call now be charged to the other side.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

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

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

Mr. KERRY. Mr. President, I yield 5 minutes to the distinguished assistant majority leader, the Senator from Illinois, and I ask unanimous consent that following his comments the subsequent quorum call be charged to the other side.

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

Mr. DURBIN. Mr. President, I wish to thank the chairman of the Foreign Relations Committee, and I appreciate this opportunity to say a few words about the nomination of HILLARY CLINTON to be Secretary of State to our new President, Barack Obama.

It has been my good fortune to serve with Senator CLINTON for many years in the Senate, to have known her when she was our First Lady, and to have worked with her on many issues. There is no question of her competence, no question of her skill. As someone who supported our current President in the last Presidential campaign and witnessed the spirited contest between Senator CLINTON and then-Senator Obama, there is obviously no lack of determination or commitment when it comes to Senator CLINTON and the task that she assumes. So when President Obama made the decision to ask her to serve as Secretary of State, I felt it was a decision which would bring to this country a leader who could make a real difference.

I can recall a telephone conversation where I spoke to her and reminded her that there were many things she had said as First Lady and Senator which she would be able to follow through on as Secretary of State. She was one of the first I heard articulate a premise which I have come to accept as basic

gospel when it comes to analyzing global issues. Senator CLINTON said, after returning from a trip overseas, she felt you could measure the likelihood that a country would be able to meet the challenges it faced economically and socially based on one question, and the question was very straightforward: How do you treat your women? I have found, as I have traveled around the world, that standard is valid. If women are treated like chattel or slaves, if they have no voice in the government and little voice in the family or the village, most of the time the men will make a mess of it, and that has been the case. I told her she had a chance, as Secretary of State, to not only deal with global issues of peace around the world but also to deal with those issues at the local level that make a dramatic difference in the lives of poor people.

I also know of her passion for so many other issues that are timely. When I spoke to her on the floor last week, as she cast her last vote as a Senator, I wished her well because I felt she would be confirmed as our next Secretary of State, and she said it is unfortunate that we come to this moment in history when there are so many things unresolved in the world, but she looked forward to those moments where she would be able to meet with the President of the United States and the Vice President, who has his own resume when it comes to global issues.

A Member on the Republican side has asked for us to consider this nomination today and to have a little debate and perhaps a vote. I don't know if it will come to a vote, but other nominations went through without controversy and without debate yesterday. These are now men and women going to work immediately for the new administration—no time wasted—so they can tackle the real timely issues that face America. One of the issues raised earlier on the Republican side was former President Bill Clinton's foundation. It was an effort, after he left the Presidency, to gather the resources to make a difference around the world in a variety of different challenges, not the least of which was the global AIDS epidemic.

It is true former President Clinton has been very adept at raising the funds to help the poorest people in the world, and I think that is a good thing. But questions were raised: Would that present a conflict if his wife, Senator HILLARY CLINTON, became Secretary of State? At that point, the former President made full disclosure of all contributions and contributors and made it clear that he would go out of his way to avoid conflicts and continue this disclosure and transparency.

I can recall in Senator KERRY's committee Senator LUGAR of Indiana asked questions about this to try to make sure there would be clarity and transparency. And that is good. We don't want any embarrassment coming to either former President Clinton or Senator CLINTON when she is Secretary of State and certainly not to the Obama administration. That kind of disclosure is the way to reach that goal.

So I will be voting for her nomination today with the belief that HILLARY CLINTON will bring that skill set and those values to this most important job for the future of our country. She understands the safety and security of America begins, of course, with a strong military but, as President Obama has said, to try to avoid using that military so we don't engage in unnecessary wars and wars that have no end; to use the skills of diplomacy to solve the world's problems. I can't think of a better person to carry that message and that responsibility than Senator HILLARY CLINTON, and I am hopeful this afternoon this Senate will rise quickly to support her nomination, send her down to Foggy Bottom, where the Department of State is located, so she can begin her new role in representing the United States around the world.

Mr. President, I reserve the remainder of my time, and I yield the floor.

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

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

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on the nomination of Senator HILLARY CLINTON to be Secretary of State. I believe Senator CLINTON brings extraordinary talent and an extraordinary record to this very important position. Her educational and professional background are sterling. I have a little parochial pride at the fact that she is a graduate of the Yale Law School and has carried forward that school's tradition for public service.

I got to know Mrs. CLINTON first when she was First Lady. Shortly after I had brain surgery, in 1993, I bumped into her at the carriage entrance, coming into the Senate Chamber, and we talked a little bit about my medical experience. She invited me to visit with her in the White House, which I did—as I recollect, on the second floor of the West Wing. I told her of the personal experience I had and also my ideas from serving on the subcommittee of Labor, Health, Human Services and Education for the 13 years that I had been in the Senate.

As First Lady, Mrs. CLINTON was an activist. The record speaks for itself on all that she undertook. Then, to maintain candidacy for the Senate in New York was very courageous, gutsy, reminiscent of Robert Kennedy leaving the Attorney General's job, going to a State not his home State to seek election to this body.

In the Senate she has had an extraordinary record. She was very accomplished here. I had the good fortune to cosponsor a number of matters with her and to work on other matters with her. We most notably, perhaps, cosponsored the legislation of our Public Service Academy; that is, to have an academy such as West Point or Annapolis or the Air Force Academy, where young people interested in public service would go for training in those arts.

Then we all know of the phenomenal race she carried on for the Presidency of the United States, coming as close as she did in the historic year we just saw, 2008, with the election of an African American and the ascendancy of a woman into the finals of the Presidential contest.

When she was talked about for Secretary of State, I thought it was a 10-strike. I did something that was a first for me, that I had never done before. When I read in the newspaper that she was equivocating as to whether to take the job, I called her with some unsolicited advice. I cannot recall having done that before. If somebody asks for advice, OK, but I called her and urged her to take the job. I urged her to do so because I thought she was an extraordinary fit for it.

I think of all of the positions available at the moment—there are some very important positions. I have been delayed coming to the floor where we were having an executive session of the Judiciary Committee on the nomination of Attorney General-designate Holder, a very important position. But no position, aside from the Presidency, is more important than Secretary of State. Perhaps the Attorney General is close, with the heavy responsibilities for national security in the fight against terrorism, the balance with civil liberties, and the very important questions facing the economy with so many fraud cases looming with people misrepresenting balance sheets. But Secretary of State poses the big issues.

I have traveled extensively in my term in the Senate in connection with my duties on the Foreign Operations Subcommittee of Appropriations and the chairmanship of the Intelligence Committee, which I held in the 104th Congress. I believe there are tremendous opportunities today for an activist U.S. policy on the hot spots around the world.

I have visited Syria on many occasions, have gotten to know President Bashar al Asad and more extensively his father before he died in the year 2000, President Hafez Asad. I believe that Syria is the key to peace in the Middle East. There have been very extensive negotiations there. The parties, Israel and Syria, came very close in 1995 when Rabin was Prime Minister, on negotiations brokered by then-President Clinton, and again in the year 2000, when Ehud Barak was Prime Minister—very close. Turkey, for the last 18 months to 2 years, has been brokering for a long while behind the scenes, negotiations.

What Syria is looking for is the return of the Golan Heights and only Israel can decide whether it is in Israel's security interests to give up the Golan. But it is a very different world today from what it was in 1967 on the strategic interests and strategic value of the Golan Heights. If a deal can be struck, I think there is great advantage for Israel and for the region. I think that would induce Syria to stop aid to Hamas or funneling aid from Iran to Hamas; stopping them from aiding Hezbollah; stopping Syria from any activities to destabilize Lebanon. So an activist policy is a matter of the first magnitude.

With respect to Iran, there again I think dialog has some hope. Can it solve the problem? I don't know. But I do know the problems with Iran cannot be solved without dialog.

I asked questions of Secretary of State Condoleezza Rice and Secretary of Defense Robert Gates before the Appropriations Committee on the undertaking of dialog and negotiations. I asked Secretary Rice how it was realistic to ask Iran to stop enriching uranium as a precondition of talks when the object of the talks was to get them to stop enriching uranium. How do you do that? It seems to me a major failure of U.S. foreign policy for decades has been a lack of civility and dignity and respect that we damn Yankees—we ugly Americans—don't accord other people, as a matter of basic dignity and respect.

I have had an opportunity to talk to the last three Iranian Ambassadors to the United Nations. They are very rational people to whom you can talk.

Ahmadinejad? A real problem, when he talks about wiping Israel off the face of the Earth. But he is not going to be President of Iran forever. I think there are forces besides President Ahmadinejad who have different views in Iran.

If you take a look at Muammar Qaddafi, there you have an example of someone who is arguably the world's worst terrorist in history—except, perhaps, for bin Laden and what al-Qaida has done. But Qaddafi and Libya blew up Pan Am 103, bombed the Berlin discotheque, killed Americans—and through negotiations, Qaddafi stopped developing a nuclear weapon, made reparations to the victims in Pan Am 103 and those who were victims in the bombing of the Berlin discotheque.

I had an opportunity to visit Muammar Qaddafi, about 30 months ago, with Congressman Tom Lantos. When you went to see Qaddafi, you would go to the desert. He lives in a tent and he meets you in plastic chairs. But you can talk to him and the talking has paid results.

With that success, I think it is an indicator, a precedent for talking to anybody. Nothing may come of it, but the dialog is an indispensable first step. We know with the difficulties in North Korea—and there have been plenty—an agreement was made in the early 1990s. They breached that in 1993. We are back on track there.

But I think it takes bilateral talks. It takes representatives of the United States to stand up and be willing to talk to other people on an equal footing, with courtesy, with civility, and with dignity.

In August of 2005, I had a chance to meet President Hugo Chavez of Venezuela. The relationship between the United States and Venezuela has been very rocky for what President Chavez has undertaken. At that time the United States Ambassador was trying to meet with the Venezuelan Secretary of the Interior over the drug issue, where there were common interests between the United States and Venezuela. I believe it is accurate to say that as a result of the conversations which I had with Chavez, the Ambassador and the Minister of the Interior met.

It was kind of a rocky day because at the same time I had the meeting with President Chavez, Secretary of Defense Rumsfeld was in Peru, and he commented in a condemnatory way about Chavez. Gratuitous insults do not advance the pace or the cause of dialog. So I would say, even with President Chavez, we ought to make the effort.

President Obama had some comments about President Chavez on a Sunday news show last week, which have started some mild fireworks. Chavez, according to the press, retaliated that he had not thrown the first stone. It is my hope, even with Chavez, that we can engage in direct, civil, courteous dialog to see if there are some areas where we can find common cause.

I know, though, the occasions I have had to talk to Fidel Castro that there were issues on sea lanes and other air lanes where the United States could have cooperated on the interdiction of drugs. I have introduced legislation which passed the Senate on two occasions and was stymied in the House of Representatives. But I mentioned this as illustrative of where I think we can go with an activist, engaged Secretary of State. It is my projection that Senator CLINTON, soon to be Secretary of State CLINTON, will undertake those matters.

There is one additional comment I have to make, and that is on the potential conflict of interest between contributions which were made to former President Clinton's Foundation and the activities of Secretary of State CLINTON, if, as, and when she is confirmed. I think Senator LUGAR was exactly on target in the comments he made in the Foreign Relations Committee about what ought to be undertaken.

There has already been a memorandum of agreement that has been entered into on the subject of some substantial import. There is a memorandum of understanding which related to this issue which was signed on December 16 of last year, right after Senator CLINTON was in the running for this position.

It would be my hope that Secretary of State CLINTON would rethink some of the additional requests which Senator LUGAR made. I do not think they are disqualifiers, but I do believe it is a matter of concern if, for example, some foreign government makes a contribution to the Clinton Foundation, then there are interests which that foreign government has, I think we would understand and trust Secretary of State HILLARY CLINTON that, in the eyes of many, especially those in the Arab world, they may be suspicious of what would appear to them to be a potential conflict of interest.

But I trust HILLARY CLINTON's good judgment, and I think she will work through the issues and the memorandum of understanding which was executed on December 16 of last year, and the additions she has made go a long way, and it would be my hope that she would rethink what Senator LUGAR has suggested. She is a very ethical person and a wise person. I think she can undertake to handle this issue satisfactorily.

So for these reasons I am pleased to speak on her behalf, and I think the temper of this body is to give her an overwhelming vote of confidence so she can carry out the very important responsibilities of Secretary of State.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I thank the Senator from Pennsylvania. I yield 5 minutes to the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the distinguished Senator and chairman of the Foreign Relations Committee from Massachusetts. It is interesting, this is the first day after the inauguration of President Barack Obama—my ninth inauguration, by far the most impressive—and I have the great pleasure to speak in support of the confirmation of my friend and colleague, HILLARY RODHAM CLINTON, to be our next Secretary of State.

Secretary-designee CLINTON's stature, intellect, her experience make her uniquely qualified to take on this role, a role which comes at a critical time in our history.

As chairman of the appropriations subcommittee that funds the State Department and our foreign assistance programs, I look forward to working closely with her and President Obama as they embark on the critical task of restoring America's leadership and image abroad.

I appreciate the conversations I have had with both of them in this regard. Some 8 years ago, President Bush inherited a balanced Federal budget. We were actually paying down the national debt. We had the biggest surplus in history. The U.S. economy was strong, and the country was at peace.

Now, 8 years later, his successor, President Obama, has inherited from him the largest deficit in our Nation's

history, an economic crisis and unemployment rate unlike any this country has experienced since the Great Depression, a budget deficit greater than any nation on Earth has ever had, Osama bin Laden has yet to be captured, more than 180,000 U.S. troops are fighting wars in Iraq and Afghanistan, the Middle East peace process is in shambles, the country is more dependent than ever on foreign oil, and the country's international reputation has been badly damaged as a result of policies that were contemptuous of the values of which this Nation was founded. That is the good news for the new President and the Secretary of State-designee.

I do not envy President Obama for the multitude of misguided policies and problems he has inherited, but all the more reason he needs the best men and women to work with him. Secretary of State-designee CLINTON is going to serve him and the country well as they take on these challenges.

During the election, I remember saying to President Obama that we needed him to reintroduce America to the rest of the world. I have, in conversations with Senator CLINTON, told her, what better person to go around the world than HILLARY CLINTON as Secretary of State to reintroduce America and the great core values of this Nation. What better person to do it than HILLARY CLINTON?

In her confirmation before the Foreign Relations Committee last week, she discussed the need to use ''smart power,'' including ''the full range of tools at our disposal.''

I am glad to see her support for foreign assistance reform. We need that, and we have learned over the past several years we cannot take for granted the unwavering allegiance of any country in the world. We have to work at keeping those relationships. It is not amateur hour, and I appreciate Secretary-designee CLINTON's recognition of the value and experience of dedicated international affairs public servants and her plans to support and enhance that capacity.

She is going to become immersed in the immensely difficult problems that were ignored or badly mishandled by the outgoing administration: the Middle East, Afghanistan, Pakistan, Iran, Sudan, Mexico, Somalia and central Africa. All these pose particularly vexing challenges which she has to confront immediately, and the sooner she is there, the better.

I will mention a couple of other items. The Federal law prohibiting U.S. assistance to units of foreign security forces that violate human rights was first enacted a dozen years ago. The State Department is still struggling with implementing it, particularly with regard to the monitoring of military equipment provided to foreign governments.

This law, known as the Leahy amendment, has been applied unevenly depending on the country, and I urge Secretary-designee CLINTON to review the Leahy amendment to ensure its vigorous and consistent implementation.

Ten years ago this March, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction came into force. Today, there are 156 countries that have signed this treaty. The most powerful Nation on Earth, the United States, has not.

The U.S. military has not used the types of antipersonnel landmines prohibited by the treaty since 1991, and it has no plans to do so. I would urge her to go back to that.

Mr. President, like President Obama, Secretary-designee CLINTON recognizes the need for strong United States leadership in an increasingly complex, dangerous, and interdependent world. She understands that most global and regional problems cannot be solved by the U.S. alone, that we need to act boldly and change the status quo when it no longer serves our interests or reflects our values, strengthen and expand our alliances, help the poorest countries develop effective and accountable institutions, and pursue policies that enhance our image abroad.

Today, as we leave the troubled policies of the past 8 years behind us, the American people should feel fortunate, as I do, that HILLARY RODHAM CLINTON will be our new Secretary of State.

I commend the distinguished Senator from Massachusetts. I will be joining with him proudly to vote for the confirmation of HILLARY RODHAM CLINTON to be our next Secretary of State.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the Senator from Vermont for his clear summary of the task ahead, and those challenges are enormous. Indeed, as we all know, I particularly thank him as an old friend. And as the chairman of the appropriations subcommittee, we work in close partnership, and I am grateful that his values are where they are because it empowers us to put the muscle, the money, support, and the implementation of the policies that committee struggles to formulate. So we really appreciate the relationship. I thank him for his comments very much.

Mr. President, how much time remains on both sides? We are about to propound a unanimous consent request. I think we are going to be able to have a vote around 4 o'clock, hopefully. I want to allow for the majority leader to get back to make a couple of comments himself. But I would like to get a sense of the time that remains.

The PRESIDING OFFICER. The Senator from Massachusetts controls 19 minutes, the Republicans control 27 minutes.

Mr. KERRY. Obviously, we intend to yield back on both sides. I thank the Chair. I know the distinguished Senator from Maryland has been waiting patiently. He would like to add a few thoughts. I yield him 4 minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, let me thank our distinguished chairman for yielding me this time.

My colleagues have talked frequently about how our colleague, Senator CLINTON, is the right person at the right time to be the Secretary of State. We have talked a great deal about her experience. As First Lady of this Nation, she traveled frequently around the world. She knows firsthand the problems that America confronts internationally. With experience as the Senator for New York, serving on the Armed Services Committee, she understands the critical role the State Department plays in our national security. With her service on the Helsinki Commission, she knows firsthand the importance that the Department of State can play in human rights issues around the world. For all of those reasons, she is truly the right person to represent our Nation as Secretary of State. She is an iconic figure for American values and for hope for people around the world.

I wanted to comment about how President and Mrs. CLINTON have provided disclosure. It is unprecedented the amount of the financial information they have opened to the public.

I particularly want to thank our former President, Bill Clinton, for his humanitarian work. We all know that Government cannot do it alone. Yet he has been able to deal with the international humanitarian needs through the use of foundations and getting other people involved. But I particularly want to thank the former President and the foundation for which he is responsible for the unprecedented disclosures that they are making. We will know all the contributors. They have agreed that before new contributions are made it will be cleared through the Government ethics bureau to make sure there is not even the appearance of a conflict. So they are doing good things for our country. The foundation is doing good things for humanitarian needs. We know that.

The Clintons have taken extraordinary steps to do the right thing for this country in the disclosure and the work they do. It is now time for us to do the right thing and confirm HILLARY CLINTON as the next Secretary of State for our Nation.

I thank the Chair for yielding me the time. I would yield back the remainder of my time to the chairman.

The PRESIDING OFFICER (Ms. STABENOW.) The Senator from Massachusetts.

Mr. KERRY. Madam President, for the sake of colleagues I reiterate, in about 15 minutes, after the majority leader has returned and had a chance to speak on this nomination, we will proceed to a vote.

It is my understanding—I was going to ask for unanimous consent—there is

a request by someone on the other side to have a rollcall vote. So there will be a rollcall vote at that time.

We are going to be making that request in a few minutes. Let me speak for the couple of minutes we have left to share a couple of quick thoughts, if I may.

This is the beginning of the 25th year that I have had the privilege of serving on the Foreign Relations Committee. I have seen the ups and downs, the waves of opportunities and lost opportunities that we have lived through in the course of that time, the heady years of the 1980s, when arms control was the centerpiece of our focus and analysis, and we were in the middle of the Cold War. The committee contributed significantly to the dialog at that time about MX missile deployments and nuclear warheads, tactical, conventional weapons, how to count. Fundamentally, that was altered through the significant daring of President Reagan to meet with President Gorbachev in Reykjavik and negotiate a pretty remarkable reduction in nuclear warheads at that time. It was against the conventional wisdom, and it is proof of the opportunities we face today, many of which run against the conventional wisdom.

I am convinced President Obama and Secretary-to-be CLINTON—with the input and cooperation of the Congress and our committee—stand on the threshold of a new moment of those kinds of opportunities. If Richard Nixon had not dared to send his then-Secretary of State Henry Kissinger to China to meet with Mao Tse Tung and, indeed, even to cross the barrier to go to Red China, as we knew it, against the wishes of many of the people in his own party and the wing of his party which found it heresy, we would not have opened China and begun a process of that relationship. There is an opportunity at this moment for an even greater relationship with China. I don't think we have begun to forge the kind of cooperative effort that is available to us, if we will engage on a much more regular and intensive basis and look for the places of commonality and agreement of interest.

There are many, frankly. Most people who analyze and think about China come to the conclusion that there is a greater opportunity for a cooperative, respectful partnership than there ought to be any kind of fears of hegemony or other kinds of expansive desires on China's part. Most people interpret the current modernization of China's military as being a fairly normative modernization process within the scale of things and not something that should be translated by the United States or others into a new arms race. I am convinced there is a great deal more to be achieved with China, provided we are disciplined and thoughtful about the setting of priorities and that we have a clear set of priorities.

One thing is clear. In the management of our relationships with China or with Russia or some other countries, we can't do everything all at the same time. That is a bit of the way our diplomacy has been managed over these past years. For instance, even with Russia, if we are more thoughtful about the missile shield and more thoughtful about NATO expansion and if we engage in a greater dialog about the mutuality of interest in those regions, we can avoid significant misinterpretations and counterreactions that come as a consequence of not talking and not understanding the motives, intentions of another country.

Even as a child, when I was the son of a foreign service officer, I always heard people talking around me about how Americans are very good at seeing the rest of the world through their own lens but not particularly adept at looking at another country's aspirations, fears, threats, hopes through their eyes. The more we can foster a foreign service that is historically, culturally, linguistically, and otherwise immersed in the full culture of a particular country, the better we are, frankly, going to do in terms of determining our own foreign policy future and decisions. President Obama and HILLARY CLINTON clearly understand the imperative of changing how we have made some of those decisions.

When I became a member of the Arms Control Observer Group in the Senate, something now defunct but something we might wish to think about enhancing in the context of proliferation issues, one of the things that always struck me was the degree to which from the time we used the bomb at Nagasaki and Hiroshima, the only nation that, incidentally, has ever exploded an atomic weapon against another people, from that moment forward, almost every weapon transition, with the exception of two—it was either the long-range bomber and/or the silent submarine—almost every weapon advancement in the course of the entire Cold War, we were first in the development of the new, more technologically advanced weapon, whatever it was. Almost without exception, our principal opponents at the time, the Soviet Union, came as quick as they could afterward and met that challenge. So we always ratcheted up, up until the point that we were at something like 30,000 warheads. Today we are somewhere in the vicinity of 5,000-plus warheads.

It is my firm belief that in this next year, we have an opportunity to negotiate an agreement with Russia, where we actually ratchet down to about 1,000 warheads, which would be the lowest we have had in the course of that period of time, since the beginning, and still be safe; in fact, be safer. Because if you have the kinds of controls with verification, inspection that get you to that level, then you begin to send a message to the rest of the world that you are serious about nonproliferation, and you begin to send a message that says to the world: The United States is taking the lead, and we will live by the standards we try to foist on other people. Most importantly, we make the world safer because we reduce the capacity for fissile material to fall into the wrong hands.

I will continue to press this thousand-warhead concept. My hope is it will become a centerpiece of the START talks and where we proceed. It is interesting because, even as we have these now 5,000-plus or so warheads—and that, incidentally, depends on accounting rules because we don't count the same weapons all the time—the fact is that China, according to public estimates, nothing classified but public estimates, has about 23 warheads. They may ratchet that up because of our lack of having moved from where we are and other reasons. The fact is, they have been pretty content to feel secure with 23. Most rational people, thinking about the use of warheads, understand the implications of using only a few.

One of the things I learned at nuclear, chemical and biological warfare school, when I served in the Navy, was the full implication of just one or two or three weapons. So when you think in terms of thousands and so forth, in today's world, where the principal conflict is religious extremism and terrorism associated with it, you have to put a huge question mark over the theories that continue to spend the amounts of money that we do and create the kinds of insecurity that we do as a consequence.

This is a moment of rather remarkable opportunity. I recently was in Pakistan and Afghanistan, India. India and Pakistan are still engaged in literally old-fashioned, mostly Cold War, old, bad-habit confrontation. In fact, both sides know the concept of war would be absurd, when the real threat to both of them comes internally from people who are disgruntled and disenfranchised and otherwise seduced into believing that by adopting one religious ideology or another or none, that they are somehow advantaging themselves. This is an opportunity to forge a new relationship across the world, as the President did yesterday. I thought one of the most important phrases he uttered in his speech was his outreach, his holding his hand out to the Muslim world to ask people to come together. One of the things that most struck me in these last years is the degree to which religious, fanatical, violent extremists have actually been able to isolate the United States within that world rather than us being able, together with modern Islam, to isolate them.

That is one of the things President Obama and this administration offers us, an opportunity to have a completely different kind of interfaith, global dialog that begins to empower modern Islam to take back the legitimacy of their religion. It is my hope and prayer that will be a centerpiece of this administration's foreign policy.

There is much to do. Obviously, Somalia and East Congo, the trouble of

Darfur that remains, populations in Egypt and Saudi Arabia and elsewhere that grow at an astonishing rate so that perhaps 60 percent of Saudi Arabia and Egypt are under the age of 21, 50 percent under the age of 18, it is a stunning growth of young people who need a future. If that future is reduced to madrasas and to the distortion of the opportunities of life, we all pay a price. Our children in the future will pay a price. So these choices that President Obama and Secretary CLINTON will face, together with the Congress, are significant.

Then, of course, there is one issue many people don't always think of as a national security/foreign policy issue. That is global climate change. I have attended almost every major conference since the Rio conference of 1992. I remember going down there with then-Senator Al Gore, and Senator Gore and I and a few others had held the first hearings on global climate change in 1988. I have watched the progression of all these years as all the warnings of 1988 have come true and more. Now our scientists are revising their latest predictions. Only a year ago, 2 years ago, they were saying we could sustain 550 parts per million of greenhouse gases in the atmosphere. Now they have revised that, not just down to 450, but they are beginning to talk about 350 parts per million as being the acceptable level.

The latest science, regrettably, shows that Mother Earth is giving us feedback at a rate that is coming at us faster and in a greater degree than any of those scientific reports offered. The result is that challenge grows greater, not smaller. I regret to say we are emitting greenhouse gases at a rate that is four times faster than it was in the 1990s. We are not doing the job. No other country is either entirely, but we are the worst because we, regrettably, are 25 percent of the world's global greenhouse gas emissions. Almost every country I have talked to in the last years, as we discuss how we are going to deal with this, looks back at us and says: We are waiting for your leadership.

I have communicated this to President Obama. He has indicated he intends to be serious about it. But the latest modeling shows that if you take every single current proposal of every country in the world that has a proposal—and that is not many—and you extend the curve out in the modeling to take all the input of today from the science and measure it against those current plans, we fall woefully short of what we need to do in order to meet this challenge. We will see an increase of somewhere between 600 and 900 parts per million which is insupportable with respect to life as we know it. We will see a degree of temperature increase of somewhere from 3.5 to 6 degrees centigrade. We have seen exactly what that means in terms of the migration of forests, the destruction of ocean currents, the increase of violent storms, the destruction of property, the movement of whole populations who will live with new drought, new water problems, and other issues.

So, Madam President, I think we are running out of time. I am sort of stalling here waiting for the majority leader.

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

Mr. KERRY. That is what I figured.

Well, on that inauspicious note, I ask unanimous consent that I be permitted to proceed now until he comes. Then I will put in a quorum call in a few moments.

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

Mr. KERRY. To finish that thought, the ice sheets in the Arctic are melting. We anticipate now, according to the science, we are going to have an ice-free arctic in the summer in about 10 years. The problem with that is that as more ice disappears, more water is evident, is available, and the water, unlike the ice sheet, which acts as a reflecter for the Sun's rays, acts to absorb the Sun's rays. So the more the ice melts, the warmer the ocean becomes and the faster it begins to continue the rest of the melting.

The result is, we begin to change the entire ecosystem in ways that scientists cannot predict completely, but it has a profound impact on the ecosystem. Moreover, it adds to the melting of the Greenland ice sheet. The Greenland ice sheet, unlike the arctic ice sheet, which floats, and, therefore, does not change the displacement—the Greenland ice sheet is on rock.

Right now, you can go up there. The Senator from California went up there last summer with a group. You can stare down a hole 100 feet deep, and you can see a torrent of a river running down off that ice into the ocean. Scientists are worried that the water layer underneath the ice actually creates a potential that a huge block of ice may slide off and fall into the ocean.

The rest of it continues to melt. The implication of the Greenland ice sheet melting is that is where you get your 16 to 23 feet of sea level rise.

Now, all I can tell you is, all of these impacts are irreversible—irreversible—so we are staring at an abyss of irreversibility. The best choice for people in positions of high responsibility like us and public people who make these choices is the whole precautionary principle. If we are told we can avoid it by doing X, Y, and Z, and the implications of not avoiding it are disaster, we have a responsibility to try to avoid it.

Now, we have to do this. It means a fundamental, profound change in our economy. That means shifting our energy grid, moving toward solar and renewables. People sort of scratch their heads and say: Well, is that kind of dreamy, goo-goo, crazy thinking? The answer is no. I had a venture capitalist in my office last week who wants to build a 600-megawatt solar powerplant in the Southwest of our country and they cannot get the financing right now.

So this economic crisis is, in fact, an economic opportunity that also has profound national security implications because to the degree we lead in our responsibilities to go to Copenhagen—where we have an international meeting next December, where we have an opportunity to fix the Kyoto treaty with a new agreement, which will have a huge impact on people all across the planet—that is one of the major challenges before the Obama administration.

I know the President is very committed to trying to move forward on this issue. But he and Secretary of State CLINTON are going to have a huge challenge to persuade countries to do difficult things, to persuade Americans to change some of our habits and do difficult things.

I am told by experts that you could produce six times the electricity needs of the entire United States of America—six times—from either concentrated solar photovoltaics or solar thermal in Utah, Colorado, California, New Mexico, and Arizona, and I think that is the heart of it. Those approximately six States or so could wind up providing us with the base from which we could provide that. I am confident the technology will move forward.

So I wholeheartedly support, as I have said in the committee, and as I have said earlier in my opening comments, the nominee. I believe Senator CLINTON is in a position to provide a historical shift in American foreign policy where we reach out to the world with the best of our values and the best of our thinking and the best of our hopes and intentions. I think this can be a moment where we renew America's proud role as a global leader, where we touch the hearts and minds of people all across the planet, and where we have an opportunity to say to future generations, we met our responsibility.

Having said that, the distinguished majority leader is here and I yield the floor.

The PRESIDING OFFICER. The distinguished majority leader is recognized.

Mr. REID. Madam President, I appreciate the leadership of the chair of our Foreign Relations Committee, Senator KERRY. In the short time he has assumed the responsibilities of that most important committee, he has done a remarkably good job, and the best is yet to come. He mentioned here briefly some of the things he wants to do dealing with the scourge we find ourselves in with global warming, and it is going to be remarkable, the work he does.

Madam President, we are moving forward on the vote on the nomination of Senator HILLARY CLINTON to be Secretary of State.

Senator CLINTON is uniquely capable and profoundly prepared to lead our

State Department at a time of unprecedented global challenges, and at a time when quick confirmation of President Obama's national security team is critical to protect us here at home.

We face two wars abroad, a complex and unpredictable crisis in the Middle East, the nuclear ambitions of a volatile Iranian regime, together with the complexities of dealing with North Korea.

Senator CLINTON has earned the admiration and respect of the global community with her understanding that our international power must be both strong and smart, that the true measure of our influence is not just the size and strength of our military, but also how we use other tools, including diplomacy and foreign assistance, to make the world safer and more free.

Senator CLINTON's exemplary qualifications and wise world view were demonstrated in her confirmation hearings, where she showed a tremendous breadth and depth of knowledge on the major foreign policy issues we face in the world today.

We all remember HILLARY CLINTON's arrival in the Senate a few short years ago—8 years ago. Some wondered—and some out loud—whether a former First Lady who had become a favored target of the rightwing could forge the relationships necessary to be an effective Senator for the people of New York State. She answered that loud, and she answered it very clear.

Some questioned whether a person of such national and international acclaim would put in the time to get to know the inner workings of the Senate and the nitty-gritty of the legislative process. She answered that big time.

It took no time for Senator CLINTON to make believers from those doubters. She became an instant favorite of Democrats and Republicans alike, a forceful advocate for both smart foreign policies and domestic policies, and a remarkably effective student of bipartisanship.

In her time as First Lady of our country, serving as an American emissary to the world, and then in the Senate as a member of the Armed Services Committee, HILLARY CLINTON built the diplomatic skills and breadth of knowledge one needs to be our next Secretary of State. She has the full package.

All but one member of the Senate Foreign Relations Committee voted to approve this outstanding nominee. Democrats and Republicans alike stand in support of our friend and colleague, Senator CLINTON.

I want spread on the RECORD my appreciation for JOHN MCCAIN coming to the floor and saying: Let's approve her now. He tried to do that earlier today.

I ask all my colleagues to join me in sending the world a clear message that we stand behind President Obama and our new Secretary of State as they proceed together to the task of rebuilding our foreign policy to be stronger, smarter, and more able to effectively lead the world with moral strength once again.

Madam President, first, we yield back all time on both sides.

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

Mr. REID. Madam President, I ask unanimous consent that the Senate now vote on confirmation of the nomination of Senator CLINTON to be Secretary of State, with the remaining provisions of the previous unanimous consent agreement in effect.

I would also say this: For all the new Senators and those who may have forgotten, we are starting this vote a little earlier, so we will be lenient here and not tie down the 15-minute rule. But in the future, we are going to start this Congress as we ended the last one. We are going to have 15-minute votes. There will be a 5-minute time period for people who are late getting here. But at the end of 20 minutes, the votes are going to be closed. This will be hard on Democrats and hard on Republicans, but it is a lot harder on everybody waiting around here for these people to come to vote. So some people are going to miss some votes, and I am sorry about that, but it is better for the body if we have votes that end when they are supposed to.

As soon as this matter is completed relating to the confirmation of HILLARY CLINTON, we are going to go back to Ledbetter. We would hope that the Kay Bailey Hutchison amendment in the form of a substitute, which has been offered, can be debated today and that we can vote on that this evening.

The PRESIDING OFFICER. Is there objection to the majority leader's request?

The Chair hears none, and it is so ordered.

The question is, Will the Senate advise and consent to the nomination of HILLARY RODHAM CLINTON, of New York, to be Secretary of State?

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

(Disturbance in the Visitors' Galleries)

The PRESIDING OFFICER. I would ask that there not be responses from the gallery. Thank you.

The clerk will continue with the call of the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

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

The result was announced—yeas 94, nays 2, as follows:

[Rollcall Vote No. 6 Ex.]

YEAS—94

Akaka	Barrasso	Bayh
Alexander	Baucus	Begich
Bennett	Grassley	Murkowski
Bingaman	Gregg	Murray
Bond	Hagan	Nelson (FL)
Boxer	Harkin	Nelson (NE)
Brown	Hatch	Pryor
Brownback	Hutchison	Reed
Bunning	Inhofe	Reid
Burr	Inouye	Risch
Burris	Isakson	Roberts
Byrd	Johanns	Rockefeller
Cantwell	Johnson	Sanders
Cardin	Kaufman	Schumer
Carper	Kerry	Sessions
Casey	Klobuchar	Shaheen
Chambliss	Kohl	Shelby
Coburn	Kyl	Snowe
Cochran	Landrieu	Specter
Collins	Lautenberg	Stabenow
Conrad	Leahy	Tester
Corker	Levin	Thune
Cornyn	Lieberman	Udall (CO)
Crapo	Lincoln	Udall (NM)
Dodd	Lugar	Voinovich
Dorgan	Martinez	Warner
Durbin	McCain	Webb
Ensign	McCaskill	Whitehouse
Enzi	McConnell	Wicker
Feingold	Menendez	Wyden
Feinstein	Merkley	
Graham	Mikulski	

NAYS—2

DeMint Vitter

NOT VOTING—2

Clinton Kennedy

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table.

Under the previous order, the President will immediately be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

Several Senators Addressed the Chair.

Mr. DODD. Madam 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.

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

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

LILLY LEDBETTER FAIR PAY ACT

Mrs. HUTCHISON. Madam President, I am prepared to offer my amendment to the Ledbetter Act, the Mikulski bill. To proceed, I need to know if that is the order of business.

Mr. LEAHY. Madam President, I was seeking recognition when the quorum call was put in. I am still seeking recognition. Obviously—well, I would just note that, that I was—

Mrs. HUTCHISON. Madam President, I had been working with Senator MIKULSKI and the majority leader about moving to Senator MIKULSKI's bill and my amendment, which is pending, and I had offered to allow Senator VOINOVICH to speak on that. If the Senator has something to intervene, I would be happy to try to accommodate, but this is the pending business.

Mr. LEAHY. Madam President, I crafted the Ledbetter matter that is now before the Senate.

The PRESIDING OFFICER. That is the pending business.

Mr. LEAHY. Madam President, am I correct that I was seeking recognition when the Republicans suggested the absence of a quorum, and I was still seeking recognition—

The PRESIDING OFFICER. The Senator was standing to seek recognition, although the quorum call was placed without objection.

Mr. LEAHY. Again, I object to somebody asking for a quorum call to be placed, Madam President. Perhaps I don't understand the rules after 34 years here, but I was the first one seeking recognition.

The PRESIDING OFFICER. The Senator from Texas has the floor.

Mrs. HUTCHISON. Madam President, I would like to ask the Senator from Vermont, without relinquishing my right to the floor, if there is something he would like to do that would be short, and then we could go back to the business of the Ledbetter bill. I am happy to try to accommodate him.

Mr. LEAHY. Madam President, as I said when a similar question was propounded by the distinguished Senator from Texas, I wish to speak on the Ledbetter bill.

Mr. REID. Madam President, would the Senator from Texas yield without losing her right to the floor?

Mrs. HUTCHISON. I would be happy to yield.

Mr. REID. There is a lot of time. We are going to be in session as long as people want to talk. The issue before the Senate now is an amendment offered by the Senator from Texas. Senator MIKULSKI, who is managing this bill, has been trying to get a time as to how long the debate will take on this tonight. The distinguished Republican leader asked that we try to figure out what amendments are going to be laid down tonight, and we will try to set up a series of votes, if necessary, in the morning. So no one should feel they are being cut off. There is plenty of time. We are not going anyplace tonight. We are on the Ledbetter legislation. I would hope we could work our way toward a vision of completing this legislation sometime early tomorrow. I appreciate the Senator from Texas moving forward with this.

I know the strong feelings of the Senator from Vermont about this Ledbetter legislation. It is a legal issue, and he is chairman of the Judiciary Committee. But I hope everyone will be calm and relax. There is plenty of time for everyone to say whatever they want tonight.

Mr. LEAHY. Madam President, I ask unanimous consent—and, of course, the Senator from Texas can object and has every right to object—I ask unanimous consent that I be allowed to continue for all of 7 minutes, all on the Ledbetter bill.

Mrs. HUTCHISON. Madam President, reserving the right to object, let me ask the Senator from Ohio, whom I promised 12 minutes, whether he would be able to wait 7 minutes for Senator LEAHY, after which I would turn the floor over to him before I discuss my own amendment?

Mr. VOINOVICH. I am more than happy to do that as long as I have a guarantee that after 7 minutes, I have a chance to offer my voice about the amendment.

Mrs. HUTCHISON. Madam President, let me ask whether I could propose this: I move that the Senator from Vermont be allowed 7 minutes on whatever subject he chooses, after which the Senator from Ohio would have 12 minutes, after which I would have the floor to speak on my amendment.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The Senator from Vermont.

LILLY LEDBETTER FAIR PAY ACT OF 2009—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 181) to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

Pending:

Hutchison amendment No. 25, in the nature of a substitute.

Mr. LEAHY. Madam President, I thank the Senator from Texas, and I especially thank my dear friend from Ohio, whom we are going to miss around here.

Madam President, I held a hearing at which Miss Lilly Ledbetter testified before the Senate Judiciary Committee. It was one of the most moving hearings we have had. The fact that a very activist, very Republican Supreme Court had basically written new law to deny her rights was shocking to everybody before that committee.

I believe we have to pass the bipartisan Lilly Ledbetter Fair Pay Act so employers are not rewarded for deceiving workers about their illegal conduct and maybe signal to the Supreme Court to stop legislating, and stop being an activist Court, but to uphold the law as we write it.

One of the Justice Department's roles in our Federal system of government is to protect the civil rights of all Americans, including those that protect them against discrimination.

The Bush administration's erosion of longstanding interpretation of our antidiscrimination laws has created a new obstacle for victims of pay discrimination to receive justice. That was a mistake when it was advanced by the Bush-Gonzales et al. Justice Department. It was a mistake when five Justices on the Supreme Court adopted the Justice Department's erroneous interpretation of congressional intent. It culminated in an erroneous opinion written by Justice Alito.

I understand the Members on the other side of the aisle introduced partisan amendments to the legislation. They have that right. But it is my belief that the amendments should be opposed for one simple reason: they are going to allow illegal pay discrimination to continue.

We are going to hear that this might encourage workers who are being paid less as a result of discrimination to delay filing for equal pay. That argument defies logic. Anyone who heard Ms. Ledbetter's testimony before either the Senate Judiciary Committee or the Senate Health, Education, Labor, and Pensions Committee knows that she, like other victims of pay discrimination, had no incentive to delay filing suit. But employers, based on the erroneous interpretation by the Supreme Court, the activist interpretation by the Supreme Court, now have a great incentive to delay revealing their discriminatory conduct: blanket immunity.

The reality is, many employers do not allow their employees to learn how their compensation compares to their coworkers'. They can hide it and hide it and hide it until these women finally retire, pray that they never find out how they were discriminated against, and then say when they are found out: Oh, my goodness gracious, you should have filed suit earlier. The fact that we had it all locked up and you couldn't possibly have known you were being discriminated against is your fault. These victims have the burden of proving the discrimination occurred and that evidentiary task is only made more difficult as time goes on.

It seems it is always the woman employee's fault. That is wrong. Workers like Ms. Ledbetter and her family are the ones hurt by the ongoing diminished paychecks, not their employers.

The bipartisan Ledbetter Fair Pay Act of 2009 does not disturb the protections built into existing law for employers, such as limiting backpay in most cases to 2 years. It does not eliminate the existing statute of limitations. Instead, it reinstates the interpretation of when the 180-day time limit begins to run, an interpretation that was run over roughshod by the Bush administration at its urging by their appointees on the Supreme Court. The bill corrects this injustice to allow workers who are continuing to be short-changed to challenge that ongoing discrimination when the employer conceals its initial discriminatory pay decision.

Opponents of the bipartisan Ledbetter Fair Pay Act may raise other excuses. They will no doubt

claim that somehow trial lawyers will benefit, but the reality is the Supreme Court in the Ledbetter decision could actually lead to more litigation because people will feel they have to file premature claims so that time does not run out.

The Congressional Budget Office has concluded that this legislation ''would not establish a new cause of action for claims of pay discrimination'' and ''would not significantly affect the number of filings with the Equal Employment Opportunity Commission'' or with the Federal courts.

Congress passed title VII of the Civil Rights Act to protect employees against discrimination with respect to compensation because of an individual's race, color, religion, sex or national origin but the Supreme Court's Ledbetter decision goes against both the spirit and clear intent of our anti-discrimination laws.

It also sends the message to employers that wage discrimination cannot be punished as long as it is kept under wraps.

At a time when one-third of private sector employers have rules prohibiting employees from discussing their pay with each other, the Court's decision ignores a reality of the workplace—pay discrimination is often intentionally concealed.

The Lilly Ledbetter Fair Pay Act is the only bill that gives workers the time to consider how they have been treated and the time to work out solutions with their employers. Our bipartisan bill fulfills Congress's goal of creating incentives for employers voluntarily to correct any disparities in pay that they find. Most importantly, our bipartisan bill ensures that employers do not benefit from continued discrimination.

I will not support amendments that weaken this bipartisan bill. I support the ability of all employees to receive equal pay for equal work.

The Lilly Ledbetter Fair Pay Act is the only bill that gives workers the time to consider how they have been treated and the time to work out a solution with their employers. Our bipartisan bill fulfills Congress' goal of creating incentives for employers voluntarily to correct any disparities in pay they find. I am not going to support amendments that weaken this bipartisan bill. I support the ability of all employees to receive equal pay for equal work. It comports completely with what we learned in the Judiciary Committee.

I applaud the Senator from Maryland. I applaud her cosponsors. I am proud to be one of them.

Ms. MIKULSKI. Before the Senator from Ohio speaks as agreed upon, I thank the chairman of the Judiciary Committee for his compelling remarks and steadfast support for women generally and certainly for his longstanding advocacy that women should be paid equal pay for equal or comparable work. Thank you very much.

The PRESIDING OFFICER (Mr. NELSON of Florida). The Senator from Ohio is recognized.

Mr. VOINOVICH. Mr. President, I rise today in strong support of the Hutchison substitute amendment.

Before I discuss the merits of the Hutchison amendment, I wish to thank Senator MIKULSKI for her commitment to debate this legislation in a constructive manner. As Senator MIKULSKI said, we can disagree, without being disagreeable.

I thank the Democratic leader, the Senator from Nevada and the minority leader, the Senator from Kentucky, for agreeing that we will make our best efforts to return to the tradition here in the Senate of debating bills and allowing amendments to be offered, and returning things to the point where I think it will enhance the reputation of this great body in terms of the body that is looking in on us. I hope this is the beginning of a new era here. I think the more we can work together, the better they are going to feel about the future of our country.

I would also like to thank my colleague, Senator HUTCHISON, who I know is extremely busy in her role as ranking member of the Commerce Committee. Her efforts to draft a solution are commendable. Senator HUTCHISON is in a strong position to speak on issues arising from both her substitute amendment and Senator MIKULSKI's underlying legislation. As Senator HUTCHISON said in her opening remarks, as a young lawyer coming out of law school, she experienced the nefarious consequences of gender discrimination. In addition, I think her experience as a small business owner and the general counsel of a bank provides Senator HUTCHISON with the unique perspective to understand the problems with Senator MIKULSKI's legislation.

There is one thing on which we all agree: Gender and other forms of discrimination are wrong, illegal, and they should not be tolerated. This debate should not be about whether one party condones illegal discrimination; rather, this debate must focus on how to strike the right balance to address the situation in which a person is subject to an individual act of discrimination but through no fault of their own has no way to know about it.

As I mentioned during my retirement announcement last week, one of the reasons I decided to retire in 2 years was the desire to spend more time with my family. I am the proud father of a daughter, Betsy, who graduated as a member of Phi Beta Kappa. When she was growing up, I said: Honey, the sky is the limit for whatever you want to do.

In addition to my daughter Betsy, I have seven grandchildren, and six of them are girls. I have said the same thing to them: The sky is the limit. My oldest granddaughter, Mary Faith, is 12 years old. One of these days, she is going to be out in that business world. I want Betsy, Mary Faith, and all my grandchildren, to have the opportunity to reach their full potential based on their God-given talents, and not be constrained by outdated prejudices.

Based on the debate so far, I believe there is a good deal of agreement between Members who support Senator HUTCHISON and Members who support Senator MIKULSKI's legislation. For example, we agree that discrimination based on gender is illegal and wrong. We also agree that the dynamics of the modern workplace may make instances of such discrimination difficult to detect if the discrimination is reflected in pay decisions.

Unlike when someone is denied a job, a promotion, or is terminated, paycheck discrimination may not be obvious. The source of our disagreement is how to find a solution to address this specific issue.

Before I address the specifics of why I support Senator HUTCHISON's amendment over Senator MIKULSKI's legislation, I believe there are some misconceptions about the Supreme Court's Ledbetter v. Goodyear decision. Advocates of the Ledbetter legislation have continued to state that passing the Lilly Ledbetter Fair Pay Act will restore the law to what it was before the Supreme Court's decision. This is misleading. In its Ledbetter decision, the Supreme Court clarified a faulty interpretation of its early decision in Bazemore v. Friday. The Supreme Court did not change the underlying statute of limitations in title VII.

I think it is helpful to understand what the Court did in distinguishing these two cases. The Court's Bazemore decision held that if an employer's pay structure is facially discriminatory, that is, the pay structure sets different compensation on criteria like race or gender, then the paycheck is the last act of illegal conduct from which the 180-day filing period begins. The Court, rightfully in my opinion, distinguished this from the situation in Ms. Ledbetter's lawsuit.

With Ms. Ledbetter's lawsuit there was not a discriminatory pay structure in place, but rather allegations of specific acts of discrimination. The Court found those discrete acts occurred outside the 180-day filing period. I think that is an important distinction Members should understand.

Still, as some of my colleagues pointed out during this debate, specific and discrete acts of wage-based discrimination may be very difficult to detect within the 180-day filing period provided under title VII. This could lead to situations in which an employer escapes liability simply because the person did not know that a discriminatory act took place.

In such a situation, the 180-day filing rule appears to reward bad behavior and harm the person facing the illegal discrimination. I agree with Senator MIKULSKI that under this situation a strict 180-day filing rule is unfair.

As one of my colleagues supporting the Ledbetter legislation pointed out,

the Supreme Court, in TRW v. Adelaide and in an opinion authored by Justice Ginsburg, interpreted a statute of limitations arising under the Fair Credit Reporting Act as starting ''from the date on which the liability arises.'' Understanding this could unduly penalize victims of identity theft, Congress enacted a fix as part of the Fair and Accurate Credit Transaction Act of 2003. This fix extended the relevant statute of limitations based on the ''discovery by the plaintiff'' of the impermissible conduct.

Unfortunately, this is not the approach the Ledbetter legislation takes. Rather, it would adopt a rule allowing for the filing of lawsuits 180 days after the last paycheck issued by the employer that was affected by a discriminatory act, even if it was a single act that occurred many years ago. Thus, the Ledbetter legislation could allow for the filing of lawsuits long after someone knew they were subject to a discriminatory act, effectively eliminating the statue of limitations from title VII in many cases.

As the Supreme Court noted in its Ledbetter decision, statutes of limitations serve an important policy of repose in our justice system. Under American legal principles, it has long been public policy that a person should not be called into court to defend claims that are based on conduct long past.

As many of my colleagues who have practiced law know, it can be very difficult to mount a defense in cases in which the underlying conduct occurred long ago because witnesses are difficult to locate, memories fade, and records are not maintained. In Ms. Ledbetter's case, the supervisor accused of the misconduct died by the time of the trial. Yet under the approach taken by the Ledbetter legislation, defendants could potentially find themselves facing lawsuits that are years, if not decades, old.

Because she recognizes that paycheck discrimination may not be obvious in the modern workplace and that a bad actor should not benefit from hiding such discrimination, Senator HUTCHISON crafted a sensible compromise. Under the Hutchison amendment, a person could bring a claim under title VII within 180 days after obtaining knowledge or information that the person is the victim of discriminatory conduct. In other words, you don't start the 180-day statute of limitations until the person knows or has reasonable suspicion that she is subject to a discriminatory wage. But once you know you have been discriminated against, then it is your obligation to bring that to the attention of the EEOC and start the process to obtain relief.

By allowing a person to bring a claim from 180 days after the discriminatory conduct is discovered, Senator HUTCHISON's amendment stops bad actors from benefiting, and addresses many of the concerns many of my colleagues raised.

Unfortunately, the Ledbetter legislation would swing the pendulum completely in the opposite direction and create an open-ended legal liability that could expose businesses, the very entities we need to help us lift our economy out of this recession, to expensive new legal liabilities.

While this may not be good for insurance companies who write policies and trial lawyers who bring lawsuits, I do not believe the legislation is sound public policy.

Finally, I want to address a related issue before I yield the floor. Besides disagreeing on the solution to the issues created by the Ledbetter decision, Senator MIKULSKI's legislation did not go through the HELP Committee during this Congress.

While I understand the HELP Committee held one hearing on the Ledbetter bill during the 110th, this hearing occurred before Senator HUTCHISON introduced her legislation, which is now before us as the pending amendment. As a result, the Senate is left without the wisdom of having testimony and information comparing the different approaches.

While I understand sometimes it is necessary to bypass committees, the Senate has started to bypass the committee process too frequently. So often, as a result of that committee process, compromises can be worked out so once the bill is out of committee in many instances you can get a UC and get that legislation passed, or at least people have had a chance to talk about it in terms of some compromise.

So I am glad to be involved in this debate, but I believe the Senate and our Nation would be better served if the Senate got back into the habit of taking up legislation after it has gone through the relevant committee. In fact, I believe if these two legislative proposals had been discussed in the HELP Committee, the committee might have crafted a compromise bill that had the support of most, if not all, of my colleagues.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I appreciate very much the remarks of the Senator from Ohio who has much the same feeling about this I do. He wants to protect the employee who has known discrimination but also knowing that a business or small business needs to know what the liability might be and, hopefully, correct it if the notification is given in a timely way.

So I would look forward to talking about my amendment. At this time, I ask unanimous consent that my amendment be set aside in order for Senator SPECTER to be able to offer amendments, after which then Senator MIKULSKI will have the floor. Then when we get back to my amendment, I would like to debate my amendment.

Ms. MIKULSKI. Mr. President, I thank the Senator. We wish to follow the recommendations of our mutual leadership, which was to debate the Hutchison substitute tonight but to get as many amendments laid down tonight as we can. The Senator from Pennsylvania has two amendments he wants to offer. So I agree with the plan of laying aside the Hutchison substitute, having the Senator from Pennsylvania, Mr. SPECTER, offer his amendment, and at such time we will return to our robust debate on the Hutchison substitute and, hopefully, we can get a regular order going back and forth.

Mrs. HUTCHISON. Mr. President, I think that is a good plan. I appreciate the accommodation of the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 26

(Purpose: To provide a rule of construction)

Mr. SPECTER. Mr. President, I call up amendment No. 26.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 26.

The amendment is as follows:

(Purpose: To provide a rule of construction)

Strike the heading for section 6 and insert the following:

SEC. 6. CONSTRUCTION.

Nothing in this Act or any amendment made by this Act shall be construed to prohibit a party from asserting a defense based on waiver of a right, or on an estoppel or laches doctrine.

SEC. 7. EFFECTIVE DATE.

Mr. SPECTER. Mr. President, I agree with the underlying approach that women ought to receive equal pay for comparable work. I voted for cloture on the Ledbetter bill in the last Congress. I had been a cosponsor of the bill. I had not cosponsored the legislation this year because of my interest in making two changes I think would improve the legislation and would reduce the opposition.

I begin by congratulating Senator MIKULSKI and Senator ENZI for the very important work they have done. I congratulate Senator HUTCHISON on the amendment she has offered, the substitute. I intend to support her amendment.

The time when the statute of limitations begins to run is when the employee knew or should have known. I think that is fair. I think it is reasonable to say to an individual where you are being discriminated against, and you know about it, or you should, in reasonable diligence, know about this. This is a standard used in the law in many areas: actual knowledge or constructive knowledge, where somebody should have known. That is fair to say, at that point a person is on notice, they ought to begin their lawsuit. It is fair for the statute of limitations to begin running at that time to give the defendant a fair opportunity to know about it.

The amendment I have offered is hand in glove with the concept of

''should have known,'' that is, or actual knowledge, actual or constructive, to provide that the defendant will have the defense based on waiver or estoppel or laches. Waiver means you take an affirmative act and say: I do not want to assert my rights. That is a waiver. Estoppel means you are estopped from bringing the defense because of some conduct on your part which precludes you from bringing the action, or estopped. You are estopped from bringing the claim. And laches means too much time has passed, that you are barred by time. These are equitable doctrines which have more flexibility as opposed to a specific date. The essence of these defenses of waiver, laches, and estoppel was articulated in the dissenting opinion of Justice Ginsburg. She disagreed in the 5 to 4 decision which precluded women from claiming equal pay. She said that women ought to be able to claim equal pay and employers have a fair right to defend if they can assert these defenses.

So this is what Justice Ginsburg said: Allowing employees to challenge discrimination ''that extends over long periods of time,'' into the charge-filing period, does not leave employers defenseless against unreasonable or prejudicial delay. Employers disadvantaged by such delay may raise various defenses. Doctrines such as ''waiver, estoppel, and equitable tolling'' ''allow us to honor Title VII's remedial purpose without negating the particular purpose of the filing requirement, to give prompt notice to the employer.''

So what Justice Ginsburg lays out are the defenses which the employers would have in any event, but in putting it into the statute, it makes it conclusive. I think it is good so that you do not have an argument as to whether employers have these defenses. It allows the plaintiff to bring the claim, and allows a reasonable defense by the employer.

Mr. President, I now ask unanimous consent that the Hutchison amendment and my amendment be set aside so that I may lay down a second and final amendment.

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

AMENDMENT NO. 27

Mr. SPECTER. Mr. President, I now call up amendment No. 27.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 27.

Mr. SPECTER. 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 limit the application of the bill to discriminatory compensation decisions)

At the appropriate place, insert the following:

SEC. ___. LIMITING APPLICATION TO DISCRIMINATORY COMPENSATION DECISIONS.

(a) FINDINGS.—In section 2(1) of the Lilly Ledbetter Fair Pay Act of 2009, strike ''or other practices''.

(b) CIVIL RIGHTS ACT OF 1964.—In section 706(e) of the Civil Rights Act of 1964 (as amended by section 3), strike subparagraph (A) of paragraph (3) and insert the following:

''(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision is adopted, when an individual becomes subject to a discriminatory compensation decision, or when an individual is affected by application of a discriminatory compensation decision, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision.''.

(c) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—In section 7(d) of the Age Discrimination in Employment Act of 1967 (as amended by section 4), strike paragraph (3) and insert the following:

''(3) For purposes of this section, an unlawful practice occurs, with respect to discrimination in compensation in violation of this Act, when a discriminatory compensation decision is adopted, when a person becomes subject to a discriminatory compensation decision, or when a person is affected by application of a discriminatory compensation decision, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision.''.

Mr. SPECTER. Mr. President, the essence of this amendment is to strike the term ''or other practices.'' The core issue here is pay, and that is what I think we ought to deal with.

There are objections to this bill on the grounds that it is a lawyers bonanza and will allow a lot of litigation. Well, I do not think that is a sound argument, but I think there is merit in specifying that this legislation is aimed at pay, and if you talk about other practices it is going to produce a lot of litigation because there is no definition of what the ''other practices'' means.

For example, other practices might be promotion, might be hiring, might be firing, might be training, might be territorial assignment, might be transfer, might be tenure, might be demotion, place of business reassignment, might be discipline. All of these are possibilities when you talk about ''other practices.'' I do not purport to be making an exhaustive list. Those are only some of them, the possibilities on what might be included in other practices. When talking about pay, you know what you are talking about. Now, if it is the objective of the drafters of the bill to cover promotion or to cover hiring or to cover firing, fine; let's say so. If there is an intent to cover any of these other specific items, let's consider that. Let's make an evaluation as to whether that is a practice which requires remedial legislation. But in order to have ''other practices,'' I think we have the potential of reaching a quagmire and have a lot of litigation about what the intent was of Congress, a lot of questions as to what we intend to do.

Now, of course, in listing all of these items, if this amendment is defeated, I know lawyers will be citing this argument to say, well, if the amendment offered by ARLEN SPECTER was defeated, it must mean that all of those other practices are included, and then some, which is not my intent. But I do believe it would be a crisper bill, and we would know exactly what we are talking about.

Again, I say if anybody wants to include other practices, so be it.

Mr. President, I was advised that the senior Senator from Illinois was going to be here at 5:15. I want the RECORD to show that I finished my comments 1 minute early so as to allow the manager to maintain her commitment.

The PRESIDING OFFICER. The assistant majority leader.

Mr. DURBIN. Let me thank the Senator from the Commonwealth of Pennsylvania for his gracious acknowledgment of my opportunity to speak on this legislation. I look forward to working with him. I hope we can get this passed.

Let me tell you what the issue is. Fundamentally, it is just basic. In the case of Lilly Ledbetter, here is what it is coming down to: Should women be paid the same for work as men? That is it. That is the basic question.

Lilly Ledbetter was a lady who worked at the Goodyear Tire plant in Gadsden, AL. You do not expect to find a lot of women working in a plant like that, do you? She went on to the managerial part of the plant, which meant she was on her way up in the managerial ranks. She worked there for years, 19 years, and at the end of the 19 years when she was near retirement, somebody said: Lilly, did you realize all of these years you were working there that men who had the same job you did were being paid more than you?

She said: That is not right. That can't be true.

She checked it out, and it was true. All those years she had the same job classification, the same job responsibilities, and she was paid less.

She said: It is not fair. I think I ought to receive compensation because the company basically discriminated against me just because I am a woman. She takes her case and files it. In most cases, it is a pretty simple situation. What was the job; what did it pay. Did you pay women less than you paid men? These are basic fact questions. Then it made it all the way across the street to the U.S. Supreme Court. Then nine Justices sat down to take a look at the Ledbetter case. The Chief Justice of the Supreme Court, John Roberts, and Sam Alito, a recent appointee by the Bush administration to the Supreme Court said: We are sorry, Ms. Ledbetter. You cannot recover for this discrimination.

She said: Why?

They said: Well, you should have discovered this and reported it the first time you got a discriminatory paycheck. The first time you were paid

less than a man who had the same job, you had 180 days from that point. When that different paycheck was given, you had to file your claim.

Of course, common sense and life experience would tell you that most people at work don't know what their fellow employee is being paid. Lilly Ledbetter didn't know. She didn't know for 19 years that the men working right next to her were being paid more than she. But the Supreme Court said: Sorry, Lilly Ledbetter. Darn shame, but you should have filed this claim years ago. The fact that you are still being paid a discriminatory wage doesn't work because you had 180 days from the first time they sent a different paycheck to a man than a woman to file your claim, and you didn't do it. You are out of court. Thanks for dropping by. End of case.

I look back at these Supreme Court Justices' answers when they appeared before the Senate Judiciary Committee. I particularly remember Chief Justice Roberts because he was the most impressive witness I had ever seen. He sat there for days and answered every question without a note in front of him. He is a brilliant man. He made a point of saying: I feel like a Supreme Court Justice is an umpire. I'll call balls and strikes there. I am not supposed to make up new rules for the ball game. I'll watch the pitches coming in, and I'll call balls and strikes.

This is a foul ball. This decision by that Supreme Court ignores the reality of the workplace today. I asked Senator MIKULSKI, who is leading our effort, what is the basic discrimination between men and women in pay today? She said it is about 78 cents for the woman and a dollar for the man. As a father of daughters and sons, I think my daughters should be treated as fairly as my son. If they do the same work, they ought to get the same pay. What Senator MIKULSKI says in her basic bill, the Lilly Ledbetter Fair Pay Act, is we are not going to allow the Supreme Court decision to stand. It makes no sense. If the company is continuing to discriminate against you in its paycheck, that is good enough. You ought to be able to go to court, not the fact that the discrimination started 10 years ago, 12 years ago, and you didn't know about it.

Basically, in the law, we have this matter called the statute of limitations. It says you get a day in court but only for a window of time for most things. If you don't go to court in that window, you don't get to go. You are finished. But we make an exception in most cases for what is known as fraud and concealment. If the person guilty of the wrongdoing has concealed what they are doing and you don't know it, you can't say the time is running. It doesn't run in that circumstance because there is concealment. In this case, there is clearly a situation where you don't know what your fellow employee is being paid.

Senator HUTCHISON of Texas comes with an amendment. I am sure it is a well-intentioned amendment, and I am sure she is not going to defend pay discrimination. I am sure she doesn't stand for that; none of us do. But she adds a provision, and I wish to make sure I have the language right because it is important we take it into consideration. She says her amendment would only permit a victim to bring a discrimination claim if she ''did not have, and should not have been expected to have, enough information to support a reasonable suspicion of such discrimination.'' On its face it sounds: What is wrong with that? What is wrong with that is now Lilly Ledbetter and people such as she have a new burden of proof. They have to prove to the court they had no reason to suspect their employer was discriminating against them. It becomes subjective. It becomes difficult. It adds another hurdle. Why would we assert this hurdle? If anything happened yesterday in Washington, DC, it was an announcement of change in this town and in this Nation. With the election of Barack Obama as President, many of us believe we are going to start standing up for folks who haven't had a fighting chance for a long time. People who are being discriminated against in the workplace, folks such as Lilly Ledbetter, who spent a lifetime getting less pay than the man right next to her, are going to have their day in court, a chance to be treated fairly. That is what this bill says. That is why Senator MIKULSKI's leadership is so important.

We are saying to the Supreme Court, wake up to reality. You don't know what the person next to you is being paid. They don't publish it on a bulletin board. Maybe they do for public employees such as us, and that is right. But in the private sector, that doesn't happen. That is what this is all about. That is what the battle is all about.

Senator HUTCHISON comes here and says: Here is another thing Lilly Ledbetter should have had to prove; in her words, Lilly Ledbetter would have been required to prove that she should not have been expected to have enough information to support a reasonable suspicion.

I think it goes too far. We ought to look at the obvious. If a person is a victim of discrimination, once they have discovered those facts and assert those in court, they should have compensation. Employers ought to be given notice nationwide that we want people to be treated fairly, Black, White, and Brown, men and women, young and old, when it comes to job responsibilities. If you do the work, you get the pay. If you get discriminated against because your employer is secretly giving somebody more for the same job, you will have your day in court.

I think it is pretty American, the way I understand it. It gets down to the basics of what this country is all about.

I salute Senator MIKULSKI for her leadership and urge my colleagues to oppose the Hutchison amendment and to pass the underlying bill.

Now I will quote a newspaper from Chicago which occasionally endorses me but not very often, the Chicago Tribune, no hotbed of liberalism. When they read the Ledbetter decision from the Supreme Court, they said:

> The majority's sterile reading of statute ignores the realities on the ground. A woman who is fired on the basis of sex knows she has been fired. But a woman who suffers pay discrimination may not discover it until years later, because employers often keep pay scales confidential. The consequences of the ruling will be to let a lot of discrimination go unpunished.

Those who vote against the Ledbetter bill or vote for the Hutchison amendment will allow a lot of discrimination in America to go unpunished. President-elect Obama has said that passing this bill as one of the earliest items in his new administration is part of an effort to update the social contract in this country to reflect the realities working women face each day.

I urge my colleagues to help update the social contract with this new administration and this new day in Washington. Let us, after we have cleaned up the mall and all the folks have gone home, not forget why we had that election, made that decision as a nation, and why America is watching us to see if our actions will be consistent with our promises.

I yield the floor.

Mrs. HUTCHISON. Mr. President, is the pending legislation my substitute for the Mikulski bill?

The PRESIDING OFFICER. The pending amendments are the two Specter amendments.

AMENDMENT NO. 25

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Hutchison substitute be laid on the table and be the pending business.

The PRESIDING OFFICER. Is there objection?

Ms. MIKULSKI. Reserving the right to object.

Mrs. HUTCHISON. Mr. President, it was my understanding that when Senator SPECTER laid aside my amendment, we would return to my amendment, my substitute, after his two amendments had been offered. That was what we intended and that is what I was trying to restore.

Ms. MIKULSKI. I believe that clarifies it. I concur. I withdraw my reservation of objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment of the Senator from Texas will be the pending business.

Mrs. HUTCHISON. I yield 10 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, I rise to speak in support of the Hutchison substitute amendment to

the Lilly Ledbetter Fair Pay Act. I do believe this substitute amendment strikes a fair balance in ensuring that employees can be relieved of discrimination. I wish to say, at the outset of my comments, I am very pleased we are able to offer amendments to this legislation. I do intend to work with my colleagues to craft and support any other amendments that I believe will improve the legislation before us.

Before speaking directly to the Hutchison substitute, I wish to make very clear one point: Discrimination because of an individual's gender, ethnicity, religion, age or disability cannot be tolerated. No American should be subject to discrimination. If they are, they have the right to the law's full protection.

The heart of the Supreme Court's Ledbetter decision is the ruling that the law requires an employee to file a complaint within 180 days of when the discriminatory intent is first activated by paycheck. Last year, I had the opportunity to speak with Lilly Ledbetter. I know she made a visit to many offices. I had a good conversation. I believed her when she told me she didn't know her wages were lower than those of her male colleagues. I agreed it is often very difficult, perhaps impossible, to know how one's wages compare with another employee's, and that even if an employee does know that he or she is being paid less, that often it is very difficult to know for sure that the reason for the disparity is discrimination.

The best solution to this problem, though, is not necessarily to restart the clock at each paycheck. I believe the best solution is to clarify that if the employee did not know about the discriminatory action at the time it was supplied or could not have reasonably suspected discrimination, the clock starts when that knowledge is available to the employee or when it is reasonable for the employee to have known of the discrimination.

It is also reasonable to require that an employee file a complaint in a timely manner, once that knowledge or that suspicion is available. The Hutchison substitute is a good fix to the Ledbetter decision. Her amendment not only recognizes that many employees do not know what their colleagues are being paid or that any disparity is due to discrimination, the Hutchison substitute amendment would also restore the reasonable requirement that the employee file a complaint in a timely manner.

We all know memories have a tendency to fade away. Paperwork may be lost or thrown away. People leave jobs. Requiring an employee to file a timely claim benefit benefits the employee in pressing his or her claim. How can the Equal Employment Opportunity Commission investigate a claim of discrimination and find the truth, if the discriminating supervisor has retired, moved away or, perhaps, even died? That is what happened to Lilly Ledbetter. The supervisor who made the original discriminatory decision about her wages died before she could even file her complaint. He wasn't even available to be questioned or cross-examined. How can the EEOC find out the truth, if the records were lost that show a woman or a minority or senior or disabled person's first paycheck was inordinately lower than the first paycheck of his or her peers?

So Senator HUTCHISON's amendment ensures that this clock does not start running on the 180-day statute of limitations until an employee finds out about, or could reasonably be expected to suspect, the possibility of discrimination. It ensures that workers can hold their employers accountable for pay discrimination.

Now, some have argued—or some will argue—Senator HUTCHISON's amendment would institute an unfair discovery rule. They argue it will force employees to file before they are sure of discrimination, when they may most fear retaliation. But I disagree. Senator HUTCHISON's amendment says the clock starts when the employee ''did not have, and should not have been expected to have, enough information to support a reasonable suspicion of such discrimination, on the date on which the alleged unlawful employment practice occurred.'' It does not say the employee must file when they have a hunch. It says a ''reasonable suspicion.''

Opponents of this amendment may also contend that the Lilly Ledbetter Fair Pay Act simply restores the paycheck accrual rule that was in place before the Supreme Court decision and that a discovery rule would be a new hurdle for employees to deal with. Again, I disagree with this. Prior to the Supreme Court's Ledbetter decision, the EEOC applied, through regulation, the concept—many attorneys are familiar with it—of ''equitable tolling.'' This concept basically means that a plaintiff may proceed with a complaint notwithstanding missing a deadline if the employee did not know he or she was being discriminated against.

The Hutchison amendment actually strengthens that familiar, often used legal concept that protects employees' rights by putting it in the statute.

Opponents of placing a so-called discovery rule in the law also allege it would lead to confusion in the courts. They call it an unclear and untested rule. Again, I would disagree. The EEOC and the courts are quite familiar with the concept of equitable tolling, and there is substantial case law in which it has been applied.

Opponents also claim a discovery rule will force plaintiffs to prove a negative—that the employee should not be expected to have known about the discrimination—before they even get to the question of whether there was discrimination. I believe it is fairly easy to prove that one did not have access to the pay records of other employees, that it is fairly easy to prove the piece of information that led the employee to file the complaint was not available to him or her earlier.

I believe the substitute amendment we have before us strikes the right balance in ensuring that employees can be relieved of discrimination. It recognizes employees often do not know their pay is different from their colleagues. It recognizes it is not always obvious that a pay disparity is based on discrimination.

For those reasons, I have cosponsored this amendment by my colleague, Senator HUTCHISON, and I urge my other Senate colleagues to support it.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank the Senator from Alaska for her support of my amendment.

I wish to lay out my amendment one more time, and then the long-suffering and ever-patient Senator from Maryland will have the chance to rebut. She has been so wonderful about making sure everyone got a chance to speak and knowing we would still be here to debate this amendment, and then setting a time agreement for the vote tomorrow, when the leaders have made that decision.

This is such an important issue. As the Senator from Alaska has said, and really everyone has said, we all want to make sure we give every opportunity to a person who has faced discrimination in the workplace to be able to have a redress of that discrimination.

The law, as it is today, gives 6 months for a person to be able to go forward to the EEOC, and then later to the courts, to say there has been an act of discrimination. Now, most of the time it is easy for an employee to know when a cause of action occurs. If it is age discrimination and someone has been demoted; if it is a firing, of course; any lessening of duties or responsibilities, that is a signal that perhaps there is some discrimination of some kind—whether it be based on age or gender or whatever might be alleged.

The harder issue is pay, there is no question because most people do not talk about what they make around the water cooler or in the break room. Most people hold that close because there are many factors that go into pay. Because of that, it is harder to do the fair thing. That is what I am trying to do with my amendment, to make sure there is a fair opportunity for an employee to have the right of redress and also a fair opportunity for the person in business to know if there is a liability or a mistake.

If the Mikulski bill passes, one would be able to sit on a claim because it would not matter if the person should have known of the alleged discrimination. They can pick their time, and it could be months, years, decades after a discrimination has occurred. This is a

problem because the employer has to be able to have an opportunity to mount a legitimate defense with records that would be kept, with witnesses who would come forward, with memories that would be fresh, to give the employer the right to know what the liability is and be able to have witnesses or the person who is accused there to make the other side of the case.

In pay discrimination, what we are doing in my substitute is basically setting a standard that will be uniform across the country, in all courts. It is what the Supreme Court has said should be the test. In some districts, the court will say: Well, let's hear from the employee why she did not know or why he did not know. If the court says: Well, I think that is reasonable—maybe there is a policy in the company that if you talk about your salary, that is grounds for firing. Now, that would be a very strong presumption for the employee that maybe they were in the dark. So we want that employee to have the right to say there is no way I could have known. There was a policy against it. But we need to have that standard across the board in every district. Some courts will do it, but not every court will do it, which is why my substitute amendment is needed, because we need every employee to have the ability to make the case that person could not have known.

Now, the distinguished assistant majority leader said that puts the employee with the burden of proof. Well, the employee is the plaintiff. The plaintiff always has the burden of proof in our legal system. We would certainly—if it were something that would make a difference to the Senator from Maryland or the Senator from Illinois; if it would make a difference that we would establish a rebuttable presumption that would favor the employee but be allowed to be rebutted by the employer—we could talk about that, and I would be open to that suggestion.

But the plaintiff bringing the case in our system does have the burden of proof. What we want is to assure that responsibility is codified in the law, that it is codified so that person has the right, but also the responsibility to press a claim. This is the important part of the substitute that says we want the right of the employee to be able to say they did not know, and why, and give courts the chance to apply a standard that would be set for everyone in this country to have the right to press the claim if they did not know.

On the other hand, the reason we have statutes of limitations—and we have had since the beginning of law in this country, and in other civil law countries—is that the defendant does have a right to be able to make the defense and be able to anticipate what the liability might be. A small business that has a person come forward who has a claim from 10 years ago, and they did not know the employer did not know this right was accumulating and could result in a catastrophic effect on a small business—when if the employee, when he or she suspected, brought forward this claim, perhaps it could be settled right then and there so everyone wins.

So I hope we can work on this bill so we do give fairness to both sides in a legal case. We wish to have the right of the employee to come forward when that person knew or should have known within 6 months of that right accruing; and we need to have the right for the business to be able to have evidence, records, witnesses, and fresh memories to mount an effective case in defense if they are going to rebut the charge. That is one part of the substitute.

The other part is, I think, also very important; and that is that in the bill before us there is a major change in common law and in tort law that has also been a part of our legal system and our case law since the beginning of law in our country and in other countries that have the types of laws we do; and that is that a tort accrues a right to the person who is offended or damaged or hurt by another action. It does not accrue to another person who is affected by or might be considered affected by this claim.

Now, there are exceptions to that. But in the main, it is, I think, essential, if we are going to have a statute of limitations that goes beyond the act itself—and in this case it would be 6 months, which is the law today—that it accrue to the person actually injured, the employee, and not some other person on behalf of the person who did not bring the case.

Under the Mikulski bill, the Ledbetter Act, a new right has been given to a person who may not be the person with the injury. So it could be a case where the person dies after working at a place of employment, a business. The person dies, and within 6 months of that person's last paycheck and subsequent death, some other person—an heir, a child, a mother, a father—could bring a case, which the person who has allegedly been discriminated against chose not to bring or did not bring. In such an absurd case, possible under the Ledbetter bill, you do not even have the person discriminated against to testify. I think this is a very big hole in the concept of fair play that our legal system tries to provide. By saying ''other affected parties,'' I think we have opened up a whole new right and possible class of plaintiffs that has not been contemplated before and could achieve an inequitable result.

So I hope very much that people will look at my substitute and try to get to the same end Senator MIKULSKI and I both want, by trying to shape the legislation so that it keeps the fairness in the process for a person who claims a discrimination and a person in the business that has hired this person to have a fair right for a defense. That should be our goal. I think my substitute does achieve that balance. I hope very much we can work this into a bill that all of us can support for people who have certainly known discrimination, as I have, and for people who want to make sure their children and grandchildren don't face discrimination, as well as for those who wish to make sure we don't discriminate against that small business owner who is all of a sudden, after 10 or 15 years, maybe looking at a liability that they didn't know about, couldn't prepare for because they don't know about it; maybe it is a mistake and maybe it could be corrected if we keep that statute of limitations that would say a person knew or should have known can have 6 months to file a claim so there can be an equitable, judicial remedy for this potential claim.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, I yield the floor to the Senator from Maryland for such time as he may consume. He has been a longstanding advocate for women. He is a current member of the Judiciary Committee. He was the Speaker of the House in Maryland. He was a member of the House of Representatives, and now is a member of the Senate Judiciary Committee. He is a real leader and I think we can look forward to a thoughtful presentation.

The PRESIDING OFFICER. The Senator from Maryland does not control the time.

The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, let me first thank my colleague from Maryland for giving me the opportunity to speak, but also to thank her for her extraordinary leadership on behalf of gender equality in our Nation. Senator MIKULSKI is no stranger to this issue. She has fought her entire life on behalf of equality for all people in this country. From her days as a social worker to her service on the City Council of Baltimore and now to the Senate, she has been our leader on speaking out for what is right on behalf of women, on behalf of all of the people of our Nation. So I thank Senator MIKULSKI very much for everything she has done, not just on this issue but on so many issues that affect equality for the people of our country.

This has been an extraordinary week. On Monday we celebrated the life and legacy of Dr. Martin Luther King, Jr. Dr. King had a dream that everyone in this country would have the equal opportunity of this great land, regardless of race, religion, sexual orientation, or gender. He had a dream. Then, yesterday, we saw this Nation take a giant step forward in reaching that dream with the inauguration of Barack Obama as the 44th President of the United States. We can take another giant step forward now by passing the legislation that my colleague from Maryland is bringing forward, the Lilly Ledbetter Fair Pay Act. It is so important that we do this.

Let me give my colleagues some of the facts. They know this, but it is worth repeating. Today in the workplace women are being discriminated against. On average, women make 77 percent of what a male makes for the same work. That is unacceptable and inexcusable. We need to change that.

Lilly Ledbetter worked for 19 years at Goodyear Tire Company. It was shown that she was making $15,000 less than her male counterparts were making in the United States of America. Well, we passed legislation to make sure that could not happen and that there were rights to protect women who were discriminated against by that type of action by an employer. Lilly Ledbetter did what was right. She filed her case and it was found that, yes, she was discriminated against, but guess what. Her claim was denied by the Supreme Court of the United States by a 5-to-4 vote because she didn't bring her case within 180 days of the discrimination. She didn't know about the discrimination until a fellow worker told her about it, well past 180 days. She couldn't possibly have brought the case within 180 days.

Now it is time for us to correct that Supreme Court decision, and that is exactly what the legislation Senator MIKULSKI has brought forward will do. It will reverse the Supreme Court decision giving women and giving people of this Nation an effective remedy if an employer discriminates based upon gender.

I have listened to some of the debate on the floor. I don't want to see us put additional roadblocks in the way of women being able to have an effective remedy. I respect greatly my colleague from Texas. She is very sincere and a very effective Member of this body. However, I don't want to have lawyers debating whether a person can bring a claim, as to whether they had reasonable cause or try to think of what someone was thinking about at the time. This is very simple. If you discriminate against your employee, they should have an effective remedy. The Supreme Court turned down that remedy. The legislation that is on the floor corrects it. It is our obligation, I believe, to make sure that is done.

So I wish to take these few moments to urge my colleagues to pass the legislation that is before us. Let's not put additional roadblocks in the way. Let's not pass amendments that will become ways in which employers such as Goodyear Tire could prevent their employees from getting fair pay. The time is now. Let's pass this legislation.

I again congratulate my colleague from Maryland for her leadership on this issue.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The senior Senator from Maryland.

Ms. MIKULSKI. Mr. President, I thank my colleague for his eloquent and persuasive argument.

I rise to debate with my colleague from Texas her amendment. Before I go into the Hutchison substitute amendment, I wish to clear up two misconceptions. The first misconception is that there have been no hearings on this bill; somehow or another this is a fast-track, jerry-rigged, gerrymandered process. That couldn't be further from the truth.

In 2008, we held two hearings on Ledbetter, one in January of 2008—just about this time—in the Senate Health, Education and Labor Committee, which was a very active committee. Second, we also held a hearing in the Senate Judiciary Committee to get the extensive legal commentary. That hearing was held on September 23. There are those who would say, But that was the last Congress. Well, that was last year, but the relevant facts are the same. So there have been extensive hearings in the Senate and in the House. I believe we are following a framework for getting views through the regular process.

Now, our new President, President Barack Obama, has said very clearly that he wants to create jobs in this country. If you don't have a job, you get a chance to get one, and if you do have a job, you get a chance to hold on to it. Additionally, he said that if you have a job or you are going to get a job, you will not face wage discrimination in the United States of America. That is why he wants not only in his first 100 days, but in his first 10 days, to pass legislation that closes a loophole on wage discrimination.

That takes me to the second misconception. The Lilly Ledbetter Fair Pay Act, which I am the lead sponsor of—but I wish to acknowledge the role of Senator KENNEDY as the lead sponsor, and I am carrying this responsibility as a member of the committee. Now, the second misconception is that somehow or another the Fair Pay Act only deals with wage discrimination affecting women. Oh, no. It deals with wage discrimination affecting all people. So if you are discriminated against in your paycheck because of your race, ethnicity, religion, natural origin, or gender, this legislation will protect you. This loophole was created by the Supreme Court, and I will elaborate on that as well.

So we followed hearings. This bill, as part of President Obama's hope for America, makes sure that when you get a job or you keep your job, you will never be discriminated against in your wages. So I wanted to clear up those two misconceptions.

Now I wish to go to the Hutchison substitute. First, I wish to acknowledge the Senator from Texas, my truly very good friend, for her long-standing advocacy for women. We have worked together on a bipartisan basis for women. Her advocacy has been steadfast. She has been of particular help. We have worked together on the women's health agenda. We have mammogram standards in this country because of the Hutchison-Mikulski amendment. We have helped with breast cancer research funding because we have worked together, and I could give example after example.

I also wish to acknowledge that the Senator from Texas herself was discriminated against in the workplace. Maybe later on in the debate she will share her own very compelling personal story. So I wish to acknowledge that.

I also wish to acknowledge that we—the women of the Senate—can disagree, which she and I do tonight, without being disagreeable. There is no doubt that the Senator from Texas and I agree that we do not want wage discrimination against women. Where we disagree is not on the goal but on the means. She has her substitute, and I have, which I think is the superior framework, the Lilly Ledbetter Fair Pay Act. I wish to be clear that in this new Senate, we can offer amendments, we can have our shared goals, and we can do it in a way that is not prickly or rancorous and so on. So I wish to be able to say that. Although I disagree with her, my bill—the Kennedy-Mikulski bill—which has 54 cosponsors, simply restores the law before the Supreme Court decision. It is a legal standard that nine separate decisions in front of courts of appeal agreed with.

Let me elaborate. The Hutchison amendment acknowledges that the Supreme Court Ledbetter decision is unfair and it has closed the courthouse door for legitimate claimants. Unfortunately, Senator HUTCHISON's effort to fix Ledbetter's problem is flawed. I think it is a well-intentioned but misguided attempt. Her amendment will not fix the problem caused by the Ledbetter decision. In fact, review of her amendment leaves the core of the Ledbetter's harsh ruling intact, creating only a very narrow and vague exception. Moreover, the exception creates significant legal hurdles for those workers who try to take advantage of it.

In the Ledbetter decision, the Supreme Court said an employee must challenge pay discrimination within 180 days of the employer's initial decision to discriminate or the employee will be forever barred from enforcing her rights. This decision gave employers a free pass to continue discrimination. By keeping in place the heart of the Ledbetter decision, the Hutchison amendment would allow such injustice to continue.

The Senator from Texas says her amendment would bring balance to our antidiscrimination laws, but in reality it imposes a very unreasonable standard on workers—a standard that would be almost impossible for someone to meet.

Under the Hutchison framework, a worker would have to prove not only that she did not know she was being discriminated against but also she "should not have been expected to have had enough information to support a reasonable suspicion of discrimination."

How can workers prove what someone else expects of them? How does a worker prove a negative, that she didn't suspect that something in the workplace wasn't quite right? And—again quoting the Hutchison recommendation—what is a ''reasonable suspicion of discrimination''? That phrase, ''reasonable suspicion of discrimination,'' is vague, and fuzzy, and I am concerned would even add to the already legal burdens. There is no similar standard in any other discrimination law.

Workers would have to prove they could meet this vague standard before they could even raise their allegations of discrimination. This means time and resources spent on what workers knew and when they knew it instead of on the conduct of unscrupulous employers.

Even conservative commentators are worried about the Hutchison amendment. Andrew Grossman of the Heritage Foundation noted that the Hutchison amendment would fail to provide the certainty of a hard statute of limitations.

By contrast, the Lilly Ledbetter Fair Pay Act would restore a bright line for determining the timeliness of pay discrimination claims. We know employers and workers can understand this rule and live with it because it was the law of the land in most of the country for decades prior to the Ledbetter decision. Our bill would simply put the law back to what it was before the Supreme Court upended the law.

Although Senator HUTCHISON claims her amendment would protect employers from unreasonable lawsuits, it could cause an explosion in the number of lawsuits. If this amendment was adopted, workers would feel compelled to file claims quickly for fear that they would miss their statute of limitations. So the only way you can protect yourself is to file a claim because you might have a reasonable suspicion. Given the way women are treated in the workplace, you could have a reasonable suspicion every time you walk in somewhere. Workers have to run to the EEOC even if the only evidence of discrimination is rumor or speculation. This could create a very nasty and hostile work environment. Without any guidance of what constitutes a ''reasonable expectation'' or a ''reasonable suspicion'' of discrimination, workers will file a tremendous number of claims. That is just what we don't want to do. We want to return to the law.

They say the Lilly Ledbetter Fair Pay Act is only going to cause an explosion of lawsuits, but it didn't before the Supreme Court decision. In fact, we now know the Lilly Ledbetter Fair Pay Act would not cause an increase in lawsuits because it gives the workers the time they need to consider how they have been treated and try to work out solutions with employers before they get into filing complaints and also lawsuits.

You don't have to take my word for this. History proves it. The rule that workers can file claims within 180 days of receiving a discriminatory paycheck did not encourage any unreasonable number of lawsuits in the decade before the Ledbetter Supreme Court decision.

We turned to CBO, again, a pretty cut-and-dry, button-down crowd. They said this bill would not increase claims filed with the EEOC or lawsuits filed in court, meaning the Lilly Ledbetter Fair Pay Act, not the Hutchison amendment.

The best evidence the Hutchison amendment does not solve the problems caused by the Ledbetter decision is that the amendment would not have helped Lilly Ledbetter herself. Isn't that something. Under the Hutchison framework, this amendment would have tipped the scales of justice against her in favor of her law-breaking employer because it is virtually impossible to meet the reasonable expectation of a reasonable suspicion standard. Ms. Ledbetter would have been forced to spend all of her time and all of her money trying to prove that she had no reason to suspect discrimination before the EEOC or the courts could have even considered Goodyear's illegal and unfair treatment of her. Discrimination claimants face enough difficult hurdles. Brave workers, such as Lilly Ledbetter, do not need more disincentives to stand up for themselves and their rights.

The Lilly Ledbetter Fair Pay Act is a bipartisan solution. It responds to the basic injustice of the Supreme Court Ledbetter v. Goodyear decision. I urge my colleagues to vote against the Hutchison amendment and vote for the Lilly Ledbetter Fair Pay Act.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Texas.

Mrs. HUTCHISON. Madam President, I was going to engage in a discussion with the Senator from Maryland. I see the Senator from Minnesota is in the Chamber. Is it OK to proceed?

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I wish to talk about a couple of points that were made by the Senator from Maryland.

First, I want to say how much I appreciate her talking about how much we have done together in the Senate for women. We have made significant legislation that has improved the lives of women. She mentioned many of the bills we cosponsored.

The other one I want on the record, because I think it is so important for the homemakers of our country, is the homemaker IRA, which was the Hutchison-Mikulski bill that allows stay-at-home spouses, those who work inside the home, to put aside the same amount for retirement security that will accrue without being taxed as someone who works outside the home, which was not the case before Senator MIKULSKI and I passed our bill. It is one of the singular achievements, I think, in helping especially women who usually go in and out of the workplace to save, without being taxed every year, in a retirement account the same amount as if they work outside the home.

We have worked together, and I know we will work together on many other issues. And I hope we will end up working together on this issue because we do have the same goal, and that is to provide a fair legal process for people to have the right to sue for discrimination and the employer that is accused to have the right of defense.

I ask unanimous consent to print in the RECORD the report of the Heritage Foundation that was mentioned earlier.

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

[From the Heritage Foundation, Jan. 7, 2009]

THE LEDBETTER ACT: SACRIFICING JUSTICE FOR ''FAIR'' PAY

(By Andrew M. Grossman)

Congressional leaders have said that they will fast-track the Lilly Ledbetter Fair Pay Act, a bill that would allow pay discrimination lawsuits to proceed years or even decades after alleged discrimination took place. Proponents say that the legislation is necessary to overturn a Supreme Court decision that misconstrued the law and impaired statutory protections against discrimination, but the Court's decision reflected both longstanding precedent and Congress's intentions at the time the law was passed.

In addition, eliminating the limitations period on claims would be bad policy. Since ancient Roman times, all Western legal systems have featured statutes of limitations for most legal claims. Indeed, they are so essential to the functioning of justice that U.S. courts will presume that Congress intended a limitations period and borrow one from an analogous law when a statute is silent. While limitations periods inevitably cut off some otherwise meritorious claims, they further justice by blocking suits where defensive evidence is likely to be stale or expired, prevent bad actors from continuing to harm the plaintiff and other potential victims, prevent gaming of the system (such as destroying defensive evidence or running up damages), and promote the resolution of claims. By eliminating the time limit on lawsuits, the Ledbetter Act would sacrifice these benefits to hand a major victory to trial lawyers seeking big damage payoffs in stale suits that cannot be defended.

The Ledbetter Act would also lead to myriad unintended consequences. Foremost, it would push down both wages and employment, as businesses change their operations to avoid lawsuits. Perversely, it could actually put women, minorities, and workers who are vocal about their rights at a disadvantage if employers attempt to reduce legal risk by hiring fewer individuals likely to file suit against them or terminating those already in their employ.

Rather than effectively eliminate Title VII's limitations period, Congress could take more modest, less risky steps to ease the law's restrictions, if such change is warranted. Most directly, it could lengthen the limitations period to two or three years to match the periods in similar laws. Another option is to augment the current limitations period with a carefully drafted ''discovery rule'' so that the time limit on suing begins running only when an employee reasonably suspects, or should reasonably suspect, that he or she has been discriminated against.

While either of these options would sacrifice some of the benefits of the current limitations period, they are far superior alternatives to throwing the law wide open to stale claims and abuse.

THE LEDBETTER SUIT

For all the rhetoric about the Supreme Court's Ledbetter decision—the New York Times, for one, called it ''a blow for discrimination''—it addresses not the substance of gender discrimination but the procedure that must be followed to assert a pay discrimination claim. Specifically, the case presented only the question of when a plaintiff may file a charge alleging pay discrimination with the Equal Employment Opportunity Commission (EEOC), a prerequisite to suing.

Lilly Ledbetter, who worked for Goodyear Tire and Rubber Co. from 1979 until 1998 as a factory supervisor, filed a formal EEOC charge in July 1998 and then a lawsuit in November, the same month that she retired. Her claim was that after she rebuffed the advances of a department foreman in the early 1980s, he had given her poor performance evaluations, resulting in smaller raises than she otherwise would have earned, and that these pay decisions, acting as a baseline, continued to affect the amount of her pay throughout her employment. She said she had been aware of the pay disparity since at least 1992.

Initially, Ledbetter sued under the Equal Pay Act of 1963 (EPA) and Title VII of the Civil Rights Act of 1964, a more general anti-discrimination statute. The EPA, unlike Title VII, has been interpreted not to require proof that pay discrimination was intentional but just that an employer paid an employee less for equal work without a good reason for doing so. For such claims, the EPA imposes a two-year statute of limitations, meaning that an employee can collect deficient pay from any discriminatory pay decisions made during that period, whether or not the employer intended to discriminate in any of those decisions. Title VII, while imposing a shorter filing deadline of 180 days and requiring proof of intent to discriminate, allows for punitive damages, which the EPA does not. Perhaps for this reason, Ledbetter abandoned her EPA claim after the trial court granted summary judgment on it in favor of her former employer.

On her Title VII claim, however, Ledbetter prevailed at trial before a jury, which awarded her $223,776 in back pay, $4,662 for mental anguish, and a staggering $3,285,979 in punitive damages. The judge reduced this total award to $360,000, plus attorneys' fees and court costs.

Goodyear appealed, and the Eleventh Circuit Court of Appeals reversed the decision on the grounds that Ledbetter had not provided sufficient evidence to prove that an intentionally discriminatory pay decision had been made within 180 days of her EEOC charge. Ledbetter appealed to the Supreme Court, challenging not that determination but only the Court of Appeals' application of Title VII's limitations period.

In a decision by Justice Samuel Alito, the Supreme Court held that the statute's requirement that an EEOC charge be brought within 180 days of an ''alleged unlawful employment practice'' precluded Ledbetter's suit, because her recent pay raises were not intentionally discriminatory. Ledbetter argued that the continuing pay disparity had the effect of shifting intent from the initial discriminatory practice to later pay decisions, performed without bias or discriminatory motive. The Court, however, had rejected this reasoning in a string of prior decisions standing for the principle that a ''new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination.'' For those familiar with the law, this appeared to be a rehash of a 1977 case that reached the same conclusion on identical grounds.

Thus, the Court affirmed the lower decision against Ledbetter.

THE PURPOSES OF LIMITATIONS PERIODS

That result did not speak to the merits of Ledbetter's case—that is, whether she had suffered unlawful discrimination years before—but only to the application of the statute's limitations period. Although it seems intrinsically unfair to many that a legal technicality should close the courthouse doors, statutes of limitations, as the majority of the Court observed, do serve several essential functions in the operation of law that justify their cost in terms of barred meritorious claims. In general, limitations periods serve five broad purposes.

Justice Story best articulated the most common rationale for the statute of limitations: ''It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt, from lapse of time, but to afford security against stale demands, after the true state of the transaction may have been forgotten, or be incapable of explanation, by reason of the death or removal of witnesses.''

Indeed, Ledbetter itself illustrates this function. Different treatment, such as pay disparities, may be easy to prove even after much time has lapsed, because the kinds of facts at issue are often documented and, indeed, are rarely in dispute. More contentious, however, is the defendant's discriminatory intent, which Title VII requires in addition to proof of disparate treatment. The evidence proving intent can be subtle—for example, ''whether a long-past performance evaluation . . . was so far off the mark that a sufficient inference of discriminatory intent can be drawn.'' With the passage of time, witnesses' memories may fade, stripping their accounts of the details necessary to resolve the claim. Evidence may be lost or discarded. Indeed, witnesses may disappear or perish—the supervisor whom Ledbetter accused of misconduct had died by the time of trial. Sorting out the subtleties of human relationships a decade or more in the past may be an impossible task for parties and the courts, one at which the defendant, who did not instigate the suit, will be at a particular disadvantage. This seems to have been the case in Ledbetter.

Statutes of limitations, in contrast, require a plaintiff to bring his or her claim earlier, when evidence is still fresh and the defendant has a fair chance of mustering it to mount a defense. In this way, statutes of limitations also serve to prevent fraudulent claims whose veracity cannot be checked due to passage of time.

Second, statutes of limitations also help to effectuate the purposes of law. They encourage plaintiffs to diligently prosecute their claims, thereby achieving the law's remedial purpose. This is particularly the case for statutes such as those forbidding discrimination in employment practices, where Congress has created causes of action to supplement government enforcement actions. Litigation under such statutes is, in part, a public good, because the plaintiff in a meritorious suit secures justice not just for himself but for similarly situated victims, as well as the public at large, which has expressed its values through the law. Anti-discrimination law is the archetypical example of an area where private suits can promote far broader good. Other victims and the public are best served when workers who believe they have been subject to discrimination have the incentive to investigate the possible unlawful conduct, document it, and then challenge it in a timely fashion. This was an explicit goal of the Civil Rights Act of 1964, whose drafters reasoned that the short limitations period and mandatory EEOC administrative process would lead most discrimination complaints to be resolved quickly, through cooperation and voluntary compliance.

Third, time limits on filing lawsuits prevent strategic behavior by plaintiffs. In some cases, plaintiffs may wait for evidence favorable to the defense to disappear or be discarded, for memories to fade and witnesses to move on, before bringing claims. Particularly under laws that allow damages continuing violations or punitive damages, plaintiffs may face the incentive to keep quiet about violations as the potential pool of damages grows. Concerns that plaintiffs will game the system in this way are so prevalent that an entire doctrine of judge-created law, known as ''laches,'' exists to combat certain of these abuses. Laches, however, is applied inconsistently, and courts often decline its exercise in enforcing statutory rights. A limitations period puts a limit on the extent to which plaintiffs can game the law by delaying suit.

Fourth, time-limiting the right to sue furthers efficiency. Valuable claims are likely to be investigated and prosecuted promptly, while most of dubious merit or value are ''allowed to remain neglected.'' Thus, ''the lapse of years without any attempt to enforce a demand, creates, therefore, a presumption against its original validity, or that it has ceased to subsist.'' Statutes of limitations, then, are one way that our justice system focuses its limited resources on the most valuable cases, maximizing its contribution to the public good.

Finally, there is an intrinsic value to repose. It promotes certainty and stability. Putting a deadline on claims protects a business's or individual's settled expectations, such as accounting statements or income. At some point, surprises from the past, in the form of lawsuits, cease to be possible. As with adverse possession of land, the law recognizes that, though a wrong may have been done, over time certainty of rights gains value.

For these important reasons, statutes of limitation are ubiquitous in the law and have been since ancient Roman times. Limitations periods necessarily close the courthouse doors to some potentially worthwhile claims—an outcome so harsh that it would be ''pure evil,'' observed Oliver Wendell Holmes, if it were not so essential to the operation of law. That a single good claim has been barred, then, proves not that the deadline for suit is unfair or unwise but only that justice cannot provide a remedy in every case.

THE LEDBETTER ACT

Nonetheless, editorial reaction to Ledbetter was swift and almost entirely negative, with most writers drawing from Justice Ginsburg's bombastic dissent (which she read in part from the bench) calling the majority's reasoning ''cramped'' and ''incompatible with the statute's broad purpose.'' Ginsburg's logic, repeated on the opinion pages, and often news pages, of countless newspapers, was that Ledbetter was a member of a protected class (women), performed work equal to that of the dominant class (men), and was compensated less for that work due to gender-based discrimination. End of story. Pay discrimination, Ginsburg argued, is different than other forms of discrimination and is more akin to a ''hostile work environment'' claim, which by its nature involves repeated, ongoing conduct. But

this is creative reimagining of the statute: Nowhere in it is there any room for the limitations period present in the statute or indeed any of the other requirements that Congress crafted.

Unfortunately, though, it was Ginsburg's dissent, and her unseemly urging that ''once again, the ball is in Congress' court,'' that spurred the drafters of the Lilly Ledbetter Fair Pay Act, which was introduced soon after the Court issued its decision and passed the House in short order. The bill would adopt Ginsburg's view, amending a variety of anti-discrimination laws to the effect that a violation occurs ''each time wages, benefits, or other compensation is paid'' that is affected by any discriminatory practice. In this way, the law would simply eliminate the limitations period as applied to many cases.

Under the Ledbetter Act, employees could sue at any time after alleged discrimination occurred, so long as they have received any compensation affected by it in the preceding 180 days. While this would certainly reverse Ledbetter, it goes much further by removing any time limitation on suing in pay-related cases, even limitations relating to the employee's learning of the discrimination—an approach that is known in other contexts, such as fraud, as a ''discovery rule.'' This new rule is also broader in that it would apply to any (alleged) discrimination that has had an (alleged) effect on pay, such as an adverse promotion decision. In addition, retirees could bring suits alleging pay-related discrimination that occurred decades ago if they are presently receiving benefits, such as pensions or health care, arguably effected by the long-ago discrimination.

In these ways, the Ledbetter Act would allow cases asserting extremely tenuous links between alleged discrimination and differences in pay, which may result from any number of non-discriminatory factors, such as experience. Employers would be forced to defend cases where plaintiffs present evidence of a present wage gap, allegations of long-ago discrimination, and a story connecting the two. As wage differences between employees performing similar functions are rampant—consider how many factors may be relevant to making a wage determination—a flood of cases alleging past discrimination resulting in present disparity would likely follow passage. In addition to investigatory and legal expenses, employers will face the risk of punitive damages and the difficulty of rebutting assertions of discriminatory acts from years or decades ago.

The flood of lawsuits would not be endless, however, because, as Eric Posner observes, employers can be expected to change their hiring, firing, and wage practices to reduce the risk of lawsuits. To the extent that disparities in treatment are the result of discrimination, this may undercut its effects. But if, as Posner puts it, businesses ''start paying workers the same amount even though their productivity differs because they fear that judges and juries will not be able to understand how productivity is determined,'' the law would impose significant costs on businesses and, by extension, consumers and the economy. The result would be a hit to employment and wages, combined with higher prices for many goods and services.

Perversely, the Ledbetter Act may actually harm those it is intended to protect. In making employment decisions, businesses would consider the potential legal risks of hiring women, minorities, and others who might later bring lawsuits against them and, as a result, hire fewer of these individuals. Even though this discrimination would violate the law, it would be difficult for rejected applicants to prove. Other employers might simply fire employees protected by Title VII—and especially those who are vocal about their rights under the law—to put a cap on their legal liabilities. Again, this would be illegal, but difficult to prove.

These kind of unintended consequences have been a chief effect of the Americans with Disabilities Act, which prohibits discrimination against individuals with disabilities and enforces that prohibition through civil lawsuits. Today, the disabled earn less and work far less than they did prior to enactment of the ADA, and a number of economists, including MIT's Daron Acemoglu, blame the ADA for reducing the number of employment opportunities available to the disabled. In this way, by dramatically increasing employers' exposure to potential liability when they hire members of protected classes, the Ledbetter Act would put members of those classes at a disadvantage in the labor marketplace.

BIG PAYOFFS FOR THE TRIAL BAR

It is difficult to explain the hue and cry from parts of the bar that accompanied Ledbetter, given that the plaintiff clearly could have proceeded under the Equal Pay Act without running into a limitations period problem. One explanation is that Title VII, unlike the EPA, allows for punitive damages in addition to several years' worth of deficient pay. Had she proceeded under the EPA and prevailed, Ledbetter would have received deficient pay going back two or three years prior to filing a charge with the EEOC—about $60,000 according to the trial court. But under Title VII, the case was worth six times that amount, due to a large punitive award.

That result becomes all the more alluring to the plaintiff's bar when one considers the possibility of follow-on lawsuits and, in limited instances, class actions. A single legal victory against an employer could provide the fodder for scores of lawsuits by similarly situated employees and former employees receiving benefits, each alleging a pattern of discrimination affecting pay, as evidenced by the previous lawsuits. In this way, each lawsuit becomes easier and cheaper to bring than the last. Employers, then, would face the choice of fighting every suit with all their might—because any loss could lead to scores more—or agreeing to generous settlements, even in marginal cases, to avoid the risk of high-stakes litigation.

This may account for the trial bar's keen interest in the Ledbetter Act—it is among the top priorities of the American Association for Justice (formerly the American Trial Lawyer's Association)—despite the existence of other, less attractive statutory remedies for those who are the victims of recent or continuing discrimination or unjustified pay disparities.

SAFER SOLUTIONS

It is true, as proponents of the Ledbetter Act have noted, that the statute of limitations for Title VII is shorter than most others. There are good reasons for this, though, considering the context in which it was drafted. Chief among them, many Members of Congress, when they considered the Civil Rights Act of 1964, feared that businesses would be overwhelmed with litigation. Others favored voluntary conciliation over litigation. Some might have been concerned that evidence of discriminatory intent would fade away if the limitations period were too long. A relatively brief limitations period certainly satisfies these concerns.

But if Congress believes that it is too short, it has far less drastic and disruptive options at its disposal than effectively eliminating the limitations period altogether. It could, quite simply, extend the period to two or three years to match the EPA. This would give employees more time to uncover possible discrimination and seek remedies, without allowing a flood of lawsuits premised on aged grievances. There is also more logic to matching the more specific statute's limitations periods than leapfrogging it so dramatically.

Another option was proposed in the last Congress as the ''Title VII Fairness Act'' (S. 3209, 110th Cong.). This legislation would maintain the current limitations period but augment it with a ''discovery rule'' so that the period begins running only when the employee reasonably suspects, or should reasonably suspect, that he or she has been discriminated against. This approach has the benefit of encouraging employees to investigate and take action on worthwhile claims, while keeping many stale claims out of court. Some courts, however, might twist this looser rule to allow stale claims brought by sympathetic plaintiffs, such as Lilly Ledbetter, who learned about the possible discrimination fully six years before filing a charge. It would also undermine, somewhat, the clear bright-line rule that a hard statute of limitations provides. Nonetheless, this approach would provide far more certainty, and prove far less disruptive, than eliminating the limitations period.

A PERFECT STORM

It was a surprise to many legal observers a year and a half ago that the Ledbetter case—an unremarkable application of a rule settled 20 years prior—would attract any interest at all. But on closer examination, the course of events leading up to the Supreme Court's decision, and the reaction since, have not been by chance but by design, part of a ''perfect storm'' orchestrated by trial lawyers, wrongheaded civil rights organizations, and labor groups to achieve a radical shift in employment law. These special interests have an extensive agenda planned for the current Congress. Yet Members should consider each plank of it on the merits.

Far beyond reversing the result of a single Supreme Court decision—one that, viewed fairly, was consistent with precedent and fairly represented Congress's intentions—the Lilly Ledbetter Fair Pay Act would open the door to a flood of lawsuits, some frivolous, that employers would find difficult or impossible to defend against, no matter their ultimate merit. Rather than help employees, the bill could end up hurting them by reducing wages and job opportunities—at a time when unemployment is rising and many are nervous about their job prospects. Instead, Congress should recognize that statutes of limitations serve many important and legitimate purposes and reject proposals that would allow litigants to evade them.

Mrs. HUTCHISON. Madam President, it is very important that we have the whole legal memorandum on the Ledbetter Act and my substitute amendment. I want to read a couple of paragraphs from it. The Heritage Foundation report says:

Another option was proposed in the last Congress—

My bill—

as the ''Title VII Fairness Act.'' This legislation would maintain the current limitations period but augment it with a ''discovery rule'' so that the period begins running only when the employee reasonably suspects, or should reasonably suspect, that he or she has been discriminated against. This approach has the benefit of encouraging employees to investigate and take action on worthwhile claims, while keeping many stale claims out of court. Some courts, however, might twist the looser rule to allow stale claims brought by sympathetic plaintiffs, such as Lilly

Ledbetter, who learned about the possible discrimination fully six years before filing a charge. It would also undermine, somewhat, the clear bright-line rule that a hard statute of limitations provides. Nonetheless, this approach would provide far more certainty, and prove far less disruptive, than eliminating the limitations period.

Which the underlying bill does. I added for emphasis those last words.

It goes on to say:

Far beyond reversing the result of a single Supreme Court decision—one that, viewed fairly, was consistent with precedent and fairly represented Congress's intentions—the Lilly Ledbetter Fair Pay Act would open the door to a flood of lawsuits, some frivolous, that employers would find difficult or impossible to defend against, no matter their ultimate merit. Rather than help employees, the bill could end up hurting them by reducing wages and job opportunities—at a time when unemployment is rising and many are nervous about their job prospects. Instead, Congress should recognize that statutes of limitations serve many important and legitimate purposes and reject proposals that would allow litigants to evade them.

The full reading of this legal memorandum by the Heritage Foundation, I think, makes the case for my substitute as the right approach, giving more rights to the plaintiff but not eliminating or discriminating against the business to defend itself.

Let me make two points. My amendment codifies the employee's right to establish what he or she didn't know. It is so necessary that we have this right, and it is necessary to know when the person should have known and make that part of the record. Otherwise, it would allow a person to knowingly sit on a claim, to run up the amount that might be added to the discriminatory act in punitive damages. That should not be a part of our legal system.

There is one other point I want to make about the Supreme Court case that the Mikulski bill will overturn.

The Supreme Court separated a discriminatory pay policy from a single discriminatory act. That was their intention. It is the law today, and it would be the law under my substitute, that if there is a policy of discriminatory pay, every paycheck would be a discriminatory act. So it would continue if it were a policy. That is the law, and it should be the law, and it will be the law if my substitute is adopted.

What the Supreme Court did in the Ledbetter case was say when it is a single act of discrimination, not one that is discriminatory in policy, that should have a statute of limitations. But perhaps we could have a reasonable rebuttable presumption that the person should have known, and when the person brings the claim, that person can establish: I could not have known because we weren't allowed to talk about our pay. That could be a reason the court would say is legitimate, and it would uphold the statute of limitations.

The Senator from Pennsylvania was here earlier. He has several amendments. The Senator from Wyoming, Mr. ENZI, has an amendment. I think we can make this a good bill that everyone will think is fair, that will give more rights to the plaintiff but does not keep the defense from having a fair chance to defend the business. And I believe that is the right approach.

I hope we can pass my substitute. I hope we can continue to work on this bill so that everyone will feel good about voting for it and our businesses won't be subject to a lawsuit 10 years after an act is alleged to have occurred and have a bill run up, when maybe if we have a statute of limitations that is reasonable and you have the ability to bring it, it could even be settled right then and there so that the employer is not going to have a big expense that might even close the business and lay off more people, which is not a result any of us would want. So I hope we can write the law carefully to avoid that eventuality.

Madam President, I yield the floor.

Ms. MIKULSKI. Madam President, I know the Senator from Minnesota wishes to speak, and I also know the Senator from New Jersey is here. I believe we are going to turn next to the Senator from New Jersey.

Madam President, while the Senator from New Jersey, who just arrived, is still organizing, 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. MENENDEZ. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MENENDEZ. Madam President, is there a time limitation?

The PRESIDING OFFICER. There is not.

Mr. MENENDEZ. Madam President, I rise today to support the Lilly Ledbetter Fair Pay Act in order to defend the Civil Rights Act of 1964 and to protect all Americans from the evils of discrimination.

Yesterday, millions of Americans rejoiced as Barack Obama was sworn in as the 44th President of the United States. Hope for a more inclusive America, a more unified America, a more just America swept across this land from our biggest cities to our smallest towns. There was a sense of wonder that someone who wouldn't have been allowed to eat in certain restaurants or drink from certain water fountains over 40 years ago had just become the freely elected leader of the greatest country on Earth. We should be incredibly proud of the progress we have made since the errors of slavery and Jim Crow.

But while we believe our Union can be perfected, we know it still isn't perfect. We know that equal opportunity and impartial justice for all have yet to be attained. And we know what the consequences are, for, as Dr. King so eloquently put in his letter from a Birmingham jail, ''Injustice anywhere is a threat to justice everywhere.''

Despite the progress we have made, we live in a country where women still earn 78 cents for every dollar a man makes, where African Americans earn only 80 cents for every dollar a White man makes and Latinos earn only 68 cents for every dollar a White man makes. Our country, therefore, is still far from perfect.

Today, the Senate has a historic opportunity to narrow the gap between our ideals and our practices. We have the opportunity to say that women should be treated the same as men. We have the opportunity to say that people should be fairly paid for their labor. We have the opportunity to loudly proclaim in a unified voice that discrimination will not be tolerated in America.

As of last year, after a misguided Supreme Court decision overturned what had been the law of the land for decades, a worker can't bring an action for wage discrimination if the original decision to discriminate happened more than 180 days beforehand. The Supreme Court said employers can get away with discrimination if they hide it long enough, even though the effects of that bigotry have no expiration date.

The Lilly Ledbetter Fair Pay Act would recognize the long-term, continuous, systemic discrimination as it really is and not let offending companies get away with it through loopholes and disinformation. If a woman sees her wages continuously fall behind those of her male counterparts or a worker gets paid a wage far lower than the company average just because she is Black, they should be able to challenge their employers even if the original decision to discriminate was made years ago.

Narrowly defining discrimination as merely the original decision to discriminate makes no sense at all. Let's say, for example, that a criminal hacks into your bank account and decides to steal a portion of your paycheck every 2 weeks. If we were to apply a precedent similar to the Ledbetter case, if the hacker doesn't get caught 180 days after the initial decision to hack in, he can keep stealing forever with no fear of prosecution. Current discrimination law makes about that much sense.

Now, some of my colleagues on the other side of the aisle will ask why workers often don't file their claim within 180 days from the first instance of discrimination. Well, there are several reasons. To begin with, workers generally find it difficult to compare their salaries to coworkers, and many businesses actually prohibit it. Even if a worker sees her pay is lower than her coworkers, she might not recognize it was a result of discrimination. And if workers do recognize it as discrimination, they often wait to contact the EEOC—the Equal Employment Opportunity Commission—or decide not to due to feeling ashamed or more often they fear retaliation by their company.

They fear the consequences of ''rocking the boat'' and figure a job in which they are discriminated against is better than being fired and having no job at all. And certainly, in these incredibly tough economic times, that is a rising reality. To make matters worse, skyrocketing unemployment rates have only put these vulnerable workers in a more precarious and often helpless position.

Some of my Republican colleagues will also argue that this legislation will open the floodgates, leading to thousands of lawsuits claiming wage discrimination. But this argument simply has no merit. For over 40 years, the courts have interpreted the Civil Rights Act of 1964 to be consistent with the Lilly Ledbetter Fair Pay Act. Eight out of nine appellate courts interpreted it that way, and yet there was no flood of litigation then, nor will there be after we enact this vital piece of legislation into law.

Some of my conservative colleagues will argue that this legislation will make companies liable for decades of backpay and will encourage workers to intentionally delay and file claims years later when those accused might no longer be around to defend themselves. Again, these arguments simply ignore the facts. Under this legislation, backpay would be capped at 2 years regardless of how long the victim was discriminated against and the burden to prove discrimination took place is borne by the worker. Any lack of witnesses available to testify would only hurt the worker's efforts to prove their case.

Critics who say this legislation will cripple businesses miss the point. The fact is that companies following the law are currently put at a competitive disadvantage compared to those who exploit their workers. The executive director of the U.S. Women's Chamber of Commerce—a strong business advocacy group—succinctly noted:

> The Lilly Ledbetter Fair Pay Act rewards those who play fair—including women business owners—unlike the Supreme Court's decision, which seems to give an unfair advantage to those who skirt the rules.

So we have a strong business advocacy group saying treat those who are obeying the law as it was intended and as it, in fact, has been pursued for over four decades in a way that doesn't put them at a competitive disadvantage. The vast majority of businesses that practice legal hiring procedures will not have to change anything and will no longer be punished for doing the right thing.

Wage discrimination is real. The Fair Pay Act would strike a clear blow against it. So we have to make sure to keep the legislation strong. Unfortunately, I am afraid the amendment offered by our colleague from Texas, Senator HUTCHISON, would severely undermine it. That amendment would require people to prove they had no reason—no reason—to suspect their employer was discriminating against them in 180 days. The amendment is pretty confusing just on its face. I have to ask, how does an employee prove she doesn't suspect discrimination? And when should she have to? In general, I don't see how it is relevant whether a victim suspects discrimination; the issue is whether there is discrimination. If it is happening, it has to be stopped, plain and simple. You can't ultimately be in a position in which you are allowed to discriminate and get away with it. If we send that message in our society, then all the progress we have made will be rolled back.

Madam President, I would like to believe that every Member of this body champions principles of equality, justice, and liberty as much as I do. But principles are meaningless without practice. Without vigilantly ensuring that no person is discriminated against because of their gender, their race, their religion, their ethnicity, or their sexual orientation, our principles become just empty words.

I would like to remind my colleagues that inaction on this issue is akin to tacit acceptance. And as Dr. King said:

> We will remember not the words of our enemies but the silence of our friends.

I urge my colleagues to remember those wise words and put their votes where their values are by supporting this vital piece of civil rights legislation.

I thank my distinguished colleague from Maryland for leading the charge. She has been an exceptional fighter on this issue, and I know she will soon see the fruits of her labor, not for herself and her advocacy but for millions of women, Latinos, and African Americans who find themselves discriminated against and who deserve the ability for all to be able to enjoy the fruits of their labor without such discrimination.

Madam President, I thank my distinguished colleague from Minnesota for allowing me to move forward in this time, during this process, and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, I am proud to join with Senator MIKULSKI and so many others in calling for the Senate to take up and pass the Lilly Ledbetter Fair Pay Act and to do it as soon as possible.

Many here have told Lilly Ledbetter's story, so I am not going to go through it again. But I will tell you, sometimes when you get to know someone, as I have gotten to know Lilly Ledbetter as a person, it means more to you. It is like when someone is arguing against a change in the law, and they suddenly find it happens to their own wife or their own daughter, they start to feel a little differently about it. So that is why I believe it is very important to do this and to make this as simple as possible and as easy as possible in order to make sure there is not discrimination in the workplace, because it is a sad reality, that still, 88 years after the 19th amendment gave women equal voting power, and 45 years after the passage of the Equal Pay Act, it still takes women 16 months to earn what men can earn in 12 months.

I have been listening to some of the arguments made today. I was picturing what would happen if, in fact, that Supreme Court decision stayed in place, which basically said that you are supposed to somehow figure out you are being discriminated against. It says it doesn't matter if you knew or not. If it happens, you have to sue right away. I was thinking how that would work in reality, how you are supposed to find out and how Lilly Ledbetter was supposed to find out. It would be as if Senator MENENDEZ and I worked in the same company and we were doing the same job and both doing it well and he was paid more than I was. How would you know that, if you are an employee at a workplace? Are you supposed to start snooping through their paychecks and opening them and trying to figure out how much he is paid? I don't think a normal person would do that.

Are you supposed to start getting to know the people who work around him to find out how much money he makes, see if he told anyone, start asking around about your fellow employee? This doesn't make sense in the real world workplace, and it certainly, as has been pointed out, is not consistent with 40 years of law in this area.

Today we have before us the Hutchison amendment. I appreciate the work of Senator HUTCHISON in so many areas, how the women of the Senate work on a bipartisan basis, but I believe in the end this amendment is wrong. What this amendment basically says is you are not going to be able to bring any kind of claim of discrimination, even a valid one, without having to go through a bunch of hoops and dot a bunch of I's and cross a bunch of T's that is very hard to do. Again, if you want to make sure this discrimination doesn't take place, make it a clear rule, make it a bright-line rule, as we do in so many other employment cases.

Under the Hutchison amendment, our workers are subject to that Supreme Court decision in Ledbetter, unless they can prove they had no reason to suspect that their employer was discriminating against them.

Again, I believe this is done for good motives, in the spirit of some kind of compromise. But, again, I try to look at the real world and think: How would you be able to prove this? Maybe things happen in the real world, maybe one of your work colleagues—if Senator MENENDEZ and I were working in the same factory and maybe someone else, maybe you, the Presiding Officer, also worked there and maybe sometime at a coffee break you said: You know, I think he is making more money than you are, and it goes away and nobody talks about it. Would that be enough? Would that be enough to show a suspicion that you thought you were being

discriminated against, that he was making more money?

What if he bought a new car, a nice new car. He is driving around in that nice car and people are starting to think: I wonder if he got a raise. Is that a suspicion that he is making more money? What if you just think he is making more money and you tell one person on the phone, but you don't know for sure?

When you start thinking this through, you realize why this standard, this ''reasonable suspicion'' standard, doesn't appear in our employment statutes. It is because it is simply unworkable as a standard, despite the good motivation to try to come up with some understanding, some kind of compromise. It doesn't make any sense. It is based on rumor.

I believe there are enough rumors around this place without starting to put them into law. A rumor starts somewhere. It changes someplace else. By the time it comes back to you, it is totally different, and I would rather not write rumors and suspicions into the law. I prefer a bright-line rule.

As has also been mentioned by some of my colleagues, we have not seen this unfair rush of litigation under the existing law. In fact, under this, if you have suspicions, it would force you to try to rush to file your claim. I think a good argument could be made—we don't know for sure, but a good argument could be made it would actually lead to more claims. This idea that it would force a worker, put the burden on the worker to spend time and money trying to meet this complicated standard that does not appear anywhere else in the law deprives employers and employees of a clear bright-line rule for determining the timeliness of claims.

I know from my work in the private sector for 13 years, people prefer bright-line rules. It makes it easier for everyone.

One of the arguments made is that somehow this would allow some raving employee, some mad employee to go back—they would simply hide their case so no one would know about it so they could keep getting backpay. This argument defies the actual rules. What are the actual rules? It says you can go back for only 2 years. Look what happened in the Lilly Ledbetter case. She went to her trial. The jury awarded her a big amount, but then it had to be reduced because the law acknowledged this, the argument made of the difficulty, and said you can only go back for 2 years. The law also has caps on damages for major employers. I think it is something like $300,000. There are caps. There are look-back rules that get to the argument that was made here. You can see it right in the Ledbetter case, if you do not believe me. The money was reduced because of those rules that are in place.

Why suddenly we would put in a standard that we do not have in the law today, when, in fact, we have that 2-year backpay rule to protect against exactly the arguments that were being made, and we have caps in place?

The Lilly Ledbetter Fair Pay Act is the only bill that gives employees the time to consider how they have been treated and try to work out solutions with their employers. That often happens. We encourage that. We would like that to happen. You don't want everyone running into court. It fulfills Congress's goals, creating incentives for employers to voluntarily correct any disparity in pay they find, and it ensures that employers do not benefit from continued discrimination. That is all it does. It is simple.

Let me tell you a little story from the State of Minnesota to end here, why I care about this so much. That is that my grandpa was a miner up in northern Minnesota. He worked hard his whole life. He never graduated from high school, saved money in a coffee can to send my dad to college. He worked hard in those mines. It was a rough-and-tumble world up in the mines of northern Minnesota.

In the mine next door to where my grandpa worked, there were a number of women—decades later, after my grandpa worked there—who started working in the mines. It was not an easy life. If anyone has seen the movie ''North Country,'' that was the basis of the movie. It happened in the mines. My relatives were right next door.

The women there were discriminated against. I am not sure of all the details. Maybe some of it was pay, but some of it was just discriminatory treatment. It went on and on. It was an example, if you have seen that movie, of how difficult it was for them to get the gumption to stand and finally file suit because they liked these guys. They were their coworkers. They worked with them. They wanted to fit in and they tried so hard. Eventually, they brought a lawsuit, but it took time for them to be able, in that hard, rough-and-tumble world of those iron ore mines, to bring that lawsuit.

They eventually did and they eventually won that suit at great personal sacrifice to them, as documented in that movie, ''North Country.''

Things changed as a result of that lawsuit at the mines. It was not a popular thing they did. It is not even popular right now. But things changed in those mines. When I ran for the Senate, the first endorsement I got was from the United Steelworkers. The guy who gave it to me was the guy who was the union steward, the same guy, Stan Daniels, at that mine at that time, that was the subject of the lawsuit.

I got elected the first woman Senator from Minnesota. The world changes. That is why this bill is so important, to maintain that right of workers. I know in my State there is lots of the discriminatory treatment going. The world changes as people realize and understand the law and employers are educated on the law, but we still need that safety valve in place. We still need those protections in place so workers can get paid fair pay for what they do.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Madam President, we are awaiting the arrival of the distinguished ranking member of the Health, Education, Labor, and Pensions Committee because he wishes to offer an amendment this evening. We wish to accommodate him. The Senator from Wyoming has been the soul of civility on this issue and has helped us to move the bill thus far. But it is our intention to ask all speakers to come now because the Senator from Texas and I would like to be able to conclude this debate for this evening—not to conclude the debate, but for this evening—around 7. I am not making a unanimous consent request, I just wish to put a few things out there.

While we are waiting for the arrival of our colleague from Wyoming, I would like to have printed in the RECORD an excellent monograph put out by the National Women's Law Center on the Hutchison amendment. It is a very lawyer-like paper, but it is also done in plain English. That outlines some of the real issues the Hutchison substitute could present.

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

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

(See exhibit 1.)

Ms. MIKULSKI. Just to give a few highlights, they advise us that the Hutchison bill allows clear pay discrimination to continue without a remedy. That is why we are doing this Lilly Ledbetter Fair Pay Act in the beginning. They make that point because they say:

> The Hutchison bill prevents employees from challenging discrimination to which they continue to be subject. [It] perpetuates the basic problem created by the Ledbetter decision.

That is what I argued earlier in the evening.

> Under the bill, employers are left without any remedy against present and continuing pay discrimination if they do not file a government complaint within 180 days of the first day when they ''have or should be expected to have'' enough information to suspect discrimination.

One of the main arguments, the differences we have with our colleague from Texas, is the should have, we should have, we should have known—how should you have known?

When you go into a workplace, one of the few things that is not discussed is pay. I commented in an earlier debate, you can talk about anything in the workplace. You can talk about religion at the water cooler. You can talk about politics at the Xerox machine. But you cannot talk about pay. This could have, should have—we don't want to have a framework where everyone who has been discriminated against by our culture and by our practice in the

workplace goes into a new job with a chip on their shoulder. We are going to presume people are fair-minded. That is the way most people show up every day. This Hutchison amendment, could have, would have, should have, I think is going to create a nightmare. It is going to do exactly what the Senator doesn't want. I think it is going to generate more lawsuits and not only more lawsuits but more lawyers arguing about could have or should have suspected.

The Hutchison bill permits employers to escape accountability for continuing pay discrimination. Like the Ledbetter decision, the Hutchison substitute immunizes an employer from any challenge to pay discrimination, even where the employer continues to profit from it. Under the Hutchison bill, an employer is off the hook for, and can continue to gain a windfall from, continued pay discrimination. . . .

You know, when you discriminate, you don't usually just discriminate against one person in the company. It is usually more than one—others. Again, we are back to this would have, should have, could have.

The Hutchison bill deprives employees of the chance to assess the extent of the discrimination and work voluntarily with their employers to address any disparities.

[It] forces employees to forfeit their claims if they take the time to work out disputes amicably.

That is exactly what we want. We want to be able to work out disputes amicably, to go to maybe some alternative dispute resolution mechanism, have time to find out the facts: What is the situation? Particularly because pay disparity may start small and grow over time. Employees may want to give their employers the benefit of the doubt hoping the employers will voluntarily remedy that gap or may want to work actively with the employer to resolve the dispute. This is especially true for employees new on the job. The Hutchison amendment denies employees this opportunity, forcing them from the get-go to file adversarial Government complaints immediately upon suspecting discrimination or risk losing the right to any relief.

Now, not only is this bad law, it is bad policy, and it is going to be bad budget. I chair the Appropriations Committee which funds the EEOC. Under the administration that left town, they were revenue starved. They have a tremendous backlog right this minute of a variety of discrimination cases. Some were wages, some dealing with gender or race or ethnicity or religion. Many of those workers really feel under siege with the workload they are going to carry. Under the Hutchison amendment, as soon as you walk into your workplace and you have a whiff, a rumor, gossip, or, oh, gee, wonder what is going on, then you have to run right to the EEOC and file a complaint.

I do not think that is good common sense. It sure is not good money sense from the strain it is going to put already on an overburdened EEOC. I think we are headed in the wrong direction.

This Hutchison bill creates burdensome and expensive, time-consuming distractions from the fundamental issue of whether an employee has been subject to pay discrimination. I fear that the Hutchison bill will increase the number of lawsuits filed against employers, and it is going to result in very protracted and very expensive minitrials in those cases that are brought.

We want to get into making sure we end wage discrimination. This bill will result in confusion for the courts and for employers. This bill rejects the bright-line familiar rule in effect before the Ledbetter decision in favor of a standard that raises numerous thorny legal and factual issues.

I like the Ledbetter Fair Pay Act, which is my bill, and also is sponsored by 54 other Members of the Senate which simply restores the familiar role for assessing the timeliness of discrimination claims that prevailed in virtually every court in this country prior to the Ledbetter decision. The Hutchison bill creates an entirely new legal regime.

The bill raises innumerable questions, including when an employee could have been found to have a ''reasonable suspicion of discrimination.''

Madam President, I have more arguments to make, but at the end of the day, why is the Lilly Ledbetter Fair Pay Act so excellent? Well, the bill from the viewpoint that I am advocating and the legislation that I am sponsoring would give employees the time to evaluate their suspicions of discrimination and work toward solutions with their employers, including voluntarily.

It would ensure that employers are held accountable for continued discrimination and, most of all, it would provide certainty in assessing the timeliness of pay discrimination claims and restore the law before the outrageous Supreme Court decision.

Congress should reject the approach of the Hutchison bill and instead act expeditiously to enact the Lilly Ledbetter Fair Pay Act.

EXHIBIT 1

[From the National Women's Law Center]

THE TITLE VII ''FAIRNESS'' ACT, S. 3209, ALLOWS PAY DISCRIMINATION TO CONTINUE

On May 20, 2007, in Ledbetter v. Goodyear Tire & Rubber Co., the Supreme Court held that employees must file claims with the government for compensation discrimination within 180 days of an employer's initial decision to discriminate or be barred from future challenges—no matter how long the discrimination has continued. The Court's decision upends decades of prior precedent and is fundamentally unfair to those subject to pay discrimination. Under the Ledbetter rule, employees have no recourse—and employers have no accountability—for continuing discrimination once 180 days have passed from the initial pay decision.

In July, 2007, the House of Representatives passed the Lilly Ledbetter Fair Pay Act to overturn the Ledbetter ruling. The Act would restore the law that applied virtually everywhere in the country before the Supreme Court's decision—that each discriminatory paycheck constitutes an act of discrimination that can be challenged. The Senate's vote on a motion to advance the Ledbetter Fair Pay Act fell just three votes short of passage in April of 2008.

In June, Senator Hutchison (together with other Senators who voted against advancing the Ledbetter Fair Pay Act) introduced S. 3209, an alternative titled the Title VII Fairness Act. But unlike the Ledbetter Fair Pay Act, the Hutchison bill fails to restore prior law or solve the problems created by the Ledbetter decision; it instead creates damaging new legal hurdles for people receiving discriminatory pay to overcome. Indeed, the Hutchison bill stands to set back basic anti-discrimination protections in the workplace even beyond equal pay.

The Hutchison bill allows clear pay discrimination to continue without a remedy.

The Hutchison bill prevents employees from challenging discrimination to which they continue to be subject. The Hutchison bill perpetuates the basic problem created by the Ledbetter decision. Under the bill, employees are left without any remedy against present, continuing pay discrimination if they do not file a government complaint within 180 days of the first day when they ''have or should be expected to have'' enough information to suspect discrimination.

The Hutchison bill permits employers to escape accountability for continuing pay discrimination. Like the Ledbetter decision, the Hutchison bill immunizes an employer from any challenge to pay discrimination even where the employer continues to profit from it. Under the Hutchison bill, an employer is off the hook for, and can continue to gain a windfall from, continued pay discrimination that is not immediately challenged when the employee first ''should have'' suspected it.

The Hutchison bill deprives employees of the chance to assess the extent of the discrimination and work voluntarily with their employers to address any disparities.

The Hutchison bill forces employees to forfeit their claims if they take the time to work out disputes amicably. Particularly because pay disparities may start small and grow only over time, employees may want to give their employers the benefit of the doubt, hoping that the employers will voluntarily remedy the pay gap—or may want to work actively with their employers to resolve the dispute over time. This is especially true if an employee is new on the job. But the Hutchison bill denies employees this opportunity, forcing them to file adversarial government complaints immediately upon suspecting discrimination or risk losing the right to any relief.

The Hutchison bill denies employees adequate time to assess the merits of their claims. Particularly because employees subject to pay discrimination may be in an ongoing relationship with an employer, they are likely to want to be sure that they have meritorious claims before filing a government challenge to their employers' practices. But the Hutchison bill limits employees' ability to take the time necessary to confirm their suspicions of discrimination or act when the problem reaches serious proportions.

The Hutchison bill creates burdensome, expensive and time-consuming distractions from the fundamental issue of whether an employee has been subject to pay discrimination.

The Hutchison bill will increase the number of lawsuits that are filed against employers. Employees who suspect discrimination will be forced to file preemptive claims to avoid forfeiting their rights. The Hutchison bill will thus increase the amount of litigation that occurs.

The Hutchison bill will result in protracted and expensive mini-trials in the cases that are brought. Employers and employees will be forced to engage in costly battles before even getting to the merits of a discrimination dispute—that is, whether a pay decision was, in fact, based on sex, race, disability or another prohibited ground. A court will have to resolve multiple threshold issues, including what the employee suspected about pay discrimination and when s/he suspected it. On top of that, even if an employee in fact had no suspicion of discrimination, she will have to prove that her failure to suspect was reasonable. These time-consuming battles will only add to the cost and burdensomeness of litigation—and will increase the difficulty employees denied equal pay will have in getting the wages they have earned.

The Hutchison bill will result in confusion in the courts and for employers.

The Hutchison bill rejects the bright-line, familiar rule in effect before the Ledbetter decision in favor of a standard that raises numerous thorny legal and factual issues. Unlike the Ledbetter Fair Pay Act, which simply restores the familiar rule for assessing the timeliness of pay discrimination claims that prevailed in virtually every court in the country prior to the Ledbetter decision, the Hutchison bill creates an entirely new legal regimen. The bill raises innumerable questions, including when an employee can be found to have a ''reasonable suspicion of discrimination.''

The Hutchison bill will result in inconsistent standards for employers in different parts of the country for years to come. Because courts will likely reach different conclusions on the many legal and factual questions raised by the bill, employers in different parts of the country will likely be subject to conflicting rules, making it difficult, if not impossible, to understand their legal obligations. It will be years, if not decades, before these questions are authoritatively resolved by the Supreme Court.

The Hutchison bill could limit protections for employees in contexts beyond pay discrimination.

The Hutchison bill is not restricted to pay discrimination. The so-called Title VII Fairness Act applies to any unlawful employment practice under the anti-discrimination laws. As a result, it goes well beyond the targeted, restorative approach of the Ledbetter Fair Pay Act.

The Hutchison bill could have particularly troubling impact on harassment claims. Under current law, employees can bring harassment claims as long as any incident of ongoing harassment occurs within 180 days prior to the complaint—regardless of how many incidents have occurred previously. It is predictable that some employers would use this bill's broad scope to try to escape their responsibility for sexual harassment and other types of discrimination.

The Hutchison bill responds to a purported ''problem'' that is, in fact, wholly invented.

Employees have no incentive to delay filing pay discrimination claims. Because employees typically cannot afford to struggle without pay to which they are legally entitled, it is simply a red herring to suggest that they will delay filing pay discrimination for years, or even decades. Furthermore, because Title VII has a two-year limit on the back pay that any plaintiff can receive, that means that if they delay they will lose compensation for all but the last two years of pay discrimination they suffer. Therefore, there is every incentive for an employee to file a pay discrimination complaint as soon as reasonably possible. It is the employer, not the employee, who benefits from any delay.

Employers were satisfied with the rules in place before the Ledbetter decision. Prior to the Ledbetter decision, employers were not asking for a change to the longstanding rules relating to the timeliness of pay discrimination claims that the Ledbetter Fair Pay Act restores. There is no evidence that the operation of the rule prejudiced employers or resulted in the success of non-meritorious claims. In fact, employers benefited from the certainty of the rule in place before Ledbetter.

The Lilly Ledbetter Fair Pay Act is the only bill that will address the basic pay discrimination that Lilly Ledbetter, and others like her, suffer.

The Ledbetter Fair Pay Act is the only bill that would have helped Lilly Ledbetter. Under the Hutchison bill, Lilly Ledbetter—to whom a jury awarded more than $3 million in damages for the egregious discrimination she endured—would have been embroiled in protracted arguments about what she knew about her workplace and when. A court would have had to decide, for example, whether idle gossip and boasting by her coworkers—who had harassed and lied to her in the past—were sufficient to give Ms. Ledbetter a ''reasonable suspicion'' of discrimination. By contrast, the Ledbetter Fair Pay Act creates a bright line rule that would ensure the timeliness of claims like Ms. Ledbetter's, when the pay continues into the present.

The Ledbetter Fair Pay Act is the only bill that corrects the problems with the Supreme Court opinion. Unlike the Hutchison bill, the Ledbetter Fair Pay Act would:

Give employees the time to evaluate their suspicions of discrimination and work toward solutions with their employers;

Ensure that employers are held accountable for continued discrimination;

Provide certainty in assessing the timeliness of pay discrimination claims;

Restore the law.

Congress should reject the approach of the Hutchison bill and should instead act expeditiously to enact the Lilly Ledbetter Fair Pay Act.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I know the Senator from Rhode Island wants to speak. I will take a minute and say a couple of things.

We are going to codify a right that is not in the law today. It is sometimes applied by judges and sometimes not. We do clarify so that there is fairness for the employee as well as for the small business owner to know if something is occurring.

Our standard is, should have known, and that is what the person can show, that they had no way to know that a discrimination was occurring. We are clarifying and trying to make it more fair and more clear and more uniform across all the districts in our country.

That is our goal, and I do hope we will be able to have this amendment that will make it a law that is better for employees who might have been discriminated against, but also give the fair right to an employer not to have a right sat on and built up so that it becomes something that could hurt the small business and be unexpected.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I ask unanimous consent to speak as in morning business for up to 15 minutes.

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

ACCOUNTABILITY

Mr. WHITEHOUSE. Madam President, I rise as we celebrate a new President, a new administration, a new mode of governing, and a new future for America.

Even in the gloom of our present predicaments, Americans' hearts are strong and confident because we see a brighter future ahead. President Obama looks to that future. Given the depth and severity of those present predicaments, we need all his energy to look forward to lead us to that brighter day, forward to what Winston Churchill in Britain's dark days called ''broad and sunlit uplands.'' But as we steer toward this broad and sunlit future, what about the past?

As the President looks forward and charts a new course, must someone not also look back to take an accounting of where we are, what was done, and what must now be repaired? Our new President has said, ''America needs to look forward.'' I agree. Our new Attorney General-designate has said: We should not criminalize policy differences. I agree, and I hope we can all agree that summoning young sacrificial lambs to prosecute, as we did after Abu Ghraib, would be reprehensible.

But consider the pervasive, deliberate, and systematic damage the Bush administration did to America, to her finest traditions and institutions, to her reputation, and integrity. I evaluate that damage in history's light. Although I am no historian, here is what I believe: The story of humankind on this Earth has been a long and halting march from the darkness of barbarism and the principle that to the victor go the spoils, to the light of organized civilization and freedom.

During that long and halting march, this light of progress has burned, sometimes brightly and sometimes softly, in different places at different times around the world.

The light shone in Athens, when that first Senate made democracy a living experiment, and again in the softer but broader glow of the Roman Empire and Senate. That light burned brightly, incandescently, in Jerusalem, when Jesus of Nazareth cast his lot with the weak and the powerless.

The light burned in Damascus, Baghdad, Cairo, and Cordoba, when the Arab world kept science, mathematics, art, and logic alive, as Europe descended into Dark Ages of plague and violence.

The light flashed from the fields of Runnymede when English nobles forced King John to sign the Magna Carta, and it glowed steadily from that island kingdom as England developed Parliament and the common law and was the first to stand against slavery.

It rekindled in Europe at the time of the Reformation, with a bright light flashing in 1517 when Martin Luther nailed his edicts to the Wittenberg Cathedral doors, and faced with excommunication stated: ''Here I stand. I can do no other.''

Over the years, across the globe, that light, and the darkness of tyranny and cruelty, have ebbed and flowed. But for the duration of our Republic, even though our Republic is admittedly imperfect, that light has shown more brightly and more steadily in this Republic than in any place on Earth as we adopted the Constitution, the greatest achievement yet in human freedom; as boys and men bled out of shattered bodies into sodden fields at Antietam and Chickamauga, Shiloh, and Gettysburg to expiate the sin of slavery; as we rebuilt shattered enemies, now friends, overseas and came home after winning world wars; and as we threw off bit by bit ancient shackles of race and gender to make this a more perfect Union for all of us.

What has made this bright and steady glow possible is not that we are better people, I believe, but that our system of government is government of the people, by the people, and for the people. Why else does our President take his oath to defend the Constitution of the United States of America? Our unique form of self-government is a blessing, and we hold it in trust, not just for us but for our children and grandchildren down through history; not just for us but as an example out through the world.

That is why our Statue of Liberty raises a lamp to other nations still engloomed in tyranny. That is why we stand as a beacon in this world, beckoning to all who seek a kinder, freer, brighter future.

We hold this unique gift in trust for the future and for the world. Each generation assumes responsibility for this Republic and its Government, and each generation takes on a special obligation when they do. Our new President closed his inaugural address by setting forth the challenge by which future generations will test us: Whether ''with eyes fixed on the horizon and God's grace upon us, we carried forth that great gift of freedom and delivered it safely to future generations.''

There are no guarantees that we will. This is a continuing experiment we are embarked upon and a lot is at stake. Indeed, the most precious thing of man's creation on the face of this Earth is at stake. That is what I believe.

So from that perspective, what about the past? No one can deny that in the last 8 years America's bright light has dimmed and flickered, darkening our country and darkening the world. The price of that is incalculable. There are nearly 7 billion human souls in this world. Every morning, the Sun rises anew over their villages and hamlets and barrios, and every day they can choose where to invest their hopes, their confidence, and their dreams.

I submit that when America's light shines brightly, when honesty, freedom, justice, and compassion glow from our institutions, it attracts those hopes, those dreams, and the force of those 7 billion hopes and dreams, the confidence of those 7 billion souls and our lively experiment is, I believe, the strongest power in our national arsenal, stronger than atom bombs. We risk it at our peril.

Of course, when our own faith is diminished at home, this vital light only dims further, again, at incalculable cost. So when an administration rigs the intelligence process and produces false evidence to send our country to war; when an administration descends to interrogation techniques of the Inquisition of Pol Pot and the Khmer Rouge, descends to techniques that we have prosecuted as crimes in military tribunals and Federal trials; when institutions as noble as the Department of Justice and as vital as the Environmental Protection Agency are systematically and deliberately twisted from their missions by odious means of institutional sabotage; when the integrity of our markets and the fiscal security of our budget are open wide to the frenzied greed of corporations, speculators, and contractors; when the integrity of public officials, the warnings of science, the honesty of government procedures, and the careful historic balance of our separated powers of government are all seen as obstacles to be overcome and not attributes to be celebrated; when taxpayers are cheated and the forces of government ride to the rescue of the cheaters and punish the whistleblowers; when a government turns the guns of official secrecy against its own people to mislead, confuse, and propagandize them; when government ceases to even try to understand the complex topography of the difficult problems it is our very purpose and duty to solve and instead cares only for those points where it intersects with party ideology so that the purpose of government becomes no longer to solve problems but only to work them for political advantage; in short, when you have pervasive infiltration into all the halls of government—judicial, legislative and executive—of the most ignoble forms of influence; when you see systematic dismantling of historic processes and traditions of government that are the safeguards of our democracy; and when you have a bodyguard of lies, jargon, and propaganda emitted to fool and beguile the American people, well, something very serious in the history of our Republic has gone wrong, something that dims the light of progress for all humanity.

As we look forward, as we begin the task of rebuilding this Nation, we have an abiding duty to determine how great the damage is. I say this in no spirit of vindictiveness or revenge. I say it because the thing that was sullied is so precious. I say it because the past bears upon the future. If people have been planted in government in violation of our civil service laws to serve their party and their ideology instead of serving the public, the past will bear upon the future. If procedures and institutions of government have been corrupted and are not put right, that past will assuredly bear on the future.

In an ongoing enterprise such as government, the door cannot be so conveniently closed on the closets of the past. The past always bears on the future. Moreover, a democracy is not just a static institution. It is a living education, an ongoing education in freedom of a people.

As Harry Truman said, addressing a joint session of Congress back in 1947:

> One of the chief virtues of democracy is that its defects are always visible, and under democratic processes can be pointed out and corrected.

Entirely apart from tentacles of the past that may reach into the future are the lessons we as a people have to learn from this past carnival of folly, greed, lies, and sabotage, so that it can, under democratic processes, be pointed out and corrected. If we blind ourselves to this history, if we pull an invisibility cloak over it, we will deny ourselves its lessons. Those lessons came at too painful a cost to ignore. Those lessons merit discovery, disclosure, and discussion. Indeed, disclosure and discussion is the difference between a valuable lesson for the bright upward forces of our democracy and a blueprint for darker forces to return and do it all over again.

A little bright, healthy sunshine and fresh air so that an educated population knows what was done and how can show where the tunnels were bored, when the truth was subordinated, what institutions were subverted, how our democracy was compromised; so this grim history is not condemned to repeat itself; so a knowing public, in the clarity of day, can say: Never, never, never again; so we can keep that light, that light that is at once America's greatest gift and greatest strength brightly shining. To do this, I submit, we must look back.

I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Wyoming is recognized.

AMENDMENTS NOS. 28 AND 29, EN BLOC

Mr. ENZI. Mr. President, I ask unanimous consent to set aside the current amendment so that I may offer two amendments, amendments Nos. 28 and 29, and then return to the pending amendment.

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

The clerk will report.

The legislative clerk read as follows:

> The Senator from Wyoming [Mr. ENZI] proposes amendments en bloc numbered 28 and 29.

The amendments are as follows:

AMENDMENT NO. 28

(Purpose: To clarify standing)

> Beginning on page 3, line 22, strike ''adopted,'' and all that follows through ''including'' on page 4, line 1, and insert ''adopted or when an individual becomes subject to a discriminatory compensation decision or other practice, including''.

AMENDMENT NO. 29

(Purpose: To clarify standing)

Beginning on page 5, line 6, strike ''adopted,'' and all that follows through ''including'' on page 5, line 10, and insert ''adopted or when a person becomes subject to a discriminatory compensation decision or other practice, including''.

AMENDMENT NO. 25

Mr. ENZI. Mr. President, I rise to speak in support of the Hutchison amendment. Before I do that, I want to voice some concern, again, about the process we have gone through on this bill and that we might be going through on others. I just came from a health care meeting where we are, in a bipartisan way, trying to reform health care. That is being done the right way. We have a task force and the task force has set down principles and questions. Those of us on the task force are returning to Members of our side of the aisle and gathering their input, answers, and additional questions. We will keep going through this process until we have hammered out the principles. Then we will start putting substance in it. Then it will go to the two committees of jurisdiction. That makes it a lot more difficult than most bills. It will go to both the HELP Committee for the health policy portion, and then it will go at the same time to the Finance Committee for the way to finance what we are talking about in the policy.

We did this on the pension bill. That was a 1,000-page bill that only took up an hour of floor time while we debated two amendments, had those two votes, and a final vote. That is the simpler way of doing bipartisan work that winds up with an actual result. So often here we spend all of our time debating the 20 percent we don't agree on and fail to look for any kind of a third way of doing something that solves the problem we started out on originally. This is not a very conducive atmosphere to negotiate anything. It is not a negotiation. It is a lay down your amendment, have it voted up or down, and because there can't be any nuances in it, the hundred voices are not heard. The voices of the constituents of the 100 people who serve here are not heard. We vote down a lot of things. Occasionally, we vote for something. But usually, what is brought to the floor is done so without any kind of a real set of principles, let alone consensus, and thus, never makes it through the body.

I know there have been some changes in majority and minority. That will still hold true, and I appreciate the majority agreeing that there will be amendments and that I got to offer two amendments that we will be debating and voting on later, I hope. This is kind of a test to see if we are going to do anything in a bipartisan way, and to see if we can do it from the floor of the Senate rather than in committee. This has not had a committee markup. This has not had the voice of the 23 people working, in some detail probably, through a couple hundred very detailed amendments, and that would be resolved between the Members. That is the most effective way to address the issue and to get it resolved.

The issue that was raised is, what if an employer discriminated against an employee because she was female and paid her less than male colleagues doing the same job with the same skills and experience? That is terrible. Such conduct by an employer has been illegal for 45 years under one statute and 46 under another. But like virtually all rights of action, it has to be exercised within a statute of limitations. So this bill's supporters ask: What if the employer hid the information the employee needed to realize she was the victim of discrimination and she missed the deadline to sue? We don't want that to happen, and courts have dealt with that issue by extending the statute of limitations on a case-by-case basis through the use of estoppel and equitable tolling. The reason this was not applied in the Lilly Ledbetter case was because there she stated in court proceedings that she was aware of the pay disparity many years before she brought the lawsuit. But putting her case aside, I can certainly agree that the statute of limitations should be extended, particularly in cases where an employer has deliberately hidden the fact of discrimination.

Senator HUTCHISON's amendment does just that. It codifies the discretion courts have applied for years. Under the Hutchison amendment, individuals who, because of conscious concealment or simple lack of information, are not aware of discrimination are not prevented from filing and pursuing their discrimination claim, even if it is well beyond the statute of limitations. Here we have an amendment that would provide some statute of limitations but takes care of that case where somebody illegally hides information or where it isn't the normal course of business to get that information.

I wish to review what the Hutchison amendment does not do. It does not eliminate the statute of limitations for all employment discrimination cases and thereby create a litigation bonanza. It does not eliminate the incentive for employees to air and resolve concerns about whether they are being treated fairly in the workplace. It does not open up standing to bring employment discrimination cases to individuals other than the affected employee. That is an important part right there. In the bill we are talking about, I know we would have extensive committee discussion about other affected parties. Who would they be? How long could they make a claim? Can it be generations later? Does it have to be at the time of death, while the person is still working there? We can't tell from the bill, but other affected persons is anybody the person may or may not be related to who could be affected by the decision.

Can you think of anything broader than that? Don't you think that ought to be pulled back a little bit? Again, we didn't talk about principles. We didn't go through committee. We didn't put in multiple amendments that could have brought up some of these points, so here we are on the floor of the Senate kind of doing up-or-down amendments and I am sure arriving at things that, even if they pass, will come to raise a lot of questions in a very short period of time. That is not what we are supposed to be getting done for the American people.

The Hutchison amendment does not present a direct threat to our already struggling defined benefit pension system. The more strain we put on that, the less people are going to do it, and we want people to have pensions. So for all of those reasons, I will support Senator HUTCHISON's wise and effective approach, one that could probably be negotiated finer and done more carefully, but that would be committee work. I will support it because I think it is a wise and effective approach that will ensure that no one loses the right to sue because they didn't have the information to realize they were being mistreated. That is our goal.

While I am expressing strong support of S. 166, which is the Hutchison alternative, and I spoke on this matter earlier, I continue to express my deep concern shared by most of my colleagues about the way the bill has been handled. I will keep bringing that up on this and every bill that skips the process.

By circumventing the regular order and not subjecting this legislation to the committee amendment process, I believe it has inadequate review and debate and no opportunity for a measured consideration of other means of achieving its same stated legislative goals. That is a process which should be done in committee, not attempted to be done on the floor. However, that is the route that is being forced on us, the minority, so that is the route we will have to follow now. We hope this is not a precedent-setting bill—or precedent-setting process. It definitely will be a precedent-setting bill regardless of whether it is S. 181 or S. 166. Yet when we compare the substance of S. 181 with that of the Hutchison bill, it should be clear the legislation has suffered from a lack of process and the review and scrutiny it needs and could bring.

Now, we should begin by first keeping clearly in mind the harm which S. 181 was purportedly designed to address. The problem is a simple one. Title VII requires that the victims of employment discrimination must commence a legal claim within 180 days of the act of discrimination, or in the case of a series of discriminatory acts, within 180 days of the last act in the series.

I should note that in most States the limitations period is actually 300 days. But in Mrs. Ledbetter's home State of Alabama, it is 180 days, so I will use that number in my statement today.

When title VII was drafted, Congress consciously used the 180-day period because they wanted to ensure that all claims of employment discrimination were raised immediately and remedied quickly—get the relief to the person right away. However, what happens if the victim does not know he or she has been discriminated against? There are a lot of possible examples of this. Suppose an individual who is a member of a racial minority applies but is not selected for a job bid or a promotion yet learns, more than 180 days after being denied the job, that it was awarded to a White applicant with the same or lesser qualifications? Or suppose a female worker receives a wage increase but does not learn until well beyond 180 days from when she gets the wage increase that she has received less than her male peers? She may not know she is being compensated less because her employer has intentionally hidden those facts or simply because employees may simply not know such information. In either case, the result is the same—the employee, through no fault of his or her own, simply does not know they may be the victim of discrimination until well beyond the 180 days from the time they received their wage increase or lose their job bid.

Let us be completely clear. I do not believe there is anyone who believes an employee in any of those or similar circumstances should lose the right to file a discrimination claim because they did not have the necessary facts and did not have any reason to know they were being discriminated against before the 180 days passed. This was precisely the problem that S. 181, the Ledbetter bill, was allegedly designed to address. If that were actually the case, I would vote for the Ledbetter bill. But the Ledbetter bill goes way beyond addressing the kind of situations I have outlined here—so far beyond that it creates new problems that make supporting it impossible for me and many other fair-minded Members.

By contrast, the Hutchison bill directly addresses and solves the very problems I have outlined. Under the Hutchison bill, the denied job applicant who did not learn the facts until long after his bid was denied or the female worker who did not know her wage differential compared to her male peers, either because of conscious concealment or simple lack of information, are not prevented from filing and pursuing their discrimination claim, even if it is well beyond the 180 days from when they got the raise or did not get the job. The Hutchison bill does this by making the 180-day period a flexible one that can be readily extended in the kind of cases I have mentioned.

On the other hand, the Ledbetter bill does this by eliminating the 180-day limitation period completely. The Hutchison bill is a rifle shot to solve a problem that everyone agrees must be solved. The Ledbetter bill is a shotgun blast that causes collateral damage to important safeguards in our system of laws.

Limitation periods, such as the 180-day period for Title VII employment discrimination claims, are a feature in every law that grants the right to someone to bring a legal action against someone else. They are universal because such limitations serve two very important purposes.

First, the existence of a limitations period is an inducement to those who have claims to seek redress promptly. All of us have an interest in a society where the laws are promptly enforced and, where the beneficiaries of those laws are promptly protected and promptly compensated. This is particularly true in the area of discrimination where society benefits best when discrimination is immediately exposed and immediately remedied. It may affect more than just the one person.

Second, limitations periods serve to ensure fairness in our litigation process. The simple truth is that the more removed in time an event is, the less likely anyone is to remember it clearly or accurately. In a work setting, those who made compensation decisions 5, 10, 20 years ago, may no longer be around. And even if they are around, how could they possibly remember with any accuracy the basis for the decisions? Under our Tax Code, records are not kept nearly that long for individuals or for businesses.

The inability to fairly defend against a claim and the inability to develop reliable evidence are the exact reasons why laws invariably contain a limitations period. Limitations periods are why someone cannot come along and try to sue you over an automobile accident that took place 20 years ago, or commence a legal action to take your house away because of a claimed defect in the title that is decades old, and why the Government cannot pursue actions against citizens that have become stale with time.

But S. 181 would do away with such limitation periods in employment discrimination cases and allow individuals to reach back in time to raise claims about which there is no fair chance to defend, no evidence of any value, and possibly nobody who was even there. We do not have to do this to address the concerns raised by the proponents of S. 181. Senator HUTCHISON's bill addresses those concerns completely.

S. 181 has a number of other problems which will be explained by my colleagues as we proceed to this bill, such as the potential to severely destabilize defined benefit pension plans and the expansion of individuals with standing to sue under civil rights laws. These are normally the kind of discussions we would have in the committee of jurisdiction, which in this case would be the Health, Education, Labor, and Pensions Committee, where our members and staff are well-versed in employment laws. However, the majority's actions will require us to have those discussions on this floor. It is not the way I want to do it, and it is not the way the American people expect us to do business, and it is not the way we will get things done.

Now, on this bill a vast number of people voted to proceed to the bill, and we all waived the 30 hours that could have been required before we could even make the first amendment. It was a nice concession on both sides; speeds up the process. But there are a number of opportunities—if the process were to get jammed—that huge hours can be added to the deliberations on this bill that do not need to be, that would not have been, probably, had it gone through the committee amendment process.

I just cannot emphasize enough how important that is to me. I made sure it happened when we were in the majority. I am hoping it will happen on future bills while I am in the minority. Cooperation around here gets a lot more done, and that is what the American people expect of us.

I yield the floor.

Mr. SANDERS. 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.

COMMUNICATION FROM SENATOR HILLARY RODHAM CLINTON

The PRESIDING OFFICER. The Chair lays before the Senate the following communication.

The assistant legislative clerk read as follows:

U.S. SENATE,
Washington, DC, January 21, 2009.

Hon. JOSEPH R. BIDEN, Jr.
President, U.S. Senate,
U.S. Capitol, Washington, DC.

DEAR MR. VICE PRESIDENT: This letter is to inform you that I resign my seat in the United States Senate effective immediately in order to assume my duties as Secretary of State of the United States.

Sincerely yours,
HILLARY RODHAM CLINTON.

MORNING BUSINESS

THE INAUGURATION OF PRESIDENT OBAMA

Mr. MCCONNELL. Mr. President, yesterday the Nation and the world witnessed the peaceful transfer of power from one President to the next.

While this now seems normal and fair, the idea that a head of state would relinquish his power willingly amazed many when George Washington willingly stepped down as commander-in-chief.

Two centuries later, that idea serves as one of the strongest principles of our democracy.

I congratulate President Obama, Vice President BIDEN, and their families.

I am proud to say that the Commonwealth of Kentucky was well represented during this week's historic celebration.

My office received thousands of requests from Kentuckians for inauguration tickets. While we only had about 400 tickets to give out, many more came for the event and for the celebrations.

The inauguration of the country's first African-American President is truly a reason for the whole country to celebrate.

It is no secret I wish he were a conservative Republican, but regardless of party, this is a proud moment for our country, and I congratulate him and his family. And I hope his beautiful daughters come to like their new home.

America certainly will face many challenges ahead, and the Congress will work with our new President to find solutions.

Where the President seeks to cut wasteful spending, reduce the national debt, provide tax relief for working Americans, or work towards energy independence, he will have Republican support.

When he works to tackle big issues, and does so by listening to and taking into account all sides he will find enormous support here in the Capitol.

And to help get his administration off to a smooth beginning, the Senate yesterday confirmed seven Cabinet-level positions.

Today we will consider the nomination of a fellow Senator, Mrs. CLINTON, as Secretary of State; more nominations will be considered in the days ahead.

It is my intent that Congress and the new administration can work together to find solutions that are equal to the moment. Confirming these administration nominees is a good step in that direction.

Now that the balls and parades are behind us, the hard work of governing lies ahead. I am eager to get started doing the business of the American people.

NOMINATION OF WILLIAM LYNN

Mrs. MCCASKILL. Mr. President, on Tuesday our Nation witnessed the historic swearing in of President Barack Obama. President Obama has nominated Mr. William Lynn to the position of Deputy Secretary of Defense. In this time of war and economic crisis, the U.S. Senate has endeavored to rapidly take up the nomination of Mr. Lynn, as well as many other senior nominees to the Obama administration, to provide our new President the ability to begin his work with key members of his team from the outset.

Last week, Mr. Lynn faced the members of the Senate Committee on Armed Services in a hearing conducted to vet Mr. Lynn. I attended that hearing and posed questions to Mr. Lynn. The day prior I also visited privately with him to discuss his nomination.

I have significant concerns about the message the nomination and confirmation of Mr. Lynn will send within the Department of Defense and across the Federal Government. While I will not object to Mr. Lynn's confirmation by the U.S. Senate today, I feel it important for me to express my concerns as a matter of record.

Following service in various defense ''think tanks'' and as a Senate aide, in 1993 Mr. Lynn joined the Department of Defense as an executive, first as Director of Program Analysis and Evaluation. In 1997 he was promoted to be the Department's Comptroller, where he served until 2001 when the Clinton presidency concluded.

After a short stint as a consultant, Mr. Lynn made a decision that many DOD executives before him have made. He decided to accept a senior position in defense industry, where his expertise, experience and contacts within DOD were greatly sought after and valued. Specifically, Mr. Lynn joined the defense giant Raytheon as a senior executive handling management and government relations.

Mr. Lynn has served with Raytheon since that time and continues there pending his confirmation today. Importantly, it appears that Raytheon substantially improved the integrity of its government contracting operations during Mr. Lynn's tenure, a time when Raytheon also built itself into the fourth largest defense contractor in the U.S. and the fifth largest in the world.

On repeated occasions in this body, I have expressed my deep concerns with the revolving door between industry and government. Those concerns are amplified when I speak of DOD, which is well known for its wealth of ''insiders'' and its closeness to the military-industrial complex. It is not uncommon to hear people speak of the fact that DOD is an insider's game. Some try to explain away this insider's notion by claiming that the complexity of DOD and its weapons and services buying operations require these types of relationships. Even as I acknowledge the complexity of the DOD operation, I tend to believe this ''special knowledge'' concept is a double-edged sword which at a minimum can lead to an appearance of impropriety.

Returning to Mr. Lynn, it is clear that his case presents a strong example of this industry-government executive revolving door phenomenon. Frankly, we live in a time when many Americans, not just those who watch DOD closely, know of concerns about the relationship of DOD with contractors. More specifically, many believe that defense contractors have the ability to influence DOD decisions for the profit of the contractor but not necessarily for the best interest of DOD or, for that fact, the taxpayer. With this backdrop, setting aside Mr. Lynn's merits, the narrative of his story alone is problematic. Further, it comes at a time when we are vigorously endeavoring to restore public confidence in government.

My concern perhaps might be mitigated were it not for the fact that Mr. Lynn is nominated to what is fairly characterized as the most critical management position within DOD and perhaps the most important position in the making of significant decisions on major defense acquisition programs. In other words, Mr. Lynn will have possibly the most powerful position in the Department to influence how the Department does business with private industry and, in some cases, to influence with whom the Department does business.

To be frank, the way DOD does business with defense contractors must change because the status quo is unacceptable. In part because of Mr. Lynn's recent past, I am concerned that he will not bring the sense of urgency to or, worse yet, see the need for substantial reform in DOD's weapons and services procurement practices. Further, in my limited interaction with Mr. Lynn to date, I have not sensed a strong commitment to this type of change, although I understand he has communicated such a commitment to others with greater vigor.

To be clear, I am not questioning Mr. Lynn's integrity. His integrity has been testified to by many of his present and former colleagues. He is clearly highly regarded by our incoming President and his administration. And I am encouraged by the historic ethics guidelines that President Obama has put in place just today for officials in his administration. I am confident that Mr. Lynn will fully meet the letter of these new rules and act much more broadly in living up to their spirit both in his individual actions and in his oversight of other DOD officials.

Let me close by making mention of the exchange I had with Mr. Lynn at the Committee on Armed Services. I put much of what I have discussed here in regards to my concerns with the revolving door at DOD before Mr. Lynn. I further discussed concerns that he may face a conflict of interest because his former employer Raytheon is a major defense contractor. Mr. Lynn offered a limited response to my question, committing to meet every ethical requirement of the Department of Defense. I have no doubt that he will meet these requirements and frankly exceed them. But Mr. Lynn did not discuss his views on the revolving door at DOD, of the adequacy of the ethical controls at DOD or of any willingness to further study these issues if confirmed. I hope nonetheless that he will take these issues up during his tenure at DOD. I firmly believe that business as usual must come to an end at DOD, both as to these matters and in regards to many more. The chief management Officer at DOD, of which Mr. Lynn will serve, must be a reformer, a disciplinarian, a person committed to change and a person willing to challenge the system in order to drive change.

As stated earlier, I will not oppose the nomination of Mr. Lynn. Even as I have expressed my concerns today, I respect Mr. Lynn and the views of so

many of my colleagues and of his former colleagues about his abilities and his commitment to improving the state of affairs in business operations at DOD. I am excited by the opportunity he has before him. And I am optimistic about what he will accomplish alongside many others on the team that will form at DOD. But I will be watching closely because this is my duty to the people of Missouri, to the people of America and to the command of our constitution.

TRIBUTE TO SENATORS

BARACK OBAMA

Mr. FEINGOLD. Mr. President, today I want to take a moment to thank President Obama for his service in the Senate. Our new President has some very difficult challenges ahead, as he faces a serious economic downturn, and many critically important national security issues. But he has already shown his ability to handle tough challenges through his outstanding work here in the Senate since his election in 2004.

From the moment he arrived, Barack Obama showed himself to be an outstanding legislator and public servant. I was very pleased to work with him on ethics and lobbying reform issues, first authoring a bill together, and then working together to pass the Honest Leadership and Open Government Act. Passing that landmark legislation took a determined, focused effort over many months, and then-Senator Obama showed that he was both a deeply principled, and very effective, member of this body. I was also pleased to work with him on a number of other issues, including the presidential public funding legislation, and I look forward to his continued support on that issue in this new Congress.

I was proud to support his efforts, along with many other members, on the efforts to support our wounded warriors, which he championed. And, finally, I thank him for his support of my bill, authored with Majority Leader HARRY REID, to safely redeploy our troops from Iraq. His support helped to build momentum for our effort to redeploy the troops from Iraq and move toward a better national security strategy, and I thank him for it.

We will miss his presence here in the Senate, but of course the Nation needs his unparalleled skills, and deep commitment to public service, more than ever as he is now President of the United States. I look forward to continuing to work with him on issues important to the American people, and I thank him once again for his service here in the Senate.

JOSEPH BIDEN

Mr. President, it has been a pleasure to serve with Senator JOE BIDEN for the last 16 years. He is an outstanding colleague and a good friend, and I know that he will make a terrific Vice President. I have been pleased to work with him on so many issues over the years. For instance, I was proud to support him in his tremendous work on the COPS program. In turn I appreciate his steadfast support of campaign finance reform issues over the years.

Most of all, I want to say how much I have enjoyed serving with Senator BIDEN on the Foreign Relations and Judiciary Committees. I also can attest to his mastery of the complicated issues he faced in both committees. It is a huge challenge to take on the chairmanship of a Senate committee, and to do it well, but to serve with such distinction as chair of two of the Senate's most important committees is very rare, and it speaks volumes about JOE BIDEN's service in this body.

I have always found Senator BIDEN to be someone who I could talk with seriously about issues of mutual concern, or when we disagree. He is open-minded and he really listens. That quality will surely serve him well in his new position. He also, in my view, can be uniquely persuasive. He is one of the few Senators who I have actually seen change people's minds during a committee debate. In a policy fight involving complex issues, JOE BIDEN is someone who you want to have on your side.

Now Senator BIDEN becomes Vice President, and I know he will serve the Nation with the same outstanding commitment and skill with which he served the people of Delaware. I thank him for his many years of distinguished service in the Senate, and look forward to continuing to work with him, and President Obama, in the years to come.

HILLARY RODHAM CLINTON

Mr. President, I am pleased to join my colleagues in thanking Senator HILLARY RODHAM CLINTON for her outstanding service in the Senate, and wishing her our very best as she becomes our Secretary of State. One of the many reasons I strongly support her nomination for Secretary of State is because I have had the pleasure of working with Senator CLINTON, and I know what a skilled legislator and committed public servant she is. We have worked on a number of issues together over the years, including fighting for family farmers and especially the dairy farmers that are so important to both New York and Wisconsin. Finding common ground, we worked together to make sure dairy markets functioned properly, to improve the milk income loss contract or MILC program, and pushing for country-of-origin labeling, or COOL, legislation for dairy products. I was also proud to support the Paycheck Fairness Act, which she authored, and to work with her on many other issues.

I also had the opportunity to travel with Senator CLINTON and a number of other senators on an official trip to Afghanistan, Iraq, Kuwait and Pakistan, where we listened to service men and women on the ground, as well as local leaders. On that trip Senator CLINTON deeply impressed me with her depth of knowledge on foreign relations and national security issues. Later I was very pleased to have her support for my effort with Majority Leader HARRY REID to safely redeploy our troops from Iraq, and I look forward to continuing to work with her on these critically important issues as she becomes our next Secretary of State. Once again, I thank her for her service in this body, and I wish her all the best as she continues her service to the American people.

KEN SALAZAR

Mr. President, I join my colleagues in thanking KEN SALAZAR for his outstanding service to the people of Colorado over the last 4 years. It has been a pleasure to work with him on a number of issues; he is extremely easy to work with, both someone of integrity and great personal decency. In particular, he has been one of the Senate's leaders when it comes to protecting the rights and freedoms of the American people as we work to strengthen our national security. I was proud to work with him and a bipartisan coalition of Senators on the SAFE Act to change flawed provisions of the PATRIOT Act. I also appreciated his critical support of the NSL Reform Act, to address the serious misuse of the FBI's national security letter authorities. I also know Senator SALAZAR's deep commitment to public lands and energy resources issues, and I think he will be an excellent Secretary of the Interior. Again, I thank him for his service in this body, and I look forward to continuing to work with him as he assumes the leadership of the Interior Department.

Mr. DODD. Mr. President, I want to say a word of good wishes to the senior Senator, albeit very briefly, from Colorado, KEN SALAZAR, as he leaves the Senate to become Secretary of the Interior.

As the son of 11th generation immigrants, from a family that farmed Colorado's San Luis Valley for a century and a half, no one has a deeper, more powerful connection to what opportunity means in this country than KEN SALAZAR.

I can remember one of the first times I met Senator SALAZAR. After we had exchanged greetings, I said to him, ''My family came to America in the 1800s. When did your family come here?''

He replied, ''Oh, about 500 years ago.''

Indeed, it is remarkable to think that the descendant of a family that settled in the American West almost half a millennium ago will soon be a Member of the cabinet of first African-American President of the United States.

Only in America.

Indeed, though his parents, who served their country in World War II, were not college-educated themselves, they made sure that KEN, his brother, John, and their six brothers and sisters all graduated from college.

To be sure, Senator SALAZAR is a son of Colorado—a small businessman who owned ice cream stores and radio stations and a farmer for more than 30

years. Indeed, he practiced water and environmental law. Our colleague's affection for the pristine, majestic beauty of the Silver State and its people is embedded in his DNA.

Senator SALAZAR also made a mark instantly on this institution. In 4 years, he developed a reputation for bringing people together in common purpose—whether it was advancing renewable energy policy, confirming judges, standing up to abuses at the Justice Department, or championing the State Children's Health Insurance Program.

And I would add that as we work to expand that latter program today, his leadership will be missed.

His time in this institution was short, but he has made those moments count. As Senator SALAZAR seeks to find a balance between renewables and fossil fuels in the administration's energy choices, protect our public lands, and restore integrity to what has been a deeply troubled Department, I am confident that as Interior Secretary he will bring the same temperament to the job that he has brought to his responsibilities in the Senate, never forgetting those who came before us—whose sweat and heart remain at the very foundation of this great country of ours.

And so, today, we thank Senator SALAZAR for his service and wish him well. As he has throughout his life, I have no doubt he will do a remarkable job for our Nation.

TRIBUTE TO MICHAEL CHERTOFF

Mr. LIEBERMAN. Mr. President, I rise to express my deep gratitude to Secretary Michael Chertoff for the service he has given his country over the past 4 years as head of the Department of Homeland Security.

Secretary Chertoff came to the job in February 2005, upon the retirement of the Department's first leader, Pennsylvania Governor Tom Ridge, with an impressive record of public service as a Federal judge, an assistant attorney general, and a prosecutor. He leaves office in the next few days with even greater distinction for shepherding the Department through the growing pains of, shall we say, its toddler years, making great strides to turn the amalgam of 22 agencies—all with different cultures and missions—and 200,000 employees into a single, focused Department. His commitment to the security of the American people remains unswerving, for which he deserves the Nation's appreciation.

Leading the Department of Homeland Security is one of Washington's toughest jobs and probably one of the most thankless. The Department of Homeland Security carries with it the awesome responsibility for safeguarding the Nation against terrorist attacks and natural disasters. It incorporates many different agencies, with missions critical to the American people, ranging from emergency management; to immigration and border security; to air, rail, and highway travel security; cybersecurity; science and technology; biological and chemical security; and infrastructure protection. Unfortunately, the Secretary gets no credit for terrorist attacks that have been averted and, of course, would be blamed if an attack were to occur. Let me say that I believe our country is safer than it was when Secretary Chertoff began his tenure at the Department, and it is in part due to his attentive and forceful leadership—and the dedicated service of the men and women he had led—that the country has been spared from another terrorist attack. His contribution toward efforts to disrupt the plot to destroy airplanes en route from Great Britain to the United States in August 2006 is especially noteworthy.

Secretary Chertoff brought a rigorous, clear-eyed intensity to the Department's many challenges. He has worked hard to set priorities for the Department and lay out a roadmap to achieve goals. While we in Congress have not agreed with all of his decisions, he has spoken clearly about his goals and been honest with us and the American people about the difficult tradeoffs involved in many aspects of homeland security.

Obviously, the Department is still a work in progress with many challenges ahead. But the Secretary has made an indelible mark in a number of areas. I will mention just a few that are of deep importance to me. First, I would note that it has been under Secretary Chertoff that the serious work of protecting the government's information technology infrastructure began. Our enemies and economic competitors are highly skilled at using computer systems to try to gain advantage over us. Secretary Chertoff realized this, took the threat seriously, and moved to secure government networks in a coordinated, comprehensive way through the creation of the comprehensive national cybersecurity initiative, CNCI. CNCI is still in its nascent stages and many other agencies have responsibility for its success, but I am pleased the Secretary moved with resolve to improve our defenses against cyberintruders.

Under Secretary Chertoff's leadership, DHS has made important strides in improving its financial management. DHS has taken important steps toward improving its grades from OMB on information security, and, I am told OMB's latest data will show that the morale of the Department's employees has definitely improved.

To his credit, Secretary Chertoff learned from his Department's mistakes responding to Hurricane Katrina and set to work to recreate FEMA, and enable it to leverage DHS' many other significant resources, so that it can become, for the first time in its history, an emergency management agency capable of responding to a catastrophic disaster.

The fact is that today, FEMA is not the same agency it was in 2005. That's because the Secretary has been an instrumental ally in implementing legislation I was honored to draft with my colleague on the committee, Senator COLLINS, to transform FEMA into a stronger, more accountable, and more coordinated agency. It is now elevated to a special status within DHS—like the Coast Guard—so that its authorities and assets cannot be changed without congressional approval and its administrator is the President's principle adviser in an emergency. Key FEMA officials now are required to have relevant emergency management experience; its preparedness duties are united with its response functions so that the same people who prepare for emergencies also respond to them. FEMA now has responsibility for dispensing $2 billion in homeland security grants and its 10 regional offices are getting stronger by the day. To the Secretary, I would say that the Department's much improved internal coordination and coordination with State and local officials during the 2008 hurricane season attests to the improvements that have been made.

There are many other areas in which Secretary Chertoff's leadership has been instrumental, including border and port security, chemical security, information-sharing, and developing the architecture to protect the nation of terrorist attacks using weapons of mass destruction. And, of course, all Americans who travel by air have been made safer by the Secretary's focus on improving the Transportation Security Administration.

I cannot talk about all of the Secretary's accomplishments today. But I would be negligent if I did not thank him for his assistance in achieving a goal that has a very low national profile, but which has significant ramifications for the 200,000 employees at the Department. I am talking about efforts to consolidate most of the Department's headquarters under one roof at St. Elizabeths Hospital campus in southeast Washington. The Department's headquarters is spread throughout more than 70 buildings across the Washington area, making communication, coordination, and cooperation between its component parts a real challenge. A unified headquarters would allow employees to work more efficiently and interactively and is a critical cornerstone of the efforts to improve management and integration at the Department. I am pleased the National Capital Planning Commission recently approved a master plan for a consolidated headquarters at St. Es. I expect construction to begin later this year, And I thank Secretary Chertoff for his leadership in this effort.

In the short time since it was created in 2002, the Department of Homeland Security has become an equal among the most important government agencies responsible for our national security, such as the Department of Defense. Secretary Ridge launched the process and admirably led the Department through the initial challenge of

merging scores of agencies and programs—the largest government reorganization in half a century. Secretary Chertoff has moved the Department to the next level, where it now has a focused, long-term strategy clarifying the Department's priorities, roles, and responsibilities, as well as those of other key Federal, State, and local partners. He has worked tirelessly to ensure an integrated and overarching vision of how the government will tackle its role of defending the homeland.

We have much work ahead to transform the Department into a mature agency whose whole is greater than the sum of its parts. But we have made steady progress. The threat of natural disasters is ongoing and the threat of terrorism remains with us. As I have often said, these are not ordinary times. They demand extraordinary commitment from those who have chosen public service. Secretary Chertoff has given our country his extraordinary commitment, and he will be well and gratefully remembered for it.

75TH ANNIVERSARY OF HOSTELLING INTERNATIONAL USA

Mr. GRASSLEY. Mr. President, I would like to take a moment today to recognize the 75th anniversary of Hostelling International USA. Since 1934, Hostelling International USA has helped facilitate travel within the United States by the world's youth and promoted intercultural understanding. As part of the international hostelling movement, this organization has helped Americans to experience different parts of their own country and helped international travelers to better understand our unique and proud history, people, and way of life.

The sharing of cultures that naturally occurs in a hostel helps people to better understand and identify with others of various backgrounds. Instead of retreating to a hotel room every night, travelers in a hostel are literally living beside and interacting with fellow travelers from other countries. Several of my staff have stayed in hostels while traveling, and I know their experiences have helped shape their ability to appreciate different cultures and points of view. In this respect, it is the small, everyday human interactions that can have the biggest impact, like encountering someone who may not speak English and learning to communicate or sharing favorite foods among an international group of travelers.

In my home State of Iowa, the Northeast Iowa Council of Hostelling International USA has provided activities for youth and adults alike in Postville and surrounding communities since 1975. I am glad that Iowans have the benefit of this programming to give a greater understanding of the world and its people to residents who may not have had a chance to travel widely. I am also glad that Hostelling International USA continues to provide the opportunity for people from around the world, and especially young people, to see the real America firsthand and meet the American people. This is the best way to build good will across the globe, and I congratulate Hostelling International USA for its 75 years of service.

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering well over 1,200, are heartbreaking and touching. While energy prices have dropped in recent weeks, the concerns expressed remain very relevant. To respect the efforts of those who took the opportunity to share their thoughts, I am submitting every e-mail sent to me through an address set up specifically for this purpose to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

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

I am an Idaho youth, currently learning how to drive, but due to the ridiculously high gas prices it is not as much fun as I was expecting it to be. Because of these prices I feel bad about doing something I need to know how to do. I am also a musician and because of that I am constantly going to rehearsals and performances and need to drive in order to get where I need to be. I do in fact carpool but because most of the people I would carpool with also have very busy schedules it is extremely hard to coordinate. Not only must I travel to get to my rehearsals and performances but I am also a transfer student at my school due to their spectacular music program. Because I am not in the school's boundary it is quite a distance for me to travel two ways every day. Simply because I have a passion for music and want to pursue a career in it I must break not only my own but also my parents' wallets. Due to my age many people will not hire me so it is quite a financial strain seeing as how I do not make an income, and only so many people need a babysitter.

I personally would greatly appreciate if the government would take the time and money to look into alternative renewable energy sources. Not only can we do that on a national level but on a more local level we could create more public transportation systems. The only place we have anything is in Boise, and I, as well as many others, live in Meridian. If there was a bus or light rail that I could get on in my town and travel to Boise or Nampa, and anywhere in between, I assure you I would use it. And, I'm pretty positive that I'm not the only person who would. Not only would this save many people's wallets but it would also be very handy for those of us who are yet to be licensed. Not to mention that the reduced number of cars would lower pollution levels greatly. Please look into a public transportation system locally. It would be greatly appreciated by many, and thank you for finally giving the people more of a voice on the issue and for bringing attention to the Congress.

BRITTAN CHASTAINE.

I assume you have already seen this website dollargas.us. It seems to me that as a nation we are not only in serious debt, but we are allowing ourselves to be put in ''bondage'' by other countries needlessly. I am angry and frustrated that we are not more assertive in addressing this problem.

We have a family of nine children all are on their own. Some are married and have young families as well as trying to get through college. As you know, job wages are not very substantial in college towns for students. The increase in the cost of fuel is driving other costs up as well. These young adults are trying very hard to make ends meet and it is becoming more difficult for them to live within their means. Wages are not keeping up with the cost of living. This is forcing mothers out of the home and children which is not in the best interest of the family.

The rising cost of fuel is also precluding their visits to our home as well as our visits to their homes. The visits are the short range effect but the long range effect is grandchildren having less interaction with grandparents which further weakens the family structure. The family is the basic unit of society and as the family weakens the values of society and our nation are also weakened. There is strength, honor, value and a sense of duty in knowing personal heritage.

Our livelihood is farming, luckily we have enough fuel which was bought two years ago and hopefully will finish out the needs for this year. It is a tragedy that farms are being sold and subdivisions are taking over good Idaho farm ground. Rising fuel costs and fertilizer prices are becoming a serious burden.

I do hope you will strongly support opening and drilling domestic oil resources as well as other technologies that provide efficient energy alternatives.

Thank you for your time. Thank you for listening. Please represent the state of Idaho in finding ways to cut rising fuel and energy costs.

CHERYL OKELBERRY.

My husband is a Viet Nam veteran who retired after 30 years with the Boise Police Department. I have worked all my life so when he was eligible for retirement, we had saved and planned and we were in a good position to do so. In the five years since he retired, we have seen our insurance premiums rise over $400 per month to $1,020 per month, and we know that is a bargain! Because of oil prices, grocery prices are rising, Idaho Power just raised their rates, the gas company is sure to follow and fuel prices have made it almost prohibitive to travel except in necessity. We have a little place in the mountains and to get there now costs $90+ just to enjoy a weekend away from the heat and noise in Boise. Our nest egg is dwindling, and we are stuck in the house watching it disappear! And we are far luckier than most—we don't have to choose between food and gas, yet.

Saudi Arabia says they make money at $70 per barrel; why is the price $130? The government has so mismanaged its own affairs that we find ourselves at the mercy of speculators and oil shieks who don't like us much anyway. We have been so short sighted that we haven't the refineries to process oil even if

you do allow drilling in the Arctic or offshore. While France gets 80% of its power from nuclear plants, we languish and waste costly oil to light and power our homes when Nuclear power would do the job for pennies comparatively. We need a ''Manhattan Project''—throw the weight of the government and the best minds behind getting nuclear facilities on line, build new refineries, develop methods for cleaner burning coal. Stop arguing about which side of the aisle is the right side, and do something for the people you were elected to represent.

PENNY TAYLOR, *Boise*.

Thank you for taking the time to hear my input on fuel prices. I hope this letter reaches the ears of your fellow Senators. I own and operate a small business with one truck. I spend approximately $700 each time I fill my truck with diesel. This occurs about 3–4 times per month. I also own and operate heavy equipment which costs about $800 to $1,000 per month to fuel. I have raised my prices slightly, however, work is scarce. Raising prices too high will result in loss of work. It appears that many people in government do not care about their constituents. Do you pay for fuel? How about health care? Maybe we ought to vote on whether you and your fellow senators should receive a fuel allowance and free health care on taxpayers' money. Maybe then, you can get your heads back out where the sun is shining! It is time to tell the environmentalists to cram it. Start drilling in our own country, providing jobs to our own people, and supplying our own nation with energy. By the way, how is the government going to tax electric cars? Let me guess, raise our electric rates? I guess I could use biodiesel, but it costs more than regular diesel. Oh yeah, big oil cannot profit from biodiesel. Are you going to do anything about the oil speculators? No. Reducing speculation would cut into the retirement accounts of 90 percent of Senators and Congressman. After all, you already have free health care and fuel allowances. Why is it okay for other countries to drill off our coastline, but we cannot? Quite frankly, Senator, no disrespect, but something needs to be done. Enough already. Tell your fellow Senators to do something.

DEVIN.

Gasoline Prices at the Pump—I am sure there are many watch dog groups out there looking at the record breaking profits of the large oil companies, but does DOE or DOJ investigate price fixing, price gouging and record profits of the large oil companies? I am not talking about regulating the oil industry, but just watching out for the average Joe who has no option but ''has to grin and bear it'' at the pumps.

Miles Per Gallon—Before the fleet MPG average included light trucks and SUVs the automakers call a lot of cars ''SUVs'' as to not include them in the car category, now that light trucks and SUVs are included in the average, maybe automakers will be forced to work on raising Fleet MPG averages. But the MPG mandates that the government set for Auto Makers to establish for their fleets is still not high enough. Maybe it needs to revised each and every year and not on the Washington average for change—Ten Years.

On a personal level, I cannot run out and buy a new vehicle that gets 10 percent better MPG. That would cost me 20K in order to save $500 per year in gas. Maybe if all vehicles had a Green rating (scale of 1–10, one being a ¾ ton PU and 10 being a 40 MPG car) and you got a tax rebate of $100 times the Green rating of your primary family vehicle.

Example: $100 times a Green rating of 8 lets you deduct $800 from your taxes.

Nuclear Power—There is a reason why France generates 80 percent of their electricity from Nuclear Power, it is a national initiative. In the US, it's left up to large electrical companies to decide whether they can make it work economically before they decide to build the next generation power plants. Remember, what killed the US nuclear industry is not safety, fuel recycling, waste disposal but economics. Look at Seabrook Nuclear Power Plant, its construction was stalled to the point with legal red tape until it would never make a profit for its owners and it never will. What you and other politicians need to do its step forward and mandate DOE to fund, build and operate the next generation nuclear power plant as a National Strategic Initiative. It is essential to the Nations Security as any Military Base, Port Security Effort or any other effort to keep this country safe in the world. If the government does it ''strong arm method'' and it gets done (on time and with in budget) and it is demonstrated how safe and economically feasible it is, commercial Nuclear Power Plant Building will follow.

Alternative forms of electrical generation either need an increase in their incentives (they almost did not get extended this year) or Carbon Producers (Coal and Oil Power Plant) need higher ''Carbon Taxes''.

Electrical Reduction at Home—I would love to install new windows in my home, but at $6,000 to replace all my windows, I need help in the form of tax credits in order to afford it. If the government reinstituted many of its programs from the 70's to help pay for home improvements, it would help.

JOHN K., *Ammon*.

I have been traveling back and forth from Burly every weekend for the past couple of years. My ex-husband took my kids from me in the divorce because I could not afford to pay for a lawyer. He then moved from Boise to Burly to be closer to his parents who had moved back to Burly a couple of years earlier. The trip used to cost about sixty dollars to get them and then take them back later. I make the trip so my parents and I can spend time with my children. I have been forced to cut that back to every other week because it costs us almost a hundred dollars each time to go and get them. It breaks my heart.

Now solutions to high gas prices:

For one drill our resources in and around the US. Open up everything: Alaska, the coast, outer continental shelf, everywhere. We need to have both Congress and the President lift their moratoriums on this issue. We must start now because the problem will still exist in five and even ten years. It may get better for a time but it will come back again and again if we don't solve it.

Secondly we need to begin to convert coal and shale to oil. Converting coal to oil is more than sixty-five year old technology. My understanding is that shale is a more recent technology, but very reasonable. We need to have Congress back companies to convert these products to oil with a subsidy that in the event that prices drop below profitable levels that these companies will not be out billions of dollars. OPEC dropped prices last time we attempted to become oil independent. They will do it again. We need to be energy independent regardless of what OPEC does with prices this time or this will happen again.

Lastly develop nuclear power. We need to take our expendable resources away from electric production. Nuclear power is a viable alternative especially considering recent technology advances in this field.

We must take control of our own destiny. Take the power away from foreign countries.

ANGELA.

I am disgusted with our legislators in the federal government. They aren't acting in our best interests, nor have they for many years. I do not trust them to do right by the U.S. citizens; collectively, greed and the lust for power have become commonplace and acceptable behavior among many legislators.

I retired last year but am going to have to find a part time job to help make ends meet, as prices in general are escalating faster than my fixed income in retirement. I do not have the answers, but I am sure that our legislators own stock in the major oil companies, and that pretty much says it all. Americans are just a big cash cow for our ravenous government to feed upon.

Additionally, I wanted to add something regarding the transit system in the Treasure Valley. I am from Seattle and have seen the problems the Puget Sound area has experienced as a result of rapid growth. The transit system in the Treasure Valley is way behind in its development. The City and county fathers had better do something soon. But the transit system issue doesn't seem to be holding a place of great importance in the development of this area. That's worrisome. There should be more advertising and incentives for people to use the transit system, and more routes made available. Encouraging ridership is important, but it needs to be (and can be) made more convenient and attractive.

Thanks for your time.

GRETCHEN, *Nampa*.

Thank you for your concern about our high energy costs. We are very concerned about this issue because it is hitting our household in two ways. We own a small trucking company and to be truthful, we don't know how much longer we will be able to run. The rising price of diesel is making our profit margin shrink and our own household budget is struggling to make ends meet. It is difficult to expand our budget for the rising energy costs, because the money just isn't there. We are doing the best we can, but it is so frustrating when we feel that our own country is not utilizing its own energy sources. It is time to allow drilling offshore and in our own country for oil and natural gas. We also can further knowledge in alternative energy sources at the same time. Those two ideas should not oppose each other, they can and should both be explored.

Please vote for those measures that would allow both pursuits

Thank you,

RALPH and JULIE MILLER.

I feel very depressed that our country is going down the tubes all being done by the left wing special interests. I would like to see a full blown debate on global warming. Just because the father of the Internet, Al Gore, says it so and the UN agrees does not mean that it is true. We are told all kinds of things that are happening and are suppose to agree when one simple question should be asked: Has it happened before? Why not ask this simple question ask when pictures showing glaciers melting, hurricanes, cyclones, etc.? We need to put all these doomsday projections into perspective. In college I took geology 101 and one of the things that I remember is the world is always changing.

I was also an economics major and was taught about supply and demand. I was taught that if the demand went up and the supply stayed the same, the price went up. I guess that I should have been taught you demagogues it. Do the liberals have one idea on how to increase the supply. I would like to see Republicans stand up and take a strong position that we need to secure our future by drilling. We need to get back to what made the country great. The one thing that makes a country great verses a socialist country is a free market that will sort out

the problem if left free. Republican Party used to stand for something and it needs to again. What happened to small government, sound economic policies, stay out of our way? We have a drug benefit plan but would it be better if they allowed a free market to bring prices down. I used to get my US manufactured meds from Canada but now pay a little less under a Medicare plan. If they can sell in Canada and make money, why not in the US? Why not free trade and competition?

By the way, because of the lack of sun spots we might be going into a little ice age, then what will the politicians do?

Thank you for reading this.

BOB.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–498. A communication from the Assistant Inspector General, Communications and Congressional Liaison, Department of Defense, transmitting, pursuant to law, a report entitled ''DoD IG Report to Congress on Section 357 of the National Defense Authorization Act for Fiscal Year 2008; Review of Physical Security of DoD Installations''; to the Committee on Armed Services.

EC–499. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13441 with respect to Lebanon; to the Committee on Banking, Housing, and Urban Affairs.

EC–500. A communication from the Secretary, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Temporary Exemptions for Eligible Credit Default Swaps to Facilitate Operation of Central Counterparties to Clear and Settle Default Swaps'' (RIN3235–AK26) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–501. A communication from the Executive Director of the Board of Directors, HOPE for Homeowners Program, transmitting, pursuant to law, the report of a rule entitled ''HOPE for Homeowners Program: Program Regulations: Upfront Payment Incentive for Subordinate Mortgage Lien Holders and Other Program Changes'' (RIN2580–AA01) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–502. A communication from the Attorney, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Railroad Safety Enforcement Procedures; Enforcement, Appeal and Hearing Procedures for Rail Routing Decisions'' (RIN2130–AB87) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Commerce, Science, and Transportation.

EC–503. A communication from the Secretary of Energy, transmitting, pursuant to law, a report relative to an annual plan for the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program; to the Committee on Energy and Natural Resources.

EC–504. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Spiromesifen; Pesticide Tolerances'' (FRL–8398–8) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–505. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of Propylene Carbonate and Dimethyl Carbonate'' (RIN2060–AN75) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Environment and Public Works.

EC–506. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Nevada; Vehicle Inspection and Maintenance Program'' (FRL–8748–7) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Environment and Public Works.

EC–507. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Finding of Failure to Submit a Required State Implementation Plan Revision for 1-Hour Ozone Standard, California—San Joaquin Valley—Reasonably Available Control Technology'' (FRL–8763–5) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Environment and Public Works.

EC–508. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Finding of Failure to Submit State Implementation Plans Required for the 1997 8-Hour Ozone National Ambient Air Quality Standard; North Carolina and South Carolina'' (FRL–8764–8) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Environment and Public Works.

EC–509. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Oil Pollution Prevention; Non-Transportation Related Onshore Facilities'' (RIN2050–AG49) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Environment and Public Works.

EC–510. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Operating Permit Programs; Flexible Air Permitting Rule'' (RIN2060–AM45) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Environment and Public Works.

EC–511. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, an annual report on the Child Support Enforcement Program for fiscal year 2006; to the Committee on Finance.

EC–512. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Evaluation of Phase I of Medicare Health Support Pilot Program Under Traditional Fee-for-Service Medicare: 18-Month Interim Analysis''; to the Committee on Finance.

EC–513. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Interim Guidance under Section 457A'' (Notice 2009–8) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Finance.

EC–514. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Update of Weighted Average Interest Rates, Yield Curves, and Segment Rates'' (Notice 2009–2) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Finance.

EC–515. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revenue Ruling: 2009 Prevailing State Assumed Interest Rates'' (Rev. Rul. 2009–3) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Finance.

EC–516. A communication from the Staff Attorney, Office of Chief Counsel for Import Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations'' (RIN0625–AA79) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Finance.

EC–517. A communication from the Chief of the Trade and Commercial Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Prohibitions and Conditions for Importation of Burmese and Non-Burmese Covered Articles of Jadeite, Rubies, and Articles of Jewelry Containing Jadeite or Rubies'' (RIN1505–AC06) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Finance.

EC–518. A communication from the Chief of the Trade and Commercial Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Import Restrictions Imposed on Certain Archaeological Material from China'' (RIN1505–AC08) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Finance.

EC–519. A communication from the Assistant Administrator, Bureau for Legislative and Public Affairs, U.S. Agency for International Development, transmitting, pursuant to law, the Agency's financial report for fiscal year 2008; to the Committee on Foreign Relations.

EC–520. A communication from the Program Manager, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards'' (RIN0938–AM50) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC–521. A communication from the Deputy Director for Management, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report relative to competitive sourcing activities for fiscal year 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–522. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report entitled ''2008 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities''; to the Committee on Homeland Security and Governmental Affairs.

EC–523. A communication from the Acting Director, Office of Personnel Management, transmitting, pursuant to law, a report relative to competitive sourcing activities for fiscal year 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–524. A communication from the Acting Director, Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''National Security Personnel System'' (RIN3206–AL75) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–525. A communication from the Program Manager, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Commerce in Explosives—Amended Definition of Propellant Actuated Device'' (RIN1140–AA24) received in the Office of the President of the Senate on January 16, 2009; to the Committee on the Judiciary.

EC–526. A communication from the Program Manager, Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Decision-Making Authority Regarding the Denial, Suspension, or Revocation of a Federal Firearms License, or Imposition of a Civil Fine'' (Docket No. ATF 27P) received in the Office of the President of the Senate on January 16, 2009; to the Committee on the Judiciary.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. KERRY for the Committee on Foreign Relations.

*Susan E. Rice, of the District of Columbia, to be the Representative of the United States of America to the United Nations, with the rank and status of Ambassador Extraordinary and Plenipotentiary, and the Representative of the United States of Americain the Security Council of the United Nations.

*Susan E. Rice, of the District of Columbia, to be Representative of the United States of America to the Sessions of the General Assembly of the United Nations during her tenure of service as Representative of the United States of America to the United Nations.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. LUGAR:

S. 282. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Kazakhstan; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. DODD, and Mr. KERRY):

S. 283. A bill to amend the Energy Policy and Conservation Act to modify the conditions for the release of products from the Northeast Home Heating Oil Reserve Account, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MENENDEZ:

S. 284. A bill to amend the Internal Revenue Code of 1986 to allow a new refundable credit for equipment used to manufacture solar energy property, to waive the application of the subsidized financing rules to such property, and for other purposes; to the Committee on Finance.

By Mr. FEINGOLD:

S. 285. A bill to amend the Internal Revenue Code of 1986 to provide that reimbursements for costs of using passenger automobiles for charitable and other organizations are excluded from gross income, and for other purposes; to the Committee on Finance.

By Mr. INHOFE:

S. 286. A bill to provide for marginal well production preservation and enhancement; to the Committee on Finance.

By Mr. INHOFE:

S. 287. A bill to amend the Internal Revenue Code of 1986 to provide for the full deduction allowable with respect to income attributable to domestic production activities, and for other purposes; to the Committee on Finance.

By Mr. INHOFE (for himself and Mr. COBURN):

S. 288. A bill to amend the Internal Revenue Code of 1986 to permanently extend the depreciation rules for property used predominantly within an Indian reservation; to the Committee on Finance.

By Mr. INHOFE (for himself and Mr. COBURN):

S. 289. A bill to amend the Internal Revenue Code of 1986 to eliminate the taxable income limit on percentage depletion for oil and natural gas produced from marginal properties; to the Committee on Finance .

By Mr. INHOFE (for himself and Mr. COBURN):

S. 290. A bill to repeal a requirement with respect to the procurement and acquisition of alternative fuels; to the Committee on Energy and Natural Resources.

By Mr. BROWNBACK (for himself, Mr. ROBERTS, and Mr. BOND):

S. 291. A bill to provide for certain requirements related to the closing of the Guantanamo Bay detention facility; to the Committee on Armed Services.

By Mr. SPECTER (for himself, Mr. VITTER, Mr. INHOFE, Mr. ISAKSON, Mr. VOINOVICH, Mr. ROBERTS, and Mr. CHAMBLISS):

S. 292. A bill to repeal the imposition of withholding on certain payments made to vendors by government entities; to the Committee on Finance.

By Mr. SPECTER:

S. 293. A bill to provide for a 5-year carryback of certain net operating losses and to suspend the 90 percent alternative minimum tax limit on certain net operating losses; to the Committee on Finance.

By Mr. SPECTER:

S. 294. A bill to amend the Internal Revenue Code of 1986 to extend and modify the special allowance for property acquired during 2009 and to temporarily increase the limitation for expensing certain business assets; to the Committee on Finance.

By Mr. BINGAMAN:

S. 295. A bill to amend title XVIII of the Social Security Act to improve the quality and efficiency of the Medicare program through measurement of readmission rates and resource use and to develop a pilot program to provide episodic payments to organized groups of multispecialty and multilevel providers of services and suppliers for hospitalization episodes associated with select, high cost diagnoses; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. REID:

S. Res. 18. A resolution making majority party appointments to certain Senate committees for the 111th Congress; considered and agreed to .

By Mr. McCONNELL:

S. Res. 19. A resolution making minority party appointments for the 111th Congress; considered and agreed to.

ADDITIONAL COSPONSORS

S. 4

At the request of Mr. REID, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 4, a bill to guarantee affordable, quality health coverage for all Americans, and for other purposes.

S. 162

At the request of Mr. FEINGOLD, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 162, a bill to provide greater accountability of taxpayers' dollars by curtailing congressional earmarking, and for other purposes.

S. 225

At the request of Mr. BAYH, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 225, a bill to amend title XIX of the Social Security Act to establish programs to improve the quality, performance, and delivery of pediatric care.

S. 243

At the request of Mr. CARDIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 243, a bill to amend the Internal Revenue Code of 1986 to allow the Secretary of the Treasury to establish the standard mileage rate for use of a passenger automobile for purposes of the charitable contributions deduction and to exclude charitable mileage reimbursements for gross income.

S. 256

At the request of Mrs. FEINSTEIN, the name of the Senator from Florida (Mr. NELSON) was withdrawn as a cosponsor of S. 256, a bill to enhance the ability to combat methamphetamine.

At the request of Mrs. FEINSTEIN, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 256, supra.

S. 274

At the request of Mr. BAUCUS, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 274, a bill to amend the Internal Revenue Code of 1986 to provide an incentive to hire unemployed veterans.

S. 281

At the request of Mr. KOHL, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 281, a bill to promote labor force participation of older Americans, with the goals of increasing retirement security, reducing the projected shortage of experienced workers, maintaining future

economic growth, and improving the Nation's fiscal outlook.

AMENDMENT NO. 26

At the request of Mr. GRASSLEY, his name was added as a cosponsor of amendment No. 26 proposed to S. 181, a bill to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

AMENDMENT NO. 27

At the request of Mr. GRASSLEY, his name was added as a cosponsor of amendment No. 27 proposed to S. 181, a bill to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE (for herself, Mr. DODD, and Mr. KERRY):

S. 283. A bill to amend the Energy Policy and Conservation Act to modify the conditions for the release of products from the Northeast Home Heating Oil Reserve Account, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. SNOWE. I rise today to speak on a bill I am introducing with my colleagues, Senators DODD and KERRY, to improve the Northeast Home Heating Oil Reserve program to ensure that when our country experiences the next energy crisis we are better prepared. Specifically, I believe that this legislation will provide flexibility as well as certainty that heating oil currently sitting in New England will be used when it is most essential to the region's population.

Through Senator DODD's leadership in 2000, Congress created the Northeast Home Heating Oil Reserve, which put in place a critical tool to reduce supply disruptions. At that point, heating oil prices were $1.49 per gallon, and while the situation has improved since the price spikes this past summer, it is clear that the Northeast remains dangerously reliant on a commodity that has shown extreme volatility in recent years. The need for of the Heating Oil Reserve was clearly demonstrated this past summer when a catastrophe was emerging for our region with heating oil reaching the unprecedented level of $5 per gallon. Thankfully, the Northeast Home Heating Oil Reserve provided a basic level of assurance that heating oil could be provided if supplies were dramatically interrupted.

However, the trigger mechanism for the release of the funds is convoluted to the point that the program's functionality is in question. Indeed, under the law, the President does not have the ability to release heating oil from the reserve even if the health and safety of the population is at risk. Rather, the current threshold for release is when the differential between crude oil and heating oil is 60 percent higher than the 5 year average. As a result, neither the overall price of heating oil nor the plight of our constituents has any factor on the release of the reserve. The formula trigger in statute is flawed to the point that the actual trigger has come close to being met not when crude oil prices are rising, but actually falling. This is clearly not the intent of the reserve.

The legislation that I am introducing with Senators DODD and KERRY today streamlines the federal law to provide the President the discretion to release the reserve if the health and safety of the population is at risk. Furthermore, if heating oil prices are above $4 per gallon during the critical winter months, the heating oil automatically will be distributed for sale. I believe this will dramatically improve the functionality of the reserve program and I look forward to working with Chairman BINGAMAN and Ranking Member MURKOWSKI of the Energy Committee to enact this legislation.

By Mr. FEINGOLD:

S. 285. A bill to amend the Internal Revenue Code of 1986 to provide that reimbursements for costs of using passenger automobiles for charitable and other organizations are excluded from gross income, and for other purposes; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, I am pleased to reintroduce legislation today that would increase the mileage reimbursement rate for volunteers.

Under current law, when volunteers use their cars for charitable purposes, the volunteers may be reimbursed up to 14 cents per mile for their donated services without triggering a tax consequence for either the organization or the volunteers. If the charitable organization reimburses any more than that, they are required to file an information return indicating the amount, and the volunteers must include the amount over 14 cents per mile in their taxable income. By contrast, for 2009, the mileage reimbursement level permitted for businesses is 55 cents per mile, nearly four times the volunteer rate.

During this economic downturn we are asking volunteers and volunteer organizations to bear a greater burden of delivering essential services, but the 14 cents per mile limit is imposing a very real hardship for charitable organizations and other nonprofit groups. This was an even harsher constraint on volunteer activity when gasoline prices spiked last summer.

I have heard from a number of people in Wisconsin on the need to increase this reimbursement limit. One of the first organizations that brought this issue to my attention was the Portage County Department on Aging. Volunteer drivers are critical to their ability to provide services to seniors in Portage County, and the Department on Aging depends on dozens of volunteer drivers to deliver meals to homes and transport people to their medical appointments, meal sites, and other essential services.

As many of my colleagues know, nutrition is one of the most vital services provided under the Older Americans Act and ensuring that meals can be delivered to seniors or that seniors can be taken to meal sites is an essential part of that program. As I discovered during my ten years as Chair of the Wisconsin State Senate Committee on Aging, the senior nutrition programs not only provide needed nutrition services, but in many cases, the congregate meals program provides an important community contact point for seniors who may live alone, and the meals program may be the point at which many frail elderly first come into contact with the network of services that can help them. For that reason, the senior nutrition programs are often at the heart of the aging services network, and as such are essential for many critical services that frail elderly may need.

Unfortunately, Federal support for the senior nutrition programs has stagnated in recent years, increasing pressure on local programs to leverage more volunteer services to make up for that lagging Federal support. The 14 cents per mile reimbursement limit has made it far more difficult to obtain those volunteer services. Portage County reported that at 14 cents per mile, many of their volunteers cannot afford to offer their services.

If volunteer drivers cannot be found, either those services will be lost, and those most vulnerable in our society will go wanting, or the services will have to be replaced by contracting with a provider, greatly increasing costs to the Department, costs that come directly out of the pot of funds available to pay for meals and other services. The same is true for thousands of other nonprofit and charitable organizations that provide essential services to communities across our Nation.

By contrast, businesses do not face this restrictive mileage reimbursement limit. As I noted earlier, for 2009 the comparable mileage rate for someone who works for a business is 55 cents per mile. This disparity means that a business hired to deliver the same meals delivered by volunteers for Portage County may reimburse their employees

nearly four times the amount permitted the volunteer without a tax consequence.

This doesn't make sense. The 14 cents per mile volunteer reimbursement limit is badly outdated. According to the Congressional Research Service, Congress first set a reimbursement rate of 12 cents per mile as part of the Deficit Reduction Act of 1984, and did not increase it until 1997, when the level was raised slightly, to 14 cents per mile, as part of the Taxpayer Relief Act of 1997.

The bill I am introducing today is identical to a measure I introduced in the 109th Congress and the 110th Congress, and largely the same as the version I introduced in the 107th and 108th Congresses. It raises the limit on volunteer mileage reimbursement to the level permitted to businesses, and provides an offset to ensure that the measure does not aggravate the budget deficit. The most recent estimate of the cost to increase the reimbursement for volunteer drivers is about $1 million over 5 years. Though the revenue loss is small, it is vital that we do everything we can to move toward a balanced budget, and to that end I have included a provision to fully offset the cost of the measure and make it deficit neutral. That provision increases the criminal monetary penalties for individuals and corporations convicted of tax fraud. The provision passed the Senate in the 108th Congress as part of the JOBS bill, but was later dropped in conference and was not included in the final version of that bill.

I also extend my thanks to the senior Senator from New York, Mr. SCHUMER, for including my bill in his larger omnibus volunteer driver relief measure, the GIVE Act, last year, and the junior Senator from Maryland, Mr. CARDIN, for including my bill in this year's version of the GIVE Act. Both Senators are keenly aware of the need for the change provided by this bill, and I thank them for their leadership on this issue.

I urge my colleagues to support this measure. It will help ensure charitable organizations can continue to attract the volunteers that play such a critical role in helping to deliver services and it will simplify the tax code both for nonprofit groups and the volunteers themselves.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD immediately following my remarks.

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

S. 285

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

SECTION 1. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS EXCLUDED FROM GROSS INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139B the following new section:

''SEC. 139C. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS.

''(a) IN GENERAL.—Gross income of an individual does not include amounts received, from an organization described in section 170(c), as reimbursement of operating expenses with respect to use of a passenger automobile for the benefit of such organization. The preceding sentence shall apply only to the extent that such reimbursement would be deductible under this chapter if section 274(d) were applied—

''(1) by using the standard business mileage rate established under such section, and

''(2) as if the individual were an employee of an organization not described in section 170(c).

''(b) NO DOUBLE BENEFIT.—Subsection (a) shall not apply with respect to any expenses if the individual claims a deduction or credit for such expenses under any other provision of this title.

''(c) EXEMPTION FROM REPORTING REQUIREMENTS.—Section 6041 shall not apply with respect to reimbursements excluded from income under subsection (a).''.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 139B and inserting the following new item:

''Sec. 139C. Reimbursement for use of passenger automobile for charity.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 2. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 7206 of the Internal Revenue Code of 1986 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

(2) by adding at the end the following new subsection:

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 of the Internal Revenue Code of 1986 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 of such Code is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) of such Code (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

By Mr. SPECTER (for himself, Mr. VITTER, Mr. INHOFE, Mr. ISAKSON, Mr. VOINOVICH, Mr. ROBERTS, and Mr. CHAMBLISS):

S. 292. A bill to repeal the imposition of withholding on certain payments made to vendors by government entities; to the Committee on Finance.

Mr. SPECTER. Mr. President, I have sought recognition to introduce the Withholding Tax Relief Act of 2009, which would repeal Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005. Section 511 will require a 3 percent withholding on all Government contracts beginning on January 1, 2011.

This legislation was sponsored in the 110th Congress by Senator Larry Craig, S. 777, and with his retirement, I have decided to continue to press for its passage to protect small businesses, contractors, and State and local governments who will be unfairly burdened by this onerous provision.

In 2006 Congress enacted tax relief on capital gains, dividends, and the Alternative Minimum Tax, AMT, as part of the Tax Increase Prevention and Reconciliation Act of 2005. These provisions provide important incentives for small businesses by encouraging investment that can lead to job creation and economic growth. At the same time, the Section 511 withholding tax provision was inserted at the last minute by conferees as a revenue raiser. As a result, the legislation which was intended to provide tax relief ended up containing a $7 billion tax penalty on Government contractors.

If no action is taken to repeal this provision, Section 511 will institute a 3 percent tax withholding on all local, State, and Federal Government payments, effective on January 1, 2011. This will apply to Governments with expenditures of $100 million or more, and will affect payments on Government contracts as well as other payments, such as Medicare, grants, and farm payments. Impacted firms will ultimately get a refund when they file their tax return if the amount withheld is in excess of what is actually owed.

The proponents of Section 511 argue that it will be an effective tool to close the tax gap—the difference between what American taxpayers owe and what they actually pay. However, an examination of the mechanics of the provision support a different conclusion. At the time of passage, Section 511 was estimated to increase revenue by $7 billion from 2011 to 2015. However, $6 billion of that amount is attained solely because of the initial collection on contracts in 2011, not because of an actual revenue increase from increased

tax compliance. Estimates show that Section 511 will only generate $215 million in 2012 and increases slightly in each of the 3 years thereafter.

While I support efforts to close the tax gap, those efforts must be weighed on a case-by-case basis against the unintended harm that is done to those impacted. For example, the 3 percent figure is an arbitrary amount and does not take into account the company's taxable income or tax liability. As a result, an honest taxpaying contractor in a loss year could be without access to the withheld capital for a significant period of time, only to see it returned when it files its taxes. Many of these firms do not have extra capital on hand to get by and, because some file yearly returns as opposed to quarterly returns, will not receive a refund on the amount withheld for 12 to 18 months. In many cases, businesses operate with a profit margin that is smaller than 3 percent of the contract; and in some cases, there is no profit at all. In these cases, Section 511 will effectively withhold entire paychecks—interest free—thereby impeding the cash flow of small businesses, eliminating funds that can be used for reinvestment in the business, and forcing companies to pass on the added costs to customers or finance the additional amount.

Section 511 will also impose significant administrative costs on the Federal, State, and local governments who are required to create, or expand, collections staffing to comply. The Congressional Budget Office, CBO, said the provision constitutes an unfunded mandate on the State and local governments. According to CBO, the projected costs of Section 511 will exceed the $50 million unfunded mandate annual threshold. On a Federal level, there is evidence that the high cost of preparation is unnecessary. For example, the Department of Defense estimated that the costs to comply with the 3 percent withholding requirement could be in excess of $17 billion over the first 5 years, which is more than any estimated revenue gains.

There is strong support from a number of stakeholders for repeal of the Withholding Tax requirement, including the Associated Builders and Contractors, U.S. Chamber of Commerce, National Association of Manufacturers, National Federation of Independent Business, and American Farm Bureau Federation.

I am pleased that this legislation garnered the support of 260 cosponsors in the House of Representatives, H.R. 1023, in the 110th Congress, with a broad mix of support from both parties. For example, cosponsors from the Pennsylvania delegation included Representatives ALTMIRE, BRADY, CARNEY, DOYLE, ENGLISH, GERLACH, HOLDEN, MURPHY, PITTS, PLATTS, SESTAK, and SHUSTER. In the Senate, I will seek to build on the efforts of Senator CRAIG and the 15 other cosponsors, including myself.

At the time of passage of the Tax Increase Prevention and Reconciliation Act of 2005, Congress had not adequately debated the merits of the withholding requirement in a committee hearing or with debate in either body. An issue of this magnitude deserves proper debate, and had that occurred, it is difficult to believe that Congress would have included Section 511. For these reasons, I urge my colleagues to support repeal of this unfair tax penalty.

Mr. President, I ask unanimous consent that a list of supporters to this bill be provided in the RECORD.

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

GOVERNMENT WITHHOLDING RELIEF COALITION

Aeronautical Repair Station Association; Aerospace Industries Association; Air Conditioning Contractors of America; Air Transport Association; America's Health Insurance Plans; American Bankers Association; American Concrete Pressure Pipe Association; American Congress on Surveying and Mapping; American Council of Engineering Companies; American Farm Bureau Federation; American Heath Care Association; American Institute of Architects; American Moving and Storage Association; American Nursery and Landscape Association; American Road & Transportation Builders Association; American Shipbuilding Association; American Society of Civil Engineers; American Subcontractors Association; American Supply Association; American Trucking Associations.

Associated Builders and Contractors; Associated Equipment Distributors; Association of National Account Executives; Business and Institutional Furniture Manufacturers Association; Coalition for Government Procurement; Colorado Motor Carriers Association; Computing Technology Industry Association; Construction Contractors Association; Construction Industry Round Table; Construction Management Association of America; Contract Services Association; Design Professionals Coalition; Edison Electric Institute; Engineering & Utility Contractors Association; Federation of American Hospitals; Financial Executives International's Committee on Government Business; Financial Executives International's Committee on Taxation; Finishing Contractors Association; Gold Coast Hispanic Chamber of Commerce; Independent Electrical Contractors, Inc.

Information Technology Association of America; International Council of Employers of Bricklayers and Allied Craftworkers; International Foodservice Distributors Association; Management Association for Private Photogrammetric Surveyors; Mason Contractors Association of America; Mechanical Contractors Association of America; Messenger Courier Association of the Americas; Modular Building Institute; National Association for Self-Employed; National Association of Credit Management; National Association of Manufacturers; National Association of Minority Contractors; National Beer Wholesalers Association; National Burglar and Fire Alarm Association; National Defense Industrial Association; National Electrical Contractors Association; National Federation of Independent Business; National Italian-American Business Association; National Precast Concrete Association; National Office Products Alliance.

National Roofing Contractors Association; National Small Business Association; National Society of Professional Engineers; National Society of Professional Surveyors; National Utility Contractors Association; National Wooden Pallet and Container Association; North Coast Builders Exchange; Office Furniture Dealers Alliance; Oregon Trucking Association; Plumbing-Heating-Cooling Contractors—National Association; Printing Industries of America; Professional Services Council; Regional Legislative Alliance of Ventura and Santa Barbara Counties; Santa Rosa Chamber of Commerce; Security Industry Association; Sheet Metal and Air Conditioning Contractors National Association, Inc.; Small Business & Entrepreneurship Council; Small Business Legislative Council; Textile Rental Services Association of America; The Associated General Contractors of America.

The Association of Union Constructors; The Distilled Spirits Council of the U.S.; The Financial Services Roundtable; U.S. Chamber of Commerce; United States Telecom Association; Women Impacting Public Policy.

By Mr. SPECTER:

S. 293. A bill to provide for a 5-year carryback of certain net operating losses and to suspend the 90 percent alternative minimum tax limit on certain net operating losses; to the Committee on Finance.

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation to expand a widely-used business tax benefit whereby business owners balance-out net losses over prior years when the firm has a net operating gain. Spreading out this tax liability helps a business to decrease the adverse impact of a difficult year. At the current time, there is a critical need for pro-growth policy initiatives to ensure an economic recovery.

Specifically, this legislation increases the general net operating loss, NOL, carryback period from 2 years to 5 years in the case of an NOL for any taxable year ending during 2007, 2008, or 2009. As an example, a company could offset NOLs in 2008 against positive income it earned in 2003–2007; resulting in a refund paid in 2009. NOLs represent the losses reported by a company within a taxable year and, under current law, generally may be carried back 2 years and forward 20 years for tax purposes.

Under current law, NOLs are not allowed to reduce Alternative Minimum Tax, AMT, liability by more than 90 percent. My legislation would eliminate this limit. This second provision is necessary for this bill to achieve its goal of allowing firms dollar-for-dollar access to their NOLs. This is because firms with temporarily low income are more likely both to create NOLs and to find themselves subject to the AMT.

From an economic standpoint, the key impact of the bill will be to lower the user cost of capital for firms and to encourage business fixed investment for those firms that were profitable in the past 5 years but are not profitable at the current time. Such firms will receive an immediate refund for their current costs.

The U.S. Chamber of Commerce, National Association of Manufacturers, and National Federation of Independent Business, NFIB, have all been supportive of this proposal in previous years.

Similar legislation was considered in the 110th Congress, but was not enacted. During consideration of the Recovery Rebates and Economic Stimulus for the American People Act of 2008, an amendment drafted by the Senate Finance Committee leadership included this important provision, as well as other items. On February 6, 2008, the Senate rejected this broader package on a procedural vote, leaving it just 1 vote short of the 60 that were required. Ultimately, that bill included tax rebates for individuals and capital investment incentives for businesses. Following that debate, I introduced the NOL carryback provision as a standalone bill, S. 2650, with 7 cosponsors.

Over the long-term, this is a low cost proposal for the taxpayer that can stimulate economic growth. According to a February 2004 report entitled ''Stimulating Job Creation and Investment: Economic Impact of NOL Carryback Legislation,'' by Kevin A. Hassett, Ph.D, and Brian C. Becker, Ph.D, ''If enacted, this expansion of the carryback period would result in current-year refunds for many companies that otherwise would have to wait until future years to apply NOLs. Having done so, however, would reduce the quantity of losses that are carried forward, and hence increase, relative to baseline, tax revenue in the future. As such, the tax revenue implications are negative initially, but positive in the future.'' The Joint Committee on Taxation estimated that passage of a similar provision as part of the Senate Finance Committee Stimulus package, which I referenced earlier in my statement, would have cost $15 billion in 2008 and $5.1 billion over 10 years.

I urge my colleagues to support this important legislation that will help numerous industries that are currently struggling to survive in a harsh economic downturn.

Mr. SPECTER:

S. 294. A bill to amend the Internal Revenue Code of 1986 to extend and modify the special allowance for property acquired during 2009 and to temporarily increase the limitation for expensing certain business assets; to the Committee on Finance.

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation to extend two important provisions that were enacted as part of the Economic Stimulus Act of 2008: 50 percent Bonus Depreciation; and Increased $250,000 limit for the Small Business Expensing Allowance.

I introduced S. 2539 and cosponsored S. 269 similar legislation in the 110th Congress.

I support tax policies to spur new business investments through the use of partial and full expensing. When a company buys an asset that will last longer than one year, the company cannot, under most circumstances, deduct the entire cost and enjoy an immediate tax benefit. Instead, the company must depreciate the cost over the useful life of the asset, taking a tax deduction for a part of the cost each year. By allowing firms to deduct the cost of a new asset in year one, expensing spurs new investments quickly and drives immediate job creation.

As part of the Economic Stimulus Act of 2008—passed by Congress and signed by the President on February, 13, 2008—I successfully included my legislation, S. 2539, to allow for an immediate 50 percent ''bonus depreciation'' on new equipment purchases. This provision only applied to purchases made in 2008 and my legislation would extend the benefit for an additional year.

The Economic Stimulus Act of 2008 also provided a 1-year boost in the Section 179 Small Business Expensing Allowance. This provision, which also applies to equipment, was increased to a $250,000 limit for 2008. Absent further action, the benefit reverts to $125,000 in 2009 and will expire at the end of 2010 and revert to $25,000. On January 25, 2008, I cosponsored legislation, S. 269, to increase the Small Business Expensing Allowance and to make it permanent. This legislation I am introducing today would extend the $250,000 limit for an additional year.

Both of these provisions merely accelerate a benefit that will be given to firms over a longer span. To that end, the cost will be higher in year one, but tax revenue will be higher in the years thereafter. According to the Joint Committee on Taxation, the cost of the ''bonus depreciation'' provision as part of the Economic Stimulus Act of 2008 was $43.9 billion in 2008, but just $7.4 billion over 10 years. The Small Business Expensing Allowance provision was scored at $900 million in 2008, and only $100 million over 10 years.

These provisions were included in a broader package drafted by Senators BAUCUS, GRASSLEY, KENNEDY, and ENZI at the end of the 110th Congress. I look forward to working with these Members to seek extension of these expiring provisions in the 111th Congress.

Enactment of these provisions was an important step in the direction of allowing full expensing of new equipment. I urge my colleagues to support these pro-growth policies that create incentives for business expansion and long-term economic growth.

By Mr. BINGAMAN:

S. 295. A bill to amend title XVIII of the Social Security Act to improve the quality and efficiency of the Medicare program through measurement of readmission rates and resource use and to develop a pilot program to provide episodic payments to organized groups of multispecialty and multilevel providers of services and suppliers for hospitalization episodes associated with select, high cost diagnoses; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce the Medicare Quality and Payment Reform Act of 2009. This legislation will help improve the quality and efficiency of the Medicare program by analyzing readmission and resource use and adjusting Medicare payments accordingly. In addition, the legislation develops a large scale pilot project to allow for episodic payments to organized groups of multispecialty and multilevel providers for select, high cost diagnosis. Reforms such as these have been recommended by the non-partisan Medicare Payment Advisory Commission or ''MedPAC,'' the Commonwealth Fund and many other experts. In their December 2008 Budget Options report, the Congressional Budget Office, CBO, estimates reforms such as these could result in more than 28 billion dollars in savings to the Federal Government over 10 years.

For several years, growth in healthcare spending, including in the Medicare program, has far exceeded the rate of inflation for all other goods and services without a concomitant rise in health care quality. According to the 2007 report of the McKinsey Global Institute, ''Accounting for the Costs of Healthcare in The United States,'' the U.S. spends almost half a trillion dollars more on healthcare than other similarly situated countries, when adjusted for population and income. Moreover, according to a 2008 Dartmouth report, total waste in the U.S. healthcare system accounts for approximately $700 billion. These data are startling and deeply troubling to me and many of my colleagues in the Congress. As we move to consider comprehensive healthcare reform legislation in the 111th Congress, it is critical that we consider bold and decisive reforms to incentivize quality and efficiency in the U.S. healthcare system.

Many experts tell us that the present fee-for-service payment system does little to encourage the prevention of readmissions or control the volume of care and cost of services delivered. MedPAC, CBO, and others believe this fee-for-service distortion is a major driver of excess spending in the healthcare system. Consequently, per-beneficiary spending varies between regions by as much as one-third without any measurable difference in patient outcomes. In addition, à la carte health care delivery focuses on individual procedures and patient interactions without much regard for the integration of care and appropriate mix of services necessary.

For example, MedPAC reports that within 30 days of discharge, 17.6 percent of Medicare admissions are readmitted for which Medicare spent $15 billion in 2005. The Commonwealth Fund Commission on a High Performance Health System found that Medicare 30-day readmission rates varied from 14 percent to 22 percent with respect to the lowest and highest decile of states.

MedPAC and other expert groups report that the bundling of Medicare payments around episodes of care will align financial incentives within the program to maximize quality and efficiency for Medicare beneficiaries. It is

critical to note that such reforms not only lower overall healthcare costs but also have the potential to lower Medicare beneficiaries out of pocket expenses while improving their health. For example, the Medicare Participating Heart Bypass Center Demonstration conducted from 1990 to 1996 explored the utility of payment bundling. In this demonstration, participating centers were reimbursed with a bundled payment for episodes of care related to heart bypass cases. The demonstration resulted in reduced spending on laboratory diagnostics, pharmacy services, intensive care, and unnecessary physician consults while still maintaining a high quality of care. In the end, the demonstration saved the Medicare program approximately 10 percent on cost of bypass treatments.

There is considerable agreement in the health policy community about a move toward ''episodic'' or bundled payments. The 16th Commonwealth Fund/Modern Health Care Opinion Leaders Survey, released November 3, 2008, found that more than ⅔ respondents reported that the fee-for-service system is not effective at encouraging high quality and efficient care. More than ¾ of respondents prefer a move toward bundled per patient payments. Shared accountability for resource use also was favored as a means for improving efficiency, and ⅔ of the experts surveyed supported realigning provider payment incentives to improve efficiency and effectiveness.

This legislation makes three broad reforms to the Medicare program leading to higher quality and more efficient care. First, the legislation requires the U.S. Department of Health and Human Services, HHS, to report on risk adjusted readmission rates and resource use to Medicare providers, and over time, to the public. Second, the legislation establishes risk-adjusted benchmarks based upon these data that, over time, will be utilized to adjust Medicare payments. Finally, the legislation institutes a voluntary ''episodic payment'' pilot program.

Readmission will be defined by the Secretary of HHS and will include a time frame of at least 30 days between the initial diagnosis and readmission, insure that the readmission rate captures readmissions to any hospital and not be limited to the initial health care provider entity, and verify that the diagnosis for both initial and readmission are related. Within 1 year from enactment, HHS will be tasked with confidentially reporting to provider entities risk adjusted for readmission rates and risk adjusted resource use for select high-volume diagnosis-related groups, DRG, associated with high-rates of readmission. After 3 years, HHS will publically release these reports with an annual review of the list of DRGs reported. The data reported will be risk adjusted taking into account variations in health status and other patient characteristics. Physician's not reporting these data to HHS for analysis will be penalized; although physicians do have the ability to apply for hardship exceptions.

The legislation requires HHS to establish benchmarks for risk adjusted readmission rates and resource utilization for a given DRG and within 2 years of enactment, report to Congress on methodologies used to develop such benchmarks. Three years from the date of enactment, the base operating DRG payment to hospitals not meeting the established benchmarks will be reduced by 1 percent or an amount that is proportionate to the number of readmissions exceeding the benchmark. The Secretary of HHS will devise a mechanism to allocate accountability among providers associated with the episode of care with regard to penalty distribution. The benchmark and penalty will be evaluated and updated annually.

The legislation goes further and establishes a voluntary pilot program to allow for bundled episodic payments to organized groups of multispecialty and multilevel providers for select high cost interventions. Payments would be risk adjusted and would cover all Medicare Part A and B costs associated with a hospitalization episode including care delivered 30 days after discharge. Payments would be issued to the participating provider group which, in turn, would reimburse negotiated payments to all individual providers associated with episode of treatment. The pilot would include testing models in a variety of settings including rural and underserved areas. The initial pilot will begin 2 years from date of enactment and continue for a period of 5 years. If the pilot proves successful, the Secretary of HHS will have the authority to expand the payment mechanism to a larger set of providers.

I urge my colleagues to join me in supporting this important piece of legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 295

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Quality and Payment Reform Act of 2009''.

SEC. 2. FINDINGS.

(a) FINDINGS RELATING TO MEDICARE REPORTING OF READMISSION RATES AND RESOURCE USE AND THE MEDICARE FEE-FOR-SERVICE PAYMENT SYSTEM.—Congress makes the following findings:

(1) The Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) does not publically or privately report to health care providers on resource use and, as a result, many health care providers are unaware of their practices with respect to resource use.

(2) In 2008, the Congressional Budget Office reported that areas with higher Medicare spending scored lower, on average, on a composite indicator of quality of care furnished to Medicare beneficiaries.

(3) Feedback on resource use has been shown to increase awareness among health care providers and encourage positive behavioral changes.

(4) The Medicare program pays for all patient hospitalizations based on the diagnosis, regardless of whether the hospitalization is a readmission or the initial episode of care.

(5) The Medicare Payment Advisory Commission reports that within 30 days of discharge from a hospital, 17.6 percent of admissions are readmitted to the hospital. In 2005, the Medicare program spent $15,000,000,000 on such readmissions.

(6) The Commonwealth Fund Commission on a High Performance Health System found that Medicare 30-day readmission rates varied from 14 percent to 22 percent with respect to the lowest and highest decile of States.

(b) FINDINGS RELATING TO THE BUNDLING OF MEDICARE PAYMENTS TO HEALTH CARE PROVIDERS.—Congress makes the following findings:

(1) Bundled payments incentivize health care providers to determine and provide the most efficient mix of services to Medicare beneficiaries with regard to cost and quality.

(2) The Medicare Payment Advisory Commission reports that bundled payments around a given episode of care under the Medicare program would encourage collaboration among providers of services and suppliers, reduce fragmentation in health care delivery, and improve the accountability for cost and the quality of care.

(3) The Medicare Participating Heart Bypass Center Demonstration which was conducted during the period of 1990 to 1996 found that bundled payments for cardiac bypass cases were successful in reducing spending on laboratory diagnostics, pharmacy services, intensive care, physician consults, and post-discharge care while maintaining a high quality of care. The Medicare program saved approximately 10 percent on bypass patients treated under the demonstration.

(4) The 16th Commonwealth Fund/Modern Healthcare Health Care Opinion Leaders Survey, released November 3, 2008, found that more than ⅔ of respondents reported that the fee-for-service payment system under the Medicare program is not effective at encouraging high quality and efficient care and more than ¾ of respondents reported preferring a move toward bundled per patient payments under the Medicare program. Respondents favored shared accountability for resource use as a means for improving efficiency, and at least ⅔ of respondents supported realigning payment incentives for providers of services and suppliers under the Medicare program in order to improve efficiency and effectiveness.

SEC. 3. PAYMENT ADJUSTMENT FOR READMISSION RATES AND RESOURCE USE.

(a) PAYMENT ADJUSTMENT.—

(1) IN GENERAL.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

''PAYMENT ADJUSTMENT FOR READMISSION RATES AND RESOURCE USE

''SEC. 1899. (a) REPORTING OF READMISSION RATES AND RESOURCE USE.—

''(1) ANNUAL REVIEW.—Beginning not later than 1 year after the date of enactment of this section, the Secretary shall conduct an annual review of readmission rates and resource use for conditions selected by the Secretary under paragraph (5)—

''(A) with respect to subsection (d) hospitals and affiliated physicians (or similarly licensed providers of services and suppliers); and

''(B) with respect to the program under this title.

''(2) REPORTING.—

''(A) TO HOSPITALS AND AFFILIATED PHYSICIANS.—Beginning not later than 1 year after the date of enactment of this section, taking into consideration the results of the annual review under paragraph (1), the Secretary shall provide confidential reports to subsection (d) hospitals and to affiliated physicians (or similarly licensed providers of services and suppliers) that measure the readmission rates and resource use for conditions selected by the Secretary under paragraph (5).

''(B) TO THE PUBLIC.—Beginning not later than 3 years after such date of enactment, taking into consideration the results of such annual review, the Secretary shall make available to the public an annual report that measures the readmission rates and resource use under this title for conditions selected by the Secretary under paragraph (5). Such annual reports shall, to the extent practicable, be integrated into public reporting of data submitted under section 1886(b)(3)(B)(viii) with respect to subsection (d) hospitals and data submitted under section 1848(m) with respect to eligible professionals.

''(3) DEFINITION OF READMISSION.—The Secretary shall define readmission for purposes of this section. Such definition shall—

''(A) include a time frame of at least 30 days between the initial admission and the applicable readmission;

''(B) capture readmissions to any hospital (as defined in section 1861(e)) or any critical access hospital (as defined in section 1861(mm)(1)) and not be limited to readmissions to the subsection (d) hospital of the initial admission; and

''(C) ensure that the diagnosis for both the initial admission and the applicable readmission are related.

''(4) PENALTIES FOR NON-REPORTING.—The Secretary shall establish procedures for the collection of data necessary to carry out this subsection. Such procedures shall—

''(A) subject to subparagraph (B), provide for the imposition of penalties for subsection (d) hospitals and affiliated physicians (or similarly licensed providers of services and suppliers) that do not submit such data; and

''(B) include a hardship exceptions process for affiliated physicians (and similarly licensed providers of services and suppliers) who do not have the resources to participate (except that such process may not apply to more than 20 percent of affiliated physicians (or similarly licensed providers of services and suppliers)).

''(5) SELECTION OF CONDITIONS.—

''(A) INITIAL SELECTION.—The Secretary shall select conditions for the reporting of readmission rates and resource use under this subsection—

''(i) that have a high volume under this title; or

''(ii) that have high readmission rates under this title.

''(B) UPDATING CONDITIONS SELECTED.—Not less frequently than every 3 years, the Secretary shall review and update as appropriate the conditions selected under subparagraph (A).

''(6) TIME PERIOD OF MEASUREMENT.—The Secretary shall, as appropriate and subject to the requirements of this subsection, determine an appropriate time period for the measurement of readmission rates and resource use for purposes of this section.

''(7) RISK ADJUSTMENT OF DATA.—The Secretary shall make appropriate adjustments to any data used in analyzing or reporting readmission rates and resource use under this section, including any data used to conduct the annual review under paragraph (1), in the preparation of reports under subparagraph (A) or (B) of paragraph (2), or in the determination of whether a subsection (d) hospital or an affiliated physician (or a similarly licensed provider of services or supplier) has met the benchmarks established under subsection (b)(1)(A)(i) to take into account variations in health status and other patient characteristics.

''(8) INCORPORATION INTO QUALITY REPORTING INITIATIVES.—The Secretary shall, to the extent practicable, incorporate readmission rates and resource use measurements into quality reporting initiatives for other Medicare payment systems, including such initiatives with respect to skilled nursing facilities and home health agencies.

''(b) PAYMENT ADJUSTMENT FOR READMISSION RATES AND RESOURCE USE.—

''(1) IN GENERAL.—

''(A) BENCHMARKS.—

''(i) IN GENERAL.—The Secretary shall establish benchmarks for measuring the readmission rates and resource use of subsection (d) hospitals and affiliated physicians (or similarly licensed providers of services and suppliers) under this section.

''(ii) REPORT TO CONGRESS ON METHODOLOGIES USED TO ESTABLISH BENCHMARKS.—Not later than 2 years after the date of enactment of this section, the Secretary shall submit to Congress a report on the methodologies used to establish the benchmarks under clause (i).

''(iii) RISK ADJUSTMENT OF DATA.—In determining whether a subsection (d) hospital has met the benchmarks established under clause (i) for purposes of the payment adjustment under this subsection, the Secretary shall provide for risk adjustment of data in accordance with subsection (a)(7).

''(B) PAYMENT ADJUSTMENT.—Not later than 3 years after the date of enactment of this section, in the case of a subsection (d) hospital that the Secretary determines does not meet 1 or more of the benchmarks established under subparagraph (A)(i) during the time period of measurement, the Secretary shall reduce the base operating DRG payment amount (as defined in subparagraph (C)) for the subsection (d) hospital for each discharge occurring in the succeeding fiscal year by—

''(i) 1 percent or an amount that the Secretary determines is proportionate to the number of readmissions of the subsection (d) hospital which exceed the applicable benchmark established under subparagraph (A)(i), whichever is greater; or

''(ii) in the case where the Secretary updates the amount of the payment adjustment under paragraph (3), such updated amount.

''(C) BASE OPERATING DRG PAYMENT AMOUNT DEFINED.—

''(i) IN GENERAL.—Except as provided in clause (ii), in this subsection, the term 'base operating DRG payment amount' means, with respect to a subsection (d) hospital for a fiscal year—

''(I) the payment amount that would otherwise be made under section 1886(d) for a discharge if this subsection did not apply; reduced by

''(II) any portion of such payment amount that is attributable to payments under paragraphs (5)(A), (5)(B), (5)(F), and (12) of such section 1886(d).

''(ii) SPECIAL RULES FOR CERTAIN HOSPITALS.—

''(I) SOLE COMMUNITY HOSPITALS.—In the case of a sole community hospital, in applying clause (i)(I), the payment amount that would otherwise be made under subsection (d) for a discharge if this subsection did not apply shall be determined without regard to subparagraphs (I) and (L) of subsection (b)(3) of section 1886 and subparagraph (D) of subsection (d)(5) of such section.

''(II) HOSPITALS PAID UNDER SECTION 1814.—In the case of a hospital that is paid under section 1814(b)(3), the term 'base operating DRG payment amount' means the payment amount under such section.

''(2) SHARED ACCOUNTABILITY.—The Secretary shall examine ways to create shared accountability with providers of services and suppliers associated with episodes of care, including how any penalty could be distributed among such providers of services and suppliers as appropriate and how to avoid inappropriate gainsharing by such providers of services and suppliers.

''(3) ANNUAL UPDATE.—The Secretary shall annually update the benchmarks established under paragraph (1)(A)(i) and the payment adjustment under paragraph (1)(B) to further incentivize improvements in readmission rates and resource use.

''(4) INCORPORATION OF NEW MEASURES.—In the case where the Secretary updates the conditions selected under subsection (a)(5)(B), any new condition selected shall not be considered in determining whether a subsection (d) hospital has met the benchmarks established under paragraph (1)(A)(i) for purposes of the payment adjustment under paragraph (1)(B) during the period beginning on the date of the selection and ending 1 year after such date.''.

(2) CONFORMING AMENDMENT.—Section 1886(d)(1)(A) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(A)), in the matter preceding clause (i), is amended by striking ''section 1813'' and inserting ''sections 1813 and 1899''.

(b) VOLUNTARY PILOT PROGRAM FOR BUNDLED PAYMENTS FOR EPISODES OF TREATMENT.—

(1) INITIAL IMPLEMENTATION.—

(A) IN GENERAL.—The Secretary of Health and Human Services (in this subsection referred to as the ''Secretary'') shall establish a pilot program to provide episodic payments to hospitals and other organizing entities for items and services associated with hospitalization episodes of Medicare beneficiaries with respect to 1 or more conditions selected under subparagraph (B).

(B) SELECTION.—The Secretary shall initially implement the pilot program for hospitalization episodes with respect to conditions that have a high volume, high readmission rate, or high rate of post-acute care under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) (as determined by the Secretary).

(C) PAYMENTS.—

(i) IN GENERAL.—Under the pilot program, episodic payments shall—

(I) be risk adjusted; and

(II) cover all costs under parts A and B of the Medicare program associated with a hospitalization episode with respect to the selected condition, which includes the period beginning on the date of hospitalization and ending 30 days after the date of discharge.

(ii) COMPATIBILITY OF PAYMENT MECHANISMS.—The Secretary shall, to the extent feasible, ensure that the payment mechanism under the pilot program functions with payment mechanisms under the original Medicare fee for service program under parts A and B of title XVIII of the Social Security Act and under the Medicare Advantage program under part C of such title.

(iii) PROCESS.—Under the pilot program, episodic payments shall be made to a hospital or other organizing entity participating in the pilot program. The participating hospitals and other organizing entities shall make payments to other providers of services and suppliers who furnished items or services associated with the hospitalization episode (in an amount negotiated between the participating hospital and the provider of services or supplier).

(iv) SAVINGS.—The Secretary shall establish procedures to ensure that the Secretary,

participating hospitals or other organizing entities, providers of services, and suppliers share any savings associated with higher efficiency care furnished under the pilot program.

(D) INCLUSION OF VARIETY OF PROVIDERS OF SERVICES AND SUPPLIERS.—In selecting providers of services and suppliers to participate in the pilot program, the Secretary shall establish criteria to ensure the inclusion of a variety of providers of services and suppliers, including providers of services and suppliers that serve a wide range of Medicare beneficiaries, including Medicare beneficiaries located in rural and urban areas and low-income Medicare beneficiaries.

(E) DURATION.—The Secretary shall conduct the pilot program under this paragraph for a 5-year period.

(F) IMPLEMENTATION.—The Secretary shall implement the pilot program not later than 2 years after the date of enactment of this Act.

(G) DEFINITION OF ORGANIZING ENTITY.—In this subsection, the term ''organizing entity'' means an entity responsible for the organization and administration of the furnishing of items and services associated with a hospitalization episode of a Medicare beneficiary with respect to 1 or more conditions selected under subparagraph (B).

(2) EXPANDED IMPLEMENTATION.—

(A) ESTABLISHMENT OF THRESHOLDS FOR EXPANSION.—The Secretary shall, prior to the implementation of the pilot program under paragraph (1), establish clear thresholds for use in determining whether implementation of the pilot program should be expanded under subparagraph (B).

(B) EXPANDED IMPLEMENTATION.—If the Secretary determines the thresholds established under subparagraph (A) are met, the Secretary may expand implementation of the pilot program to additional providers of services, suppliers, and episodes of treatment not covered under the pilot program as conducted under paragraph (1), which may include the implementation of the pilot program on a national basis.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 18—MAKING MAJORITY PARTY APPOINTMENTS TO CERTAIN SENATE COMMITTEES FOR THE 111TH CONGRESS

Mr. REID submitted the following resolution; which was considered and agreed to:

S. RES. 18

Resolved, That notwithstanding the provisions of rule XXV, the following shall constitute the majority party's membership on the following standing committees for the 111th Congress, or until their successors are chosen:

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY: Mr. Harkin (Chairman), Mr. Leahy, Mr. Conrad, Mr. Baucus, Mrs. Lincoln, Ms. Stabenow, Mr. Nelson of Nebraska, Mr. Brown, Mr. Casey, Ms. Klobuchar, Majority Leader designee, and Majority Leader designee.

COMMITTEE ON APPROPRIATIONS: Mr. Inouye (Chairman), Mr. Byrd, Mr. Leahy, Mr. Harkin, Ms. Mikulski, Mr. Kohl, Mrs. Murray, Mr. Dorgan, Mrs. Feinstein, Mr. Durbin, Mr. Johnson, Ms. Landrieu, Mr. Reed, Mr. Lautenberg, Mr. Nelson of Nebraska, Mr. Pryor, and Mr. Tester.

COMMITTEE ON ARMED SERVICES: Mr. Levin (Chairman), Mr. Kennedy, Mr. Byrd, Mr. Lieberman, Mr. Reed, Mr. Akaka, Mr. Nelson of Florida, Mr. Nelson of Nebraska, Mr. Bayh, Mr. Webb, Mrs. McCaskill, Mr. Udall of CO, Mrs. Hagan, Mr. Begich, and Mr. Burris.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS: Mr. Dodd (Chairman), Mr. Johnson, Mr. Reed, Mr. Schumer, Mr. Bayh, Mr. Menendez, Mr. Akaka, Mr. Brown, Mr. Tester, Mr. Kohl, Mr. Warner, Mr. Merkley, and Majority Leader designee.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION: Mr. Rockefeller (Chairman), Mr. Inouye, Mr. Kerry, Mr. Dorgan, Mrs. Boxer, Mr. Nelson of Florida, Ms. Cantwell, Mr. Lautenberg, Mr. Pryor, Mrs. McCaskill, Ms. Klobuchar, Mr. Udall of New Mexico, Mr. Warner, and Mr. Begich.

COMMITTEE ON ENERGY AND NATURAL RESOURCES: Mr. Bingaman (Chairman), Mr. Dorgan, Mr. Wyden, Mr. Johnson, Ms. Landrieu, Ms. Cantwell, Mr. Menendez, Mrs. Lincoln, Mr. Sanders, Mr. Bayh, Ms. Stabenow, Mr. Udall of Colorado, and Mrs. Shaheen.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS: Mrs. Boxer (Chairman), Mr. Baucus, Mr. Carper, Mr. Lautenberg, Mr. Cardin, Mr. Sanders, Ms. Klobuchar, Mr. Whitehouse, Mr. Udall of New Mexico, Mr. Merkley, and Majority Leader designee.

COMMITTEE ON FINANCE: Mr. Baucus (Chairman), Mr. Rockefeller, Mr. Conrad, Mr. Bingaman, Mr. Kerry, Mrs. Lincoln, Mr. Wyden, Mr. Schumer, Ms. Stabenow, Ms. Cantwell, Mr. Nelson of Florida, Mr. Menendez, and Mr. Carper.

COMMITTEE ON FOREIGN RELATIONS: Mr. Kerry (Chairman), Mr. Dodd, Mr. Feingold, Mrs. Boxer, Mr. Menendez, Mr. Cardin, Mr. Casey, Mr. Webb, Ms. Shaheen, Mr. Kaufman, and Majority Leader designee.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS: Mr. Kennedy (Chairman), Mr. Dodd, Mr. Harkin, Ms. Mikulski, Mr. Bingaman, Mrs. Murray, Mr. Reed, Mr. Sanders, Mr. Brown, Mr. Casey, Mrs. Hagan, Mr. Merkley, and Majority Leader designee.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS: Mr. Lieberman (Chairman), Mr. Levin, Mr. Akaka, Mr. Carper, Mr. Pryor, Ms. Landrieu, Mrs. McCaskill, Mr. Tester, Mr. Burris, and Majority Leader designee.

COMMITTEE ON THE JUDICIARY: Mr. Leahy (Chairman), Mr. Kohl, Mrs. Feinstein, Mr. Feingold, Mr. Schumer, Mr. Durbin, Mr. Cardin, Mr. Whitehouse, Mr. Wyden, Ms. Klobuchar, and Mr. Kaufman.

COMMITTEE ON RULES AND ADMINISTRATION: Mr. Schumer (Chairman), Mrs. Feinstein, Mr. Dodd, Mr. Byrd, Mr. Inouye, Mr. Durbin, Mr. Nelson of Nebraska, Mrs. Murray, Mr. Pryor, Mr. Warnert, and Mr. Udall of New Mexico.

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP: Ms. Landrieu (Chairperson), Mr. Kerry, Mr. Levin, Mr. Harkin, Mr. Lieberman, Ms. Cantwell, Mr. Bayh, Mr. Pryor, Mr. Cardin, Mrs. Hagan, and Mrs. Shaheen.

COMMITTEE ON VETERANS' AFFAIRS: Mr. Akaka (Chairman), Mr. Rockefeller, Mrs. Murray, Mr. Sanders, Mr. Brown, Mr. Webb, Mr. Tester, Mr. Begich, and Mr. Burris.

SPECIAL COMMITTEE ON AGING: Mr. Kohl (Chairman), Mr. Wyden, Mrs. Lincoln, Mr. Bayh, Mr. Nelson of Florida, Mr. Casey, Mrs. McCaskill, Mr. Whitehouse, Mr. Udall of Colorado, Majority Leader designee, Majority Leader designee, and Majority Leader designee.

COMMITTEE ON THE BUDGET: Mr. Conrad (Chairman), Mrs. Murray, Mr. Wyden, Mr. Feingold, Mr. Byrd, Mr. Nelson of Florida, Ms. Stabenow, Mr. Menendez, Mr. Cardin, Mr. Sanders, Mr. Whitehouse, Mr. Warner, and Mr. Merkley.

SELECT COMMITTEE ON ETHICS: Mrs. Boxer (Chairman), Mr. Pryor, and Mr. Brown.

COMMITTEE ON INDIAN AFFAIRS: Mr. Dorgan (Chairman), Mr. Inouye, Mr. Conrad, Mr. Akaka, Mr. Johnson, Ms. Cantwell, Mr. Tester, Mr. Udall of New Mexico, and Majority Leader designee.

SELECT COMMITTEE ON INTELLIGENCE: Mrs. Feinstein (Chairman), Mr. Rockefeller, Mr. Wyden, Mr. Bayh, Ms. Mikulski, Mr. Feingold, Mr. Nelson of Florida, and Mr. Whitehouse.

JOINT ECONOMIC COMMITTEE: Mr. Schumer (Vice Chairman), Mr. Kennedy, Mr. Bingaman, Ms. Klobuchar, Mr. Casey, and Mr. Webb.

SENATE RESOLUTION 19—MAKING MINORITY PARTY APPOINTMENTS FOR THE 111TH CONGRESS

Mr. MCCONNELL submitted the following resolution; which was considered and agreed to:

S. RES. 19

Resolved, That the following be the minority membership on the following committee for the remainder of the 111th Congress, or until their successors are appointed:

COMMITTEE ON AGRICULTURE NUTRITION AND FORESTRY: Mr. Chambliss, Mr. Lugar, Mr. Cochran, Mr. McConnell, Mr. Roberts, Mr. Johanns, Mr. Grassley, Mr. Thune, and Republican Leader designee.

COMMITTEE ON APPROPRIATIONS: Mr. Cochran, Mr. Specter, Mr. Bond, Mr. McConnell, Mr. Shelby, Mr. Gregg, Mr. Bennett, Mrs. Hutchison, Mr. Brownback, Mr. Alexander, Ms. Collins, Mr. Voinovich, and Ms. Murkowski.

COMMITTEE ON ARMED SERVICES: Mr. McCain, Mr. Inhofe, Mr. Sessions, Mr. Chambliss, Mr. Graham, Mr. Thune, Mr. Martinez, Mr. Wicker, Mr. Burr, Mr. Vitter, and Ms. Collins.

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS: Mr. Shelby, Mr. Bennett, Mr. Bunning, Mr. Crapo, Mr. Martinez, Mr. Corker, Mr. DeMint, Mr. Vitter, Mr. Johanns, and Mrs. Hutchison.

COMMITTEE ON THE BUDGET: Mr. Gregg, Mr. Grassley, Mr. Enzi, Mr. Sessions, Mr. Bunning, Mr. Crapo, Mr. Ensign, Mr. Cornyn, Mr. Graham, and Mr. Alexander.

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION: Mrs. Hutchison, Ms. Snowe, Mr. Ensign, Mr. DeMint, Mr. Thune, Mr. Wicker, Mr. Isakson, Mr. Vitter, Mr. Brownback, Mr. Martinez, and Mr. Johanns.

COMMITTEE ON ENERGY AND NATURAL RESOURCES: Ms. Murkowski, Mr. Burr, Mr. Barrasso, Mr. Brownback, Mr. Risch, Mr. McCain, Mr. Bennett, Mr. Bunning, Mr. Sessions, and Mr. Corker.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS: Mr. Inhofe, Mr. Voinovich, Mr. Vitter, Mr. Barrasso, Mr. Specter, Mr. Crapo, Mr. Bond, and Mr. Alexander.

COMMITTEE ON FINANCE: Mr. Grassley, Mr. Hatch, Ms. Snowe, Mr. Kyl, Mr. Bunning, Mr. Crapo, Mr. Roberts, Mr. Ensign, Mr. Enzi, and Mr. Cornyn.

COMMITTEE ON FOREIGN RELATIONS: Mr. Lugar, Republican Leader designee, Mr. Corker, Mr. Isakson, Mr. Risch, Mr. DeMint, Mr. Barrasso, and Mr. Wicker.

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS: Mr. Enzi, Mr. Gregg, Mr. Alexander, Mr. Burr, Mr. Isakson,

Mr. McCain, Mr. Hatch, Ms. Murkowski, Mr. Coburn, and Mr. Roberts.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS: Ms. Collins, Republican Leader designee, Mr. Coburn, Mr. McCain, Mr. Voinovich, Mr. Ensign, and Mr. Graham.

COMMITTEE ON THE JUDICIARY: Mr. Specter, Mr. Hatch, Mr. Grassley, Mr. Kyl, Mr. Sessions, Mr. Graham, and Mr. Coburn.

COMMITTEE ON RULES AND ADMINISTRATION: Mr. Bennett, Mr. McConnell, Mr. Cochran, Mr. Chambliss, Mrs. Hutchison, Mr. Alexander, Mr. Roberts, and Mr. Ensign.

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP: Ms. Snowe, Mr. Bond, Republican Leader designee, Mr. Vitter, Mr. Thune, Mr. Enzi, Mr. Isakson, and Wicker.

COMMITTEE ON VETERANS' AFFAIRS: Mr. Burr, Mr. Specter, Mr. Isakson, Mr. Wicker, and Mr. Johanns, and Mr. Graham.

COMMITTEE ON INDIAN AFFAIRS: Mr. Barrasso, Mr. McCain, Ms. Murkowski, Mr. Coburn, Mr. Crapo, and Mr. Johanns.

SELECT COMMITTEE ON ETHICS: Mr. Isakson, Mr. Roberts, and Mr. Risch.

SELECT COMMITTEE ON INTELLIGENCE: Mr. Bond, Mr. Hatch, Ms. Snowe, Mr. Chambliss, Mr. Burr, Mr. Coburn, and Mr. Risch.

SPECIAL COMMITTEE ON AGING: Mr. Martinez, Mr. Shelby, Ms. Collins, Mr. Specter, Republican Leader designee, Mr. Corker, Mr. Hatch, Mr. Brownback, and Mr. Graham.

ECONOMIC COMMITTEE: Mr. Brownback, Mr. DeMint, Mr. Risch, and Mr. Bennett.

AMENDMENTS SUBMITTED AND PROPOSED

SA 30. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 181, to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes; which was ordered to lie on the table.

SA 31. Mr. DEMINT (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill S. 181, supra; which was ordered to lie on the table.

SA 32. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 181, supra; which was ordered to lie on the table.

SA 33. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 181, supra; which was ordered to lie on the table.

SA 34. Mr. VITTER submitted an amendment intended to be proposed by him to the bill S. 181, supra; which was ordered to lie on the table.

SA 35. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 181, supra; which was ordered to lie on the table.

SA 36. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 181, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 30. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 181, to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes; which was ordered to lie on the table; as follows:

On page 3, lines 21 and 22, strike ''a discriminatory compensation decision'' and insert ''an intentional discriminatory compensation decision''.

On page 3, lines 23 and 24, strike ''a discriminatory compensation decision'' and insert ''an intentional discriminatory compensation decision''.

On page 3, line 25, through page 4, line 1, strike ''a discriminatory compensation decision'' and insert ''an intentional discriminatory compensation decision''.

On page 5, lines 5 and 6, strike ''a discriminatory compensation decision'' and insert ''an intentional discriminatory compensation decision''.

On page 5, line 7, strike ''a discriminatory compensation decision'' and insert ''an intentional discriminatory compensation decision''.

On page 5, line 9, strike ''a discriminatory compensation decision'' and insert ''an intentional discriminatory compensation decision''.

SA 31. Mr. DEMINT (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill S. 181, to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. RIGHT TO WORK.

(a) NATIONAL LABOR RELATIONS ACT.—

(1) RIGHTS OF EMPLOYEES.—Section 7 of the National Labor Relations Act (29 U.S.C. 157) is amended by striking ''except to'' and all that follows through ''authorized in section 8(a)(3)''.

(2) UNFAIR LABOR PRACTICES.—Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(A) in subsection (a)(3), by striking '': *Provided*, That'' and all that follows through ''retaining membership'';

(B) in subsection (b)—

(i) in paragraph (2), by striking ''or to discriminate'' and all that follows through ''retaining membership''; and

(ii) in paragraph (5), by striking ''covered by an agreement authorized under subsection (a)(3) of this section''; and

(C) in subsection (f), by striking clause (2) and redesignating clauses (3) and (4) as clauses (2) and (3), respectively.

(b) AMENDMENT TO THE RAILWAY LABOR ACT.—Section 2 of the Railway Labor Act (45 U.S.C. 152) is amended by striking paragraph Eleven.

SA 32. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 181, to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. PROTECTION OF WORKERS' POLITICAL RIGHTS.

Title III of the Labor Management Relations Act, 1947 (29 U.S.C. 185 et seq.) is amended by adding at the end the following:

''SEC. 304. PROTECTION OF WORKER'S POLITICAL RIGHTS.

''(a) PROHIBITION.—Except with the separate, prior, written, voluntary authorization of an individual, it shall be unlawful for any labor organization to collect from or assess its members or nonmembers any dues, initiation fee, or other payment if any part of such dues, fee, or payment will be used to lobby members of Congress or Congressional staff for the purpose of influencing legislation.

''(b) AUTHORIZATION.—An authorization described in subsection (a) shall remain in effect until revoked and may be revoked at any time.''.

SA 33. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 181, to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. 7. STATUTES OF LIMITATIONS FOR SUITS AGAINST LABOR ORGANIZATIONS.

(a) CIVIL RIGHTS ACT OF 1964.—Section 706(e) of the Civil Rights Act of 1965 (as amended by section 3 of this Act) (42 U.S.C. 2000e–5(e)) is further amended by adding at the end the following:

''(4) Notwithstanding paragraph (1), a charge filed by or on behalf of an individual claiming to be aggrieved against a labor organization shall not be subject to the timing requirements of such paragraph, and the individual may file a charge at any time after the alleged unlawful employment practice has occurred.''.

(b) AGE DISCRIMINATION IN EMPLOYMENT ACT.—Section 7 of the Age Discrimination in Employment Act of 1967 (as amended by section 4 of this Act) (29 U.S.C. 626) is further amended by adding at the end the following:

''(g) STATUTES OF LIMITATIONS FOR SUITS AGAINST LABOR ORGANIZATIONS.—Notwithstanding subsection (d), a charge filed by or on behalf of an individual alleging that a labor organization committed unlawful discrimination against the individual shall not

be subject to the timing requirements of such subsection, and the individual may file a charge at any time after the alleged unlawful employment practice has occurred.''.

(c) APPLICATION TO OTHER LAWS.—Section 5 of this Act shall be applied by substituting ''sections 3 and 7'' for ''section 3'' each place the term occurs.

SA 34. Mr. VITTER submitted an amendment intended to be proposed by him to the bill S. 181, to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. GOVERNMENT NEUTRALITY IN CONTRACTING.

(a) PURPOSES.—It is the purpose of this section to—

(1) promote and ensure open competition on Federal and federally funded or assisted construction projects;

(2) maintain Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded or assisted construction projects;

(3) reduce construction costs to the Federal Government and to the taxpayers;

(4) expand job opportunities, especially for small and disadvantaged businesses; and

(5) prevent discrimination against Federal Government contractors or their employees based upon labor affiliation or the lack thereof, thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects.

(b) PRESERVATION OF OPEN COMPETITION AND FEDERAL GOVERNMENT NEUTRALITY.—

(1) PROHIBITION.—

(A) GENERAL RULE.—The head of each executive agency that awards any construction contract after the date of enactment of this Act, or that obligates funds pursuant to such a contract, shall ensure that the agency, and any construction manager acting on behalf of the Federal Government with respect to such contract, in its bid specifications, project agreements, or other controlling documents does not—

(i) require or prohibit a bidder, offeror, contractor, or subcontractor from entering into, or adhering to, agreements with 1 or more labor organization, with respect to that construction project or another related construction project; or

(ii) otherwise discriminate against a bidder, offeror, contractor, or subcontractor because such bidder, offeror, contractor, or subcontractor—

(I) became a signatory, or otherwise adhered to, an agreement with 1 or more labor organization with respect to that construction project or another related construction project; or

(II) refused to become a signatory, or otherwise adhere to, an agreement with 1 or more labor organization with respect to that construction project or another related construction project.

(B) APPLICATION OF PROHIBITION.—The provisions of this subsection shall not apply to contracts awarded prior to the date of enactment of this Act, and subcontracts awarded pursuant to such contracts regardless of the date of such subcontracts.

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to prohibit a contractor or subcontractor from voluntarily entering into an agreement described in such subparagraph.

(2) RECIPIENTS OF GRANTS AND OTHER ASSISTANCE.—The head of each executive agency that awards grants, provides financial assistance, or enters into cooperative agreements for construction projects after the date of enactment of this Act, shall ensure that—

(A) the bid specifications, project agreements, or other controlling documents for such construction projects of a recipient of a grant or financial assistance, or by the parties to a cooperative agreement, do not contain any of the requirements or prohibitions described in clause (i) or (ii) of paragraph (1)(A); or

(B) the bid specifications, project agreements, or other controlling documents for such construction projects of a construction manager acting on behalf of a recipient or party described in subparagraph (A) do not contain any of the requirements or prohibitions described in clause (i) or (ii) of paragraph (1)(A).

(3) FAILURE TO COMPLY.—If an executive agency, a recipient of a grant or financial assistance from an executive agency, a party to a cooperative agreement with an executive agency, or a construction manager acting on behalf of such an agency, recipient, or party, fails to comply with paragraph (1) or (2), the head of the executive agency awarding the contract, grant, or assistance, or entering into the agreement, involved shall take such action, consistent with law, as the head of the agency determines to be appropriate.

(4) EXEMPTIONS.—

(A) IN GENERAL.—The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of 1 or more of the provisions of paragraphs (1) and (2) if the head of such agency determines that special circumstances exist that require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.

(B) SPECIAL CIRCUMSTANCES.—For purposes of subparagraph (A), a finding of ''special circumstances'' may not be based on the possibility or existence of a labor dispute concerning contractors or subcontractors that are nonsignatories to, or that otherwise do not adhere to, agreements with 1 or more labor organization, or labor disputes concerning employees on the project who are not members of, or affiliated with, a labor organization.

(C) ADDITIONAL EXEMPTION FOR CERTAIN PROJECTS.—The head of an executive agency, upon application of an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of such entities, may exempt a particular project from the requirements of any or all of the provisions of paragraphs (1) or (2) if the agency head finds—

(i) that the awarding authority, recipient of grants or financial assistance, party to a cooperative agreement, or construction manager acting on behalf of any of such entities had issued or was a party to, as of the date of the enactment of this Act, bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions set forth in paragraph (1)(A); and

(ii) that one or more construction contracts subject to such requirements or prohibitions had been awarded as of the date of the enactment of this Act.

(5) FEDERAL ACQUISITION REGULATORY COUNCIL.—With respect to Federal contracts to which this subsection applies, not later than 60 days after the date of enactment of this Act, the Federal Acquisition Regulatory Council shall take appropriate action to amend the Federal Acquisition Regulation to implement the provisions of this subsection.

(6) DEFINITIONS.—In this subsection:

(A) CONSTRUCTION CONTRACT.—The term ''construction contract'' means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(B) EXECUTIVE AGENCY.—The term ''executive agency'' has the meaning given such term in section 105 of title 5, United States Code, except that such term shall not include the Government Accountability Office.

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

SA 35. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 181, to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes; which was ordered to lie on the table; as follows:

On page 7, strike lines 11 through 20 and insert the following:

SEC. 6. EFFECTIVE DATE.

(a) IN GENERAL.—This Act, and the amendments made by this Act, take effect on the date of enactment of this Act, except as provided in subsection (b).

(b) CLAIMS.—This Act, and the amendments made by this Act, shall apply to each claim of discrimination in compensation under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), title I and section 503 of the Americans with Disabilities Act of 1990, and sections 501 and 504 of the Rehabilitation Act of 1973, if—

(1) the claim results from a discriminatory compensation decision or other practice; and

(2) the discriminatory compensation decision or other practice is adopted on or after that date of enactment.

SA 36. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 181, to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory

compensation decision or other practice, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 3, strike line 21 and all that follows through page 5, line 9 and insert the following:

in compensation in violation of this title, when an intentional discriminatory compensation decision or other practice is adopted, when an individual becomes subject to an intentional discriminatory compensation decision or other practice, or when an individual is affected by application of an intentional discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

''(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.''.

SEC. 4. DISCRIMINATION IN COMPENSATION BECAUSE OF AGE.

Section 7(d) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(d)) is amended—

(1) in the first sentence—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(B) by striking ''(d)'' and inserting ''(d)(1)'';

(2) in the third sentence, by striking ''Upon'' and inserting the following:

''(2) Upon''; and

(3) by adding at the end the following:

''(3) For purposes of this section, an unlawful practice occurs, with respect to discrimination in compensation in violation of this Act, when an intentional discriminatory compensation decision or other practice is adopted, when a person becomes subject to an intentional discriminatory compensation decision or other practice, or when a person is affected by application of an intentional discriminatory compensation decision or other

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. KERRY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, January 21, 2009, at 2 p.m., in room 253 of the Russell Senate Office Building.

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

COMMITTEE ON FINANCE

Mr. KERRY. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Wednesday, January 21, 2009, at 10 a.m., in room 215 of the Dirksen Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. KERRY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, January 21, 2009, at 3:15 p.m.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. KERRY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, January 21, 2009, at 2 p.m. to conduct a hearing entitled ''Where Were the Watchdogs? The Financial Crisis and the Breakdown of Financial Governance.''

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

COMMITTEE ON THE JUDICIARY

Mr. KERRY. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during the session of the Senate, to conduct an executive business meeting on Wednesday, January 21, 2009, at 2:30 p.m., in room SH–216 of the Hart Senate Office Building.

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

S. RES. 18 AND S. RES. 19

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration en bloc of S. Res. 18 and S. Res. 19, submitted earlier today; that the resolutions be agreed to, and the motions to reconsider be laid upon the table en bloc. They have been approved by the Republican leader.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The resolutions (S. Res. 18 and S. Res. 19) were agreed to, as follows:

S. RES. 18

Resolved, That notwithstanding the provisions of rule XXV, the following shall constitute the majority party's membership on the following standing committees for the 111th Congress, or until their successors are chosen:

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY: Mr. Harkin (Chairman), Mr. Leahy, Mr. Conrad, Mr. Baucus, Mrs. Lincoln, Ms. Stabenow, Mr. Nelson of Nebraska, Mr. Brown, Mr. Casey, Ms. Klobuchar, Majority Leader designee, and Majority Leader designee.

COMMITTEE ON APPROPRIATIONS: Mr. Inouye (Chairman), Mr. Byrd, Mr. Leahy, Mr. Harkin, Ms. Mikulski, Mr. Kohl, Mrs. Murray, Mr. Dorgan, Mrs. Feinstein, Mr. Durbin, Mr. Johnson, Ms. Landrieu, Mr. Reed, Mr. Lautenberg, Mr. Nelson of Nebraska, Mr. Pryor, and Mr. Tester.

COMMITTEE ON ARMED SERVICES: Mr. Levin (Chairman), Mr. Kennedy, Mr. Byrd, Mr. Lieberman, Mr. Reed, Mr. Akaka, Mr. Nelson of Florida, Mr. Nelson of Nebraska, Mr. Bayh, Mr. Webb, Mrs. McCaskill, Mr. Udall of CO, Mrs. Hagan, Mr. Begich, and Mr. Burris.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS: Mr. Dodd (Chairman), Mr. Johnson, Mr. Reed, Mr. Schumer, Mr. Bayh, Mr. Menendez, Mr. Akaka, Mr. Brown, Mr. Tester, Mr. Kohl, Mr. Warner, Mr. Merkley, and Majority Leader designee.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION: Mr. Rockefeller (Chairman), Mr. Inouye, Mr. Kerry, Mr. Dorgan, Mrs. Boxer, Mr. Nelson of Florida, Ms. Cantwell, Mr. Lautenberg, Mr. Pryor, Mrs. McCaskill, Ms. Klobuchar, Mr. Udall of New Mexico, Mr. Warner, and Mr. Begich.

COMMITTEE ON ENERGY AND NATURAL RESOURCES: Mr. Bingaman (Chairman), Mr. Dorgan, Mr. Wyden, Mr. Johnson, Ms. Landrieu, Ms. Cantwell, Mr. Menendez, Mrs. Lincoln, Mr. Sanders, Mr. Bayh, Ms. Stabenow, Mr. Udall of Colorado, and Mrs. Shaheen.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS: Mrs. Boxer (Chairman), Mr. Baucus, Mr. Carper, Mr. Lautenberg, Mr. Cardin, Mr. Sanders, Ms. Klobuchar, Mr. Whitehouse, Mr. Udall of New Mexico, Mr. Merkley, and Majority Leader designee.

COMMITTEE ON FINANCE: Mr. Baucus (Chairman), Mr. Rockefeller, Mr. Conrad, Mr. Bingaman, Mr. Kerry, Mrs. Lincoln, Mr. Wyden, Mr. Schumer, Ms. Stabenow, Ms. Cantwell, Mr. Nelson of Florida, Mr. Menendez, and Mr. Carper.

COMMITTEE ON FOREIGN RELATIONS: Mr. Kerry (Chairman), Mr. Dodd, Mr. Feingold, Mrs. Boxer, Mr. Menendez, Mr Cardin, Mr. Casey, Mr. Webb, Ms. Shaheen, Mr. Kaufman, and Majority Leader designee.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS: Mr. Kennedy (Chairman), Mr. Dodd, Mr. Harkin, Ms. Mikulski, Mr. Bingaman, Mrs. Murray, Mr. Reed, Mr. Sanders, Mr. Brown, Mr. Casey, Mrs. Hagan, Mr. Merkley, and Majority Leader designee.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS: Mr. Lieberman (Chairman), Mr. Levin, Mr. Akaka, Mr. Carper, Mr. Pryor, Ms. Landrieu, Mrs. McCaskill, Mr. Tester, Mr. Burris, and Majority Leader designee.

COMMITTEE ON THE JUDICIARY: Mr. Leahy (Chairman), Mr. Kohl, Mrs. Feinstein, Mr. Feingold, Mr. Schumer Mr. Durbin, Mr. Cardin, Mr. Whitehouse, Mr. Wyden, Ms. Klobuchar, and Mr. Kaufman.

COMMITTEE ON RULES AND ADMINISTRATION: Mr. Schumer (Chairman), Mrs. Feinstein, Mr. Dodd, Mr. Byrd, Mr. Inouye, Mr. Durbin, Mr. Nelson of Nebraska, Mrs. Murray, Mr. Pryor, Mr. Warner, and Mr. Udall of New Mexico.

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP: Ms. Landrieu (Chairperson), Mr. Kerry, Mr. Levin, Mr. Harkin, Mr. Lieberman, Ms. Cantwell, Mr. Bayh, Mr. Pryor, Mr. Cardin, Mrs. Hagan, and Mrs. Shaheen.

COMMITTEE ON VETERANS' AFFAIRS: Mr. Akaka (Chairman), Mr. Rockefeller, Mrs. Murray, Mr. Sanders, Mr. Brown, Mr. Webb, Mr. Tester, Mr. Begich, and Mr. Burris.

SPECIAL COMMITTEE ON AGING: Mr. Kohl (Chairman), Mr. Wyden, Mrs. Lincoln, Mr. Bayh, Mr. Nelson of Florida, Mr Casey, Mrs. McCaskill, Mr. Whitehouse, Mr. Udall of Colorado, Majority Leader designee, Majority Leader designee, and Majority Leader designee.

COMMITTEE ON THE BUDGET: Mr. Conrad (Chairman), Mrs. Murray, Mr. Wyden, Mr. Feingold, Mr. Byrd, Mr. Nelson of Florida, Ms. Stabenow, Mr. Menendez, Mr. Cardin, Mr. Sanders, Mr. Whitehouse, Mr. Warner, and Mr. Merkley.

SELECT COMMITTEE ON ETHICS: Mrs. Boxer (Chairman), Mr. Pryor, and Mr. Brown.

COMMITTEE ON INDIAN AFFAIRS: Mr. Dorgan (Chairman), Mr. Inouye, Mr. Conrad, Mr. Akaka, Mr. Johnson, Ms. Cantwell, Mr. Tester, Mr. Udall of New Mexico, and Majority Leader designee.

SELECT COMMITTEE ON INTELLIGENCE: Mrs. Feinstein (Chairman), Mr.

Rockefeller, Mr. Wyden, Mr. Bayh, Ms. Mikulski, Mr. Feingold, Mr. Nelson of Florida, and Mr. Whitehouse.

JOINT ECONOMIC COMMITTEE: Mr. Schumer (Vice Chairman), Mr. Kennedy, Mr. Bingaman, Ms. Klobuchar, Mr. Casey, and Mr. Webb.

S. RES. 19

Resolved, That the following be the minority membership on the following committee for the remainder of the 111th Congress, or until their successors are appointed:

COMMITTEE ON AGRICULTURE NUTRITION AND FORESTRY: Mr. Chambliss, Mr. Lugar, Mr. Cochran, Mr. McConnell, Mr. Roberts, Mr. Johanns, Mr. Grassley, Mr. Thune, and Republican Leader designee.

COMMITTEE ON APPROPRIATIONS: Mr. Cochran, Mr. Specter, Mr. Bond, Mr. McConnell, Mr. Shelby, Mr. Gregg, Mr. Bennett, Mrs. Hutchison, Mr. Brownback, Mr. Alexander, Ms. Collins, Mr. Voinovich, and Ms. Murkowski.

COMMITTEE ON ARMED SERVICES: Mr. McCain, Mr. Inhofe, Mr. Sessions, Mr. Chambliss, Mr. Graham, Mr. Thune, Mr. Martinez, Mr. Wicker, Mr. Burr, Mr. Vitter, and Ms. Collins.

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS: Mr. Shelby, Mr. Bennett, Mr. Bunning, Mr. Crapo, Mr. Martinez, Mr. Corker, Mr. DeMint, Mr. Vitter, Mr. Johanns, and Mrs. Hutchison.

COMMITTEE ON THE BUDGET: Mr. Gregg, Mr. Grassley, Mr. Enzi, Mr. Sessions, Mr. Bunning, Mr. Crapo, Mr. Ensign, Mr. Cornyn, Mr. Graham, and Mr. Alexander.

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION: Mrs. Hutchison, Ms. Snowe, Mr. Ensign, Mr. DeMint, Mr. Thune, Mr. Wicker, Mr. Isakson, Mr. Vitter, Mr. Brownback, Mr. Martinez, and Mr. Johanns.

COMMITTEE ON ENERGY AND NATURAL RESOURCES: Ms. Murkowski, Mr. Burr, Mr. Barrasso, Mr. Brownback, Mr. Risch, Mr. McCain, Mr. Bennett, Mr. Bunning, Mr. Sessions, and Mr. Corker.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS: Mr. Inhofe, Mr. Voinovich, Mr. Vitter, Mr. Barrasso, Mr. Specter, Mr. Crapo, Mr. Bond, and Mr. Alexander.

COMMITTEE ON FINANCE: Mr. Grassley, Mr. Hatch, Ms. Snowe, Mr. Kyl, Mr. Bunning, Mr. Crapo, Mr. Roberts, Mr. Ensign, Mr. Enzi, and Mr. Cornyn.

COMMITTEE ON FOREIGN RELATIONS: Mr. Lugar, Republican Leader designee, Mr. Corker, Mr. Isakson, Mr. Risch, Mr. DeMint, Mr. Barrasso, and Mr. Wicker.

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS: Mr. Enzi, Mr. Gregg, Mr. Alexander, Mr. Burr, Mr. Isakson, Mr. McCain, Mr. Hatch, Ms. Murkowski, Mr. Coburn, and Mr. Roberts.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS: Ms. Collins, Republican Leader designee, Mr. Coburn, Mr. McCain, Mr. Voinovich, Mr. Ensign, and Mr. Graham.

COMMITTEE ON THE JUDICIARY: Mr. Specter, Mr. Hatch, Mr. Grassley, Mr. Kyl, Mr. Sessions, Mr. Graham, Mr. Cornyn, and Mr. Coburn.

COMMITTEE ON RULES AND ADMINISTRATION: Mr. Bennett, Mr. McConnell, Mr. Cochran, Mr. Chambliss, Mrs. Hutchison, Mr. Alexander, Mr. Roberts, and Mr. Ensign.

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP: Ms. Snowe, Mr. Bond, Republican Leader designee, Mr. Vitter, Mr. Thune, Mr. Enzi, Mr. Isakson, and Mr. Wicker.

COMMITTEE ON VETERANS' AFFAIRS: Mr. Burr, Mr. Specter, Mr. Isakson, Mr. Wicker, Mr. Johanns, and Mr. Graham.

COMMITTEE ON INDIAN AFFAIRS: Mr. Barrasso, Mr. McCain, Ms. Murkowski, Mr. Coburn, Mr. Crapo, and Mr. Johanns.

SELECT COMMITTEE ON ETHICS: Mr. Isakson, Mr. Roberts, and Mr. Risch.

SELECT COMMITTEE ON INTELLIGENCE: Mr. Bond, Mr. Hatch, Ms. Snowe, Mr. Chambliss, Mr. Burr, Mr. Coburn, and Mr. Risch.

SPECIAL COMMITTEE ON AGING: Mr. Martinez, Mr. Shelby, Ms. Collins, Mr. Specter, Republican Leader designee, Mr. Corker, Mr. Hatch, Mr. Brownback, and Mr. Graham.

JOINT ECONOMIC COMMITTEE: Mr. Brownback, Mr. DeMint, Mr. Risch, and Mr. Bennett.

MAINTAINING THE SCHEDULE

Mr. REID. Mr. President, we have made good progress on this legislation today, the Ledbetter legislation. I am not filing cloture tonight. I am very confident we will be able to finish this bill tomorrow. If we do not, I will file cloture on it for a weekend cloture vote because we have to finish this bill this week. If people need more time, they want to have some more debate and amendments on Friday, that is fine with me too.

I think this legislation sets a good tone that we can legislate here, people can offer amendments, with no restrictions on the amendments. I think this is the way we need to move forward.

The simple fact that we have 58, 59 Senators should not in any way give us any idea that we can move through here without bipartisan support. So I hope we can do that. But we still have a schedule to maintain. If that cannot be done, we will do some things over the weekend.

Progress is being made with the nominations. I hope once we get some more reported out of the committees, we can move some of them out of here quickly.

We have so much work to do in just a short period of time. Four weeks, basically, is all we have left of this work period, and we are going to finish a number of items. I have announced what they would be. We are going to do that or we are not going to have our Presidents Day recess.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

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

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

THE WAY FORWARD

Mr. SANDERS. Mr. President, I wish to begin by congratulating Senator MIKULSKI on her continued efforts in fighting for pay equality for women workers. This is a struggle that has gone on for decades. We are making some progress, but we have a long way to go and it is imperative that we pass the Ledbetter legislation.

Yesterday, as everybody in the world knows, Barack Obama was sworn in as the President of the United States. I can tell my colleagues that in my State of Vermont, and I expect all over this country and, in fact, in virtually every country in the world, there was great anticipation and great joy, not only because we have made history in our country by electing the first African American ever elected President, but also because the people of this country demand that we begin moving America in a very different direction than where we have been going for the last 8 years. Unfortunately, as President Obama assumes office, the Congress, the American people, and he are looking out at a set of the most serious problems that our country has faced since the Great Depression. Let me take a very few minutes to give a broad outline of some of those problems and some of the efforts I personally will be making in order to address these crises.

As a result of the outrageous greed and recklessness and dishonesty on the part of a few hundred or a few thousand speculators on Wall Street, our entire financial system is in danger of collapsing. That impacts not only the United States but, in fact, the financial markets all over the world. At this point, the American taxpayer—primarily the middle class—has already put into the TARP bailout some $700 billion, but in addition to that, the Fed has lent out trillions of dollars with virtually no transparency and certainly no accountability. This is a crisis we have to deal with in a number of ways. I will tell my colleagues as somebody who voted against the original bailout and who voted against the second bailout, we have to develop a mechanism that does more than pump hundreds and hundreds of billions of dollars to bail out Wall Street. This is a difficult issue, it is a complicated issue, but it is an issue that we have to address.

Furthermore, in my view, we need an investigation to get at the root of the problem. I reject the idea, as some suggest, that this was a problem caused by everybody; all of us are guilty in causing this financial crisis. That is wrong. The fact is there are a relatively small number of people—by and large people who in the last 5 to 10 years have made hundreds of millions of dollars; in fact, in some cases have accrued billions of dollars of wealth for themselves, who have operated in utter recklessness and, in my suspicion, in illegal mannerisms in order to make these incredible profits and to bring our financial system to the edge of collapse. We need to know who these people are, how they did it, hold them accountable, and create legislation which makes sure that we never, ever again are placed in the position we are in today.

The truth of the matter is that while the financial crisis of the last few months has exacerbated the economic problems that we are facing as a Nation today, for many years, despite the assertions of the Bush administration, the middle class has been in a significant state of decline, poverty has been increasing, and millions of people have lost their health insurance and their

pensions. What is happening today as a result of the financial crisis and the huge increase in unemployment is a situation where when people lose their jobs, they are losing their health insurance; when they are losing their income, they are losing their ability to maintain their homes and they are losing their homes; when they are losing their income, they are unable to take care of their parents, they are unable to send their kids to college, and the dreams many people have fought for their entire working lives are now disappearing. I can tell my colleagues that in the State of Vermont we have received many e-mails and communications from elderly people, elderly workers who have told me that they have spent their whole lives working so they would have a secure retirement, and now that retirement is disappearing with the decline of the stock market. We are in the midst of a grave crisis and we are going to need some bold thinking in order to get out of it.

Not only are we seeing a huge increase in unemployment, people losing their health insurance, poverty increasing, the reality is we continue to have—and we do not talk about this enough—by far the highest rate of childhood poverty of any major Nation on Earth. During my years in the House and my time in the Senate, I have heard some of my colleagues talk about family values. Well, let me say very clearly that having the highest rate of childhood poverty in the industrialized world is not a family value, it is a national disgrace. Every psychologist in the world will tell us that when kids grow up in poverty, when kids do not have early childhood education, when kids go to poor schools, there is a direct correlation between that reality and the fact that we have more people behind bars today, more people in jail than any country in the world, including China. How does that happen, that millions of Americans end up in jail more so than in an authoritarian country such as China? If one thinks it does not have a relationship to the high rate of childhood poverty in this country and the fact that we are not investing in our kids, I think you would be wrong.

Last year, we continued the process of seeing a growing gap between the very rich and everybody else. I know this is not an issue that many people in the Congress choose to talk about, but it is an issue that must be talked about, not only from a sense of morality but from a sense of basic economic well-being. In my view, it is not acceptable that the top one-tenth of 1 percent earn more income than the bottom 50 percent. It is not acceptable that the top 1 percent own more wealth than the bottom 90 percent. The whole issue of greed is something that we as a Congress and as a Nation have to be talking about. Do people need billions and billions and billions of dollars in personal wealth when we have children in this city and all over this country who are living out in the streets and who are denied basic, decent quality childcare? Is that the kind of Nation that we are about?

Since 2000, since the year 2000, nearly 6 million Americans have slipped out of the middle class and into poverty, the median income for working age families has gone down by over $2,300, over 7 million Americans have lost their health insurance, more than 4 million decent paying manufacturing jobs have been lost, and over 4 million workers have lost their pensions. All of those figures will get worse because of the statistics we have seen in recent months because of the financial crisis. The dream of a college education is fading away for many working families in my State and all over this country as college costs go up while incomes go down. We are seeing a situation where hundreds of thousands of qualified students are unable to go to college because they simply don't have the money to do that, and many others are coming out deeply in debt and have to take jobs which they would rather not take in order to pay back their student loans. Meanwhile, in the last 8 years, despite the bailout of Wall Street, with ongoing tax breaks for the very wealthy, and with the war in Iraq, we now have a national debt of over $10.5 trillion.

Another issue this Congress has to deal with is to address the reality that the United States of America remains the only major country on Earth that does not provide health care to all of its people. Yet we end up spending substantially more per capita on health care than any other Nation. But 47 million Americans have no health insurance. Almost 20,000 Americans die every single year because they don't have access to decent primary health care—they can't find a doctor when they need it—and we pay the highest prices in the world for prescription drugs.

With a new President, with a new Congress, the American people are asking whether finally we will have the courage to stand up to the lobbyists who are outside of this building every single day, who are walking the corridors; can we stand up to the insurance companies, can we stand up to the drug companies so that we finally—finally—will provide quality health care, low-cost prescription drugs to every man, woman, and child as a right of citizenship? Will we have the courage to do that? I certainly hope we will.

As we speak, we are currently involved in wars in Iraq and Afghanistan which have cost us not only the lives of thousands and thousands of wonderful young men and women, but they cost us over $10 billion every single month. These wars are also stretching the Army and our National Guard to the breaking point. My hope is that in the next several months we will be developing policy to bring our troops home from Iraq as soon as we possibly can. I hope very much that we will have not only a debate right here in Congress but a national conversation about how we deal with the very difficult issues of Afghanistan.

Despite the reality of global warming, our Nation still, despite decades of talk, has not yet broken our dependency on fossil fuel and foreign oil. In fact, every single year we are spending more than $500 billion bringing in oil from abroad. We have only begun—just begun—to make the advances we need to make in terms of energy efficiency and sustainable energy. As a member of both the Environmental Committee and the Energy Committee, it is my view that we have the potential to create millions of good-paying jobs as we transform our energy system away from fossil fuel to energy efficiency and sustainable energy. We can do that. We must do that.

As my colleagues well know, the major issue that this Congress is going to be dealing with in the next several weeks is an economic recovery program. I strongly support the basic outlines of that program. Obviously, there is going to be a lot of debate about the details within it and the hope that we can target that money in such a way as to create good-paying jobs as quickly as possible in the most cost-effective way imaginable. What I can tell my colleagues is that in my State—and I expect in the other 49 States in this country—our infrastructure is collapsing. We have roads in the State of Vermont which have huge problems. We have all kinds of bridges that are in need of repair in our small towns. We have water systems that are simply inadequate. We have wastewater plants that need to be rebuilt. All of these are very expensive propositions. So in the stimulus package, my hope is that we are going to put substantial sums of money into rebuilding our roads, our bridges, our water systems. I hope we begin to make the investment we need in public transportation—certainly rural public transportation in the State of Vermont—as one of many needs. If you are a worker in one part of the State and you want to go 50 miles to your job, in almost every case there is no public transportation to get you there. If you are a senior citizen and wish to go to the hospital or the grocery store, it is very hard to get there if you do not have a car. I suspect that is true all over rural America. In addition, our rail system is far behind, where Europe, Japan, and even China are now advancing forward. So I hope for and will support a major increase in funding to create a substantial number of new jobs as we rebuild our infrastructure.

In addition—I know President Obama has been very strong on this issue, and I agree with him—we need to invest heavily in energy efficiency. I can tell you that in the State of Vermont and, again, all over this country but especially in cold-weather States, you have older homes where energy is just going through the roof—literally going

through the roof and the windows—because of poor insulation. We can create jobs making our homes, our offices, our schools more energy efficient.

We need to be extremely aggressive, as I mentioned a moment ago, in terms of public transportation.

Also, right now we are on the cusp of major breakthroughs in such renewable technologies as wind, solar, geothermal, and biomass. I suspect that in 20 years, people will see a very different energy system than we have right now. It will be a cleaner system. It will be a system not emitting greenhouse gases.

There is a lot of work that stands in front of us. There was an election in November where the people said: We want change. That is what that election was all about. Unless we are bold, unless we are prepared to take on the big money interests that have dominated legislation for the last many years, there will be a great deal of disappointment all over this country.

Now is the time. There is a lot of enthusiasm in the work President Obama has been doing since he has been elected. There is an enormous amount of hope and confidence in the air that we can move America in a new direction. I hope that with new national leadership, with strong grassroots participation, with a Congress prepared to stand up and take on the powerful special interests that have dominated us for so many years, we can fulfill the faith the American people have expressed in us in recent years and that, in fact, we can move America in a very different direction and become the country all of us know we can become.

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

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

UNANIMOUS CONSENT AGREEMENT—S. 181

Mr. SANDERS. Mr. President, I ask unanimous consent that when the Senate resumes consideration of S. 181, the Lilly Ledbetter Fair Pay Act, on Thursday, January 22, there be up to 60 minutes of debate equally divided between Senator HUTCHISON and Senator MIKULSKI or their designees on the Hutchison amendment No. 25 prior to a vote in relation to the amendment; further, that no amendment be in order to the Hutchison amendment prior to the vote.

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

ORDERS FOR THURSDAY, JANUARY 22, 2009

Mr. SANDERS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Thursday, January 22; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business for up to 1 hour, with Senators permitted to speak for up to 10 minutes each, with Republicans controlling the first 30 minutes and the majority controlling the final 30 minutes; that following morning business, the Senate resume consideration of S. 181, the Lilly Ledbetter Fair Pay Act, as under the previous order.

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

PROGRAM

Mr. SANDERS. Mr. President, the first vote of the day will begin around 11:30 a.m. That vote will be in relation to the Hutchison amendment.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. SANDERS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 7:49 p.m., adjourned until Thursday, January 22, 2009, at 9:30 a.m.

DISCHARGED NOMINATION

The Senate Committee on Foreign Relations was discharged from further consideration of the following nomination by unanimous consent and the nomination was confirmed:

HILLARY RODHAM CLINTON, OF NEW YORK, TO BE SECRETARY OF STATE.

CONFIRMATION

Executive nomination confirmed by the Senate Wednesday, January 21, 2009:

DEPARTMENT OF STATE

HILLARY RODHAM CLINTON, OF NEW YORK, TO BE SECRETARY OF STATE.