Mr. HATCH. Mr. President, I ask unanimous consent that we withdraw the call for a rollcall vote and voice-vote this amendment.

The PRESIDING OFFICER. The rollcall vote has not been ordered.

The question is on agreeing to the amendment.

The amendment was rejected.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I have conferred with the Republican leader. This will be the last vote today. The Finance Committee is still meeting, and they expect to continue working tonight. I spoke to the chairman just a short time ago. He is going to do everything within his power to finish the markup tonight. We are going to get back tomorrow and again have no morning business. We will be back on this bill tomorrow. Everyone who has amendments to offer, get them ready.

EXECUTIVE SESSION

NOMINATION OF DANIEL K. TARULLO TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

The PRESIDING OFFICER. Under the previous order, the nomination is discharged and the Senate will proceed to executive session to consider the nomination, which the clerk will report.

The bill clerk read the nomination of Daniel K. Tarullo, of Massachusetts, to be a member of the Board of Governors of the Federal Reserve System.

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

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Daniel K. Tarullo, of Massachusetts, to be a member of the Board of Governors of the Federal Reserve System. On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. CHAMBLISS).

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

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 17 Ex.]

YEAS—96

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

NAYS—1

Bunning

NOT VOTING—2

Chambliss Kennedy

The nomination was confirmed.

The PRESIDING OFFICER (Mr. UDALL of Colorado). Under the previous order, the motion to reconsider is considered made and laid upon the table.

The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009—Continued

The PRESIDING OFFICER. The Senator from Ohio.

ECONOMIC RECOVERY

Mr. BROWN. Mr. President, the severity of this economic crisis requires the Federal Government to respond quickly and forcefully. The economic recovery proposal we are considering has two key objectives: stimulating the economy and creating jobs. Congress currently is negotiating where the funds will be spent—on infrastructure projects, on health care and safety net programs, on developing alternative energy for the 21st century economy. As we decide how to spend these tax dollars, it is imperative we consider where to spend them or, rather, on whom. These funds must create American jobs. To do that, we must ensure that Federal funds are used to buy American services and American products.

Our economy is suffering from the highest unemployment rate in more than a decade and a half. In 2008, we lost 2.6 million jobs, the largest job losses in 1 year in more than six decades. Our unemployment rate jumped to 7.2 percent. We all know that number doesn't tell the real story, the real human story. The more accurate measure of joblessness, the unemployed and the underemployed, or workers whose hours have been cut, is almost 14 percent. More than 533,000 jobs were eliminated in December. Yesterday, some of America's strongest, most prestigious companies announced more than 55,000 job cuts in 1 day. Among them was General Motors, which announced it would cut a shift at its Lordstown plant in Mahoning County in northeast Ohio. As President Obama said:

> These are not just numbers on a page. There are families and communities behind every job.

Communities such as Moraine and Chillicothe and Canton understand what happens when there is a major layoff. They don't need to hear the new job numbers. They understand it when small businesses close and diners empty out.

Manufacturing jobs keep American communities strong, and the steepest job losses are occurring in manufacturing. Nearly one in four manufacturing jobs has simply vanished since 2000, and 40,000 factories have closed in the last 10 years. Last year, manufacturing accounted for nearly a third of all lost jobs, while factory orders plummeted to record lows. Inventories are piling up because no one is buying. This leads to production cuts and then massive job losses that we will likely see more of this year. President Obama said it is likely going to get worse in 2009 before it gets better.

A loss of manufacturing is about more than jobs; it is about the loss of the Nation's middle class. I want to lay out what exactly the benefits of manufacturing are to this Nation.

Many of us represent large manufacturing workforces. All of us represent some manufacturing, some in more States than others. We all recognize or all should recognize the importance of manufacturing to our national security and to our domestic security—for families, neighborhoods, communities, for the Nation.

Let me cite the benefits of manufacturing:

No. 1, these jobs pay better on average than others.

No. 2, manufacturing jobs have a stronger multiplier effect, supporting as many as five other jobs. For instance, an auto assembly plant obviously creates other jobs—suppliers and tool and die shops and machine shops and parts manufacturers, and all that those jobs create. Manufacturers are large taxpayers supporting vital public services and schools in communities across the Nation.

No. 3, if you have a large industrial plant in a school district, that school district gets an awful lot of help in local property tax dollars from the manufacturing plant.

No. 4, American manufacturers are on the cutting edge of new technologies in the clean energy economy of tomorrow.

No. 5, if we are to end our dependence on foreign oil, we need to do more manufacturing here rather than allowing it to go offshore, especially in alternative energy.

No. 6, our national security depends on a strong defense industrial base to supply troops and protect our national interests.

Without a bold economic recovery plan that makes manufacturing a priority, the job losses will continue throughout this year and into next.

''Buy American,'' established in 1933 by President Roosevelt, requires that Federal purchasers prefer U.S. products. In other words, if the product is made in the United States at a decent price, then Federal purchasers must buy those products. But over the years, waivers of those preferences have been abused to create giant loopholes in ''Buy American.'' In other words, when we should be buying American, we are often buying Chinese or from some country in the European Union or Mexico. U.S. tax dollars whenever possible should go to create U.S. jobs. It is pretty simple. It is something people at home simply don't understand—nor do I—why we, as a country, as a government, don't use our tax dollars to create American jobs.

I am concerned about the lack of transparency in the waiver process and how that can lead to lost business, lost jobs, lost work, the actual steel, iron, cement, and other materials coming from overseas and not creating jobs in our country.

The Obama administration's stated goal is to make the biggest investment in the Nation's infrastructure since President Eisenhower created the Interstate Highway System more than 50 years ago. Imagine all this infrastructure, steel, concrete, all the materials we are going to buy with tax dollars, what it will matter if these products are made in the United States and not somewhere else. That is what we did mostly with the Interstate Highway System 50 years ago.

So when we are building infrastructure, whether it is water or sewer lines in Denver or whether it is a bridge in Minneapolis, this ''Buy American'' provision says we should be buying American and creating jobs here.

We have a responsibility to taxpayers to ensure that these dollars are creating jobs. Inclusion of ''Buy American'' requirements in the recovery proposal would be the most effective way to ensure that tax dollars are spent in the United States to create jobs. We have a responsibility to give American manufacturers the opportunity to bid on the steel and the iron and the other products that will be in demand from these massive investments in our infrastructure.

We have ''Buy American'' provisions in Federal statutes that provide that preference to use domestic materials, such as steel and other products and components, in federally funded highway and transit projects for State and local authorities. These need to be applied to the maximum extent possible as we try to revive the economy, as we move the Obama stimulus package through the Chamber.

Just last week, the Government Accountability Office reported on the benefits of Buy American policies. This is what the GAO said:

> The types of potential benefits to this program include protecting domestic employment through national infrastructure improvements that can stimulate economic activity and create jobs. . . .

This recovery proposal is about creating direct jobs with taxpayer dollars and then spin-off jobs with taxpayer dollars.

Let me be clear. This is not about stopping or slowing international trade. It is about using provisions in U.S. law consistent with our international obligations that allow for a preference for domestically produced goods financed by our U.S. taxpayer dollars.

Only if we do this will the recovery effort have the impact our towns and cities so desperately need. Why spend tens of billions—no, hundreds of billions—of dollars for infrastructure if we are not going to spend that money on American made products to create jobs directly and the spin-off jobs that come from that manufacturing?

American taxpayers deserve no less. Congress must act in good faith to create the most jobs here, especially in manufacturing. Enforcing the Buy America requirements already on the books and, to the extent we can, applying them to this stimulus bill is simply the right thing to do.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I rise tonight to speak of the Children's Health Insurance Program and the debate we are having in the Senate.

I appreciate what my colleague from Ohio just spoke of, the tremendous trauma that has been caused across the country with this terrible recession so many families are living through. I appreciate the fact he reminded us about what has been happening in our States and our communities as a result of this economic horror that so many families are living through. That horror and that trauma will only be increased in the months and years ahead if we do not pass this children's health insurance legislation. I think it is directly related to what we are talking about here when it comes to the terrible recession so many families are living through.

So I want to speak about the bill and deal with some of the questions that have been raised about the bill. But in particular, I want to, first, step back from the bill, from the debate, even step back for a few minutes from the program itself, to reflect on what the reality is for families.

I think when we speak of families and children's health insurance we speak and we think mostly about parents and the relationship they have to their children and what they want for their children. They, of course, want their children to succeed in life. They have hopes and dreams for their children. But, of course, for a parent, and especially for a mother, who is often providing most of the care for a child, her initial hopes, her initial fears, her concerns at the beginning of that child's life are very basic: Will that child be born healthy? Will that child grow and develop as he or she should?

I was thinking back to 2007 when we were having this debate at that time, thinking of the love of a mother and what she can provide for a child, especially a very young child. That mother can provide all of the protection she can muster for that child, she can envelop or embrace that child with protection and love and nurturing and all the wonderful things that a mother—a parent but especially a mother—can provide for a child. But there are some things that no matter what that mother does, no matter how much she loves her son or her daughter, there are some things she cannot provide on her own. She cannot provide health insurance on her own. She cannot provide medical care if she is not trained in that profession as a doctor or a nurse.

So there are a lot of mothers out there who have children they worry about every day of the week. They go to bed worrying what if that child has a problem in the middle of the night or some kind of a health care challenge in the middle of the day, what will happen to that child?

So when we are thinking about this debate and this issue, we should think about the love of a mother and what she can and cannot provide. That is one of the reasons why as a country we come together to solve problems such as this. We know an individual person cannot build a road, so we come together and provide public resources to build a road. We know one person or one family cannot provide law enforcement protection, so we all contribute to that. The same is true on health care. No matter how much that mother loves her child, she cannot on her own provide health insurance.

So what did we do? We created a program which in my State of Pennsylvania is called the Children's Health Insurance Program—CHIP for short. The program ''name'' is kind of redundant because the last word of the acronym is ''Program.'' But the CHIP Program then developed into a national program, as the Presiding Officer knows from his time in the House of Representatives, the so-called SCHIP, State Children's Health Insurance Program. That is what the debate is about.

What did we do? We created a program which now covers 6.7 million American children, most of whom, probably the overwhelming majority of whom would not have any health insurance coverage because, as we know, these are families who are above the income levels for Medicaid but they are often below or outside the category of families who have employer-sponsored health insurance. So they are in that gap: lower middle or middle-income families, in many cases. So we have covered 6.7 million children. That is wonderful. The only problem is there are millions more who are not covered.

This bill—strip away all the debate, all of the back and forth, all of the fighting about this—at its core, just as it did a couple years ago, is to provide health insurance to more than 4 million additional children. So 6.7 million, roughly, and you add 4.1 million, that is what you are talking about.

So we have the program in the legislation now to cover more than 10.5 million American children. Few, if any, generations of Americans who have served in a legislative body could say they cast a vote to cover that many children. It is a tremendous opportunity for a child, for their family, for the community and neighborhood they live in, for their State, and for their country now and in the next months and years ahead, but it is also important to all of us down the road.

Who would you want to hire 20 years from now? A child we invested in? A child who had health care in the dawn of his or her life? A child who had early learning opportunities? A child who had a good healthy start in life? I think as an employer you would want to hire a person who had that investment. They are bound to be more productive. So there is a long-term workforce argument. But even if that argument was not there, this is the right thing to do for the obvious reasons.

Now, what are we talking about? We are talking about health care and benefits. There is a long list of benefits I won't go through. We have charts we have all pointed to, and we will continue to do that.

But just consider one aspect of the benefits, one that I focus on because I think it is crucial to the life of a child and crucial to their—I should say, not just crucial, determinative of the kind of future they are going to have or not have, and that is well-child visits. One of the benefits that is covered in Pennsylvania is that in the first year of the life of that child he or she will get six well-child visits. Every child in America should have that opportunity. Every family should have the peace of mind to know that if all does not go well, at least their child has health insurance, and in the first year of their life they have been to the doctor at least six times, and they have been to the dentist and any other specialty they can get to and that the benefits cover.

So if we want to just focus on one benefit of the children's health insurance: a kid gets to the doctor six times in a year—pretty important. I am not a doctor, but we all know the benefit, as parents and as legislators from our work.

Another aspect of this legislation that does not get a lot of attention: When people hear about a government-inspired initiative, or a program in this case, that is partially paid for with public dollars, we often hear about: Well, that is just for communities where people are low income, but they are covered by Medicaid, so why do we need to help them? It does not help people kind of across the length and breadth of the country. It is somehow targeted to one group and, therefore, it is not good for everyone.

Well, I just made the case about the workforce long term. But one aspect of this issue in terms of a group of children who are often not in the headlines but benefit directly and are reliant upon the Children's Health Insurance Program and the Medicaid Program for children is that a lot of poorer families with children are in rural areas—people who live in rural areas across the State of Pennsylvania and across the country.

In my State of Pennsylvania, when you get outside of Philadelphia and Pittsburgh and Erie and Harrisburg—a couple of major urban areas—we are a very rural State. We have literally millions of people who live in the demographic category that we refer to as rural areas. Those children—one-third of them—rely upon either the Children's Health Insurance Program or the Medicaid Program. So it helps a high percentage of rural children.

In the midst of this economy, when those rural communities in Pennsylvania and across the country have been disproportionately adversely impacted by high energy costs, including everything from gasoline to home heating oil, to all kinds of other energy costs, when they have also been hit hard by the downturn in the economy—job losses are rampant in rural communities—when you factor in those realities with the dependence or reliance they have on this program, it is critically important we provide as much in the way of resources as we can and outreach to get those children enrolled in rural areas, as well as in our urban and even suburban communities.

I want to conclude with a recitation of some myths and facts, some of which we have heard on the floor in the debate over the last couple days. I will do just one, two, three, four—about four or five myths.

Myth No. 1, the children's health insurance bill reduces documentation requirements, allowing illegal immigrants to receive benefits. That is the myth.

Here are the facts.

Fact No. 1: Under current law, only individuals applying for Medicaid are subject to the citizenship documentation requirements. This bill actually extends those requirements to the Children's Health Insurance Program, requiring documentation in CHIP just like documentation is required in the Medicaid Program. You would never know that by some of the debate here.

Fact No. 2 about this documentation issue: Because the requirements have resulted in the widespread denial of coverage to many citizens, the children's health insurance bill also gives States a new way to prove citizenship through matching Social Security Administration records. So that is further help on documentation.

Fact No. 3 under this section: These citizen documentation provisions are the same as they were in the children's health insurance bill passed in the Senate overwhelmingly—overwhelming—with bipartisan support in 2007. So it is the same. So for those who are creating the myth that somehow it is new, that is not true.

Myth No. 2: The bill ends the mandatory 5-year waiting period for legal immigrants to receive benefits—opening the program to abuse by illegal immigrants. It is another myth.

Fact No. 1 under this myth: The bill allows but does not require—it allows but does not require—States to cover legal immigrant children without forcing them to wait 5 years for coverage. Why should a child who is a legal immigrant or why should a pregnant woman in the same circumstance—why should they have to wait 5 years? Does that make any sense at all? Does that make any of us safer or does that make our country better to have vulnerable people wait to get these benefits, especially when 23 States are doing this now? By listening to the debate, you would think this is some new concept that just fell out of the sky. Twenty-three States right now are doing this. So what does this bill do? It allows States to cover legal immigrant children without forcing them to wait 5 years for coverage.

Only immigrant children here legally—legally—are eligible for the benefits provided by Medicaid and the Children's Health Insurance Program. So if anyone uses the word ''illegal'' in this context, you know automatically they are deliberately attempting to mislead people.

Children and pregnant women who will now be eligible must document their immigration status. State Medicaid agencies use the Bureau of Citizenship and Immigration Services' automated SAVE system to verify the immigration status of legal immigrants applying for Medicaid. So that is a protection that is built into this bill.

The next myth: This bill will allow children from families making over $80,000 per year to receive coverage while poor children are still not enrolled.

That is another myth. This bill would extend coverage to 4 million more low-income children and help struggling families in this time of economic downturn. The CHIP bill prioritizes enrolling low-income children by establishing a performance-based system to reward States for enrolling low-income kids while giving them new tools to do so. So we incentivize States to go out and enroll more children, which is a worthy thing to do, and critically important.

Under the bill, States would be allowed to designate CHIP funds to help families afford private coverage afforded by employers or other sources.

Finally, under this section, the bill maintains provisions to reduce the Federal match rate for the cost of covering children above 300 percent of the Federal poverty level.

Let me get to two more myths, and I will conclude.

The next myth: The revenue stream to pay for the Children's Health Insurance Program with tobacco tax is unsteady and will not be able to fund the program in the future, increasing the burden on taxpayers.

That is the myth. We have heard that a lot. The fact is, according to the nonpartisan Congressional Budget Office, the proposed $31.5 billion in spending will be fully paid for by the fee increase to tobacco products over the authorized 5-year timeframe.

Finally, this myth: Democrats have made unilateral changes to CHIP, which has jeopardized the bipartisan support of the previous version passed by the Senate.

Fact: The CHIP legislation introduced this year is almost identical to the legislation in 2007 which received broad bipartisan support in the House and the Senate. Two prior bipartisan efforts were blocked by President Bush when he vetoed the legislation.

Providing health care for children is not a Democratic or Republican issue. We know that. It is a moral issue and one that all Senators should support. The few unresolved policy disagreements were put to a vote in the committee. So we have had a committee vote as well.

So I would conclude tonight with where I began. What is the Senate going to do when faced with the question, the stark and fundamental question: Are we going to act this week to cover 4.1 million more children? It is up or down.

There have been a lot of discussions about so-called immigration issues which I think have been misleading. A lot of the debate is about numbers. But we are either going to act to do this, to cover 4 million kids, or not.

Finally, what will the Senate do this week to speak to that one mother and to say to her: We understand a little bit—a little bit—about what you are going through, and we understand that with all of the love you surround your son or daughter with, we know you cannot provide them health insurance on your own. We are going to help you because we have the program that has been in place for 15 years, which is one of the best pieces of legislation this body or the other body ever voted on; we know how to help you, and we are going to do everything we can to help you. We know this economy is especially tough on that mother and that family. We are going to act to help you through this difficult period in your life so that you can have the peace of mind to know that your son or daughter at least—at least—is covered by health insurance and can get six visits to the doctor in a year. That is not asking too much of all of us and of the American people, to show some degree of understanding and some degree of solidarity with that mother and her children.

Thank you, Mr. President. I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

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

ERIC HOLDER NOMINATION

Mr. DURBIN. Mr. President, I rise in support of the nomination of Eric Holder to be Attorney General of the United States. As a member of the Judiciary Committee, I have given especially close consideration to this nomination. I met privately with Eric Holder, reviewed his record, listened to his sworn testimony, and I have come to the conclusion that he will be an outstanding Attorney General.

On January 15 and 16, the Judiciary Committee held a hearing on Mr. Holder's nomination where he was asked many questions from the committee members on both sides of the aisle. He stayed until every member of the committee had asked every question they wished. Then, following the hearing, Mr. Holder responded to literally hundreds of written followup questions from members of the committee.

Last week, the Judiciary Committee was scheduled to vote on his nomination. Despite a lengthy 2-day hearing which included multiple outside witnesses and Mr. Holder's timely response to the questions, the Republicans asked to postpone the committee's vote on Mr. Holder's nomination. That is their right under the Senate rules, but it is disappointing that despite Mr. Holder's full cooperation, we have been unable to move forward on this nomination to this point. As a result, the crucial position of Attorney General remains unfilled and the Obama administration's national security team is incomplete.

Due to the delay, the committee will now vote on Mr. Holder's nomination as early as tomorrow. I urge my colleagues on both sides of the aisle to support the nomination so we can have new leadership in place at the Justice Department.

I believe Eric Holder has the experience, independence, and commitment to the rule of law to reform the Justice Department. He will be one of the most qualified Attorneys General, having previously served as Deputy Attorney General, U.S. attorney, judge, and a career Justice Department attorney. Mr. Holder will need to bring all of that experience to bear to restore the integrity of the Department which has descended to a sad state today.

However, it is more than just experience that he will bring. The Attorney General is the people's lawyer, not the President's lawyer, so he or she needs to have the backbone on occasion, if necessary, to stand up for what is right, even if it means disagreeing with the President.

I have had many differences of opinion with John Ashcroft, our former Attorney General under the previous President, but there was a moment in history when he was literally in an intensive care unit and asserted his authority as Attorney General to say no to the President. It took courage. It took commitment. It took professionalism. We should expect nothing less of those who serve in that capacity.

There can be little doubt about Eric Holder's willingness to say no to the President. He has demonstrated a lot of independence throughout his career. As Deputy Attorney General, he recommended expanding the Starr investigation into the Monica Lewinsky affair, and he recommended the appointment of a special prosecutor to investigate a member of President Clinton's Cabinet. He has been involved in the investigation and prosecution of Members of Congress in both political parties.

The testimony of former FBI Director Louie Freeh, in support of Mr. Holder, is a good indication of his independence. No one would accuse Mr. Freeh of being a partisan Democrat. He was a strong supporter of former New York mayor Rudy Giuliani and also of JOHN MCCAIN's efforts when he ran for President. He has been a vocal critic of former President Clinton. Mr. Freeh included his decisions to pardon Marc Rich and offer commutation to the FALN as things he disagreed with. But Mr. Freeh enthusiastically supports Mr. Holder's nomination. Here is what he said:

> The Attorney General is not the President's lawyer. . . . the President has a White House counsel for those purposes. And I know that Eric Holder understands the difference. I think he would be very quickly able to say no to the President if he disagreed with him. And I think that's the confidence and trust we need in that position.

Mr. Holder is also supported by dozens of other prominent Republican lawyers, such as former Attorney General William Barr and former Deputy Attorney General Jim Comey, a man who, incidentally, distinguished himself during the previous administration in his service at the Justice Department.

President Obama respects Eric Holder's independence. At his hearing, Mr. Holder testified about a conversation he had with the President after he accepted the offer. The President said:

> Eric, you've got to understand you have to be different. You know, we have a pretty good relationship. That's probably going to change as a result of you taking this position. I don't want you to do anything that you don't feel comfortable doing.

What a refreshing exchange. It gives me hope that the Attorney General, if it is Eric Holder, in this Justice Department will chart a new and important course for this Nation.

In addition to Mr. Holder's experience and independence, there is little

doubt about his commitment to the rule of law. I voted against the two previous Attorneys General because of their involvement in one issue: torture.

As White House Counsel, Alberto Gonzales was an architect in the Bush administration's policy on interrogation, a policy which has come into criticism not only in the United States but around the world. His successor, Michael Mukasey, refused to repudiate torture techniques such as waterboarding. That was unfortunate because Mr. Mukasey really brought a stellar resume to the job, but that really was a bone in my throat that I couldn't get beyond, and I voted against his nomination.

Now, during his confirmation hearing, Eric Holder gave a much different response. When asked directly, he said: ''Waterboarding is torture.''

Those three words resonated throughout the committee room and across the Nation among many Americans who had been concerned about this important issue and literally gave a message to the world that there was a new day dawning in Washington.

I also asked Mr. Holder the same question I asked Attorneys General Gonzalez and Mukasey: Does he agree with the Judge Advocates General, the four highest ranking military lawyers, that the following interrogation techniques violate the Geneva Conventions: painful stress position, threatening detainees with dogs, forced nudity, or mock execution. Mr. Holder said:

> The Judge Advocate General Corps are in fact correct that those techniques violate Common Article 3 of the Geneva Conventions.

Some of my colleagues on the other side of the aisle have suggested that Eric Holder's opposition to torture will somehow lead to a witch hunt against former Bush officials. Frankly, this seems like a weak excuse to delay the confirmation of a well-qualified nominee.

Here are the facts: President Obama and Eric Holder made it clear that while no one is above the law, the administration is going to move forward, not back. The goal to investigate the Bush administration does not come from the Obama administration but from others such as retired major general Antonio Taguba, who led the U.S. Army's official investigation into the Abu Ghraib prison scandal.

Here is what General Taguba recently said:

> The Commander in Chief and those under him authorized a systematic regime of torture. . . . there is no longer any doubt as to whether the [Bush] administration has committed war crimes.

In the words of General Taguba:

> The only question that remains to be answered is whether those who ordered the use of torture will be held to account.

Indeed, the facts are troubling. Former President Bush and former Vice President Cheney have acknowledged authorizing the use of waterboarding which the United States had previously prosecuted as a war crime. Susan Crawford, the Bush administration official who ran the Guantanamo military commissions, said that the so-called 20th 9/11 hijacker cannot be prosecuted because ''his treatment met the legal definition of torture.''

Now it appears some Republicans are holding up Eric Holder's nomination because of the problems of the previous administration. A headline in the Washington Post this last Sunday highlighted the irony. It said: ''Bush Doctrine Stalls Holder Confirmation.'' Apparently, some Republicans are opposing Eric Holder because of their concern that former Bush administration officials may be prosecuted for committing war crimes.

Here is what the junior Senator from Texas said:

> I want some assurances that we're not going to be engaging in witch hunts.

But Mr. Holder has made it clear in his testimony there will be no witch hunts. He testified:

> We will follow the evidence, the facts, the law, and let that take us where it should. But I think President-elect Obama has said it well. We don't want to criminalize policy differences that might exist between the outgoing administration and the administration that is about to take over.

The junior Senator from Texas also expressed concerns about Eric Holder's ''intentions . . . with regard to intelligence personnel who were operating in good faith based upon their understanding of what the law was.'' But Mr. Holder has made his intentions clear. He testified:

> It is, and should be, exceedingly difficult to prosecute those who carry out policies in a reasonable and good faith belief that they are lawful based on assurances from the Department of Justice itself.

What more would you expect a man aspiring to be Attorney General to say? It certainly would be inappropriate to seek an advance commitment from any nominee for Attorney General that they will definitely not investigate allegations of potential criminal activity. No responsible Attorney General would ever say that, nor should that person be confirmed if they made that statement.

Senator LINDSEY GRAHAM, another Republican member of the Judiciary Committee, recognizes that fact. Senator GRAHAM, also a military lawyer still serving, said:

> Making a commitment that we'll never prosecute someone is probably not the right way to proceed.

He went on to say:

> I don't expect [Holder] to rule it in or rule it out. In individual cases if there's allegations of mistreatment, judges can handle that and you can determine what course to take.

I think Senator LINDSEY GRAHAM has hit the nail on the head. I hope no one will use this false specter of a witch hunt as an excuse to oppose a fine nominee.

I say to my colleagues, if you have an objection to Eric Holder based on his qualifications, vote against him. But don't oppose him because the previous administration may have been guilty of wrongdoing which may lead to a prosecution. There are too many hypotheticals in that position. In fact, these misdeeds are the reasons we need Eric Holder's leadership.

Here is what President Obama has said about the need to reform the Justice Department:

> It's time that we had a Department of Justice that upholds the rule of law and American values, instead of finding ways to enable a President to subvert them. No more political parsing or legal loopholes.

I think Eric Holder is the right person to fill the vision of President Obama. After 8 years of a Justice Department that too many times put politics before principle, we now have a chance to confirm a nominee with strong bipartisan support who can restore the Department to its rightful role as guardian of our fundamental rights.

I urge my colleagues to support Eric Holder's nomination.

AMENDMENT NO. 39

Mr. DURBIN. Mr. President, I ask unanimous consent that the pending Baucus amendment No. 39 be agreed to, the motion to reconsider be laid upon the table, and the bill, as thus amended, be considered as original text for the purpose of further amendment.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate resumes consideration of H.R. 2 on Wednesday, the time until 11 a.m. be for debate with respect to McConnell, et al., amendment No. 40, with the time equally divided and controlled between the majority and Republican leaders or their designees; that no amendments be in order to the amendment prior to a vote in relation to the amendment; that at 11 a.m. the Senate proceed to vote in relation to the McConnell amendment, No. 40; provided further, if the McConnell amendment is agreed to, the bill, as thus amended, be considered as original text for the purpose of further amendments.

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

MORNING BUSINESS

Mr. DURBIN. I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

FURTHER CHANGES TO S. CON. RES. 70

Mr. CONRAD. Mr. President, section 227 of S. Con. Res. 70, the 2009 Budget resolution, permits the chairman of the Senate Budget Committee to revise the allocations, aggregates, and other appropriate levels in the resolution for