Howrigan on their hillside farm in Vermont. I can think of more than one occasion when Marcelle and I would be there. We would be listening to one of these stories, and I knew that we might be late for the next thing, but I didn't want it to end. I wanted to hear what else he had to say.

Harold was a man who seemed to accomplish more each year than most of us do in a lifetime. He built his Fairfield, VT farm to over 1,000 acres, including the land that had been worked by his family since the mid 1800s.

It is now tended by the next generation of Howrigans. I remember him as a dynamic man, as genuinely comfortable in his public duties as he was in the dairy parlor or out splitting wood. In addition to running the farm and tending to the family he loved so much, he accepted leadership roles in dozens of civic and agricultural organizations from local to national in scope. He moderated the Fairfield town meeting right up to this year. The town meeting is a sacred institution in Vermont. A town wants to make sure they have the very best and the fairest and the most knowledgeable to be their moderator. It also helps when you have somebody with an Irish sense of humor. This is a position of distinction in any Vermont town.

He was director of the St. Alban's Cooperative Creamery for 25 years and president for another 20. He was appointed by three Governors, both parties, to the Vermont Milk Commission. He was also a local and national leader among maple sugar makers. He served on University of Vermont advisory boards and on county commissions. All the while he tended the fire in the Fairfield sugar house each year and he got the cows milked each day and sang for 60 years on the choir at church. The church, of course, is named, as you would expect in a town full of Irish immigrants and descendants, St. Patrick's.

Nationally, he was a director of the National Milk Producers Federation for 20 years and chairman of the National Dairy Board. In addition to his work on dairy, he was a local and national leader for the maple industry, a prolific sugar maker. I know Marcelle and I and our children, when we were having something at the farm that called for maple syrup—and in our family, that is just about anything from English muffins to pancakes—everybody's eyes would light up if we knew it was Howrigan syrup.

Notwithstanding his prodigious service to his community, his profession and his country, his greatest impact was probably felt through his personal relationships with his family and what he considered, I think, all of Vermont, his extended family. As a friend, he was a trusted adviser on agricultural issues over several decades. I know Senator Jeffords also valued his friendship and advice and Governors consulted him regularly. But as dad and grandpa to a large, active family, he cultivated two new generations of Vermont dairy farmers and maple sugar makers.

We could talk about all the different things he did, but it still does not give a picture of the man. He was known for a deep and spirited Irish pride, a sentiment I obviously share. I find myself comparing that other great Irish American and dear friend, Teddy Kennedy, whose recent loss I also mourn. But I also treasure the trip my wife Marcelle and I took with Harold to Ireland. There he felt he was truly in the Promised Land. We would walk about the streets of Dublin or small towns nearby. He was so proud of his family's Irish heritage, he never stopped smiling throughout his visit.

The day of his funeral, last week, Marcelle wore an Irish pin we purchased with him in Ireland. I, of course, wore a green tie in his honor. I watched his grandsons wearing some of the Irish ties Harold had owned. I listened to his son and daughter and grandchildren talk about him, capturing him in his stories and his nature. I think about the very last conversation I had with him just weeks before he died. In all these things, he never asked for anything for himself. He always asked me to watch out for other people. He led by quiet example and hard work and kindness and love.

I, along with the State of Vermont and many across the United States and across the Atlantic, will miss Harold. He was a dear friend, truly a great American. Similar to all Vermonters, I express my sympathy to his family and I say: Goodbye, Harold, my dear friend.

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

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

## EXECUTIVE SESSION

### NOMINATION OF GERARD E. LYNCH TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT

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

The legislative clerk read the nomination of Gerard E. Lynch, of New York, to be United States Circuit Judge for the Second Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 2 hours of debate, equally divided, between the Senator from Vermont and the Senator from Alabama or their designees.

The Senator from Vermont.

Mr. LEAHY. Mr. President, today the Senate finally considers the nomination of Gerard Lynch to the Second Circuit. I take particular interest in this because my own State of Vermont is part of the Second Circuit. I am a member of that bar, and I have argued cases before that court.

This is a nomination reported out of the Judiciary Committee over 3 months ago, on June 11 unanimously by voice vote. There were no dissents. When that occurred and the ranking Republican member said such glowing things about Judge Lynch, I assumed his nomination was going to be confirmed right away as we did with President Bush's nominations in similar situations. Now it is nearly 3 months later. In almost unprecedented fashion, someone who has had the strong support of both the chairman and ranking Republican of the committee is still on the Executive Calendar.

Judge Lynch has served as a highly respected Federal judge from New York for almost a decade. He has impeccable legal credentials. His nomination received the highest possible rating from the ABA's standing committee on the Federal judiciary, unanimously voted ''well qualified.''

The Senate can and must do a better job of restoring our tradition, a tradition followed with Republican Presidents and Democratic Presidents, of regularly considering qualified, noncontroversial nominees to fill vacancies on the Federal bench without needless and harmful delays. We should not have to overcome filibusters and spend months seeking time agreements to consider these nominations. The American public wonders what is going on here.

It is imperative that we move to fill the growing number of vacancies throughout the Federal courts. These vacancies have already risen to over 90, including 21 on the circuit courts. I have been here with six Presidents. I cannot remember a time we have been this late in the year and, even though nominations have been made, nobody has been confirmed, all because of holds by the Republicans. Do they object so much to having President Obama as President that they will hold up well-qualified judges? These are supposed to be nonpartisan, outside the political area.

This alarming spike in vacancies is only further fueled by delays and inaction. In addition, 26 future vacancies have been announced. At this rate, as I said at the judicial conference this week with the Chief Justice and leaders of the Federal judiciary, the Federal judicial vacancies will soon be close to 120 unless we start acting on these nominations in a responsible and fair manner. These nominations should not be something where Republicans or Democrats might score political points. Our inaction on these nominations hurts the average American. They do not care about the politics. They want Federal courts that are going to work. They do not want cases delayed because we have vacancies in

the Federal court that we could easily be filling.

I do not think most Americans, when they go into a court, say: I am here as a Republican or a Democrat. They go in and say: I am here as a plaintiff or defendant. They are there to seek justice, not to find out there is nobody in the courthouse because the minority party does not want President Obama filling vacancies.

During the last Presidency, we worked very hard to fill vacancies. When I chaired the Senate Judiciary Committee and we had a President of the other party, we were able to reduce overall vacancies by two-thirds, from over 100 down to 34. We were able to reduce circuit court vacancies to single digits. Today, because we are blocked from getting judges through, because Republican Senators will not give this Democratic President the same courtesies we gave a Republican President, those vacancies have nearly tripled. In the 17 months I served as Senate Judiciary Committee chairman during President Bush's first term, the Senate confirmed 100 of the President's judicial nominations. So far this year, 9 months into the year, we have not confirmed a single Federal district judge or circuit judge. In fact, Judge Lynch will be the first.

Despite the fact that President Obama sent his first judicial nomination to the Senate 2 months earlier than President Bush, despite the fact that judicial nominees have the support of Republican home State Senators, despite the fact that the Judiciary Committee has reported favorably five judicial nominees to the Senate for final action, and despite the fact that judicial nominees have been pending on the Senate calendar for more than 3 months, we have not been able to reach agreement before today to vote on a single judicial nominee for either a district court or a circuit court.

The first of President Obama's nominations, that of Judge David Hamilton to the Seventh Circuit, was made in March. It has been on the Executive Calendar since early June, despite the support of the most senior of Senate Republicans, Senator LUGAR. The nomination of Judge Andre Davis on the Fourth Circuit was reported by the committee on June 4 by a vote of 16 to 3 but has yet to receive Senate consideration. We should not further delay Senate consideration of these well-respected, mainstream Federal judges.

During the last Congress, we reduced Federal judicial vacancies from 10 percent, under Republican control of the Senate during the Clinton administration, to less than half that level. We cut circuit vacancies from 32 to less than 10 last year. Ironically, during President Bush's two Presidential terms, more nominees were confirmed with a Democratic Senate majority than a Republican majority, and in less time. I am urging Republican Senators to work together with the President to fill vacancies on the Federal bench.

I hope that Republican Senators do not seek to return to the practices of the 1990s that more than doubled circuit court vacancies. The crisis they created led to public criticism of their actions by Chief Justice Rehnquist during those years. It is not a good sign that already this year Republican Senators threatened a filibuster of the Deputy Attorney General and pursued five filibusters, including one for Elena Kagan, the Solicitor General, one for Harold Koh to be the Legal Adviser to the State Department, and another that was finally broken just last week on Cass Sunstein, who heads the White House Office of Management and Budget's Office of Information and Regulatory Affairs. Nor is it a good sign that in March every Republican Senator signed a letter to the President threatening filibusters of his judicial nominees before they were even nominated.

We are supposed to be the conscience of the Nation in the Senate. If a Senator does not like a particular nominee, vote against him or her. But these are nominees that will probably pass unanimously.

I hope, instead, that both sides of the aisle will join together to treat the nominees of President Obama fairly. I made sure that we treated President Bush's nominees more fairly than President Clinton's nominees had been treated. We should continue that progress rather than ratcheting up the partisanship and holding down our productivity with respect to Senate consideration of judicial nominations. Our demonstrated ability to work together to fill judicial vacancies will go a long way toward elevating public trust in our justice system.

Another troubling sign is the refusal of every Republican Senator to cosponsor the comprehensive judgeship bill. Last week I reintroduced that legislation embodying your nonpartisan recommendations for 63 judgeships needed around the country. Not a single Republican Senator would cosponsor the bill. Even traditional cosponsors with whom I have worked for years would not join. Not one of the 18 Republican Senators whose states would benefit from additional judges yet supports the bill. For that matter, Republican Senators obstructed the hearing on a similar bill last summer, after they had requested the hearing. As we pass legislation that is leading to increased workloads in the Federal courts, we need to be cognizant of the increasing workloads and needs of the Federal courts.

Judge Gerard Lynch began his legal career as a Federal prosecutor in the U.S. Attorney's Office for the Southern District of New York, where he investigated and prosecuted white collar and political corruption cases, and argued complex criminal appeals. Through his exemplary hard work and considerable skill, he rose to be chief of the criminal division in the Southern District of New York, where he managed the office's criminal cases and supervised well over 130 Federal prosecutors. Judge Lynch has also served as a part-time associate counsel for the Office of Independent Counsel and as a counsel to a Wall Street New York law firm.

He also has impeccable legal credentials. Judge Lynch graduated summa cum laude and first in his class from both Columbia Law School and Columbia University. He clerked for Justice Brennan on the Supreme Court of the United States and Judge Feinberg on the Second Circuit Court of Appeals. Judge Gerard Lynch began his legal career as a Federal prosecutor in the U.S. Attorney's Office for the Southern District of New York, where he investigated and prosecuted white collar and political corruption cases, and argued complex criminal appeals. Through his exemplary hard work and considerable skill, he rose to be chief of the criminal division in the Southern District of New York, where he managed the office's criminal cases and supervised well over 130 Federal prosecutors. Judge Lynch has also served as a part-time associate counsel for the Office of Independent Counsel and as a counsel to a Wall Street New York law firm.

He also has impeccable legal credentials. Judge Lynch graduated summa cum laude and first in his class from both Columbia Law School and Columbia University. He clerked for Justice Brennan on the Supreme Court of the United States and Judge Feinberg on the Second Circuit Court of Appeals.

While maintaining a full judicial caseload, Judge Lynch has also been a distinguished legal scholar who has received praise as one of the country's outstanding law professors. For over 13 years, he taught criminal law, criminal procedure, and constitutional law as the Paul J. Kellner Professor of Law at Columbia University's School of Law. For 5 years, Judge Lynch also served as the vice dean of that fine legal institution. He is nationally known as a criminal law expert and has received numerous honors, including the distinction of being the first law professor to receive Columbia University's President's award for outstanding teaching.

Judge Lynch's nomination has received numerous letters of support, including strong endorsements from public officials and law professors across the political spectrum. Otto G. Obermaier, who served as President George H.W. Bush's U.S. attorney for the Southern District of New York, supports Judge Lynch's candidacy to the Second Circuit and called him a person of ''superior judgment and intelligence'' who is ''intellectually gifted.'' Professor Henry P. Monaghan, the Harlan Fiske Stone Professor of Law at Columbia University, writes that Judge Lynch ''is everything you want in a judge: fair, tough-minded, enormously experienced, highly intelligent, and apolitical'' and his addition to the Second Circuit would ''strengthen'' that court. He has the support of the Senators from New York.

I congratulate Judge Lynch and his family on his confirmation today.

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

I withdraw that request. I see the distinguished senior Senator from New York in the Chamber, a man who works so extremely hard in the Senate Judiciary Committee, who has worked night and day for Judge Lynch, who has made sure we all realize what impeccable credentials he has.

I yield to the Senator, but I ask, first, unanimous consent that if there are quorum calls, the time be divided equally.

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

The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, first, I thank our chairman and leader, Senator LEAHY, for not just moving this very qualified nominee forward but for his diligence and steadfastness and patience as we try to move judges to the floor. Senator LEAHY, as everyone in this Chamber knows, is a very fair-minded person. He always goes out of his way to allow people to have their time to speak. We had this in the Judiciary Committee this morning. He has done an amazing job trying to move our judges through. I hope those on the other side of the aisle will hear his heartfelt plea that we stop all these dilatory tactics.

Having said that, today is a very good day because I am so pleased to rise in favor of the nomination of the first appointment by President Obama to a Federal appellate court that this body will consider. If Judge Gerard Lynch is any indication of the quality and temperament and intellectual firepower of judges whom President Obama intends to nominate, then my friends on both sides of the aisle should have reason to rejoice today.

As Chairman LEAHY has already noted, Judge Lynch was referred out of committee by a unanimous voice vote. Even my friend and colleague Ranking Member SESSIONS was able to support Judge Lynch despite having opposed his nomination to the district court bench in 2000.

Judge Lynch, who currently sits as a U.S. district judge in the Southern District of New York, comes to us today for confirmation much as he did in 2000 for his first confirmation: with an unimpeachable record of moderation, consistency, intelligence, and dedication to exploring all facets of complex legal questions. But since then, he has amassed an impressive record of moderation and thoroughness. In his 9 years on the bench, he has issued nearly 800 opinions, has tried nearly 90 cases to verdict, and has been overturned by the Second Circuit only 12 times—and one of those times, the Second Circuit was, in turn, reversed by the U.S. Supreme Court.

There should not be any doubt that Judge Lynch is not an ideologue. His opinions and his writings show moderation and thoughtfulness. He is pragmatic. His peers and those who practice before him have found him to be both probing and courteous—in sum, very judicial in his temperament.

In response to questions before the Senate Judiciary Committee in 2000, Judge Lynch said:

> A judge who comes to the bench with an agenda, or a set of social problems he or she would like to solve, is in the wrong business.

As his record has shown, Judge Lynch is in the right business.

I have said many times that my criteria for selecting good judges are three: excellence—they should be top of the line legally; moderation—judges should not be too far right or too far left; and diversity.

As is somewhat known, despite the fact that President Bush and I clashed on Supreme Court nominees and some of these circuit court nominees, within New York and within the Second Circuit we had a very amiable arrangement where he would nominate two and then we would get—Senator Clinton and I would get to nominate one. We each had veto power on the other.

I am proud to say that Judge Lynch was one of my first choices to put on the district court bench. It was because of the recommendations of his peers, the lawyers with whom he practiced, and just how good the general legal community thought he was.

That stands true today. He still, more than ever before, meets the qualifications of excellence, moderation, and diversity.

There is no question of his excellence. He was first in both his classes at Columbia, undergraduate and law school—first, not even second or third. Pretty good. His opinions are scholarly, and one that was overturned by the Second Circuit was lauded by the panel as ''a valiant effort by a conscientious district judge.''

There is also no question that Judge Lynch is, in fact, a moderate. His impressively low reversal rate should give the lie to any argument that he is outside the legal mainstream.

Now, the rap on Judge Lynch in 2000 among those 36 who voted against him was that he would be an ''activist.'' This view rose from out-of-context outtakes from two law review articles he had written. I repeat now what I said then: In both of these articles, then-Professor Lynch expressed the moderate view that the Constitution cannot as a practical matter remain frozen in the 18th century—the Constitution should not be expanded but it must be interpreted.

To illustrate my point about why Judge Lynch should be accepted as a paragon of moderation, I want to read two quotes.

First:

> Text is the definitive expression of what was legislated.

Second:

> A text should not be construed strictly, and it should not be construed leniently; it should be construed reasonably, to contain all that it fairly means.

The second quote was written by Associate Justice Antonin Scalia. The first quote was from our nominee, Judge Lynch.

So the entirety of Judge Lynch's copious opinions and rulings bears out the conclusion that he does not intend to legislate from the bench. He has been the definition of law enforcing and justice seeking. He has ruled for the State against prisoners, but he has also ruled that the State must protect the due process rights of those it seeks to detain. He has sentenced defendants convicted of horrible crimes to life without parole, and he has also expressed concern when he thinks a sentence might be too long—while imposing the sentence in complete accordance with the law. He has issued complex and scholarly opinions in securities and antitrust cases. Judge Lynch imposed the sentence that was required by law.

In sum, Judge Lynch is excellent, and he represents moderation.

Now let me say a word about diversity. Judge Lynch obviously is not a nominee who fits this bill. But I want to note another kind of diversity that I believe deserves mention. Before he went on the bench, Judge Lynch sought out opportunities to be more than a smart professor living in an ivory tower. He spent 5 years in the U.S. Attorney's Office in the Southern District of New York as Chief of the appellate section and Chief of the Criminal Division. He worked as counsel to a prominent law firm. He took numerous pro bono cases. In short, he lived the life of a real lawyer while teaching and writing. Driven by his own conscience, he even registered for the draft during the Vietnam war rather than seek a college deferment. Very few do that. This is someone who has sought out a diversity of experiences which he now brings to the table as a judge.

I look forward to this new chapter in Judge Lynch's service to our country. I hope he will get a unanimous vote, or close to it, from the Members of this Chamber.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business.

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

HEALTH CARE REFORM

Mr. CASEY. Mr. President, as you can tell from the chart on my left, I rise today to speak about the issue that is probably the No. 1 challenge we face in the Congress today, which is debating and devising solutions for the improvement of our health care system in so many ways. I rise today to talk about some aspects of that and especially not only where we are headed in terms of focusing on both those with insurance and those without insurance but also to focus on some of the goals here.

From the beginning, both President Obama and Members of Congress have focused on a couple of priorities—first of all, to reduce costs. We cannot go forward with any health care bill that does not do that, and I think we will do that.

We have to reduce costs, but we also have to ensure choices. We have to continue to give the American people the kind of choice they should have a right to expect and give them a sense of a peace of mind in terms of what that choice will mean. We ought to make sure this bill, for example, leads to the following conclusion: You get the treatment you need from the doctor you choose. I think we can do that in the Congress.

Thirdly, I think we have to make sure, as we are controlling costs and ensuring choice, that we ensure quality and that we put both quality and prevention in the final bill. They are in the bill I voted for already this summer.

The Health, Education, Labor, and Pensions Committee, as people know, debated all summer, with hours and hours and hours of debate, accepting Republican and Democratic amendments, sometimes not agreeing, but we voted out a bill that did a lot of what I just talked about. It focused on making sure we are covering more Americans. It protected Americans who have coverage.

So many people, as the Presiding Officer knows—whether it is in the State of Illinois or the State of Pennsylvania or any State in the country—even those with insurance, are not secure, even those with insurance feel a sense of instability, a lack of control over their own destiny, sometimes because an insurance company says: We are going to deny you coverage because of a preexisting condition. Why have we permitted that? Why have we tolerated that year after year? Instead of just talking about preventing them from doing that, why haven't we literally made it illegal for an insurance company to do that? We are going to make sure this year we do not just talk about it but we legislate about it and make that part of our law.

So we will go through some of those issues, but the first thing I want to highlight is where we are headed if we do not do anything.

There are some people in Washington who, to be candid or blunt about it, want to scratch their heads for a couple more years or maybe 10 more years.

Here, as shown on this chart, is where we are headed by one estimation. The New America Foundation is the source for this information. But here we are in 2008. When you talk about the cost of an annual premium, OK, it is roughly—and actually we found out the other day that number is a little higher—we can say it is a little more than $13,000 for family coverage. If you look between 2008 and 2016—just 8 years in that estimation, and we are already into 2009—that premium will rise by more than 83 percent. Why should we allow that to happen when we know we can do something about it this year? So that is one way to look at this in terms of the cost of doing nothing.

Also, often people with insurance will say: Well, I have some problems with my insurance. I worry about a preexisting condition, I worry about exorbitant out-of-pocket costs, and I am glad you are working on that and I will support that part of the bill. But they say: Look, if I have coverage, I am worried about giving millions of more Americans coverage without some adverse effect to those who have coverage.

Well, let's look at this chart for a little bit of a discussion about this topic: families paying 8 percent surcharge on premiums. If we look at this chart, what this red or red-orange part of the chart shows is a $1,100 hidden tax to cover the cost of uncompensated care for the uninsured. So the idea that those with insurance right now are not paying for those without insurance is ridiculous. Fortunately, in Pennsylvania, that number is a little lower, but it is still 900 bucks. So the idea that somehow if we change the system, improve the existing system, build upon what works but improve the system, that somehow that is going to adversely impact in a cost sense those with insurance—the Center for American Progress did this research—this chart and others show if you have insurance today, you are paying for those without insurance. Right now you are paying for them. We know that right now.

So, if anything, broadening the number of Americans who have coverage will actually reduce costs. It will be one of the contributors, I should say, of reducing costs—not the only way but one of the ways we do that.

Let me go to the next chart which is a depiction in very simple colors, red and green, about what the existing system does adversely as it relates to women. There are a lot of things that insurance companies do today that we don't like and we have complained about, but now we can do something about it. One is a preexisting condition problem and another one is the out-of-pocket costs and another one is how often insurance policies definitively discriminate against some Americans.

This map shows in the orange or red section: gender rating allowed. In other words, insurance practices that lead to policies in States that result in discrimination against women. So you want this chart to show all in the green States where gender rating is banned.

What we would like to do with our legislation, one of the goals—and it is in our bill and in the bill we passed this summer, the Affordable Health Choices Act—is to make sure the whole country is green on this issue, green in the sense that we have banned gender rating; that an insurance company can't say, when they are trying to determine how they make up their policy, that if you happen to be a woman, a policy would discriminate against you.

Unfortunately, Pennsylvania is a State that has permitted this discrimination, along with all of these other States. So we ought to have a national standard. Very simply: No more discriminating insurance policies against women. It is that simple, folks.

What I voted for this summer in the bill we passed was this, along with other provisions. So that is something we shouldn't just talk about for another year or 2 or 5 or 10; let's do something about this now. Let's make this practice illegal this year, and we can do it with the legislation.

The next one is an enlarged version of some language. I mentioned preexisting conditions in my remarks today, and we are going to keep mentioning this because this is a reality for millions of Americans in the individual market, the people who have to go it alone. They are not part of the big pool of people getting insurance. They have to go it alone to get insurance. They are the ones who are often most adversely affected by preexisting conditions. Why should we tolerate that?

The other point about this chart is, I purposefully put legislative language on it because a lot of people here want to say: Well, this legislation and language gets complicated. Admittedly, some of it does, but this is pretty easy. This is in the bill we passed this summer. I will just read this one sentence. Anyone can understand this. This isn't some complicated legislative language:

> A group health plan and a health insurance issuer offering group or individual health insurance coverage may—

We know what they are; we know exactly what we are talking about here—

> not impose any preexisting condition exclusion—

That is in our bill—

> with respect to such plan or coverage.

Let's do it this year. Let's make it illegal for insurance companies to do this to an individual or to a family or to those who happen to be employees of a small business.

So some of this debate gets lost in detail, but this is very simple language taken right out of the bill.

Let's go to the next one and our final chart before I conclude. I am going to spend more time on this issue, but I just wanted to spend a couple of minutes on this issue.

What happens at the end of this road with regard to health care as it pertains to children, especially children who happen to be poor or children with special needs? What will happen? At the end of the road, when we pass a bill and send it to the President and he signs it—and that is what I hope will happen, of course—will poor children and children with special needs be better off or worse off? That is still a question. That is still an open question we are debating right now.

Children are different than those of us who happen to be adults. They are not smaller versions of adults; they are different. Their treatment needs are different. We have to give them different kinds of preventive care. In Medicaid, for example, we give what they call early periodic screening and diagnostic testing, known by the acronym EPSDT. We focus on the special needs of children and give them early diagnosis, early treatment. That is what I am talking about in general. So they aren't small adults. It seems like a simple concept, but we have to say it more than we do. It is clear they have different needs, particularly the ones who are the most disadvantaged. The poor are the ones who could potentially be a lot sicker with the threat of sickness and disease. We make sure they get the highest quality care throughout their childhood. That is a resolution I introduced as a statement of policy.

So we are going to continue to debate not just a question of bringing down costs—that is central to what we are trying to do—not just a question of quality, and not only the question of enhancing choice and giving people some stability over their own lives with insurance and those who don't have insurance, giving them some affordable choices—that is all important, and we are going to spend a lot more time on those questions, but another question we have to address is, what happens at the end of the road for poor children or children with special needs?

The rule ought to be very simple: No child in those categories, no child worse off. Four words: No child worse off at the end of this.

So we will have a lot more time to continue to debate the legislation and a lot of these important issues. I think the American people want us to act. They don't want us to just debate and not get something done.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

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

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

MISSILE DEFENSE

Mr. McCAIN. Mr. President, I rise today to express my deep disappointment with the administration's decision to cancel plans for fully developing missile defenses in Eastern Europe. This decision calls into question security and diplomatic commitments the United States has made to Poland and the Czech Republic. I believe it has the potential to undermine American leadership in Eastern Europe.

Given the strong and enduring relationships we have forged with the region's Nations since the end of the Cold War, we should not take steps backward in strengthening these ties. Yet I fear the administration's decision will do just that, and at a time when Eastern European nations are increasingly wary of renewed Russian aggression.

The administration's decision to abandon these sites comes at a time when the United States is in the midst of negotiations with Russia on reducing strategic nuclear weapons. Russia has long opposed the planned missile defense sites in Europe and has on numerous occasions tried to link reductions in offensive strategic nuclear arms with defensive capabilities such as missile defense. In fact, President Putin, on many occasions, has stated in very belligerent tones his opposition to this agreement that was already made between the United States and Poland and the Czech Republic.

The United States should reject the Russian attempt to further this argument and capitalize on these ongoing negotiations.

As rogue nations, including North Korea and Iran, push the nuclear envelope and work tirelessly to develop weapons capable of reaching America and its allies, we must aggressively develop the systems necessary to counter such belligerent efforts and enhance our national security, protect our troops abroad, and support our allies. Enhancing missile defense capabilities in Europe is an essential component to addressing threats we currently face and expect to face in the future. As Iran works to develop ballistic missile capabilities of all ranges, the United States must reaffirm its commitments to its allies and develop and deploy effective missile defense systems.

I wish to point out two important factors. The United States of America does not believe missile defense systems are in any way a threat to any nation. They are defensive in nature, and I believe they were a key component and factor in ending the Cold War.

Intelligence assessments apparently have changed rather dramatically since January 16. According to Eric Edelman, the Under Secretary of Defense for Policy under Secretary Gates during the Bush administration, intelligence reports on the Iranian threat as recently as January of this year were more troubling than what is being portrayed by the current administration. Mr. Edelman maintains that:

> Maybe something really dramatic changed between January 16 and now in terms of what the Iranians are doing with their missile systems, but I don't think so.

You know what. I don't think so either. I think the fact is that this decision was obviously rushed. The Polish Prime Minister, according to news reports, was called at midnight. The agreement was made and ratified by these countries after consultation, discussion, and a proper process. They were not even notified of this decision. The decision to abandon the missile defense sites in Poland and the Czech Republic came as a surprise to them.

I understand that administration officials were on a plane supposedly to arrive in Poland today. I might add that Members of Congress were also not briefed on this decision prior to reading about it in the newspaper. I was not informed. I didn't know what ''new technology'' was being recommended to be put in the place of the agreement. As short a time ago as August 20, the United States said:

> The United States is committed to the security of Poland and of any U.S. facilities located on the territory of the Republic of Poland. . . . The United States and Poland intend to expand air and missile defense cooperation—et cetera.

We all know the Iranian ballistic missile threat is real and growing. We all know the administration is seeking the cooperation and help of the Russians. Now we will see. Now we will see.

Why was this agreement rushed into—or the abrogation of an agreement? Why the abrogation of this agreement between the United States with Poland and the United States with the Czech Republic rescinded in such a dramatic and rushed fashion? We all know the Iranian ballistic missile threat is real and growing. How many times have the ''intelligence estimates'' been wrong dating back to and including the Cold War? As many times as they have been right, I tell my colleagues—whether it be their assessment about the war in Iraq or whether it be the capabilities of many of our adversaries, including the Korean buildup, which we have been consistently wrong on.

The last administration reached out to the governments of Poland and the Czech Republic and asked that they make what many at the time perceived as an unpopular agreement. Despite threats from Russia, both governments recognized the importance such a defense capability would provide to their citizens and to Europe as a whole and agreed to allow the United States to place ground-based interceptors in Poland and a midcourse radar site in the Czech Republic. What are these countries going to do the next time we want to make an agreement with them, in view of the way this decision was made and announced or, shall I say, made known to the media before they were even told about it. It will be very interesting to see what we get in return.

According to a Christian Science Monitor's global news blog:

> ''We see this as a pragmatic decision,'' says Pavel Zolotaryov, deputy director of the official institute of USA-Canada Studies, suggesting that internal U.S. factors mainly account for Mr. Obama's choice. ''Obama's sober approach is understandable, given the [economic] crisis, because this project would have given nothing but trouble.''
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> If it sounds like Moscow has already discounted this sweeping strategic concession from Washington, experts suggest that's because Russia's foreign policy establishment had been expecting such a decision, at least since Obama hinted that he might give up the missile defense scheme during his summit with Russian President Dmitry Medvedev in Moscow last July.
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> ''We've been getting signals since last Spring that made it seem almost certain that the missile defense plan would be set aside,'' said Fyodor Lukyanov, editor of Russia in Global Affairs, a leading Moscow foreign policy journal.

The Russians seem to have anticipated this decision. Unfortunately, the

Polish Government and the Czech Government did not. Members of Congress were certainly not informed of this decision until after reading about it in the media. That is not the way to do business. I think it sends the wrong signal to the Russians and to our friends and allies.

There are consequences with every decision. I believe the consequences of this decision may—albeit unintentionally—encourage further belligerence on the part of Russians and a distinct lack and loss of confidence on the part of our friends and allies in the word of the United States and the commitments of the United States of America.

I ask unanimous consent that articles in the Wall Street Journal and the Christian Science Monitor be printed in the RECORD.

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

[From the Wall Street Journal, Sept. 17, 2009]

U.S. TO SHELVE NUCLEAR-MISSILE SHIELD—DEFENSE PLANS FOR POLAND, CZECH REPUBLIC TO BE DROPPED AS IRAN ROCKET THREAT DOWNGRADED; MOSCOW LIKELY TO WELCOME MOVE

(By Peter Spiegel)

WASHINGTON.—The White House will shelve Bush administration plans to build a missile-defense system in Poland and the Czech Republic, according to people familiar with the matter, a move likely to cheer Moscow and roil the security debate in Europe.

The U.S. will base its decision on a determination that Iran's long-range missile program has not progressed as rapidly as previously estimated, reducing the threat to the continental U.S. and major European capitals, according to current and former U.S. officials.

The findings, expected to be completed as early as next week following a 60-day review ordered by President Barack Obama, would be a major reversal from the Bush administration, which pushed aggressively to begin construction of the Eastern European system before leaving office in January.

The Bush administration proposed the European-based system to counter the perceived threat of Iran developing a nuclear weapon that could be placed atop its increasingly sophisticated missiles. There is widespread disagreement over the progress of Iran's nuclear program toward developing such a weapon, but miniaturizing nuclear weapons for use on long-range missiles is one of the most difficult technological hurdles for an aspiring nuclear nation.

The Bush plan infuriated the Kremlin, which argued the system was a potential threat to its own intercontinental ballistic missiles. U.S. officials repeatedly insisted the location and limited scale of the system—a radar site in the Czech Republic and 10 interceptor missiles in Poland—posed no threat to Russian strategic arms.

The Obama administration's assessment concludes that U.S. allies in Europe, including members of the North Atlantic Treaty Organization, face a more immediate threat from Iran's short- and medium-range missiles and will order a shift towards the development of regional missile defenses for the Continent, according to people familiar with the matter. Such systems would be far less controversial.

Critics of the shift are bound to view it as a gesture to win Russian cooperation with U.S.-led efforts to seek new economic sanctions on Iran if Tehran doesn't abandon its nuclear program. Russia, a permanent member of the U.N. Security Council, has opposed efforts to impose fresh sanctions on Tehran.

Security Council members, which include the U.S. and Russia, will meet with Iranian negotiators on Oct. 1 to discuss Iran's nuclear program.

Current and former U.S. officials briefed on the assessment's findings said the administration was expected to leave open the option of restarting the Polish and Czech system if Iran makes advances in its long-range missiles in the future.

But the decision to shelve the defense system is all but certain to raise alarms in Eastern Europe, where officials have expressed concerns that the White House's effort to ''reset'' relations with Moscow would come at the expense of U.S. allies in the former Soviet bloc. ''The Poles are nervous,'' said a senior U.S. military official.

A Polish official said his government wouldn't ''speculate'' on administration decisions regarding missile defense, but said ''we expect the U.S. will abide by its commitments'' to cooperate with Poland militarily in areas beyond the missile-defense program.

Last week, Russian Foreign Minister Sergei Lavrov said he expected the Obama administration to drop the missile-defense plans. He said that Moscow wouldn't view the move as a concession but rather a reversal of a mistaken Bush-era policy.

Still, the decision is likely to be seen in Russia as a victory for the Kremlin. Russian President Dmitry Medvedev will meet with Mr. Obama at next week's meetings of the U.N. General Assembly and Group of 20 industrialized and developing nations.

Although a center-right government in Prague supported the Bush missile-defense plan when it was first proposed, the Czech Republic is now run by a caretaker government. A Czech official said his government was concerned an announcement by the White House on the missile-defense program could influence upcoming elections and has urged a delay. But the Obama administration has decided to keep to its original timetable.

European analysts said the administration would be forced to work hard to convince both sides the decision wasn't made to curry favor with Moscow and, instead, relied only on the program's technical merits and analysis of Iran's missile capabilities.

''There are two audiences: the Russians and the various European countries,'' said Sarah Mendelson, a Russia expert at the Center for Strategic and International Studies. ''The task is: How do they cut through the conspiracy theories in Moscow?''

The Obama administration has been careful to characterize its review as a technical assessment of the threat posed by the Iranian regime, as well as the costs and capabilities of a ground-based antimissile system to complement the two already operating in Alaska and central California. Those West Coast sites are meant to defend against North Korean missiles.

The administration has also debated offering Poland and the Czech Republic alternative programs to reassure the two NATO members that the U.S. remains committed to their defense.

Poland, in particular, has lobbied the White House to deploy Patriot missile batteries—the U.S. Army's primary battlefield missile-defense system—manned by American troops as an alternative.

Although Polish officials supported the Bush plan, U.S. officials said they had indicated their primary desire was getting U.S. military personnel on Polish soil. Gen. Carter Hamm, commander of U.S. Army forces in Europe, said Washington has begun talks with Polish officials about starting to rotate Europe-based American Patriot units into Poland for month-long training tours as a first step toward a more permanent presence.

''My position has been: Let's get started as soon as we can with the training rotations, while the longer-term stationing . . . is decided between the two governments,'' Gen. Hamm said in an interview.

For several years, the Pentagon's Missile Defense Agency has been pushing for breaking ground in Poland and the Czech Republic, arguing that construction must begin so the system would be in place to counter Tehran's emerging long-range-missile program, which intelligence assessments determined would produce an effective rocket by about 2015.

But in recent months, several prominent experts have questioned that timetable. A study by Russian and U.S. scientists published in May by the East-West Institute, an international think tank, downplayed the progress of Iran's long-range-missile program. In addition, Gen. James Cartwright, the vice chairman of the Joint Chiefs of Staff and an expert in missile defense and space-based weapons, said in a speech last month that long-range capabilities of both Iran and North Korea ''are not there yet.''

''We believed that the emergence of the intercontinental ballistic missile would come much faster than it did,'' Gen. Cartwright said. ''The reality is, it has not come as fast as we thought it would come.''

It is not an assessment that is shared universally. Eric Edelman, who oversaw missile-defense issues at the Pentagon as undersecretary of defense for policy in the Bush administration, said intelligence reports he reviewed were more troubling.

''Maybe something really dramatic changed between Jan. 16 and now in terms of what the Iranians are doing with their missile system, but I don't think so,'' Mr. Edelman said, referring to his last day in office.

There is far more consensus on Iran's ability to develop its short- and medium-range missiles, and the administration review is expected to recommend a shift in focus toward European defenses against those threats. Such a program would be developed closely with NATO.

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[From the Christian Science Monitor, Sept. 17, 2009]

RUSSIA'S RESPONSE TO U.S. MISSILE DEFENSE SHIELD SHIFT

(By Fred Weir)

MOSCOW HAS LONG OPPOSED A MISSILE SHIELD IN POLAND AND THE CZECH REPUBLIC. BUT THE U.S. SHOULDN'T EXPECT TOO MUCH IN RETURN

MOSCOW.—President Barack Obama's decision to shelve plans for a missile defense shield in Eastern Europe could be seen as a major concession to Moscow. But given years of vehement opposition to the controversial plan, Russian reaction to the move appears surprisingly lukewarm.

So what does it mean for U.S.-Russia relations?

There are indications that Russia might support tougher sanctions on Iran, and fresh START talks, as well as more cooperation with the war in Afghanistan. The Kremlin also expects the U.S. to back off on expanding NATO, say Russian analysts.

''We see this as a pragmatic decision,'' says Pavel Zolotaryov, deputy director of the official Institute of USA-Canada Studies, suggesting that internal U.S. factors mainly account for Mr. Obama's choice. ''Obama's sober approach is understandable, given the

[economic] crisis, because this project would have given nothing but trouble.''

If it sounds like Moscow has already discounted this sweeping strategic concession from Washington, experts suggest that's because Russia's foreign policy establishment had been expecting such a decision, at least since Obama hinted that he might give up the missile defense scheme during his summit with Russian President Dmitry Medvedev in Moscow last July.

''We've been getting signals since last Spring that made it seem almost certain that the missile defense plan would be set aside,'' says Fyodor Lukyanov, editor of Russia in Global Affairs, a leading Moscow foreign policy journal.

NEW ARMS DEAL NOW WITHIN REACH, BUT CONCESSIONS ON IRAN?

Mr. Lukyanov says the only predictable result of key importance is that negotiations for a new strategic arms reduction treaty to replace the soon-to-expire 1991 START accord are now likely to meet the December deadline for a fresh deal.

''Now we can be sure the new START agreement will be completed on time, because the vexing issue of missile defense and how it affects the strategic balance has been removed for the time being,'' he says. ''That's quite an important matter.''

But while Russian experts say the move can only contribute to a warmer dialogue between Moscow and Washington, they say no one should expect any reciprocal concessions from the Kremlin on issues of key concern to the U.S., such as Iran.

WHY RUSSIA HAS OPPOSED MISSILE DEFENSE

Washington has consistently argued since news of the proposed missile defense shield emerged in 2006 that it was intended to protect Europe and the U.S. from a rogue missile attack from Iran or North Korea and not to undermine Russia's strategic deterrent.

Moscow has retorted that those threats are merely theoretical, but Russia's dependence upon its aging Soviet-era nuclear missile force for its national security would be deeply affected if the American scheme were to go forward.

''Iran isn't going to have any long-range missiles in the near future anyway,'' says Alexander Sharavin, director of the independent Institute of Military and Political Analysis in Moscow.

''The U.S. evidently doesn't want to quarrel with Russia, now that Moscow is collaborating in such areas of importance to the U.S. as Afghanistan,'' where Moscow has enabled a resupply corridor through former Soviet territory to embattled NATO forces, and offered other forms of cooperation, he says.

RUSSIANS EXPECT ANOTHER U.S. CONCESSION—ON NATO EXPANSION

Mr. Lukyanov says ''it's possible'' Russia may be more pliable on the issue of tough sanctions against Iran, a measure it has strongly resisted in the past. He says that in a recent meeting with foreign policy experts, President Medvedev introduced a new tone by remarking on his contacts with Arab leaders who are deeply worried about Iran's alleged drive to obtain nuclear weapons.

''It may be that Russia will be more amenable, but this is a deeply complicated issue,'' he says. ''On Iran, and other regional conflicts, the differences between Moscow and Washington are deep, and that hasn't changed.''

Russian experts also say they believe the Obama administration will quietly set aside the other issue that has infuriated Moscow over recent years: the effort to expand NATO into the former USSR by including Ukraine and Georgia.

''I wouldn't expect any formal statements to this effect, but it's more or less clear that the issue of NATO enlargement is off the table for the time being,'' says Lukyanov.

POSTPONED, NOT CANCELED

So why isn't sunshine breaking and a new era of strategic accord dawning between Moscow and Washington?

''Nothing has been canceled, missile defense has just been postponed,'' says Lukyanov. ''For awhile this topic is off the agenda, but later it will return. So, for now the political situation may improve, but the underlying pattern of relations is unlikely to change in any basic way.''

And Russian hawks might see the dropping of the missile shield as weakness in Washington and press the Kremlin for even less compromise on key U.S.-Russia issues.

''I think the reaction of Russia's leadership will be positive on the whole,'' says Mr. Sharavin. ''But Russian hawks are very likely to find faults, and use this to build up their own positions.''

Who's the new right-wing prophet advising the Kremlin?

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

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. TESTER. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business for up to 10 minutes and that the time be charged against Senator LEAHY's time.

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

FINANCIAL REGULATORY REFORM

Mr. TESTER. Mr. President, I rise to say a few words about an issue that has been front and center in my office for the past 12 months—reforming regulation of our financial markets.

I am a family farmer. In my neck of the woods, farmers usually don't sit around and talk about economic policy and Wall Street financial institutions.

But I do guarantee you that where I come from, everybody talks about common sense and why so much common sense seemed to be missing when America's financial industry almost collapsed a year ago.

Everyone in my State felt the impact of what happened when Lehman Brothers caved in, when Fannie and Freddie hit a dead end, when AIG went belly up, and when we saw daily headlines about bank mergers and bailouts.

We all paid a price because of a few greedy actors on Wall Street and no refs on the playing field. That price was $700 billion of taxpayer money. I opposed that bailout because it rewarded the wrong people, and I was concerned about its ability to create a single job for our small businesses or help one family farmer. I think it was a bad deal for Main Street.

Last year, I asked Treasury Secretary Paulson—a former chairman of Goldman Sachs—about why this happened. His answer: ''I don't know.''

Where I come from, answers such as that aren't good enough, and terms such as ''too big to fail'' don't make any sense at all. It is time to make some changes.

After what we have been through over the past year, it is clear we need to reform the rules that keep America's financial industry on our side.

How? Well, it is going to take a lot of hard work, honesty, and common sense.

We have already started. I have teamed up with some of my friends in the Senate, from both parties, to cosponsor the TARP Transparency Act. Our bill will better track the money being used to get the financial industry back on its feet because it is taxpayer money and because taxpayers deserve no less.

Over the course of the past year, the Senate Banking Committee has held countless hearings on regulatory modernization. The administration has put forth a good-faith effort in working with Congress in the massive legislative overhaul. Government has worked with the financial industry and consumers to outline the goals of sweeping new financial regulatory reform.

I don't believe comprehensive financial reform will guarantee we are safe from financial crises, but, if done right, it can provide folks with adequate protection, it can bring confidence back into the marketplace, and it can minimize the risk of a financial meltdown similar to the one we barely weathered last fall.

Unfortunately, there are those who don't believe comprehensive reform should be on the front burner. They are now lobbying to protect their own self-interests, their own profits, and the status quo over consumer protection.

That is why we need to use this 1-year anniversary as a reminder to act now to protect consumers and investors, to close the loopholes in our regulatory framework, and to ensure that no company is too big to fail.

We must regulate derivatives; supervise financial companies that have been outside the scope of regulation, thereby creating a level playing field; ensure that there is strong supervision of all financial firms—not just depository institutions; build on the bipartisan success of the credit card legislation and pass mortgage reform to protect consumers; combine the numerous banking regulators into a more simple, streamlined, commonsense structure that is capable of supervising 21st century financial institutions; create an entity that will protect taxpayers from future financial corporate failures and minimize the need for further government action; increase capital standards to prohibit institutions from growing too big to fail; and we must ensure that those companies selling mortgages and securities keep some skin in the game by holding onto a portion of the underlying asset to keep them honest.

As we move forward with regulatory reform, I will be working hard to eliminate any unintended consequences, specifically as it relates to community banks and credit unions.

In Montana, when we talk about the banking industry, we are talking about community banks and credit unions. They are the good actors. They don't live on the edge. They didn't get into the Wall Street shenanigans that caused this mess.

Montana's community banks and credit unions serve their towns and communities reliably and safely. We are fortunate in Montana to not have had a bank fail in over 10 years. We also have one of the lowest rates of mortgage defaults and foreclosures in the Nation. We have had very few problems as it applies to predatory subprime loans.

The community banks and credit unions are not the problem. I wish to make sure we do not place excessive fees or regulatory burdens on these small but very important institutions, such as the community banks.

Over the course of the coming weeks and months, I plan to work with Senator DODD, the chairman of the Senate Banking Committee, and all my colleagues toward commonsense reform that will increase supervision and transparency of the financial markets, that will bring back investor confidence, and that will protect consumers and safeguard us from another situation where the greed of Wall Street penalizes hard-working families.

Earlier this week, the President spoke on Wall Street. He said:

> We are beginning to return to normalcy.

But he warned that:

> Normalcy cannot lead to complacency.

I couldn't agree more. That is what we in Montana call common sense.

Mr. President, I yield the floor. I suggest the absence of a quorum and ask that the time during the quorum call be charged equally to both sides.

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

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

Mr. SESSIONS. Mr. President, I wish to speak today on President Obama's nominee for the Second Circuit Court of Appeals—a court one step below the U.S. Supreme Court—Judge Gerard Lynch.

I have carefully reviewed Judge Lynch's background and his rulings as a district court judge. He is a Columbia law graduate and a former Federal prosecutor in the Southern District of New York. For the most part, he has been a very good district judge. He is exceedingly capable and a man of high integrity.

After reviewing his record and responses to questions from the Senate Judiciary Committee, I decided to support his nomination. I do so because I believe he will adhere to his judicial oath which requires judges to administer justice without respect to persons, to do equal right to the poor and the rich, and to faithfully and impartially discharge and perform their duties under the Constitution and laws of the United States and not above it.

In responses to my questions, Judge Lynch affirmed that circuit courts have no greater freedom than district courts to decide law outside the bounds of precedent, but they must apply the law and the precedent to which they are bound.

Judge Lynch also stated that a judge is to ''apply the law impartially'' and ''should not identify with either side'' in a case.

Even though I will support Judge Lynch and admire him and enjoyed meeting with him, I want to share some concerns about his rulings and some statements he has made over the years that I think are matters that ought not go unremarked before his confirmation.

The role of a judge is to follow the law regardless of personal politics, feelings, preferences, or ideology. I think, for the most part, he has done that in his cases.

One case that is troubling, however, is U.S. v. Pabon-Cruz in which Judge Lynch attempted to get around the jury process and the sentencing process because he believed a mandatory minimum sentence required by Congress of 10 years for a conviction of receiving and distributing child pornography was unduly harsh.

He announced that he would tell the jury about the penalties in the case, which is not appropriate. In its order prohibiting Judge Lynch from informing the jury about what the punishment would be in the case, the Second Circuit, on which he now seeks to sit, expressly stated that Judge Lynch's ''proposed jury instruction regarding the penalties the defendant faces if convicted is a clear abuse of discretion in light of binding authority.''

Judge Lynch disagreed with the Second Circuit's decision, calling it a ''mistaken conclusion.'' Judge Lynch clearly believed he had the right to ignore precedent and established law and inform the jury about the penalties that were applicable upon their verdict of guilty so that the jurors, in effect, would have an opportunity to ignore the law and choose not to apply it because he did not think the penalty was fair, apparently.

I am disappointed by the fact that Judge Lynch appears to believe this sentence was inappropriate, but more importantly, that he should have been allowed to invite jury nullification, which is, in effect, to say to a jury: You don't find the defendant guilty if you think the punishment is inappropriate.

In response to one of my written questions, Judge Lynch said that while he accepts the ruling of the Second Circuit, he continues to believe his instincts were correct. He stated:

> The rationale for this decision—

Of the Second Circuit which reversed him—

> which I fully accept, in light of the ruling of the Second Circuit, was erroneous—was that unlike most cases in which the jury fully understands the seriousness of the crime charged, in that case the jury may have misperceived the relative seriousness of the two overlapping charges in the case.

Judge Lynch's actions in that case are especially disconcerting when considered in light of his written remarks criticizing the textualist approach to constitutional interpretation.

In a 2001 speech on the Supreme Court's decision in Apprendi v. New Jersey, Judge Lynch stated:

> I would like to welcome—

Talking here about Justice Scalia and Justice Thomas—

> also to a more realistic, more flexible, and in the end more honest way of protecting the constitutional values they share.

Judge Lynch, in effect, endorsed this flexible judicial philosophy and advocated it previously.

Concern over his statements in previous years contributed to my vote against his nomination to the U.S. District Court on that occasion.

In a 1997 law review article entitled ''In Memoriam: William J. Brennan, Jr., American''—that is, of course, Justice William Brennan for whom he formerly clerked—Judge Lynch admonished the successors of Justice Brennan that they must also engage in constitutional interpretation ''in light of their own wisdom and experience and in light of the conditions of American society today.''

In that same article, Judge Lynch stated he personally believed it was a ''simple necessity'' that the Constitution ''be given meaning for the present.'' Judge Lynch's praise for Brennan's ''present-day meaning'' approach included the opinion that Justice Brennan's ''long and untiring labor to articulate the principles found in the Constitution in the way he believed made most sense today seems far more honest and honorable than the pretense that the meaning of those principles can be found in eighteenth- or nineteenth-century dictionaries.''

So I have a problem with that speech from 1997 and that strong statement of adherence to the doctrine that Justice Brennan was the foremost advocate of a living constitution and that words don't have fixed meanings; that you can make them say what you want them to say to affect the result you think is appropriate today.

The Constitution is a contract with the American people. We have every right to amend it through the amendatory process, but judges don't have a right to amend it based on what they perceive it to mean. Based on what? What information have they received that makes them think they have a better idea of what the Constitution ought to mean than how it has been interpreted for 200 years?

This is a serious matter because judges are unelected. They have a lifetime appointment, and we give them that because we want unbiased, objective analyses. But it doesn't mean they are empowered to update the Constitution to make it say what they would like it to say today. They are not empowered to do that. In fact, it erodes democracy when they do that because the elective branches, those of us in

this Senate, are accountable. Judges aren't accountable.

Another of Judge Lynch's cases that bears mention is United States v. Reyes. In that case, a police officer asked a defendant drug dealer, who had not yet been read his Miranda rights, whether he had anything on him that could hurt the officer or his field team. Even though the defendant had not been frisked, Judge Lynch concluded the defendant was the subject of a custodial interrogation under Miranda, and that before the police officer could ask whether he had anything to endanger the officers, he had to warn him of his Miranda rights. As a result, Judge Lynch excluded from the record statements that the defendant made at that time which implicated him in the crime.

The Second Circuit—the circuit which he will now serve on—reversed Judge Lynch, holding that the public safety exception was in fact applicable and that the cases Judge Lynch had relied upon in his ruling were distinguishable. The court noted that drug dealers often have hypodermic needles or razor blades on their person that could pose a danger to police officers. Additionally, the defendant was not handcuffed at the time of the arrest and could have reached for a concealed weapon. The Second Circuit also noted that the questions asked by the officer were ''sufficiently limited in scope and were not posed to elicit incriminating evidence,'' and the police ''cannot be faulted for the unforeseeable results of their words or actions.''

Judge Lynch has also advocated that Miranda warnings be administered for searches, which has never been the case. In a symposium commentary, Judge Lynch proposed a Miranda-type rule for searches that would invalidate consents to search unless the party whose consent is sought is first advised that he or she has the constitutional right to refuse such consent.

Well, Miranda was never required by the Constitution. It was a prophylactic protective rule the Court conjured up. Somehow the system has survived it, but it has done some damage in terms of not getting the kind of admissions and confessions you might otherwise get. That is just a fact. At any rate, to expand that now to searches, which has never been done, I think is an unhealthy approach.

You might say: Well, theoretically, if you are going to do these Miranda interviews you could do it on searches. But I would just note that Miranda itself is a protective rule, not a mandated constitutional rule.

I mentioned the foregoing issues because they are of great concern to me. It appears, notwithstanding, in the vast majority of his cases, Judge Lynch has been a very careful judge who has followed the law. He has stated that he understands that circuit judges are ''bound by Supreme Court and prior circuit precedent, and their job is to apply, fairly and accurately, the holdings and reasoning of such precedent.''

Given his commitment to do that, I will vote for him, and I hope he will continue his excellent service on the bench, but that he will interpret the law as written and will refrain from imposing personal views in his decisions.

It is unfortunate, and I am concerned also, that the President, in his nominations, is moving a number of people for the Federal bench that are clearly activists. Many of them don't have the length of time on the bench that Judge Lynch does, or his skills as a judge, frankly, and it is causing us some concern, and we will have some real debate about it.

The nomination of Judge David Hamilton for the Seventh Circuit Court of Appeals raises that issue and concern with me. The White House has said it intended to send a message with his appointment, and I would say that it did. Judge Hamilton's appointment is significant. Instead of embracing the constitutional standard of jurisprudence, Judge Hamilton has embraced President Obama's empathy standard. Indeed, he said as much in his answers to questions for the record following his confirmation hearing in the Judiciary Committee.

He rejects the idea that the role of a judge is akin to that of an umpire who calls balls and strikes in a neutral manner. Rather, he believes a judge will ''reach different decisions from time to time . . . taking into account what has happened and its effect on both parties, what are the practical consequences.''

Judge Hamilton also appears to have embraced the idea of a living constitution. The last time I was at the Archives Building, I saw a parchment from 1789—not breathing. It is a document. It is a contract. It guarantees certain rights to every American, and judges aren't empowered to rewrite it, to make it say what they think it ought to say today.

In a speech in 2003, Judge Hamilton indicated a judge's role included writing footnotes to the Constitution. When Senator HATCH questioned him about these comments in a follow-up question, he retreated somewhat, but then gave a disturbing answer to the next question about judges amending the Constitution or creating new rights through case law and court decisions. This judicial philosophy has clearly impacted Judge Hamilton's rulings during his time as a district court judge. He has issued a number of controversial rulings and has been reversed in some noteworthy cases.

For example, he ruled against allowing a public, sectarian prayer in the Indiana State Legislature and was reversed by the Seventh Circuit.

He ruled against allowing religious displays in public buildings and was unanimously reversed by a panel of the Seventh Circuit.

He blocked the enforcement of a reasonable informed consent law dealing with abortion matters for 7 years. He continued to block enforcement of that law and was eventually firmly and forcefully overruled by the Seventh Circuit for being in violation of the law.

Judges, the State, and other people spent all kinds of money, and attorney generals of the State spent money and time and effort to litigate these matters, and finally winning, but, in effect, the people of the State, for 7 years, were unable to enforce a constitutional statute their duly elected representatives had passed.

That is the power of an unelected Federal judge sometimes, and we need to be sure judges who go on the bench understand they are not allowed to do that. They are supposed to be a neutral umpire. If the case law and the Constitution say this is a good statute, they need to affirm it whether they like it or not, whether they would have voted differently or not. If he wants to be in the legislature and vote on the statutes, let him seek that office.

A Federal judge must be able to dispense rulings in a neutral fashion so the emblem that hangs over the Supreme Court, which has been embraced by the American people—equal justice under law—can be carried out in every aspect of a legal proceeding. A judge must put aside political views which may be appropriate as a legislator, executive, or an advocate, and interpret the law as it is written. He must keep his oath to uphold the Constitution first and foremost.

As I have said before, the Constitution is a contract between the American people, especially in a government of limited powers that is established by the people. It is a judge's duty to abide by the Constitution and protect and defend it and all the laws duly passed by Congress that are consistent with that Constitution. We have preserved our Nation well by insisting that our judiciary remain faithful to the plain and simple words of the Constitution and the statutes involved.

So, Mr. President, I am impressed with the skill, the legal ability of Judge Lynch, whose nomination is before us today. I have reviewed his record carefully. I have listened to his answers. I have seen some of his speeches. In a few cases, they cause me concern. But I think giving deference—and appropriate deference—to the President's nomination, he should be confirmed. I will ask my colleagues to support the confirmation.

But I want to say that all of us in this body, as well as judges, have a duty to preserve and defend our Constitution. You can erode the Constitution in a number of ways, and one way it can be changed and altered impermissibly is when judges redefine the meaning of words. So when a judge says we shouldn't resort to 18th century dictionaries, that makes me nervous. What does that mean? You just give a new definition to the word, the one that people ratified—the amendment they passed and ratified, which

had a certain meaning and was understood to have that meaning? Now that you are on the bench, and you think it shouldn't be enforced that way, and you would like to see a different result, you just sort of amend it or write a footnote to it? I don't think that is good judicial policy, and I feel an obligation—I think a number of us in this Senate do—to confirm good judges—men and women of character and ability and faithfulness to our laws and Constitution—but also raise the concerns that we have and to use every bit of our ability and strength to oppose nominees who won't be faithful to those high ideals that have made us a nation of laws and made us prosperous and free.

I thank the Chair, and I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. MCCASKILL). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

TRANSPORTATION APPROPRIATIONS

Mr. DEMINT. Madam President, I wish to speak to an amendment of mine that is to be on the floor on the transportation bill in a few minutes. It is an amendment that would cut funding to a particular airport in Pennsylvania. I wish to discuss why we are targeting this particular cut.

As all of us know, all over America for the last several months, millions of Americans have come out to TEA parties and townhalls, expressing concern and even anger over the level of spending and borrowing and debt we are incurring here in Congress; the concern about all the new taxes we are talking about; the takeover of everything from General Motors to insurance companies. People are concerned, I think for a lot of good reasons.

The question is now, particularly after the hundreds of thousands of people gathered in front of the Capitol last Saturday from all over the country, expressing many of those same concerns: Is anybody listening? Is anyone here listening?

It reminds me of a couple of weeks ago when my 2½-year-old grandson was spending the night with my wife and me. He was sleeping in another room, and we have these intercoms that everyone knows about. He knows about the intercom and how it works, so when he got up in the morning, as usual about 6:30 or something, he said: I am up. Is anybody home?

He kept saying: Is anybody home? Is anybody home? I knew he was going to keep saying it until I got up and went in and got him up.

I think that is the question Americans are asking us here in Congress: Is anybody home? A lot of people last weekend, when I was here, said: Keep speaking for us. Someone has to speak for us. These were not mobsters, they were not the right wing. They were Americans, moms and dads with kids in strollers, grandpas and grandmas, here from all over the country, of all political parties, who know enough to say we cannot keep spending and borrowing, and the more we spend, the more waste and fraud there is.

All of us here seem to agree, especially at campaign time: Oh, we need to cut out the waste and fraud. But no matter what we bring up to cut, even if we pick the most egregious waste the Government Accountability Office comes up with every year and says these are the most wasteful and inefficient programs, we can put them on the floor of the Senate for a vote and we cannot cut them.

Where do we begin, when all we seem to do, week after week, month after month, year after year, when all of us come in from all around the country and for every problem we see we have a new government program or an earmark or something that is supposed to fix it? Everything adds to the deficit. We never make those tough decisions about cutting anything.

My amendment actually cuts something. It was not my invention. I have learned about it over countless television documentaries on the Congressman John Murtha Airport in Johnstown, PA. It is a small airport that over the last 20 years has received $200 million in taxpayer funds. This is an airport that only has 3 flights a day, an average of a total of 20 passengers a day. All of those three flights come to Washington and they are always mostly empty. The people who buy the tickets spend about the same amount per ticket as the taxpayers' subsidy for those tickets.

Earlier in the year, after we passed the stimulus package, another $800,000 went to this airport to pave the alternate runway that is seldom used. After I brought up this amendment to discontinue funding—and I want to make this clear; this is on this bill, the transportation bill, and it only discontinues funding for 1 year. It is not permanent. It does not discontinue any funding related to defense or the military, so the National Guard and others continue to use it. The Defense Department can spend whatever they want on this airport. It is just that the Department of Transportation cannot spend any more money to subsidize air traffic from this airport.

It also does nothing to cut any safety funds for air traffic control. It is a couple of paragraphs that say enough is enough, this airport has received an inordinate amount of money. It has equipment it doesn't even use, millions for radar equipment that is not even staffed. Again, 3 flights a day, only to Washington, DC, with less than an average of 20 passengers a day. Most of the time there are more airport security people in this airport than there are passengers.

This is not some partisan attack. In fact, if you will remember, the bridge to nowhere, which was a Republican project, was exposed by Republicans. It helped America see an example of waste and abuse. That is what this amendment is about. It is not an attack on any party or any State, it is just an example that has been brought to light by countless media sources all over the country of us wasting money—not just one time but year after year.

If my amendment is not agreed to, another $1.5 million of subsidies will go to this one airport because their Congressman likes to fly back and forth from a local airport. Many Americans have to drive an hour or two to get to an airport. Folks in Johnstown could drive an hour to Pittsburgh Airport if the tickets were too expensive from Johnstown. This is not a particular attack on a Congressman or a State or community. It is a beginning. It is a demonstration that here in the Senate we get the message. We are listening. We are actually home and we are going to speak for those millions of Americans who say enough is enough, we cannot keep spending and borrowing and creating debt.

For every dollar we spend here, about half of it now is borrowed. We are actually on our knees begging countries such as China to loan us some money so we can pay some of the debt that is coming due. Yet we keep creating cash for clunkers and ''Fannie Travel,'' which is a travel promotion agency we created a couple of weeks ago. Now we are passing a spending bill that is about 23 percent over what it was last year. At a time with down economics, Americans out of jobs, we are increasing spending that much.

With this amendment we are saying we can make a tough decision. We can begin the process of starting to cut waste and fraud. But the reason so many people are going to vote against this amendment is there is a code here: I will support your spending for your State if you will support mine. I will not mess with the spending in your State if you won't mess with mine. We have been doing it for years, so we have been adding earmarks and projects in all of our States, supporting each other, and the budget and the spending get bigger and bigger and no one has the courage to say no, we have to stop.

A few of us did on the bridge to nowhere. Thanks to millions of Americans saying you are right, we were able to stop that one project. But we are still spending like there is no tomorrow.

I am asking my colleagues to agree we can cut one thing, one thing that is obviously wasteful and unfair. It is not fair to ask taxpayers all over the country to subsidize half of every ticket that is bought in a little airport in Johnstown, PA. They are not helping all the other Americans around the country or all the other small airports. Certainly small general aviation airports have gotten Federal funds but nothing to this degree.

We are not interfering with the general aviation function of this airport at all or any military use. We are just going to stop for 1 year subsidizing the tickets and hopefully helping America to focus on part of our problem here.

Part of correcting a problem is admitting you have one. I don't think we have done it yet in this Senate. My hope is on this vote a majority of the Senators will step up and say we do have a problem and this is one amendment where we can show we are beginning to turn it around. I encourage all my colleagues to vote for this amendment to cut funding for 1 year, at least cut these subsidies and at least demonstrate to America that somebody is home.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. MURRAY. Madam President, in a few short minutes we are going to be going to a series of votes, including a number of them on the transportation and housing bill that has been before the Senate for a week now. I want to take a few minutes to remind all of our colleagues about the importance of this bill that we will be passing here shortly this afternoon. This is a bill that has broad bipartisan support because it addresses some very real housing and transportation needs of families in every region of this country. We worked very hard with our colleague, Senator BOND, my ranking member, who has been amazingly great to work with this week. We faced some real challenges with our bill this year but together we made some important infrastructure improvements, including providing over $75 billion for the Department of Transportation to support continued investment in our transportation infrastructure.

It includes $11 billion for public transit and $1.2 billion to invest in inner-city and high-speed rail.

This bill also supports the FAA's efforts to develop its next-generation air transportation system to support projected growth in air travel in coming years. It also invests $3.5 billion for capital improvement at airports across the country.

The bill provides nearly $46 billion for the Department of Housing and Urban Development, including $100 million for HUD's housing counseling program that will help families who are facing foreclosure today to stay in their homes. The bill also provides more than $18 billion for tenant-based rental or section 8, including an increase of over $1 billion for the renewal of section 8 vouchers.

It also provides increased funding for the operation of public housing for a total level of $4.75 billion, to make sure our Nation's low-income families, which are also, as we all know, among the hardest hit in these tough economic times, continue to have access to safe, affordable housing.

The bill includes $75 million for a very important program I worked on with Senator BOND, the joint HUD Veterans Affairs Supportive Housing Program. This is extremely important to our Nation's veterans. It will provide an additional 10,000 homeless veterans and their families with housing and supportive services.

The bill also addresses the needs of some of our most vulnerable citizens, by providing increased funding to support affordable housing for the elderly, disabled, those suffering from AIDS, and the Nation's homeless.

Finally, the bill provides almost $4 billion for the Community Development Block Grant Program to support investments in public infrastructure, housing rehabilitation, and public service, assistance that is critical to our States and our local governments right now.

In summary, this bill provides assistance to those who need it most, and it directs resources in a responsible and fiscally prudent way. It will help our commuters, it will help owners, it will help the most vulnerable, and it will help our economy.

I hope all Senators will support the bill when we move to the final vote here shortly this afternoon, after we consider several amendments. Before I close, I do wish to take, again, a moment to thank my partner and friend, Senator BOND, whom it has been a pleasure to work with throughout this process, as he and I go to conference now to work hard to make sure we find the differences and fix the differences between us and the House so we can get this bill to the President.

I most importantly wish to thank all our staff, from the floor staff who have been so generous with their time and help as we have worked through this, to all the staff who worked on the transportation and housing subcommittee, including John Kamarck, Ellen Beares, Joanne Waszczak, Travis Lumpkin, Grant Lahmann, Michael Bain, Dedra Goodman, and Alex Keenan, our new staff director on transportation who has done an excellent job, and especially Matt McCardle and Mike Spahn for all their efforts during floor consideration.

I am pleased we were able to consider and debate so many amendments and have produced a strong bill. But I would be remiss if I did not single out and thank two members of our staff, Meaghan McCarthy and Rachel Milberg, for all the outstanding efforts they made over the past several months under very trying circumstances late at night working so diligently.

I wish to especially thank them for all the work they have done to assemble this bill and write the report. I know it was a daunting challenge. I am so grateful to them for all the extra effort they have had to go through under some very trying circumstances. They have done an excellent job. They are a delight to work with.

With that, I see that my ranking member is on the floor. I wish to, again, thank him for being a great partner and for all his help and support to get this bill to the floor today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, the real kudos and plaudits go to my colleague, the chair, Senator MURRAY, for having worked this through.

It is also a very interesting and challenging measure. But this year, we have advanced a bill, we have had lots of amendments, we have adopted some on strong bipartisan votes. I think this is a great tribute to the way she has worked with us closely on the committee and with the cooperation of all parties on the floor.

This is a bill in which many people have good ideas, and, as I said, we voted on and took a few of them. But I join Senator MURRAY in thanking her staff: Alex Keenan, Meaghan McCarthy, Rachel Milberg, Joanne Waszczak and Travis Lumpkin for their work. They have worked very closely with us.

Thanks for the hard work on my side to Ellen Beares and Jon Kamarck. The staff contributed. And also the work of the newest member of our team who came in at a time when we were badly understaffed, Dedra Goodman. But a very special thanks to Matt McCardle for his leadership and masterful management on the floor.

This was due to a lot of unforeseen circumstances. There were lots of times when he had to carry the load, and he also did it with good humor. When I was frazzled and confused about where things may be going, Matt had it under control, and he did a truly outstanding job.

Again, I thank our colleagues for allowing us to proceed with this bill. We did not plan on being here this the eighth day, having started last Thursday. But we are very optimistic that this bill can emerge from conference as a freestanding bill and be adopted by this body. I do not want to see this wind up in an ''ominous'' appropriations bill that does not reflect the hard work that went into it. When our work goes into what they call an omnibus, what I call an ''ominous,'' appropriations bill, strange things happen to it. We hope we can work this bill and keep it together as crafted. It is a critical piece of legislation.

It has vitally important safety needs for transportation, particularly in aviation. It continues, although not as robustly as I would like, the development of more transportation infrastructure. There are badly needed elements in the housing part of the bill. We have to continue housing for those people who have assisted housing, public housing authorities, particularly in this economic downturn, when so many

people are feeling the pinch, special needs from the disabled, the elderly, to veterans, who have particularly been well served by the veterans assisted in supportive housing that we have provided.

But also, as I have warned many times before, the FHA program is a high-risk program that could subject us to billions of dollars being thrown on the taxpayers' credit card. And this bill provides resources for HUD to get up the IT systems it needs, to get the people in place. It provides for more oversight. It provides increases for the inspector general to doublecheck to make sure the predatory lending which inflicted the entire economy does not transport itself into FHA-supported housing.

So we do have some more amendments. And we look forward to working on those this afternoon. We thank all our colleagues for letting us come this far. We hope to get it passed and get these badly needed appropriations enacted into law.

AMENDMENT NO. 2403, AS MODIFIED

I ask unanimous consent that the McCain amendment No. 2403 be modified with the changes at the desk.

The PRESIDING OFFICER. As in legislative session, without objection, it is so ordered.

The amendment (No. 2403) as modified is as follows:

AMENDMENT NO. 2403, AS MODIFIED

On page 318, between lines 11 and 12, insert the following:

SEC. 2_____. None of the funds made available by this Act may be used to carry out the Brownfields Economic Development Initiative program (including with respect to any individual property described on page 138, 139, or 141 of Senate Report No. 111–69) administered by the Department of Housing and Urban Development.

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

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

## LEGISLATIVE SESSION

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

## TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—Resumed

The PRESIDING OFFICER. The clerk will report the bill.

The assistant bill clerk read as follows:

A bill (H.R. 3288) making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

Pending:

Landrieu amendment No. 2365, to amend the Disaster Relief and Recovery Supplemental Appropriations Act, 2008.

McCain modified amendment No. 2403, to prohibit the use of funds to carry out the Brownfields Economic Development Initiative program administered by the Department of Housing and Urban Development.

DeMint amendment No. 2410, to limit the use of funds for the John Murtha Johnstown-Cambria County Airport.

Vitter modified amendment No. 2359, to prohibit the use of funds for households that include convicted drug dealing or domestic violence offenders or members of violent gangs that occupy rebuilt public housing in New Orleans.

Kyl motion to commit the bill to the Committee on Appropriations, with instructions to report the same back to the Senate forthwith with Kyl amendment No. 2421 (to the instructions on Kyl motion to commit the bill), relating to the American Recovery and Reinvestment Act.

AMENDMENT NO. 2365

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes evenly divided for a vote with respect to the Landrieu amendment.

Who yields time?

Mrs. MURRAY. Madam President, it is my understanding that this amendment is accepted on both sides. I urge a voice vote.

Mr. BOND. Madam President, nobody has advised us of objections on our side.

Mrs. HUTCHISON. Madam President, I support the Landrieu amendment.

The year 2008 witnessed numerous devastating disasters: severe wildfires in California, floods in the Midwest, and the one-two punch of Hurricanes Gustav and Ike along the Gulf Coast.

Congress responded last fall by passing a natural disaster supplemental, which in addition to providing necessary FEMA and SBA funding, provided $6.5 billion in community development block grants to support recovery.

Unfortunately, the language included a restriction that has impaired these impacted communities' ability to rebuild.

This amendment removes that restriction, providing flexibility for these funds to be used to their greatest impact in the community, helping these communities get back on their feet as quickly as possible.

Without this amendment, many communities will be unable to balance their budget priorities, jeopardizing critical projects in the recovery process, or worse yet, leading to the abandonment of projects altogether.

Communities across this Nation have been greatly impacted by natural disasters over the past several years, including the State of Texas. Tax bases have been decimated and many communities are still struggling to recover. These devastated communities want to be able to stand on their own; however, they don't currently have the resources to do so. By providing maximum flexibility of vital Federal funds, as we have for previous disasters, we remove one more barrier from their way on the road to recovery.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 2365) was agreed to.

Mrs. MURRAY. I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table. The motion to lay on the table was agreed to.

AMENDMENT NO. 2359

The PRESIDING OFFICER. The pending business is amendment No. 2359, the Vitter amendment.

The Senator from Louisiana.

Mr. VITTER. Madam President, this amendment is very simple and straightforward. It simply says that no public housing assistance will be granted to anyone who is convicted of a crime involving drug trafficking, not simple possession but distribution, et cetera, or being a member of a violent gang. These are serious adult offenders. I don't believe we should use taxpayer funds with housing assistance, particularly in public housing projects, in that manner. It specifically focuses on New Orleans, LA, only New Orleans, where we are pouring massive amounts of Federal dollars to rebuild public housing projects in a fundamentally different, better way after Katrina, ridding those projects of the crime problem which had previously been embedded there. It is very important in terms of that recovery.

I reserve the remainder of my time.

Mr. DODD. Madam President, I rise in opposition to amendment No. 2359. Our colleague Senator LANDRIEU spoke at length last night about the reasons she opposes this amendment, which is targeted to her city of New Orleans.

I am here as the chairman of the Banking Committee, to share with you some of the reasons I believe this legislation could have benefitted from a more thorough vetting through the authorizing process.

While superficially an attractive effort to be tough on crime, the proposed amendment is likely to have serious unintended consequences while providing no apparent increase in public safety. The proposed amendment is overly broad, burdensome, and would present great difficulties for Federal, State, and local administrators to actually implement.

Representatives of public housing agencies have raised concerns about implementing this legislation. Advocates for low income families oppose this amendment.

Needless to say, we want to ensure the security of families receiving housing assistance. That is why current law already provides tools for denying or terminating assistance for drug-related and violent crimes and activities in public housing and section 8 assistance, which appears to be the amendment's objective.

I have other concerns about things that may or may not have been the objective of the amendment.

This provision only applies in New Orleans, raising questions about equal protection and the unfortunate possibility of federal law that changes from city to city.

It is a vast expansion of current Federal law. While Senator VITTER describes the amendment as applying to