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Senate

The Senate met at 9:31 a.m. and was called to order by the Honorable MARK L. PRYOR, a Senator from the State of Arkansas.

PRAYER

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

Let us pray.

God of wonder beyond all majesty, You are worthy of our praise. Thank You for the marvel of creation that surrounds us and for Your creative presence that empowers us. Let Your presence unsettle and inspire us, as we seek to live lives of praise and thanksgiving.

Lord, unsettle us when our dreams come true because they are too small, as you inspire us to dare more boldly and attempt to accomplish great things in Your name.

Today, show Your glory, Your justice, and Your peace through the work of our lawmakers. Inspire their hearts to thirst for Your wisdom, preparing them to navigate through life's inevitable challenges and setbacks. Restore in them the wholeness that comes from seeking Your glory in everything they think, say, and do.

We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK L. PRYOR led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 5, 2009.

To the Senate:

Under the provisions of rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK L. PRYOR, a Senator from the State of Arkansas, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will proceed to a period of morning business for 2 hours. During that period of time, Senators will be allowed to speak therein for up to 10 minutes each. The majority will control the first hour and the Republicans will control the second hour.

Following morning business, there will be 40 minutes of debate with respect to H.R. 2847, the Commerce, Justice, Science appropriations bill. Upon the use or yielding back of that time, the Senate will proceed to a cloture vote on the committee-reported substitute amendment to the bill.

A number of amendments are pending to the bill. If cloture is invoked, we would dispose of any pending germane amendments.

We also expect to reach an agreement today to consider the nomination of Andre Davis to be a circuit judge for the Fourth Circuit. That nomination, we are told, will require a rollcall vote.

We will begin consideration of the Military Construction Appropriations matter, which is important, upon completion of the Commerce, Justice, Science appropriations bill.

Senators should expect the first vote at around 12:15 or 12:30 today. That will be a vote on cloture on the CJS appropriations bill, and additional votes are expected throughout the day.

SENATE BIPARTISANSHIP

Mr. REID. Mr. President, one thing this body needs is more bipartisanship. The Presiding Officer has done a wonderful job in reaching out during his tenure as a Senator to other Senators, Democrats and Republicans. Legislation is the art of compromise, consensus building. The Presiding Officer certainly has filled that role very well. I want to spend a few minutes talking about this.

We have had some dramatic developments take place in the last several weeks. That is as a result of two men who are working very hard to come up with something that would be landmark legislation. We are working so hard on health care reform. It has been extremely difficult to arrive at the point where we are. But we are further now than we have ever been since 1948 in coming up with health care legislation that will make health care more available for all Americans.

Switching from health care to energy and the problems we have with the warming of the Earth, I have known JOHN KERRY for a long time. We were both Lieutenant Governors. We came to the Congress the same year. As a relatively new Senator, I was on a select committee he cochaired, dealing with prisoners of war and those missing in action. I noticed at that time what a fine leader and fine legislator JOHN KERRY was. As a result of his good work with others on that committee, including Bob Smith of New Hampshire, we came up with an outstanding work product in that committee. JOHN KERRY, as we all know, became the Democratic nominee for President of the United States and came very close to being elected President. But he put that aside and went on

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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to become the fine Senator he is. He is filling that role now as chairman of the Foreign Relations Committee. He has worked so hard on doing something on a bipartisan basis to move forward on this most important legislation. With what he has done in reaching out to Republicans—I say that in the plural—we have had one brave Republican step forward to work with him, LINDSEY GRAHAM. I first saw LINDSEY GRAHAM in action when we had the impeachment trial of President Clinton. He was one of the impeachment officers from the House. He was very good. I learned at that time what an outstanding trial lawyer he had been in South Carolina. I recognized that from the presentation he made right in the well of this Senate.

As we learned with the work we completed dealing with unemployment insurance, net operating loss, first-time home buyers, it only takes one person to break from the pack, for lack of a better description, to develop bipartisanship. That was done along with Senator ISAKSON from Georgia. On this most important issue dealing with climate change, it is LINDSEY GRAHAM from South Carolina. He is bravely stepping forward.

What Senators KERRY and GRAHAM have done is quite remarkable. They have reached out to the coal interests. We have a number of coal Senators who have said: No way will we ever agree to anything, and they are working toward having them as part of the agreement. Nuclear power, which when this all started, I think it is fair to say, people on this side of the aisle wanted no part of that—most people on this side. Now that will be part of the mix. The production of oil in our country—people say, does that mean you have given up on all these great things we believe in? Legislation is the art of compromise. We need to have legislation that is bipartisan. I believe what LINDSEY GRAHAM and JOHN KERRY have done will allow us to move forward on this legislation. It is important that we do things on a bipartisan basis.

I compliment and applaud and recognize the good work these two brave men are doing in setting an example for the rest of us in moving forward on legislation that will be dramatic not only for our country but for the world.

RECOGNITION OF THE MINORITY LEADER

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

HEALTH CARE REFORM

Mr. MCCONNELL. Mr. President, the last 2 years haven't been easy ones for the American people. Millions have lost jobs and homes, and many have had the bitter experience of watching years of savings disappear. Unemployment stands at a 25-year high, and in many States it is worse. Just to take one example, in Kentucky unemployment rose in all 120 counties from June 2008 to June 2009. A lot of Americans are hurting. A lot of them have been struggling for a long time. And despite the occasional piece of good news, the situation doesn't seem to be getting a whole lot better for most people.

This is the situation now, and this was the situation when the White House announced its plan to undertake health care reform. Throughout this debate, the need to do something about the economy has never been far from our minds.

Indeed, from the very outset of this debate, the administration has rested its case for reform on the need to do something about the economy. The economy was in bad shape, the argument went. And reforming health care would make it better.

All of us agree that health care costs are unsustainably high, and alleviating the burden of these costs on American families and businesses is something we should work together to do. But somewhere along the way, the administration got off track. The original purpose of reform was obscured. And now we are hearing from one independent analysis after another that a bill which was meant to alleviate economic burdens will actually make these burdens worse. And the most significant finding is this: A reform that was meant to lower costs will actually drive them up.

Americans are scratching their heads about all this, and rightly so. Business owners can't believe a reform that was meant to help them survive will end up costing them more in higher taxes. Seniors can't believe a bill that was meant to improve their care will lead to nearly half a trillion dollars in cuts to their Medicare. And families can't believe that they are going to have to pay higher health care premiums and taxes at a time when so many of them are already struggling to make ends meet.

Higher taxes, higher premiums, cuts to Medicare. These are three of the major blows this legislation would deal to the American people. And any one of them would be bad enough on its own. But let's just look at one of the unexpected consequences of the Democrat health care plan for a moment—let's look at the tax hikes.

The Senate bill we've seen targets individuals and businesses with a raft of new taxes, fees, and penalties. It imposes a 40-percent tax on high value insurance plans for individuals and families. It imposes billions in fees on health plans that will inevitably be passed along to consumers. It imposes fees on the costs of medical devices and life-saving drugs, fees that would be paid by consumers.

Millions of taxpayers managing chronic conditions and facing extraordinary medical expenses will be faced with even higher out of pocket costs because the bill makes it more difficult to deduct these expenses. And small businesses with as few as 50 employees would be required to buy insurance for all workers whether they could afford it or not, or pay a substantial tax for each of them.

Taken together, the health care plan we have seen would impose roughly half a trillion dollars in new taxes, fees, and penalties at a time when Americans are already struggling to dig themselves out of a recession. What's worse, an independent analysis by the Joint Committee on Taxation suggests that nearly 80 percent of the burden would fall on middle-class Americans.

So a reform that was meant to make life easier is now expected to make life harder. If you have insurance, you get taxed. If you don't have insurance, you get taxed. If you're a struggling business owner who can't afford insurance for your employees, you get taxed. If you use medical devices, you get taxed.

This is not the reform Americans were asking for, Mr. President. And that's precisely why more Americans now oppose this health care plan than support it.

The administration didn't listen to the American people when it put this plan together, but it can listen now, and the message it is going to hear is this: Put away the plan to raise premiums, raise taxes, and cut Medicare. Get back to the drawing board and come up with a commonsense, step-by-step set of reforms. That is what people want, and that is what they should get.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business for 2 hours, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the final half.

The Senator from North Carolina.

HEALTH CARE REFORM

Mrs. HAGAN. Mr. President, the United States spends $2.3 trillion each year on health care—the most per capita of all industrialized nations. Yet we still have higher infant mortality and lower life expectancy than many of the other industrialized nations. Moreover, medical errors kill 100,000 patients per year and cost the system tens of billions of dollars, and $700 billion is spent each year on treatments that do not lead to improved patient health.

Today, my freshman Senate colleagues and I are going to speak about

the need to reform our health care delivery systems. You will hear from all of us about innovative initiatives that are successfully bringing down the cost of health care and at the same time improving the quality of care.

Mr. President, I would like to yield 5 minutes to my colleague from Colorado, Senator MARK UDALL, to discuss accountable care organizations.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Colorado is recognized.

Mr. UDALL of Colorado. Mr. President, I thank my colleague from North Carolina, Senator HAGAN, for convening this important session this morning where we will talk about the urgent need to reform health care in our country.

The unsustainable growth in health care costs and lack of stable, affordable coverage for millions of Americans continue to jeopardize not only our Nation's fiscal well-being but also the physical well-being of our families and neighbors. One of the key ways we can help put our health care system and our economy on the right track is by encouraging value in the delivery of health care.

I have cited these numbers before—I know many of us have—but I want to emphasize them again. As a nation, we spend over $2 trillion per year on health care—that is nearly one-fifth of our economy. Yet between 30 and 50 percent of these dollars are not contributing to better patient health. That is not a good deal for the American people.

Health reform is designed to address this staggering amount of waste in a number of ways. One way is to encourage providers to focus on the quality of care they provide and not just on the volume. And we can start with Medicare.

I think the American people would agree that taxpayer dollars are better spent rewarding doctors for keeping patients healthy and not for performing more tests or more procedures. Health reform legislation can move us in this direction through the development of what are known as accountable care organizations, or ACOs. These organizations would encourage groups of health care professionals to team up and provide more coordinated, streamlined care to Medicare patients. The idea is to have these ACOs take responsibility for improving patient care while lowering cost and then sharing the savings that accrue. Research indicates that this idea of shared savings would help eliminate waste and spur changes in our health care delivery system to emphasize patient outcomes and value.

The idea for ACOs no doubt came from the great work being done by a patchwork of physician groups. Groups such as the Physician Health Partners, or PHP, in my home State of Colorado, and others across the country focused on care coordination and quality.

For example, PHP has seen great success in improving care for kids suffering from asthma—the No. 1 cause of child hospitalization and school absence. They developed treatment guidelines and promoted collaboration among doctors, the Children's Hospital in Denver, and the Colorado Allergy and Asthma Centers. As a result, they have reduced emergency room visits and improved families' ability to manage asthma on their own.

PHP also has the Practice Health Project. This comprehensive effort brings doctors together to share best practices and encourage the adoption of commonsense guidelines to improve quality and efficiency. The goal of this team effort is to raise the standard and value of care and allow these physician groups to act as a model for Denver's physician community as a whole.

I would also like to tout the PHP's Transitions of Care Program in collaboration with Denver's St. Anthony Hospital and other local care providers. The program dispatches nurse coaches to help Medicare patients make the transition from the hospital to their homes. The period immediately following a hospital stay is a very confusing time, particularly for our seniors. Having someone help with this transition is crucial. PHP has had tremendous early success with this program, showing the potential to reduce costly hospital readmissions by 40 to 50 percent. At the same time, this program keeps patients healthy and it saves money.

The successes of groups such as Physician Health Partners demonstrate that we already have the will and the know-how to change our system for the better. But under our existing system there is no incentive for programs like PHP to even exist. Under the status quo, a hospital stands to lose money if it decreases its admission rates. Primary care doctors would be at a financial disadvantage if they spent time in the development and implementation of effective treatment plans for their asthmatic patients.

This is why health reform includes commonsense proposals such as encouraging groups such as Physician Health Partners to form accountable care organizations and paying them to coordinate care for Medicare patients. Promoting ACOs and other creative pro-consumer ideas will increase quality for patients and value for the taxpayer.

Only by reshaping the way we do business in our health care system can we truly change health care delivery in our country. I look forward to working with my colleagues here today and other Senators in the coming weeks to promote the many ways we can accomplish that goal.

I thank Senator HAGAN, and I yield the floor.

Mrs. HAGAN. I thank Senator UDALL. Accountable care organizations are extremely important in health care reform.

Mr. President, I would like to yield 5 minutes to my colleague from Delaware, Senator TED KAUFMAN, to discuss Delaware's health information network.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. KAUFMAN. First, Mr. President, I want to thank Senator HAGAN not just for putting this on but for her leadership all along on health care reform, and I look forward to working with her because of her great leadership. I appreciate the opportunity to join my colleagues on the floor to highlight health care innovations in our home States that can serve as models for national reform.

Delaware is a national leader in health care IT—information technology—and I want to take a couple of minutes this morning to talk about a truly innovative approach to health care record keeping in my State. It is called the Delaware Health Information Network.

The Delaware Health Information Network, which we call DHIN, was authorized 12 years ago and went live in 2007, becoming the first operational statewide health information exchange. A public-private partnership of physicians, hospitals, laboratories, community organizations, and patients, the DHIN provides for the fast, secure, and reliable exchange of health information among the State's many medical providers. As a result of its early success, the DHIN was one of the nine initial health information exchanges selected to participate in the U.S. Department of Health and Human Services' national health information network trial implementations. Among those nine, it was the first State to successfully establish a connection with the trial.

Right now, more than 50 percent of all providers in the State—nearly 1,300—participate in the DHIN. More than 85 percent of all lab tests are entered into the network, and 81 percent of all hospitalizations are captured by the exchange. As of June of this year, the DHIN held over 648,000 patient records, and it conducts 40 million transactions a year.

Participating providers have a choice of three options to receive lab, pathology, and radiology reports, as well as admission face sheets: they can have them sent directly into a secure in-box, similar to an e-mail account, they can have them faxed to their office, or they can get the results from an electronic medical records interface on the Web. All three provide information in a timely manner that protects the privacy of the patient.

Our State of Delaware receives four very tangible benefits from DHIN, and these are listed on this chart.

First, the DHIN provides a communication system between providers and organizations—something that did not exist previously. Individual physician offices can now easily discover if hospitals, such as Christiana, Bayhealth, and Beebe Medical Center, have admitted their patients. Doctors and hospitals can also get lab results back

from the State's clinical laboratories in a timely manner.

Second, the information exchanged electronically through DHIN helps improve the quality of care being delivered in the State. When providers have access to better, faster information at the time and place of care, either in a doctor's office or an emergency room, those providers can make better decisions and reduce the chance of medical errors. Knowing what medications a patient is on or what coexisting conditions a patient may have can give the provider more complete information when delivering care, reducing the chance of an adverse outcome.

Third, the DHIN can help reduce the cost of care within the health care system. That is what we are all looking for out of health care reform—cost reduction. With nearly 650,000 patient records in the system, providers can know what tests and procedures have already been ordered, cutting out inadvertent test duplication. In addition, the DHIN can help improve disease management by allowing multiple providers treating a person to communicate and better align the treatments and prescriptions for a particular patient.

Finally, No. 4, the DHIN can enhance privacy within the medical health care system. The DHIN is a secure system that can only be accessed by participating providers and organizations. It contains access controls, regulating who can use the network, and it contains audit requirements to ensure there are no breaches in patient privacy.

While the DHIN is still growing, it has already helped the patient care delivery system in Delaware. As it moves to include all providers in the State and works with other States' information exchanges to share ideas and successes, the DHIN will help lead our country to a widespread adoption of health information technology.

The stimulus act contained $19 billion to promote the adoption of health IT nationwide, and the health reform effort promises to build on this momentum with even more resources. I believe it is essential that health reform boost the integration of information technology such as that provided by the DHIN throughout the health care system.

As I have said many times, it is time to gather our collective will and do the right thing during this historic opportunity by passing health care reform. We must include incentives to expand the utilization of health information technology. We can do no less. The American people deserve no less.

Mrs. HAGAN. I thank Senator KAUFMAN. A health information network is critical to improving patient care and reducing health care costs.

Now I would like to yield 5 minutes to my colleague from Alaska, Senator MARK BEGICH, to discuss customer-driven care.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Alaska is recognized.

Mr. BEGICH. Mr. President, I thank Senator HAGAN for allowing me time this morning. I am pleased to join my freshman colleagues to once again state our case for health insurance reform in this country. It is truly long overdue and very much needed.

I also wish to make a point. I have listened closely to the comments of my colleagues from the other side of the aisle over the last several weeks. A few weeks ago, I heard the Senator from North Carolina, Mr. BURR, talking on this floor about health reform. He acknowledged that we need to change the health delivery system, which I agree with, but then he said our Democratic ideas won't work. He said one reason is because government programs don't do enough innovation and wellness and they won't help people make the lifestyle changes needed to get true savings in the health system.

Quoting from the CONGRESSIONAL RECORD, here is what else he said:

> Show me a government plan that pays for prevention, wellness, and chronic disease management, and I will quit coming to the floor and quit talking about the lack of reform.

Mr. President, I have one. I have a great example of just such a government plan that pays for all of those things, almost the whole thing, and gets incredible results. It comes from my home State, from an Alaska Native program called the Nuka Model of Care. It is based in Anchorage at the Southcentral Foundation, a nonprofit health system serving about 55,000 Alaska Natives.

The Nuka Model was developed about 10 years ago using the wisdom of Native leaders. They acted in response to what they saw as their own failing health care system. Like many other health providers in this country, the foundation recognized an alarming contradiction: As health costs continued to increase, the health status of their patients only got worse. More dollars going to health care only resulted in worse health outcomes.

So they decided to change things. From the ground up, they built a system of customer-driven health care. That is their term, not mine—''customer driven.''

''Nuka'' is a Native word associated with family, and that is certainly the approach. The Nuka model creates teams of health providers—doctors, nurses, medical assistants—to work with each patient. It requires doctors to listen to the patients, to really hear what customers are saying about their lifestyles, their jobs, their families, everything that affects their overall health.

It makes medical access much easier, guaranteeing that you can see your chosen provider for anything you want—same day. In person, via phone or e-mail—whatever is easier for the patient—same-day guarantee. Let me repeat that: same-day guarantee.

Here is another important point. Physician salaries are based on the team's overall performance. I want to make sure my friend, Senator BURR from North Carolina, hears this part. The Nuka model is funded almost entirely by the Federal Government—half by Indian Health Services and one-third by Medicaid or Medicare. It works, and it works very well.

This chart covers some of the most amazing results since the program started: a 50-percent drop in urgent care and emergency room visits; a 53-percent reduction in hospital admissions; a 65-percent drop in the need for expensive specialists; a childhood immunization rate of 93 percent, well above the State and national averages; much better management of diabetes with 50 percent of patients kept in the prediabetes stage instead of worsening into full diabetes; and happy customers. The overall satisfaction rate among our patients for this program is 91 percent.

The Nuka model has attracted attention from all over the world, as it should. Even as recent as last month, the former Speaker, Newt Gingrich, recognized this great program.

I am sure there are similar government-backed success stories throughout this country. I think I have made my point, and truly my remarks are not intended to single out any one Senator. But I will say this: As we debate health insurance reform in this Chamber, let's arm ourselves with the facts and with open minds. Let's not say no just because of partisan differences. Let's celebrate examples of innovation and excellence that work no matter where they come from, and let's use the successful models to extend good, quality care to millions more Americans.

I am proud of the Nuka model in Alaska, of the people who got it started a decade ago, and of the people who are making it work today.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

Mrs. HAGAN. Mr. President, Senator BEGICH's comments on customer-driven care is certainly working in Alaska.

I now yield 5 minutes to my colleague from Colorado, Senator MICHAEL BENNET, for his discussion on transitional care.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. BENNET. Mr. President, I thank our colleague from North Carolina for organizing this discussion this morning and for the other freshmen here yet again, week after week, to talk about the urgent need for health care reform in this country.

My colleague, Senator UDALL from Colorado, did a wonderful job talking about the models we have of transitional care in Colorado, where we see some providers able to have merely a 3-percent readmission rate just because of the way they manage patients, patient-centered care, unlike the way we

do it all across the country, which is the reason we are at a 20-percent readmission hospital rate in the United States.

If we would put in some of these commonsense practices and worry about outcomes more and worry less about how many tests were given, in this case we could reduce the expenditure by $18 billion annually and provide better quality care. It is just one of the many ideas that is bubbling up from States all across the country.

I wish to spend a couple minutes today talking about the absurd waste of time that is caused by our current system of insurance in the United States. We have two examples in Colorado that have recently been covered by the newspapers out there. The first is a story about gender discrimination when it comes to insurance. It is about a woman in my state, Peggy Robertson of Golden, CO, who was denied coverage because she had what was called a preexisting condition, which was the C-section that she had when she gave birth to her son. The insurance company said they would not cover her unless she became sterilized.

Peggy came and testified about this in the committee, and her story has been repeated by many people across the State of Colorado. But it got the attention of another person in our State named Matt Temme of Castle Rock, CO, who wrote a letter to the editor that I almost could not believe when I read it.

We followed up with Matt, and it turned out that it was true. Matt was denied coverage because his wife, who is insured—she has her own insurance—was pregnant. Matt is a 40-year-old commercial pilot from Castle Rock. He was furloughed from his job at the end of June. His wife Wendy is a paralegal, and she is covered through her employer. They have a 6-year-old son.

As I mentioned a minute ago, Wendy is pregnant. It was too expensive for Matt and his son to join his wife's plan. Because he was furloughed, he went out shopping for a new plan on the individual market, which he thought would be easy. He first checked with his previous company's health insurance. He filled out all the paperwork for himself and his son. He is healthy, he is 40 years old, and he is not eligible for coverage because his wife found out she was pregnant. He told the insurance companies: My wife is already covered by another insurer.

They said to him: That is true, but if she suffers a fatality while giving birth to her child, that child is going to become a dependent of yours and therefore will be on the insurance you buy and therefore we are not going to sell it to you.

So now Matt had to go out to the market again. They have three plans. They have the plan his wife is on, already covered; they have another plan for his 6-year-old son; and now Matt is on a version of a public option that we have in Colorado called Cover Colorado.

When I read this letter, when we heard this story, when we talked with Matt, it reminded me again of all the stories that I have heard—that all of us have heard—over these many months when we have been discussing health care about all the wasted evenings and conversations and fights that people have over their telephone just to get basic insurance for their families so they can have the kind of stability all of us want to have for our kids, for our grandkids, and for our families.

That is what this insurance reform is about. It is time for us to set aside the usual politics, the special interests that always have prevented us from getting something done, and deliver reform that creates stability for working families all across our country, deliver reform that allows us to consume a smaller portion of our gross domestic product than we are today, deliver reform that allows us to begin to put this Federal Government back on a path of fiscal stability. It is high time to put this politics aside.

I know in this country we can do better than that. In the end, we will do better. Our working families and small businesses will be real beneficiaries of the reform that we pass.

I thank the Senator from North Carolina for giving me the opportunity to be here this morning. I appreciate her very important leadership on this critical issue.

I yield the floor.

Mrs. HAGAN. Mr. President, I thank Senator BENNET for his comments on transitional care and certainly the need to make sure no patients are denied insurance coverage for preexisting conditions and in particular because a wife is pregnant.

I yield 5 minutes to myself. I take this opportunity to talk about health care reform and how it will improve the delivery of health care to Americans.

One successful delivery system that health care reform will expand upon is patient-centered medical homes which were pioneered in my State of North Carolina. Since 1998, North Carolina has been implementing an enhanced medical home model of care and its Medicaid Program called Community Care of North Carolina.

Under this model, each patient has access to a primary care physician who is responsible for providing comprehensive and preventive care, working in collaboration with nurses, physician specialists, and other health care professionals.

The primary care physician is the go-to doctor and the gatekeeper of a patient's information. Within each network, patients are linked to a primary care provider to serve as a medical home that provides acute and preventive care, manages chronic illness, coordinates speciality care, and provides round-the-clock, on-call assistance. Case managers are integral members of the network and work in concert with the physicians to identify and manage care for high-cost, high-risk patients.

As of May of this year, Community Care of North Carolina was comprised of 14 networks that included more than 3,200 physicians and covered over 913,000 Medicaid patients in North Carolina, accounting for over 67 percent of the State's entire Medicaid population.

As an example of the benefits of a program such as this, consider the impact on asthma patients because patients get to see the same doctor and get more consistent, coordinated care. Physicians are able to quickly recognize a condition such as asthma and can more quickly and efficiently determine the most appropriate treatment. The support network then educates the patients and their families about the management of their disease.

Due to the increased likelihood of complications when asthma patients get the flu, it is very important that they receive the flu vaccine. Since 2004, within the Community Care of North Carolina, there has been a 112-percent increase in flu shots administered to asthma patients. More than 90 percent of patients are using the most appropriate medications.

Between 2003 and 2006, asthma-related hospitalizations were decreased by 40 percent, and emergency room visits decreased by 17 percent. That saves all of us dollars.

Community Care of North Carolina has improved patient care and saved the State money. An independent analysis by Mercer, which is a government consulting group, found that this program saved between $150 million and $170 million in 2006.

A University of North Carolina evaluation of asthma and diabetes patients found that it saved $3.3 million for asthma patients and $2.1 million for diabetic patients between 2000 and 2002.

In addition to asthma patients, diabetic patients also had fewer hospitalizations, and they visited the primary care doctors more often instead of specialists and had better health outcomes.

I would like to tell a story about how access to a medical home has helped someone in North Carolina overcome the challenges of an illness.

Donald from Charlotte has type 2 diabetes. This diabetic condition of his went untreated for a long time and, as a result, he began having ministrokes, had to cut back on his work in landscaping, and he ended up in an emergency room. He was referred to a Charlotte-based medical home program called Physicians Reach Out. He now has a primary care doctor who has helped get him on a medication regimen, returning his blood sugar to a normal level which allowed him to work full time again. His primary care physician was the key to teaching him how to manage his diabetes. Without his medical home, he said getting his condition under control would have been a ''wild goose chase.''

The Health, Education, Labor, and Pensions Committee included two provisions in the health care reform bill to

encourage patient-centered medical homes, such as we have in North Carolina. The Secretary of Health and Human Services will create a program to support the development of medical homes, and then the other States will apply for grants.

The bill also provides grants for physician training programs, giving priority to those who educate students in these physician training programs that are team-based approaches, including the patient-centered medical home.

I have been focused on a reform bill that prevents insurance companies from turning patients away who have a preexisting condition, that expands coverage, and ensures that if you like your insurance and your doctors, you keep them. This bill actually will reduce our deficit, and that, obviously, has been a requirement of mine all along. This bill also encourages innovation in the delivery of health care to Americans using successful programs, such as the Community Care of North Carolina and the Physicians Reach Out patient-centered medical home as a model.

Mr. President, now I wish to yield 5 minutes to my colleague from New Mexico, Senator TOM UDALL, to talk about a model of community health service delivery.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico is recognized.

Mr. UDALL of New Mexico. I thank Senator HAGAN very much, and thank her for her statement today and leading us on the floor in this discussion of health care.

In my case, I want to talk a little bit about health care delivery systems.

First, let me say I know when we talk about a health care delivery system it is a little bit of a wonky term. Most Americans' eyes probably glaze over when experts, politicians, or pundits describe the problems with our health care delivery system. They don't know what it has to do with their health care experience, their doctors, or their lives.

The reality is health care delivery systems have everything to do with all of that. These delivery systems determine how Americans receive their care. They dictate how a doctor treats their patients, how long a patient must wait for treatment, how much a hospital charges for its services, and how the medical community is held accountable for its mistakes.

As we continue working to reform health care, we must take an honest look at our current health care delivery system and ask ourselves some basic questions, questions such as: Do the systems we currently use to deliver health care work? Are we, as patients, businesses, and governments, getting the best value for our health care dollar? Do these systems encourage efficient, coordinated care?

If you ask the experts on this subject, the answer you will likely get is a loud and resounding ''no.''

The way I look at the role of health care delivery systems is the same way I look at building a house. To build a strong, solid, safe house, you have to start with a strong, solid, safe foundation. Our health care delivery systems are the foundation for all of our efforts in health care. If that foundation is off center or cracked or built on uneven ground, it does not even matter how straight the walls are or how efficient the electrical system is, nothing is going to work right.

Right now, the vast majority of health care in America rests on shaky foundations. It is our job to rebuild these foundations before more Americans slip through the cracks. The good news is that across the country, communities are achieving success with innovative health care delivery programs. We should look at these models as we continue our work here in Washington.

There is one example I wish to highlight today. That example comes from my home State of New Mexico, from a county that makes up the boot heel of the southwestern corner. Hidalgo County is one of the most rural counties of my State, with a population of 5,000 people. Hidalgo faces the same health care delivery problems as other rural areas. There are not enough doctors. Patients must travel long distances for care and, as a result, there are higher rates of chronic diseases and health problems that require specialized treatment.

To meet these challenges, the Hidalgo County medical community had to think outside the box. What they came up with is the Hidalgo Health Commons. It uses four guiding principles in its approach to health care.

First, they acknowledge that in rural areas, chronic health conditions are worsened by limited access to health providers and are often compounded by poverty.

Second, to respond to this challenge they established a one-stop shop for medical and social services. At the clinic you can find doctors, nurses, and dentists, seek mental health treatment, fill a prescription, get Medicaid or Medicare, or apply for public assistance such as WIC.

Third, they work with the community to identify local health priorities and then align their services accordingly.

Finally, they are a source of local economic and social development by creating jobs, serving schools, and offering family support.

The health commons model has worked so well that it has grown to serve five sites across New Mexico and they are not stopping there. The new Hidalgo initiative, which is still in development, will expand on the success of the health commons. The goal is to enroll all 5,000 residents of Hidalgo County into the health services program.

Hidalgo County is just one example of the innovative work going on across the country and it serves as a lesson to all of us that faulty foundations do not fix themselves. They require hard work and ingenuity and significant investment.

If we are going to fully transform our Nation's ailing health care system, we must first focus on the foundation. We must first reform our health care delivery systems.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

Mrs. HAGAN. Mr. President, I thank Senator UDALL. His example of the community health service delivery in New Mexico is excellent.

Now I yield 5 minutes to my colleague from New Hampshire, Senator JEANNE SHAHEEN, to talk about reducing overutilization of emergency departments and reducing hospital readmissions.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire is recognized.

Mrs. SHAHEEN. Mr. President, I thank Senator HAGAN for organizing the effort today and also for her great work on the HELP Committee to develop a health care reform bill that can be supported by this body.

Once again we are here to talk about health care reform and why it is so urgently needed. We are at a critical juncture because health care costs are out of control. They are a threat to our families, our small businesses, our economy and, despite all the money we are spending on health care, we are not guaranteed better health outcomes. That means because we are spending money doesn't mean that people are healthier. The truth is, we can control costs and improve quality. We can do this by promoting effective delivery models. Senator UDALL did a great job of talking about what that term means in real language. We can promote effective delivery models that emphasize coordination and individualized care.

As I have said on a number of occasions, I am proud of the innovations that are changing health care delivery in New Hampshire, my home State. One of those that has been recognized nationally is the Dartmouth Atlas project, based in Hanover. Because of the work of the Dartmouth Atlas project, we now know that there are significant variations in the way health care resources are used and how money is spent depending on where we live.

Right now, providers are rewarded for volume rather than for value. There is a chart here that shows that very clearly. It shows the difference in spending among different regions of the country for Medicare patients. As you can see, the areas that are dark red are the most expensive, these areas. The areas that are lightest are the least expensive areas when it comes to cost per Medicare patient—from $5,280 to $6,600 in the lowest spending regions all the way up to $8,600 to $14,360 per Medicare

patient in these darkest regions of the country.

Unfortunately, the sad thing about this research is not the changes in cost, but it is the fact that because someone lives in an area where the spending is higher doesn't mean they are going to have better health outcomes. Put very simply, more costly care does not mean better care. This is a fundamental problem with our health care system. The way our health care dollars are being spent right now is analogous to a medical arms race. That is not my term, that is by Dr. Elliott Fisher, from the Atlas Project. Too often we judge the quality of our hospitals, for example, based on a new expansion wing or the latest medical device, and not on comparing the quality of care they provide.

Over the past several months, thousands of my constituents have expressed their concerns about our health care system. Last week, Dr. Jim Kelly, from Hollis, NH, was in my office sharing his concerns and frustrations. Dr. Kelly is a family physician and, like so many of our health care providers, he is dedicated to doing the best job he can for his patients. However, inefficiencies in our system often work against the best efforts of our providers.

Dr. Kelly shared one of those experiences. He talked about one of his patients who was a 73-year-old woman with diabetes who came into his office on a Friday morning with a swollen, red, and tender leg. In addition to her own illness, she is the sole caretaker for her 79-year-old husband who recently had a stroke. Dr. Kelly diagnosed her condition, a relatively common one, as cellulitis, a skin infection which required IV antibiotics. Dr. Kelly gave her the first dose in his office, but Medicare would not cover her infusion therapy at home. As a result, Dr. Kelly was forced to send her to the local emergency room to receive treatment over the weekend. As a result, she had to bring her disabled husband, whom she couldn't leave at home alone, to the emergency room. Both of them were forced to sit in the crowded ER, exposing them to more germs and using resources that could be used much more efficiently.

Unfortunately, our system does not always facilitate efficient and coordinated care. This is too often true with our most vulnerable patients.

But there are innovative projects across the country that have adapted to meet the needs of these individuals. By providing increased outreach and care coordination, one pilot program was able to reduce visits to the emergency room by almost two-thirds, after 2 years of participation.

I recently introduced the REDUCE Act, which is modeled after these successful pilots, and which I believe will change the way care is delivered to these high-risk patients with multiple chronic conditions. I think that is very important to point out.

The REDUCE Act will create demonstration projects in 10 States that are modeled off of these approaches that have been successful in places around the country. This is the type of delivery system reform that improves quality and reduces costs simultaneously.

As I have said many times, the challenge we face is great, but we have the resources and the tools we need to reform our health care system. We can do this in a fiscally responsible way. By improving the way we deliver care, we can maximize efficiency and we can improve quality. This is the type of reform all Americans deserve. This is the type of reform we are working on here in the Senate. This is the type of reform I hope our colleagues will all support.

I thank Senator HAGAN and I yield my time back to her.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina

Mrs. HAGAN. Mr. President, I thank my colleague. She has made it abundantly clear that by reducing the overutilization of emergency departments, at the same time reducing hospital admissions, we can maximize efficiencies and improve patient health and health care.

I yield 5 minutes to my colleague from Virginia, Senator MARK WARNER, to talk about delivery system reforms in Virginia.

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

Mr. WARNER. Mr. President, I thank my colleague from North Carolina for organizing the freshmen one more time to talk about our vision for health care reform. We invite our colleagues not only on our side of the aisle but our colleagues across the aisle to join us in this conversation about how to get health care reform right. I also commend my colleague from New Hampshire, Senator SHAHEEN, on her comments about how we can fix financial incentives in our current health care system. I think reforming our delivery system ought to be, clearly, part of any overall health care reform we take on.

I want to pick up, actually, where Senator SHAHEEN left off and talk about how we can readjust our financial incentives system in health care. We have them all wrong. We have a health care system right now that rewards bad practices. We have a health care system that rewards hospitals for multiple readmissions rather than a low readmission rate. We have a health care system that rewards volume of care rather than quality of care. Reforming the financial incentives in our delivery system has to be a key component of any health care reform going forward.

I join my colleagues in citing examples of delivery system reforms that are happening now in my own state. I have three examples here from the Commonwealth of Virginia.

In 2000, VCU Health System in Richmond, our capital, developed a system called Virginia Coordinated Care to manage health care services for the uninsured. The uninsured often rely on emergency rooms to be treated for their illnesses and then go back home until they get sick again. There is no continuity of care and oftentimes that uninsured person will end up back on an emergency room doorstep because, outside of being treated for the episodic incident, there was no management of that patient's care during that period.

What VCU developed was a program that assigned a primary care physician to oversee each uninsured patient's health. The goal was to increase coordination between doctors and hospitals and, as a result, increase accountability, improve quality of care, and lower costs.

The Virginia Coordinated Care program started with a few participants in 2000; by 2009, there were over 20,000 members. One of the most important outcomes of the program was a significant drop in emergency room visits by enrolled patients. By increasing continuity of care, emergency room visits dropped 14 percent between 2000 and 2005. Costs were reduced for Richmond area hospitals, as well as surrounding Virginia hospitals as fewer patients showed up at other emergency rooms. By treating the patient earlier in their illness the program achieved better quality of care, and better results for the health care system as a whole.

Another example of delivery system reform took place at another end of our State, at Sentara Healthcare, located in Norfolk, VA. In 1999, Sentara studies found that intensive care units that were monitored by a doctor full time had lower mortality rates and shorter length of stays than those that were not. In order to improve quality of care, Sentara worked with a company called VISICU to install Web-based television cameras in each patient's room. With this technology, a single physician in a central location can follow patients in multiple rooms at the same time. Again, this kind of logical approach produced more efficient care at a lower cost. Sentara saw a 25-percent reduction in mortality among these patients, a 17-percent reduction in their length of stay, and a 150-percent return on investment in the program.

Perhaps the best example is now being modeled by the Carilion Clinic in Roanoke, VA. Carilion Clinic is a multispecialty health care organization, with more than 600 doctors and 8 health care organizations.

In 2010, next year, Carilion Clinic will join with Engelberg Center for Health Care Reform at Brookings and the Dartmouth Institute for Health Policy and Clinical Practice to implement a new and innovative health care model that rewards providers for improving patient outcomes while also lowering costs. This Accountable Care Organization will encourage physicians, hospitals, insurance companies, and the

government to work together to coordinate care, improve quality, and reduce costs. Under this model, providers will assume greater responsibility not only for treating the patient's illness but for the overall quality and cost of care to be delivered. They will actually be incentivized to take steps to keep patients healthy, while avoiding costly medications and procedures. Additionally, this model will encourage, and make it affordable, for doctors to finally practice preventive care. Carilion Clinic is doing the right thing: moving away from the current, and very flawed, fee-for-service system.

As long as our health care system—one-sixth of our economy—continues to reward providers simply based on quantity rather than quality of care, we are never going to get health care reform right. By increasing coordination of care, and putting in place smarter financial incentives, we can have higher quality care at lower costs. We can focus on the health of patients, rather than the number of procedures. Changing our payment mechanisms and restructuring financial incentives are a key part of health care reform.

I know my freshmen colleagues stand ready to work with our colleagues on this side of the aisle, and I again invite our colleagues on the other side of the aisle to join us in this effort. Getting it right will lead to improved quality of care, lower costs, and a healthier America.

I thank our leader today, the Senator from North Carolina, for granting me this time. I look forward to working with Senator HAGAN and all my colleagues as we move forward.

I yield the floor.

Mrs. HAGAN. I thank Senator WARNER. It is obvious that coordinated care will reduce costs and at the same time provide higher quality for our patients.

What Senator WARNER has discussed is very similar to the patient centered medical homes in North Carolina where we currently cover over 900,000 Medicaid patients.

Finally, I yield 5 minutes of my time to my new colleague from Massachusetts, Senator PAUL KIRK, to discuss some key national indicators.

Mr. KIRK. Mr. President, I thank the Senator from North Carolina. It is a privilege to be a member of her class and the class of distinguished colleagues of freshmen, and I commend her as well for her leadership in this discussion this morning, adding onto the role the freshman class is playing in advocating for health care reform for the American people.

I would like to speak this morning about a key national indicators system.

As we know, America is said to lead the world in health innovation. It can create the finest medical devices, the most effective drugs to treat diseases and advanced processes and procedures to care for patients. It is this wide range of remarkable innovations that has resulted in today's $2.3 trillion health care industry. But despite all of our medical achievements and technologies and the private and public money we spend on health care, we do not lead the world in health outcomes.

We need to innovate not only in the way we treat patients but in the way we create and implement health care policy. For that reason, one of the most promising provisions in the draft health reform measures about to come before us is the creation of a key national indicators system.

When illness strikes, we expect a health care team to carefully collect information from the patient and then consult the wide range of information available to them to achieve the appropriate diagnosis and treatment. That careful and complete process should yield the best possible course of treatment and recovery.

We need the same kind of approach in the creation of wise health care policy. In particular, we need measures to identify what is wrong with our current health care system, including what is driving the increasingly high cost of care. Abundant research and reports have analyzed such questions. What is missing is a central, independent organization that can analyze all of the research performed by various organizations and make that information readily available to Congress, to the executive branch, and the American people. That is an indispensable part of successful health reform. It will give decisionmakers easier access to all the knowledge available and eliminate wasteful spending of the hard-earned dollars of American families.

Senator Kennedy and Senator ENZI, in a strong, bipartisan effort, understood the need for this vital resource, and they designed a key national indicators system to provide it. It will be a nonpartisan, independent agency with a public-private partnership. It will foster better relations and relationships between members of the legislative, statistical, and scientific communities and will lead to greater transparency and accountability for spending on national health programs. Without such a resource, we will be at a serious disadvantage in fully understanding emerging health risks and in assessing whether the intended result is being achieved or adequate progress is being made on the health care challenges facing us.

The key national indicators system will make all its data available on a newly created, widely accessible Web site in the health care context. This unprecedented accessibility of data will assist the public in understanding what information was used by politicians in creating health care policies. It will enable policymakers to see whether progress is being made in health reform. And it will permit practitioners and researchers to use the information for the greater benefit of patients and consumers of health and medical care.

Significant progress in this area has already been accomplished. Over the years, the Institute of Medicine has been able to identify five drivers of health care quality and costs: first, health outcomes; second, health-related behaviors; third, health system performance; fourth, social and physical environment; and fifth, demographic disparities. The institute has recommended 20 specific indicators for measuring these five drivers of health care quality and cost. These indicators were carefully selected to reflect both the overall health of the Nation and the efficiency and effectiveness of our health care industry. However, the institute lacks an implementation system that can use these indicators effectively to guide future policy and practice. That is the goal and that is the mission of the new agency, the key national indicators system, we propose.

Here is one example of how this legislation will improve our health care system. A recent study conducted by the Harvard School of Public Health found that using a simple checklist during surgical procedures resulted in a one-third reduction of complications from that surgery. Reports such as these are made public, but you have to know where to look in order to access this information. The key national indicators system will take these reports, compile them, disseminate them, and make them available to the public. So any time a bill is being developed, a congressional office can go to this Web site and see all of the research that has been conducted on the topic in order to make economically sound decisions for the American people.

Currently, Congress and the executive branch continue to follow old habits. We tend to reinvent the wheel with every major new bill that is introduced. That approach leads to wasted time, wasted energy, and wasted money. Old habits are not good enough to achieve tomorrow's goals. By developing this indicator system, a process will be in place so that the efficiency and effectiveness of government spending on short-, medium-, and long-term problems can be determined quickly and in a fiscally responsible manner.

Our current system is unsustainable. It creates unnecessary confusion when Americans can least afford it. We need a system that will provide insight, foresight, transparency, and accountability. We will not be doing our job for the American people if we allow their money to be spent without assessing the cost-effectiveness of the various programs being developed.

By creating the key national indicators system, we can reassure all Americans that we did our required due diligence and that our health care reform bill will truly work for them.

I yield the floor.

Mrs. HAGAN. Mr. President, I thank Senator KIRK. I thank him for his comments and the discussion on the transparency and openness of the new key national indicators system. I think

this is critically important so that our public can see the progress we are making in improving health outcomes, healthy behavior, and cost-effectiveness.

In this last hour, we have heard from many of our new freshman colleagues about the successful efforts to reform the way we deliver health care in our country. I thank my colleagues for sharing those ideas with us.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

HEALTH CARE REFORM

Mr. CRAPO. I, too, would like to talk about health care. As we speak here in the Senate, the House is preparing to debate and reportedly vote by late this week or early next week on a massive new health care bill that will dramatically expand the size of our government, dramatically increase taxes, and establish a government-controlled insurance system.

While in the Senate we are not yet clearly aware of what the bill we will be debating is because it is still being crafted behind closed doors, we have an idea, and we are pretty sure some of the elements that are going to be included in it are the same elements we debated in the Finance Committee and the HELP Committee as those committees worked on their product here. In that context, we expect we will see also here in the Senate a massive new expansion of the size of government, up to $1 trillion or more. If it is anything like what the Finance Committee bill was, we will see taxes increased on the American public by over $500 billion, we will see cuts in Medicare, which we discussed yesterday, of over $400 billion, and a significant expansion of the control of the Federal Government over our health care economy. Today, I want to focus on just the tax piece of this situation.

One of the most common provisions we have seen here in the Senate that we clearly expect will be in the final bill is the proposed 40-percent excise tax on high-cost or ''Cadillac'' health care plans. This has been defined as health care plans that are valued at more than $8,000 for an individual or valued at more than $21,000 for a family.

It is important to note these thresholds are not indexed to the increasing cost of health care spending but instead are indexed to inflation plus 1, which means that over time this will, similar to the alternative minimum tax, eat further and further into the American public's health care plans, which will then be taxed.

The Joint Tax Committee has scored this tax to generate $201 billion of revenue to pay for that portion, $201 billion of this new Federal spending proposal. Many think that because it is called an excise tax on health care plans, it is not going to impact them. They will be surprised to learn that in my questioning of the Joint Tax Committee, we were told the vast majority of this $201 billion tax is expected to be collected directly from the middle class, individuals who will be paying more income and payroll taxes.

Let's figure out how that can be. It turns out that as we analyze the way this tax is going to work, employers that will face a 40-percent excise tax on the health care they provide to their employees will begin to adjust the value of their health care plans so they avoid the tax. As they do so, they will reduce the health care they are providing to their employees and, presumably—and we expect they will—increase the wages they are paying to their employees so their employees' net compensation is not changed. The result of that, though, is that since the health care portion of the compensation is not taxed and the income portion of an employee's compensation is taxed, the employee will actually pay higher taxes, both on the income and on the payroll tax level.

Maybe a real-world example will demonstrate. In my State of Idaho, the Census Bureau says the median household income is about $55,000 per year. In this case, let's take an example of a single woman who currently earns $60,000 per year in annual compensation from her employer. We have an example represented by this chart. Let's assume she has a $10,000 valued health policy. Her total compensation package from her employer is going to be $60,000–$50,000 in wages and $10,000 in employer-provided health care benefits. She is taxed on $50,000 and gets the $10,000 health care benefit without taxation. What will happen in the bill, as I have indicated, is this $10,000 health care policy will be subject to a 40-percent excise tax. In order to avoid that excise tax, the company will simply react by reducing her health care policy to below $8,000 and increase her income.

Let's put up another chart to see what the likely reaction of the employer will be: Not to pay the insurance fee, as many here are saying, but simply to skip that and direct her tax dollars to the Federal Government. If this new high-cost plan is to be enacted, the theory is her employer will make the adjustments to change her overall compensation package in a way that she ends up with higher wages.

Let's put the next chart up to show how this would work. Under this proposal, her health care benefits are going to go down. Let's assume the company reduces her health care benefits from $10,000 in value to $6,000 in value and gives her the extra $4,000 in income. Her health care benefits will go down. She will pay more taxes because she now has $4,000 more of her package that is subject to compensation. The net value of her compensation will go down because of increased taxes. The result is, we are going to see millions of Americans pay this excise tax squarely in contravention of the President's promise that no individuals who make less than $200,000 will pay income taxes or payroll taxes or, in the President's words, ''any other kind of taxes.''

So we are clear on this, the estimates are that 84 percent of this tax is going to be paid by those who are earning less than $200,000 per year. As a matter of fact, if we look at those who make less than $50,000 a year, we expect somewhere in the neighborhood of 8 million Americans will fall into this category. If we look at the number who make less than $200,000 per year, we expect that number will be above 25 million Americans who will be paying more taxes, both payroll and income taxes, and receiving less health care benefits from their employer.

The net result is, the President's promise that one can keep their health care if they like it will not be honored because of this provision. People will see, necessarily, that their employers will begin reducing health care packages to make them fit the tax structure this bill will create.

Secondly, there is the President's promise that if you make less than $200,000 as an individual or $250,000 as a family, you will pay no taxes under this proposal. As we have seen with this one example—and there are a number of other examples in the proposal being developed—in this one example of $201 billion worth of the new taxes in the bill, those making less than $200,000 will pay over 80 percent of it, and it will come directly out of their pockets and their compensation package with their employer.

In the time I have remaining, I wish to focus on one additional element. There is also a proposal to increase the bar for deductions of health care expenses. In other words, those who deduct their expenses and itemize their deductions can today deduct that portion of their income over 7.5 percent of their income that is represented by their health care expenses. This bill will increase that to 10 percent and generate over $15 billion of additional taxes in that format. Who is the most likely to pay these taxes? People who have relatively low health care costs are going to end up not meeting that 7.5-percent threshold, now to be brought to 10 percent, and probably will not be able to benefit from the deductibility of their health care. But those who face medical crises, those who have health care expenses that exceed the value of 10 percent, will see their deductibility reduced again by these proposals. The net result: Millions of Americans making less than $200,000 a year will pay more taxes.

I encourage the Senate, as we move forward in the debate, to recognize that the tax provisions contained in it are squarely going to hit those in the middle class.

The PRESIDING OFFICER (Mr. WARNER). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I am sorry the Presiding Officer, the Senator from Virginia, has to listen to me twice on the same subject.

When I am referring to a bill, I am referring to the 2,000-page House bill.

Small business is very vital to the health of our economy. The President and I agree that 70 percent of new private sector jobs are created by small business. Small business is the employment machine of the American economy. However, where the President and I differ is, I believe small business taxes should be lowered, not raised, to get our economy back on track. You will hear from my discussion, this 2,000-page bill raises taxes on small business.

The President and my colleagues on the other side of the aisle have proposed increasing the top marginal tax rates from 35 percent to 39.6 percent, respectively. We can see that on the chart under the proposed Obama budget, 39.6 percent is where they would raise them. They have also proposed increasing the tax rates on capital gains and dividends to 20 percent and providing for an estate tax rate as high as 45 percent and an exemption of that estate tax of $3.5 million. Also, the President and congressional Democrats have called for fully reinstating the personal exemption phase-out. I will refer to the personal exemption phase-out as PEP. They would do that for those making more than $200,000 a year. In addition, they have called for fully reinstating the limitation on itemized deductions, which is known as Pease after a former Congressman Pease of Ohio, for those making also more than $200,000.

Under the 2001 tax law, PEPs and Pease are scheduled to be completely phased out in 2010. That means the tax rate for current 35-percent-rate taxpayers would go up, as we can see on the chart, to 41 percent. For the vast majority of people who earn less than $200,000, raising taxes on high earners might not sound so bad. However, this means many small businesses will be hit with a higher tax bill. From the standpoint of it being where they create 70 percent of the new jobs, that is bad not only for those taxpayers, that is bad for the entire economy.

As if this was not bad enough for small business, the tax increases I have already talked about, the House Democrats, in this 2,000-page health care reform bill, have proposed a new surtax of 5.4 percent. With this small business surtax, a family of four in the top bracket will pay a marginal tax rate of 46.4 percent by the year 2011. So we go from current law of 35 percent to automatically, if Congress doesn't intervene, 39.6 percent; and then eliminate the PEPs and Pease, 41 percent; and then do what the House Democrats want to do, 46.4 percent, a marginal tax rate that is very high and very negative to employment by small business.

This tax change would result, cumulatively, in an increase of marginal tax rates of 33 percent, a 33-percent increase over what taxes people pay right now.

Owners of the many small businesses, whether regular—which could be so-called C corporations—or other entities that receive dividends or realize capital gains, would face a 25-percent rate increase under this House bill. So we have a 15-percent capital gains rate today on dividends going up almost 70 percent by January 1, 2011.

Campaign promises are pretty important. Candidate Obama pledged on the campaign trail that:

> Everyone in America—everyone—will pay lower taxes than they would under rates Bill Clinton had in the 1990s.

That is quite a promise. That is good for business, if it is lower than what Bill Clinton had. The small business surtax proposed by House Democrats, however, violates President Obama's pledge he made as a candidate. Therefore, I want Members to know I stand with President Obama in opposing the small business surtax proposed by House Democrats in this bill, this 2,000-page bill.

According to the National Federation of Independent Businesses—they made a survey—their data shows that 50 percent of the owners of small businesses that employ 20 to 249 workers would fall into the top bracket. The red bar shows 50 percent of all small employers fall into that bracket. According to the Small Business Administration, about two-thirds of the Nation's small business workers are employed by small businesses with 20 to 500 employees.

Do we want to raise taxes on these small businesses that create new jobs and employ two-thirds of all small business workers?

In his radio address a few months ago, the President noted small businesses are hurting. They are hurting because we are helping Wall Street, but we are not helping Main Street with all the things we are doing in Congress. Of course, there is no argument from this side of the aisle on that point.

President Obama recognized in that speech the credit crunch on small businesses continues, despite hundreds of billions in bailout money to big banks. With these small businesses already suffering from the credit crunch, do we want to think it is wise to hit them with a double whammy of a 33-percent increase in their marginal tax rate?

Just yesterday, we received data from the nonpartisan official congressional tax scorekeepers, the Joint Committee on Taxation, that said $1 out of every $3 raised by the massive $461 billion House surtax—and that is in this 2,000-page bill—would come from small businesses. That is a conservative, a very conservative estimate because other kinds of income that these business owners receive, such as capital gains and dividends, are not included in that figure.

If the proponents of the marginal rate increase on small business owners agree that a 33-percent tax increase for half—half—the small businesses that employ two-thirds of all small business workers is not wise, then they should either oppose these tax increases or present data that shows different results.

This House bill of 2,000 pages and the surtax included in it piles on the heavy taxes small businesses will face. In a time when many businesses are struggling to stay afloat, does it make sense to impose an additional burden on them by raising their taxes? Odds are, they will cut spending. In other words, the small businesses will cut spending. They will cancel orders for new equipment, cut health insurance for their employees, stop hiring, and lay off people.

Instead of seeking to raise taxes on those who create jobs in our economy, our policies need to focus on reducing excessive tax and regulatory barriers that stand in the way of small businesses and the private sector making investments, expanding production, and creating sustainable jobs—creating sustainable jobs, which is what I refer to as small business being the job-creating miracle of our economy.

So I want you to know, regardless of this 2,000-page House bill, with these big tax increases in it, I will continue to fight to prevent a dramatic tax increase on our Nation's job engine, the small businesses of America.

I hope my friends on the other side of the aisle will follow accordingly.

Mr. President, I ask unanimous consent that a statement from the Joint Committee on Taxation, backing up some of the figures I used in my speech, be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, November 3, 2009.

MEMORANDUM

To: Mark Prater, Nick Wyatt, and Jim Lyons
From: Tom Barthold
Subject: Revenue Estimate

This memorandum is in response to your request of October 30, 2009, for an estimate of the percentage of revenue raised from the 5.4-percent AGI surtax included in the "Affordable Health Care for America Act" attributable to business income.

For purposes of this analysis, business income consists of income from sole proprietorships (Schedule C); farm income (Schedule F); and income from rental real estate, royalties, partnerships, subchapter S corporations, estates and trusts, and real estate mortgage investment conduits (Schedule E), as would be reported on lines 12, 17, and 18 of the 2008 Form 1040. We do not count as "business income" income from interest, dividends, or capital gains that may flow through certain pass-through entities but which is reported elsewhere on an individual's return.

Under the "Affordable Health Care for America Act," a 5.4-percent surtax would be imposed on adjusted gross income ("AGI") in excess of $500,000 ($1,000,000 in the case of a married taxpayer filing a joint return). For purposes of responding to your request, we have assumed that net positive business income is "stacked" last relative to the other

income components of AGI. For example, a married taxpayer filing jointly with $2 million of AGI including $500,000 of net business income would have one-half of the taxpayer's $54,000 surtax liability under the ''Affordable Health Care for America Act'' attributed to the taxpayer's net business income.

We estimate that one-third of the $460.5 billion estimated to be raised in fiscal years 2011–2019 from the 5.4-percent AGI surtax under the ''Affordable Health Care for America Act'' is attributed to business income.

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

The PRESIDING OFFICER (Mr. KIRK). The Senator from Indiana.

START TREATY INSPECTIONS LEGISLATION

Mr. LUGAR. Mr. President, I rise to speak on S. 2727, the START I Treaty Inspections and Monitoring Protocol Continuation Act of 2009, which I introduced yesterday.

This bill provides authority that would allow the President of the United States to extend, on a reciprocal basis, privileges and immunities to Russian arms inspection teams that may come to the United States to carry out inspections permitted under the Strategic Arms Reduction Treaty or START I.

This bill is necessary because, on December 5—1 month from today—the START I treaty will expire. This treaty, signed in 1991, is obscure to many in the Senate. Only 26 current Senators were serving at the time we voted on the resolution of ratification in October 1992. But the START I treaty has been vitally important to arms control efforts up to the present day because it contains a comprehensive verification regime that undergirds every existing United States-Russian treaty that deals with strategic arms control.

It is essential to understand that a successful arms control regime depends on much more than mutual agreement on the numbers of weapons to be eliminated. Arms control agreements also must provide for verification measures, including seemingly mundane details, such as delineating the privileges and responsibilities of verification teams operating in each other's countries, as well as the procedures for conducting those inspections.

These details require legal authorization that minimizes disputes and reinforces reciprocal expectations of how the verification regime will function. If the legal authorization for strategic arms control verification lapses, as it will in 1 month, we will be creating unnecessary risks for the national security of the United States and our working relationship with Russia.

It had been my hope that the previous and current administrations would have made substantially more progress in ensuring the continuity of the START I verification system so the legal authorities I am proposing would not be necessary. But we have reached the point where both the United States and Russia must take steps to ensure the continuity of verification mechanisms.

In 2002, the Senate considered the Moscow Treaty governing strategic nuclear forces. That treaty contained no verification mechanisms. Instead, it relied on the verification regime established in the START I treaty. During Senate consideration of the Moscow Treaty, I asked Secretary of State Colin Powell and Secretary of Defense Donald Rumsfeld about the apparent gap in verification that could occur, given that the Moscow Treaty extends to 2012, while the START I verification provisions were set to expire on December 5, 2009, this year.

Secretary Powell stated:

It did not seem to be something that was pressing at the moment.

He said that during negotiations on the Moscow Treaty, consideration was given to extending the START verification regime past 2009 in a separate negotiation or that the transparency measures under the Moscow Treaty could be maximized in some way to provide for enhanced verification. But Secretary Powell said, in 2002, that we had ''some 7 years to find an answer to that question.''

Likewise, Secretary Rumsfeld was questioned about the verification gap created by the 2009 expiration of START. He stated:

There is [a gap], from 2009 to 2012, exactly. But between now and 2009 . . . there is plenty of time to sort through what we will do thereafter. . . .Will we be able to do something that is better than the START treaty? I hope so. Do we have a number of years that we can work on that? Yes.

I was pleased to play a role in securing ratification of the Moscow Treaty on March 6, 2003. But, at that time Senators were led to understand the Bush administration would begin work with Russia on codifying a verification regime under the Moscow Treaty, either by continuing the START verification regime past 2009 or through other measures. Neither was accomplished.

The START treaty itself provides that the parties must meet to extend the treaty ''no later than one year before the expiration of the 15-year period'' of its duration. In 2008, we witnessed the conflict in Georgia. December 5, 2008, was the date by which the United States and Russia would have to meet to satisfy the treaty's requirements. Many worried that the atmosphere created by the Georgia situation would prevent the United States and Russia from conducting such a meeting. But to the Bush administration's credit, a meeting was held that provided us the possibility of extending the treaty. But the clock kept ticking.

I noted during Secretary Clinton's confirmation hearings, on January 13, 2009, it was vital that the START treaty be renewed. At that time, she assured the committee that ''we will have a very strong commitment to the START Treaty negotiation.'' I do not doubt that commitment. I am hopeful the capable negotiators we have deployed to Geneva will achieve a new treaty in the remaining 30 days before expiration. But even if that happens, the time required for a thorough Senate consideration of the treaty ensures that it will not be ratified before START I expires.

At the core of the START treaty rests its verification regime—a system of data exchanges and more than 80 different types of notifications covering movement, changes in status, conversion, elimination, testing, and technical characteristics of new and existing strategic offensive arms. This data is further verified through an inspection regime. The START I treaty inspection protocol permits no less than 12 different types of inspections pursuant to the treaty.

According to a fact sheet released by the Department of State in July 2009, the United States has conducted more than 600 START inspections in Belarus, Kazakhstan, Russia, and Ukraine. Russia has conducted more than 400 inspections in the United States. These intrusive, onsite inspections permit the United States to verify the kinds and types of Russian weapons being deployed, as well as to examine modified versions of Russia's weapons. It is this ability, in addition to our own national technical means, that gives us the capabilities and confidence to ensure effective verification of the treaty.

Some skeptics have pointed out Russia may not be in total compliance with its obligations under START. Others have expressed opposition to the START treaty on the basis that no arms control agreement is 100-percent verifiable. But such concerns fail to appreciate how much information is provided through the exchanges of data mandated by the treaty, onsite inspections, and national technical means. Our experiences, over many years, have proven the effectiveness of the treaty's verification provisions and served to build a basis for confidence between the two countries when doubts arose. The bottom line is, the United States is far safer as a result of these 600 START inspections than we would be without them.

Testifying before the Foreign Relations Committee on the INF Treaty in 1988, Paul Nitze provided the definition of ''effective verification.'' He stated:

What do we mean by effective verification? We mean that we want to be sure that, if the other side moves beyond the limits of the Treaty in any militarily significant way, we would be able to detect such a violation in time to respond effectively and thereby deny the other side the benefit of the violation.

In a similar vein, Secretary of Defense Bob Gates testified in 1992, when he was Director of Central Intelligence, that the START treaty was effectively verifiable and that the data it provides would give us the ability to detect militarily significant cheating.

The Senate has repeatedly expressed confidence in the START I verification procedures. It approved the START I treaty in 1992, by a vote of 93 to 6. In

1996, it approved the START II treaty, which relied on the START I verification regime, by a vote of 87 to 4. Likewise, the Moscow Treaty was approved by a vote of 95 to 0.

The current administration has employed a capable team in Geneva. Just last week, National Security Adviser Jim Jones went to Moscow to underscore the importance of achieving agreement on a successor to the START treaty. The administration has publicly stated it seeks a new treaty that will ''combine the predictability of START and the flexibility of the Moscow Treaty, but at lower numbers of delivery vehicles and their associated warheads.''

This predictability stems directly from START's verifiability.

So far, most of the public discussion surrounding a potential successor agreement has focused on further reductions in strategic nuclear weapons. Scant attention has been paid to the verification arrangements for such a follow-on agreement. Informally, we understand that we will yet again be relying on START's verification regime in the new agreement. For me, this will be the key determinant in assessing whether a follow-on agreement that comes before the Foreign Relations Committee and the Senate furthers the national interest.

For the moment, we know only the outlines of such an agreement. What is certain is that after December 5, no legally binding treaty will exist that provides for onsite inspections.

My bill is not a substitute for a treaty, but without it, it is unclear how we can permit and by extension carry out any inspection activities. This might not appear troubling to some, but allowing a break in verification is not in the interests of the United States or Russia. Such a break could amplify suspicions or even complicate the conclusion of the START successor agreement.

I believe it is incumbent upon the United States and Russia to maintain mutual confidence and preserve a proven verification regime between December 5 and the entry into force of a new agreement. If we are to do so, the legal tools that are contained in the bill I have introduced are essential. There is nothing in my bill that requires the administration to admit Russian inspection teams in the absence of reciprocity by Moscow, nor does the bill expand verification beyond those already conducted under the START protocol. The authorities in the bill would terminate on June 5, 2010, or on the date of entry into force of a successor agreement to the START treaty.

We must ensure that needed verification tools will exist in the period between START's expiration and entry into force of a new treaty. I am hopeful that Congress will take action on S. 2727 in the near future and that both the Obama administration and the Russian Government will take steps to maintain inspection until ratification of a START successor agreement is completed.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

HEALTH CARE REFORM

Mr. JOHANNS. Mr. President, I stand today to highlight the tax hammer, as I would describe it, that is being brought down on the American people relative to the health care bills that are making their way to the floor of the Senate and literally are about to be debated on the House side.

In the Finance Committee bill, there are over $500 billion in additional taxes and fees and fines and penalties. In the House bill, there are over $750 billion in new taxes, et cetera. If you shrug your shoulders thinking: Well, that is a tax on those wealthy people; I don't have anything to worry about; I am not one of them—you are missing something. Actually, nothing could be further from the truth.

In my judgment, these taxes will stifle small business. They are going to shock families who think there is no way their modest income could possibly be taxed more by the Federal Government.

The House bill, let me start there. The first tax is a 5.4-percent surtax on what are referred to as the high-income earners. It raises taxes by about $460 billion. This is a gigantic tax increase. But supporters of it make the case that, again, this is the rich people, creating the feeling that somehow you don't have to worry about that if you are not making a lot of money. But what they don't want to acknowledge is that this is a tax on business and small businesses. In fact, I would suggest if you wanted to be fair in this debate, you wouldn't call it the millionaire tax; you would call it by the proper name—the small business tax.

The Joint Committee on Taxation released a letter yesterday. It found that one-third of the tax—one-third of the tax—will be from business income. The Wall Street Journal has said this recently, and I am quoting:

> The burden will mostly fall on small businesses that have organized as Subchapter S or limited liability corporations, since the truly wealthy won't have any difficulty sheltering their incomes.

In the United States, there are over 6 million small businesses. Last count, the last available information I could get my hands on, there were over 41,000 small employers in my home State of Nebraska. I have walked through many of these small businesses. I have visited with the people who are trying to keep these businesses going, and they are facing challenges to make the payroll.

Many of these small businesses exist in small communities in my State, and their employees are not just faceless people, people without names. These are people with whom they went to high school. These are people with whom they worship on Sunday, they see at the grocery store. Our small businesses don't want to lay off these people.

Now, what would a 5.4-percent tax do to their bottom line, to their employees, to any potential of hiring in the future, to the communities they support? Well, one can see the impact it will have.

Shawne McGibbon, a former Small Business Administration official, said it very well and, again, I am quoting:

> Nebraska depends on small businesses for jobs and economic growth. During this time of financial stress and economic instability, policymakers need to remember that the State's small businesses provide the economic base for families and communities.

Maybe to some from big cities or States that are mostly urban, the loss of 50 jobs is not a big deal. I can tell my colleagues it is a big deal to me. It is a big deal to my State. Fifty jobs in a community of 1,000 people is absolutely devastating. Those paychecks no longer spent on Main Street can literally bring Main Street to its knees.

Making matters worse, this tax is not indexed for inflation, so what can we predict? What is the most certain thing we can predict about this tax? It is going to have the AMT problem all over again. Each year it is going to creep down, every year capturing more and more people in the middle class.

The second tax I wish to talk about today is the 8-percent penalty on employers who don't offer insurance. Eight percent of their payroll or pay, at least 72.5 percent of workers' premiums, that is what they are faced with. Again, no matter how one sugarcoats it, this is going to cut into wages. For those who pay the 8 percent, that is going to total $135 billion more in taxes taken out of our economy.

The Wall Street Journal, again, I think said it very well recently:

> Such ''play or pay'' taxes always become ''pay or pay'' and will rise over time, with severe consequences for hiring, job creation, and ultimately growth.

I look over there at the House and they sure seem very determined to throttle the backbone of our economy—our small businesses. I will just tell them as somebody who has represented my great State as a Governor and now as a Senator: You take those jobs out of small communities and you will bring those small communities to their knees.

I pay attention to the wisdom conveyed back home. That is why we do our townhall meetings and we walk in parades and we do everything we can to listen to the people.

A constituent from Pierce, NE, a small community, a great community in our State, said it very well:

> With my husband self-employed, around 30 percent of our income is required to pay income taxes. If these income taxes weren't so high, we would be able to afford and choose our own insurance coverage. More taxes for public health care is not the answer.

I wish to reference the Senate bill and a third tax—the penalty tax on individuals without insurance. It provides that if you don't have a government-approved health plan, you will pay a penalty of $750 for singles and $1,500 for married couples. The Congressional Budget Office has analyzed this penalty. Almost half of those paying the penalty tax would be between 100 and 300 percent of the poverty level. In some States, these good folks qualify for government assistance programs. So we are going to tax them or penalize them and then give them subsidies. Boy, only here could somebody make an argument that is rational. It makes no sense to the people back home.

Listen to this: A family of four earning between $23,000 and $68,000 in 2013 would be saddled with the new tax. We are literally talking about taxing not just the middle class but even below that level.

I remember a pledge being made. Last year, President Obama said:

> No one making less than $250,000 a year will see any form of tax increase.

Yet a family of four earning $25,000 will be hit with a tax within a few years. Boy, that is a long way away—$25,000 from $250,000.

Nebraskans believe they can make better decisions about their own health care than the Federal Government. Let me repeat that. Nebraskans believe they can make better decisions about their own health care for themselves and their families than can the Federal Government. I stand here today to tell my colleagues I agree with them.

A constituent from Kearney, NE, said:

> Is there anything I can do to take a stand against what I consider a huge tax burden and a loss of freedoms?

The individual mandate—just one more example of government intrusion into people's lives.

I have covered three of the tax hikes pervasive in the bills, but it is the tip of the iceberg. There are new taxes, penalties, and fees as far as the eye can see.

There is a very fitting quote from John Marshall. He said: ''The power to tax is the power to destroy.'' The power to tax is the power to destroy.

As the health care debate continues, all of us should remember Chief Justice Marshall's wise words. Make no mistake about it. These various bills raise taxes and put burdens upon the American people at a breathtaking pace. Don't be fooled that this is all about taxing the rich people and the millionaires. This is really about taxing and taking from the American people, and Americans are seeing the truth.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, how much time remains on the Republican side?

The PRESIDING OFFICER. There is 14½ minutes remaining.

Mr. ALEXANDER. Thank you, Mr. President. Will you let me know when 3 minutes remain?

The PRESIDING OFFICER. The Chair will so notify.

Mr. ALEXANDER. I thank the President.

Mr. President, we have a lot of unusual things happening in the Senate, the Congress, and the world today, but apparently we are about to be presented with a rare opportunity that very few Senators ever have a chance to vote on. The Democratic congressional health care bill will present Senators—it is still being written from behind closed doors, but from what we can tell from the other bills—with an opportunity to vote for one-half trillion dollars in Medicare cuts and $900 billion-plus in new taxes at the same time. It is very rare that any Senator has a chance to vote for Medicare cuts that big and new taxes that big all at once.

It is not an opportunity that many, if any, Republicans will take advantage of, but that is the proposal that is coming. It caused my colleague from Tennessee to say on the Senate floor yesterday that if Republicans were to propose the same thing—a one-half trillion dollars cut in Medicare, a 60-percent increase in premium costs, which is the estimated increase to Tennesseans who have insurance premiums, according to Senator CORKER, plus taxes of $900 billion when fully implemented, it wouldn't get a single Democratic vote. I think Senator CORKER is probably right about that.

Whenever we say this, this brings a deep concern from the other side of the aisle. The Senator from Ohio came to the Senate floor and engaged in a colloquy with the assistant Democratic leader yesterday after I left the floor and said:

> Imagine this, the Republican Senator from Tennessee is saying that Democrats are about to cut Medicare. Why would they say that? It makes me incredulous to hear the Senator say that Democrats are going to cut Medicare and we are going to use Medicare cuts to pay for health care reform.

The only reason we and everybody else who reads their bill is saying that is because it is true. The proposal is to cut grandma's Medicare and spend it on their proposal, to cut nearly one-half trillion dollars in Medicare spending and not spend it on making Medicare solvent.

We know the Medicare trustees have said the program is going to go broke in 2015 to 2017, yet we are going to spend that money on a new government program into which many Americans who now have employer-based insurance will find their way. It is not Republicans who are scaring seniors about Medicare cuts; it is the Democratic health care bills that are scaring seniors about Medicare cuts. They have a right to be concerned.

Just in case anybody who might be listening thinks we are making this up on the Republican side of the aisle, I brought with me a few articles from reputable sources that describe the Democratic health care proposals and their proposed Medicare cuts.

Here is the New York Times on September 24, an article by Robert Pear, who writes about this subject regularly. It says:

> To help offset the cost of covering the uninsured, the Senate and House bills would squeeze roughly $400 billion to $500 billion out of the projected growth in Medicare over 10 years.

That is the New York Times, Mr. President.

From the sanfranciscogate.com, this is an Associated Press article of September 22:

> Congress' chief budget officer on Tuesday contradicted President Obama's oft-stated claim that seniors wouldn't see their Medicare benefits cut under a health care overhaul.
>
> The head of the nonpartisan Congressional Budget Office, Douglas Elmendorf, told senators that seniors in Medicare's managed care plans could see reduced benefits under a bill in the Finance Committee.
>
> The bill would cut payment to Medicare Advantage plans by more than $100 billion over 10 years.
>
> Elmendorf said the changes ''would reduce the extra benefits that would be made available to beneficiaries through Medicare Advantage plans.''

Then there is the CBO, which in its October 7 letter to Senator BAUCUS talked about in detail the proposed Medicare cuts. Then there is the Associated Press article of July 30, 2009, which says:

> Democrats are pushing for Medicare cuts on a scale not seen in years to underwrite health care for all. Many seniors now covered under the program don't like that one bit.

That is not the Republican National Committee. That is the Associated Press reporting on what the bills say. It also says:

> The House bill—the congressional proposal that has advanced the most—would reduce projected increases in Medicare payments to providers by more than $500 billion over 10 years, a gross cut of about 7 percent over the period. But the legislation would also plow nearly $300 billion back into the program, mainly to sweeten payments to doctors.
>
> That still leaves a net cut of more than $200 billion—

Says the Associated Press, describing the Democratic health care plan—

> which would be used to offset new Federal subsidies for workers and their families now lacking health insurance.

In other words, we are taking money from Medicare and spending it on someone else.

The Senator from Kansas said it is like writing a check on an overdrawn bank account to buy a big new car. That is a pretty good description.

I have a couple more. This is the Los Angeles Times, which is not a Republican publication. The headline on June 14 was, ''Obama to Outline $313 Billion in Medicare, Medicaid Spending Cuts.''

That is what Democratic Senators have always called such proposals, that is what the Los Angeles Times calls the proposals, and that is what we call it because that is what they are. The article says:

Reporting from Washington—Under pressure to pay for his ambitious reshaping of the nation's healthcare system, President Obama today will outline $313 billion in Medicare and Medicaid spending cuts over the next decade to help cover the cost of expanding coverage to tens of millions of America's insured.

This is from an October 22 NPR report:

Over a decade, the committee would cut $117 billion from the Medicare Advantage plans.

This is from an article in the Washington Post on October 23:

$500 billion in cuts to Medicare over the next decade.

That is the Washington Post.

This is the Wall Street Journal on September 8:

Other sources of funding for the Finance Committee plan include cuts to Medicare.

Mr. President, the question is not whether there are going to be cuts to Medicare; that is the proposal. Maybe it is a good idea; maybe it is a bad idea. But we don't need to come to the Senate floor and say that something that is, is not.

The proposal in these large expansive health care plans—the 2,000-page bill coming from the House soon—is that it is basically half financed by cuts in Medicare—not to make the program solvent—a program which has $37 trillion in unfunded liabilities over the next 75 years—but to spend it on a new government program. Those are the facts. That is why it is important that the American people have an opportunity to read the bill and know what it costs and know how it affects them.

The Republican leader and Senator JOHANNS have talked about taxes in the bill. Rarely does a Senator have an opportunity to vote on so many Medicare cuts and so many new taxes, as we apparently will have when this bill comes to us.

The taxes include a tax on individuals who don't buy government-approved health insurance. The Joint Committee on Taxation, our joint committee, and the CBO estimate that at least 71 percent of that penalty, that tax, will hit people earning less than $250,000. So it is not just taxes on rich people. When you impose, as the Senate Finance Committee bill would, $900 billion-plus in new taxes, when fully implemented, on a whole variety of people and businesses that provide health care, what do they do?

According to the Director of the CBO, most of those taxes are passed on to the consumers. Who are the consumers? The people who are paying health care premiums—250 million Americans. What does that mean? That would mean that instead of reducing the cost of your health care premium, we are more likely to increase it.

I ask, Why are we passing a health care reform bill that increases the cost of your health care premiums, raises your taxes, and cuts Medicare to help pay for that? There are increased taxes on health care providers, manufacturers and importers of brand-named drugs, medical device manufacturers—these will all be passed on to consumers, according to the Joint Committee on Taxation and CBO. The Finance proposal raises the threshold for deducting catastrophic medical expenses, but eighty-seven percent of the 5.1 million taxpayers who claim this deduction earn less than $100,000 a year. They are not millionaires. They earn less than $100,000 a year. In fact, data from the Joint Committee on Taxation and the former Director of the CBO shows, by 2019, 89 percent of the taxes—these new taxes—will be paid by taxpayers earning less than $200,000 a year.

The 2,000-page proposal from the House of Representatives would raise taxes by $729 million. There is a tax on millionaires, but we know what happens to that when it is not indexed. Forty years ago, we were worried about 155 high-income Americans who were avoiding taxes, so the Congress passed the millionaires tax—the alternative minimum tax. Today, if we hadn't patched it, as we say, in 2009, that tax would have raised taxes on 28.3 million Americans. The millionaires tax will hit you if you keep earning money.

I have said quite a bit about Medicare cuts and taxes. I want to conclude my remarks by quickly saying what Republicans think should be done. We believe the American people do not want this 2,000-page bill that is headed our way. We want, instead, to start over in the right direction, which means reducing costs and re-earning the trust of the American people by reducing the cost of health care step by step.

Specifically, we would start with the small business health care plans. That is just 88 pages that would lower premiums, according to the CBO. It could cover up to 1 million new small business employees, and it would reduce spending on Medicaid. Then we could take a step to encourage competition by allowing people to buy health insurance across State lines, and we can take measures to stop junk lawsuits against doctors.

More health information technology could be a bipartisan proposal. We can have more health exchanges. The number of pages are very small. Waste, fraud, and abuse are out of control—$1 out of every $10 spent in Medicaid. Our proposal would offer a choice—a couple hundred pages, not 2,000—reducing premiums and debt and making Medicare solvent instead of cutting it, with no tax increases instead of higher taxes, and reducing costs.

That is the kind of health care plan Republicans have offered and the kind we believe Americans will want. We hope over time that will earn bipartisan support.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, how much time is remaining on both sides for morning business?

The PRESIDING OFFICER. The majority has 2½ minutes of morning business. The minority's time has expired.

HEALTH CARE

Ms. MIKULSKI. Mr. President, I would like to speak on health care. I note with interest the remarks of the Senator from Tennessee. I think there is former bipartisan agreement, but everybody says let's go through this step by step. The Congress has had an extensive health care debate. We in the HELP Committee have had extensive hearings, and we had a markup of our bill that lasted more than 3 weeks and had over 350 amendments, of which 75 percent were offered by the other side. We offered many of those amendments. When all was said and done, they voted no. So we don't know when good would be good enough. It is one thing to disagree on policy; it is another thing to want to do a filibuster by proxy, which is what we encountered in the committees with the increased volume of amendments.

We need health care reform, and we need it now. We need it in a way that accomplishes the goal of saving lives, improving lives and, at the same time, controlling costs.

No. 1, I think we all agree, we need to save and stabilize Medicare. The other thing we need to do is end the punitive practices of insurance companies.

I am going to tell you a bone-chilling story. I held a hearing in the HELP Committee on how health insurance in the private sector treats women. First, we pay more and get less benefits. But also what happened and what emerged is that a woman who applied for health care who had a C-section was denied by a Minnesota company unless she got a sterilization.

Did you hear what I said? An insurance company told an American woman, to get health insurance, she had to have a sterilization. Is this fascist China, fascist Germany? Is this Communist China? This is the United States of America. We were outraged.

I have been in touch with this insurance company. I got lipservice promises, blow-off letters from their lawyers, and stuff like that. I am ready with an amendment on the floor. We have to get rid of these punitive practices of denying health care on the basis of a previous condition. And then, not only doing that because of a C-section, but then to engage in a coercive way to force a sterilization.

So you think I want reform? You better believe I do. And I think I speak for the majority of the country who feels this way and the good men, such as the Presiding Officer, who will support us on it. I will have an amendment to deal with this if the insurance company continues to blow me off.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—Resumed

The PRESIDING OFFICER. Under the previous order, the motion to proceed to the motion to reconsider the vote by which cloture was not invoked on the committee-reported substitute to H.R. 2847 is agreed to, and the motion to reconsider that vote is agreed to.

Under the previous order, there will be 40 minutes of debate equally divided and controlled as follows: 20 minutes under the control of the Senator from Louisiana and 20 minutes total under the control of the Senator from Maryland, Ms. MIKULSKI, and the Senator from Alabama, Mr. SHELBY.

Ms. MIKULSKI. Mr. President, very shortly, we will vote on cloture on the CJS bill. As the chairperson of the committee, I wish to say that we want to finish this today so we can move forward with the blessing and the business of funding—Mr. President, I have to yield the floor a moment. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Ms. MIKULSKI. Mr. President, reclaiming my time as the manager of the bill, I wish to bring to my colleagues' attention that at 12:25 p.m. today, we are going to vote on cloture of the Commerce-Justice-Science appropriations bill. We wish to finish this bill today. When I say ''we,'' I mean Senator SHELBY, my ranking member, and myself.

This bill is the result of a rigorous bipartisan effort to fund the Department of Justice, including the FBI and DEA, the Commerce Department, and major science agencies that propel our country in the area of innovation and technology development, such as the National Science Foundation and the National Space Agency.

We want the Senate to be able to deal with this and then move on to other business.

After the cloture vote, it is our intention to dispose of any pending amendments that are germane to the bill. This bill has been public since June. It has been on the floor already for 4 days and over 20 hours. Senators have had ample time to draft and call up their amendments. Senator SHELBY and I hope to be able to move through the amendments in a well-paced but brisk fashion.

We hope our colleagues will cooperate and have any decisions relating to the funding of these important agencies be decided on robust debate and the merits of the argument rather than delay and dither, delay and dither, delay-and-dither tactics of the other side. We don't want to delay. We don't want to dither. We want to proceed, debate germane amendments, and bring our bill to a prompt closure.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that when the Senate resumes consideration of H.R. 2847, that it be in order for me to offer amendment No. 2676, which is filed at the desk.

The PRESIDING OFFICER. Is there objection?

Ms. MIKULSKI. I object, Mr. President. The intention is to vote on cloture and dispose of pending germane amendments. The Senator's amendment is not pending, so I do object, with all courtesy because of my respect for the Senator.

The PRESIDING OFFICER. Objection is heard.

Mr. CHAMBLISS. Mr. President, I obviously am very disappointed to see my colleagues on the other side of the aisle object to my amendment. It is a pretty simple, straightforward amendment.

We have voted several different times when appropriations bills have been on the Senate floor over the last couple of weeks, wherein the folks on the other side of the aisle insist on allowing the transfer of prisoners from Guantanamo Bay to the United States for trial. My amendment prohibits that. I simply think it is not appropriate to bring battlefield combatants into article III trials inside the United States for any number of procedural reasons relative to the treatment of Guantanamo Bay prisoners within our Federal courts. But even beyond that, the potential for the release of those enemy combatants, once they arrive on U.S. soil, certainly is increased.

This is not the way we need to be treating enemy combatants. Those men who are at Gitmo are the meanest, nastiest killers in the world. Every single one of them wakes up every day thinking of ways they can kill and harm Americans, both our soldiers as well as individuals. Some of them were involved in the planning and the carrying out of the September 11 attacks. Others were arrested on the battlefield in Iraq and are at Guantanamo. We are not equipped nor have we ever in our history dealt with trials in article III courts of any enemy combatant arrested on the battlefield. The FBI has not investigated cases prior to arrest. These folks were not given Miranda warnings because our soldiers captured these individuals with AK–47s in their hands with which they were shooting at our men. These are not the types of individuals that our criminal courts are designed to handle or can feasibly handle.

I am disappointed we are not going to get a vote on this amendment. I will continue to raise this issue as long as we possibly can between now and the time that Guantanamo Bay is scheduled to be closed and, from a practical standpoint, until it is closed, if that ever does happen. We have the courts at Guantanamo Bay equipped to handle and try these individuals before military tribunals. Those tribunals have been established, just reauthorized. We are capable of handling the trials at Guantanamo Bay, and that is where they should take place.

I want to make sure the time I utilized is charged against Senator VITTER, which has been agreed to by the Senator.

The PRESIDING OFFICER. It will be so charged.

The Senator from South Carolina.

Mr. DEMINT. Mr. President, I appreciate the Senator from Georgia attempting to get a very important amendment on the floor. I wish to also propound a unanimous-consent request for a related amendment, related to the terrorists in Guantanamo Bay.

This week, I was advised by the officials at the Air Force and Navy base in Charleston——

Ms. MIKULSKI. Will the Senator yield for a question?

Mr. DEMINT. I will in a second.

Yes, I will yield.

Ms. MIKULSKI. Is the Senator offering an amendment or giving a speech about the desire to offer an amendment?

Mr. DEMINT. Mr. President, I desire to offer an amendment, and I will propound a unanimous-consent request to allow my amendment to be considered postcloture. I have a request. I will get to the request in a moment. I wish to give a few seconds of background.

We know this is not an idle threat because inquiries have been made in Charleston for moving detainees from Guantanamo Bay to minimum security brigs in Charleston.

I ask unanimous consent that when the Senate resumes consideration of H.R. 2847, it be in order for me to offer an amendment preventing the transfer of known terrorists at Guantanamo to U.S. soil.

The PRESIDING OFFICER. Is there objection?

Ms. MIKULSKI. Mr. President, I object to the amendment. The intention is to vote on cloture and dispose of pending germane amendments. The Senator's amendment is not pending, so I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DEMINT. Mr. President, this amendment has been filed as a second degree. It makes no sense at this point for us to not have a short debate about moving the most dangerous people in the world to American soil. It is appropriate for us to allow at least a small amount of time, as we rush these bills through, to talk about the issues that are important to Americans.

I am obviously disappointed that we will not allow the discussion of my amendment or the amendment of the Senator from Georgia or others who are trying to get this issue in front of

this body for discussion. It does not mean you cannot vote it down. But not to allow a debate is certainly discouraging at this point.

I appreciate Senator VITTER giving us a few minutes.

I yield the floor.

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

AMENDMENT NO. 2644

Mr. VITTER. Mr. President, I rise again in strong support of my amendment No. 2644 to the Commerce-Justice-Science appropriations bill. It is coauthored by the distinguished Senator BENNETT from Utah, and it is strongly supported by many other Members.

There has been a lot said about this amendment, most of it inaccurate, so let me step back and start with what the amendment says. It is pretty simple, pretty straightforward when you actually read it.

The amendment simply requires the census that we are set to take next year to ask whether the respondent is a citizen. The amendment does not do anything but that. It simply says: The census should ask folks if they are citizens. It is very straightforward.

We should count every person in the United States. The census should include everyone, but in so doing, I am encouraging, and my amendment would require, that the census ask if an individual is a citizen.

Compared to that statement of policy, that simple goal, it is absolutely mind-boggling to me some of the statements that have been made about it. First, the distinguished majority leader Senator REID admitted in several conference calls and statements to the press that he is trying to invoke cloture on this bill specifically to block out any vote, any discussion of the Vitter amendment.

Secondly, in saying that, the majority leader called my amendment ''anti-immigrant.'' I honestly don't see how any reasonable person can say that when we take a census and we simply ask whether the respondent is a citizen or a noncitizen—and plenty of noncitizens are here legally—that is anti-immigrant.

Third, and perhaps most outrageously, Senator REID said my effort is akin to the activities in the 1950s and 1960s to intimidate Black citizens and try to get them to stay away from voting in the voting booth. I take personal offense to that. I think there is no reasonable comparison, and I ask Senator REID to apologize to me for that outrageous statement on the Senate floor.

As I said, what the amendment does is simple. It says that the census should ask whether a respondent is a citizen or not. Why is that important? Well, for at least two reasons. First of all, the census is an enormously important tool we in Congress are supposed to use—information and statistics—as we tackle any number of significant issues and Federal programs. Certainly it is a very significant and important issue that we deal with the immigration problem and the issue of illegal immigration. And certainly it is useful to know, if we are going to spend $14 billion to do a census, who within that number are citizens and who within that number are noncitizens.

Secondly, and even more important, the top thing the census is used for, the first thing the census is used for is to reapportion the U.S. House of Representatives, to determine after each census is done how many U.S. House Members each State gets. The current plan is to count everybody and not ask whether a person is a citizen or a noncitizen. So the current plan is to reapportion House seats using that overall number—using both citizens and noncitizens in the mix. I think that is wrong. I think that is contrary to the whole intent of the Constitution and the establishment of Congress as a democratic institution to represent citizens. I believe only citizens should be in that particular calculation for the reapportionment of the U.S. House of Representatives.

This is a significant issue for many States, including my State of Louisiana. It has a very big and direct and concrete impact on Louisiana and certain other States. It comes down to this: If the census is done next year and reapportionment happens using everybody—citizens and noncitizens—Louisiana is going to lose a seat in the U.S. House of Representatives. We will lose one-seventh of our standing there, our representation there, our clout. If the census was done and only the number of citizens was used to determine reapportionment, Louisiana would not lose that House seat. We would retain seven seats. So that has a very big and direct impact on my State of Louisiana.

I would also point out that it will have the same impact in seven other States: North Carolina, South Carolina, Oregon, Pennsylvania, Mississippi, Michigan, Iowa, and Indiana—excuse me, eight other States. So a total of nine States are in this position, Louisiana being one of them. So it is a very significant issue that directly impacts many citizens and many States.

So I urge all of my colleagues to support getting a vote on the Vitter amendment by denying cloture on the Commerce-Justice-Science appropriations bill. However you may vote, this is an important issue, and however you may vote, we need a full debate and a vote. In particular, I would urge my colleagues from North Carolina, South Carolina, Oregon, Pennsylvania, Mississippi, Michigan, Iowa, Indiana, and, of course, Louisiana to vote no on cloture so we can examine this very significant issue and so we can have a vote on the Vitter-Bennett amendment.

There has been discussion in at least two areas that I wish to quickly address. One is some discussion in the press, including from my distinguished colleague from Louisiana, Senator LANDRIEU, who has indicated that what I just laid out in terms of the impact on reapportionment isn't true. Well, I think every expert who has looked at this, every demographer who has looked at this agrees with what I just said, that this factor is the difference between Louisiana losing a House seat or not and these other States losing a House seat or not.

I would point out three experts, but there are many others. Dr. Elliott Stonecipher, demographer from Louisiana, has been leading the charge on this issue. I compliment him for his tenacity and his hard work. But there are others as well. In an October 27, 2009, New York Times article, my numbers were again confirmed by Andrew Beverage, professor of sociology at Queens College, New York. He did an independent analysis and said exactly the same thing, that, yes, this issue of whether we use citizens and noncitizens in reapportionment does make that huge difference for those States. And last week, my analysis and my numbers were confirmed yet again by an independent and well-respected demographic expert—again in my State of Louisiana—Greg Rigamer with GCR and Associates. And that is very significant.

Secondly, I wish to briefly address this cost issue. It is interesting that in this debate, the other side has been flailing around for an argument against my amendment, though nobody has argued—or nobody whom I have heard—that reapportionment should be done counting citizens and noncitizens, and that is more consistent with the notion of Congress being the representative body of citizens of the United States. So folks on the other side are wildly flailing around for some argument, and the one they have come across is cost: Oh my goodness, the census would have to incur additional cost to add this to the form.

Well, it is certainly true that it would cost some more. I can't give you a precise dollar figure, but it would cost something more. It is certainly true it would have been better for this to have been caught and debated earlier rather than later. Unfortunately, the committee of jurisdiction, the Committee on Homeland Security and Governmental Affairs, which reviews the census forms, did not bring this issue up in a significant way. I agree with that. I don't agree with this wild figure that it would cost $1 billion.

Let me point out a couple of things. First of all, the cost of the census has ballooned from the last census. The last census was $3.4 billion; this census is going to be $14 billion. So the first thing I would say, quite honestly, is that it is pretty ironic for an agency that has had a budget balloon from $3.4 billion in the last census to $14 billion this census to say they can't squeeze in that question, that they can't do it right for $14 billion.

Secondly, quite frankly, the Census Bureau has a horrendous record in terms of cost estimates. When they threw out this very large, very round figure of it costing an additional $1 billion, I called them and said: OK, can you give us the rationale for that, the background on that cost estimate? After 3 weeks of asking for the data behind that $1 billion claim, they sent us one piece of paper with 10 bullet points on it, all very general statements and suggestions, with a final bottom line being a nice even round figure of $1 billion—very unimpressive, in my opinion, in terms of any precise accounting for $1 billion.

I would also draw everyone's attention to an October 7, 2009, GAO report delivered to the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security. It was about the census. In that report, the GAO said:

> Given the Bureau's past difficulties in developing credible and accurate cost estimates, we are concerned about the reliability of the figures that were used to support the 2010 budget.

In another example, the Office of the Inspector General filed a report in 2008 about the census. In that report, the office inspected a particular cost estimate from the Census Bureau that came up to $494 million for a certain portion of their activity, and they said: We think this is a wildly inflated figure, and we can immediately identify cost savings that bring it down to $348 million—a significant savings of almost $150 million. When the Census Bureau was confronted with that, they had to agree and they had to adopt the lower figure.

So, Mr. President, the bottom line is simple: We do a census every 10 years. It is a very important event. We need to do it right, and to do it right, we need a full debate and a vote on this central question embodied by the Vitter-Bennett amendment. So I urge all of my colleagues to vote no on cloture of the Commerce-Justice-Science appropriations bill to demand a reasonable debate and vote on the Vitter-Bennett amendment. This is an important question, and we simply shouldn't forge ahead. Americans have a fundamental problem with not even asking the citizenship question and therefore forging ahead with a plan to reapportion the entire U.S. House of Representatives by putting noncitizens in the mix, when the whole notion of our representative democracy and of Congress is to represent the citizens of the country.

I urge my colleagues to support that position, and I thank my colleagues who have done so thus so far. In particular, I urge my colleagues from North Carolina, South Carolina, Oregon, Pennsylvania, Mississippi, Michigan, Iowa, Indiana, and certainly Louisiana to stand up for their States, to stand up for their interests, to stand up for their clout and their representation in the U.S. House of Representatives.

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

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I object to the Senator's amendment, and I object to the arguments he has made.

First of all, we adopt cloture so that we can proceed on amendments that are germane. Second, in terms of the inaccurate accusation that we are plowing ahead and forging forward, we were on this bill for 4 days, with over 20 hours of debate. There was plenty of time to talk about this amendment, and I was here and ready to engage.

The other thing is that there have been other times—since my bill was pulled from the floor—called morning business, when a Senator could talk for any length of time on any topic he or she wants. Yet silence, silence, silence. So don't use the cloture vote as a way to say there wasn't enough time.

Now let's go to being asleep at the switch. Two accusations were made—the ballooning of the census cost. Well, one of the reasons and the main reason the cost is exploding is that the party in power prior to 2008 was asleep at the switch with the census. They completely dropped the ball on the new technology for being able to go door to door to get a count. It turned into a big techno-boondoggle. It finally took the Secretary of Commerce to uncover that under that rock was another rock, and under that rock were a lot of buckets of malfunctioning microchips. So we had to bail out Secretary Gutierrez and the census because of the techno-boondoggle because the other party was asleep at the switch in maintaining strict quality controls.

Now let's go to the asking of another question. The Senator from Louisiana says he wants to stand up for his State. I agree, we have to stand up for the States, but the time to stand up was in April of 2007. Did you know that the Census is mandated by law to submit the questionnaires to Congress—and they did? So for 1 year, from April 1, 2007, to the close of the review by Congress 1 year later, April 2008, there was plenty of time to say: We don't like the questionnaire; we want to add a citizenship question. That was the time and the place. When you are going to stand up for your State, stand up at the right time to make a difference and not try to amend the law in a way that is going to create administrative havoc.

We can debate the merits of the question, but I am here as an appropriator on the process. The Census Bureau did meet its statutory responsibility. It submitted the questionnaire to the Congress on April 1, 2007. It did not come by stealth in the night, it was not written in invisible ink, it was written in English here for all to see—and also in other languages we could test and use—to say: Do you, Congress, like this questionnaire? Do you have any comments? For all those who want to stand up, that was the time to do it and the time to make a change.

Let's talk about the consequences. It will delay the census so we could essentially not meet our constitutional mandate of having the census done in a timely way. No. 2, it will cost, if we did not do it, another $1 billion and wreak, again, administrative havoc.

Let's go into this whole claim about citizens and noncitizens. The census already tracks the number of citizens and noncitzens through a separate survey. We could talk about what this will mean in reapportionment and so on. Those questions are for debates that lie with the Judiciary Committee.

We are not going to vote up or down on the Vitter amendment, we are going to vote on cloture. Why is cloture important? So we do not have distracting amendments that are better offered on the appropriate substance of the bill. We have to fund the State, Commerce, Justice, Science agencies. The FBI needs us to fund this agency. The Marshals Service needs us to fund this agency. Federal law enforcement, our Federal prisons—you might not like whom the Obama administration puts in Federal prisons, but we need Federal prisons. So we need to pass cloture so we can dispose of germane amendments and move democracy forward.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Maryland has 7½ minutes remaining.

Ms. MIKULSKI. I wish to reserve my time. Did the Senator from Kansas have a question?

Mr. ROBERTS. I would be delighted to respond to my good friend from Maryland. I am in a position to yield back all the minority's time. We have no more speakers.

Ms. MIKULSKI. Mr. President, we are not prepared to yield back any time. I reserve the remainder of my time.

Mr. ROBERTS. Will the distinguished Senator yield?

Ms. MIKULSKI. Certainly.

Mr. ROBERTS. Today, the U.S. Marine Corps is celebrating its birthday. As I speak, the Commandant of the Marine Corps, the Drum and Bugle Corps and various and assorted marines are over in the Russell Building. I am to cut the cake, and I am getting into deeper and deeper trouble if we delay the ceremonies to the degree they could be delayed. If somebody wants to talk, obviously, you have 7 minutes, but I appreciate any consideration you might be able to give us.

Ms. MIKULSKI. That is one heck of an argument, I respond to the Senator from Kansas. I have great admiration for the Marine Corps. If the Semper Fi guys call and you need to cut the cake, I will certainly be willing to cooperate.

Seriously, our congratulations to the U.S. Marine Corps on their birthday. We value them for what they have done in their most recent conflicts and their incredible history. They are truly Semper Fi. In the spirit of what I hope will be the comity of the day, the civility of

the day, we yield back our time in order to permit the vote.

Mr. ROBERTS. I tell the Senator Semper Fi, and on behalf of the minority, I yield back all our time.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the committee-reported substitute amendment to H.R. 2847, the Departments of Commerce, Justice and Science and Related Agencies Appropriations Act of Fiscal Year 2010.

Harry Reid, Barbara A. Mikulski, Barbara Boxer, Robert Menendez, Charles E. Schumer, Patty Murray, Tom Harkin, Patrick J. Leahy, Roland W. Burris, Mark Begich, Ben Nelson, Daniel K. Inouye, Debbie Stabenow, Bernard Sanders, Dianne Feinstein, John F. Kerry, Edward E. Kaufman.

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

The question is, Is it the sense of the Senate that debate on the committee-reported substitute amendment to H.R. 2847, the Departments of Commerce, Justice, and Science, and Related Agencies Appropriations Act of 2010 shall be brought to a close?

The yeas are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The yeas and nays resulted—yeas 60, nays 39, as follows:

[Rollcall Vote No. 335 Leg.]

YEAS—60

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—39

Alexander	Collins	Hatch
Barrasso	Corker	Hutchison
Bennett	Cornyn	Inhofe
Bond	Crapo	Isakson
Brownback	DeMint	Johanns
Bunning	Ensign	Kyl
Burr	Enzi	LeMieux
Chambliss	Graham	Lugar
Coburn	Grassley	McConnell
Cochran	Gregg	Murkowski
Risch	Shelby	Vitter
Roberts	Snowe	Voinovich
Sessions	Thune	Wicker

NOT VOTING—1

McCain

The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 39. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2847) making appropriations for the Departments of Commerce, Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes.

Pending:

Vitter/Bennett amendment No. 2644, to provide that none of the funds made available in this act may be used for collection of census data that does not include a question regarding status of United States citizenship.

Johanns amendment No. 2393, prohibiting the use of funds to fund the Association of Community Organizations for Reform Now (ACORN).

Levin/Coburn amendment No. 2627, to ensure adequate resources for resolving thousands of offshore tax cases involving hidden accounts at offshore financial institutions.

Durbin modified amendment No. 2647, to require the Comptroller General to review and audit Federal funds received by ACORN.

Begich/Murkowski amendment No. 2646, to allow tribes located inside certain boroughs in Alaska to receive Federal funds for their activities.

Ensign modified amendment No. 2648, to provide additional funds for the State Criminal Alien Assistance Program by reducing corporate welfare programs.

Shelby/Feinstein amendment No. 2625, to provide danger pay to Federal agents stationed in dangerous foreign field offices.

Leahy amendment No. 2642, to include nonprofit and volunteer ground and air ambulance crew members and first responders for certain benefits.

Graham amendment No. 2669, to prohibit the use of funds for the prosecution in article III courts of the United States of individuals involved in the September 11, 2001, terrorist attacks.

Coburn amendment No. 2631, to redirect funding of the National Science Foundation toward practical scientific research.

Coburn amendment No. 2632, to require public disclosure of certain reports.

Coburn amendment No. 2667, to reduce waste and abuse at the Department of Commerce.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. I ask for the regular order.

Mr. NELSON of Florida. 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. NELSON of Florida. I ask unanimous consent that the order for the quorum be rescinded.

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

Mr. NELSON of Florida. Mr. President, the Food and Drug Administration is proposing a rule that will basically eliminate raw oysters from the Gulf of Mexico. There have been 15 people in the past year who have died from a bacterial infection that comes out of raw oysters. But what has been discovered is that the people had a preexisting condition prior to eating the oysters that made their immune system wear down so they were much more susceptible. In a sweeping administrative executive branch decision trying to correct a problem, they are suddenly proposing that they are going to stop the rest of America eating raw oysters from the Gulf of Mexico. This is like saying: If you have a food allergy to peanuts, we are going to ban you eating peanuts unless you cook them.

There is a thriving industry along the coast of America, particularly the gulf coast, that has a delicacy known as raw oysters that people enjoy. Apalachicola oysters, the creme de la creme, are shipped all over the world. And in some of the fanciest restaurants you get Apalachicola oysters on the half shell. The Food and Drug Administration is about to basically ban raw oysters from the Gulf of Mexico. Some of us in the Senate are going to try not to let it happen.

Senator LANDRIEU and I, who both have some interest in this because it affects our States, are filing a bill today that would utilize the appropriations means of not letting an appropriation be enacted or used for the purpose of the FDA implementing such a rule that would basically ban raw oysters from the Gulf of Mexico. This is trying to kill a gnat with a sledgehammer. If people were, because of a preexisting condition, already subject to coming down with an illness, there is simply no sense. This is government run amok. This is government out of control. This is government trying to kill a gnat with a sledgehammer. We are not going to let it happen.

I inform the Senate today that we are filing this legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. FRANKEN. I ask unanimous consent to speak as in morning business for up to 5 minutes and that the time be charged postcloture.

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

(The remarks of Mr. FRANKEN pertaining to the introduction of S. 2734 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. 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. NELSON of Florida. Mr. President, I wish to be recognized as in morning business.

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

Mr. NELSON of Florida. Mr. President, it goes without saying that NASA, the National Aeronautics and Space Administration, is at a crossroads. It is an agency that has been starved of funds, so it finds itself in the position that its human-rated capable vehicle, the space shuttle, will be ceasing to fly after six more flights that will continue to build the space station and equip it.

This last flight will probably not be until the first quarter of 2011. But the crossroads NASA is facing is because it has been starved of funds over the course of the last half a dozen years, it will not have a new human-rated vehicle to take our crews to the International Space Station. As a matter of fact, there is a great deal of consternation and conflict within NASA itself as to what that vehicle should be. So the President, recognizing this earlier when he appointed the new NASA Administrator, GEN Charlie Bolden, set up a blue ribbon panel headed by Norman Augustine.

They have now reported, and the strong inference of their extensive and detailed report is that the vehicle that was planned to fly but was obviously going to be delayed because it hadn't been developed quickly enough, the Ares I—by the way, the same vehicle that had a very successful test flight a week ago—the strong inference of the Augustine Commission Report is that the Ares I would not even be ready to fly astronauts until the year 2017. Its sole purpose would be, according to the Augustine Commission Report, to get astronauts to and from the space station, and that would be, in the Augustine report's inference, too late. So they are recommending, or at least the strong inference of the recommendation in the Augustine report, is that commercial vehicles be developed to take cargo and crew to the International Space Station. The Augustine Commission Report is suggesting the space station certainly should be kept alive until the year 2020, but to now start to reap some of the science from the experiments that just now the space station is getting equipped to be able to do, in the nodule that is now designated as a national laboratory on the International Space Station.

If what I have said sounds confusing, indeed it is. That is why NASA is at a crossroads. NASA is even more at a crossroads because NASA can't do anything unless it gets some serious new additional money, and that is the strong recommendation of the Augustine Commission Report. What they are saying is that NASA should have $1 billion extra over the President's request in this fiscal year, the fiscal year that started October 1 known as fiscal year 2010, and that the next fiscal year it should have an additional $2 billion over the President's baseline recommendation in the budget, and that thereafter, for the decade, it should have an additional $3 billion per year to fill out the decade so that NASA can do what it does best.

What does it do best? It explores the unknown. It explores the heavens. What should that architecture be? I don't think our Senate committee can decide that. I don't think the White House can decide that, but the White House can give direction and our committee can give direction to NASA to go figure it out: Figure out what that architecture is to do what NASA does best, which is explore the heavens. That direction is certainly recommended in the Augustine Commission Report as: Get out of low Earth orbit. Expand out into the cosmos, with humans, to explore.

So what I am hoping the President of the United States, Barack Obama, is going to do, now that he has received the Augustine Commission Report—it is my hope, it is my plea to the President that he will take their recommendations seriously and that he will do three things. First, even in the midst of an economic recession, when the budgets are very constrained and tight, he will say that a part of America we are not going to give up is our role as explorers and that he will commit to recommend in his budgets the additional money as recommended by the Augustine Commission, and in this first year, this fiscal year we are in now, fiscal year 2010, that is a lot easier because you can get that additional $1 billion out of the unused money in the stimulus bill. But it gets tougher as we get on down the line. That is the first thing.

The second thing the President should say to his administrator of NASA, General Bolden, is convene the guys and determine the architecture of how we should go about and what is the mission we are going to explore. I can tell my colleagues that this Senator thinks the goal should be to go to Mars. It may not be to the surface of Mars; it may be first to Phobos, one of the moons of Mars; we would have to spend so much less energy in getting down to the surface of that moon because of the gravitational pull instead of going all the way to the surface of Mars. The science that we could gain from that would be extraordinary.

Therefore, the President's direction, I would hope, to NASA would be: Figure out the architecture. Does that mean we are going to take the Ares I and make it into an Ares V?

Is that going to be the heavy lift vehicle to get the hardware up to expand out into the cosmos, be it to Phobos, be it to an astroid, be it to the Moon? My hope is that the President would give that direction: Figure out that architecture and what are the steps along to the goal of getting to Mars. That would be the second thing.

The third thing I hope the President would do is give direction to NASA that since NASA is at this crossroads and since there is going to be disruption in the workforce because there is not another human-rated rocket ready after the space shuttle is shut down, then you have to help the workforce. You have to move work around among the NASA centers. You have to bring in new kinds of research and development, of which NASA is a good example of an R&D agency.

It is through the direction of those three things that I think we can get NASA out of this fix it finds itself in at this crossroads point. Give the direction, No. 1, for the additional funding that NASA needs; No. 2, direct NASA to produce that architecture for exploring the heavens; and No. 3, take care of the workforce in the meantime.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KAUFMAN. 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. KAUFMAN. Mr. President, I ask unanimous consent to speak as in morning business for up to 20 minutes.

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

Mr. KAUFMAN. Mr. President, I rise today because I am deeply concerned that just over 1 year since the collapse of Lehman Brothers, a failure that helped send us to the brink of depression, Wall Street is essentially unchanged. Congress and the SEC have not enacted any reform, and the American people remain at risk of another financial debacle—not just because the same practices that led to the crisis 14 months ago are continuing but from new practices that are leading to new problems and new systemic risks.

Last year, the financial world almost came to an end. Yet most of Wall Street then believed that no government review or additional regulation was necessary—right up until the moment government had to step in and save it.

We had been assured that the system was sound. We were assured that a host of checks and balances were in place that would suffice. We were assured that companies have to report their financial holdings with full disclosure and transparency. We were assured that accountants have to verify those assets. We were assured that due diligence is conducted on every deal and transaction. We were assured that boards of directors have a fiduciary duty to undertake prudent risk management. We were sure that management wanted their companies to thrive

over the long term. Most important, we were assured that regulatory bodies and law enforcement agencies are in place to police the system. But those safeguards did not prevent the disaster.

In the past 10 years or more, one of the most important safeguards—the regulators—had simply given up on the importance of regulation. We believed and they believed that markets could police themselves, they would self-regulate, and so in effect we pulled the regulators off the field.

We now know the confluence of events that led to the disaster, and there is blame enough to go around. We failed to regulate the derivatives market. Government-backed agencies, such as Fannie Mae and Freddie Mac, pushed to make housing available for greater numbers of people; unscrupulous mortgage brokers pushed subprime mortgages at every opportunity; and investment bankers pooled and securitized those subprime mortgages by the trillions of dollars and sold them like hotcakes. Rating agencies, left unmonitored by the SEC, incredibly stamped these pools with AAA ratings.

The SEC, which changed the capital-to-leverage ratio level for investment banks from 30-and-50-to-1, allowed these banks to buy huge pools of these soon-to-be toxic assets, and investment banks wrote credit default swaps and then hedged those risks without any central clearinghouse, without any understanding of who was writing how much or what it all meant—all of this, incredible to believe, without any regulation or oversight.

This chart conveys that banks were involved in high-risk return investments that were largely unregulated. Then, crash—the housing bubble burst and a disaster of truly monumental proportions struck. Americans lost $20 trillion in housing and equity value during the ensuing financial meltdown. The economy lurched into free fall, and the GDP shrunk by a staggering percentage not seen since the 1950s.

What happened next? The American taxpayer, the deep-pocket lender of last resort, had to ride to the rescue. We can barely even count the trillions of dollars in taxpayer money that have gone into bailing out the banks, AIG, and a number of other financial institutions. That is not including the billions of taxpayer dollars we had to spend to stimulate the economy.

We must never let this happen again. Yet here we are 1 year later, with no immediate crisis at hand, and we are falling back into complacency. The credit default swap market remains unregulated. The credit rating agencies have not yet been reformed. The banks are back to their old habits—paying out billions of dollars in bonuses for employees who are still engaged in high-risk, high-reward practices.

What is the great lesson we should have learned from the financial disaster of 2008? When markets develop rapidly and change dramatically, when they are not regulated, and when they are not fully transparent, it can lead to financial disaster. That is what happened in the credit default swap market—rapid and dramatic change in the market, no regulation, and opaqueness, which equaled disaster. This must never happen again.

I look forward to working with my colleagues to regulate the derivatives markets, to ensure that credit default swaps are traded on an exchange or at least cleared through a central clearinghouse with appropriate safeguards enforced, and to enact meaningful financial regulatory reforms.

At the same time, we need to be looking carefully to see if these three deadly ingredients—rapid technological development, lack of transparency, and a lack of regulation—are appearing again in other markets. There is no question in my mind that in today's stock markets, those three disastrous ingredients do exist.

Due to rapid technological advances in computerized trading, stock markets have changed dramatically in recent years. They have become so highly fragmented that they are opaque—beyond the scope of effective surveillance—and our regulators have failed to keep pace.

The facts speak for themselves. We have gone from an era dominated by a duopoly of the New York Stock Exchange and Nasdaq to a highly fragmented market of more than 60 trading centers.

Dark pools, which allow confidential trading away from the public eye, have flourished, growing from 1.5 percent to 12 percent of market trades in under 5 years.

Competition for orders is intense and increasingly problematic. Flash orders, liquidity rebates, direct access granted to hedge funds by the exchanges, dark pools, indications of interest, and payment for order flow are each a consequence of these 60 centers all competing for market share.

Moreover, in just a few short years, high-frequency trading, which feeds everywhere on small price differences in the many fragmented trading venues, has skyrocketed from 30 percent to 70 percent of the daily volume.

Indeed, the chief executive of one of the country's biggest block trading dark pools was quoted 2 weeks ago as saying that the amount of money devoted to high-frequency trading could "quintuple between this year and next."

Let's put the last chart back up for a second. Again, we have learned that if you have rapid and dramatic change, opaqueness, and no effective regulation, which is exactly what exists in the high frequency trading markets, we have a disaster. We should look at this in terms of high-frequency trading. We have no effective regulation in these markets.

Last week, Rick Ketchum, the chairman and CEO of the Financial Industry Regulatory Authority—the self-regulatory body governing broker-dealers—gave a very thoughtful and candid speech, which I applaud. In it, Mr. Ketchum admitted that we have inadequate regulatory market surveillance.

His candor was refreshing but also ominous:

> There is much more to be done in the areas of front-running, manipulation, abusive short selling, and just having a better understanding of who is moving the markets and why.

Mr. Ketchum went on to say:

> [T]here are impediments to regulatory effectiveness that are not terribly well understood and potentially damaging to the integrity of the markets . . . The decline of the primary market concept, where there was a single price discovery market whose on-site regulator saw 90-plus percent of the trading activity, has obviously become a reality. In its place are now two or three or maybe four regulators all looking at an incomplete picture of the market—

And this is important—

> and knowing full well that this fractured approach does not work.

At the same time that we have no effective regulatory surveillance, we have also learned about potential manipulation by high-frequency traders.

Last week, the Senate Banking Subcommittee for Securities, Insurance, and Investment held a hearing on a wide range of important market structure issues. At the hearing, Mr. James Brigagliano, co-acting director of the Division of Trading and Markets, testified that the Commission intends to do a "deep dive" into high-frequency trading issues due to concerns that some high-frequency programs may enable possible front-running and manipulation.

Mr. Brigagliano's testimony about his concerns was troubling:

> . . . if there are traders taking position and then generating momentum through high frequency trading that would benefit those positions, that could be manipulation which would concern us. If there was momentum trading designed—or that actually exacerbated intra-day volatility—that might concern us because it could cause investors to get a worse price. And the other item I mentioned was if there were liquidity detection strategies that enabled high frequency traders to front-run pension funds and mutual funds, that also would concern us.

Reinforcing the case for quick action, several panelists acknowledged that it is a daily occurrence for dark pools to exclude certain possible high-frequency manipulators. For example, Robert Gasser, president and CEO of Investment Technology Group, asserted that surveillance is a "big challenge" and that improving market surveillance must be a regulatory priority.

He said:

> I can tell you that there are some frictional trades going on out there that clearly look as if they are testing the boundaries of liquidity provision versus market manipulation.

But none of the panelists, when asked, felt responsible to report any of their suspicions of manipulative activity to the SEC. That is up to the regulators and their surveillance to stop, they believe.

Finally, at the end of the hearing, Subcommittee Chairman REED asked about the reported arrest of a Goldman Sachs employee who allegedly had stolen code from Goldman used for their high-frequency trading programs.

A Federal prosecutor, arguing that the judge should set a high bail, said he had been told that with this software, there was the danger that a knowledgeable person could manipulate the markets in unfair ways.

The SEC has said it intends to issue a concept release to launch a study of high-frequency trading. According to news reports, this will happen next year. I do not believe next year is soon enough. We need the SEC to begin its study immediately. Where is the sense of urgency?

Our stock markets are also opaque. Again, I refer to Chairman Ketchum's speech:

> There are impediments to regulatory effectiveness that are not terribly well understood and potentially damaging to the integrity of the markets.

He went on to say:

> We need more information on the entities that move markets—the high frequency traders and hedge funds that are not registered. Right now, we are looking through a translucent veil, and only seeing the registered firms, and that gives us an incomplete—if not inaccurate—picture of the markets.

Senator SCHUMER echoed this theme at last week's hearing. He said:

> Market surveillance should be consolidated across all trading venues to eliminate the information gaps and coordination problems that make surveillance across all the markets virtually impossible today.

Let me repeat: '' . . . market surveillance across all the markets virtually impossible today.'' I totally agree with that, and none of the industry witnesses disagreed with Senator SCHUMER. That is why the SEC must not let months go by without taking meaningful action. We need the Commission to report now on what it should be doing sooner to discover and stop any such high-frequency manipulation.

Where is the sense of urgency?

We must also act urgently because high-frequency trading poses a systemic risk. Both industry experts and SEC Commissioners have recognized this threat. One industry expert has warned about high-frequency malfunctions:

> The next LongTerm Capital meltdown would happen—

And get this—

> in a five-minute time period . . .

''The next LongTerm Capital meltdown would happen in a five-minute time period.''

> At 1,000 shares per order and an average price of $20 per share, $2.4 billion of improper trades could be executed in [a] short timeframe.

This is a real problem. We have unregulated entities—hedge funds—using high-frequency trading programs, interacting directly with the exchanges.

As Chairman REED said at last week's hearing, nothing requires that these people even be located within the United States. Known as ''sponsored access,'' hedge funds use the name of a broker-dealer to gain direct trading access to the exchange but do not have to comply with any of the broker-dealer rules or risk checks.

SEC Commissioner Elisse Walter has recognized this threat:

> [Sponsored access] presents a variety of unique risks and concerns, particularly when trading firms have unfiltered access to the markets. These risks could affect several market participants and potentially threaten the stability of the markets.

Let me repeat that:

> These risks could affect several marketing participants and potentially threaten the stability of the markets.

This is from a member of the SEC. Even those on Wall Street responsible for overseeing their firms' high-frequency programs are not up to speed on the risks involved, according to a recent study conducted by 7city Learning. In a survey of quantitative analysts who design and implement high-frequency trading algorithms, two-thirds asserted their supervisors ''do not understand the work they do.''

And though the quants and risk managers played a central role exacerbating last year's financial crisis, 86 percent of those surveyed indicated their supervisor's ''level of understanding of the job of a quant is the same or worse than it was a year ago,'' and 70 percent said the same thing about their institutions as a whole.

I agree with the market expert and 7city director Paul Wilmott who said:

> These numbers are alarming. They indicate that even with the events of the past year, financial institutions are still not taking the importance of financial education seriously.

Let me repeat that.

> . . . They indicate that even with the events of the past year, financial institutions are still not taking the importance of financial education seriously.

Where is the urgency? Time is of the essence. We must act now.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the submission of S. Res. 339 are printed in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

Mr. SPECTER. I thank the Chair, and I yield the floor.

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

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

The bill clerk proceeded to call the roll.

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

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

Ms. MIKULSKI. Mr. President, our colleague from Pennsylvania, Senator SPECTER, just gave an eloquent speech on why the Supreme Court should be televised and how it would provide greater openness and transparency were decisions being made in the public's eye. I think that argument was very interesting. But there is one institution that is absolutely on television already, and that is the Congress of the United States. Through C–SPAN, what goes on in this Chamber and often in the committee rooms goes out all over America. We get phone calls, in many instances, from the C–SPAN watchers. I think it is an outstanding tool.

Someone watching what is going on all day would wonder: What are they doing? We have kind of lost sight, given some of the amendments that were offered, of just what is the pending business on the floor of the Senate today. As the person who chairs the Appropriations Subcommittee on Commerce, Justice and Science, I would like to remind the American people watching, and my colleagues, what is the pending business.

The pending business is how should we best fund those important agencies at the Commerce Department that promote trade and scientific innovation; also the Justice Department, rendering impartial justice, enforcing the laws that are on the books; to important science agencies, such as the American space program. What the appropriations bill does is it determines what goes in the Federal checkbook to fund these programs.

I am very proud of the way we, in our subcommittee, have worked on a bipartisan basis to bring a bill to the Senate floor that we believe reflects national priorities. I have worked hand in hand with my ranking member, the Republican Senator from Alabama, Mr. SHELBY, and we wrote good legislation.

What do we like about it? First of all, what we like about it is that we want to promote innovation and competition in our society. We are in a terrible economic mess. Our economy is rocking and rolling. The fact is, we still do not have jobs. What about these jobs? What do we do? I want to talk about the role of the Commerce Department in coming up with new ideas, making sure we have innovation from the government. Innovation is important because it is the new ideas that create the new products that create the new jobs.

I note the Presiding Officer is from the State of Ohio. There, as in my State, manufacturing has been very hard hit. Many of the traditional ways of life are not there. We have to look ahead to what is promoting innovation-friendly government. Right there in the Commerce Department is the Bureau of Industry and Security, which makes sure we are able to provide exports of our technology. We have the Patent and Trademark Office, which is guardian of our intellectual property around the world. It protects ideas and those who come up with inventions as private property, the hallmark of capitalism—the ability to own private

property and benefit from the fruits of your labor in an open and competitive marketplace. We would fund that.

When you come up with new products, you also have to have standards so a yardstick is the same in the United States as in any other country—or the metric system. What the National Institute of Standards does is it sets standards for products that will enable the private sector to compete among themselves and around the world. I am proud of them. They are located in Maryland, but even if they were located in Utah or Wyoming I would be proud of them because it is there that they set the standards which help set the pace for America to compete.

Much is said about our arms race, but one of the races we have been in is the race for America's future. One of the agencies that is the greatest inventor of technology has been the National Space Agency. We have all been thrilled to watch our astronauts go into space. Many of us, particularly this summer, were excited about the bold and courageous astronauts because they were able to retrofit Hubble with new batteries and a new camera so we could do the scientific work needed to send Hubble on its final journey. It is at the National Space Agency, though, that so much invention of new technology occurs.

As someone who has spoken out so much for women's health, and also the desire to prevent breast cancer, one of the things I am proud of is out of NASA's x-ray technology we have been able to develop other products for the civilian population, such as digital mammography.

A few months ago I broke my ankle and then wore a boot that looked like a space boot. It looked like a space boot because it maybe was—well, not mine. I would love to wear a space boot worn by Sally Ride or one of the great women astronauts. But the fact is, it is because of the technology that was developed to protect our astronauts that we now know how to protect us on Earth. This is what we are talking about.

Should we fund these agencies? Should we be able to make public investments that lead to private sector jobs? While we are fighting over should we have this prisoner over at Gitmo or other kinds of provocative social questions, we have a duty to promote those agencies that promote private sector jobs.

The other area I am very proud of in this bill is our support of law enforcement. Yes, we support Federal law enforcement, our FBI, our Marshal Service, as well as our Bureau of Alcohol, Tobacco, Firearms and Explosives. But I am also proud that we support that thin blue line of local law enforcement. For many of our communities, mayors and county executives are stretched to the limit. Sometimes people who commit crimes are better armed and have the latest technology, more than our cops on the beat. Through a program called the Byrne grants they are able to apply for Federal funds to be able to modernize themselves.

We don't want to hold up the funding. We want this bill to go ahead. We want things to happen. That is what this bill is. We have worked hard. Senator SHELBY and I held hearings, we held meetings, we met with local law enforcement.

We took the time to meet with people who have been victims, battered women. We fund the Violence Against Women Act. Do you know, since JOE BIDEN created that program, over 1 million people have called on the hotline; that we have protected over 1 million women from being abused and maybe even facing violence of such a degree that it threatened their lives?

This is not only about spending. These are about public investments that protect our communities and protect American jobs. I hope my colleagues will come and agree to complete discussion on their amendments so we can complete votes and bring this to a close so we can go to a conference with the House.

I note the Senator from Louisiana is on the Senate floor. I want to single her out, as they say in the colloquial: Do a shout-out. The Senator is well known for her work on adoption, and I salute her for that. Also, international adoption, making sure the laws are made and making sure, as people seek international adoption, there is not the exploitation of those children. We work with that in our bill. We also make sure we protect missing and exploited children in their own country.

You know, we see horrific, ghoulish, and grisly things done to young people who have been picked up. But thanks to the Adam Walsh Act, the Missing Children and Exploitation Act, we are stopping that. We have tough laws now against sexual predators and a way to keep them off the streets and to keep them registered. We have the money in the Federal checkbook to do that.

I really like this subcommittee because it does protect American jobs. It does protect American communities. It does protect the American people. I hope that today we can conclude our debate on the five pending amendments, move to a vote and try to get our country and our economy back again.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. I ask unanimous consent that the Senator from Louisiana be recognized for 3 minutes and then I follow with the 30 minutes I had allotted.

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

Ms. LANDRIEU. Mr. President, I appreciate the comments from our leader, Senator MIKULSKI from Maryland, who does a magnificent job as a member of the Appropriations Committee, and particularly in this area she feels passionate about. I look forward to continuing to work with her in all sorts of criminal justice areas, particularly as it relates to the protection of children. I thank her for those comments.

I thank the Senator for giving me a chance to speak very briefly, to do two things: one, to give a statement on an amendment that was proposed on this bill by Senator VITTER, that related to adding a question to the Census. I have submitted a letter on this to him personally.

Senator VITTER contends that the founding fathers only believed that citizens should be counted by Census officials for the purposes of congressional apportionment.

He argues that the inclusion of noncitizens in the census will result in Louisiana losing a congressional seat since the population of States like California and Texas could be inflated by millions of illegal immigrants, making their population growth relatively greater than ours.

Should noncitizens be included in the calculation that determines the allocation of seats in the House of Representatives? I believe that the answer is no.

But merely adding a question to the Census will not fix that. That change requires an amendment to the Constitution, which states: ''Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State''.

I think that the Constitution is clear. But my staff has checked with the Nation's foremost constitutional scholars at Yale, Stanford, and UCLA to name a few. They have checked with scholars from the political right and scholars from the political left. So far, every single scholar agrees: If you want to exclude noncitizens you must amend the Constitution.

Professor Eugene Volokh, a well-regarded constitutional law scholar at UCLA, and a staunch conservative, has written publicly that the notion would be unconstitutional.

Were the founders wrong to create the formula for congressional apportionment in that way? That is a very serious question for all 50 States, but it is far from the most important challenge confronting Louisiana today.

The fact is that if Louisiana does not bolster law enforcement, our communities will not be safe enough to attract new residents. If we do not improve our failing public schools, families will not want to call Louisiana home, and businesses would not have the employment base that will grow our economy.

The truth is that our State has seen more outward migration than any other in the Union. Only Louisiana and North Dakota lost population this decade, and Louisiana's population was reduced by a much higher degree.

Illegal immigration is a very serious problem. but it is not responsible for Louisiana's loss of representation. Andrew Beveridge, a sociologist at Queens

College and the Graduate Center of the City University of New york, has shown that even if all illegal immigrants were excluded, Louisiana would still lose a seat.

Here is our real problem: Decades of stagnant economic growth drove many Louisianians elsewhere, and that was before Hurricanes Katrina, Rita, Gustav and Ike severely impacted our populous coastal communities.

Demonstrating that Louisiana means business when it comes to reforming our schools and our police departments and our basic infrastructure takes serious work. That is the work that I engage in every day.

Blaming immigrants for our problems does not take much effort, but it will not make our State a better place to live either.

Secondly, quickly, since Puerto Rico does not have a Senator, as it is still a territory and not a State, I wanted to take the opportunity to express to the people of Puerto Rico our sadness about a terrible explosion that happened recently, on October 24. It occurred at one of their major refineries.

This came to my attention for two reasons. One, we also have a lot of refineries in Louisiana, so we are sensitive that accidents such as this can happen, but also as the Chair of the Subcommittee on Disaster Response, I wanted to talk a minute about this. The fire burned for 24 hours. It destroyed 22 of the 40 storage tanks. Thankfully and amazingly, no one was killed.

I come to the floor to congratulate the local officials, the Governor, the FEMA representatives, the law enforcement that responded to this horrific disaster. Some 1,500 people were evacuated, 596 people were sheltered outside of the impacted area. There were 130 firefighters and National Guard troops who worked to bring the inferno under control. The good news is that they did.

The purpose of this comment for the RECORD is to say that training and preparedness help. The Members of this body, both Democrats and Republicans, supported additional funding in last year's bill for FEMA for local training. Congress recognized the importance of training. Since 2007 we have appropriated over $250 million each year in grants. The post-Katrina emergency management reform gave FEMA regional administrators specific responsibility for coordinating that training.

I am encouraged that FEMA seems to have learned some of the lessons from Hurricane Katrina and also from September 11, which is now several years behind us, but nonetheless still on our minds. So I wanted to say that training, the appropriate amount of investment in training, works. Again, no one was killed.

I want to give credit to FEMA and the Governor of Puerto Rico, Luis Fortuño, for their quick action in keeping people safe, in responding to this situation. Hopefully we will continue to refine our processes, make our disaster response even better for disasters such as this. For hurricanes, for earthquakes, or for anything else that comes our way, we will be ready and able to respond.

I yield the floor and I thank the Senator from Oklahoma for being gracious with his time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I am going to spend about 20 minutes talking about amendments I have that are germane and we will be voting on. But they are small amendments. There is nothing big here. They are amendments that are designed to make a point.

We ran, by a factor of two, the largest deficit in the history of this country. Of the money we spent in the 2009 fiscal year, we borrowed 43 percent of it: 43 cents out of every dollar we expended, 43 cents we borrowed from our children and our grandchildren.

We have before us a bill, the Commerce-Justice-Science bill, that will go up almost 13 percent, 12.6 percent this year, on the back of a 15.5-percent increase last year. The latest inflation numbers are deflation, a minus four-tenths of 1 percent.

The question America has to ask itself, after we pass $800 billion of stimulus spending for which this agency got billions which are not reflected in any of these increases, is how is it that when we can spend $1.4 trillion we do not have, we can come to the floor and continue to have double-digit increases in almost everything we pass?

It does not take a lot of math to figure out that if we keep doing what we are doing, in 4½ years the size of the Federal Government doubles. If you do this for another 4 years, we will double the size of the Federal Government. So there is absolutely no fiscal restraint within the appropriations bills that are going through this body with the exception of one, and that is the Defense Department, probably the one that is most important to us in terms of our national security, in terms of where there is no question we have waste but where we need to make sure that we are prepared for the challenges that face us.

If you look at what we passed through the body, and you look at 2008, 2009, you go 10, 9.9, 9.4, 13.0, 13.3, 14.1, 15.7—that was last year—and now we are going to go 5.7, 7.2, 1.4, 12.6, 22.5, 16.2, and 12.6.

Not only are we on an unsustainable course as far as mandatory programs such as Social Security and Medicare—by the way, we have now borrowed from Social Security, stolen from Social Security, $2.4 trillion which we do not even recognize we owe. We do not put it on our balance sheet. We have stolen $758 billion from the Medicare trust fund, which we do not even recognize. So we borrowed $3 trillion from funds that were supposed to be there for our seniors and our retirees which our children—not us; our children and our grandchildren—will have to repay.

I saw this the other day on the Internet. It speaks a million words to me. Here is a little girl, a toddler with a pacifier in her mouth. She has got a sign hanging around her neck. She says: I am already $38,375 in debt and I only own a doll house.

The problem with that is that she way understates what she is in debt for. That is just the recognized external debt. That does not count what we borrowed internally from our grandchildren. It does not count the unfunded liabilities she through her lifetime will never get any benefit from but will pay because we have stolen the benefit for us, without being good stewards of the money that has been given to us.

If you go through this and you look at it, by the time she is 40, she will be responsible for the $1,119,000 worth of debt we have accumulated for payments for Medicare, Social Security, and Medicaid that she got absolutely zero benefit from.

Then if you think about a $1 million debt for a little girl like this and what it costs, what the interest is to fund that debt, if you just said 6 percent, she has got to make $60,000 first to pay the interest on that debt before she pays any taxes, her share of the taxes, and before she has the capability to have a home and have children and have a college education, own a car. We are absolutely, with bills such as this, strangling her. We are strangling her.

I am reminded what one of our Founders said, and it is so important. I love the Senator from Maryland. She said we had plenty of money in the checkbook to do this. We do not have plenty of money in the checkbook to do this. What we have is an unlimited credit card that we keep putting into the machine and saying, we will take the money and our kids will pay later. That is what we are doing.

Thomas Jefferson said, ''I predict future happiness for Americans if they can prevent the government from wasting the labors of the people under the pretense of taking care of them.''

When we are seeing 12.6 and 15 percent increases in the nonmandatory side, the non-Social Security, the non-Medicare, the non-Medicaid side of the budget, we have fallen into the trap Thomas Jefferson was worried about.

I know my colleagues are sick of me talking about this. But you know what, the American people are not sick of us talking about it. They get it. They realize that we refuse to make hard choices. Every one of them is making hard choices today with their families about their future based on their income. Yet we have the gall to bring to the floor double-digit spending at a time when people, 10 percent of Americans, are out of work, seeking work, another 5 percent have given up, and we are saying, that is fine if we have a 12-percent increase. It is fine. No problem. There is plenty of money in the checking account.

There is no money in the checking account. We are perilously close to having our foreign policy dictated to us by those who own our bonds, people outside of this country. The time to start changing that is now.

I have two little amendments, and one is very instructive. The political science community is hot and bothered because I would dare to say that maybe in a time of $1.4 trillion deficits, maybe at a time when we have 10 percent unemployment, maybe at a time when we are at the worst financial condition we have ever been in our country's history, maybe we ought not spend money asking the questions why politicians give vague answers, or how we can do tele-townhall meetings and raise our numbers. Maybe we ought not to spend this money on those kinds of things right now.

You see, it is instructive because those who are getting from the Federal Government now do not care about their grandchildren. What they want is what they are getting now. Give me now; it doesn't matter what happens to the rest of the generations that follow us.

So we have the political science community all in an uproar, not because I am against the study of political science but because I think now is not the time to spend money on that. Now is the time to spend money we absolutely have to spend, on things which are absolute necessities, as every family in America is making those decisions today. We do not have the courage to do it because it offends individual interest groups that are getting money from the Federal Government for a priority that is much less than the defense of this country, protecting people, securing the future, taking care of their health care, and making sure we have law and order.

You see, Alexander Tyler warned of this as he studied why republics fail. He said, ''All republics fail.'' They fail because when people learn they can vote themselves money from the public treasury, all of the other priorities go out the window. They become totally self-focused, self-centered on what is in it for them, with no long-range vision, only parochial vision, no vision for the country as a whole, but only what is good for them. It is called self-centeredness. It is called selfishness. And we perpetuate it in this body by bringing bills to the floor that are resistant to amendments that say: Maybe this is not a priority right now.

I would bet if you polled the American public and said, we are going to run another $1.4 trillion deficit this year, we probably would not want to spend $12 million telling politicians how to stay elected. We probably would not.

The fact is, it is major universities that get this small amount of money are in debt in excess of $50 billion.

They have plenty of money to fund this if they wanted, but they don't do it because they are getting from the person who is out of work. They are getting from the person who didn't get that job because the economy is on its back, because we are borrowing $1.4 trillion and competing with the capital that is required to create a job. It is just a small amount of money. It by itself won't make any difference. But supporting this amendment will build on confidence with the American people that says, he is right, we ought to be about priorities.

We ought to be about doing what is most important first and cutting out what is least important because the times call for discipline so we don't further hamstring the generation of children to which this young lady belongs. If you take $5 or $6 million and do it once, pretty soon, if you have done it 10 times, you have $60 million. You do it another 10 times, you have $600 million. Pretty soon, we have billions of dollars we are not spending because it is low priority and we are not borrowing it against our children. All of a sudden, the value of the dollar starts to rise. Confidence around the world in the dollar starts increasing. Competition for capital by the Federal Government competing in the private sector for the capital goes down. The cost of capital goes down. Credit flows and job opportunities are created. We don't connect that because we have always done it that way. We have a budget allocation. As long as we are under that budget allocation, everything is fine.

Where is the leadership in our country today that says we are going to model a leadership that we know the American people expect of us—make hard choices, take the heat to eliminate things that are lower priority so that we can preserve the priority of this child and those of her generation? The fact is, that leadership is nonexistent. There is no reason for anyone to doubt why confidence in the Congress is at alltime lows. We are not realists. We are not listening.

The message out there, the No. 1 concern with fear isn't health care; it is economic. Am I going to have a job tomorrow? Am I going to be able to pay my bills? Will I be able to pay my mortgage? There are thousands of items in every appropriations bill just like this one, just like that amendment that we could eliminate tomorrow. It might create some small hardship but nothing compared to the hardship we are transferring to the following generation.

I have no doubt of the outcome of the votes on my amendments. I understand we are a resistant, recalcitrant body that refuses to recognize the will and direction of the American people in terms of commonsense priorities. I understand that. But what we must understand is, they are awake now, they are listening, and they are watching. It is time to respond to the desires of the American people and stop responding to the special interests of those who are getting money from the Federal Government that are low priority in terms of what really counts and really matters for our future.

I have one other amendment we will be voting on that transfers money to increase the money at the inspector general. It will not slow down the conversion of the Hoover Building at all. We have been told that. But it will help to make good government.

Part of our problem in government is about 10 percent of everything we do is pure waste, pure fraud, or pure duplication. If we are going to invest dollars in something, we ought to invest in the transparency and accountability mechanisms we have already set up.

I find myself encouraged by the attitude of the American people, yet discouraged by the attitude of my colleagues. Nobody wants to take and make the hard choices, the hard choices that say we are going to get heat if we start prioritizing. The easiest is to do nothing. The easiest is to continue to let the programs run whether they are high priority or not. That is easy. But America is having a rumble right now. The ground is shaking. The American people are paying attention. They are going to watch votes just like this one. Then we are going to be called to account as to, why won't you make priority choices, why won't you take the heat.

If there ought to be any political science study done, it is, why are Members of Congress such cowards? That is the thing we ought to study. We ought to study why we refuse to do the right thing because it puts our job at risk. We ought to be doing the right thing when it does put our job at risk and when it doesn't.

I will finish up by reminding us of what our oath is. Our oath never mentions our State. Our oath never mentions our special interest. Our oath never mentions our campaign contributors. What our oath mentions is that we are Senators of the United States—not from Oklahoma, not from Delaware, not from Maryland, not from Ohio. We are Senators of the United States; we just happen to be from those places. Our oath is to the long-term best interest of the country, never a parochial interest.

As you go through these bills, what you see are parochial interests trumping the long-term best interests of the country. That is not to demean the fine job the Senator from Maryland has done. She came in with the number that was given her. There is no question that she probably made some tough choices as she did that. But we haven't made enough. This kind of increase in this kind of bill is absurd. It is obscene. It is obscene at a time when the average family's income is declining, their ability to have the freedom to make choices, relaxed choices about what they do versus very stern choices about what is a necessity. We have not gotten the message.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

AMENDMENT NO. 2669

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I rise to speak on behalf of amendment No. 2669 that has been offered by Senator GRAHAM, with Senators WEBB, MCCAIN, and myself as cosponsors. It is a pending amendment.

The purpose of this amendment is quite straightforward. It would prevent the use of any funds made available to the Department of Justice by this appropriations bill from being used to prosecute any individual suspected of involvement in the 9/11/01 attacks against the United States in an article III court—that means essentially a regular Federal court created pursuant to article III of our Constitution.

Why would we feel we need to do such a thing? It is because the current protocol governing the disposition of cases referred for possible prosecution of detainees currently held at Guantanamo Bay, Cuba, the current protocol of the U.S. Department of Justice governing the referral of these detainees from Guantanamo Bay, says as follows:

No. 2, Factors for Determination of Prosecution. There is a presumption that, where feasible, referred cases will be prosecuted in an Article III court in keeping with traditional principles of federal prosecution.

It is because we who are sponsoring this amendment think there is a fundamental error of judgment—in fact, in its way, an act of injustice—that these individuals, suspected terrorists being held at Guantanamo Bay, Cuba, suspected in this case, according to our amendment, of having been involved in the attacks of 9/11 on the United States which resulted in the deaths of almost 3,000 people, that these individuals would be tried in a regular U.S. Federal court as if they were accused of violating our criminal laws. They are not common criminals or uncommon criminals; they are suspected of being war criminals. As such, they should not be brought to prosecution in a traditional Federal court along with other accused criminals.

Citizens of the United States have all the right to the protections of our Constitution in the Federal courts, article III courts of the United States. These are suspected terrorist war criminals who are not entitled to all the protections of our Constitution and whose prosecution should not be confused with a normal criminal law prosecution. They are war criminals. They ought to be tried according to all the rules that prevail for war criminals, including, of course, the Geneva Conventions.

This Congress has established a tradition and improved in recent times a system of military commissions, a system adopted by both Houses of Congress, signed into law by the President, which provides standards of due process and fairness in the trial of suspected war criminals, not just in compliance with the Geneva Conventions and the Supreme Court of the United States but well above the standards that have been required by both the Supreme Court and the Geneva Conventions.

Those who are accused of committing the heinous, cowardly acts of intentionally targeting unsuspecting, defenseless civilians in an act of war as part of a larger declared war of Islamic extremists against, frankly, anybody who is not like them—the most numerous victims of these Islamic terrorists around the world are fellow Muslims who don't agree with their extremism. They have killed many people of other religions. When they struck us in the United States on 9/11, they killed an extraordinary classically American diverse group of people. The only reason they were targeted was that they were in the United States. The terrorists, these people who are suspected of being terrorists participating in and aiding the attacks of 9/11, are war criminals, not common criminals. They should, therefore, be tried by a military commission system, which goes back as long as the Revolutionary War in the United States. There is a proud and fair tradition. We have upgraded and strengthened all the due process and legal protections of them after 9/11. So why would we take these war criminals, suspected war criminals, and bring them into the criminal courts of the United States and give them the rights of the Constitution. I don't understand.

Every Member of the Senate received a letter today from quite a large number of families of the victims of 9/11, 140-plus at last writing. I want to read briefly from the letter. The letter is in support of the amendment Senators GRAHAM, WEBB, MCCAIN, and I have offered.

The American people were rightly outraged by this act of war. Whether the cause was retribution or simple recognition of our common humanity, the words ''Never Forget'' were invoked in tearful or angry rectitude, defiantly written in the dust of Ground Zero or humbly penned on makeshift memorials all across this land.

The country was united in its determination that these acts should not go unmarked and unpunished.

Eight long years have passed since that dark and terrible day.

Remember, Mr. President, this is written by people who lost dear ones on 9/11.

They continue:

Sadly, some have forgotten the promises we made to those whose lives were taken in such a cruel and vicious manner.

We have not forgotten. We are the husbands and wives, mothers and fathers, sons, daughters, sisters, brothers and other family members of the victims of these depraved and barbaric attacks, and we feel a profound obligation to ensure that justice is done on their behalf.

They continue:

It is incomprehensible to us that Members of the United States Congress would propose that the same men who today refer to the murder of our loved ones as a ''blessed day'' and who targeted the United States Capitol for the same kind of destruction that was wrought in New York, Virginia and Pennsylvania, should be the beneficiaries of a social compact of which they are not a part, do not recognize, and which they seek to destroy: the United States Constitution.

So they say:

We adamantly oppose prosecuting the 9/11 conspirators in Article III courts, which would provide them with the very rights that may make it possible for them to escape the justice which they so richly deserve. We believe that military commissions . . . are the appropriate legal forum for the individuals who declared war on America.

Mr. President, I know there will be further debate on this amendment, but I ask my colleagues to join in this. We are doing it not just because of the protocol I cited at the beginning but because of stories that are emanating that perhaps as early as next week, the Department of Justice will announce they are going to bring Khalid Shaikh Mohammed, the man who planned the 9/11 attacks, who is in our custody, to trial in a Federal court. This man is, from all that I know, one of the devils of history, an evil man who wrought terrible destruction and suffering on our country, and he ought to be given due process, but he ought to be given due process in a forum reserved for suspected war criminals, and that is the military commissions.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The senior Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I thank my friend and colleague, Senator LIEBERMAN. Along with Senator GRAHAM and Senator WEBB, we are strongly supporting this amendment.

Senator LIEBERMAN made reference to a letter that has currently been signed by 214 9/11 family members. Mr. President, I ask unanimous consent that this letter be printed in the RECORD, along with an article from the Wall Street Journal dated October 19, 2009, entitled ''Civilian Courts Are No Place To Try Terrorists'' by Michael B. Mukasey, the former Attorney General of the United States of America.

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

NOVEMBER 5, 2009.

U.S. SENATE,
The U.S. Capitol,
Washington, DC.

DEAR SENATORS: On September 11, 2001, the entire world watched as 19 men hijacked four commercial airliners, attacking passengers and killing crew members, and then turned the fully-fueled planes into missiles, flying them into the World Trade Center twin towers, the Pentagon and a field in Shanksville, Pennsylvania. 3,000 of our fellow human beings died in two hours. The nation's commercial aviation system ground to a halt. Lower Manhattan was turned into a war zone, shutting down the New York Stock Exchange for days and causing tens of thousands of residents and workers to be displaced. In nine months, an estimated 50,000 rescue and recovery workers willingly exposed themselves to toxic conditions to dig out the ravaged remains of their fellow citizens buried in 1.8 million tons of twisted steel and concrete.

The American people were rightly outraged by this act of war. Whether the cause was retribution or simple recognition of our

common humanity, the words ''Never Forget'' were invoked in tearful or angry rectitude, defiantly written in the dust of Ground Zero or humbly penned on makeshift memorials erected all across the land. The country was united in its determination that these acts should not go unmarked and unpunished.

Eight long years have passed since that dark and terrible day. Sadly, some have forgotten the promises we made to those whose lives were taken in such a cruel and vicious manner.

We have not forgotten. We are the husbands and wives, mothers and fathers, sons, daughters, sisters, brothers and other family members of the victims of these depraved and barbaric attacks, and we feel a profound obligation to ensure that justice is done on their behalf. It is incomprehensible to us that members of the United States Congress would propose that the same men who today refer to the murder of our loved ones as a ''blessed day'' and who targeted the United States Capitol for the same kind of destruction that was wrought in New York, Virginia and Pennsylvania, should be the beneficiaries of a social compact of which they are not a part, do not recognize, and which they seek to destroy: the United States Constitution.

We adamantly oppose prosecuting the 9/11 conspirators in Article III courts, which would provide them with the very rights that may make it possible for them to escape the justice which they so richly deserve. We believe that military commissions, which have a long and honorable history in this country dating back to the Revolutionary War, are the appropriate legal forum for the individuals who declared war on America. With utter disdain for all norms of decency and humanity, and in defiance of the laws of warfare accepted by all civilized nations, these individuals targeted tens of thousands of civilian non-combatants, brutally killing 3,000 men, women and children, injuring thousands more, and terrorizing millions.

We support Senate Amendment 2669 (pursuant to H.R. 2847, the Commerce, Justice, Science Appropriations Act of 2010), ''prohibiting the use of funds for the prosecution in Article III courts of the United States of individuals involved in the September 11, 2001 terrorist attacks.'' We urge its passage by all those members of the United States Senate who stood on the senate floor eight years ago and declared that the perpetrators of these attacks would answer to the American people. The American people will not understand why those same senators now vote to allow our cherished federal courts to be manipulated and used as a stage by the ''mastermind of 9/11'' and his co-conspirators to condemn this nation and rally their fellow terrorists the world over. As one New York City police detective, who lost 60 fellow officers on 9/11, told members of the Department of Justice's Detainee Policy Task Force at a meeting last June, ''You people are out of touch. You need to hear the locker room conversations of the people who patrol your streets and fight your wars.''

The President of the United States has stated that military commissions, promulgated by congressional legislation and recently reformed with even greater protections for defendants, are a legal and appropriate forum to try individuals captured pursuant the 2001 Authorization for the Use of Military Force Act, passed by Congress in response to the attack on America. Nevertheless, on May 21, 2009, President Obama announced a new policy that Al-Qaeda terrorists should be tried in Article III courts ''whenever feasible.''

We strongly object to the President creating a two-tier system of justice for terrorists in which those responsible for the death of thousands on 9/11 will be treated as common criminals and afforded the kind of platinum due process accorded American citizens, yet members of Al Qaeda who aspire to kill Americans but who do not yet have blood on their hands, will be treated as war criminals. The President offers no explanation or justification for this contradiction, even as he readily acknowledges that the 9/11 conspirators, now designated ''unprivileged enemy belligerents,'' are appropriately accused of war crimes. We believe that this two-tier system, in which war criminals receive more due process protections than would-be war criminals, will be mocked and rejected in the court of world opinion as an ill-conceived contrivance aimed, not at justice, but at the appearance of moral authority.

The public has a right to know that prosecuting the 9/11 conspirators in federal courts will result in a plethora of legal and procedural problems that will severely limit or even jeopardize the successful prosecution of their cases. Ordinary criminal trials do not allow for the exigencies associated with combatants captured in war, in which evidence is not collected with CSI-type chain-of-custody standards. None of the 9/11 conspirators were given the Miranda warnings mandated in Article III courts. Prosecutors contend that the lengthy, self-incriminating tutorials Khalid Sheikh Mohammed and others gave to CIA interrogators about 9/11 and other terrorist operations—called ''pivotal for the war against Al-Qaeda'' in a recently released, declassified 2005 CIA report—may be excluded in federal trials. Further, unlike military commissions, all of the 9/11 cases will be vulnerable in federal court to defense motions that their prosecutions violate the Speedy Trial Act. Indeed, the judge presiding in the case of Ahmed Ghailani, accused of participating in the 1998 bombing of the American Embassy in Kenya, killing 212 people, has asked for that issue to be briefed by the defense. Ghailani was indicted in 1998, captured in Pakistan in 2004, and held at Guantanamo Bay until 2009.

Additionally, federal rules risk that classified evidence protected in military commissions would be exposed in criminal trials, revealing intelligence sources and methods and compromising foreign partners, who will be unwilling to join with the United States in future secret or covert operations if doing so will risk exposure in the dangerous and hostile communities where they operate. This poses a clear and present danger to the public. The safety and security of the American people is the President's and Congress's highest duty.

Former Attorney General Michael Mukasey recently wrote in the Wall Street Journal that ''the challenges of terrorism trials are overwhelming.'' Mr. Mukasey, formerly a federal judge in the Southern District of New York, presided over the multi-defendant terrorism prosecution of Sheikh Omar Abel Rahman, the cell that attacked the World Trade Center in 1993 and conspired to attack other New York landmarks. In addition to the evidentiary problems cited above, he expressed concern about courthouse and jail facility security, the need for anonymous jurors to be escorted under armed guard, the enormous costs associated with the use of U.S. marshals necessarily deployed from other jurisdictions, and the danger to the community which, he says, will become a target for homegrown terrorist sympathizers or embedded Al Qaeda cells.

Finally, there is the sickening prospect of men like Khalid Sheikh Mohammed being brought to the federal courthouse in Lower Manhattan, or the courthouse in Alexandria, Virginia, just a few blocks away from the scene of carnage eight years ago, being given a Constitutionally mandated platform upon which he can mock his victims, exult in the suffering of their families, condemn the judge and his own lawyers, and rally his followers to continue jihad against the men and women of the U.S. military, fighting and dying in the sands of Iraq and the mountains of Afghanistan on behalf of us all.

There is no guarantee that Mr. Mohammed and his co-conspirators will plead guilty, as in the case of Zacarias Moussaoui, whose prosecution nevertheless took four years, and who is currently attempting to recant that plea. Their attorneys will be given wide latitude to mount a defense that turns the trial into a shameful circus aimed at vilifying agents of the CIA for alleged acts of ''torture,'' casting the American government and our valiant military as a force of evil instead of a force for good in places of the Muslim World where Al Qaeda and the Taliban are waging a brutal war against them and the local populations. For the families of those who died on September 11, the most obscene aspect of giving Constitutional protections to those who planned the attacks with the intent of inflicting maximum terror on their victims in the last moments of their lives will be the opportunities this affords defense lawyers to cast their clients as victims.

Khalid Sheikh Mohammed and his co-conspirators are asking to plead guilty, now, before a duly-constituted military commission. We respectfully ask members of Congress, why don't we let them?

Respectfully submitted,

(214 Family Members).

[From the Wall Street Journal, Oct. 19, 2009]

CIVILIAN COURTS ARE NO PLACE TO TRY TERRORISTS

(By Michael B. Mukasey)

The Obama administration has said it intends to try several of the prisoners now detained at Guantanamo Bay in civilian courts in this country. This would include Khalid Sheikh Mohammed, the mastermind of the Sept. 11, 2001 terrorist attacks, and other detainees allegedly involved. The Justice Department claims that our courts are well suited to the task.

Based on my experience trying such cases, and what I saw as attorney general, they aren't. That is not to say that civilian courts cannot ever handle terrorist prosecutions, but rather that their role in a war on terror—to use an unfashionably harsh phrase—should be, as the term ''war'' would suggest, a supporting and not a principal role.

The challenges of a terrorism trial are overwhelming. To maintain the security of the courthouse and the jail facilities where defendants are housed, deputy U.S. marshals must be recruited from other jurisdictions; jurors must be selected anonymously and escorted to and from the courthouse under armed guard; and judges who preside over such cases often need protection as well. All such measures burden an already overloaded justice system and interfere with the handling of other cases, both criminal and civil.

Moreover, there is every reason to believe that the places of both trial and confinement for such defendants would become attractive targets for others intent on creating mayhem, whether it be terrorists intent on inflicting casualties on the local population, or lawyers intent on filing waves of lawsuits over issues as diverse as whether those captured in combat must be charged with crimes or released, or the conditions of confinement for all prisoners, whether convicted or not.

Even after conviction, the issue is not whether a maximum-security prison can hold these defendants; of course it can. But

their presence even inside the walls, as proselytizers if nothing else, is itself a danger. The recent arrest of U.S. citizen Michael Finton, a convert to Islam proselytized in prison and charged with planning to blow up a building in Springfield, Ill., is only the latest example of that problem.

Moreover, the rules for conducting criminal trials in federal courts have been fashioned to prosecute conventional crimes by conventional criminals. Defendants are granted access to information relating to their case that might be useful in meeting the charges and shaping a defense, without regard to the wider impact such information might have. That can provide a cornucopia of valuable information to terrorists, both those in custody and those at large.

Thus, in the multidefendant terrorism prosecution of Sheik Omar Abdel Rahman and others that I presided over in 1995 in federal district court in Manhattan, the government was required to disclose, as it is routinely in conspiracy cases, the identity of all known co-conspirators, regardless of whether they are charged as defendants. One of those coconspirators, relatively obscure in 1995, was Osama bin Laden. It was later learned that soon after the government's disclosure the list of unindicted co-conspirators had made its way to bin Laden in Khartoum, Sudan, where he then resided. He was able to learn not only that the government was aware of him, but also who else the government was aware of.

It is not simply the disclosure of information under discovery rules that can be useful to terrorists. The testimony in a public trial, particularly under the probing of appropriately diligent defense counsel, can elicit evidence about means and methods of evidence collection that have nothing to do with the underlying issues in the case, but which can be used to press government witnesses to either disclose information they would prefer to keep confidential or make it appear that they are concealing facts. The alternative is to lengthen criminal trials beyond what is tolerable by vetting topics in closed sessions before they can be presented in open ones.

In June, Attorney General Eric Holder announced the transfer of Ahmed Ghailani to this country from Guantanamo. Mr. Ghailani was indicted in connection with the 1998 bombing of U.S. Embassies in Kenya and Tanzania. He was captured in 2004, after others had already been tried here for that bombing.

Mr. Ghailani was to be tried before a military commission for that and other war crimes committed afterward, but when the Obama administration elected to close Guantanamo, the existing indictment against Mr. Ghailani in New York apparently seemed to offer an attractive alternative. It may be as well that prosecuting Mr. Ghailani in an already pending case in New York was seen as an opportunity to illustrate how readily those at Guantanamo might be prosecuted in civilian courts. After all, as Mr. Holder said in his June announcement, four defendants were ''successfully prosecuted'' in that case.

It is certainly true that four defendants already were tried and sentenced in that case. But the proceedings were far from exemplary. The jury declined to impose the death penalty, which requires unanimity, when one juror disclosed at the end of the trial that he could not impose the death penalty—even though he had sworn previously that he could. Despite his disclosure, the juror was permitted to serve and render a verdict.

Mr. Holder failed to mention it, but there was also a fifth defendant in the case, Mamdouh Mahmud Salim. He never participated in the trial. Why? Because, before it began, in a foiled attempt to escape a maximum security prison, he sharpened a plastic comb into a weapon and drove it through the eye and into the brain of Louis Pepe, a 42-year-old Bureau of Prisons guard. Mr. Pepe was blinded in one eye and rendered nearly unable to speak.

Salim was prosecuted separately for that crime and found guilty of attempted murder. There are many words one might use to describe how these events unfolded; ''successfully'' is not among them.

The very length of Mr. Ghailani's detention prior to being brought here for prosecution presents difficult issues. The Speedy Trial Act requires that those charged be tried within a relatively short time after they are charged or captured, whichever comes last. Even if the pending charge against Mr. Ghailani is not dismissed for violation of that statute, he may well seek access to what the government knows of his activities after the embassy bombings, even if those activities are not charged in the pending indictment. Such disclosures could seriously compromise sources and methods of intelligence gathering.

Finally, the government (for undisclosed reasons) has chosen not to seek the death penalty against Mr. Ghailani, even though that penalty was sought, albeit unsuccessfully, against those who stood trial earlier. The embassy bombings killed more than 200 people.

Although the jury in the earlier case declined to sentence the defendants to death, that determination does not bind a future jury. However, when the government determines not to seek the death penalty against a defendant charged with complicity in the murder of hundreds, that potentially distorts every future capital case the government prosecutes. Put simply, once the government decides not to seek the death penalty against a defendant charged with mass murder, how can it justify seeking the death penalty against anyone charged with murder—however atrocious—on a smaller scale?

Even a successful prosecution of Mr. Ghailani, with none of the possible obstacles described earlier, would offer no example of how the cases against other Guantanamo detainees can be handled. The embassy bombing case was investigated for prosecution in a court, with all of the safeguards in handling evidence and securing witnesses that attend such a prosecution. By contrast, the charges against other detainees have not been so investigated.

It was anticipated that if those detainees were to be tried at all, it would be before a military commission where the touchstone for admissibility of evidence was simply relevance and apparent reliability. Thus, the circumstances of their capture on the battlefield could be described by affidavit if necessary, without bringing to court the particular soldier or unit that effected the capture, so long as the affidavit and surrounding circumstances appeared reliable. No such procedure would be permitted in an ordinary civilian court.

Moreover, it appears likely that certain charges could not be presented in a civilian court because the proof that would have to be offered could, if publicly disclosed, compromise sources and methods of intelligence gathering. The military commissions regimen established for use at Guantanamo was designed with such considerations in mind. It provided a way of handling classified information so as to make it available to a defendant's counsel while preserving confidentiality. The courtroom facility at Guantanamo was constructed, at a cost of millions of dollars, specifically to accommodate the handling of classified information and the heightened security needs of a trial of such defendants.

Nevertheless, critics of Guantanamo seem to believe that if we put our vaunted civilian justice system on display in these cases, then we will reap benefits in the coin of world opinion, and perhaps even in that part of the world that wishes us ill. Of course, we did just that after the first World Trade Center bombing, after the plot to blow up airliners over the Pacific, and after the embassy bombings in Kenya and Tanzania.

In return, we got the 9/11 attacks and the murder of nearly 3,000 innocents. True, this won us a great deal of goodwill abroad—people around the globe lined up for blocks outside our embassies to sign the condolence books. That is the kind of goodwill we can do without.

Mr. McCAIN. Mr. President, I urge my colleagues, who will be made aware of a letter from Mr. Holder and Secretary Gates, who are urging defeat of this amendment, to look at the views of the previous Attorney General of the United States, which are diametrically opposed.

The 9/11 families say—and I am sure they represent all of the 9/11 families—

> We adamantly oppose prosecuting the 9/11 conspirators in Article III courts, which would provide them with the very rights that may make it possible for them to escape the justice which they so richly deserve. We believe that military commissions, which have a long and honorable history in this country dating back to the Revolutionary War, are the appropriate legal forum for the individuals who declared war on America. With utter disdain for all norms of decency and humanity, and in defiance of the laws of warfare accepted by all civilized nations, these individuals targeted tens of thousands of civilian non-combatants, brutally killing 3,000 men, women and children, injuring thousands more, and terrorizing millions.

I would be glad to respond to a question from the Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Arizona. I would ask the Senator if he would be kind enough to ask unanimous consent that I could follow him, speaking after his remarks.

Mr. McCAIN. Mr. President, I ask unanimous consent that the Senator from Illinois follow me.

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

Mr. McCAIN. Mr. President, these are the 9/11 families. All Americans were impacted by 9/11, the 9/11 families in the most tragic fashion. This is a very strong letter from them concerning the strong desire that these 9/11 conspirators not be tried in article III courts but be tried according to the military commissions.

The 9/11 victims experienced an act of war against the United States, carried out not on some distant shore but in our communities on the very symbols of our national power. Because it involved attacks on innocent civilians and innocent civilian targets, it is a war crime. It is a war crime that was committed by the 9/11 terrorists. It is important that we call things what they are and not gloss over the essence of these events, even though they occurred 8 years ago.

In response to the attacks, the Congress quickly and overwhelmingly passed the Authorization for Use of

Military Force giving the President the authority to ''use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001. . . .'' The Senate passed this legislation unanimously.

The Authorization for Use of Military Force recognized the true nature of these attacks and committed the entire resources of the United States to our self-defense in light of the grave threat to our national security and foreign policy. The United States does not go to war over a domestic criminal act, nor should it. It was clearly understood at that time that far more was at stake. We sent our sons and daughters off to war, where they have been bravely risking their lives and futures on our behalf for the last 8 years.

Given the facts and history of the 9/11 attacks, we should not deal with the treachery and barbarism of the slaughter of thousands of innocent civilians as a matter of law enforcement in the ordinary sense. To do so would belittle the events that transpired, the symbolism and purpose of the attacks, the huge number of lives that were lost, and the threat posed to the United States—which continues in the caves and sanctuaries of al-Qaida to this day.

During my life, I have been a warrior, although that seems a long time ago now. I have some experience in the reality of combat and the suffering it brings. I know something of the law of war, having fought constrained by it and having lived through it, with the help of my comrades and my faith, times when my former enemy felt unconstrained by it.

No, the attacks of 9/11 were not a crime; they were a war crime. Together with my colleagues in Congress, I have worked closely with the President to provide a means to address war crimes committed against this country in a war crimes tribunal—the Military Commissions Act of 2009. It was designed specifically for this purpose. It should be used not to mete out a guilty verdict and sentence that could not be achieved in Federal criminal court but to call things what they are, to be unshakable in our resolve to respond to the unprecedented attacks of 9/11 consistent with the Authorization for Use of Military Force and to tell this and any future enemy that when they attack our innocent civilians at home, we will not be sending the police after them to make an arrest.

By denying funds to the Department of Justice to prosecute these horrendous crimes in article III courts, I do not mean these outrages against our country and its citizens should go unpunished. In fact, I have long argued that justice in these cases was long overdue and that prosecutions should be pursued as expeditiously as possible. Rather, my support for this amendment is based on my unshakable view that these events were acts of war and war crimes and that the proper forum for bringing the war criminals to justice is a military tribunal consistent with longstanding traditions in this country that date back to George Washington's Continental Army during the founding of the Republic.

For that reason, I urge my colleagues to support this amendment so that the prosecution of war crimes will take place in the traditional and long-accepted forum of a military tribunal, as the Congress overwhelmingly enacted in 2006 and which the National Defense Authorization Act for 2010 amended and improved in a statute that was enacted into law by President Obama just days ago.

Again, I hope we will, as we have in the past, listen to the families of 9/11. From the trauma and sorrow of the tragedy they experienced in the loss of their families, they became a force. They became a force that without them we would have never had the 9/11 Commission, we would have never been able to make the reforms that arguably have made our Nation much safer.

Now, today, the families are standing up and saying: Try these war criminals according to war crimes which they committed—the heinous acts of 9/11, which I know Americans will never forget.

Mr. President, I hope we will vote in favor of the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I have great respect for my colleagues from Arizona and Connecticut, but I respectfully disagree with them on this amendment.

If this amendment passes, it will say that the only people in the world who cannot be tried in the courts of America for crimes of terrorism are those who are accused of terrorism on 9/11. Think about that for a moment. The argument is being made that we should say to the President and Attorney General that when they plot their strategy to go after the men and women responsible for 9/11, we will prohibit them, by the language of this amendment, from considering the prosecution of these terrorists in the courts of America.

What are the odds of prosecuting a terrorist successfully in the courts of America, our criminal courts, as opposed to military commissions, commissions that have been created by law, argued before the Supreme Court, debated at great length? What are the odds of a successful prosecution of a terrorist in the courts of our land as opposed to a military commission? I can tell you what the odds are. They are 65 to 1 in favor of prosecution in our courts. Mr. President, 195 terrorists have been prosecuted in our courts since 9/11. Three have been prosecuted by military commissions. But the offerers of this amendment want to tie the hands of our Department of Justice and tell them: You cannot spend a penny, not one cent, to pursue the prosecution of a terrorist in an American court.

Who disagrees with this amendment? It is not just this Senator from Illinois. It would be our Secretary of Defense, Robert Gates, and our Attorney General, Eric Holder. Here is what they said in a letter to all Members of the Senate about this amendment:

> We write to oppose the amendment proposed by Senator Graham (on behalf of himself and Senators McCain and Lieberman). . . . This amendment would prohibit the use of Department of Justice funds ''to commence or continue the prosecution in an Article III court of the United States of an individual suspected of planning, authorizing, organizing, committing, or aiding the attacks on the United States and its citizens that occurred on September 11, 2001.''

They go on to say:

> As you know, both the Department of Justice and the Department of Defense have responsibility for prosecuting alleged terrorists. Pursuant to a joint prosecution protocol, our departments are currently engaged in a careful case-by-case evaluation of the cases of Guantanamo detainees who have been referred for possible prosecution, to determine whether they should be prosecuted in an Article III, court or by military commission. We are confident that the forum selection decisions that are made pursuant to this process will best serve our national security interests.
>
> We believe it would be unwise, and would set a dangerous precedent, for Congress to restrict the discretion of either department to fund particular prosecutions. The exercise of prosecutorial discretion has always been and should remain an Executive Branch function. We must be in a position to use every lawful instrument of national power—including both courts and military commissions—to ensure that terrorists are brought to justice and can no longer threaten American lives.
>
> For these reasons, we respectfully request that you oppose this amendment.

This amendment would hinder President Obama's efforts to combat terrorism. That is why the Secretary of Defense and the Attorney General have written to each one of us urging us to vote no.

The Graham amendment would be an unprecedented intrusion into the authority of the executive branch of our government to combat terrorism.

There is a great argument. For 8 long years, Republicans argued it was inappropriate to interfere in any way with President Bush's Commander in Chief authority. Time and again, we were told by our Republican colleagues that it is inappropriate and even unconstitutional for Congress to ask basic questions about the Bush administration's policies on issues such as Iraq, Guantanamo, torture, or warrantless wiretapping. Time and again, we were told that Congress should defer to the Defense Department's expertise.

Let me give one example. On September 19, 2007, the author of this amendment, Senator GRAHAM, said, and I quote:

> The last thing we need in any war is to have the ability of 535 people who are worried about the next election to be able to micromanage how you fight the war. This is not only micromanagement, this is a constitutional shift of power.

Just 2 years later, a different President of a different party, and my Republican colleagues have a different view. My colleagues think Congress should not defer to that very same Defense Secretary, Robert Gates, and they think it is not only appropriate but urgent for Congress to tie the hands of this administration, making it more difficult to bring terrorists to justice. Clearly, there is a double standard at work.

Some of my Republican colleagues argue that Federal courts are not well suited to prosecute terrorists, and terrorists should only be prosecuted by military commissions. But look at the facts. Since 9/11, 195 terrorists have been convicted in Federal courts. Three have been convicted by military commissions. Again, the odds are 65 to 1 that if we want to find a terrorist guilty and be incarcerated for endangering or killing Americans, it is better to go to a regular court in America than to a military commission. That is the record since 9/11.

According to the Justice Department, since January 1 of this year, more than 30 terrorists have been successfully prosecuted or sentenced in Federal courts. I would like to ask my colleagues behind this amendment and their inspiration, the Wall Street Journal: Was this a mistake, taking accused terrorists into our courts and successfully prosecuting them under the laws of America?

Clearly, it was not. The Department of Justice made the right decision effectively prosecuting these individuals and, equally important, showing to the world we would take these people accused of terrorism into the very same system of justice that applies to every one of us as American citizens, hold them to the same standards of proof, give them the rights that are accorded to them in our court system, and come to a just verdict.

That is an important message. It is a message which says we can treat these individuals in our judicial system in a fair way and come to a fair conclusion and find justice, and we did—195 times since 9/11, 30 times just this year.

Recently, the administration transferred Ahmed Ghailani to the United States to prosecute him for involvement in the 1998 bombings of our Embassies in Kenya and Tanzania. Those bombings killed 224 people, including 12 Americans. My colleagues on the other side of the aisle have been very critical of this administration's decision to bring this man to justice in the courts of America. One of them, a House Republican Member from Virginia, ERIC CANTOR, said, and I quote:

> We have no judicial precedence for the conviction of someone like this.

That is from Congressman CANTOR. Unfortunately, the Congressman is wrong. There are many precedents for convicting terrorists in U.S. courts. I will name a few: Ramzi Yousef, the mastermind of the 1993 World Trade Center bombing; Omar Abdel Rahman, the so-called Blind Sheikh; Richard Reid, the Shoe Bomber; Zacarias Moussaoui; Ted Kaczynski, the Unabomber; and Terry Nichols, the Oklahoma City coconspirator. They were all accused of terrorism. Some were citizens of the United States, some not. All were tried in the same article III courts which this amendment would prohibit—would prohibit—our President and Attorney General from using.

In fact, there is precedent for convicting terrorists who were involved in the bombing of U.S. Embassies in Tanzania and Kenya, the same attack in which Ahmed Ghailani was allegedly involved. In 2001, four men were sentenced to life without parole at the Federal courthouse in Lower Manhattan, the same court in which Mr. Ghailani will be tried. To argue that we cannot successfully prosecute a terrorist in American courts is to ignore the truth and ignore history.

Susan Hirsch lost her husband in the Kenya Embassy bombing. She testified at the sentencing hearing for the four terrorists who were convicted in 2001. Mrs. Hirsch said she supports the Obama administration's decision to prosecute Ahmed Ghailani for that same bombing that took the life of her husband. She said, and I quote:

> I am relieved we are finally moving forward. It is really, really important to me that anyone we have in custody accused of acts related to the deaths of my husband and others be held accountable for what they have done.

Mrs. Hirsch also said she believes it is safe to try Ahmed Ghailani in a Federal court. I quote her again: ''I have some trust in the New York Police Department'' based on her experience at the 2001 trial.

Listen to what she said about the critics of this administration: ''They're just raising fear and alarm.'' This is from the widow of a terrorist bombing where the terrorists have been brought to justice in the courts of our land.

I agree with Susan Hirsch. I have faith in the New York Police Department. I have faith in our law enforcement agencies, I have faith in our courts, and I have faith in our system of justice.

We know how to prosecute terrorists, and we know how to hold them safely. We have living proof in 195 prosecutions since 9/11 and 350 convicted terrorists being held today in America's jails across the United States.

The Graham amendment is not about whether military commissions are superior to Federal courts. The amendment doesn't just express a preference for one over the other. The amendment expressly prohibits this administration and the Department of Justice from trying a terrorist in a Federal court.

The truth is, President Obama may choose to try the 9/11 terrorists in military commissions. That should be the President's decision. If it is his decision that it is in the interests of the security of the United States or in a successful prosecution to turn to a military commission over a regular Federal court in America, that should be the President's decision, the decision of his Attorney General, the decision of the prosecutors, not the decision of Members of the Senate who do not know the facts of the case and don't know the likelihood of prosecution.

Defense Secretary Gates and Attorney General Holder have developed a joint protocol to determine whether individual cases should be tried in Federal courts or commissions. The President worked closely with Congress to reform the military commissions so he would have another lawful tool to use in the fight against terrorism. The two lead cosponsors of the amendment before us, Senator MCCAIN and Senator GRAHAM, who is on the Senate floor, were very involved in that effort, as was Senator LEVIN of Michigan, the chairman of our Armed Services Committee. They sat down to rewrite the rules for military commissions because, frankly, we haven't had a great deal of success with prosecutions of terrorists with military commissions. Only three cases have gone before the Supreme Court, raising issues about military commissions, the standard of justice, due process, and fairness.

Now there is a new effort by President Obama, with the bipartisan help of Members of the Senate. So I am not standing here in criticism of the use of military commissions, but I am standing here taking exception to the point of view that we should preclude prosecutions in any other forum than military commissions of the terrorists of 9/11. President Obama may very well choose to try Khalid Sheikh Mohammad and other terrorists in military commissions. That should be his choice. Let him choose the forum, the most effective forum to pursue justice and to protect America from future acts of terrorism.

In their letter to Senators REID and MCCONNELL, Secretary Gates and Attorney General Holder said it well, and I quote them again:

> We must be in a position to use every lawful instrument of national power, including both courts and military commissions, to ensure that terrorists are brought to justice and can no longer threaten American lives.

The decision may be reached at some future date by the administration, with the concurrence of the Secretary of Defense and the Attorney General, that it is a better forum to move to military commissions for a variety of reasons. They could be issues of national security. They could be issues of evidence.

But do we want to take away from them with this pending amendment the right to make that decision? Why would Congress choose to take away one of these lawful instruments from the President, our Commander in Chief? Don't we want the President to have the use of every lawful tool to bring these terrorists to justice?

One word in closing. I have the greatest respect for the families of 9/11.

Those who have spoken out on behalf of this amendment, I respect them greatly. They have been a force in America since the untimely and tragic deaths of members of their families. They forced on the previous administration a dramatic investigation of 9/11 and where our government had failed and what we could do to improve things. They have become a voice and a force in so many other respects since that awful day of 9/11. But they don't speak with one voice on this issue. Many support the pending amendment; others see it differently.

Susan Hirsch, whose husband was lost in a terrorism bombing in Africa, clearly sees it differently than these survivors of 9/11. With the greatest respect for those who support this amendment, I would say there are others who see this in a much different light.

I urge my colleagues to reject the Graham amendment. It is an unprecedented effort to interfere with the executive branch's prosecutorial discretion and President Obama's genuine efforts to combat terrorism.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I appreciate Senator LEVIN allowing me to speak now. I know we are going back and forth. I appreciate that.

To my friend, Senator DURBIN, it is my honest desire that as we move forward with what to do with Guantanamo Bay, we can find some bipartisanship and close the facility. I am one of the few Republicans who expressed that thought, simply because I have listened enough to our commanders to know—General Petreaus, Admiral Mullen, and others—that Guantanamo Bay has become a symbol for recruitment and propaganda usage against American forces in the war on terror.

It is probably the best run jail in the world right now, to those of us who have been down there. To the ground forces, I wish to acknowledge your patriotism and your service. It is a tough place to do duty because there are some pretty tough characters down there.

At the end of the day, I have tried to be helpful where I could, and I will tell you in a little detail why I am offering this amendment. But my hope was that when President Obama was elected, we could find a way to reform Guantanamo Bay policy, detainee policy, because I have been a military lawyer for 25 years. I do understand detainee policy affects the war effort. If we mess it up, if we abuse detainees, we can turn populations against us that will be helpful in winning the war.

One of the great things that happened in World War II is that we had over 400,000 German prisoners, Japanese prisoners housed in the United States. We took 40,000 hard-core Nazis from the British and put them in American military jails in the United States. So this idea that we can't find a place for 200 detainees in America, I don't agree with. We have done that before. These people are not 10 feet tall. They are definitely dangerous, but as a nation I believe we could start over.

By closing Guantanamo Bay in a logical, rational way, we would be improving our ability to effect the outcome of the war in the Mideast because we would be taking a tool away from the enemy.

President Obama and Senator MCCAIN both, when they were candidates, agreed with the idea of closing Guantanamo Bay and reforming interrogation policy.

To most Americans, it is kind of: Why are we worried about what we do with these guys, because they would cut our heads off. You are absolutely right. It is not lost upon me or any other military member out there that the enemy we are dealing with knows no boundaries and they are barbarians and brutal.

The question is not about them but about us. The fact that we are a civilized people is not a liability, it is an asset. So when you capture a member of al-Qaida, I have always believed it becomes about us, not them. We need interrogation techniques that will allow us to get good intelligence and make the country safe. We need to understand we are at war, and the people we are dealing with are some of the hardest, meanest people known since the Nazis.

But if you try to say, in the same breath, that anything goes to get that information, it will come back to haunt you. So some of the interrogation techniques we have used that come from the Inquisition got us some information, but I can assure you it has created a problem. Ask anybody in the Mideast who has to deal with America. They will tell you this has been a problem. You don't need to do that to protect this country. You can have interrogation techniques that get you good information but also adhere to all your laws.

As to the trials, some people wonder: Why do we care about this? They wouldn't give us a trial. You are absolutely right. The fact that our country will give the worst terrorist in the world a trial with a defense attorney, for free; a judge who is going to base his decision on facts and law and not prejudice; a jury, where the press can show up and watch the trial; and the ability to appeal the result, makes us stronger, not weaker. So count me in for starting over with Guantanamo Bay, with a new legal process that recognizes we have had abuses in the past and we are going to chart a new course.

Regarding the Military Commission Act that just passed the Congress, I wish to say publicly that Senator LEVIN was a great partner to work with. The military commission system we have in place today has been reformed. I think it is a model justice system that I will put up against any in the world, including the International Criminal Court at the Hague, in terms of due process rights for detainees. It also recognizes we are at war. This military commission system, while transparent, with the ability to appeal all verdicts to the civilian system, has safeguards built in it to recognize we are at war and how you handle evidence and access the evidence and intelligence sources are built into that military system that are not built into civilian courts.

Since this country was founded, we have historically used military commissions as a venue to try suspected war criminals caught on battlefields. Why have I brought forth this amendment? I have been told by too many people, with reliable access, that the administration is planning on trying Khalid Shaikh Mohammed—the mastermind of 9/11, the perpetrator of the attacks against our country in Washington, Pennsylvania, and New York—in Federal court in the lower district of Manhattan. If that is true, you have lost me as a partner.

Why do I say that? It would be the biggest mistake we could possibly make, in my view, since 9/11. We would be giving constitutional rights to the mastermind of 9/11, as if he were any average, everyday criminal American citizen. We would be basically saying to the mastermind of 9/11, and to the world at large, that 9/11 was a criminal act, not an act of war.

I do believe in prosecutorial discretion and executive branch discretion. I introduced this amendment reluctantly but with all the passion and persuasion I can muster to tell my colleagues: Act now, so we will get this right later. Congress said we are not going to fund the closing of Gitmo. Well, is Congress meddling in the ability of the Commander in Chief to run a military jail? Hell, yes, because we don't know what the plan is. We have an independent duty as Members of Congress to make sure there is balance. This Nation is at war. It is OK for us to speak up. As a matter of fact, it has been too much passing—too many passes during the Bush administration, where Congress sort of sat back and watched things happen. Don't watch this happen. Get on the record now, before it is too late, to tell the President we are not going to sit by as a body and watch the mastermind of 9/11 go into civilian court and criminalize this war. If he goes to Federal court, here is what awaits: a chaos zoo trial.

Yes, we have taken people into Federal court before for acts of terrorism. We took the Blind Sheik—the first guy to try to blow up the World Trade Center—and put him in civilian court. We treated these people as common criminals. What a mistake we made. What if we had treated them as warriors rather than a guy who robbed a liquor store? Where would we have been in 2001 if we had the foresight in the 1990s to recognize that we are at war and these people are not some foreign criminal cartel; they are warriors bent on our destruction who have been planning for

years to attack this country and are planning, as I speak, to attack us again?

We are not fighting crime. We are fighting a war. The war is not over. What happened in the Blind Sheik trial? Because it was a civilian court, built around trying common criminals, the court didn't have the protections military commissions will have to protect this Nation's secrets and classified information. As a result of that trial, the unindicted coconspirator list was provided to the defense as part of discovery in a Federal civilian criminal court. That unindicted coconspirator list was an intelligence coup for the enemy. It went from the defense counsel, to the defendant, to the Mideast. Al-Qaida was able to understand, from that trial, whom we were looking at and whom we had our eye on.

During the 1990s, we tried to treat these terrorist warriors as just some other form of crime. It was a mistake. Don't repeat it. If you take Khalid Shaikh Mohammed, the mastermind of 9/11, and put him in Federal civilian court, you will have learned nothing from the 1990s. You will have sent the wrong signal to the terrorists and to our own people.

Judge Mukasey, who presided over the Blind Sheik trial, wrote an op-ed piece about how big a mistake it would be to put the 9/11 coconspirators into Federal court. He went into great detail about the problems you would have trying these people in a civilian court. He became our Attorney General. So if you don't listen to me, listen to the judge who presided over the trial in the 1990s.

I don't know what they are going to do in the Obama administration. If I believed they were going to do something other than take Khalid Shaikh Mohammed to Federal court in New York, I would not introduce this amendment. I know this is not a cavalier thing to do. I have taken some grief for trying to help the President form new policies with Guantanamo Bay and reject the arguments made by some of my dear friends that these people are too dangerous to bring to the United States. We can find a way to bring them to the United States; we just have to be smart about it.

To our military men and women who will be administering the commission, my biggest fear has always been that the military commission system will become a second-class justice system. Nothing could be further from the truth. The men and women who administer justice in the military commission system are the same judge advocates and jurors who administer justice to our own troops. The Judge Advocate General of the Navy said the new military commission system is such that he would not hesitate to have one of our own tried in it.

We will gain nothing, in terms of improving our image, by sending the mastermind of 9/11 to a New York civilian court, giving him the same constitutional rights as anybody listening to me in America who is a citizen. The military commission system will be transparent. He will have his say in court. He will have the ability to appeal a conviction to our civilian judges. He will be defended by a military lawyer—or private attorney, if he wants to be. He will be presumed innocent until found guilty. It will be required by the ''beyond a reasonable doubt'' standard for him to be found guilty of anything.

For those who are wondering about military commissions, I can tell you the bill we have produced I will put up against any system in the world. To those who think it is no big deal to send Khalid Shaikh Mohammed to Federal court, I could not disagree with you more. What you will have done is set in motion the dynamic that led to criminalizing the war in the 1990s. You will have lost focus, yet again. You will have been lured into the sense that we are not at war, that these are just a bunch of bad people committing crimes. The day we take the mastermind of 9/11 and put him in Federal court, who the hell are you going to try in the military commission? How can you tell that detainee you are an enemy combatant, you are a bad guy? You are at war, but the guy who planned the whole thing is just a common criminal. What a mistake we would make.

It is imperative this Nation have a legal system that recognizes we are at war and that we have rules to protect this country's national security balance against the interests and the rights of the accused detainee. The military commission forum has created that balance. It is a system built around war, a system built around the rules of military law, a system that recognizes the difference between a common criminal and a warrior, a system that understands military intelligence is different than common evidence. If we do not use that system for the guy who planned 9/11, we will all regret it.

My amendment is limited in scope. It is a chance for you, as a Member of the Senate, to speak up about what you would like to see happen as this Nation moves forward and our desire to correct past mistakes and defend this Nation, which is still at war this very day. It is a chance for you to have a say, on behalf of your constituents, as to how they would like to see this Nation defend itself.

I argue that most Americans—not just the 9/11 families—would be very concerned to learn that the man who planned the attacks that killed 3,000 of our fellow citizens—who would do it again tomorrow—is going to be treated the same as any other criminal. No good will come from that. You will have compromised the military commission system beyond repair. You will have adopted the law enforcement model that failed us before, and we will not be a better people.

I, along with Senator LEVIN, was at Guantanamo Bay the day Khalid Shaikh Mohammed appeared before the Combat Status Review Tribunal. We were in the next room. We listened on a monitor. You could see him and could hear the chains rattle next door when he went through great detail about 9/11 and all the other acts of terrorism he planned against our country.

I never will forget when he told the military judge that he was a high-ranking commander in the al-Qaida military organization and he appreciated being referred to as a military commander. Some would say: You don't want to elevate this guy. What I would say is you want to understand who he is. If you think he is a common criminal, no different than any other person who wants to hurt people, you have made a mistake.

Khalid Shaikh Mohammed is bent on our destruction. He did not attack us for financial gain. He attacked us because he hates us. He is every bit as dangerous as the Nazis. These people we are fighting are very dangerous people. I am insistent they get a trial consistent with our values, that they do not get railroaded, that they get a chance to defend themselves. The media will see how the trial unfolds and you can see most of it, if not all of it. But I am also insistent that we not take our eye off the ball. It has been a long time since we have been attacked. For a lot of people—those who were on the front lines of 9/11—they relive it every night. It replays itself over and over every night of their lives.

For the rest of us, please do not lose sight of the fact that this country is engaged in an armed conflict with an enemy that knows no boundaries, has no allegiance to anything beyond their radical religion, and is conspiring to attack us as I speak.

When we try them, we need to understand that the trial itself is part of the war effort. How we do the trial can make us safer or it can make us weaker. If we criminalize this war, it would take the man who planned the attacks of 9/11 and put him in civilian court. It is going to be impossible with a straight face to take somebody under him and put him in a military court. And the day you put him back in civilian court, you are going to create the problems Judge Mukasey warned us against. You are going to have evidence compromised and you are going to regret it.

I hope to continue to work with the administration to find a way to close Guantanamo Bay, to create a transparent legal system that will allow every detainee their day in court, due process rights they deserve based on our law, not based on what they have done but based on who we are as a people.

The 20th hijacker said this in Federal court—the victims were allowed to testify about the impact of 9/11. They had a U.S. Navy officer talking about being at the Pentagon and the impact on her

life and on her friends. During the testimony, the officer started to cry. Here is what the defendant said, Moussaoui, the 20th hijacker:

I think it was disgusting for a military person to pretend that they should not be killed as an act of war. She is military.

It was a Navy female officer.

She should expect that the people who are at war with her will try to kill her.

This is the 20th hijacker in civilian court:

I will never, I will never cry because an American bombed my camp.

If you have any doubt that we are at war, the one thing you ought to be certain of, they have no doubt that they are at war with us.

The one thing the men and women who go off to fight this war should expect of their government and of their Congress is to watch their back the best we can. We would be doing those men and women a great disservice if we put the mastermind of 9/11, who killed the friends of this Navy officer, in a civilian court that could lead to compromising events that would make their job harder. We would be doing them a disservice to act on our end as if we are not at war.

Mr. President, I say to my colleagues, they have a chance to speak. They have a chance to be on the record for their constituents to send a signal that needs to be sent before it is too late. Here is what I ask them to say with their vote: I believe we are at war and that the legal system we are going to use to try people who attacked this country and killed 3,000 American citizens should be a military legal system, consistent with us being at war. I will not, with my vote, go back to the law enforcement model that jeopardized our national security back in the nineties. I will insist that these detainees have a full and fair trial and that they be treated appropriately. But I will not, with my vote, take the mastermind of 9/11, the man who planned the attacks, who would do it tomorrow, and give him the same constitutional rights as an average, everyday American in a legal system that is not built around being at war.

If they will say that, we will get a good outcome. If they equivocate, we are slowly but surely going to create a legal hodgepodge that will come back to haunt us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, the amendment that has been sponsored by Senators GRAHAM, MCCAIN, LIEBERMAN, and WEBB is wrong and it is unnecessary. It would, as Senator GRAHAM said, prohibit the prosecution of any individual suspected of involvement with the September 11 attacks against the United States from being tried in our article III courts.

The idea that we cannot try a terrorist and mass murderer in our courts is beneath the dignity of this great country. Timothy McVeigh was one of the greatest mass murderers this Nation has ever known and we had no difficulty trying him and convicting him and executing him using our laws and our article III courts.

The real intent of this amendment is clear, to ensure that the detainees held at Guantanamo Bay, some who have been held for years without charge, can only be tried by military commissions.

As a former prosecutor, I find it deeply troubling that the Senate would be asked to prohibit the administration from trying even dangerous terrorists in our Federal courts. These Senators should not use an amendment that politicizes decisions about significant prosecutions as a backdoor to require the use of military commissions.

The administration has worked hard to revise the military commissions to make sure that they meet constitutional standards. However, their use has been plagued with problems and repeatedly overturned by a conservative Supreme Court.

In contrast, our Federal courts have a long and distinguished history of successfully prosecuting even the most atrocious violent acts, and they are respected throughout the world. When we use our Federal courts, the rest of the world recognizes that we are following over 200 years of judicial history of the United States of America. We earn respect for doing so.

The administration strongly opposes this amendment. In a letter to the Senate leadership the Secretary of Defense, Robert Gates, and the Attorney General of the United States, Eric Holder, warn that this amendment would ''set a dangerous precedent'' by directing the Executive Branch's prosecutorial determination.

They also point out this amendment would prohibit them from being able to ''use every lawful instrument of national power . . . to ensure that terrorists are brought to justice and can no longer threaten American lives.''

If we really want to stop terrorists, if we really want to make sure they pay for their crime, why would we block off any of the avenues available to us? Two senior administration officials, individuals directly responsible for the disposition of these detainees, are telling us not to tie their hands in the fight against terrorism. This Senator is listening to them, and I believe all Senators should listen to them.

There has been an outpouring of opposition against this amendment including by numerous human rights groups such as Human Rights First, the National Institute of Military Justice, Constitution Project and Amnesty International.

We have also seen a strong public declaration in support of trying terrorism offenses in Federal courts, signed by a bipartisan group of former Members of Congress, high-ranking military officials and judges.

The Senate Judiciary Committee has held several hearings on the issue of how best to handle detainees. Experts and judges across the political spectrum have agreed that our criminal justice system can handle this challenge and indeed has handled it many times already.

We are a nation that fought hard to have a strong, independent judiciary, with a history of excellence. Do we now want to say to the world that in spite of all of our power, our history, our strong judiciary, that we are not up to trying those who struck us in our traditional federal courts? I think we should say just the opposite, that we can and will prosecute these people in a way that will gain the respect of the whole world and protect our nation. Republican luminaries, such as General Colin Powell, have agreed with this idea.

In fact, one of the things we tend to forget is since January of this year alone, over 30 terrorism suspects have been successfully prosecuted or sentenced in Federal courts. Those federal courts have sentenced individuals directly implicated by this amendment, such as Zacarias Moussaoui.

If this amendment were law Moussaoui, the so called ''20th hijacker'' who was directly involved in the planning of September 11, would not have been convicted by our federal courts and sentenced to life in prison. This amendment takes away one of the greatest tools we have to protect our national security—the ability to prosecute suspects in Federal court. Instead, as the Justice Department has said in its opposition to it, the Graham amendment would make it more likely that terrorists will escape justice.

I believe as strongly as all Americans do that we should take all steps possible to prevent terrorism, and we must ensure severe punishment for those who do us harm. As a former prosecutor, I have made certain that perpetrators of violent crime receive serious punishment. I also believe strongly that we can ensure our safety and security, and bring terrorists to justice, in ways that are consistent with the laws and the values that make us a great democracy.

The administration has said where possible they will try individuals in Federal courts. When we unnecessarily preempt that option, we are saying we do not trust the legal system on which we have relied for so long. All that does is give more ammunition to our enemies. It further hurts our standing around the world, a standing which has already suffered so much from the stain of Guantanamo Bay. Worse still it sends the message to other countries that they do not have to use traditional legal regimes with established protections for defendants if they are prosecuting American soldiers or civilians.

Just as partisan Republicans were wrong in trying to hold up the confirmation of Attorney General Holder to extort a pledge from him that he would not exercise independent prosecutorial judgment—something I have never seen done before in 35 years here—it is also wrong to force an amendment politicizing prosecutions in the Commerce-Justice-Science appropriations bill. I opposed the effort by some Republican Senators who wanted the Nation's chief prosecutor to agree in advance to turn a blind eye to possible lawbreaking before even investigating whether it occurred. Republicans asked for such a pledge, a commitment that no prosecutor should give. To his credit, Eric Holder didn't give that pledge.

Passing a far-reaching amendment that takes away a powerful tool from the Justice Department in bringing terrorists to justice and usurps the Attorney General's constitutional responsibilities is not the path forward. All administrations should be able to decide who to prosecute and where they should be prosecuted. This amendment denies us the benefit of using not only our Federal courts, with their successful track record convicting terrorists, but also from using our Federal laws, which are arguably more expansive and better suited for use in terrorism cases than the narrower set of charges that can be brought in a military commission. We should not tie the hands of our law enforcement in their efforts to secure our national security. Any former prosecutor, any lawyer and any citizen should know it is not the decision of or an appropriate role for the United States Senate.

It is time to act on our principles and our constitutional system. Those we believe to be guilty of heinous crimes should be tried, and when convicted, punished severely. Where the administration decides to try them in Federal courts, our courts and our prisons are more than up to the task. I agree with the Justice Department that this amendment ''would ensure that the only individuals in the world who could not be prosecuted under the criminal terrorist offenses Congress has enacted would be those who are responsible for the most devastating terrorist acts in U.S. history.'' That means that the only people in the world who could not be prosecuted under our terrorism laws are the people who committed the most devastating terrorist acts against us. That is Alice in Wonderland justice. It makes no sense to have tough terrorism laws, to have the best judicial system in the world and then, when terrorist acts are committed against us, to simply ignore that system and decide we cannot use it to prosecute those acts. It makes no sense.

Let us put aside heated and distorted rhetoric and support the President in his efforts to truly make our country safe and strong and a republic worthy of the history and values that have always made America great.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from Michigan.

Mr. LEVIN. Madam President, I very much oppose the Graham amendment, and I want to take a few moments to explain why.

It has been argued that we are at war. Indeed, we are. I can't think of anything clearer, that any of us in this country understands than we are at war. And being at war, it totally mystifies me why we would deny ourselves one of the tools that we could use against people who are attacking us, who have attacked us, who will attack us, who will kill us, who kill innocent people. Why would we deny ourselves one of the tools which are available to try these people, to lock them up, or execute them and throw away the key? Why we would, by law, say this particular group of people can't be tried in a Federal court, that they can only be tried in a military commission, when we have tried so many terrorists in court, convicted them and executed them, is something I do not understand.

I believe we ought to not only throw the book at these people, but I think we ought to throw both books at these people. Why limit ourselves to one book—the book that sets the procedures for military commissions? Why do we deny ourselves the opportunity, if it is more effective—for whatever reasons the Justice Department determines it is more effective—to prosecute in a Federal court? Why would we deny them that?

In fact, under this amendment, they could not even continue the prosecution they had begun. The language of the amendment says either ''to commence or continue the prosecution in an Article III court.'' So the question isn't whether these are the most dangerous people around—they are.

I also went down to Guantanamo. I went with Senator GRAHAM, and we watched the proceeding against Khalid Shaikh Mohammed. I want us to use all of the tools. I want them all to be available. I want the Justice Department to be able to determine which is more effective, and not for us to decide in a political setting, in a legislative setting, that they cannot use one of the tools which has been proven to be effective against dozens of terrorists.

What about the law of war? What about war crimes? The argument is these are war crimes. As far as I am concerned, they are crimes; they are war crimes—both. War crimes can be prosecuted in an article III court. Let me repeat that because the argument is these are war crimes. War crimes can be prosecuted in an article III court under our laws that we adopted about 10 or 15 years ago. So Khalid Shaikh Mohammed needs to be given justice. He needs to be dealt with as strongly as we possibly can and as effectively as we possibly can. I believe he was the mastermind of 9/11. I don't think there is a Member of this body that would not want to see him dealt with as strongly as can possibly be done. But I don't know why we would tell the Justice Department that they only can consider one of the two tools that they could use against him; that they only can consider the military commissions but they can't consider article III courts.

I have been deeply involved in rewriting the military commissions law. That law, when we first wrote it, was defective, and I argued against it because it was defective. This body adopted it. That is the way things work. The majority decided to go with it. It was not usable. So we took a major step in the last few months to revise the military commissions law. I helped to lead that effort, and I know how important it is. But it was never our intent to make that the exclusive remedy for people who would attack us or attack this country. We want that remedy to be available if that is the most effective remedy. But there is nothing in that law that we wrote, or intended, that said this would displace article III courts if the Justice Department decided the most effective place to try an alleged terrorist was an article III court.

Are we actually, on the floor of the Senate, going to decide which terrorists should be tried in article III courts and which ones should be tried in military commission courts? Why would we tie the hands of the Justice Department in that way?

I know Senator GRAHAM feels very strongly these should be tried in front of military commissions, and if he were the Justice Department, or if he were the Attorney General, he may make that decision, assuming he knows all the facts that go into the decision. He may make that decision, and he could strongly recommend it to the Justice Department. But why would we decide to displace the discretion of the Justice Department is a mystery to me. I find it unacceptable.

More importantly, the Attorney General and the Secretary of Defense find it unacceptable. They have urged us not to do this. They have written our leaders—Senator REID and Senator MCCONNELL—opposing the Graham amendment.

They say in their letter that there is a joint prosecution protocol, and the departments are ''currently engaged in a careful case-by-case evaluation of the cases of Guantanamo detainees who have been referred for possible prosecution, to determine whether they should be prosecuted in an Article III court or by military commission. We are confident that the forum selection decisions that are made pursuant to this process will best serve our national security interests.''

That is the Attorney General of the United States and the Secretary of Defense. Can we truly say in the Senate that we are going to displace that process which will determine what is the

most effective way to prosecute these people? Can we and should we do that? I hope not.

They end their letter of October 30 by saying the following:

> The exercise of prosecutorial discretion has always been and should remain an Executive Branch function. We must be in a position to use every lawful instrument of national power—including both courts and military commissions—to ensure that terrorists are brought to justice and can no longer threaten American lives.

If we adopt the Graham amendment, we are saying no; we are only going to use one instrument of national power. We are not going to consider both instruments of national power, and that is truly not only limiting our options but tying one of our hands behind our back in the essential prosecution of these people.

Madam President, Zacarias Moussaoui, the so-called 20th hijacker, was convicted in Federal court in May of 2006 for conspiring to hijack aircraft and crash them into the World Trade Center. He was quoted by Senator GRAHAM as saying that ''we are at war with you people.'' I don't have the slightest doubt that he means it and if he were ever released he would go back to war.

But I also have no doubt about something else. He was saying this in a Federal court, after being convicted in a Federal court of the terrorist acts that he perpetrated. He is now in a supermax facility in Florence, CO. He is serving life imprisonment without parole. If the Graham amendment had been in place at the time that Moussaoui was being prosecuted—indeed, if the Graham amendment had come in the middle of that prosecution—the prosecution would have had to have been suspended.

This amendment, if it is adopted, is going to make it more difficult to bring some of the 9/11 terrorists to justice. Let me share some of the reasons this possibility exists.

A court could decide that one of the 9/11 detainees does not meet the test, under the military commissions law, of being an ''unprivileged enemy belligerent.'' In particular, a court could decide that one of the 9/11 alleged terrorists did not participate in a ''hostility'' and therefore was not subject—a belligerent subject to the laws of war. So we are saying to the Justice Department: If you see the possibility that someone could be let out or somebody could be found not guilty based on that kind of a technicality, we are not going to let you go and try that person in a Federal court. You must try that person where that person could escape justice based on a technicality.

Why would we want to do that? How can we possibly sit here and reach a judgment on all of the possible factual situations which might allow one of these people to escape justice? We cannot do that. That is what prosecutors are for. That is what a Justice Department is for. We should be giving them tools, not denying them tools. We should be handing them every possible tool we can give them to prosecute these people instead of saying you can't use this tool or you can't use that tool.

A court could decide that the crimes committed by one of the 9/11 detainees is not justiciable under the Military Commissions Act. So therefore we are going to say you have to prosecute him there anyway? A court could decide that an offense under the Military Commissions Act cannot be retroactively applied to an offense that took place before the enactment of the act. In our language, they can be tried even though it is a retroactive application. What happens if that occurs and then a court comes along, a court of appeals following a military commission, and says: No, you can't do that. Why would we not want the Justice Department to be able to weigh all of these possible escape loopholes that a defendant could use and decide that they have a better chance of convicting somebody and making that conviction stick if they proceed in an article III court?

Maybe the procedural rights which we have written into our Military Commissions Act, which is now law—maybe a court will determine they are not adequate. Maybe they will throw out the entire process despite our best efforts to correct what we had previously done. We should not presume the outcome of the judicial process and throw away legal tools that may be needed to bring the 9/11 terrorists to justice. We should not be tying the hands of our prosecutors against these people.

Prosecutorial discretion is one of the cornerstones of the American judicial system. It is wrong for us to be limiting that discretion by directing cases to a particular forum. It denies our prosecutors the ability to choose the forum that is best suited to a successful outcome in the case. The mechanism of cutting off funds for a prosecution, which is what this amendment does because Congress believes that a prosecution should take place in one forum or another, would set a terrible precedent. We should not be intervening in that kind of decision through the appropriations act.

The determination of the proper forum for the trial of 9/11 terrorists should be made by the professional prosecutors based on the circumstances of the case and their judgment as to where is the best chance to gain a successful prosecution. We should not decide where these cases are going to be tried. I don't believe we should presume they will be tried in one place or another.

There is a process underway, including both the Defense Department and the Justice Department, to make a determination as to which will be the most effective place to try these terrorists. So that is the appropriate process, and we ought to let it continue without this kind of intervention by the Senate.

Before I yield the floor and suggest the absence of a quorum, I ask unanimous consent to have printed in the RECORD the letter from the Attorney General and the Secretary of Defense to Senators REID and MCCONNELL.

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

OCTOBER 30, 2009.

Hon. HARRY REID,
Majority Leader, U.S. Senate, Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate, Washington, DC.

DEAR SENATORS REID AND MCCONNELL: We write to oppose the amendment proposed by Senator Graham (on behalf of himself and Senators McCain and Lieberman) to H.R. 2847, the Commerce, Justice, Science, and Related Agencies Appropriations Act of 2010. This amendment would prohibit the use of Department of Justice funds ''to commence or continue the prosecution in an Article III court of the United States of an individual suspected of planning, authorizing, organizing, committing, or aiding the attacks on the United States and its citizens that occurred on September 11, 2001.''

As you know, both the Department of Justice (in Article III courts) and the Department of Defense (in military commissions, reformed under the 2010 National Defense Authorization Act) have responsibility for prosecuting alleged terrorists. Pursuant to a joint prosecution protocol, our departments are currently engaged in a careful case-by-case evaluation of the cases of Guantánamo detainees who have been referred for possible prosecution, to determine whether they should be prosecuted in an Article III court or by military commission. We are confident that the forum selection decisions that are made pursuant to this process will best serve our national security interests.

We believe that it would be unwise, and would set a dangerous precedent, for Congress to restrict the discretion of either department to fund particular prosecutions. The exercise of prosecutorial discretion has always been and should remain an Executive Branch function. We must be in a position to use every lawful instrument of national power—including both courts and military commissions—to ensure that terrorists are brought to justice and can no longer threaten American lives.

For these reasons, we respectfully request that you oppose this amendment.

ROBERT M. GATES,
Secretary of Defense.
ERIC H. HOLDER, JR.,
Attorney General.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Madam President, most Americans recognize that our continued success in preventing another terrorist attack on U.S. soil depends on our ability as a Nation to remain vigilant and clear-eyed about the nature of the threats we face at home and abroad.

Some threats come in the form of terror cells in distant countries. Others

come from people plotting attacks within our own borders.

And still others can come from a failure to recognize the distinction between everyday crimes and war crimes.

This last category of threat is extremely serious but sometimes overlooked—and that is why Senators GRAHAM, LIEBERMAN, and MCCAIN have offered an amendment to the Commerce, Justice and Science appropriations bill that would reassure the American people that the Senate has not taken its eye off the ball.

The amendment is simple and straightforward. It explicitly prohibits any of the terrorists who were involved in the September 11, 2001, attacks from appearing for trial in a civilian U.S. courtroom. Instead, it would require the government to use military commissions; that is, the courts proper to war, for trying these men.

By requiring the government to use military commissions, the supporters of this amendment are reaffirming two things: First, that these men should have a fair trial.

And second, we are reaffirming what American history has always showed; namely, that war crimes and common crimes are to be tried differently—and that military courts are the proper forum for prosecuting terrorists.

Some might argue that terrorists like Zacarias Moussaoui, one of the 9/11 conspirators, are not enemy combatants—that they are somehow on the same level as a convenience store stick-up man. But listen to the words of Moussaoui himself. He disagrees.

Asked if he regretted his part in the September 11 attacks, Moussaoui said: ''I just wish it will happen on the 12th, the 13th, the 14th, the 15th, the 16th, the 17th, and [on and on].'' He went on to explain how happy he was to learn of the deaths of American service men and women in the Pentagon on 9/11. And then he mocked an officer for weeping about the loss of men under her command, saying:

> I think it was disgusting for a military person to pretend that they should not be killed as an act of war. She is military. She should expect that people who are at war with her will try to kill her. I will never cry because an American bombed my camp.

There is no question Moussaoui himself believes he is an enemy combatant engaged in a war against us.

The Senate has also made itself clear on this question. Congress created the military commissions system 3 years ago, on a bipartisan basis, precisely to deal with prosecutions of al-Qaida terrorists consistent with U.S. national security, with the expectation that they would be used for that purpose.

The Senate reaffirmed this view 2 years ago when it voted 94–3 against transferring detainees from Guantanamo stateside, including the 9/11 planners.

We reaffirmed it again earlier this year when we voted 90–6 against using any funds from the war supplemental to transfer any of the Guantanamo detainees to the United States.

And just this summer the Senate reaffirmed that military commissions are the proper forum for bringing enemy combatants to justice when we approved without objection an amendment to that effect as part of the Defense authorization bill.

Further, our past experiences with terror trials in civilian courts have clearly been shown to undermine our national security. During the trial of Ramzi Yousef, the mastermind of the first Trade Center bombing, we saw how a small bit of testimony about a cell phone battery was enough to tip off terrorists that one of their key communication links had been compromised.

We saw how the public prosecution of the Blind Sheikh, Abdel Rahman, inadvertently provided a rich source of intelligence to Osama bin Laden ahead of the 9/11 attacks. And in that case, we remember that Rahman's lawyer was convicted of smuggling orders to his terrorist disciples.

We also saw how the trial of Zacarias Moussaoui resulted in the leak of sensitive information.

And we saw how the trials of the East African Embassy bombers compromised intelligence methods to the benefit of Osama bin Laden.

The administration calls these prosecutions ''successful.'' But given the loss of sensitive information that resulted, former Federal judge and Attorney General Michael Mukasey has noted ''there are many words one might use to describe how these events unfolded; 'successfully' is not among them.''

Trying terror suspects in civilian courts is also a giant headache for communities; just look at the experience of Alexandria, VA, during the Moussaoui trial. As I have pointed out before, parts of Alexandria became a virtual encampment every time Moussaoui was moved to the courthouse. Those were the problems we saw in Northern Virginia when just one terrorist was tried in civilian court. What will happen to Alexandria, New York City, or other cities if several terrorists are tried there? You can imagine.

It is because of dangers and difficulties like these that we established military commissions in the first place. The administration has now rewritten the military commission procedures precisely to its liking. If we can't expect the very people who masterminded the 9/11 attacks and went to war with us to fall within the jurisdiction of these military courts, then who can we expect to fall within the jurisdiction of these military courts?

The American people have made themselves clear on this issue. They do not want Guantanamo terrorists brought to the U.S., and they certainly do not want the men who planned the 9/11 attacks on America to be tried in civilian courts—risking national security and civic disruption in the process.

Congress created military commissions for a reason. But if the administration fails to use military commissions for self-avowed combatants like Khalid Sheikh Mohammed, then it is wasting this time-honored and essential tool in the war on terror.

I would ask the opponents of the Graham amendment the following: what material benefit is derived by bringing avowed foreign combatants like KSM into a civilian court and giving them all the rights and privileges of a U.S. citizen; and why should we further delay justice for the families of the victims of 9/11?

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WEBB. Madam President, I rise with some regret because I am in a contradiction with our President and with many members of my own caucus. I am a cosponsor of the Graham amendment. I have no regrets about cosponsoring the amendment. I do regret that I am in contradiction with a number of my colleagues on this side.

I believe this is an appropriate amendment. I believe it is the best way for us to move forward and bring a solution with respect to those who are detained in Guantanamo.

I would start by saying I have consistently argued that the appropriate venue for trying perpetrators of international terrorism who are, in fact, enemy combatants is a military tribunal. One of my primary focuses in my time in the Senate has been to work toward a fairer and more efficient criminal justice system in the United States.

As all my colleagues know, we have an enormous backlog in many court systems right now. Prisons are overcrowded. We have 2.3 million people in prison right now, 7 million people inside the criminal justice system. The process of trying enemy combatants in our already overburdened domestic courts, on the one hand, is not necessary and, on the other, would introduce major logjams and work against our goals of improving our criminal justice system.

As someone who served in the military, has spent 5 years in the Pentagon, and is privileged to serve in this body, I would like to say, in my view, the Guantanamo Bay detainee situation is challenging, it is complicated, it involves balancing an entire host of considerations, including national security, constitutional due process requirements, international law, procedural and practical considerations, and the responsibilities and authority of all three branches of government.

Given the complicated nature of this situation, I believe it is very important for us to move forward with a careful and considered approach. These are among the considerations we should be looking at: First, the Supreme Court has reviewed this issue a number of times and, in several cases, has given clear guidance on due process requirements.

Second, taking into consideration these Supreme Court's decisions, Congress enacted new procedures for military tribunals. These new pressures, which were included in the recently passed Defense authorization bill, contain safeguards that protect detainees' due process and habeas rights.

President Obama, as a Senator, took part in the creation of these new procedures. President Obama signed these new procedures into law. Additionally, the facilities for properly holding and trying dangerous detainees who are, in fact in many cases, enemy combatants, exist at the cost of approximately millions of dollars in Guantanamo.

The Guantanamo debate has, in my view, improperly focused on place versus process over the past couple of years. The most important factor has been to improve the process as we consider these different cases, not simply whether this was Guantanamo or anywhere else.

Removing our detainees from Guantanamo to the United States is not going to solve the problem. The improved processes we have put in place is one of the key factors in addressing the problem.

The people we are seeking to prosecute—I think it needs to be said again and again—are enemy combatants. They were apprehended during a time of war, while hostilities are still ongoing. Prosecuting these individuals in domestic courts gives rise to a host of problematic issues which are basically unnecessary because of the availability now of properly constituted military tribunals.

The problems with trying alleged detainees in domestic courts include: procedural, constitutional, and evidentiary rules in place to protect civilian criminal defendants in our country. These protections would require the production of classified materials. It could require military and intelligence officers to be called from other duties, in some cases from the battlefield, to testify.

This could lead to the exposure of sensitive material or, alternatively, to acquittal of enemy combatants who are guilty of these crimes. In the U.S. legal system, when a defendant is acquitted he goes free. In this complex scenario, it is unclear what will happen in our domestic judicial system if one of those enemy combatants is actually acquitted.

This mixing of the legal and military paradigms, I believe, would confuse our criminal justice system without a real upside. The burden of trying enemy combatants in a domestic court is overwhelming. Other people have mentioned this. There is an issue, of course, of maintaining security for the courtroom and for the jail facilities: the additional security burdens to the U.S. Marshals Service and to local police services, the security and procedural complexities would tie up our court system at a time when we need to move criminal cases forward.

I think it is very important for the understanding of this body, that while this amendment only applies to six detainees at Guantanamo Bay, it is long past time that we work to reach a consensus on how and where all these detainees are going to be tried and/or held. The administration has consistently talked about three different categories of detainees: Those who have been found not to be a threat to the United States and can be released and a number of them have; those who are a threat and can be prosecuted, which takes up most of our discussion, but, importantly, a third group is those who we have reason to believe will continue to be a threat to the United States, but we may not have sufficient admissible evidence to bring them to trial. That is the category that is the most troubling when we start talking about moving these detainees from Guantanamo Bay to the United States.

Every Member of this body should be concerned with the implications of confining such individuals indefinitely inside the United States without due process. I took the time, after a number of discussions, including a long discussion with the President about this, to read the Hamdi case, the Supreme Court case that deals with indefinite detention of detainees.

There is a conundrum here, if you think about the reality of what we are doing. If you bring these people into the United States and do not try them, you are going to put them in a civilian prison. There are only two possibilities here: either as legally here in the United States they have to be given a speedy trial or, as enemy combatants, we do not have to give them a speedy trial until the end of hostilities. How do we define the end of hostilities? We are simply going to be importing a problem, affecting about 50 people at Guantanamo, from Guantanamo into the United States.

Again, it is not the place, it is the process. Ten years from now, fifteen years from now we don't want to find ourselves saying: There is an individual in a super-max prison somewhere in Illinois who has never been charged with a crime.

Why do we need to bring that into our system? Why do we need to bring that into our country? We have to commit ourselves to examining that issue in detail and figure out a way to move forward. I am committed to working with the administration. I have said this to the President in the past and to Members of this body, we need to move forward and develop a final trial and detention plan.

But the bottom line is, we are a nation at war. The Supreme Court has outlined due process rights for detainees. Guantanamo Bay is the appropriate facility for holding the enemy belligerents, particularly since we just passed these improvements in the Military Commissions Act. I hope this body will think seriously about the implications of bringing large numbers of Guantanamo Bay detainees into the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. I see the Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I will be speaking for only 4 or 5 minutes. I see Senator DEMINT. I ask unanimous consent that I follow him. But I will be considerably briefer than Senator WEBB.

Mr. DEMINT. I would be happy to let the Senator from Rhode Island go first, as long as I can follow him.

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

The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. I appreciate the Senator's courtesy. I wish to take a different view than our distinguished colleague from Virginia. He comes from a military background and he views this from that lens. I come from a prosecutor's and lawyer's background. I see it through a different lens.

I take exception to a number of the concerns the distinguished Senator from Virginia elucidated. My concern is, the balancing of those concerns and the determination as to on which side, military commissions or traditional law enforcement prosecution, the government should come down on is one that should not be a legislative determination.

We have executive officials who are very capable of making this determination. It is at the soul of prosecutorial discretion to decide whom to charge, what to charge, and in what forum to bring the charge. I think we are in the wrong location, trying to inject ourselves as the legislative branch of government into the executive determination as to where a case should be brought.

It may very well be that a great number of these cases should indeed be brought in military commissions. But I do not think it is up to us as Members of the Senate to force the executive branch's hands.

A second point is, we have had very bad luck with these military commissions so far. Many believe the procedures for those commissions did not afford adequate process to the accused, and, as a result, the perceived legitimacy of the commissions was undermined. That is the finding of the Detention Policy Task Force.

Some of those shortcomings have been improved upon recently. But we are in a stage, at this point, in which article III courts—the Federal American courts—have handled 119 terrorism cases with 289 defendants. Of those, 75 cases are still pending in our courts, but 195 defendants have been convicted. Our conviction rate has been 91 percent.

Our Bureau of Prisons currently holds 355 terrorists in its facilities, by it is own estimation, 216 international

terrorists, and 139 domestic terrorists. So regular, traditional American law enforcement, prosecution by the Department of Justice, is a tried-and-true vehicle for prosecuting and punishing terrorists.

By contrast, the Gitmo military tribunals have convicted three detainees. After all those years of trouble and effort, 289 defendants convicted in our criminal courts, three in our military commissions.

So I submit there may be very good logic for those military commissions, but it is not a wise decision and not properly our decision to force the hand of the executive branch of government and close down the side of the war on terrorism that has been most effective at incarcerating and punishing our terrorist enemies.

I yield the floor and, again, thank the Senator for his courtesy.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. I thank the Chair.

Madam President, I wish to associate myself with Leader MCCONNELL and thank him for his leadership on the Guantanamo Bay issue. I know as the President looks to close this facility which costs the American taxpayers $275 million, people around the country, including in my own State of South Carolina, are concerned that we will now move some of the world's most dangerous people into a civilian area that is not designed for this type of security threat. I appreciate the leadership of Senator MCCONNELL in trying to bring some rational thinking.

HONDURAS

I wish to take a break from the discussion of Guantanamo Bay and the appropriations bills to discuss briefly the situation in Honduras. Honduras is one of America's best allies in this hemisphere. For the last 4 months they have been involved in a constitutional crisis. I have been very critical of the administration's handling of the Honduras situation. In fact, I have held two nominees, one to Latin America and one to Brazil, in order to shine a spotlight on the situation and get this administration and this Congress to focus on what I consider very bad policy toward a very close friend of the United States.

While I have been critical, it is important, when the administration changes its view and puts things on the right course, to thank Secretary Clinton, Secretary Tom Shannon for their work in Honduras. I also wish to talk a little bit about the situation.

As part of my talk, I want Senator REID to know it is my intent to release my holds on the nominees so they can move forward, now that I believe the administration has set a good course for our allies in Honduras.

Let me take a few minutes to go through the background of the situation. Not many people have paid much attention to it. Over 4 months ago, I believe our administration rushed to judgment in declaring the removal of President Zelaya from office as a military coup. All branches of the Honduran Government agreed that he should have been removed. The congress, the electoral tribunal, the attorney general, the supreme court, all institutions of democracy in Honduras, agreed the president had violated the constitution and the law and needed to be removed from office. For weeks leading up to his arrest, President Manuel Zelaya defied his nation's laws and attempted to illegally rewrite the Honduran constitution so he could remain in office past his term. That probably sounds familiar because that is the same course Hugo Chavez has taken in Venezuela and Ortega in Nicaragua. We know about the Castros, of course. It is a pandemic in Latin America that democracies elect leaders who change the constitution and become dictators. Zelaya was on the same course until the democratic institutions in Honduras stopped him short.

He attempted to force a national vote to allow himself to stay in office. He went so far as to lead a violent mob to try to retrieve ballots printed in Venezuela that had been confiscated by the Honduran authorities so he could not have the national referendum he wanted. As I mentioned before, every Honduran institution supported his removal because of his open defiance of the laws and the constitution. The people of Honduras have struggled too long to have their hard-won democracy stolen from them by a would-be dictator. The Honduran Government had little choice but to act in accordance with the Honduran constitution and their own rule of law. They had to remove Zelaya from office to protect their democracy.

Since June, the Law Library of Congress made public a thorough report defending the actions undertaken by the Honduran institutions in contradicting the claims made by the Obama administration. Our own State Department said they have secret legal memos of their own supporting their actions, but they have refused our request to release them and have kept them hidden from the public. Instead of siding with the Honduran people, the administration decided to put their full support behind Mr. Zelaya, who is a close ally of Hugo Chavez and who the State Department even said had undertaken provocative actions that led to his removal. Despite this admission, the Obama administration has waged a war directly against the Honduran people by denying visas, terminating aid, and refusing to acknowledge that free and fair elections would solve the problems in Honduras.

The Presidential election is on schedule for November 29. It has been scheduled that way since 1982, when their constitution was put in place. Under Honduras's one-term-limit requirement, Zelaya could not have sought reelection anyway. The current president, Roberto Micheletti, whom I just got off the phone with, was installed after Zelaya's removal per the constitution. He is not on the ballot either. He is not seeking power in Honduras. The Presidential candidates were nominated in primaries over a year ago, and all of them, including Zelaya's former vice president, expect these elections to be free and fair and transparent, as has every other Honduran election for almost a generation. I have been terribly disappointed with the administration's policies on Honduras and have consistently argued that the upcoming November 29 elections are the only way out of this mess. We as a nation have to send a signal that we will recognize these elections.

I personally visited Honduras last month and was satisfied as to the legitimacy of the interim government of Micheletti and as to the legitimacy of the long-scheduled Presidential elections that will be held later this month. I am happy to report that after many months, Secretary Clinton and Assistant Secretary Shannon have led the Obama administration back in the right direction. I met yesterday with Assistant Secretary of State of Latin America Tom Shannon and spoke today with Secretary Clinton. I can report that we now appear to be on the right track. Both Assistant Secretary Shannon and Secretary Clinton assured me that notwithstanding any previous statements by administration officials, the United States will recognize the November 29 Honduran election, regardless of whether the Honduras Government votes to reinstate Zelaya. They have made it clear the administration will recognize the elections, regardless of whether the Honduran Congress votes on the Zelaya reinstatement before or after the November 29 election.

The independence, transparency, and fairness of those elections has never been in doubt. Thanks to the reversal of the Obama administration, the new government sworn into office next January can expect the full support of the United States and, I hope, the entire international community.

I applaud the administration. I am thankful they have ended their focus on whom I consider a would-be dictator and are now standing firmly with the Honduran people and for a Honduran solution to the problem. Today starts a major step forward for the cause of freedom and democracy for the western hemisphere, for the United States, and especially for the brave people of Honduras. They are proving that despite crushing hardships and impossible odds, freedom and democracy can succeed anywhere people are willing to fight for it. The condemnation heaped on the free people of Honduras these last several months never had to happen. The Obama administration erred in its assessment of the situation in Honduras because of a rush to judgment based on bad information. We have all learned a lesson about distinguishing friends from foes and the

paramount importance of constitutional democracy to international stability.

For months I have made it clear I would continue to object to two State Department nominations until the United States reversed its flawed Honduras policy. My goal has been to get this administration to recognize the November 29 elections. Now that this has happened, I will keep my part of the bargain and release these holds. I will notify Senator REID that these nominations can move ahead on his schedule. It is no secret that I have been critical of the administration on their handling of these issues. But I take this opportunity today to thank Secretary Clinton and Assistant Secretary Shannon for reengaging the Honduran Government and working out a solution that President Micheletti and the government in Honduras, as well as the Honduran people, feel is fair.

There are still a number of concerns. As I talked to President Micheletti moments ago, he is concerned that the Organization of American States continues to support deposed President Zelaya and is organizing, along with Zelaya, a lot of mischief related to the upcoming elections, encouraging people to take to the streets and violence. I hope the State Department and the Obama administration, along with Congress, will continue to support the Honduran people and make sure the Organization of American States and any other country will support the agreement that has been signed by the people in Honduras and that we have agreed to.

I am thankful for the opportunity to speak on this issue, to bring it to the attention of this Congress and the American people. I look forward to releasing the holds on these nominations and continue to follow the situation closely, particularly the November 29 elections, as Honduras continues as a free and democratic nation.

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

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

The legislative clerk proceeded to call the roll.

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

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

Ms. MIKULSKI. Mr. President, as the chairman of the Commerce, Justice, Science Committee, I ask unanimous consent that all postcloture time be yielded back, except the 10 minutes specified for debate as noted in this agreement; that the Senate now resume the Coburn amendments Nos. 2631 and 2667, and that prior to the votes in relation to each amendment in the order listed, there be 2 minutes of debate, equally divided and controlled in the usual form; that upon the use or yielding back of time, the Senate proceed to vote in relation to the amendments; that upon the disposition of the Coburn amendments, the Senate resume consideration of the Graham amendment No. 2669, and that prior to a vote in relation to the amendment, there be 4 minutes of debate, equally divided and controlled between Senators GRAHAM and LEAHY or their designees; that upon the use or yielding back of time, the Senate proceed to vote in relation to the amendment; that upon disposition of the Graham amendment, the Senate then resume the Ensign amendment No. 2648, as modified; that there be 2 minutes of debate, equally divided and controlled in the usual form, prior to a vote in relation to the amendment; that upon disposition of the Ensign amendment, the Senate resume the Johanns amendment No. 2393; that the amendment be agreed to and the motion to reconsider be laid upon the table, with no amendments in order to the aforementioned amendments; that no further amendments be in order; that the substitute amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Senate then proceed to vote on passage of the bill; that upon passage, the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees, with the subcommittee plus Senators BYRD and COCHRAN appointed as conferees; that if a point of order is raised and sustained against the substitute amendment, then it be in order for a new substitute to be offered, minus the offending provisions but including any amendments previously agreed to; that the new substitute be considered and agreed to, no further amendments be in order, the bill, as amended, be read a third time, with the provisions of this agreement after adoption of the original substitute amendment remaining in effect; and that the cloture motion on the bill be withdrawn; and that the order commence after the remarks of Senator CHAMBLISS.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—EXECUTIVE CALENDAR

Ms. MIKULSKI. Mr. President, as in executive session, I ask unanimous consent that upon disposition of H.R. 2847, the Senate proceed to executive session and immediately proceed to vote on confirmation of the nomination of Calendar No. 462, and that upon confirmation, the motion to reconsider be considered made and laid upon the table; that no further motions be in order, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 2669

Mr. SESSIONS. Mr. President, I would like to speak, briefly, in support of Senator GRAHAM's amendment dealing with the trial of 9/11 terrorists in Federal court. It, in effect, would prohibit the administration from doing that by denying funding for any such trials.

This is a very important matter. One of the things we learned when 9/11 occurred was that this country had made a mistake in treating people who are at war with the United States, who attempt to destroy the United States, as normal criminals and that they should be tried in court.

We learned the only effective way to deal with persons such as that is to treat them as prisoners of war or unlawful combatants, who are people who violate the rules of war—and all these individuals do, basically, with the way they conduct themselves. So we would try them according to military commissions. The Constitution makes reference to military commissions. They can be tried fairly in that method without all the rules and procedures we cherish so highly in Federal courts for the trials of normal crimes that people are accused of in this country.

I spoke about al-Marri just last week, who came to the United States on September 10. He had met bin Laden. He had been to a training camp in Afghanistan. He had a goal, pretty clearly, to participate in an attack on the United States. He seemed to be a part of that entire effort. He came 1 day before 9/11. He was tried by a Federal judge who apparently gave a conviction but sentenced him to, in effect, 7 years. He had training in bomb making and that kind of thing. He had done other acts that indicated an intent to kill American people, innocent civilians, in a surreptitious way, contrary to the laws of war. So as a result of that, I think he should have been tried by a military commission, and he was not.

As one of the professors said in commenting on this case, it raises questions about the ability of our normal Federal court system to try these people who may be subject to having the courthouse attacked in an attempt to free them. Jurors may feel threatened because they are willing to kill to promote their agenda—or their allies are. Courthouses have to be armed with guards all around and with people on top of the courthouse to protect the courthouse throughout the trial.

They can be tried effectively by military commissions. So Senator GRAHAM is serving the national interest in raising this issue. It is not a little bitty matter. It is correct. He has a good idea about it. He has focused it narrowly on the 9/11 issue and on those who participated in that attack. I think that is at least what we should do today.

We need to have a sincere analysis of the determination by this administration to try more and more cases in Federal court when they have been

captured by the military. In fact, they say there is a presumption in their commission report to date that they would be tried in Federal courts rather than military commissions. I think that is very dangerous because military people do not give them Miranda warnings when they are arrested. They do not do the kinds of things that are necessary to maintain change of custody or to admit evidence into trials in a way we would normally do. These kinds of procedures could cause a trial to be extremely difficult. They could bring witnesses from the battlefield and the like.

It is not the way, I am aware, any country tries people who are at war with them—any country. All countries provide for military commissions against unlawful combatants.

I see my friend, Senator CHAMBLISS, in the Chamber. I know he wants to speak on this issue.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise in strong support of the Graham amendment, and I wish to echo the sentiments expressed by my friend from Alabama, who, like me, has had extensive experience in trying cases for many years.

In this country, over our 225-plus years, we have been involved in many different military conflicts. In each of those conflicts, dating back to the early years, there have always been prisoners captured, and we have always had a procedure whereby we incarcerated and ultimately tried those individuals who were captured on the battlefield.

The process of how we operate from an article III criminal standpoint relative to criminals in America who commit offenses against the United States of America is one thing. The process we have always used to deal with those individuals whom we capture on the battlefield has been entirely different and all for the right reasons.

I know there are those who have gotten up here over the past several weeks and months as we have talked about this issue from time to time, and I have had any number of amendments on this issue and have spoken on the floor numerous times about it. It is important for the protection and security of the American people to keep all these individuals whom we capture on the battlefield, who are incarcerated at Guantanamo, outside America. We have the mechanics set up to try them. We have a very safe place for them to be incarcerated. That is, frankly, where they ought to stay until some method can be worked out to deal with them, to have them housed somewhere outside the United States.

Unfortunately, the President has made a commitment to close Guantanamo by January 22, without ever having a plan in place as to how he was going to deal with them. What we are talking about doing is making sure, because folks on the other side of the aisle have already said: We want to bring the prisoners from Guantanamo to American soil, we try them there. Ultimately, I guess they are saying: We want to house them in American prisons. I think that is wrong.

This amendment, though, is even narrower than that. That is why it is so important. This amendment says: We are going to take the meanest of these individuals, who get up every day thinking of ways to kill and harm Americans, and make sure they never come to American soil for trial and are never subjected to the process that is developed in article III courts for average, ordinary criminals who are tried every single day in America.

Khalid Shaikh Mohammed is the admitted mastermind of September 11. He is one of the individuals who today is housed at Guantanamo Bay. He is one of the individuals who is going to be directly affected by this amendment. Does Khalid Shaikh Mohammed want justice? No. Khalid Shaikh Mohammed wants a platform. He wants a platform on which to exude his arrogance and his hatred of America and his hatred of Americans, as exhibited by the plan he put in place to fly airplanes into the Pentagon, the World Trade Center, and another entity that was probably the U.S. Capitol. That airplane, ultimately, crashed in Pennsylvania.

There were over 3,000 victims on September 11. It is my understanding family members of those victims have written letters and made phone calls urging the passage of this amendment. They are an indication of the strong feeling that prevails all across America relative to how we deal with these individuals who, particularly—particularly—intended and did, in fact, carry out an attack against America, an atrocious attack that took the lives of over 3,000 people.

I commend Senator GRAHAM for even thinking of the idea of narrowing this amendment to include just those individuals who participated in the September 11 attack. I would rather broaden it to include all those who are housed at Guantanamo. I defy anyone to stand and say that trying any of those individuals who are housed at Guantanamo, who were captured on the battlefield, in an article III court in the United States would be similar to some other terrorists we have tried in this country. That is wrong. We have never tried anybody who was arrested on the battlefield in an article III court in the United States.

So Senator GRAHAM's amendment is very appropriate. It ought to be passed. It ought to be passed with a large margin. A vote against this amendment is simply a vote to give Khalid Shaikh Mohammed that platform he wants to have to talk about why he hates America and about everything that is wrong with America. That is not what we ought to be doing in this body today or at any other time.

I urge a positive and affirmative vote on the Graham amendment.

I yield back, Mr. President.

AMENDMENT NO. 2631

Ms. MIKULSKI. Mr. President, what is the pending amendment?

The PRESIDING OFFICER. Coburn amendment No. 2631 is the pending amendment.

Ms. MIKULSKI. Mr. President, I vigorously and unabashedly oppose the Coburn amendment. It eliminates not only the dollars from the science program at the National Science Foundation, it specifically targets the $9 million cut in the area of funding for research by political scientists.

The very first American woman to win the Nobel Prize for economics ever has received 28 awards from the National Science Foundation, the science program offered to political science professors. It shows what groundbreaking work can be done.

This amendment is an attack on science. It is an attack on academia. We need full funding to keep America innovative, and I urge my colleagues to vote no on this amendment.

Mr. President, I yield back the remainder of our time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered.

The PRESIDING OFFICER. Who yields time in favor of the amendment?

Is there objection to yielding back all time?

Without objection, all time is yielded back.

The question is on agreeing to the amendment.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

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

The result was announced—yeas 36, nays 62, as follows:

[Rollcall Vote No. 336 Leg.]

YEAS—36

Barrasso	Enzi	McConnell
Baucus	Graham	Murkowski
Bayh	Grassley	Nelson (NE)
Bennett	Hatch	Risch
Brownback	Hutchison	Roberts
Bunning	Inhofe	Sessions
Chambliss	Isakson	Shelby
Coburn	Kyl	Thune
Corker	LeMieux	Vitter
Crapo	Lugar	Voinovich
DeMint	McCain	Webb
Ensign	McCaskill	Wicker

NAYS—62

Akaka	Burr	Conrad
Alexander	Burris	Cornyn
Begich	Cantwell	Dodd
Bennet	Cardin	Dorgan
Bingaman	Carper	Durbin
Bond	Casey	Feingold
Boxer	Cochran	Feinstein
Brown	Collins	Franken

Gillibrand	Leahy	Sanders
Gregg	Levin	Schumer
Hagan	Lieberman	Shaheen
Harkin	Lincoln	Snowe
Inouye	Menendez	Specter
Johanns	Merkley	Stabenow
Johnson	Mikulski	Tester
Kaufman	Murray	Udall (CO)
Kerry	Nelson (FL)	Udall (NM)
Kirk	Pryor	Warner
Klobuchar	Reed	Whitehouse
Kohl	Reid	Wyden
Lautenberg	Rockefeller	

NOT VOTING—2

Byrd Landrieu

The amendment (No. 2631) was rejected.

Mr. REID. Mr. President, I ask unanimous consent that all succeeding votes in the tranche of votes—and I think there are five—be 10 minutes in duration.

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

Mr. REID. Mr. President, people are anxious to finish tonight. If everybody will try to stay close and not wander around, we can wrap these up.

I yield at this time to the Senator from Texas, KAY BAILEY HUTCHISON.

MOMENT OF SILENCE

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that this body have a moment of silence in memory of 11 great soldiers at Fort Hood, TX, who have been shot down this afternoon at the base at a processing center where they were being prepared to be deployed to Iraq and Afghanistan. In addition, the person who was the main shooter has also been killed. Over 30 of our great personnel are also injured and being treated as we speak.

When I spoke to the general a few minutes ago, the base, Fort Hood, was still in lockdown to make sure they have checked every possibility that there would be no more shootings. I know all of us love our military and appreciate everything they do. For them to have to suffer even more tragedy like this, as they are on their way to protect our freedom, is unthinkable.

I ask unanimous consent that all of us show how deeply we care about them right now on the floor of the Senate.

The PRESIDING OFFICER. Without objection, a moment of silence will commence.

[Moment of Silence.]

Mrs. HUTCHISON. Mr. President, I thank Senators very much.

AMENDMENT NO. 2667

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided in relation to the Coburn amendment No. 2667. Who yields time?

The Senator from Oklahoma.

Mr. COBURN. Mr. President, this is a straightforward amendment that actually increases the funding for the IG. One of our weaknesses is waste, fraud, and abuse. According to GSA, this will not affect the renovations whatsoever at the Hoover Building. We are simply transferring funds.

I understand a point of order is going to be made against this amendment. But if my colleagues want control and have accurate work done by our IGs, we need to fund them appropriately, and this amendment is intended to do that.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I share the concerns of the Senator from Oklahoma about oversight at the Department of Commerce. That is why the bill already funds the inspector general at $25.8 million, the same as the President's request. There is an additional $6 million furnished through the stimulus.

This amendment does cut the Hoover Building and it would only delay the renovations to meet basic health and safety standards. I oppose the amendment. The amendment would cause the CJS bill to exceed its allocation. Therefore, I make a point of order that the amendment violates section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I move to waive the applicable section of the Budget Act with respect to my amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

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

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 337 Leg.]

YEAS—42

Alexander	Crapo	LeMieux
Barrasso	DeMint	Lincoln
Baucus	Ensign	Lugar
Bayh	Enzi	McCain
Bennett	Feingold	McCaskill
Brownback	Graham	McConnell
Bunning	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Snowe
Collins	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Wicker

NAYS—57

Akaka	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Bond	Kaufman	Reid
Boxer	Kerry	Rockefeller
Brown	Kirk	Sanders
Burris	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Menendez	Voinovich
Durbin	Merkley	Warner
Feinstein	Mikulski	Webb
Franken	Murkowski	Whitehouse
Gillibrand	Murray	Wyden

NOT VOTING—1

Byrd

The PRESIDING OFFICER. On this vote, the yeas are 42, the nays are 57. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to. The point of order is sustained, and the amendment fails.

Mrs. BOXER. Mr. President, I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2669

The PRESIDING OFFICER. There is now 4 minutes equally divided before the vote on the Graham amendment, No. 2669.

The Senator from South Carolina.

Mr. GRAHAM. Colleagues, we are about to take a vote. It is a tough vote, and I regret we are having to do this, but at the end of the day, I have a view that this country is at war. I think most of you share it. Our civilian court system serves us well, but we have had a long history of having military commission trials when the Nation is at war. The military commission bill which this Congress wrote is reformed. It is new, it is transparent, and it is something I am proud of.

This amendment says that the six coconspirators who planned 9/11—Khalid Shaikh Mohammed at the top of the list—will not be tried in Federal court because the day you do that, you will criminalize this war.

In the first attack on the World Trade Center, the Blind Sheik was tried in Federal court, and the unindicted coconspirators list wound up in the hands of al-Qaida.

Military commissions are designed to administer justice in a fair and transparent way, but they know and understand we are at war. Our civilian courts are not designed to deal with war criminals; the military system is.

Khalid Shaikh Mohammed, the mastermind of 9/11, didn't rob a liquor store; he didn't commit a crime under domestic criminal law; he took this Nation to war and he killed 3,000 of our citizens. He needs to have justice rendered in the system that recognizes we are at war.

Please support this idea of not criminalizing the war the second time around.

The PRESIDING OFFICER. Who yields time?

Mr. REED. Mr. President, we all recognize the severity of this issue and the passion the Senator from South Carolina brings to the issue. But since 9/11, we have tried 195 terrorists in article III courts; we have tried 3 in military commissions. I think we have recognized that our courts are durable enough to stand up to the issues of the culpability of these individuals and the magnitude of their actions. Secretary Gates and Attorney General Holder have asked for the option to use article

III courts or military commissions. We are preserving that if we reject the Graham amendment.

Let me say something else. Our enemies see themselves as jihadists—holy warriors. They don't object to being tried in military commissions because they see themselves as combatant warriors. They are criminals. They committed murder. The sooner we can convince the world that these aren't holy warriors, that they are criminals, the sooner we will take an advantage in this battle of ideas between those people and the system of laws and justice that we represent and try to protect and defend.

So I recognize the sincerity and the passion of the Senator, but I would urge a vote against this amendment, and I move to table the amendment.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. To my dear friend, this is the biggest issue of the day: Are they criminals? Are they warriors? Does it matter? These people are not criminals, they are warriors, and they need to be dealt with in a legal system that recognizes that.

And to the 214 9/11 families who support my amendment, I understand that the people who killed your family members are at war with us. I hope the Senate will understand that so we don't have another.

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

The Senator from Rhode Island.

Mr. REED. Mr. President, do I have time remaining?

The PRESIDING OFFICER. Twenty-five seconds.

Mr. REED. Mr. President, this present statute that is on the books gives the Secretary of Defense the opportunity to recommend and the Attorney General the opportunity to prosecute in either an article III court or a military tribunal. I think that choice should be maintained.

I would urge that we defeat this amendment.

I move to table the amendment.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

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

The result was announced—yeas 54, nays 45, as follows:

[Rollcall Vote No. 338 Leg.]

YEAS—54

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown	Kerry	Sanders
Burris	Kirk	Schumer
Cardin	Klobuchar	Shaheen
Carper	Kohl	Specter
Casey	Landrieu	Stabenow
Conrad	Lautenberg	Tester
Dodd	Leahy	Udall (CO)
Dorgan	Levin	Udall (NM)
Durbin	McCaskill	Warner
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—45

Alexander	DeMint	Lugar
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Pryor
Bunning	Gregg	Risch
Burr	Hatch	Roberts
Cantwell	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Snowe
Cochran	Johanns	Thune
Collins	Kyl	Vitter
Corker	LeMieux	Voinovich
Cornyn	Lieberman	Webb
Crapo	Lincoln	Wicker

NOT VOTING—1

Byrd

The motion was agreed to.

Mrs. MURRAY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2648, AS MODIFIED

The PRESIDING OFFICER. There is now 2 minutes equally divided with respect to the Ensign amendment, No. 2648. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, my amendment is very simple. It would add $172 million to the State Criminal Alien Assistance Program. This program provides payment to States that incur correctional officer salary costs for incarcerating undocumented criminal aliens for at least one felony or two misdemeanor convictions. This amendment is offset by simply an across-the-board decrease in spending, so it is budget neutral.

I believe this is an important amendment. It is especially important if you are in one of the Southwestern States or border States. Local law enforcement in those states incur a lot of expenses; those associated with illegal immigrants, especially those who are criminals. I urge my colleagues to support this amendment and match what the House of Representatives did when they passed this amendment by a vote of 405 to 1. Let's go along with the House of Representatives and make sure our local law enforcement has the resources they need to fight those who are here illegally and committing serious crimes.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, I rise in opposition to the Ensign amendment. The State Criminal Alien Assistance Program, a program that was not requested by this nor the previous administration, is currently overfunded in this bill at $228 million. With the Ensign amendment, we are being asked to add $172 million to a program that barely touches most of our States. Since 2004, five States have received 71 percent of the $2.1 billion in funding for this program.

Let me say that again, 71 percent, or $1.5 billion of the amount for this program since 2004, has gone to five States. This can hardly be called a national program.

In 2008, during the CJS Senate floor debate a year ago, this amendment was tabled and rejected by a vote of 68 to 25. I strongly oppose this amendment and urge my colleagues to vote against this amendment.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, I support every comment made by my ranking member. I believe this amendment will cause the CJS bill to exceed its allocation, therefore I make a point of order the amendment violates section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. To clear up a couple of facts, first of all, not every State has the same problem with illegal immigrants that other States do.

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

Mr. ENSIGN. I move to waive the applicable sections of the Budget Act with respect to my amendment and ask for the yeas and nays.

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

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

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

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

The yeas and nays resulted—yeas 32, nays 67, as follows:

[Rollcall Vote No. 339 Leg.]

YEAS—32

Barrasso	Ensign	LeMieux
Baucus	Enzi	McCain
Bingaman	Feinstein	McConnell
Boxer	Graham	Nelson (NE)
Brownback	Grassley	Reid
Burr	Hagan	Risch
Chambliss	Hatch	Roberts
Coburn	Hutchison	Tester
Cornyn	Isakson	Thune
Crapo	Johanns	Wicker
DeMint	Kyl	

NAYS—67

Akaka	Bunning	Conrad
Alexander	Burris	Corker
Bayh	Cantwell	Dodd
Begich	Cardin	Dorgan
Bennet	Carper	Durbin
Bennett	Casey	Feingold
Bond	Cochran	Franken
Brown	Collins	Gillibrand

Gregg
Harkin
Inhofe
Inouye
Johnson
Kaufman
Kerry
Kirk
Klobuchar
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Lugar
McCaskill
Menendez
Merkley
Mikulski
Murkowski
Murray
Nelson (FL)
Pryor
Reed
Rockefeller
Sanders
Schumer
Sessions
Shaheen
Shelby
Snowe
Specter
Stabenow
Udall (CO)
Udall (NM)
Vitter
Voinovich
Warner
Webb
Whitehouse
Wyden

NOT VOTING—1

Byrd

The PRESIDING OFFICER. On this vote, the yeas are 32, the nays are 67. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to, the point of order is sustained, and the amendment falls.

AMENDMENT NO. 2393

The question is on agreeing to amendment No. 2393.

The amendment (No. 2393) was agreed to.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that it be in order to make a point of order against the remaining amendments.

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

Ms. MIKULSKI. I make a point of order en bloc that amendments Nos. 2644, 2627, 2646, 2625, 2642, and 2632 are either not germane postcloture or violate rule XVI.

The PRESIDING OFFICER. The points of order are well taken. The amendments fall.

AMENDMENT NO. 2647, AS MODIFIED

Ms. MIKULSKI. Mr. President, notwithstanding the order regarding the passage of H.R. 2847, I now ask unanimous consent that amendment No. 2647, as modified, be agreed to and the motion to reconsider be laid upon the table.

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

The amendment (No. 2647), as modified, was agreed to.

EFFECTS OF RESEARCH AND DEVELOPMENT AND ENERGY ON THE GDP

Mr. BINGAMAN. Speaking through the Chair to the manager of the Commerce-Justice-Science bill, I would like to ask if she is aware that the President's fiscal year 2010 budget for the Bureau of Economic Analysis contained two important initiatives to measure the impact that research and development as well as energy has on the gross domestic product?

Ms. MIKULSKI. Yes, I am aware of these two important initiatives I know from the COMPETES Act, which I was integrally involved in with the Senator, that one of the more important policy questions is what effect research and development has on gross domestic product. There are many estimates that it is substantial and it is an important question for Congress to consider.

Mr. BINGAMAN. As chairman of the Energy and Natural Resources Committee, I would also like to point out another initiative by the Bureau in the fiscal year 2010 budget on the effect of energy consumption on the gross domestic product. I believe that such macroeconomic information will be critical as we develop a comprehensive energy policy that is currently before the Congress.

Ms. MIKULSKI. Yes, I am aware of the initiative and it is important we understand how the recent prices increases for the energy we use affects the overall gross domestic product.

Mr. BINGAMAN. I would like to ask the manager if during conference with the House consideration can be given to help start these two initiatives so that we in Congress can begin to understand how these two important parameters affect our gross domestic product.

Ms. MIKULSKI. I thank Senator BINGAMAN. I will work with the House and Senate conferees to give these two important initiatives the consideration they deserve.

COPS HIRING PROGRAM FUNDING

Mr. BENNET. Mr. President, I congratulate the senior Senators from Maryland and Alabama for their excellent work putting together a Commerce, Justice, Science—CJS—appropriations bill that invests in critical national priorities. At this moment, I would like to invite Chairwoman MIKULSKI to enter into a colloquy about how important that the Community-Oriented Policing Services, COPS, Hiring Program is for our local law enforcement personnel. Given the budget shortfalls faced by states and local governments, federal resources through the COPS program are absolutely essential to ensure that work we are doing locally to prevent domestic violence and drug trafficking, for example, do not go neglected during this recession. I know Senator MIKULSKI has championed the COPS program, and. I would love to hear more of her thoughts.

Ms. MIKULSKI. Certainly, I thank the Senator for his kind words. As the Senator noted, I am a strong supporter of the COPS Hiring Program. This year in particular, we faced difficult funding decisions and had to juggle a number of priorities because we were trying to make up for years of underinvestment in Justice Department programs. That is why our fiscal year 2010 CJS spending bill provides $100 million for the COPS Hiring Program to put an additional 500 cops on the beat, patrolling our streets and protecting our families. As we move forward to conference with the House, I expect to hear from Democratic members about the need to increase those funds. I intend to do my part in conference to see that this program remains a high priority in the conference report.

Mr. BENNET. I agree with the Senator that we need to ensure that our law enforcement ranks remain stable. In February, this body took significant steps to ensure that our law enforcement maintained its ranks through investments made in the American Recovery and Reinvestment Act. The stimulus provided $1 billion for the COPS Hiring Recovery Program, CHRP, which was intended to help communities hire and rehire police officers during the recession. Nearly 7,300 CHRP applications requesting over 39,000 officers and $8.3 billion in funds were submitted to the COPS Office. Because of limited funds available, COPS was able to fund only 1,046—14 percent of the 7,272 CHRP requests received during the 2009 solicitation.

Some local law enforcement in my state are in need of assistance, though, and have not been able to get it. In July, the Montrose Police Department tragically lost Sgt. David Kinterknecht in a shooting. His sacrifice in the line of fire is a testament to the commitment of law enforcement in Colorado. Unfortunately, Montrose and some other departments in my state were rejected when they applied for the COPS Hiring Recovery Program. After the loss of Sergeant Kinterknecht, they were not only unable to add to their force, but also could not refill their ranks after this tragic death. The Montrose Police Department remains an officer short.

The story of the Montrose Police Department is just one of the many challenges faced by law enforcement as they try to protect our communities. Denver had to forego pay increases for 2010 and 2011 due to shortfalls in the city budget, for example. The city faced layoffs and our law enforcement made hard concessions in order to protect crucial jobs. Now in addition to making sacrifices in the line of duty, law enforcement is making financial sacrifices as our communities struggle to stay above water.

An increase in funding for the COPS Hiring Program would go a long way toward helping communities brace with the challenges of the current economic crisis.

Ms. MIKULSKI. I agree that we need to do all we can to help our police officers to ensure they are not walking a thin blue line. Our cops need a full team to combat violence, protect families, and fight the crime that's destroying neighborhoods. The funding provided in the stimulus went a long way toward helping put cops back on the beat. It is clear that the demand and needs of local communities are high. The Senators tireless advocacy for his State's law enforcement is much appreciated. The Senator has made his point loud and clear, and I know we will continue to hear from him on the importance of the COPS Hiring Program as we move into conference.

Mr. BENNET. I thank the Senator.

Mr. CARDIN. Mr. President, I rise today to express my support for the Senate amendment to H.R. 3288 and to thank my colleagues on the Commerce,

Justice, Science, and Related Agencies Appropriations Subcommittee for their fine work on this bill. I congratulate the senior Senator from Maryland, Ms. MIKULSKI, and the ranking member, Mr. SHELBY, for crafting legislation that positively impacts the course of technology-based innovation, U.S. competitiveness, and scientific advances while protecting Americans from terrorism and violent crime.

In my home State of Maryland, we are fortunate to have many Maryland facilities that have crucial roles in the development and advancement of science and technology. The Senate amendment provides $878.8 million for the National Institute of Standards and Technology, or NIST. NIST operates a 234-acre headquarter facility in Gaithersburg, MD, where more than 2,500 scientists, engineers, technicians, and support personnel are employed. NIST assists industry in developing technology to improve product quality, helps modernize manufacturing processes, ensure product reliability, and facilitate rapid commercialization of products based on scientific discoveries.

Maryland is also fortunate to be home to several National Oceanic and Atmospheric, or NOAA, facilities. The Senate amendment provides $4.77 billion for NOAA. NOAA provides scientific, technical, and management expertise to promote safe and efficient marine and air navigation; assess the health of coastal and marine resources; monitor and predict the coastal, ocean, and global environments—including weather forecasting—and protect and manage the Nation's coastal resources. NOAA's significance is strongly felt in Maryland which, with the Chesapeake Bay, boasts 4,000 miles of coastal land. The bill funds several environmental projects important to Maryland including the Chesapeake Bay Interpretive Buoy System and NOAA's Chesapeake Bay Oyster Restoration, and the Chesapeake Bay Environmental Center to name a few.

As we are all acutely aware, the decennial Census will soon be upon us. This legislation provides $7.32 billion for the Census Bureau. The challenges of the 2010 Census will be unlike any previously experienced. Hot button issues such as immigration and healthcare have cultivated mistrust of the government and will impede public cooperation on the Census. Responses to economic conditions such as families whose home have been foreclosed living in recreational vehicles or multiple families ''doubling up'' into single family homes present even more challenges. However, these challenges simply underscore the importance of the Census and the necessity of making sure every person counts. The Census count will determine federal financial formula allocations. Not in the past seven decades has the Census been so significant, economically speaking. And for those who question whether their voices are heard on Capitol Hill; the Census ensures that they do through the process of reapportionment. It is imperative that the 2010 Census count be accurate. I thank the appropriators for their attention to this important matter on behalf of the nearly 4,300 employees of the U.S. Census Bureau Headquarters in Suitland, MD.

The committee has provided $27.39 billion for the Department of Justice. This will fund important grant programs like the Byrne justice assistance grants for local law enforcement, and Community Oriented Policing Service or COPS grants, and other crime abatement activities. The bill combats crime in Maryland by providing funding for programs such as the Annapolis Capital City Safe Streets Program and the Maryland Department of Juvenile Services Violence Prevention Initiative. This bill supports our law enforcement officers who protect and serve Americans each day by giving them the resources needed to combat and deter violent crimes. In Maryland, this includes the State Police First Responder Radio Interoperability Project. The State of Maryland has committed to developing a Radio interoperability Project that will link State and local law enforcement agencies for coordinated, comprehensive protective services.

I commend Senator MIKULSKI for boosting funding for the Legal Services Corporation, LSC, in this bill, and for removing the restrictions on the use of non-LSC funds by LSC grant recipients. Lifting this restriction in the law is important, because it allows LSC grantees to use their own funds to pursue class action lawsuits and attorneys fees. These are critical tools for lawyers to have in their arsenal as they fight to protect their low-income clients against egregious miscarriages of justice, and help the most vulnerable individuals in our society secure equal justice under the law. I chaired a hearing in May 2008 in the Judiciary Committee on ''Closing the Justice Gap.'' This bill is consistent with many of our witnesses' recommendations at the hearing, and also with the underlying reauthorization legislation—the Civil Access to Justice Act—filed by Senators KENNEDY, HARKIN, and me in March 2009. I am also pleased that the House has introduced legislation to reauthorize LSC, and look forward to working with the Obama administration and my colleagues in Congress to enact both the LSC appropriations and reauthorization legislation in this Congress.

In closing, again let me say how much I appreciate the work of Senator MIKULSKI, Senator SHELBY, and their staffs along with the rest of the subcommittee. In addition to providing for critical law enforcement needs, they have crafted a bill that spurs American interests in science and technology forward; making way for American innovation in the global economy. I find that quite impressive and I support this bill.

Mr. AKAKA. Mr. President, I support the Commerce, Justice, Science, and Related Agencies appropriations bill for fiscal year 2010. This bill's priorities will protect America from terrorism and violent crime; create jobs for Americans by investing in the Nation's scientific infrastructure and in new technologies; and ensure a timely and accurate 2010 decennial census.

In Hawaii, as in the rest of the Nation, sexual and domestic violence unfortunately persists, bringing with it the need for programs and services that address such violence and meet the needs of victims. For nearly four decades, the Sexual Assault Response Services of the Hawaii County and Kauai County YWCAs, have offered a 24/7 sexual assault hotline, 24/7 on-call crisis intervention, and support for victims of sexual assault and violence through the medical examination and legal services process, individual/group therapeutic counseling, and case management. I am therefore thankful that this bill includes $400,000 to enable the Hawaii and Kauai County YWCAs to continue their critically needed services.

Like other political jurisdictions across the Nation, Hawaii has pursued collaborative, community based delinquency prevention programs targeted to at-risk youth. To address this need the bill includes $300,000 for Ka Wili Pu (Native Hawaiian for ''the blend'') a project that would provide 400 at-risk youth on Maui with adult guidance and adult role models and one-on-one instruction to bolster their self-esteem, self-confidence, school attendance, and academic performance and dissuade them from becoming truants and dropouts. By encouraging at-risk youth to remain in school, fulfill their promise, and avoid a problematic future with few meaningful options, Ka Wili Pu promotes a healthier and more stable society.

Recognizing that children and elderly adults can become lost and disoriented in the urban and suburban areas of Hawaii, $500,000 is provided for A Child Is Missing—ACIM—Hawaii. ACIM currently operates in 49 States but not in Hawaii, where its advanced telephone-based computer system only recently became available. That system can place 1,000 phone calls every 60 seconds to residences and businesses in the area where a missing child or adult was last seen. This initiative will provide that critical rapid response to assist law enforcement agencies in Hawaii to locate missing children and adults.

I am also pleased that $500,000 was included in this legislation for the State Courts Improvement Initiative of the National Center or to Courts, NCSC. The NCSC was founded in 1971 by the Conference of Chief Justices, CCJ, the Conference of State Court Administrators, COSCA, and former U.S. Supreme Court Chief Justice Warren E. Burger. Today, the NCSC serves as a think tank, forum, and voice for 30,000 judges, and 20,000 courthouses, in the

State court system in the 50 States, DC, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa, where annually 98 percent of court filings are submitted. This request funds the implementation of the NCSC's State Courts Improvement Initiative, which will increase support services to judges, administrators and other personnel in the state court system. Improving the operations of the state courts will help shape Americans' understanding of and confidence in the Nation's judicial system.

Because there may be Hawaii prisoners with credible claims to actual innocence who have exhausted their appellate rights and their rights to counsel, the bill includes $300,000 for the Hawaii Innocence Project. Founded in 2005 by Hawaii attorneys in partnership with the William S. Richardson School of Law, this project, in which law students work alongside practicing criminal defense attorneys, provides pro bono assistance to Hawaii prisoners who no longer have access to legal resources but who may be innocent of the crimes for which they were convicted, and whose innocence may now be proven through technology unavailable at the time of their trials. The possible exoneration of any wrongfully convicted individual will help to serve the cause of justice.

The Violence Against Women Act, VAWA, acknowledges that immigrant women, particularly indigent women, are a specific and often overlooked at-risk group. In Hawaii, the Hawaii Immigrant Justice Center, HIJC, is the only agency providing pro bono civil legal services to indigent immigrants, particularly immigrant women who are victims of sexual assault and domestic violence. For many years, the HIJC has coordinated and delivered comprehensive assistance to indigent immigrant women through a cost-effective delivery of legal, medical, psychological, and social services that would otherwise have required the intervention of a range of other public agencies and at far greater cost. I am pleased that this bill includes $200,000 for the HIJC to enable the agency to continue to perform its good work, which not only assists immigrant victims of sexual violence but places them on a path to self-sufficiency that will, in time and over the long term, mitigate the effects of crime and promote family and social stability.

All in all, the fiscal year 2010 Department of Justice-related appropriations will help Hawaii to discourage delinquency and crime, bring criminals to justice, address and meet the needs of victims, and promote a fairer and more just society.

Funding included in this bill also bolsters advancements in science and technology, as well as enhances U.S. competitiveness. I am proud to have worked with Senator INOUYE to secure resources that support ecosystem based management, preserve the endangered Hawaiian Monk Seal, strengthen our understanding of climate change, improve warning systems for public safety, and further science education at the 'Imiloa Astronomy Center. These programs will inform our decisions on how we manage our resources, as well as understand and interact with our natural environment.

Maintaining healthy ecosystems that extend into our oceans is important. Coral reef ecosystems provide benefits by protecting coastal communities, sustaining fisheries, and preserving biodiversity. Hawaii's coral reefs generate more than $360 million a year on reef related tourism and fisheries activities. To ensure this natural resource is preserved, $2.250 million is provided in this bill to conduct studies that will enable scientists to develop predictive management tools for the conservation and management of healthy coral reef ecosystems in Hawaii and develop best practices to restore reefs where human related activities result in reef ecosystem decline. This initiative will help ensure that these reefs are protected and managed well, while also empowering coastal communities across the country to minimize human impact on our reefs.

The National Oceanic and Atmospheric Administration will receive $4 million in this bill to continue the implementation of the Hawaiian monk seal recovery plan. The Hawaiian monk seal, endemic to Hawaii, is the most endangered seal in the country and one of the most endangered marine mammals in the world. In the last 50 years the Hawaiian monk seal population has fallen by 60 percent, with a current population of less than 1,200 individual seals. Funding will address female and juvenile monk seal survival and enhancement, as well as efforts to minimize monk seal mortality. Further, these funds will strengthen coordinated regional office efforts for field response teams and enhance implementation of the 2007 recovery plan.

We know that there are significant effects of climate change, especially in Hawaii and the Pacific region. As island communities, sea level rise, coral bleaching, and severe weather associated with climate change have unique impacts on the public safety, economic development, and health of our ecosystems and wildlife. Fortunately, $1.5 million is provided in the bill for the International Pacific Research Center at the University of Hawaii to conduct systematic and reliable climatographic research for the Pacific. Improving our understanding of climate variability empowers us to use data and models to mitigate adverse impacts.

Given Hawaii's geographic isolation, having warning systems in place to address public safety needs is critical. In order to focus on response and preparedness needs, I worked to ensure that $2 million was provided to foster the development of infrasound as a warning tool for natural hazards. As a joint initiative by the University of Hawaii and University of Mississippi, infrasound technology has the potential to minimize the catastrophic human and economic loss resulting from a natural disaster. The objective is to develop technologies for infrasound warning systems for emergency organizations and traffic control agencies. Potential applications of infrasound monitoring may include volcanic eruptions, gulf coast hurricane tracking, tsunami infrasound warning, acoustic monitoring of ocean swells, infrasonic tornado detection, and other natural disasters such as avalanches and wild fires. Development of this technology and lessons learned can help enhance existing warning systems nationwide.

Developing interest in science by our Nation's youth at an early age ensures that they are better prepared to pursue and excel in the fields of science, technology, engineering, and math. In an effort to cultivate a life-long interest in science and learning, $2.5 million is provided to expand astronomy and culture exhibits, as well as to develop community and educational programming at the Imiloa Astronomy Center. This endeavor is a joint initiative supported by partners including the National Oceanic and Atmospheric Administration and Hawaii Volcanoes National Park. This program will serve as a model that integrates university/research institution resources with community learning needs using the center as a catalyst to engage and educate students and the general community. Further, this initiative increases public understanding and enjoyment of science research, while supporting the national priority of attracting more students into science and technology related fields.

In conclusion, I would like to thank the senior Senator from Hawaii and the senior Senator from Mississippi, the chairman and ranking member, respectively, of the Appropriations Committee, as well as the senior Senator from Maryland and the senior Senator from Alabama, the Chairwoman and ranking member, respectively, for the Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, for their support in funding these important priorities for Hawaii and for their efforts in developing and managing this bill through the legislative process.

The PRESIDING OFFICER. The substitute amendment, as amended, is agreed to.

The question is on the engrossment of the committee amendment, as amended, and third reading of the bill.

The amendment, as amended, was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

Ms. MIKULSKI. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

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

The result was announced—yeas 71, nays 28, as follows:

[Rollcall Vote No. 340 Leg.]

YEAS—71

Akaka	Franken	Murray
Alexander	Gillibrand	Nelson (NE)
Baucus	Gregg	Nelson (FL)
Begich	Hagan	Pryor
Bennet	Harkin	Reed
Bennett	Hutchison	Reid
Bingaman	Inouye	Rockefeller
Bond	Johnson	Sanders
Boxer	Kaufman	Schumer
Brown	Kerry	Shaheen
Brownback	Kirk	Shelby
Burris	Klobuchar	Snowe
Cantwell	Kohl	Specter
Cardin	Landrieu	Stabenow
Carper	Lautenberg	Tester
Casey	Leahy	Udall (CO)
Cochran	LeMieux	Udall (NM)
Collins	Levin	Vitter
Conrad	Lieberman	Voinovich
Dodd	Lincoln	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feingold	Mikulski	Wyden
Feinstein	Murkowski	

NAYS—28

Barrasso	Ensign	McCain
Bayh	Enzi	McCaskill
Bunning	Graham	McConnell
Burr	Grassley	Risch
Chambliss	Hatch	Roberts
Coburn	Inhofe	Sessions
Corker	Isakson	Thune
Cornyn	Johanns	Wicker
Crapo	Kyl	
DeMint	Lugar	

NOT VOTING—1

Byrd

The bill (H.R. 2847), as amended, was passed, as follows:

H.R. 2847

Resolved, That the bill from the House of Representatives (H.R. 2847) entitled ''An Act making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, and for other purposes, namely:

TITLE I

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

For necessary expenses for international trade activities of the Department of Commerce provided for by law, and for engaging in trade promotional activities abroad, including expenses of grants and cooperative agreements for the purpose of promoting exports of United States firms, without regard to 44 U.S.C. 3702 and 3703; full medical coverage for dependent members of immediate families of employees stationed overseas and employees temporarily posted overseas; travel and transportation of employees of the International Trade Administration between two points abroad, without regard to 49 U.S.C. 40118; employment of Americans and aliens by contract for services; rental of space abroad for periods not exceeding 10 years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed $327,000 for official representation expenses abroad; purchase of passenger motor vehicles for official use abroad, not to exceed $45,000 per vehicle; obtaining insurance on official motor vehicles; and rental of tie lines, $455,704,000, to remain available until September 30, 2011, of which $9,439,000 is to be derived from fees to be retained and used by the International Trade Administration, notwithstanding 31 U.S.C. 3302: Provided, That not less than $49,530,000 shall be for Manufacturing and Services; not less than $43,212,000 shall be for Market Access and Compliance; not less than $68,290,000 shall be for the Import Administration; not less than $257,938,000 shall be for the Trade Promotion and United States and Foreign Commercial Service; and not less than $27,295,000 shall be for Executive Direction and Administration: Provided further, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities without regard to section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4912); and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 shall include payment for assessments for services provided as part of these activities: Provided further, That negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties: Provided further, That negotiations shall be conducted within the World Trade Organization consistent with the negotiating objectives contained in the Trade Act of 2002, Public Law 107–210, to maintain strong U.S. remedies laws, correct the problem of overreaching by World Trade Organization Panels and Appellate Body, and prevent the creation of obligation never negotiated or expressly agreed to by the United States: Provided further, That within the amounts appropriated, $1,500,000 shall be used for the projects, and in the amounts, specified in the table entitled ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act.

BUREAU OF INDUSTRY AND SECURITY

OPERATIONS AND ADMINISTRATION

For necessary expenses for export administration and national security activities of the Department of Commerce, including costs associated with the performance of export administration field activities both domestically and abroad; full medical coverage for dependent members of immediate families of employees stationed overseas; employment of Americans and aliens by contract for services abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed $15,000 for official representation expenses abroad; awards of compensation to informers under the Export Administration Act of 1979, and as authorized by 22 U.S.C. 401(b); and purchase of passenger motor vehicles for official use and motor vehicles for law enforcement use with special requirement vehicles eligible for purchase without regard to any price limitation otherwise established by law, $100,342,000, to remain available until expended, of which $14,767,000 shall be for inspections and other activities related to national security: Provided, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities: Provided further, That payments and contributions collected and accepted for materials or services provided as part of such activities may be retained for use in covering the cost of such activities, and for providing information to the public with respect to the export administration and national security activities of the Department of Commerce and other export control programs of the United States and other governments.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For grants for economic development assistance as provided by the Public Works and Economic Development Act of 1965, and for trade adjustment assistance, $200,000,000, to remain available until expended: Provided, That of the amounts provided, no more than $4,000,000 may be transferred to ''Economic Development Administration, Salaries and Expenses'' to conduct management oversight and administration of public works grants.

SALARIES AND EXPENSES

For necessary expenses of administering the economic development assistance programs as provided for by law, $38,000,000: Provided, That these funds may be used to monitor projects approved pursuant to title I of the Public Works Employment Act of 1976, title II of the Trade Act of 1974, and the Community Emergency Drought Relief Act of 1977.

MINORITY BUSINESS DEVELOPMENT AGENCY

MINORITY BUSINESS DEVELOPMENT

For necessary expenses of the Department of Commerce in fostering, promoting, and developing minority business enterprise, including expenses of grants, contracts, and other agreements with public or private organizations, $31,200,000: Provided, That within the amounts appropriated, $200,000 shall be used for the projects, and in the amounts, specified in the table entitled, ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act.

ECONOMIC AND STATISTICAL ANALYSIS

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, of economic and statistical analysis programs of the Department of Commerce, $100,600,000, to remain available until September 30, 2011.

BUREAU OF THE CENSUS

SALARIES AND EXPENSES

For expenses necessary for collecting, compiling, analyzing, preparing, and publishing statistics, provided for by law, $259,024,000.

PERIODIC CENSUSES AND PROGRAMS

For necessary expenses to collect and publish statistics for periodic censuses and programs provided for by law, $7,065,707,000, to remain available until September 30, 2011: Provided, That none of the funds provided in this or any other Act for any fiscal year may be used for the collection of census data on race identification that does not include ''some other race'' as a category: Provided further, That from amounts provided herein, funds may be used for additional promotion, outreach, and marketing activities.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses, as provided for by law, of the National Telecommunications and Information Administration (NTIA), $19,999,000, to remain available until September 30, 2011: Provided, That, notwithstanding 31 U.S.C. 1535(d), the Secretary of Commerce shall charge Federal agencies for costs incurred in spectrum management, analysis, operations, and related services, and such fees shall be retained and used as offsetting collections for costs of such spectrum services, to remain available until expended: Provided further, That the Secretary of

Commerce is authorized to retain and use as offsetting collections all funds transferred, or previously transferred, from other Government agencies for all costs incurred in telecommunications research, engineering, and related activities by the Institute for Telecommunication Sciences of NTIA, in furtherance of its assigned functions under this paragraph, and such funds received from other government agencies shall remain available until expended.

PUBLIC TELECOMMUNICATIONS FACILITIES, PLANNING AND CONSTRUCTION

For the administration of grants, authorized by section 392 of the Communications Act of 1934, $20,000,000, to remain available until expended as authorized by section 391 of the Act: Provided, That not to exceed $2,000,000 shall be available for program administration as authorized by section 391 of the Act: Provided further, That, notwithstanding the provisions of section 391 of the Act, the prior year unobligated balances may be made available for grants for projects for which applications have been submitted and approved during any fiscal year.

UNITED STATES PATENT AND TRADEMARK OFFICE

SALARIES AND EXPENSES

For necessary expenses of the United States Patent and Trademark Office (USPTO) provided for by law, including defense of suits instituted against the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, $1,930,361,000, to remain available until expended: Provided, That the sum herein appropriated from the general fund shall be reduced as offsetting collections assessed and collected pursuant to 15 U.S.C. 1113 and 35 U.S.C. 41 and 376 are received during fiscal year 2010, so as to result in a fiscal year 2010 appropriation from the general fund estimated at $0: Provided further, That during fiscal year 2010, should the total amount of offsetting fee collections be less than $1,930,361,000, this amount shall be reduced accordingly: Provided further, That of the amount received in excess of $1,930,361,000 in fiscal year 2010, in an amount up to $100,000,000 shall remain until expended: Provided further, That from amounts provided herein, not to exceed $1,000 shall be made available in fiscal year 2010 for official reception and representation expenses: Provided further, That of the amounts provided to the USPTO within this account, $25,000,000 shall not become available for obligation until the Director of the USPTO has completed a comprehensive review of the assumptions behind the patent examiner expectancy goals and adopted a revised set of expectancy goals for patent examination: Provided further, That in fiscal year 2010 from the amounts made available for ''Salaries and Expenses'' for the USPTO, the amounts necessary to pay: (1) the difference between the percentage of basic pay contributed by the USPTO and employees under section 8334(a) of title 5, United States Code, and the normal cost percentage (as defined by section 8331(17) of that title) of basic pay, of employees subject to subchapter III of chapter 83 of that title; and (2) the present value of the otherwise unfunded accruing costs, as determined by the Office of Personnel Management, of post-retirement life insurance and post-retirement health benefits coverage for all USPTO employees, shall be transferred to the Civil Service Retirement and Disability Fund, the Employees Life Insurance Fund, and the Employees Health Benefits Fund, as appropriate, and shall be available for the authorized purposes of those accounts: Provided further, That sections 801, 802, and 803 of division B, Public Law 108–447 shall remain in effect during fiscal year 2010: Provided further, That the Director may, this year, reduce by regulation fees payable for documents in patent and trademark matters, in connection with the filing of documents filed electronically in a form prescribed by the Director: Provided further, That $2,000,000 shall be transferred to ''Office of Inspector General'' for activities associated with carrying out investigations and audits related to the USPTO.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For necessary expenses of the National Institute of Standards and Technology, $520,300,000, to remain available until expended, of which not to exceed $9,000,000 may be transferred to the ''Working Capital Fund'': Provided, That not to exceed $5,000 shall be for official reception and representation expenses: Provided further, That within the amounts appropriated, $10,500,000 shall be used for the projects, and in the amounts, specified in the table entitled ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act.

INDUSTRIAL TECHNOLOGY SERVICES

For necessary expenses of the Hollings Manufacturing Extension Partnership of the National Institute of Standards and Technology, $124,700,000, to remain available until expended. In addition, for necessary expenses of the Technology Innovation Program of the National Institute of Standards and Technology, $69,900,000, to remain available until expended.

CONSTRUCTION OF RESEARCH FACILITIES

For construction of new research facilities, including architectural and engineering design, and for renovation and maintenance of existing facilities, not otherwise provided for the National Institute of Standards and Technology, as authorized by 15 U.S.C. 278c–278e, $163,900,000, to remain available until expended: Provided, That within the amounts appropriated, $47,000,000 shall be used for the projects, and in the amounts, specified in the table entitled ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act: Provided further, That the Secretary of Commerce shall include in the budget justification materials that the Secretary submits to Congress in support of the Department of Commerce budget (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) an estimate for each National Institute of Standards and Technology construction project having a total multi-year program cost of more than $5,000,000 and simultaneously the budget justification materials shall include an estimate of the budgetary requirements for each such project for each of the five subsequent fiscal years.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of activities authorized by law for the National Oceanic and Atmospheric Administration, including maintenance, operation, and hire of aircraft and vessels; grants, contracts, or other payments to nonprofit organizations for the purposes of conducting activities pursuant to cooperative agreements; and relocation of facilities, $3,301,131,000, to remain available until September 30, 2011, except for funds provided for cooperative enforcement, which shall remain available until September 30, 2012: Provided, That fees and donations received by the National Ocean Service for the management of national marine sanctuaries may be retained and used for the salaries and expenses associated with those activities, notwithstanding 31 U.S.C. 3302: Provided further, That in addition, $3,000,000 shall be derived by transfer from the fund entitled ''Coastal Zone Management'' and in addition $104,600,000 shall be derived by transfer from the fund entitled ''Promote and Develop Fishery Products and Research Pertaining to American Fisheries'': Provided further, That of the $3,304,131,000 provided for in direct obligations under this heading $3,301,131,000 is appropriated from the general fund, $3,000,000 is provided by transfer: Provided further, That the total amount available for the National Oceanic and Atmospheric Administration corporate services administrative support costs shall not exceed $226,809,000: Provided further, That payments of funds made available under this heading to the Department of Commerce Working Capital Fund including Department of Commerce General Counsel legal services shall not exceed $36,583,000: Provided further, That within the amounts appropriated, $57,725,000 shall be used for the projects, and in the amounts, specified in the table entitled ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act: Provided further, That any deviation from the amounts designated for specific activities in the report accompanying this Act, or any use of deobligated balances of funds provided under this heading in previous years, shall be subject to the procedures set forth in section 505 of this Act: Provided further, That in allocating grants under sections 306 and 306A of the Coastal Zone Management Act of 1972, as amended, no coastal State shall receive more than 5 percent or less than 1 percent of increased funds appropriated over the previous fiscal year.

In addition, for necessary retired pay expenses under the Retired Serviceman's Family Protection and Survivor Benefits Plan, and for payments for the medical care of retired personnel and their dependents under the Dependents Medical Care Act (10 U.S.C. 55), such sums as may be necessary.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

For procurement, acquisition and construction of capital assets, including alteration and modification costs, of the National Oceanic and Atmospheric Administration, $1,397,685,000, to remain available until September 30, 2012, except funds provided for construction of facilities which shall remain available until expended: Provided, That of the amounts provided for the National Polar-orbiting Operational Environmental Satellite System, funds shall only be made available on a dollar-for-dollar matching basis with funds provided for the same purpose by the Department of Defense: Provided further, That except to the extent expressly prohibited by any other law, the Department of Defense may delegate procurement functions related to the National Polar-orbiting Operational Environmental Satellite System to officials of the Department of Commerce pursuant to section 2311 of title 10, United States Code: Provided further, That any deviation from the amounts designated for specific activities in the report accompanying this Act, or any use of deobligated balances of funds provided under this heading in previous years, shall be subject to the procedures set forth in section 505 of this Act: Provided further, That the Secretary of Commerce is authorized to enter into a lease, at no cost to the United States Government, with the Regents of the University of Alabama for a term of not less than 55 years, with two successive options each of 5 years, for land situated on the campus of University of Alabama in Tuscaloosa to house the Cooperative Institute and Research Center for Southeast Weather and Hydrology: Provided further, That within the amounts appropriated, $19,000,000 shall be used for the projects, and in the amounts, specified in the table entitled ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act.

PACIFIC COASTAL SALMON RECOVERY

For necessary expenses associated with the restoration of Pacific salmon populations, $80,000,000, to remain available until September 30, 2011: Provided, That of the funds provided herein the Secretary of Commerce may issue grants to the States of Washington, Oregon, Idaho, Nevada, California, and Alaska, and

federally recognized tribes of the Columbia River and Pacific Coast for projects necessary for conservation of salmon and steelhead populations that are listed as threatened or endangered, or identified by a State as at-risk to be so-listed, for maintaining populations necessary for exercise of tribal treaty fishing rights or native subsistence fishing, or for conservation of Pacific coastal salmon and steelhead habitat, based on guidelines to be developed by the Secretary of Commerce: Provided further, That funds disbursed to States shall be subject to a matching requirement of funds or documented in-kind contributions of at least 33 percent of the Federal funds.

COASTAL ZONE MANAGEMENT FUND

(INCLUDING TRANSFER OF FUNDS)

Of amounts collected pursuant to section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a), not to exceed $3,000,000 shall be transferred to the ''Operations, Research, and Facilities'' account to offset the costs of implementing such Act.

FISHERIES FINANCE PROGRAM ACCOUNT

Subject to section 502 of the Congressional Budget Act of 1974, during fiscal year 2010, obligations of direct loans may not exceed $16,000,000 for Individual Fishing Quota loans and not to exceed $59,000,000 for traditional direct loans as authorized by the Merchant Marine Act of 1936: Provided, That none of the funds made available under this heading may be used for direct loans for any new fishing vessel that will increase the harvesting capacity in any United States fishery.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For expenses necessary for the departmental management of the Department of Commerce provided for by law, including not to exceed $5,000 for official reception and representation, $61,000,000: Provided, That the Secretary, within 120 days of enactment of this Act, shall provide a report to the Committee on Appropriations of the Senate that audits and evaluates all decision documents and expenditures by the Bureau of the Census as they relate to the 2010 Census: Provided further, That of the amounts provided to the Secretary within this account, $5,000,000 shall not become available for obligation until the Secretary certifies to the Committee on Appropriations of the Senate that the Bureau of the Census has followed and met all standards and best practices, and all Office of Management and Budget guidelines related to information technology projects and contract management.

HERBERT C. HOOVER BUILDING RENOVATION AND MODERNIZATION

For expenses necessary, including blast windows, for the renovation and modernization of the Herbert C. Hoover Building, $22,500,000, to remain available until expended.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978 (5 U.S.C. App.), $27,000,000.

GENERAL PROVISIONS—DEPARTMENT OF COMMERCE

(INCLUDING TRANSFER OF FUNDS)

SEC. 101. During the current fiscal year, applicable appropriations and funds made available to the Department of Commerce by this Act shall be available for the activities specified in the Act of October 26, 1949 (15 U.S.C. 1514), to the extent and in the manner prescribed by the Act, and, notwithstanding 31 U.S.C. 3324, may be used for advanced payments not otherwise authorized only upon the certification of officials designated by the Secretary of Commerce that such payments are in the public interest.

SEC. 102. During the current fiscal year, appropriations made available to the Department of Commerce by this Act for salaries and expenses shall be available for hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; services as authorized by 5 U.S.C. 3109; and uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901–5902).

SEC. 103. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Commerce in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: Provided, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 505 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section: Provided further, That the Secretary of Commerce shall notify the Committees on Appropriations at least 15 days in advance of the acquisition or disposal of any capital asset (including land, structures, and equipment) not specifically provided for in this Act or any other law appropriating funds for the Department of Commerce: Provided further, That for the National Oceanic and Atmospheric Administration this section shall provide for transfers among appropriations made only to the National Oceanic and Atmospheric Administration and such appropriations may not be transferred and reprogrammed to other Department of Commerce bureaus and appropriation accounts.

SEC. 104. Any costs incurred by a department or agency funded under this title resulting from personnel actions taken in response to funding reductions included in this title or from actions taken for the care and protection of loan collateral or grant property shall be absorbed within the total budgetary resources available to such department or agency: Provided, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: Provided further, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 505 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 105. The requirements set forth by section 112 of division B of Public Law 110–161 are hereby adopted by reference.

SEC. 106. Notwithstanding any other law, the Secretary may furnish services (including but not limited to utilities, telecommunications, and security services) necessary to support the operation, maintenance, and improvement of space that persons, firms or organizations are authorized pursuant to the Public Buildings Cooperative Use Act of 1976 or other authority to use or occupy in the Herbert C. Hoover Building, Washington, DC, or other buildings, the maintenance, operation, and protection of which has been delegated to the Secretary from the Administrator of General Services pursuant to the Federal Property and Administrative Services Act of 1949, as amended, on a reimbursable or non-reimbursable basis. Amounts received as reimbursement for services provided under this section or the authority under which the use or occupancy of the space is authorized, up to $200,000, shall be credited to the appropriation or fund which initially bears the costs of such services.

SEC. 107. With the consent of the President, the Secretary of Commerce shall represent the United States Government in negotiating and monitoring international agreements regarding fisheries, marine mammals, or sea turtles: Provided, That the Secretary of Commerce shall be responsible for the development and interdepartmental coordination of the policies of the United States with respect to the international negotiations and agreements referred to in this section.

SEC. 108. Section 101(k) of the Emergency Steel Loan Guarantee Act of 1999 (15 U.S.C. 1841 note) is amended by striking ''2009'' and inserting ''2011''.

SEC. 109. Nothing in this title shall be construed to prevent a grant recipient from deterring child pornography, copyright infringement, or any other unlawful activity over its networks.

SEC. 110. The National Marine Fisheries Service is authorized to accept land, buildings, equipment, and other contributions including funding, from public and private sources, which shall be available until expended without further appropriation to conduct work associated with existing authorities.

This title may be cited as the ''Department of Commerce Appropriations Act, 2010''.

TITLE II

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, $118,488,000, of which not to exceed $4,000,000 for security and construction of Department of Justice facilities shall remain available until expended: Provided, That the Attorney General is authorized to transfer funds appropriated within General Administration to any office in this account: Provided further, That $18,693,000 is for Department Leadership; $8,101,000 is for Intergovernmental Relations/External Affairs; $12,715,000 is for Executive Support/Professional Responsibility; and $78,979,000 is for the Justice Management Division: Provided further, That any change in amounts specified in the preceding proviso greater than 5 percent shall be submitted for approval to the House and Senate Committees on Appropriations consistent with the terms of section 505 of this Act: Provided further, That this transfer authority is in addition to transfers authorized under section 505 of this Act.

JUSTICE INFORMATION SHARING TECHNOLOGY

For necessary expenses for information sharing technology, including planning, development, deployment and departmental direction, $95,000,000, to remain available until expended, of which $21,132,000 is for the unified financial management system.

TACTICAL LAW ENFORCEMENT WIRELESS COMMUNICATIONS

For the costs of developing and implementing a nation-wide Integrated Wireless Network supporting Federal law enforcement communications, and for the costs of operations and maintenance of existing Land Mobile Radio legacy systems, $206,143,000, to remain available until expended: Provided, That the Attorney General shall transfer to this account all funds made available to the Department of Justice for the purchase of portable and mobile radios: Provided further, That any transfer made under the preceding proviso shall be subject to section 505 of this Act.

ADMINISTRATIVE REVIEW AND APPEALS

For expenses necessary for the administration of pardon and clemency petitions and immigration-related activities, $300,685,000, of which $4,000,000 shall be derived by transfer from the Executive Office for Immigration Review fees deposited in the ''Immigration Examinations Fee'' account.

DETENTION TRUSTEE

For necessary expenses of the Federal Detention Trustee, $1,438,663,000, to remain available until expended: Provided, That the Trustee shall be responsible for managing the Justice Prisoner and Alien Transportation System: Provided further, That not to exceed $5,000,000 shall be considered ''funds appropriated for State and local law enforcement assistance'' pursuant to 18 U.S.C. 4013(b).

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, $84,368,000, including not to exceed $10,000 to meet unforeseen emergencies of a

confidential character, of which $2,000,000 is designated as being for overseas deployments and other activities pursuant to sections 401(c)(4) and 423(a)(1) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

UNITED STATES PAROLE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the United States Parole Commission as authorized, $12,859,000.

LEGAL ACTIVITIES

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for the legal activities of the Department of Justice, not otherwise provided for, including not to exceed $20,000 for expenses of collecting evidence, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; and rent of private or Government-owned space in the District of Columbia, $875,097,000, of which $2,500,000 is designated as being for overseas deployments and other activities pursuant to sections 401(c)(4) and 423(a)(1) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010; and of which not to exceed $10,000,000 for litigation support contracts shall remain available until expended: Provided, That of the total amount appropriated, not to exceed $10,000 shall be available to the United States National Central Bureau, INTERPOL, for official reception and representation expenses: Provided further, That notwithstanding section 205 of this Act, upon a determination by the Attorney General that emergent circumstances require additional funding for litigation activities of the Civil Division, the Attorney General may transfer such amounts to ''Salaries and Expenses, General Legal Activities'' from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: Provided further, That any transfer pursuant to the previous proviso shall be treated as a reprogramming under section 505 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section: Provided further, That of the amount appropriated, such sums as may be necessary shall be available to reimburse the Office of Personnel Management for salaries and expenses associated with the election monitoring program under section 8 of the Voting Rights Act of 1965 (42 U.S.C. 1973f): Provided further, That of the amounts provided under this heading for the election monitoring program $3,390,000 shall remain available until expended.

In addition, for reimbursement of expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed $7,833,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

SALARIES AND EXPENSES, ANTITRUST DIVISION

For expenses necessary for the enforcement of antitrust and kindred laws, $163,170,000, to remain available until expended: Provided, That notwithstanding any other provision of law, fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection (and estimated to be $102,000,000 in fiscal year 2010), shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: Provided further, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2010, so as to result in a final fiscal year 2010 appropriation from the general fund estimated at $61,170,000.

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For necessary expenses of the Offices of the United States Attorneys, including inter-governmental and cooperative agreements, $1,926,003,000: Provided, That of the total amount appropriated, not to exceed $8,000 shall be available for official reception and representation expenses: Provided further, That not to exceed $25,000,000 shall remain available until expended: Provided further, That of the amount provided under this heading, not less than $36,980,000 shall be used for salaries and expenses for assistant U.S. Attorneys to carry out section 704 of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248) concerning the prosecution of offenses relating to the sexual exploitation of children.

UNITED STATES TRUSTEE SYSTEM FUND

For necessary expenses of the United States Trustee Program, as authorized, $224,488,000, to remain available until expended and to be derived from the United States Trustee System Fund: Provided, That notwithstanding any other provision of law, deposits to the Fund shall be available in such amounts as may be necessary to pay refunds due depositors: Provided further, That, notwithstanding any other provision of law, $210,000,000 of offsetting collections pursuant to 28 U.S.C. 589a(b) shall be retained and used for necessary expenses in this appropriation and shall remain available until expended: Provided further, That the sum herein appropriated from the Fund shall be reduced as such offsetting collections are received during fiscal year 2010, so as to result in a final fiscal year 2010 appropriation from the Fund estimated at $9,488,000.

SALARIES AND EXPENSES, FOREIGN CLAIMS SETTLEMENT COMMISSION

For expenses necessary to carry out the activities of the Foreign Claims Settlement Commission, including services as authorized by section 3109 of title 5, United States Code, $2,117,000.

FEES AND EXPENSES OF WITNESSES

For fees and expenses of witnesses, for expenses of contracts for the procurement and supervision of expert witnesses, for private counsel expenses, including advances, and for expenses of foreign counsel, $168,300,000, to remain available until expended: Provided, That not to exceed $10,000,000 may be made available for construction of buildings for protected witness safesites: Provided further, That not to exceed $3,000,000 may be made available for the purchase and maintenance of armored and other vehicles for witness security caravans: Provided further, That not to exceed $11,000,000 may be made available for the purchase, installation, maintenance, and upgrade of secure telecommunications equipment and a secure automated information network to store and retrieve the identities and locations of protected witnesses.

SALARIES AND EXPENSES, COMMUNITY RELATIONS SERVICE

For necessary expenses of the Community Relations Service, $11,479,000: Provided, That notwithstanding section 205 of this Act, upon a determination by the Attorney General that emergent circumstances require additional funding for conflict resolution and violence prevention activities of the Community Relations Service, the Attorney General may transfer such amounts to the Community Relations Service, from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: Provided further, That any transfer pursuant to the preceding proviso shall be treated as a reprogramming under section 505 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

ASSETS FORFEITURE FUND

For expenses authorized by 28 U.S.C. 524(c)(1)(B), (F), and (G), $20,990,000, to be derived from the Department of Justice Assets Forfeiture Fund.

UNITED STATES MARSHALS SERVICE

SALARIES AND EXPENSES

For necessary expenses of the United States Marshals Service, $1,125,763,000; of which not to exceed $30,000 shall be available for official reception and representation expenses; of which not to exceed $4,000,000 shall remain available until expended for information technology systems.

CONSTRUCTION

For construction in space controlled, occupied or utilized by the United States Marshals Service for prisoner holding and related support, $26,625,000, to remain available until expended; and of which not less than $12,625,000 shall be available for the costs of courthouse security equipment, including furnishings, relocations, and telephone systems and cabling.

NATIONAL SECURITY DIVISION

SALARIES AND EXPENSES

For expenses necessary to carry out the activities of the National Security Division, $87,938,000; of which not to exceed $5,000,000 for information technology systems shall remain available until expended: Provided, That notwithstanding section 205 of this Act, upon a determination by the Attorney General that emergent circumstances require additional funding for the activities of the National Security Division, the Attorney General may transfer such amounts to this heading from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: Provided further, That any transfer pursuant to the preceding proviso shall be treated as a reprogramming under section 505 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

INTERAGENCY LAW ENFORCEMENT

INTERAGENCY CRIME AND DRUG ENFORCEMENT

For necessary expenses for the identification, investigation, and prosecution of individuals associated with the most significant drug trafficking and affiliated money laundering organizations not otherwise provided for, to include inter-governmental agreements with State and local law enforcement agencies engaged in the investigation and prosecution of individuals involved in organized crime drug trafficking, $515,000,000, of which $50,000,000 shall remain available until expended: Provided, That any amounts obligated from appropriations under this heading may be used under authorities available to the organizations reimbursed from this appropriation.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For necessary expenses of the Federal Bureau of Investigation for detection, investigation, and prosecution of crimes against the United States; $7,668,622,000, of which $101,066,000 is designated as being for overseas deployments and other activities pursuant to sections 401(c)(4) and 423(a)(1) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010; and of which not to exceed $150,000,000 shall remain available until expended: Provided, That not to exceed $205,000 shall be available for official reception and representation expenses: Provided further, That notwithstanding section 205 of this Act, the Director of the Federal Bureau of Investigation, upon a determination that additional funding is necessary to carry out construction of the Biometrics Technology Center, may transfer from amounts available for ''Salaries and Expenses'' to amounts available for ''Construction'' up to

$30,000,000 in fees collected to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs: Provided further, That any transfer made pursuant to the previous proviso shall be subject to section 505 of this Act.

CONSTRUCTION

For all necessary expenses, to include the cost of equipment, furniture, and information technology requirements, related to construction or acquisition of buildings, facilities and sites by purchase, or as otherwise authorized by law; conversion, modification and extension of federally owned buildings; and preliminary planning and design of projects; $244,915,000, to remain available until expended.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Drug Enforcement Administration, including not to exceed $70,000 to meet unforeseen emergencies of a confidential character pursuant to 28 U.S.C. 530C; and expenses for conducting drug education and training programs, including travel and related expenses for participants in such programs and the distribution of items of token value that promote the goals of such programs, $2,014,682,000; of which $10,000,000 is designated as being for overseas deployments and other activities pursuant to sections 401(c)(4) and 423(a)(1) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010; and of which not to exceed $75,000,000 shall remain available until expended; and of which not to exceed $100,000 shall be available for official reception and representation expenses.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

SALARIES AND EXPENSES

For necessary expenses of the Bureau of Alcohol, Tobacco, Firearms and Explosives, not to exceed $40,000 for official reception and representation expenses; for training of State and local law enforcement agencies with or without reimbursement, including training in connection with the training and acquisition of canines for explosives and fire accelerants detection; and for provision of laboratory assistance to State and local law enforcement agencies, with or without reimbursement, $1,114,772,000, of which not to exceed $1,000,000 shall be available for the payment of attorneys' fees as provided by section 924(d)(2) of title 18, United States Code; and of which $10,000,000 shall remain available until expended: Provided, That no funds appropriated herein shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees: Provided further, That no funds appropriated herein shall be used to pay administrative expenses or the compensation of any officer or employee of the United States to implement an amendment or amendments to 27 CFR 478.118 or to change the definition of ''Curios or relics'' in 27 CFR 478.11 or remove any item from ATF Publication 5300.11 as it existed on January 1, 1994: Provided further, That none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 925(c): Provided further, That such funds shall be available to investigate and act upon applications filed by corporations for relief from Federal firearms disabilities under section 925(c) of title 18, United States Code: Provided further, That no funds made available by this or any other Act may be used to transfer the functions, missions, or activities of the Bureau of Alcohol, Tobacco, Firearms and Explosives to other agencies or Departments in fiscal year 2010: Provided further, That, beginning in fiscal year 2010 and thereafter, no funds appropriated under this or any other Act may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section 923(g), except to: (1) a Federal, State, local, tribal, or foreign law enforcement agency, or a Federal, State, or local prosecutor; or (2) a foreign law enforcement agency solely in connection with or for use in a criminal investigation or prosecution; or solely in connection with and for use in a criminal investigation or prosecution; or (3) a Federal agency for a national security or intelligence purpose; unless such disclosure of such date to any of the entities described in (1), (2) or (3) of this proviso would compromise the identity of any undercover law enforcement officer or confidential informant, or interfere with any case under investigation; and no person or entity described in (1), (2) or (3) shall knowingly or publicly disclose such data; and all such data shall be immune from legal process, shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State (including the District of Columbia) or Federal court or in an administrative proceeding other than a proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms and Explosives to enforce the provisions of chapter 44 of such title, or a review of such an action or proceeding; except that this proviso shall not be construed to prevent: (A) the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title) and licensed manufacturer (as defined in section 921(a)(10) of such title); (B) the sharing or exchange of such information among and between Federal, State, local, or foreign law enforcement agencies, Federal, State, or local prosecutors, and Federal national security, intelligence, or counterterrorism officials; or (C) the publication of annual statistical reports on products regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives, including total production, importation, and exportation by each licensed importer (as so defined) and licensed manufacturer (as so defined), or statistical aggregate data regarding firearms traffickers and trafficking channels, or firearms misuse, felons, and trafficking investigations: Provided further, That no funds made available by this or any other Act shall be expended to promulgate or implement any rule requiring a physical inventory of any business licensed under section 923 of title 18, United States Code: Provided further, That no funds under this Act may be used to electronically retrieve information gathered pursuant to 18 U.S.C. 923(g)(4) by name or any personal identification code: Provided further, That no funds authorized or made available under this or any other Act may be used to deny any application for a license under section 923 of title 18, United States Code, or renewal of such a license due to a lack of business activity, provided that the applicant is otherwise eligible to receive such a license, and is eligible to report business income or to claim an income tax deduction for business expenses under the Internal Revenue Code of 1986.

CONSTRUCTION

For necessary expenses to construct or acquire buildings and sites to purchase, or as otherwise authorized by law (including equipment for such buildings); conversion and extension of federally owned buildings; and preliminary planning and design of projects; $6,000,000, to remain until expended.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

For necessary expenses of the Federal Prison System for the administration, operation, and maintenance of Federal penal and correctional institutions, including purchase (not to exceed 831, of which 743 are for replacement only) and hire of law enforcement and passenger motor vehicles, and for the provision of technical assistance and advice on corrections related issues to foreign governments, $5,979,831,000, of which $10,500,000 is designated as being for overseas deployments and other activities pursuant to sections 401(c)(4) and 423(a)(1) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010: Provided, That the Attorney General may transfer to the Health Resources and Services Administration such amounts as may be necessary for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions: Provided further, That the Director of the Federal Prison System, where necessary, may enter into contracts with a fiscal agent or fiscal intermediary claims processor to determine the amounts payable to persons who, on behalf of the Federal Prison System, furnish health services to individuals committed to the custody of the Federal Prison System: Provided further, That not to exceed $6,000 shall be available for official reception and representation expenses: Provided further, That not to exceed $50,000,000 shall remain available for necessary operations until September 30, 2011: Provided further, That, of the amounts provided for contract confinement, not to exceed $20,000,000 shall remain available until expended to make payments in advance for grants, contracts and reimbursable agreements, and other expenses authorized by section 501(c) of the Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note), for the care and security in the United States of Cuban and Haitian entrants: Provided further, That the Director of the Federal Prison System may accept donated property and services relating to the operation of the prison card program from a not-for-profit entity which has operated such program in the past notwithstanding the fact that such not-for-profit entity furnishes services under contracts to the Federal Prison System relating to the operation of pre-release services, halfway houses, or other custodial facilities.

BUILDINGS AND FACILITIES

For planning, acquisition of sites and construction of new facilities; purchase and acquisition of facilities and remodeling, and equipping of such facilities for penal and correctional use, including all necessary expenses incident thereto, by contract or force account; and constructing, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions, including all necessary expenses incident thereto, by contract or force account, $99,155,000, to remain available until expended, of which not less than $73,769,000 shall be available only for modernization, maintenance and repair, and of which not to exceed $14,000,000 shall be available to construct areas for inmate work programs: Provided, That labor of United States prisoners may be used for work performed under this appropriation.

FEDERAL PRISON INDUSTRIES, INCORPORATED

The Federal Prison Industries, Incorporated, is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available, and in accord with the law, and to make such contracts and commitments, without regard to fiscal year limitations as provided by section 9104 of title 31, United States Code, as may be necessary in carrying out the program set forth in the budget for the current fiscal year for such corporation, including purchase (not to exceed five for replacement only) and hire of passenger motor vehicles.

LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED

Not to exceed $2,700,000 of the funds of the Federal Prison Industries, Incorporated shall be available for its administrative expenses, and for services as authorized by section 3109 of title 5, United States Code, to be computed on an accrual basis to be determined in accordance with the corporation's current prescribed accounting system, and such amounts shall be exclusive of depreciation, payment of claims, and expenditures which such accounting system requires to be capitalized or charged to cost of commodities acquired or produced, including selling and shipping expenses, and expenses in connection with acquisition, construction, operation, maintenance, improvement, protection, or disposition of facilities and other property belonging to the corporation or in which it has an interest.

STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

OFFICE ON VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS

For grants, contracts, cooperative agreements, and other assistance for the prevention and prosecution of violence against women, as authorized by the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) (''the 1968 Act''); the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) (''the 1994 Act''); the Victims of Child Abuse Act of 1990 (Public Law 101–647) (''the 1990 Act''); the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Public Law 108–21); the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) (''the 1974 Act''); the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386) (''the 2000 Act''); and the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162) (''the 2005 Act''); and for related victims services, $435,000,000, to remain available until expended: Provided, That except as otherwise provided by law, not to exceed 3 percent of funds made available under this heading may be used for expenses related to evaluation, training, and technical assistance: Provided further, That of the amount provided (which shall be by transfer, for programs administered by the Office of Justice Programs)—

(1) $15,000,000 for the court-appointed special advocate program, as authorized by section 217 of the 1990 Act;

(2) $2,500,000 for child abuse training programs for judicial personnel and practitioners, as authorized by section 222 of the 1990 Act;

(3) $200,000,000 for grants to combat violence against women, as authorized by part T of the 1968 Act, of which—

(A) $18,000,000 shall be for transitional housing assistance grants for victims of domestic violence, stalking or sexual assault as authorized by section 40299 of the 1994 Act; and

(B) $2,000,000 shall be for the National Institute of Justice for research and evaluation of violence against women and related issues addressed by grant programs of the Office on Violence Against Women;

(4) $60,000,000 for grants to encourage arrest policies as authorized by part U of the 1968 Act;

(5) $15,000,000 for sexual assault victims assistance, as authorized by section 41601 of the 1994 Act;

(6) $41,000,000 for rural domestic violence and child abuse enforcement assistance grants, as authorized by section 40295 of the 1994 Act;

(7) $3,000,000 for training programs as authorized by section 40152 of the 1994 Act, and for related local demonstration projects;

(8) $3,000,000 for grants to improve the stalking and domestic violence databases, as authorized by section 40602 of the 1994 Act;

(9) $9,500,000 for grants to reduce violent crimes against women on campus, as authorized by section 304 of the 2005 Act;

(10) $45,000,000 for legal assistance for victims, as authorized by section 1201 of the 2000 Act;

(11) $4,250,000 for enhanced training and services to end violence against and abuse of women in later life, as authorized by section 40802 of the 1994 Act;

(12) $14,000,000 for the safe havens for children program, as authorized by section 1301 of the 2000 Act;

(13) $6,750,000 for education and training to end violence against and abuse of women with disabilities, as authorized by section 1402 of the 2000 Act;

(14) $3,000,000 for an engaging men and youth in prevention program, as authorized by section 41305 of the 1994 Act;

(15) $1,000,000 for analysis and research on violence against Indian women, as authorized by section 904 of the 2005 Act;

(16) $1,000,000 for tracking of violence against Indian women, as authorized by section 905 of the 2005 Act;

(17) $3,500,000 for services to advocate and respond to youth, as authorized by section 41201 of the 1994 Act;

(18) $3,000,000 for grants to assist children and youth exposed to violence, as authorized by section 41303 of the 1994 Act;

(19) $3,000,000 for the court training and improvements program, as authorized by section 41002 of the 1994 Act;

(20) $500,000 for the National Resource Center on Workplace Responses to assist victims of domestic violence, as authorized by section 41501 of the 1994 Act; and

(21) $1,000,000 for grants for televised testimony, as authorized by part N of title I of the 1968 Act.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by title I of the Omnibus Crime Control and Safe Streets Act of 1968; the Missing Children's Assistance Act (42 U.S.C. 5771 et seq.); the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Public Law 108–21); the Justice for All Act of 2004 (Public Law 108–405); the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162); the Second Chance Act of 2007 (Public Law 110–199); the Victims of Child Abuse Act of 1990 (Public Law 101–647); the Victims of Crime Act of 1984 (Public Law 98–473); the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248); the PROTECT Our Children Act of 2008 (Public Law 110–401); subtitle D of title II of the Homeland Security Act of 2002 (Public Law 107–296), which may include research and development; and other programs (including the Statewide Automated Victim Notification Program); $215,000,000, to remain available until expended, of which:

(1) $40,000,000 is for criminal justice statistics programs, pursuant to part C of the 1968 Act, of which $35,000,000 is for the National Crime Victimization Survey;

(2) $48,000,000 is for research, development, and evaluation programs;

(3) $12,000,000 is for the Statewide Victim Notification System of the Bureau of Justice Assistance;

(4) $45,000,000 is for the Regional Information System Sharing System, as authorized by part M of title I of the 1968 Act; and

(5) $70,000,000 is for the Missing Children's Program.

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) (''the 1994 Act''); the Omnibus Crime Control and Safe Streets Act of 1968 (''the 1968 Act''); the Justice for All Act of 2004 (Public Law 108–405); the Victims of Child Abuse Act of 1990 (Public Law 101–647) (''the 1990 Act''); the Trafficking Victims Protection Reauthorization Act of 2005 (Public Law 109–164); the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162); the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248); the Second Chance Act of 2007 (Public Law 110–199); and the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386); and other programs; $1,159,000,000, to remain available until expended as follows:

(1) $510,000,000 for the Edward Byrne Memorial Justice Assistance Grant program as authorized by subpart 1 of part E of title I of the 1968 Act, (except that section 1001(c), and the special rules for Puerto Rico under section 505(g), of the 1968 Act, shall not apply for purposes of this Act), of which $5,000,000 is for use by the National Institute of Justice in assisting units of local government to identify, select, develop, modernize, and purchase new technologies for use by law enforcement, $2,000,000 is for a program to improve State and local law enforcement intelligence capabilities including anti-terrorism training and training to ensure that constitutional rights, civil liberties, civil rights, and privacy interests are protected throughout the intelligence process, $10,000,000 is to support the Nationwide Pegasus Program in coordination with the National Sheriff's Association, for rural and non-urban law enforcement databases and connectivity to enhance information sharing technology capacity, and $10,000,000 is for implementation of a student loan repayment assistance program pursuant to section 952 of Public Law 110–315;

(2) $178,500,000 for discretionary grants to improve the functioning of the criminal justice system, to prevent or combat juvenile delinquency, and to assist victims of crime (other than compensation): Provided, That within the amounts appropriated, $178,500,000 shall be used for the projects, and in the amounts specified in the table entitled ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act;

(3) $40,000,000 for competitive grants to improve the functioning of the criminal justice system, to prevent or combat juvenile delinquency, and to assist victims of crime (other than compensation) of which $8,000,000 shall be available for the SMART Office activities and $2,000,0000 shall be available for grants to States and local law enforcement agencies as authorized by section 5 of Public Law 110–344;

(4) $2,000,000 for the purposes described in the Missing Alzheimer's Disease Patient Alert Program (section 240001 of the 1994 Act);

(5) $15,000,000 for victim services programs for victims of trafficking, as authorized by section 107(b)(2) of Public Law 106–386 and for programs authorized under Public Law 109–164;

(6) $40,000,000 for Drug Courts, as authorized by section 1001(25)(A) of title I of the 1968 Act;

(7) $5,000,000 for prison rape prevention and prosecution and other programs, as authorized by the Prison Rape Elimination Act of 2003 (Public Law 108–79);

(8) $20,000,000 for grants for Residential Substance Abuse Treatment for State Prisoners, as authorized by part S of title I of the 1968 Act;

(9) $50,000,000 for offender re-entry programs, as authorized by the Second Chance Act of 2007 (Public Law 110–199), of which $25,000,000 is for grants for adult and juvenile offender State, tribal and local reentry demonstration projects, $15,000,000 is for grants for mentoring and transitional services and $5,000,000 is for family-based substance abuse treatment;

(10) $5,500,000 for the Capital Litigation Improvement Grant Program, as authorized by section 426 of Public Law 108–405;

(11) $10,000,000 for mental health courts and adult and juvenile collaboration program grants, as authorized by parts V and HH of title I of the 1968 Act, and the Mentally Ill Offender

Treatment and Crime Reduction Reauthorization and Improvement Act of 2008 (Public Law 110–416);

(12) $30,000,000 for assistance to Indian tribes, of which—

(A) $10,000,000 shall be available for grants under section 20109 of subtitle A of title II of the 1994 Act;

(B) $10,000,000 shall be available for the Tribal Courts Initiative;

(C) $7,000,000 shall be available for tribal alcohol and substance abuse reduction assistance grants; and

(D) $3,000,000 shall be available for training and technical assistance and civil and criminal legal assistance as authorized by title I of Public Law 106–559;

(13) $228,000,000 for the State Criminal Alien Assistance Program, as authorized by section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)); and

(14) $25,000,000 for the Border Prosecutor Initiative to reimburse State, county, parish, tribal, or municipal governments for costs associated with the prosecution of criminal cases declined by local offices of the United States Attorneys: Provided, That no less than $20,000,000 shall be for prosecution efforts on the Southern border: Provided further, That no less than $5,000,000 shall be for prosecution efforts on the Northern border:

Provided, That, if a unit of local government uses any of the funds made available under this heading to increase the number of law enforcement officers, the unit of local government will achieve a net gain in the number of law enforcement officers who perform nonadministrative public safety service.

WEED AND SEED PROGRAM FUND

For necessary expenses, including salaries and related expenses of the Office of Weed and Seed Strategies, $20,000,000, to remain available until expended, as authorized by section 103 of title I of the Omnibus Crime Control and Safe Streets Act of 1968.

JUVENILE JUSTICE PROGRAMS

For grants, contracts, cooperative agreements, and other assistance authorized by the Juvenile Justice and Delinquency Prevention Act of 1974 (''the 1974 Act''), the Omnibus Crime Control and Safe Streets Act of 1968 (''the 1968 Act''), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162), the Missing Children's Assistance Act (42 U.S.C. 5771 et seq.); the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Public Law 108–21); the Victims of Child Abuse Act of 1990 (Public Law 101–647); the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248); the PROTECT Our Children Act of 2008 (Public Law 110–401), and other juvenile justice programs, $407,000,000, to remain available until expended as follows:

(1) $75,000,000 for programs authorized by section 221 of the 1974 Act, and for training and technical assistance to assist small, non-profit organizations with the Federal grants process: Provided, That no less than $5,000,000 shall be for the Safe Start Program, as authorized by the 1974 Act;

(2) $82,000,000 for grants and projects, as authorized by sections 261 and 262 of the 1974 Act: Provided, That within the amounts appropriated, $82,000,000 shall be used for the projects, and in the amounts, specified in the table entitled ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act;

(3) $100,000,000 for youth mentoring grants;

(4) $65,000,000 for delinquency prevention, as authorized by section 505 of the 1974 Act, of which, pursuant to sections 261 and 262 thereof—

(A) $25,000,000 shall be for the Tribal Youth Program;

(B) $10,000,000 shall be for a gang education initiative; and

(C) $25,000,000 shall be for grants of $360,000 to each State and $4,840,000 shall be available for discretionary grants, for programs and activities to enforce State laws prohibiting the sale of alcoholic beverages to minors or the purchase or consumption of alcoholic beverages by minors, for prevention and reduction of consumption of alcoholic beverages by minors, and for technical assistance and training;

(5) $25,000,000 for programs authorized by the Victims of Child Abuse Act of 1990; and

(6) $60,000,000 for the Juvenile Accountability Block Grants program as authorized by part R of title I of the 1968 Act and Guam shall be considered a State:

Provided, That not more than 10 percent of each amount may be used for research, evaluation, and statistics activities designed to benefit the programs or activities authorized: Provided further, That not more than 2 percent of each amount may be used for training and technical assistance: Provided further, That the previous two provisos shall not apply to grants and projects authorized by sections 261 and 262 of the 1974 Act.

PUBLIC SAFETY OFFICER BENEFITS

For payments and expenses authorized under section 1001(a)(4) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796), such sums as are necessary (including amounts for administrative costs, which amounts shall be paid to the ''Salaries and Expenses'' account); and $5,000,000 for payments authorized by section 1201(b) of such Act; and $4,100,000 for educational assistance, as authorized by section 1218 of such Act, to remain available until expended.

COMMUNITY ORIENTED POLICING SERVICES

For activities authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322); the Omnibus Crime Control and Safe Streets Act of 1968 (''the 1968 Act''); the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162); subtitle D of title II of the Homeland Security Act of 2002 (Public Law 107–296), which may include research and development; and the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177); the NICS Improvement Amendments Act of 2007 (Public Law 110–180); the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248) (the ''Adam Walsh Act''); and the Justice for All Act of 2004 (Public Law 108–405), $658,500,000, to remain available until expended: Provided, That any balances made available through prior year deobligations shall only be available in accordance with section 505 of this Act. Of the amount provided (which shall be by transfer, for programs administered by the Office of Justice Programs)—

(1) $30,000,000 for the matching grant program for law enforcement armor vests, as authorized by section 2501 of title I of the 1968 Act: Provided, That $1,500,000 is transferred directly to the National Institute of Standards and Technology's Office of Law Enforcement Standards from the Community Oriented Policing Services Office for research, testing, and evaluation programs;

(2) $39,500,000 for grants to entities described in section 1701 of title I of the 1968 Act, to address public safety and methamphetamine manufacturing, sale, and use in hot spots as authorized by section 754 of Public Law 109–177, and for other anti-methamphetamine-related activities: Provided, That within the amounts appropriated, $34,500,000 shall be used for the projects, and in the amounts, specified in the table entitled ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act;

(3) $187,000,000 for a law enforcement technologies and interoperable communications program, and related law enforcement and public safety equipment: Provided, That within the amounts appropriated, $187,000,000 shall be used for the projects, and in the amounts, specified in the table entitled ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act;

(4) $10,000,000 for grants to assist States and tribal governments as authorized by the NICS Improvements Amendments Act of 2007 (Public Law 110–180);

(5) $10,000,000 for grants to upgrade criminal records, as authorized under the Crime Identification Technology Act of 1998 (42 U.S.C. 14601);

(6) $166,000,000 for DNA related and forensic programs and activities as follows:

(A) $151,000,000 for a DNA analysis and capacity enhancement program and for other local, State, and Federal forensic activities including the purposes of section 2 of the DNA Analysis Backlog Elimination Act of 2000 (the Debbie Smith DNA Backlog Grant Program);

(B) $5,000,000 for the purposes described in the Kirk Bloodsworth Post-Conviction DNA Testing Program (Public Law 108–405, section 412);

(C) $5,000,000 for Sexual Assault Forensic Exam Program Grants as authorized by Public Law 108–405, section 304; and

(D) $5,000,000 for DNA Training and Education for Law Enforcement, Correctional Personnel, and Court Officers as authorized by Public Law 108–405, section 303;

(7) $20,000,000 for improving tribal law enforcement, including equipment and training;

(8) $15,000,000 for programs to reduce gun crime and gang violence;

(9) $10,000,000 for training and technical assistance;

(10) $20,000,000 for a national grant program the purpose of which is to assist State and local law enforcement to locate, arrest and prosecute child sexual predators and exploiters, and to enforce sex offender registration laws described in section 1701(b) of the 1968 Act, of which:

(A) $5,000,000 for sex offender management assistance as authorized by the Adam Walsh Act and the Violent Crime Control Act of 1994 (Public Law 103–322); and

(B) $1,000,000 for the National Sex Offender Public Registry;

(11) $16,000,000 for expenses authorized by part AA of the 1968 Act (Secure our Schools);

(12) $35,000,000 for Paul Coverdell Forensic Science Improvement Grants under part BB of title I of the 1968 Act; and

(13) $100,000,000 for grants under section 1701 of title I of the 1968 Act (42 U.S.C. 3796dd) for the hiring and rehiring of additional career law enforcement officers under part Q of such title notwithstanding subsections (g) and (i) of such section and notwithstanding 42 U.S.C. 3796dd–3(c).

SALARIES AND EXPENSES

For necessary expenses, not elsewhere specified in this title, for management and administration of programs within the Office on Violence Against Women, the Office of Justice Programs and the Community Oriented Policing Services Office, $179,000,000, of which not to exceed $15,708,000 shall be available for the Office on Violence Against Women; not to exceed $125,830,000 shall be available for the Office of Justice Programs; not to exceed $37,462,000 shall be available for the Community Oriented Policing Services Office: Provided, That, notwithstanding section 109 of title I of Public Law 90–351, an additional amount, not to exceed $21,000,000 shall be available for authorized activities of the Office of Audit, Assessment, and Management: Provided further, That the total amount available for management and administration of such programs shall not exceed $200,000,000.

GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

SEC. 201. In addition to amounts otherwise made available in this title for official reception

and representation expenses, a total of not to exceed $75,000 from funds appropriated to the Department of Justice in this title shall be available to the Attorney General for official reception and representation expenses.

SEC. 202. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape: Provided, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.

SEC. 203. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of, any abortion.

SEC. 204. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: Provided, That nothing in this section in any way diminishes the effect of section 203 intended to address the philosophical beliefs of individual employees of the Bureau of Prisons.

SEC. 205. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: Provided, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 505 of this Act and shall not be available for obligation except in compliance with the procedures set forth in that section.

SEC. 206. The Attorney General is authorized to extend through September 30, 2011, the Personnel Management Demonstration Project transferred to the Attorney General pursuant to section 1115 of the Homeland Security Act of 2002, Public Law 107–296 (6 U.S.C. 533) without limitation on the number of employees or the positions covered.

SEC. 207. Notwithstanding any other provision of law, Public Law 102–395 section 102(b) shall extend to the Bureau of Alcohol, Tobacco, Firearms and Explosives in the conduct of undercover investigative operations and shall apply without fiscal year limitation with respect to any undercover investigative operation by the Bureau of Alcohol, Tobacco, Firearms and Explosives that is necessary for the detection and prosecution of crimes against the United States.

SEC. 208. None of the funds made available to the Department of Justice in this Act may be used for the purpose of transporting an individual who is a prisoner pursuant to conviction for crime under State or Federal law and is classified as a maximum or high security prisoner, other than to a prison or other facility certified by the Federal Bureau of Prisons as appropriately secure for housing such a prisoner.

SEC. 209. (a) None of the funds appropriated by this Act may be used by Federal prisons to purchase cable television services, to rent or purchase videocassettes, videocassette recorders, or other audiovisual or electronic equipment used primarily for recreational purposes.

(b) The preceding sentence does not preclude the renting, maintenance, or purchase of audiovisual or electronic equipment for inmate training, religious, or educational programs.

SEC. 210. None of the funds made available under this title shall be obligated or expended for Sentinel, or for any other major new or enhanced information technology program having total estimated development costs in excess of $100,000,000, unless the Deputy Attorney General and the investment review board certify to the Committees on Appropriations that the information technology program has appropriate program management and contractor oversight mechanisms in place, and that the program is compatible with the enterprise architecture of the Department of Justice.

SEC. 211. The notification thresholds and procedures set forth in section 505 of this Act shall apply to deviations from the amounts designated for specific activities in this Act and accompanying statement, and to any use of deobligated balances of funds provided under this title in previous years.

SEC. 212. None of the funds appropriated by this Act may be used to plan for, begin, continue, finish, process, or approve a public-private competition under the Office of Management and Budget Circular A–76 or any successor administrative regulation, directive, or policy for work performed by employees of the Bureau of Prisons or of Federal Prison Industries, Incorporated.

SEC. 213. Notwithstanding any other provision of law, no funds shall be available for the salary, benefits, or expenses of any United States Attorney assigned dual or additional responsibilities by the Attorney General or his designee that exempt that United States Attorney from the residency requirements of 28 U.S.C. 545.

SEC. 214. None of the funds appropriated in this or any other Act shall be obligated for the initiation of a future phase of the Federal Bureau of Investigation's Sentinel program until the Attorney General certifies to the Committees on Appropriations that existing phases currently under contract for development or fielding have completed a majority of the work for that phase under the performance measurement baseline validated by the integrated baseline review conducted in 2008: Provided, That this restriction does not apply to planning and design activities for future phases: Provided further, That the Bureau will notify the Committees on Appropriations of any significant changes to the baseline.

SEC. 215. In addition to any amounts that otherwise may be available (or authorized to be made available) by law, with respect to funds appropriated by this Act under the headings ''Justice Assistance'', ''State and Local Law Enforcement Assistance'', ''Weed and Seed'', ''Juvenile Justice Programs'', and ''Community Oriented Policing Services''—

(1) Up to 3 percent of funds made available to the Office of Justice Programs for grants or reimbursement may be used to provide training and technical assistance; and

(2) Up to 1 percent of funds made available to such Office for formula grants under such headings may be used for research or statistical purposes by the National Institute of Justice or the Bureau of Justice Statistics, pursuant to, respectively, sections 201 and 202, and sections 301 and 302 of title I of Public Law 90–351.

SEC. 216. Section 5759(e) of title 5, United States Code, is amended by striking subsection (e).

SEC. 217. (a) The Attorney General shall submit quarterly reports to the Inspector General of the Department of Justice regarding the costs and contracting procedures relating to each conference held by the Department of Justice during fiscal year 2010 for which the cost to the Government was more than $20,000.

(b) Each report submitted under subsection (a) shall include, for each conference described in that subsection held during the applicable quarter—

(1) a description of the subject of and number of participants attending that conference;

(2) a detailed statement of the costs to the Government relating to that conference, including—

(A) the cost of any food or beverages;

(B) the cost of any audio-visual services; and

(C) a discussion of the methodology used to determine which costs relate to that conference; and

(3) a description of the contracting procedures relating to that conference, including—

(A) whether contracts were awarded on a competitive basis for that conference; and

(B) a discussion of any cost comparison conducted by the Department of Justice in evaluating potential contractors for that conference.

SEC. 218. (a) Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end of the following:

''§5761. Foreign language proficiency pay awards for the Federal Bureau of Investigation

''The Director of the Federal Bureau of Investigation may, under regulations prescribed by the Director, pay a cash award of up to 10 percent of basic pay to any Bureau employee who maintains proficiency in a language or languages critical to the mission or who uses one or more foreign languages in the performance of official duties.''.

(b) The analysis for chapter 57 of title 5, United States Code, is amended by adding at the end the following:

''5761. Foreign language proficiency pay awards for the Federal Bureau of Investigation.''

SEC. 219. The Attorney General is authorized to waive the application of 42 U.S.C. 3755(d)(2)(A) with respect to grants made to units of local government pursuant to 42 U.S.C. 3755(d)(1), if such units of local government were eligible to receive such grants under the transitional rule in 42 U.S.C. 3755(d)(2)(B).

This title may be cited as the ''Department of Justice Appropriations Act, 2010''.

TITLE III

SCIENCE

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601–6671), hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, not to exceed $2,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, $6,154,000.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SCIENCE

For necessary expenses, not otherwise provided for, in the conduct and support of science research and development activities, including research, development, operations, support, and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control, and communications activities; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; and purchase, lease, charter, maintenance, and operation of mission and administrative aircraft, $4,517,000,000, to remain available until September 30, 2011.

AERONAUTICS

For necessary expenses, not otherwise provided for, in the conduct and support of aeronautics research and development activities, including research, development, operations, support, and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control, and communications activities; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; and purchase, lease, charter,

maintenance, and operation of mission and administrative aircraft, $507,000,000, to remain available until September 30, 2011.

EXPLORATION

For necessary expenses, not otherwise provided for, in the conduct and support of exploration research and development activities, including research, development, operations, support, and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control, and communications activities; program management, personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; and purchase, lease, charter, maintenance, and operation of mission and administrative aircraft, $3,940,400,000, to remain available until September 30, 2011.

SPACE OPERATIONS

For necessary expenses, not otherwise provided for, in the conduct and support of space operations research and development activities, including research, development, operations, support and services; space flight, spacecraft control and communications activities including operations, production, and services; maintenance; construction of facilities including repair, rehabilitation, revitalization and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $6,161,600,000, to remain available until September 30, 2011.

EDUCATION

For necessary expenses, not otherwise provided for, in carrying out aerospace and aeronautical education research and development activities, including research, development, operations, support, and services; program management; personnel and related costs, uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; and purchase, lease, charter, maintenance, and operation of mission and administrative aircraft, $140,100,000, to remain available until September 30, 2011.

CROSS AGENCY SUPPORT

For necessary expenses, not otherwise provided for, in the conduct and support of science, aeronautics, exploration, space operations and education research and development activities, including research, development, operations, support, and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control, and communications activities; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $70,000 for official reception and representation expenses; and purchase, lease, charter, maintenance, and operation of mission and administrative aircraft, $3,383,500,000, to remain available until September 30, 2011: Provided, That within the amounts appropriated $47,000,000 shall be used for the projects, and in the amounts, specified in the table entitled ''Congressionally designated projects'' in the report of the Committee on Appropriations of the Senate to accompany this Act.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, $36,400,000, to remain available until September 30, 2011.

ADMINISTRATIVE PROVISIONS

Notwithstanding the limitation on the duration of availability of funds appropriated to the National Aeronautics and Space Administration for any account in this Act, except for ''Office of Inspector General'', when any activity has been initiated by the incurrence of obligations for environmental compliance and restoration activities as authorized by law, such amount available for such activity shall remain available until expended.

Notwithstanding the limitation on the availability of funds appropriated to the National Aeronautics and Space Administration for any account in this Act, except for ''Office of Inspector General'', the amounts appropriated for construction of facilities shall remain available until September 30, 2014.

Funds for announced prizes otherwise authorized shall remain available, without fiscal year limitation, until the prize is claimed or the offer is withdrawn.

Not to exceed 5 percent of any appropriation made available for the current fiscal year for the National Aeronautics and Space Administration in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers. Any transfer pursuant to this provision shall be treated as a reprogramming of funds under section 505 of this Act and shall not be available for obligation except in compliance with the procedures set forth in that section.

Notwithstanding any other provision of law, no funds shall be used to implement any Reduction in Force or other involuntary separations (except for cause) by the National Aeronautics and Space Administration prior to September 30, 2010.

The unexpired balances of the Science, Aeronautics, and Exploration account, for activities for which funds are provided under this Act, may be transferred to the new accounts established in this Act that provide such activity. Balances so transferred shall be merged with the funds in the newly established accounts, but shall be available under the same terms, conditions and period of time as previously appropriated.

Funding designations and minimum funding requirements contained in any other Act shall not be applicable to funds appropriated by this title for the National Aeronautics and Space Administration.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880–1881); services as authorized by 5 U.S.C. 3109; maintenance and operation of aircraft and purchase of flight services for research support; acquisition of aircraft; and authorized travel; $5,618,000,000, to remain available until September 30, 2011, of which not to exceed $570,000,000 shall remain available until expended for polar research and operations support, and for reimbursement to other Federal agencies for operational and science support and logistical and other related activities for the United States Antarctic program: Provided, That from funds specified in the fiscal year 2010 budget request for icebreaking services, $54,000,000 shall be transferred to the U.S. Coast Guard ''Operating Expenses'': Provided further, That receipts for scientific support services and materials furnished by the National Research Centers and other National Science Foundation supported research facilities may be credited to this appropriation: Provided further, That not less than $147,800,000 shall be available for activities authorized by section 7002(c)(2)(A)(iv) of Public Law 110–69.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For necessary expenses for the acquisition, construction, commissioning, and upgrading of major research equipment, facilities, and other such capital assets pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), including authorized travel, $122,290,000, to remain available until expended.

EDUCATION AND HUMAN RESOURCES

For necessary expenses in carrying out science and engineering education and human resources programs and activities pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), including services as authorized by 5 U.S.C. 3109, authorized travel, and rental of conference rooms in the District of Columbia, $857,760,000, to remain available until September 30, 2011: Provided, That not less than $55,000,000 shall be available until expended for activities authorized by section 7030 of Public Law 110–69.

AGENCY OPERATIONS AND AWARD MANAGEMENT

For agency operations and award management necessary in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875); services authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; not to exceed $9,000 for official reception and representation expenses; uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; rental of conference rooms in the District of Columbia; and reimbursement of the Department of Homeland Security for security guard services; $300,370,000: Provided, That contracts may be entered into under this heading in fiscal year 2010 for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year.

OFFICE OF THE NATIONAL SCIENCE BOARD

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code) involved in carrying out section 4 of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1863) and Public Law 86–209 (42 U.S.C. 1880 et seq.), $4,340,000: Provided, That not to exceed $2,500 shall be available for official reception and representation expenses.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General as authorized by the Inspector General Act of 1978, as amended, $14,000,000.

This title may be cited as the ''Science Appropriations Act, 2010''.

TITLE IV

RELATED AGENCIES

COMMISSION ON CIVIL RIGHTS

SALARIES AND EXPENSES

For necessary expenses of the Commission on Civil Rights, including hire of passenger motor vehicles, $9,400,000: Provided, That none of the funds appropriated in this paragraph shall be used to employ in excess of four full-time individuals under Schedule C of the Excepted Service exclusive of one special assistant for each Commissioner: Provided further, That none of the funds appropriated in this paragraph shall be used to reimburse Commissioners for more

than 75 billable days, with the exception of the chairperson, who is permitted 125 billable days.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Equal Employment Opportunity Commission as authorized by title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, the Genetic Information Non-Discrimination Act (GINA) of 2008 (Public Law 110–23); the ADA Amendments Act of 2008 (Public Law 110–325), and the Lilly Ledbetter Fair Pay Act of 2009 (Public Law 111–2), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); nonmonetary awards to private citizens; and not to exceed $30,000,000 for payments to State and local enforcement agencies for authorized services to the Commission, $367,303,000: Provided, That the Commission is authorized to make available for official reception and representation expenses not to exceed $2,500 from available funds: Provided further, That the Commission may take no action to implement any workforce repositioning, restructuring, or reorganization until such time as the House and Senate Committees on Appropriations have been notified of such proposals, in accordance with the reprogramming requirements of section 505 of this Act: Provided further, That the Chair is authorized to accept and use any gift or donation to carry out the work of the Commission.

INTERNATIONAL TRADE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the International Trade Commission, including hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, and not to exceed $2,500 for official reception and representation expenses, $82,700,000, to remain available until expended.

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, $400,000,000, of which $374,600,000 is for basic field programs and required independent audits; $4,000,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; $17,000,000 is for management and grants oversight; $3,400,000 is for client self-help and information technology; and $1,000,000 is for loan repayment assistance: Provided, That the Legal Services Corporation may continue to provide locality pay to officers and employees at a rate no greater than that provided by the Federal Government to Washington, DC-based employees as authorized by 5 U.S.C. 5304, notwithstanding section 1005(d) of the Legal Services Corporation Act, 42 U.S.C. 2996(d).

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105–119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2009 and 2010, respectively.

MARINE MAMMAL COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Marine Mammal Commission as authorized by title II of Public Law 92–522, $3,250,000.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SALARIES AND EXPENSES

For necessary expenses of the Office of the United States Trade Representative, including the hire of passenger motor vehicles and the employment of experts and consultants as authorized by 5 U.S.C. 3109, $48,326,000, of which $1,000,000 shall remain available until expended: Provided, That not to exceed $124,000 shall be available for official reception and representation expenses: Provided further, That negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties: Provided further, That negotiations shall be conducted within the World Trade Organization consistent with the negotiating objectives contained in the Trade Act of 2002, Public Law 107–210 to maintain strong U.S. remedies laws, correct the problem of overreaching by World Trade Organization Panels and Appellate Body, and prevent the creation of obligation never negotiated or expressly agreed to by the United States.

STATE JUSTICE INSTITUTE

SALARIES AND EXPENSES

For necessary expenses of the State Justice Institute, as authorized by the State Justice Institute Authorization Act of 1984 (42 U.S.C. 10701 et. seq.) $5,000,000, of which $500,000 shall remain available until September 30, 2011: Provided, That not to exceed $3,000 shall be available for official reception and representation expenses.

TITLE V

GENERAL PROVISIONS

SEC. 501. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

SEC. 502. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 503. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 504. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of each provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 505. (a) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2009, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through the reprogramming of funds that:

(1) creates or initiates a new program, project or activity;

(2) eliminates a program, project or activity, unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds;

(3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted by this Act, unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds;

(4) relocates an office or employees, unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds;

(5) reorganizes or renames offices, programs or activities, unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds;

(6) contracts out or privatizes any functions or activities presently performed by Federal employees, unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds;

(7) proposes to use funds directed for a specific activity by either the House or Senate Committee on Appropriations for a different purpose, unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds;

(8) augments funds for existing programs, projects or activities in excess of $500,000 or 10 percent, whichever is less, or reduces by 10 percent funding for any program, project or activity, or numbers of personnel by 10 percent as approved by Congress, unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds; or

(9) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, projects or activities as approved by Congress, unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2010, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through the reprogramming of funds after August 1, except in extraordinary circumstances, and only after the House and Senate Committees on Appropriations are notified 30 days in advance of such reprogramming of funds.

SEC. 506. Hereafter, none of the funds made available in this or any other Act may be used to implement, administer, or enforce any guidelines of the Equal Employment Opportunity Commission covering harassment based on religion, when it is made known to the Federal entity or official to which such funds are made available that such guidelines do not differ in any respect from the proposed guidelines published by the Commission on October 1, 1993 (58 Fed. Reg. 51266).

SEC. 507. If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a ''Made in America'' inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds made available in this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

SEC. 508. The Departments of Commerce and Justice, the National Science Foundation, and the National Aeronautics and Space Administration, shall provide to the House and Senate Committees on Appropriations a quarterly accounting of the cumulative balances of any unobligated funds that were received by such agency during any previous fiscal year.

SEC. 509. Any costs incurred by a department or agency funded under this Act resulting from, or to prevent, personnel actions taken in response to funding reductions included in this Act shall be absorbed within the total budgetary resources available to such department or agency: Provided, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: Provided further, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 505 of this

Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 510. None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.

SEC. 511. None of the funds appropriated pursuant to this Act or any other provision of law may be used for—

(1) the implementation of any tax or fee in connection with the implementation of subsection 922(t) of title 18, United States Code; and

(2) any system to implement subsection 922(t) of title 18, United States Code, that does not require and result in the destruction of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm no more than 24 hours after the system advises a Federal firearms licensee that possession or receipt of a firearm by the prospective transferee would not violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law.

SEC. 512. None of the funds made available in this Act may be used to pay the salaries and expenses of personnel of the Department of Justice to obligate more than $705,000,000 during fiscal year 2010 from the fund established by section 1402 of chapter XIV of title II of Public Law 98–473 (42 U.S.C. 10601): Provided, That hereafter the availability of funds under section 1402(d)(3) to improve services shall be understood to mean availability for pay or salary, including benefits for the same.

SEC. 513. None of the funds made available to the Department of Justice in this Act may be used to discriminate against or denigrate the religious or moral beliefs of students who participate in programs for which financial assistance is provided from those funds, or of the parents or legal guardians of such students.

SEC. 514. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

SEC. 515. Any funds provided in this Act used to implement E-Government Initiatives shall be subject to the procedures set forth in section 505 of this Act.

SEC. 516. (a) Tracing studies conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives are released without adequate disclaimers regarding the limitations of the data.

(b) The Bureau of Alcohol, Tobacco, Firearms and Explosives shall include in all such data releases, language similar to the following that would make clear that trace data cannot be used to draw broad conclusions about firearms-related crime:

(1) Firearm traces are designed to assist law enforcement authorities in conducting investigations by tracking the sale and possession of specific firearms. Law enforcement agencies may request firearms traces for any reason, and those reasons are not necessarily reported to the Federal Government. Not all firearms used in crime are traced and not all firearms traced are used in crime.

(2) Firearms selected for tracing are not chosen for purposes of determining which types, makes, or models of firearms are used for illicit purposes. The firearms selected do not constitute a random sample and should not be considered representative of the larger universe of all firearms used by criminals, or any subset of that universe. Firearms are normally traced to the first retail seller, and sources reported for firearms traced do not necessarily represent the sources or methods by which firearms in general are acquired for use in crime.

SEC. 517. (a) The Inspectors General of the Department of Commerce, the Department of Justice, the National Aeronautics and Space Administration, the National Science Foundation, and the Legal Services Corporation shall conduct audits, pursuant to the Inspector General Act (5 U.S.C. App.), of grants or contracts for which funds are appropriated by this Act, and shall submit reports to Congress on the progress of such audits, which may include preliminary findings and a description of areas of particular interest, within 180 days after initiating such an audit and every 180 days thereafter until any such audit is completed.

(b) Within 60 days after the date on which an audit described in subsection (a) by an Inspector General is completed, the Secretary, Attorney General, Administrator, Director, or President, as appropriate, shall make the results of the audit available to the public on the Internet website maintained by the Department, Administration, Foundation, or Corporation, respectively. The results shall be made available in redacted form to exclude—

(1) any matter described in section 552(b) of title 5, United States Code; and

(2) sensitive personal information for any individual, the public access to which could be used to commit identity theft or for other inappropriate or unlawful purposes.

(c) A grant or contract funded by amounts appropriated by this Act may not be used for the purpose of defraying the costs of a banquet or conference that is not directly and programmatically related to the purpose for which the grant or contract was awarded, such as a banquet or conference held in connection with planning, training, assessment, review, or other routine purposes related to a project funded by the grant or contract.

(d) Any person awarded a grant or contract funded by amounts appropriated by this Act shall submit a statement to the Secretary of Commerce, the Attorney General, the Administrator, Director, or President, as appropriate, certifying that no funds derived from the grant or contract will be made available through a subcontract or in any other manner to another person who has a financial interest in the person awarded the grant or contract.

(e) The provisions of the preceding subsections of this section shall take effect 30 days after the date on which the Director of the Office of Management and Budget, in consultation with the Director of the Office of Government Ethics, determines that a uniform set of rules and requirements, substantially similar to the requirements in such subsections, consistently apply under the executive branch ethics program to all Federal departments, agencies, and entities.

SEC. 518. None of the funds appropriated or otherwise made available under this Act may be used to issue patents on claims directed to or encompassing a human organism.

SEC. 519. None of the funds made available in this Act shall be used in any way whatsoever to support or justify the use of torture by any official or contract employee of the United States Government.

SEC. 520. (a) Notwithstanding any other provision of law or treaty, none of the funds appropriated or otherwise made available under this Act or any other Act may be expended or obligated by a department, agency, or instrumentality of the United States to pay administrative expenses or to compensate an officer or employee of the United States in connection with requiring an export license for the export to Canada of components, parts, accessories or attachments for firearms listed in Category I, section 121.1 of title 22, Code of Federal Regulations (International Trafficking in Arms Regulations (ITAR), part 121, as it existed on April 1, 2005) with a total value not exceeding $500 wholesale in any transaction, provided that the conditions of subsection (b) of this section are met by the exporting party for such articles.

(b) The foregoing exemption from obtaining an export license—

(1) does not exempt an exporter from filing any Shipper's Export Declaration or notification letter required by law, or from being otherwise eligible under the laws of the United States to possess, ship, transport, or export the articles enumerated in subsection (a); and

(2) does not permit the export without a license of—

(A) fully automatic firearms and components and parts for such firearms, other than for end use by the Federal Government, or a Provincial or Municipal Government of Canada;

(B) barrels, cylinders, receivers (frames) or complete breech mechanisms for any firearm listed in Category I, other than for end use by the Federal Government, or a Provincial or Municipal Government of Canada; or

(C) articles for export from Canada to another foreign destination.

(c) In accordance with this section, the District Directors of Customs and postmasters shall permit the permanent or temporary export without a license of any unclassified articles specified in subsection (a) to Canada for end use in Canada or return to the United States, or temporary import of Canadian-origin items from Canada for end use in the United States or return to Canada for a Canadian citizen.

(d) The President may require export licenses under this section on a temporary basis if the President determines, upon publication first in the Federal Register, that the Government of Canada has implemented or maintained inadequate import controls for the articles specified in subsection (a), such that a significant diversion of such articles has and continues to take place for use in international terrorism or in the escalation of a conflict in another nation. The President shall terminate the requirements of a license when reasons for the temporary requirements have ceased.

SEC. 521. Notwithstanding any other provision of law, no department, agency, or instrumentality of the United States receiving appropriated funds under this Act or any other Act shall obligate or expend in any way such funds to pay administrative expenses or the compensation of any officer or employee of the United States to deny any application submitted pursuant to 22 U.S.C. 2778(b)(1)(B) and qualified pursuant to 27 CFR section 478.112 or .113, for a permit to import United States origin ''curios or relics'' firearms, parts, or ammunition.

SEC. 522. None of the funds made available in this Act may be used to include in any new bilateral or multilateral trade agreement the text of—

(1) paragraph 2 of article 16.7 of the United States-Singapore Free Trade Agreement;

(2) paragraph 4 of article 17.9 of the United States-Australia Free Trade Agreement; or

(3) paragraph 4 of article 15.9 of the United States-Morocco Free Trade Agreement.

SEC. 523. None of the funds made available in this Act may be used to authorize or issue a national security letter in contravention of any of the following laws authorizing the Federal Bureau of Investigation to issue national security letters: The Right to Financial Privacy Act; The Electronic Communications Privacy Act; The Fair Credit Reporting Act; The National Security Act of 1947; USA PATRIOT Act; and the laws amended by these Acts.

SEC. 524. If at any time during any quarter, the program manager of a project within the jurisdiction of the Departments of Commerce or Justice, the National Aeronautics and Space Administration, or the National Science Foundation totaling more than $75,000,000 has reasonable cause to believe that the total program cost has increased by 10 percent, the program manager shall immediately inform the Secretary, Administrator, or Director. The Secretary, Administrator, or Director shall notify the House and Senate Committees on Appropriations within 30 days in writing of such increase, and shall include in such notice: the date on which such determination was made; a statement of the reasons for such increases; the action taken and proposed to be taken to control future cost

growth of the project; changes made in the performance or schedule milestones and the degree to which such changes have contributed to the increase in total program costs or procurement costs; new estimates of the total project or procurement costs; and a statement validating that the project's management structure is adequate to control total project or procurement costs.

SEC. 525. Funds appropriated by this Act, or made available by the transfer of funds in this Act, for intelligence or intelligence related activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2010 until the enactment of the Intelligence Authorization Act for fiscal year 2010.

SEC. 526. The Departments, agencies, and commissions funded under this Act, shall establish and maintain on the homepages of their Internet websites—

(1) a direct link to the Internet websites of their Offices of Inspectors General; and

(2) a mechanism on the Offices of Inspectors General website by which individuals may anonymously report cases of waste, fraud, or abuse with respect to those Departments, agencies, and commissions.

SEC. 527. None of the funds appropriated or otherwise made available by this Act may be used to enter into a contract in an amount greater than $5,000,000 or to award a grant in excess of such amount unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that, to the best of its knowledge and belief, the contractor or grantee has filed all Federal tax returns required during the three years preceding the certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

SEC. 528. None of the funds appropriated or otherwise made available in this Act may be used in a manner that is inconsistent with the principal negotiating objective of the United States with respect to trade remedy laws to preserve the ability of the United States—

(1) to enforce vigorously its trade laws, including antidumping, countervailing duty, and safeguard laws;

(2) to avoid agreements that—

(A) lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies; or

(B) lessen the effectiveness of domestic and international safeguard provisions, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions; and

(3) to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.

SEC. 529. None of the funds made available in this Act may be used to purchase first class or premium airline travel in contravention of sections 301–10.122 through 301–10.124 of title 41 of the Code of Federal Regulations.

SEC. 530. None of the funds made available in this Act may be used to send or otherwise pay for the attendance of more than 50 employees from a Federal department or agency at any single conference occurring outside the United States.

(RESCISSIONS)

SEC. 531. (a) Of the unobligated balances available to the Department of Justice from prior appropriations, the following funds are hereby rescinded, not later than September 30, 2010, from the following accounts in the specified amounts:

(1) ''Legal Activities, Assets Forfeiture Fund'', $379,000,000, of which $136,000,000 shall be permanently rescinded and returned to the general fund;

(2) ''Office of Justice Programs'', $42,000,000; and

(3) ''Community Oriented Policing Services'', $40,000,000.

(b) The Department of Justice shall, within 30 days of enactment of this Act, submit to the Committee on Appropriations of the House of Representatives and the Senate a report specifying the amount of each rescission made pursuant to this section.

(c) The recissions contained in this section shall not apply to funds provided in this Act.

SEC. 532. Section 504(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Public Law 104–134) is amended:

(1) in subsection (a), in the matter preceding paragraph (1), by inserting after ''('' the following: *''that uses Federal funds (or funds from any source with regard to paragraphs (14) and (15)) in a manner'';*

(2) by striking subsection (d); and

(3) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 533. None of the funds made available under this Act may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries.

REVIEW AND AUDIT OF ACORN FEDERAL FUNDING

SEC. 534. (a) REVIEW AND AUDIT.—The Comptroller General of the United States shall conduct a review and audit of Federal funds received by the Association of Community Organizations for Reform Now (referred to in this section as ''ACORN'') or any subsidiary or affiliate of ACORN to determine—

(1) whether any Federal funds were misused and, if so, the total amount of Federal funds involved and how such funds were misused;

(2) what steps, if any, have been taken to recover any Federal funds that were misused;

(3) what steps should be taken to prevent the misuse of any Federal funds; and

(4) whether all necessary steps have been taken to prevent the misuse of any Federal funds.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the results of the audit required under subsection (a), along with recommendations for Federal agency reforms.

This Act may be cited as the ''Commerce, Justice, Science, and Related Agencies Appropriations Act, 2010''.

Mrs. MURRAY. I move to reconsider the vote.

Mr. NELSON of Nebraska. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment, requests a conference with the House, and the Chair appoints Ms. MIKULSKI, Mr. INOUYE, Mr. LEAHY, Mr. KOHL, Mr. DORGAN, Mrs. FEINSTEIN, Mr. REED, Mr. LAUTENBERG, Mr. NELSON of Nebraska, Mr. PRYOR, Mr. BYRD, Mr. SHELBY, Mr. GREGG, Mr. MCCONNELL, Mrs. HUTCHISON, Mr. ALEXANDER, Mr. VOINOVICH, Ms. MURKOWSKI, and Mr. COCHRAN conferees on the part of the Senate.

The PRESIDING OFFICER. The majority leader.

ORDER OF BUSINESS

Mr. REID. Mr. President, we have one more vote tonight. In the last 24 hours we have had a lot of accomplishments that we are going to be able to point to. I appreciate the cooperation of the Republicans. We have a number of nominations we are going to be able to complete.

We are going to move, as soon as this next vote is over, to military construction. I have spoken to the Republican leader. We are going to do our best to finish that on Monday or Tuesday. We are going to have that one vote, the one vote I indicated. On Monday, at 5:30, we will have a judge vote. We will see if there is anything else we can have to vote on on Monday, but at least we will have that one at—5:30 will be fine.

Mr. President, we are going to be in Monday and Tuesday. I told everyone I thought this was going to be the day that REID finally called ''wolf'' and the wolf showed up, but it is not going to be the case. The reason it is not is because we have been able to get a lot of stuff done. I indicated to the Republican leader there were things we needed to get done. We did not get everything I wanted done, but we got things I had not put on the list done that amounts to the same.

So I am grateful for the cooperation we have gotten recently, and I look forward to a good week next week. Remember, it is only 2 days long.

EXECUTIVE SESSION

NOMINATION OF IGNACIA S. MORENO TO BE AN ASSISTANT ATTORNEY GENERAL

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

The assistant legislative clerk read the nomination of Ignacia S. Moreno, of New York, to be an Assistant Attorney General.

Mr. LEAHY. Mr. President, today, the Senate will confirm yet another outstanding nominee to fill a high-level vacancy at the Department of Justice. The confirmation of Ignacia Moreno to head the Environment and Natural Resources Division is long overdue. Ms. Moreno's nomination has been stalled on the Senate Executive Calendar without explanation for almost 6 weeks. Nominations for four other Assistant Attorneys General to run divisions at the Department remain stalled by Republican objections to their consideration.

I thank Senator WHITEHOUSE for chairing the Judiciary Committee hearing on this nomination on September 9. When we reported this nomination by unanimous consent—without a single dissenting vote—on September 24, I did not imagine it would not be considered by the full Senate until November.

Senate Republicans have irresponsibly held up nominations to critical posts in the Department of Justice, depriving the President, the Attorney General, and the country of the leaders needed to head key law enforcement divisions at the Justice Department. These are leaders in our Federal law enforcement efforts. Presidents of both parties, especially newly elected ones, are normally accorded significant deference to put in place appointees for their administrations.

Yet, 10 months into President Obama's first term, even after we confirm Ms. Moreno, four nominations to be Assistant Attorneys General will remain stalled on the Senate's Executive Calendar due to Republican opposition and obstruction. These are the President's nominees to run 4 of the 11 divisions at the Justice Department—nearly half. By comparison, at this point in the Bush administration the Senate had confirmed nine Assistant Attorneys General and only one nomination was pending on the Senate Executive Calendar. The difference is that the Republican minority is refusing to consider these nominations.

The nomination we consider today, President Obama's nomination of Ignacia Moreno to be the Assistant Attorney General in charge of the Environment and Natural Resources Division, has been on the Senate Executive Calendar for almost 6 weeks, even though it was reported by the Judiciary Committee without a single Republican Senator dissenting. By comparison, a Democratic majority in the Senate confirmed President Bush's nomination of Thomas Sansonetti to the position only 1 day after it was reported by the Judiciary Committee.

The President nominated Dawn Johnsen to be the Assistant Attorney General in charge of the Office of Legal Counsel at the Justice Department on February 11. Her nomination has been pending on the Senate Executive Calendar since March 19. That is the longest pending nomination on the calendar by over 2 months. We did not treat President Bush's first nominee to head the Office of Legal Counsel the same way. We confirmed Jay Bybee to that post only 49 days after he was nominated by President Bush and only 5 days after his nomination was reported by the committee. Of course, his work in the Office of Legal Counsel is now the subject of an ongoing review by the Office of Professional Responsibility.

Mary Smith's nomination to be the Assistant Attorney General in charge of the Tax Division has been pending on the Senate's Executive Calendar since June 11—nearly 5 months. We confirmed President Bush's first nomination to that position, Eileen O'Connor, only 57 days after her nomination was made and 1 day after her nomination was reported by the Committee. Her replacement, Nathan Hochman, was confirmed without delay, just 34 days after his nomination.

Chris Schroeder's nomination to be the Assistant Attorney General in charge of the Office of Legal Policy has been pending on the Senate Executive Calendar since July 28. It was reported by voice vote without a single dissenting voice. President Bush's first nominee to head that division, Viet Dinh, was confirmed 96 to 1 only 1 month after he was nominated and only a week after his nomination was reported by the committee. The three nominees to that office that succeeded Mr. Dinh—Daniel Bryant, Rachel Brand, and Elisabeth Cook—were each confirmed by voice vote in a shorter time than Professor Schroeder's nomination has been pending. Ms. Cook was confirmed 13 days after her nomination was reported by the committee, even though it was the final year of the Bush Presidency. By contrast, the majority leader may have to file another cloture position in order to overcome Republican obstruction and obtain Senate consideration of Professor Schroeder's nomination.

Instead of withholding consents and filibustering President Obama's nominees, the other side of the aisle should join us in treating them fairly. We should not have to fight for months to schedule consideration of the President's judicial nominations and nomination for critical posts in the executive branch.

Upon the announcement of her nomination, President Obama described Ignacia Moreno as a ''talented individual'' whose leadership will help us ''preserve our environment.'' I agree. Ignacia Moreno is a well-qualified nominee who has chosen to leave a lucrative private practice to return to government service.

Ms. Moreno currently works for General Electric, where she oversees that corporation's compliance with State and Federal laws. Prior to that, she spent 7 years in the Energy and Natural Resources Division, where she served as a Special Assistant and later Principal Counsel to the Assistant Attorney General. I am confident that Ms. Moreno's significant experience will be put to good use when she is confirmed to return to the Justice Department.

I congratulate Ms. Moreno and her family on her confirmation today. I thank her many supporters for helping to free this nomination for Senate consideration.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Ignacia S. Moreno, of New York, to be an Assistant Attorney General?

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Delaware (Mr. CARPER), and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. DEMINT), the Senator from Georgia (Mr. ISAKSON), and the Senator from Ohio (Mr. VOINOVICH).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted ''yea.''

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

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 341 Leg.]

YEAS—93

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

NOT VOTING—7

Byrd	DeMint	Voinovich
Carper	Isakson	
Chambliss	Landrieu	

The nomination was confirmed.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

MILITARY CONSTRUCTION, VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

The PRESIDING OFFICER. The Senate will now proceed to the consideration of H.R. 3082, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3082) making appropriations for military construction, the Department Of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

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

AMENDMENT NO. 2730

Mr. JOHNSON. Mr. President, I call up amendment No. 2730.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. JOHNSON], for himself and Mrs. HUTCHISON, proposes an amendment numbered 2730.

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

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

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

Mr. JOHNSON. Mr. President, I am pleased to present the fiscal year 2010 Military Construction, Veterans Affairs, and Related Agencies appropriations bill. The bill was unanimously reported out of committee on July 7. It is a well balanced and bipartisan measure, and I hope all Senators will support it.

I thank my ranking member, Senator HUTCHISON, for her help and cooperation in crafting the bill. Senator HUTCHISON's dedication to America's veterans and to our military forces has been a tremendous asset in developing this bill. I also thank Chairman INOUYE and Vice Chairman COCHRAN for their support and assistance in moving this bill forward.

The Military Construction and Veterans Affairs bill provides critical investments in capital infrastructure for our military, including barracks and family housing; training and operational facilities; and childcare and family support centers. In addition, it fulfills the Nation's promise to our veterans by providing the resources needed for the medical care and benefits that our veterans have earned through their service.

The bill before the Senate today provides a total of $134 billion in funding for fiscal year 2010. This includes $76.7 billion in discretionary funding—$439 million over the budget request; $1.4 billion for overseas contingency operations to support our troops in Afghanistan, and $56 billion in mandatory funding for veterans programs.

In addition, I am pleased to report that, for the first time, the bill before us contains $48.2 billion in advance appropriations for veterans medical care for fiscal year 2011. This funding will ensure that the VA has a predictable stream of funding and that medical services will not be adversely affected should another stopgap funding measure be needed in the future. As an original cosponsor of the legislation authorizing advance appropriations for veterans health care, I am particularly pleased that Senator HUTCHISON and I were able to provide the funding in this bill to implement this important legislation.

Other funding priorities in the bill include $53 billion in discretionary funding for veterans programs, $150 million over the budget request and $3.9 billion more than last year; $45 billion for veterans' medical care, $4.2 billion over last year; $23 billion for military construction, $286 million over the President's budget request; $1.3 billion for Guard and reserve construction projects, $264 million above the budget request, and $279 million for related agencies, including the American Battle Monuments Commission and Arlington National Cemetery.

For fiscal year 2010, the bill provides $53.2 billion in discretionary funding for veterans programs, an increase of $150 million over the budget request and $3.9 billion over last year. This includes $44.7 billion for veterans medical care, an increase of $4.2 billion over last year.

The veterans funding also includes $250 million requested by the President for rural health care, continuing an initiative the committee began last year. To further improve outreach to veterans in rural areas, including Native Americans, the bill provides $50 million above the budget request for a new rural clinic initiative to serve veterans in rural areas currently underserved by VA facilities.

For military construction, the bill provides $23.2 billion, $286 million over the President's budget request. This includes nearly $1.3 billion for Guard and Reserve projects, $264 million above the budget request. As so many of us know, our Reserve components have provided unparalleled support to their active component counterparts in operations around the globe. Providing quality infrastructure for the Guard and Reserve is only a small token of our appreciation.

In all, the military construction projects included within this bill are as diverse as the individuals serving our Nation—from building a field training facility in North Carolina, to constructing a military school in Europe; from developing a military health clinic in Washington State to providing dining halls in forward operating locations in Afghanistan.

For the first time since the war in Afghanistan began; the President has requested war-related funding as part of the regular budget process. This year, we have incorporated projects for Afghanistan into the normal budget order by providing an overseas contingency operations account to support war fighting operations. Within this account, we supported the President's budget request of $1.4 billion for military construction projects at 22 forward operating locations in Afghanistan.

For military family housing, the bill provides $2 billion as requested. The budget request for family housing is $1.5 billion below the fiscal year 2009 enacted level, due primarily to the nearing completion of the military's housing privatization initiative and subsequent reductions in operating expenses. The privatization of military family housing has been a good news story for our military families and the American taxpayers. Our military families will get first rate housing while at the same time reducing construction and maintenance costs to the military.

Our committee mark also includes funding to complete previous and ongoing base closure actions. This bill contains $7.5 billion for BRAC 2005 as requested and $421.8 million for BRAC 1990, a $25 million increase above the request. The BRAC 2005 request is $1.3 billion below the fiscal year 2009 enacted level, reflecting reduced construction requirements.

The bill also includes $276.3 million as requested to fund the NATO Security Investment Program, NSIP. This program provides the U.S. funding share of joint U.S.–NATO military facilities.

Two military construction programs of particular importance to me are the Homeowners Assistance Program, HAP, which provides mortgage relief to military families required to relocate, and the Energy Conservation Investment Program. Building on an expansion of the HAP program that was funded in the stimulus bill, this bill adds $350 million to complete the funding requirement to temporarily extend HAP benefits to all eligible military families who have suffered losses on home sales due to the mortgage crisis. The additional funding also supports the permanent extension of HAP benefits to wounded warriors who must relocate for medical reasons and to surviving spouses of fallen warriors. As everyone knows, the mortgage crisis has had a devastating impact on many Americans, and our military families are not immune from the collapse in the housing market. In particular, military families have been adversely impacted when forced to sell their homes at a loss when required by the military to relocate either within the United Stated or overseas. In such circumstances, our military men and women do not have the luxury of waiting for the housing market to recover.

The Energy Conservation Investment Program—ECIP—is designed to promote energy conservation and efficiency, including investments in renewable and alternative energy resources, on our military installations. The subcommittee has added $135 million in funding to the President's budget request to provide for such innovations. Our bill also includes language urging the Department of Defense to develop a more comprehensive strategy to address energy conservation, energy efficiency and energy security. While I am encouraged by the efforts of the services at finding ways to reduce energy use on military installations, I worry that the Department as a whole does not have a single point of coordination that will ensure that innovative ideas and projects are shared across all of the services and within the Department.

This bill includes $26.9 million for projects at active duty installations and Guard facilities in my home State of South Dakota. This includes $14.5

million to expand the Deployment Center at Ellsworth Air Force Base; $7.89 million for the Army and Air Guard Joint Force Headquarters Readiness Center at Camp Rapid; $1.95 million for a National Guard troop medical clinic addition at Camp Rapid; $1.3 million to construct an above-ground magazine storage facility for the Air Guard at Joe Foss Field; and $1.3 million for a munitions maintenance complex addition, also for the Air Guard at Joe Foss Field.

Once again we have made veterans a top priority this year by including $53.2 billion in discretionary funding for the VA, an increase of $150 million over the budget request and $3.9 billion over last year. The Department is expecting to treat almost 6.1 million patients in fiscal year 2010; therefore we have targeted the bulk of the discretionary funding for the three medical care accounts, which total $44.7 billion this year. This includes a $3.7 billion increase over fiscal year 2009 for the medical services account.

The challenges that face the VA in the 21st century are daunting but not insurmountable. These include modernizing and transforming antiquated systems; treating combat injuries, many of which leave no physical scars; and adjusting services to meet changing demographics. The VA will have to balance the services required by aging veterans, such as long term care, with the needs required by a surge of new veterans from the wars in Iraq and Afghanistan. Moreover, as more and more women are choosing the Armed Forces as a career, the VA will need to transform from a culture dominated by services designed for men to one that includes services specific to the health care needs of women veterans. To that end, this bill includes $183 million to specifically address the unique health care needs of women veterans.

Veterans Affairs Secretary Shinseki has laid out an ambitious plan to transform the Department of Veterans Affairs into a 21st century organization. The bill before the Senate is a step in that direction by providing the VA with the resources needed to address these and other issues. For example, the bill provides $6 billion for long-term care, a $663 million increase from last year. The funding includes both institutional and home based care programs. In addition, the bill provides $115 million for grants for the construction of State extended care facilities, $30 million over the budget request. This program provides grants to State veterans homes to construct new facilities or to correct life threatening code violations.

The bill also includes $2.1 billion, $460 million above fiscal year 2009, for medical care for veterans of the wars in Iraq and Afghanistan. The VA has seen a surge of these veterans and expects to see over 419,000 this year alone, a 61 percent increase in patient load since 2008. Many of these veterans suffer combat specific injuries such as polytrauma, post traumatic stress disorder, and traumatic brain injury. The resources provided in the bill are essential to the VA's ability to treat these veterans.

As a Senator from a large, highly rural state, I have been emphatic that the VA must change its way of doing business when it comes to providing services to veterans who live well outside urban areas. Last year, as chairman of the subcommittee, I established a new rural health initiative at the VA, and provided $250 million specifically for the Department to address the gap in services that exists in rural areas. This year's bill includes an additional $250 million, as requested by the President, to continue this program. To further bolster the rural health effort, I added $50 million to the bill for a new Rural Clinic Initiative. This will provide the VA with additional funding to establish Community Based Outpatient Clinics—CBOCs—in rural areas that are currently underserved by VA health care facilities.

According to the VA, roughly 131,000 veterans are homeless on any given night. This is 131,000 too many veterans. Secretary Shinseki has made combating homelessness a top priority at the VA. To assist, the bill includes $3.2 billion for health care and support services for homeless veterans. This includes $500 million in direct programs to assist homeless veterans.

The bill also puts a priority on reducing the time it takes for veterans to receive the benefits they have earned. Funding is included which will provide the Veterans Benefits Administration with the resources to hire 1,200 new claims processors in fiscal year 2010. This will bring the compensation and pensions workforce level to 14,549 in 2010 as compared to 7,550 in 2005. This increased workforce will be necessary as claims for benefits are estimated to reach almost one million in fiscal year 2010.

The last two issues I will highlight deal with infrastructure, both capital and electronic. The VA operates the Nation's largest integrated health care system in the United Sates. It does so through a system of 153 hospitals and 1,002 outpatient clinics. These buildings must be maintained at the highest level to ensure patient safety and high quality medical care. Once again this year, the bill contains additional funding above the budget request to ensure that VA facilities do not become dilapidated and that the backlog of code violations identified in facility condition assessment reports is addressed. In total, this bill provides $1.3 billion, $300 million above the President's request, to address critical non-recurring maintenance at existing VA hospitals and clinics. Additionally, $1.9 billion is provided for the construction of new VA hospitals and clinics. The bill also includes $685 million for minor construction projects, $85 million above the President's request.

Funding for bricks and mortar and recapitalization is not the only infrastructure investment made in the bill. In the 21st century, health care delivery is dependent on modern technology and robust information technology. Therefore, we have included $3.3 billion for the Department to modernize its information technology programs, including its electronic medical records, a new paperless claims system, and systems designed for seamless integration of medical and service records with the Department of Defense.

Finally, the bill provides $279 million for a handful of small but important related agencies, including the American Battle Monuments Commission and Arlington National Cemetery.

Next Wednesday is Veterans Day, a day on which the Nation honors all those who have served in the armed forces of the United States. I can think of no better way to express the Senate's gratitude for the service of our veterans and the sacrifices they have made for our country than to pass this bill without delay. Again, I thank my ranking member for her support in crafting the bill. I also thank the staff of the subcommittee—Christina Evans, Chad Schulken and Andy Vanlandingham of my staff, and Dennis Balkham and Ben Hammond of the minority staff—for their hard work and cooperative effort to produce this bill.

Mr. President, I want to express my sorrow at the tragic events that unfolded at Fort Hood, TX, this afternoon. I extend my condolences to the troops and families at Fort Hood, and to my ranking member Senator HUTCHISON. Our thoughts and prayers are with her and with the Fort Hood community in this difficult time.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, suddenly I find myself a member of the powerful Appropriations Committee, but it comes under a dark cloud indeed. The distinguished chairman, who does such a great job in behalf of our veterans and military construction, has pointed out the terrible tragedy that has happened at Fort Hood. So I am here standing in, if you will, for Senator HUTCHISON, who does such a good job, in partnership with my colleague and my friend and my neighbor, whom I respect a great deal. So I appreciate the opportunity to speak on the bill before us.

As Senator HUTCHISON departs as early as she possibly can to get to Texas to assist in the challenge of this great tragedy, we wish her well, and our prayers are with her and all the people at Fort Hood and all the people in Texas.

As the distinguished chairman has stated, a lot of time and energy have gone into putting this legislation together. Senator HUTCHISON wanted to thank Chairman JOHNSON and his staff for working hard to address the needs of our servicemembers and veterans. I am going to repeat just a couple of things that are in the full statement of the distinguished Senator from Texas.

As Chairman JOHNSON has pointed out, the Military Construction, Veterans Affairs, and Related Agencies appropriations bill includes for fiscal year 2010 $76.7 billion in discretionary spending, $23.2 billion for military construction, $53.2 billion for our veterans, $55.8 billion in mandatory spending for veterans' benefits, and $1.4 billion for military construction projects to assist our troops in Afghanistan in their fight against terrorism.

A lot of the figures Senator HUTCHISON has here have been mentioned by the distinguished chairman, so I won't go into those, but Senator HUTCHISON wanted to indicate and wanted to highlight that she was very pleased that the bill provides full funding for the base realignment and closure actions. The funds are essential to bringing our troops home, predominantly from Europe and Korea, and basing them in the United States. By fully funding BRAC, we can help the Department of Defense to stay on schedule to achieve this goal by September of 2011.

Senator HUTCHISON would also like to highlight that the legislation contains the necessary funds for the Defense Department program especially designed to help our servicemembers who were forced to relocate in this harsh economic housing environment—I might add that we see this at Fort Leavenworth and Fort Riley as well in Kansas—the Homeowners Assistance Fund. Chairman JOHNSON has been absolutely instrumental in making this program a success.

The legislation contains about $1.4 billion in emergency funding for the war in Afghanistan. Senator HUTCHISON, myself—almost every Senator knows that the policies of this conflict have been passionately debated on the Senate floor in recent days, but I am sure we can all agree that independent of our views on the war or the strategy of that national security threat, we must provide the infrastructure needs of our sailors, soldiers, airmen, and marines, who, by the way, celebrated their birthday today. This bill does just that.

In addition, I would point out that the distinguished ranking member wanted to express her strong commitment to making sure that our NATO allies—our NATO allies—fund their fair share of these joint projects.

The chairman has already gone over the figures for the Department of Veterans Affairs, although Senator HUTCHISON did want to point out that it includes funding to enhance outreach and services for mental health care, combat homelessness, further meet the needs of women veterans, and expand our health care to rural areas—something the chairman knows all about, something which I like to think I know something about, and something that I know Senator HUTCHISON knows about a great deal.

Finally, we have included $48.2 billion in advanced appropriations for veterans' medical care for fiscal year 2011. This funding will allow the VA to better plan the budget for our veterans' health care.

Congress has shown its resolve time and again to care for our Nation's veterans and provide the infrastructure for our men and women in uniform. We all owe them a debt of gratitude and will do our part to take care of them.

So I ask my colleagues to support this bill. We have no objection on this side.

Again, I wish to thank the distinguished chairman for all of his work and leadership.

I yield the floor.

(At the request of Mr. ROBERTS, the following statement was ordered to be printed in the RECORD.)

• Mrs. HUTCHISON. Mr. President, as the ranking member of the Military Construction, Veterans Affairs, and Related Agencies Subcommittee, I appreciate the opportunity to speak on the bill before us. A lot of time and energy has gone into putting this legislation together, and I would like to thank Chairman JOHNSON and his staff for working hard to address the needs of our service members and veterans.

This is a bipartisan bill, and I can say with great confidence that this subcommittee makes sure that the priorities of all Senators, on both sides of the aisle, are evaluated and taken care of to the best of our ability.

As Chairman JOHNSON has pointed out, this Military Construction, Veterans Affairs, and Related Agencies Appropriations bill includes, for fiscal year 2010: $76.7 billion in discretionary spending, including $23.2 billion for military construction and $53.2 billion for our veterans; $55.8 billion in mandatory spending for veterans' benefits, and $1.4 billion for military construction projects to assist our troops in Afghanistan in their fight against terrorists and insurgents.

This legislation provides $23.2 billion for the Defense Department's military construction program. I am concerned that the DOD requested over $7 billion less for 2010, a 25 percent decrease from the previous year, and I hope this trend does not continue. Of all the funds we provide for our government, supporting the infrastructure needs of our soldiers is one of the most important I can think of.

I am pleased that our bill provides full funding for the Base Realignment and Closure actions at almost $7.5 billion. These funds are essential to bring our troops home, predominantly from Europe and Korea, and basing them in the United States. By fully funding BRAC we can help the DOD stay on schedule to achieve this goal by September 2011.

I wish to point out as well that our legislation contains the necessary funds for the Defense Department program specially designed to help our service members who are forced to relocate in this harsh economic housing environment, the Homeowners Assistance Fund. Chairman JOHNSON has been instrumental in making this program a success.

This bill funds the Guard and Reserve at $264 million above the President's request. A significant number of the troops fighting the war on terror consist of Guard and Reserve members, so I am very glad we were able to provide additional resources for them.

This summer, as our Nation was preparing for its Fourth of July celebrations, I had the honor of visiting our troops in Iraq and Kuwait. I listened to their concerns and saw first hand how the facilities we provide in this bill are instrumental in their ability to carry out their mission.

This legislation contains almost $1.4 billion in emergency funding for the war in Afghanistan. The policies of this conflict have been passionately debated on the Senate floor in recent days. But I am sure we can all agree that—independent of our views of the war—we must provide the infrastructure needs of our sailors, soldiers, airmen and marines. This bill does that.

In addition, I would like to point out that this subcommittee is committed to making sure that our NATO allies fund their fair share of all joint projects. I can assure my colleagues, and the American people, that every MILCON facility shared by allied forces is evaluated for NATO reimbursement and that we push hard for cost sharing at every possible opportunity.

Our bill provides $109 billion for the Department of Veterans Affairs, a 14 percent increase above fiscal year 2009. Veterans' healthcare is funded at $45 billion, and medical research is funded at $580 million. This bill also makes a significant investment in VA infrastructure needs, with nearly $5 billion for the maintenance and repair of VA medical facilities and $2 billion in new construction projects.

The Veterans Benefits Administration is funded at $56 billion to administer compensation, pension, and readjustment benefits earned by our veterans. We have fully funded the new education benefits provided by the post–9/11 educational assistance program, and included funding for 1,200 new claims processors to reduce the claims backlog.

This legislation addresses the many demands facing the Department of Veterans Affairs. It includes funding over 2009 levels to enhance outreach and services for mental health care, combat homelessness, further meet the needs of women veterans, and expand access to healthcare in rural areas. Finally, we included $48.2 billion in advance appropriations for veterans' medical care for fiscal year 2011. This funding will allow the Veterans Health Administration to better plan and budget for veterans' health care.

Congress has shown its resolve time and again to care for our nation's veterans and provide the infrastructure for our men and women in uniform. We

owe all of them our gratitude, and we will do our part to take care of them. I ask my colleagues to support this bill.

Again, I would like to thank Senators INOUYE and COCHRAN for their support putting this bill together, and I would especially like to thank Chairman JOHNSON for his leadership and the hard work of his staff: Christina Evans, Chad Schulken, and Andy Vanlandingham.●

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

AMENDMENT NO. 2732 TO AMENDMENT NO. 2730

Mr. JOHNSON. Mr. President, I send an amendment to the desk on behalf of myself and Senator HUTCHISON and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. JOHNSON], for himself and Mrs. HUTCHISON, proposes an amendment numbered 2732 to amendment No. 2730.

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

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

The amendment is as follows:

(Purpose: To make a technical amendment regarding the designation of funds)

On page 56, between lines 9 and 10, insert the following:

SEC. 401. Amounts appropriated or otherwise made available by this title are designated as being for overseas deployments and other activities pursuant to sections 401(c)(4) and 423(a)(1) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

Mr. JOHNSON. Mr. President, this amendment is a technical amendment which provides for the proper designation for title IV of the bill, Overseas Contingency Operations. This information was inadvertently left out of the bill. An amendment would correct this error.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSON. 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. JOHNSON. Mr. President, I believe it has been cleared by both sides. I ask unanimous consent that the amendment be agreed to.

Mr. ROBERTS. Will the chairman yield?

Mr. JOHNSON. Yes.

Mr. ROBERTS. The chairman has accurately described the contents of the amendment. We have no objection and ask that it be agreed to.

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

The amendment (No. 2732) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BROWN. Mr. President, with respect to amendment No. 2732, I move to reconsider and table the vote on adoption of the amendment.

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

Mr. CONRAD. Mr. President, section 401(c)(4) of S. Con. Res. 13, the 2010 budget resolution, permits the chairman of the Senate Budget Committee to adjust the section 401(b) discretionary spending limits, allocations pursuant to section 302(a) of the Congressional Budget Act of 1974, and aggregates for legislation making appropriations for fiscal years 2009 and 2010 for overseas deployments and other activities by the amounts provided in such legislation for those purposes and so designated pursuant to section 401(c)(4). The adjustment is limited to the total amount of budget authority specified in section 104(21) of S. Con. Res. 13. For 2009, that limitation is $90.745 billion, and for 2010, it is $130 billion.

On July 7, 2009, the Senate Appropriations Committee reported S. 1407, the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2010. The reported bill contains $1.399 billion in funding that the Senate Appropriations Committee intends to designate for overseas deployments and other activities pursuant to section 401(c)(4). An amendment has been offered that provides a designation consistent with section 401(c)(4). The Congressional Budget Office estimates that the $1.399 billion in budget authority will result in $145 million in new outlays in 2010. As a result, I am revising both the discretionary spending limits and the allocation to the Senate Committee on Appropriations for discretionary budget authority and outlays by those amounts in 2010. When combined with previous adjustments made pursuant to section 401(c)(4), $129.999 billion has been designated so far for overseas deployments and other activities for 2010.

I ask unanimous consent that the following revisions to S. Con. Res. 13 be printed in the RECORD.

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

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 401(c)(4) TO THE ALLOCATION OF BUDGET AUTHORITY AND OUTLAYS TO THE SENATE APPROPRIATIONS COMMITTEE AND THE SECTION 401(b) SENATE DISCRETIONARY SPENDING LIMITS

[In millions of dollars]

	Current allocation/limit	Adjustment	Revised allocation/limit
FY 2009 Discretionary Budget Authority	1,482,201	0	1,482,201
FY 2009 Discretionary Outlays	1,247,872	0	1,247,872
FY 2010 Discretionary Budget Authority	1,218,252	1,399	1,219,651
FY 2010 Discretionary Outlays	1,376,050	145	1,376,195

HEALTH CARE REFORM

Mr. BROWN. Mr. President, I rise again this evening, as I have many days in the last couple of months, to share with my colleagues letters from people in Ohio—from Bucyrus, Lima, Springfield, and Zanesville—people who are sharing their stories with us.

As I have been in the Senate now for 3 years, it occurs to me that perhaps more often than not, we talk about policy up here, but we simply do not pay enough attention to individual problems and individual people. That is why a lot of people think their elected officials are out of touch with them. These letters really do share with us where we are, what we ought to do, and how we should respond as we move forward on the health issue.

This letter comes from Ann from Montgomery County. She writes:

Our insurance premiums have nearly tripled in the last 6 years, going from $500 per month to $1,500 per month. At the same time, none of our benefits have increased. Since we bought our policy, we have paid the insurance company $68,000 for the insurance. Anthem's total spending for my family's claims since we bought the insurance: $4,064.24. Anthem's profit from my family: $64,000. Anthem's CEO's total compensation last year alone: $10 million.

Ann from Montgomery County, Dayton, Huber Heights, Centerville, Oakwood—that area of the State, southwest Ohio. Obviously, Ann is angry and frustrated with what she has seen. She has paid so much for insurance, gotten so few benefits, and she sees Anthem's CEO taking down $10 million a year.

What we see repeatedly in the insurance industry, the average CEO salary for the biggest 11 insurance companies is $11 million a year. Insurance company profits have gone up more than 400 percent in the last 7 years.

The way they make this money is this kind of business model where they hire a huge bureaucracy, a bunch of bureaucrats to keep people from buying insurance if they are sick. They discriminate based on gender. They discriminate based on age. They discriminate based on disability. In some cases,

they use the excuse of preexisting condition to keep people from buying policies, including, believe it or not, women who have been victims of domestic violence. Some insurance companies consider that a preexisting condition. If their husband hit them once, they might hit them again, and that would be a cost to the insurance company. They cannot get insurance. Sometimes a woman who has had a C-section is a preexisting condition. She cannot get insurance because if a woman has had a C-section, she might get pregnant again and need another one. That is too expensive. They don't give her insurance. That is how Anthem and these other companies make these kinds of profits, because they hire bureaucrats to keep you from buying insurance if you have a preexisting condition.

On the other end, they hire more bureaucrats to reject your claims when you have been sick. Oftentimes the insurance company records show that about 30 percent of all claims are rejected initially. Sometimes they are appealed and then they pay these claims. But then you as the patient or you the family of a sick husband, wife, child have to spend your time on the phone fighting with the insurance company while at the same time you are trying to nurse your husband, wife, child, or mother. What kind of system is that, that we allow these insurance companies to do that.

What I found in these letters, in the last 3 months I have been doing this on the Senate floor, is a couple of things. One is, consistently people were pretty happy with their insurance, if you asked them a year or two earlier, but then they got sick and they found out their insurance wasn't what they thought it was. That frustration and anger builds from that.

Another thing I found is that people in their late fifties and sixties have lost their insurance, they have lost their jobs, their insurance is canceled or their employers cannot afford it because they are a small business, they don't have insurance, they are 58, 62 years old, and they just hope they can hang on until they are Medicare eligible or until they can get a stable public plan, such as a public option, such as Medicare.

I will share two more letters.

John from Richland County—that is my home county. I grew up in Mansfield. There is Shelby, Lexington, Butler—north central Ohio.

> Health care reform will not be achieved unless a public option is in place to compete with insurance carriers. I recently retired after 45 years as a family physician. If government-run medicine is so bad, why should insurance companies object to the competition? Cost and treatment is already controlled by the insurance providers whose only motive is profit.
>
> Allowing the insurance industry to dictate terms of cost and treatment has not worked and will not work. Please fight for a public option.

John, a physician of 45 years, absolutely gets it. He says something interesting. I hear opponents of the public option, a lot of conservatives say government cannot do anything right, they mess everything up, and then they say that if we have a public option, they will be so efficient that they will run private insurance out of business. So which is it—the government cannot do anything right or the government is so efficient, it is going to run private insurance out of business?

The point is, insurance executives' average salary is $11 million. Insurance companies' profits are up 400 percent in the last 7 or 8 years. Insurance companies don't want the public option because you know what will happen—their profits won't be quite as high. They won't go up 400 percent. Salaries won't be as high because they have competition from the public option. They know they will be in a situation where life is not going to be quite as good for insurance companies and insurance executives. That is why they don't like the public option. That is why they fight the public option. And we know that is why the public option will work. It will mean more choice for consumers.

In southwest Ohio, two companies have 85 percent of the insurance policies. A public option will provide competition, will stabilize prices, which means prices will come down and quality will be better. If you have two companies controlling 85 percent of the business in Cincinnati, Batavia, Lebanon, Hamilton, Littleton, Fairfield, or any of those counties, you have two companies controlling 85 percent of the business, you know the quality is lower and prices are too high.

Let me conclude—Senator CASEY is here. He more than any single Senator has spoken out strongly and fought successfully to make sure this health care bill works for our Nation's children, from when we passed the SCHIP back months ago to the health care bill on which my colleague from Pennsylvania has done remarkable work. Let me read one more letter and turn to him.

Cheryl from Cuyahoga County in northern Ohio, the Cleveland area, writes:

> My daughter is paying costly health care out of her own pocket to treat her depression. Despite getting a new job, she was told her condition is preexisting and would not be covered.
>
> After struggling for a year to find a good job, she doesn't need this preexisting condition to shadow her.
>
> I, too, have a preexisting condition of breast cancer. Please stop insurance companies from denying insurance due to preexisting conditions.

This letter again shows this insurance reform—our health care bill makes so much sense. I am hearing from hundreds and hundreds of them from Gallipolis, Pomeroy, along the Ohio River to Lake Erie, Lake County, to the Indiana border, Troy, Preble County—all over—that too many people are denied coverage because of a preexisting condition.

Why does it make sense that people who are sick or maybe are going to get sick cannot get insurance? Why does it make sense that they would have to pay so much, they simply cannot qualify or literally cannot get it no matter how much they pay?

One of the important things about our bill is that it will outlaw—there will be no more exclusions for preexisting conditions. Nobody will be prohibited from getting insurance because of a preexisting condition, including women who have been victims of domestic violence, women who have had C-sections, men who have had colon cancer, whatever, No. 1.

No. 2, nobody will be denied care because of discrimination, because of their disability, because of their age or their gender or their geography.

No. 3, nobody will have their insurance policy rescinded. That is what the insurance companies say when they take away your insurance. Nobody will have their policy rescinded because they got sick and it was a very expensive illness they had and the insurance companies want to cut them off.

In addition to these changes in the law that we are going to do with insurance reform, the public option will make sure these rules are enforced, that people simply can't game the system. The insurance companies will not be able to game the system the way they have.

It makes so much sense to pass this bill. It is going to mean people who have insurance and are happy with it will be able to keep their insurance and have consumer protections. Small businesses will get help with tax incentives and other things to insure their employees. And it will mean those without insurance can get insurance and have the option of going to Medical Mutual, CIGNA, BlueCross, Aetna, WellPoint, or the public option and have that choice.

Mr. President, I yield the floor.

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

Mr. CASEY. Mr. President, I rise tonight to speak about the health insurance reform bill that will eventually come before the Congress. We have a process underway in the Senate that is still playing out. We don't have a bill, but I think we are cognizant of the fact that we need to talk about the challenge we face with regard to health care, as well as talk about some good ideas to confront this challenge.

I commend my colleague from Ohio, Senator BROWN, who has led the fight on making sure the public option is a priority. From day one, he not only has led this fight, but also from day one, way back in the summer when we were actually working on language in the Health, Education, Labor,and Pensions Committee, he and others sat down to actually rewrite that section. We are grateful for his leadership and for his ability to relate to us what a public option means to real people—not the concept, not only the policy of it, but what

it means to real people and real families. I commend him for that great work.

One of the areas I have tried to spend as much time as possible on is the question of what happens with regard to our children. Will children at the end of this process be better off or worse off, especially in the context of children who happen to be vulnerable because of income? We are concerned about poor children and children with special needs in particular.

I believe one of the principles—or maybe the better word is a goal—that we must meet at the end of the road, when we have a bill that gets through both Houses of Congress and goes to the President, when a bill gets to the President of the United States, President Obama, for his signature—and I believe we will get there; it is going to take some time and we are going to be continuing to work very hard in the next couple of weeks to get that done. But when that bill gets to President Obama, I believe we have to make sure in this process over these many months of work—and for some people, many years—we have to make sure that bill ensures that no child, especially those who are vulnerable, is worse off. I believe we can get there. I believe we must get there. I believe we have an obligation, especially when it comes to vulnerable children, poor children, and those with special needs.

To set forth a foundation for that, I submitted a resolution several months ago, resolution 170. I won't read it or review it tonight, but it was a resolution that focused on that basic goal of making sure no child was worse off. I was joined in that resolution by Senator DODD, then-chairman of our health care reform hearings, this summer. Senator ROCKEFELLER also was a cosponsor of this resolution, someone who has led on not just health care issues in the Finance Committee but also in a very particular way he stood up for children, as has Senator DODD—both Senators in their many years in the Senate.

We just heard from Senator BROWN. He was a cosponsor of this joint resolution for children, as well as Senator SANDERS from the State of Vermont and Senator WHITEHOUSE from Rhode Island. Those five Senators joined with me in this resolution which I believe is the foundation for what we have to do with regard to children.

The chart on my left is a summation of some of the things we just talked about. First of all, this first point with regard to our children, children are not small adults. It seems like a simple statement. It seems very much self-evident, but, unfortunately, we forget that. I think we forget it once we become adults. But even in the context of health care reform, we cannot just say this is a health care strategy or program or manner of delivering care or a treatment option or a way to cover more Americans with regard to health care, so if it applies to an adult it will work for children. Unfortunately, because they are not simply small adults, we have to have different strategies for children that differ from the way we approach the challenge in providing health care for adults.

The second bullet: Children have different health care needs than do adults. I think that is a basic fundamental principle; that children have to be approached in a different way. The treatment is different, the prevention strategies are different, and sometimes the outcome of a health care treatment or strategy is different.

It is also critical that all children, particularly those who are most disadvantaged, get the highest quality care throughout childhood. And that is the foundation of that resolution.

When it comes to health care reform generally, but in particular with regard to our children, we have to get this right. We can't just say: Well, we tried, and we tinkered with some details or some programs, and we did our best. When it comes to health care for children, not only for that child or his or her family or the community they live in—and we tend to forget this—but also our long-term economic strength is predicated in large measure, in my judgment, on how we care for our children, and especially the kind of health care our children will receive. So we have to get this right for our kids, for their families, and for our economy long term.

Fortunately, we have made great strides over the last 15 years. Really even less, maybe the last 12 years we have made great strides on children's health insurance. President Clinton signed a law passed by Congress in 1997 creating a nationwide Children's Health Insurance Program—the so-called CHIP program. In that case, we had something that had its origin in the States.

My home State of Pennsylvania started one of the largest, if not the largest, children's health insurance efforts in the Nation, and that was built upon by way of Federal legislation so that we now have had a program in existence since about 1997 nationally where millions of children have health care because we made them a priority.

In Pennsylvania, for example, we have had, fortunately, a diminution, a decreasing number of children who are uninsured, to the point where last year, when there was a survey done for the State of Pennsylvania, the uninsured rate for children was 5 percent. That is still too high, but it is lower than it used to be. We want to bring that, obviously, to zero, but we have a 5-percent rate of uninsured children in Pennsylvania and 12 percent uninsured for people between the ages of 19 and 64.

For children and for citizens over the age of 64—65 and up—we have had strategies for both those age groups; children more recently, with regard to children's health insurance, as well as Medicaid for low-income children, and also, we have had Medicare for our older citizens. But the problem is that age category in the middle, that vast middle age group of 19 to 64. We haven't had a strategy recently, or over many decades, and that is one of the many reasons we are talking about health insurance reform for everyone but especially for those who are in that age category.

With regard to children, we have to make sure what we know works stays in place. We have plenty of data to show that children with health care coverage do better than children without health care coverage. That is irrefutable. It is absolutely indisputable now. I don't think anyone would dispute that as a matter of public policy. Children with insurance are more likely to have access to preventive care.

A major part of our reform effort—and the major part of the HELP bill we passed this summer—is all about prevention. Children in public programs are 1½ times more likely to obtain well-child care than uninsured children. What does that mean? Well, it is simple. The experts tell us children enrolled in the CHIP program—or SCHIP, as we sometimes call it—in their first year of life have six well-child visits to the doctor. That is fundamentally important. It can alter in a positive sense that child's destiny. Their future can be determined in the first couple of weeks and months, and certainly the first year of life. It is good for that child in the first year of life to go to the doctor at least six times for a well-child visit, as they do in the CHIP program. It is important that we have prevention strategies in place for that child in the very early months of that child's life, but certainly in the first year.

Here is another chilling statistic. Uninsured children are 10 times more likely to have an unmet health care need than insured children—not double or triple but 10 times more likely to have an unmet health care need.

We hear some people in this debate say: Well, that is about someone else. That is about some other family, someone else's child. That is not our problem.

Well, it actually is your problem. Even if you have no compassion, even if someone out there says: Well, that is not my problem; that is someone else's problem.

It is your problem because for every child who has no insurance, and as a result has no well-child visits to the doctor or does not get to the dentist or does not get preventive care, there is, in some way, an adverse impact on our economy. Think about it long term. If you are running a company, who do you think will be a stronger employee for you or a more productive employee, someone who got good health care in the dawn of their life—as Hubert Humphrey used to say—or someone who didn't get that kind of health care or nutrition or early learning?

All these things we talk about have ramifications for our long-term economy because of our workforce. To have a high-skilled workforce, you have to have access to health care. So that number of 10 times more likely to have an unmet health care need for the uninsured child versus the child with insurance is chilling. It is one of those numbers that alone should compel us, should motivate us to pass this bill.

Insured children are better equipped to do well in school. Uninsured children, with poorly controlled chronic diseases, such as asthma, can suffer poor academic performance if their health care condition causes them to miss many days of school. We know that. This is not news, but, unfortunately, we have allowed conditions to persist in our system where a child doesn't get the kind of care they need, and that allows their asthma or other condition to be made worse. Insurance improves children's access to the medications and treatments they need to control chronic diseases, allowing them to miss fewer days of school. We know that is the case.

The chart on my left gives a brief overview of a Johns Hopkins University study published in the New York Times on October 30, just a few days ago, which states that hospitalized children without insurance are more likely to die. So this isn't just about a child getting a slower start in life because they didn't have health care or a child not having a B average in school because they didn't get health care or missing days from school. All of that is terrible for that child and for that family, but this is a lot worse than that. This is literally about the life and death of a child, according to this study and others as well.

Mr. President, I ask unanimous consent to have printed in the RECORD an article dated October 30, 2009, in the New York Times with the headline: ''Hospitalized Children Without Insurance Are More Likely to Die, a Study Finds.''

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

(See Exhibit 1.)

Mr. CASEY. This is what the article says:

> Researchers at Johns Hopkins Children's Center analyzed data from more than 23 million children's hospitalizations in 37 states from 1988 to 2005.

This wasn't a quick survey, Mr. President. This was a detailed study of millions of records over that long a time period. Continuing the quote:

> Compared with insured children, uninsured children faced a 60 percent increased risk of dying, the researchers found.

So this research showed a 60-percent increased risk of dying. That is what we are talking about. This isn't theoretical. This isn't some public policy argument we have pulled down from a public policy report. This is about life and death for children. We are either going to stay on the course we have been on with regard to children, making improvements, strengthening a program like CHIP, or we are not. I think it is vitally important that we continue to make progress as it relates to children's health insurance.

So this is fundamental to this discussion about health care reform, and sometimes a study or a chart or a public policy report doesn't tell us nearly enough. Sometimes the life of a person says it best.

Senator BROWN has been highlighting letters that he has received from people in the State of Ohio, and people in Pennsylvania have written to me or sent an e-mail or appeared in my office and relayed their own stories. In this case, when it comes to real families and real children, it is especially important to highlight them.

I just have one example to share tonight. I received a letter from a Pennsylvania resident named Denise Lewis. Denise has four children who are now older, but when she contacted us, she was recalling what she went through with her four children in terms of health care. All through their childhood, Denise and her husband struggled with being either uninsured or underinsured. What health insurance they have had has always been employer-based but often was limited and only covered hospitalizations. Her family couldn't afford the premiums on more expensive coverage, and much of this, unfortunately, was before the Children's Health Insurance Program was in effect. Her family never qualified for any other kind of assistance.

She said she would work a second job part time as a waitress so they could afford food and to pay off medical bills. Today, even though her youngest is 19 years old—her youngest child of the four is 19 years old today—she is still sending monthly checks to her pediatrician to pay for all the care her children received.

Imagine that, all these years later, because of the system we have. Goodness knows there are great parts to our system that we should celebrate and be proud of, but there are a lot of parts of our health care system which simply don't work for too many Americans and is hurting families, hurting businesses, and killing our ability to grow our economy long term, and this is one example.

Why should Denise Lewis or anyone have to worry like this, have to choose between food and getting medical care or paying for a hospital visit? Why should anyone have to pay off medical bills years and years later for children who are already grown?

At times, Denise said the medical care her children needed would actually determine what food the family ate that week. They managed to make ends meet but never had any money for extras of any kind.

Listen to this in terms of what Denise said, and these are her words:

> Wondering whether you should go to the doctor is completely different from wondering whether your kids should go to the doctor.

That is the nightmare that too many families are living through. There are those who say: Well, let's just think about it for another 6 months. Some are saying: Let's not pass a bill. Let's slow it down. It's too complicated. We can't do this.

For those who are saying that, I would ask them if they have ever had to face that decision—the question of what kind of care their child would get. Had they ever faced the dilemma of how much your family can eat in a particular week or can you pay for a doctor's visit?

Denise Lewis, one of her children had frequent ear infections as a baby, and more than once she would call the pediatrician and ask if she could get a prescription without coming to the office so she wouldn't have to pay for the office visit.

Why have we tolerated this, year after year and decade after decade, of people telling stories such as this? The Congress of the United States, year after year, has said we will get to that later; it is too complicated. Why should any parent, mother or father, single parent—why should any parent have to make those choices or say to a pediatrician can I get a prescription without coming to the office because I can't afford the office visit?

We are the greatest country in the world. We have all the benefits of the wonders of technology and great doctors and dedicated and skilled nurses, great hospitals and hospital systems, all this brainpower and talent and ability—ability to cure disease. Yet on the other side of our system we tell people you have to pay more for a doctor visit for your child. Why did we allow this to happen? Year after year, we have just allowed the problem to persist.

Our system has said to women, you should engage in some preventive strategy. With regard to breast cancer, you should get a mammogram. Then we say you have to pay for all or most of it. Why do we do that? Why should we allow that to continue?

I want to move to two more charts. I know I am over my time a little bit. Let me go to the next chart. I really believe, when we describe some of these challenges, we are talking about, really, a national tragedy, that the children in our country should be reduced to having the emergency room as their primary care physician or their doctor's office.

When we were growing up, we knew what it was like to go to the doctor, but for too many children the emergency room is the doctor's office. That is not good for the child because that usually means they are further down the road for a condition or problem; they are sicker and have more complications. It is also bad for how we pay for health care.

We also know the emergency room care by uninsured Americans with no place to go but an emergency room is one of the biggest drivers of the out-of-

control costs we often see in our system. That is why we need health care reform now.

We now cover about 7 million children in CHIP. Thankfully, fortunately, we reauthorized it in 2009. It kind of went by people pretty quickly, but that was a major achievement. That bill went through and the President, President Obama, signed it into law. By virtue of that one signature and the work that led up to that, those 7 million who are covered now by CHIP will double by 2013 to 14 million children who will be covered by that program.

But even with that reauthorization, there are still things that will challenge us with regard to the Children's Health Insurance Program. One of them is a failure that could take place over time where we do not strengthen the Children's Health Insurance Program.

I meant to highlight this chart as well: ''Uninsured low-income children are four times as likely to rely on an emergency department or have no regular source of care.'' That is the point I wanted to make about emergency room visits.

Finally, let me move to the fourth chart. Not only is this program, the Children's Health Insurance Program, a major success across the country, but it has reduced the rate of uninsured children by more than one-third. As we can see by this chart on my left, insuring children is something people across America strongly support. Prior to the amendments and the markup process in the Finance Committee this fall, there was a proposal to move the Children's Health Insurance Program into the health insurance exchange as part of the Finance Committee bill. Many members of that committee, and others like me and others, didn't think that was a good idea. Senator JAY ROCKEFELLER was another and, fortunately, he was on the Finance Committee. His amendment in that committee fortunately removed the Children's Health Insurance Program from the exchange.

Why was that important? The data is overwhelming that placing families that are covered by the Children's Health Insurance Program into that newly created insurance exchange would, in fact, increase their costs and decrease their benefits. There was a debate about it, but I think the Finance Committee did the right thing. By keeping the Children's Health Insurance Program as a stand-alone program that we know works—all the data shows it. It is not an experiment. It is not a new program. We have had more than a decade of evidence that shows that it works. We have to keep that in the final bill. We have to keep that as a stand-alone program, and we have some work to do to make sure that happens.

When you see the numbers here, an overwhelming three to one majority, 62 percent to 21 percent of Americans, would oppose the elimination of the Children's Health Insurance Program if they learned that a new health insurance exchange ''may be more costly for families and provide fewer benefits for children.'' We have to make sure when we get to the point of having a final bill worked out that we keep that in mind.

We know for now that we have a stand-alone program. Thank goodness that change was made. We know it works. But we have to do everything we can to strengthen the Children's Health Insurance Program, because in the coming years there will be recommendations to change it. There will be others who will make suggestions about how the Children's Health Insurance Program fits into our health care system, and we have to be very careful about how we do that.

But for now I want to emphasize two points and I will conclude. A commitment to that basic goal that no child at the end of this is worse off, especially vulnerable children who happen to be poor or have one or more special needs—we have to make sure that happens. We also have to reaffirm what I think is self-evident and irrefutable. The Children's Health Insurance Program works. We have to keep it as a stand-alone program, and we have to continue to strengthen it because there are some changes we can make to strengthen it.

I look forward to working with our colleagues in the Senate to meet those goals. I know the Presiding Officer has a concern about this as well. He has been a great leader on health care in his first year in the Senate. I thank him for his work.

I will conclude with this. In the Scriptures it tells us ''A faithful friend is a sturdy shelter.'' We have heard that line from Scripture. We have heard it other places as well. We think of a friendship as a kind of shelter when things get difficult, when life gets difficult. One of the questions we have to ask ourselves in this debate is, Will the Congress of the United States really be a friend to children? Will we be that faithful friend who acts as a sturdy shelter? Because children can't do it on their own; we have to help them. I believe by getting this right we can be that faithful friend and we can be that sturdy shelter for our children.

Let it be said of us many years from now, when people reflect upon how this debate took place and what we passed, in terms of health care reform—let it be said of us, when our work is done, that we, all of us as Members of the Senate and Members of the Congress overall, that we created at this time, at this place, a sturdy shelter for our children and that we can say that with confidence and with integrity.

[From the New York Times, Oct. 30, 2009]

EXHIBIT 1.

HOSPITALIZED CHILDREN WITHOUT INSURANCE ARE MORE LIKELY TO DIE, A STUDY FINDS

(By Roni Caryn Rabin)

Nicole Bengiveno/The New York Times Researchers analyzed data from more than 23 million children's hospitalizations from 1988 to 2005.

Uninsured children who wind up in the hospital are much more likely to die than children covered by either private or government insurance plans, according to one of the first studies to assess the impact of insurance coverage on hospitalized children.

Researchers at Johns Hopkins Children's Center analyzed data from more than 23 million children's hospitalizations in 37 states from 1988 to 2005. Compared with insured children, uninsured children faced a 60 percent increased risk of dying, the researchers found.

The authors estimated that at least 1,000 hospitalized children died each year simply because they lacked insurance, accounting for 16,787 of some 38,649 children's deaths nationwide during the period analyzed.

''If you take two kids from the same demographic background—the same race, same gender, same neighborhood income level and same number of co-morbidities or other illnesses—the kid without insurance is 60 percent more likely to die in the hospital than the kid in the bed right next to him or her who is insured,'' said David C. Chang, co-director of the pediatric surgery outcomes group at the children's center and an author of the study, which appeared today in The Journal of Public Health.

Although the research was not set up to identify why uninsured children were more likely to die, it found that they were more likely to gain access to care through the emergency room, suggesting they might have more advanced disease by the time they were hospitalized.

In addition, uninsured children were in the hospital, on average, for less than a day when they died, compared with a full day for insured children. Children without insurance incurred lower hospital charges—$8,058 on average, compared with $20,951 for insured children.

In children who survived hospitalization, the length of stay and charges did not vary with insurance status.

The paper's lead author, Dr. Fizan Abdullah, assistant professor of surgery at Johns Hopkins, dismissed the possibility that providers gave less care or denied procedures to the uninsured. ''The children who were uninsured literally died before the hospital could provide them more care,'' Dr. Abdullah said.

Furthermore, Dr. Abdullah said, indications are that the uninsured children ''are further along in their course of illness.''

The results are all the more striking because children's deaths are so rare that they could be examined only by a very large study, said Dr. Peter J. Pronovost, a professor of surgery at Johns Hopkins and an author of the new study.

''The striking thing is that children don't often die,'' Dr. Pronovost said. ''This study provides further evidence that the need to insure everyone is a moral issue, not just an economic one.''

An estimated seven million children are uninsured in the United States, despite recent efforts to extend coverage under the federal Children's Health Insurance Program.

Advocates for children said they were saddened by the findings but not surprised.

''We know from studies of adults that lack of insurance contributes to worse outcomes, and this study provides evidence that there are similar consequences for children,'' said Alison Buist, director of child health at the Children's Defense Fund, a nonprofit advocacy organization. ''If you wait until a child gets care at a hospital, you have missed an opportunity to get them the types of screening and preventive services that prevent them from getting to that level of severity to begin with.''

The most common reasons for children being hospitalized were complications from birth, pneumonia and asthma. The study found that the reasons did not differ depending on insurance status.

Earlier studies have found that uninsured children are more likely than insured children to have unmet medical needs, like untreated asthma or diabetes, and are more likely to go for two years without seeing a doctor.

Following a recent expansion, 14 million children will be covered by the CHIP program by 2013, according to the Congressional Budget Office. Advocates for children are concerned that efforts to overhaul the health care system may actually reverse the progress made toward covering more children if CHIP is phased out and many families remain unable to afford health insurance.

''You can't just dump 14 million vulnerable children into a new system without evidence that the benefits and the affordability provisions are better than they are now,'' Dr. Buist said. ''That's not health reform.''

Mr. CASEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. CASEY. Mr. President, as in executive session, I ask unanimous consent that at 4:30 p.m. on Monday, November 9, the Senate proceed to executive session to consider Calendar No. 185, the nomination of Andre M. Davis to be a U.S. Circuit Judge for the Fourth Circuit; that there be 60 minutes of debate with respect to the nominations, with the time equally divided and controlled between Senators LEAHY and SESSIONS or their designees; that at 5:30 p.m. the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be made and laid on the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

Mr. CASEY. For the information of the Senate, if Members wish to speak with respect to this nomination on Friday, they are encouraged to do so.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. CASEY. Mr. President, I ask unanimous consent the Senate proceed to executive session to consider en bloc Calendar Nos. 314, 495, 496, 502, 503, 515, 516, 517, 518, 523, 524, 525, 528, and 529; that the nominations be confirmed; that the motions to reconsider be laid on the table en bloc; that no further motions be in order; that any statements relating to the nominations be printed in the RECORD; that the President be immediately notified of the Senate's action, and that the Senate resume legislative session.

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

The nominations considered and agreed to are as follows:

DEPARTMENT OF STATE

Arturo A. Valenzuela, of the District of Columbia, to be an Assistant Secretary of State (Western Hemisphere Affairs).

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Rolena Klahn Adorno, of Connecticut, to be a Member of the National Council on the Humanities for a term expiring January 26, 2014.

Marvin Krislov, of Ohio, to be a Member of the National Council on the Humanities for a term expiring January 26, 2014.

DEPARTMENT OF JUSTICE

Laurie O. Robinson, of the District of Columbia, to be an Assistant Attorney General.

Benjamin B. Wagner, of California, to be United States Attorney for the Eastern District of California for the term of four years.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Anne S. Ferro, of Maryland, to be Administrator of the Federal Motor Carrier Safety Administration.

DEPARTMENT OF TRANSPORTATION

Cynthia L. Quarterman, of Georgia, to be Administrator of the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Elizabeth M. Robinson, of Virginia, to be Chief Financial Officer, National Aeronautics and Space Administration.

DEPARTMENT OF COMMERCE

Patrick Gallagher, of Maryland, to be Director of the National Institute of Standards and Technology.

MERIT SYSTEMS PROTECTION BOARD

Susan Tsui Grundmann, of Virginia, to be Chairman of the Merit Systems Protection Board.

Susan Tsui Grundmann, of Virginia, to be a Member of the Merit Systems Protection Board for the term of seven years expiring March 1, 2016.

Anne Marie Wagner, of Virginia, to be a Member of the Merit Systems Protection Board for the term of seven years expiring March 1, 2014.

DEPARTMENT OF JUSTICE

Carmen Milagros Ortiz, of Massachusetts, to be United States Attorney for the District of Massachusetts for the term of four years.

Edward J. Tarver, of Georgia, to be United States Attorney for the Southern District of Georgia for the term of four years.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate resumes legislative session.

MORNING BUSINESS

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

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

GLOBAL CHILD SURVIVAL ACT OF 2009

Mr. DURBIN. Mr. President, I rise before you today to speak about a population that is all too often forgotten in the poorest corners of our world; women and children. A woman's pregnancy should be a joyous time in her life. Sadly, in many developing countries countless women suffer from pregnancy-related injuries, infections, diseases, and disabilities often with lifelong consequences. Too often their children die or struggle from a lack of basic childhood medical care.

Over the years I have traveled to some of the poorest corners of the world, from Congo to Haiti. I have seen those who struggle to find food and water, battle AIDS, TB and malaria, and fight every day to eke out a living against great odds.

Yet one of the most fundamental struggles I have witnessed is that of a mother and child surviving pregnancy and childbirth. It is heartbreaking to hear stories of women who have been in labor for days before being able to reach a hospital, of those who die giving birth because of a lack of basic medical facilities, of the thousands of children who could be saved with low cost vitamin A supplements, or of the thousands of children left as orphans.

What could be a more fundamental need in our world than making sure women and children survive childbirth?

Reducing child mortality and improving maternal health make up two of the eight United Nations Millennium Development Goals. While progress has been made in many countries, an effort to reduce under-five mortality by two-thirds and improve maternal mortality to achieve MDG targets has made the least progress than any of the other MDG's.

That is why Senators DODD, CORKER and I introduced the Global Child Survival Act of 2009.

This legislation is about strengthening the U.S. Government's role in saving the lives of children and mothers in poor countries. The act would require the U.S. Government to develop a strategy for supporting the improvement of newborns, children, and mothers.

Across the developing world, mothers are dying giving birth from complications such as hemorrhaging, sepsis, hypertensive disorders, and obstructed labor. Each year, more than half a million women die from causes related to pregnancy and childbirth.

The sad reality is that most of these complications have easy and preventable solutions. In fact, if women had access to basic maternal health services, an estimated 80 percent of maternal deaths could be prevented.

Key interventions, such as adequate nutrition, antenatal care, skilled attendance at birth and access to emergency obstetric care when necessary,

are already improving the health outcomes for mothers and infants around the world.

But we can do more. We must do more.

Accordingly, the Global Child Survival Act would create an interagency task force on child and maternal health. Through building local capacity and self-sufficiency, partnering with nongovernmental organizations and participation by local communities we can better coordinate activities directed at achieving maternal and child health goals.

The act builds on existing interventions that support counseling for new mothers. Research has shown that most of the 4 million newborn babies that die every year could be saved by training parents in simple care practices and by training health workers to help newborns with complications.

Factors such as malnutrition, unsafe drinking water, and inadequate access to vaccines contribute greatly to global child mortality. Three quarters of newborn deaths take place in the first 7 days of life; most of these deaths are also preventable. Effective low-cost tools—such as vaccines and antibiotics—could save the lives of 6 million of these children.

The reproductive risks young girls in developing countries face are linked to lower levels of schooling and to underlying factors of poverty, poor nutrition, and reduced access to health care. That is why the Global Child Survival Act also supports activities to promote scholarships for secondary education. Educating girls and young women is one of the most powerful ways of breaking the poverty trap and creating a supportive environment for maternal and newborn health.

I am pleased that many partners in this fight are showing an interest in moving forward in this fight. In May, President Obama announced a Global Health Initiative proposing $63 billion over 6 years, specifically emphasizing maternal and child health as a piece of the initiative.

President Obama also called attention to maternal and child mortality during his recent travel to Africa. After visiting a USAID funded hospital in Accra, Ghana the President stated, ''Part of the reason this is so important is that throughout Africa, the rate of both infant mortality but also maternal mortality is still far too high.''

I urge my colleagues to join me in supporting the Global Child Survival Act to help show our commitment to improving the lives of women and children around the world. It is an important step, along with such basics as clean water and sanitation, food security, and education, in improving the lives of the world's poor.

UNEMPLOYMENT COMPENSATION EXTENSION ACT

Mr. BAUCUS. Mr. President, the provision of S.A. 2712 to H.R. 3548, The Worker, Homeownership, and Business Act of 2009 as voted on yesterday, November 4, 2009, provide relief for unemployed workers, homeowners and businesses. Senate Finance Committee Chairman BAUCUS has asked the nonpartisan Joint Committee on Taxation to make available to the public a technical explanation of the bill, JCX–44–09. The technical explanation expresses the committee's understanding and legislative intent behind this important legislation. It is available on the Joint Committee's Web site at www.house.gov/jct.

Mr. President, I ask unanimous consent to have the technical explanation printed in the RECORD.

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

TECHNICAL EXPLANATION OF CERTAIN REVENUE PROVISIONS OF THE WORKER, HOMEOWNERSHIP, AND BUSINESS ASSISTANCE ACT OF 2009

INTRODUCTION

This document, prepared by the staff of the Joint Committee on Taxation, provides a technical explanation of certain revenue provisions of The Worker, Homeownership, and Business Assistance Act of 2009.

A. EXTENSION AND MODIFICATION OF FIRST-TIME HOMEBUYER CREDIT (SECS. 11 AND 12 OF THE BILL AND SEC. 36 OF THE CODE)

PRESENT LAW

In general

An individual who is a first-time homebuyer is allowed a refundable tax credit equal to the lesser of $8,000 ($4,000 for a married individual filing separately) or 10 percent of the purchase price of a principal residence. The credit is allowed for qualifying home purchases on or after April 9, 2008, and before December 1, 2009.

The credit phases out for individual taxpayers with modified adjusted gross income between $75,000 and $95,000 ($150,000 and $170,000 for joint filers) for the year of purchase.

An individual is considered a first-time homebuyer if the individual had no ownership interest in a principal residence in the United States during the 3-year period prior to the purchase of the home.

An election is provided to treat a residence purchased after December 31, 2008, and before December 1, 2009, as purchased on December 31, 2008, so that the credit may be claimed on the 2008 income tax return.

No District of Columbia first-time homebuyer credit is allowed to any taxpayer with respect to the purchase of a residence after December 31, 2008, and before December 1, 2009, if the national first-time homebuyer credit is allowable to such taxpayer (or the taxpayer's spouse) with respect to such purchase.

Recapture

For homes purchased on or before December 31, 2008, the credit is recaptured ratably over fifteen years with no interest charge beginning in the second taxable year after the taxable year in which the home is purchased. For example, if an individual purchases a home in 2008, recapture commences with the 2010 tax return. If the individual sells the home (or the home ceases to be used as the principal residence of the individual or the individual's spouse) prior to complete recapture of the credit, the amount of any credit not previously recaptured is due on the tax return for the year in which the home is sold (or ceases to be used as the principal residence). However, in the case of a sale to an unrelated person, the amount recaptured may not exceed the amount of gain from the sale of the residence. For this purpose, gain is determined by reducing the basis of the residence by the amount of the credit to the extent not previously recaptured. No amount is recaptured after the death of an individual. In the case of an involuntary conversion of the home, recapture is not accelerated if a new principal residence is acquired within a two-year period. In the case of a transfer of the residence to a spouse or to a former spouse incident to divorce, the transferee spouse (and not the transferor spouse) will be responsible for any future recapture. Recapture does not apply to a home purchased after December 31, 2008 that is treated (at the election of the taxpayer) as purchased on December 31, 2008.

For homes purchased after December 31, 2008, and before December 1, 2009, the credit is recaptured only if the taxpayer disposes of the home (or the home otherwise ceases to be the principal residence of the taxpayer) within 36 months from the date of purchase.

EXPLANATION OF PROVISION

Extension of application period

In general, the credit is extended to apply to a principal residence purchased by the taxpayer before May 1, 2010. The credit applies to the purchase of a principal residence before July 1, 2010 by any taxpayer who enters into a written binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010.

The waiver of recapture, except in the case of disposition of the home (or the home otherwise ceases to be the principal residence of the taxpayer) within 36 months from the date of purchase, is extended to any purchase of a principal residence after December 31, 2008.

The election to treat a purchase as occurring in a prior year is modified. In the case of a purchase of a principal residence after December 31, 2008, a taxpayer may elect to treat the purchase as made on December 31 of the calendar year preceding the purchase for purposes of claiming the credit on the prior year's tax return.

No District of Columbia first-time homebuyer credit is allowed to any taxpayer with respect to the purchase of a residence after December 31, 2008, if the national first-time homebuyer credit is allowable to such taxpayer (or the taxpayer's spouse) with respect to such purchase.

Long-time residents of the same principal residence

An individual (and, if married, the individual's spouse) who has maintained the same principal residence for any five-consecutive year period during the eight-year period ending on the date of the purchase of a subsequent principal residence is treated as a first-time homebuyer. The maximum allowable credit for such taxpayers is $6,500 ($3,250 for a married individual filing separately).

Limitations

The bill raises the income limitations to qualify for the credit. The credit phases out for individual taxpayers with modified adjusted gross income between $125,000 and $145,000 ($225,000 and $245,000 for joint filers) for the year of purchase.

No credit is allowed for the purchase of any residence if the purchase price exceeds $800,000.

No credit is allowed unless the taxpayer is 18 years of age as of the date of purchase. A taxpayer who is married is treated as meeting the age requirement if the taxpayer or the taxpayer's spouse meets the age requirement.

The definition of purchase excludes property acquired from a person related to the

person acquiring such property or the spouse of the person acquiring the property, if married.

No credit is allowed to any taxpayer if the taxpayer is a dependent of another taxpayer.

No credit is allowed unless the taxpayer attaches to the relevant tax return a properly executed copy of the settlement statement used to complete the purchase.

Waiver of recapture for individuals on qualified official extended duty

In the case of a disposition of principal residence by an individual (or a cessation of use of the residence that otherwise would cause recapture) after December 31, 2008, in connection with government orders received by the individual (or the individual's spouse) for qualified official extended duty service, no recapture applies by reason of the disposition of the residence, and any 15-year recapture with respect to a home acquired before January 1, 2009, ceases to apply in the taxable year the disposition occurs.

Qualified official extended duty service means service on official extended duty as a member of the uniformed services, a member of the Foreign Service of the United States, or an employee of the intelligence community.

Qualified official extended duty is any period of extended duty while serving at a place of duty at least 50 miles away from the taxpayer's principal residence or under orders compelling residence in government furnished quarters. Extended duty is defined as any period of duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

The uniformed services include: (1) the Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard); (2) the commissioned corps of the National Oceanic and Atmospheric Administration; and (3) the commissioned corps of the Public Health Service.

The term ''member of the Foreign Service of the United States'' includes: (1) chiefs of mission; (2) ambassadors at large; (3) members of the Senior Foreign Service; (4) Foreign Service officers; and (5) Foreign Service personnel.

The term ''employee of the intelligence community'' means an employee of the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Reconnaissance Office. The term also includes employment with: (1) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; (2) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, the Department of Energy, and the Coast Guard; (3) the Bureau of Intelligence and Research of the Department of State; and (4) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

Extension of the first-time homebuyer credit for individuals on qualified official extended duty outside of the United States

In the case of any individual (and, if married, the individual's spouse) who serves on qualified official extended duty service outside of the United States for at least 90 days during the period beginning after December 31, 2008, and ending before May 1, 2010, the expiration date of the first-time homebuyer credit is extended for one year, through May 1, 2011 (July 1, 2011, in the case of an individual who enters into a written binding contract before May 1, 2011, to close on the purchase of a principal residence before July 1, 2011).

Mathematical error authority

The bill makes a number of changes to expand the definition of mathematical or clerical error for purposes of administration of the credit by the Internal Revenue Service (''IRS''). The IRS may assess additional tax without issuance of a notice of deficiency as otherwise required in the case of: an omission of any increase in tax required by the recapture provisions of the credit; information from the person issuing the taxpayer identification number of the taxpayer that indicates that the taxpayer does not meet the age requirement of the credit; information provided to the Secretary by the taxpayer on an income tax return for at least one of the two preceding taxable years that is inconsistent with eligibility for such credit; or, failure to attach to the return a properly executed copy of the settlement statement used to complete the purchase.

EFFECTIVE DATE

The extension of the first-time homebuyer credit and coordination with the first-time homebuyer credit for the District of Columbia apply to residences purchased after November 30, 2009.

Provisions relating to long-time residents of the same principal residence, and income, purchase price, age, related party, dependent, and documentation limitations apply for purchases after the date of enactment.

The waiver of recapture provision applies to dispositions and cessations after December 31, 2008.

The expansion of mathematical and clerical error authority applies to returns for taxable years ending on or after April 9, 2008.

B. FIVE-YEAR CARRYBACK OF OPERATING LOSSES (SEC. 13 OF THE BILL AND SEC. 172 OF THE CODE)

PRESENT LAW

In general

Under present law, a net operating loss (''NOL'') generally means the amount by which a taxpayer's business deductions exceed its gross income. In general, an NOL may be carried back two years and carried over 20 years to offset taxable income in such years. NOLs offset taxable income in the order of the taxable years to which the NOL may be carried.

For purposes of computing the alternative minimum tax (''AMT''), a taxpayer's NOL deduction cannot reduce the taxpayer's alternative minimum taxable income (''AMTI'') by more than 90 percent of the AMTI.

In the case of a life insurance company, present law allows a deduction for the operations loss carryovers and carrybacks to the taxable year, in lieu of the deduction for net operation losses allowed to other corporations. A life insurance company is permitted to treat a loss from operations (as defined under section 810(c)) for any taxable year as an operations loss carryback to each of the three taxable years preceding the loss year and an operations loss carryover to each of the 15 taxable years following the loss year.

Temporary rule for small business

Present law provides an eligible small business with an election to increase the present-law carryback period for an ''applicable 2008 NOL'' from two years to any whole number of years elected by the taxpayer that is more than two and less than six. An eligible small business is a taxpayer meeting a $15,000,000 gross receipts test. An applicable 2008 NOL is the taxpayer's NOL for any taxable year ending in 2008, or if elected by the taxpayer, the NOL for any taxable year beginning in 2008. However, any election under this provision may be made only with respect to one taxable year.

EXPLANATION OF PROVISION

The provision provides an election to increase the present-law carryback period for an applicable NOL from two years to any whole number of years elected by the taxpayer which is more than two and less than six. An applicable NOL is the taxpayer's NOL for a taxable year beginning or ending in either 2008 or 2009. Generally, a taxpayer may elect an extended carryback period for only one taxable year.

The amount of an NOL that may be carried back to the fifth taxable year preceding the loss year is limited to 50 percent of taxable income for such taxable year (computed without regard to the NOL for the loss year or any taxable year thereafter). The limitation does not apply to the applicable 2008 NOL of an eligible small business with respect to which an election is made (either before or after the date of enactment of the bill) under the provision as presently in effect. The amount of the NOL otherwise carried to taxable years subsequent to such fifth taxable year is to be adjusted to take into account that the NOL could offset only 50 percent of the taxable income in such year. Thus, in determining the excess of the applicable NOL over the sum of the taxpayer's taxable income for each of the prior taxable years to which the loss may be carried, only 50 percent of the taxable income for the taxable year for which the limitation applies is to be taken into account.

The provision also suspends the 90-percent limitation on the use of any alternative tax NOL deduction attributable to carrybacks of the applicable NOL for which an extended carryback period is elected.

For life insurance companies, the provision provides an election to increase the present-law carryback period for an applicable loss from operations from three years to four or five years. An applicable loss from operations is the taxpayer's loss from operations for any taxable year beginning or ending in either 2008 or 2009. A 50-percent of taxable income limitation applies to the fifth taxable year preceding the loss year.

A taxpayer must make the election by the extended due date for filing the return for the taxpayer's last taxable year beginning in 2009, and in such manner as may be prescribed by the Secretary. An election, once made, is irrevocable.

An eligible small business that timely made (or timely makes) an election under the provision as in effect on the day before the enactment of the bill to carryback its applicable 2008 NOL may also elect to carryback a 2009 NOL under the amended provision. It is intended that an eligible small business may continue to make the present-law election under procedures prescribed in Rev. Proc. 2009–26 following the enactment of the bill.

The provision generally does not apply to: (1) any taxpayer if (a) the Federal government acquired or acquires at any time, an equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008, or (b) the Federal government acquired or acquires, at any time, any warrant (or other right) to acquire any equity interest with respect to the taxpayer pursuant to such Act; (2) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; and (3) any taxpayer that in 2008 or 2009 is a member of the same affiliated group (as defined in section 1504 without regard to subsection (b) thereof) as a taxpayer to which the provision does not otherwise apply. An equity interest (or right to acquire an equity interest) is disregarded for this purpose if acquired by the Federal

government after the date of enactment from a financial institution pursuant to a program established by the Secretary for the stated purpose of increasing the availability of credit to small businesses using funding made available under the Emergency Economic Stabilization Act of 2008.

EFFECTIVE DATE

The provision is generally effective for net operating losses arising in taxable years ending after December 31, 2007. The modification to the alternative tax NOL deduction applies to taxable years ending after December 31, 2002. The modification with respect to operating loss deductions of life insurance companies applies to losses from operations arising in taxable years ending after December 31, 2007.

Under transition rules, a taxpayer may revoke any election to waive the carryback period under either section 172(b)(3) or section 810(b)(3) with respect to an applicable NOL or an applicable loss from operations for a taxable year ending before the date of enactment by the extended due date for filing the tax return for the taxpayer's last taxable year beginning in 2009. Similarly, any application for a tentative carryback adjustment under section 6411(a) with respect to such loss is treated as timely filed if filed by the extended due date for filing the tax return for the taxpayer's last taxable year beginning in 2009.

C. EXCLUSION FROM GROSS INCOME OF QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE (SEC. 14 OF THE BILL AND SEC. 132 OF THE CODE)

PRESENT LAW

Homeowners Assistance Program payment

The Department of Defense Homeowners Assistance Program (''HAP'') provides payments to certain employees and members of the Armed Forces to offset the adverse effects on housing values that result from a military base realignment or closure.

In general, under the HAP, eligible individuals receive either: (1) a cash payment as compensation for losses that may be or have been sustained in a private sale, in an amount not to exceed the difference between (a) 95 percent of the fair market value of their property prior to public announcement of intention to close all or part of the military base or installation and (b) the fair market value of such property at the time of the sale; or (2) as the purchase price for their property, an amount not to exceed 90 percent of the prior fair market value as determined by the Secretary of Defense, or the amount of the outstanding mortgages.

The American Recovery and Reinvestment Act of 2009 expands the HAP in various ways. It amends the Demonstration Cities and Metropolitan Development Act of 1966 to allow, under the HAP under such Act, the Secretary of Defense to provide assistance or reimbursement for certain losses in the sale of family dwellings by members of the Armed Forces living on or near a military installation in situations where: (1) there was a base closure or realignment; (2) the property was purchased before July 1, 2006, and sold between that date and September 30, 2012; (3) the property is the owner's primary residence; and (4) the owner has not previously received benefits under the HAP. Further, it authorizes similar HAP assistance or reimbursement with respect to: (1) wounded members and wounded civilian Department of Defense and Coast Guard employees (and their spouses); and (2) members permanently reassigned from an area at or near a military installation to a new duty station more than 50 miles away (with similar purchase and sale date, residence, and no-previous-benefit requirements as above). It allows the Secretary to provide compensation for losses from home sales by such individuals to ensure the realization of at least 90 percent (in some cases, 95 percent) of the pre-mortgage-crisis assessed value of such property.

Tax treatment

Present law generally excludes from gross income amounts received under the HAP (as in effect on November 11, 2003). Amounts received under the program also are not considered wages for FICA tax purposes (including Medicare). The excludable amount is limited to the reduction in the fair market value of property.

EXPLANATION OF PROVISION

The bill expands the exclusion to HAP payments authorized under the American Recovery and Reinvestment Tax Act of 2009.

EFFECTIVE DATE

The provision is effective for payments made after February 17, 2009 (the date of enactment of the American Recovery and Reinvestment Tax Act of 2009).

D. DELAY IN APPLICATION OF WORLDWIDE ALLOCATION OF INTEREST (SEC. 15 OF THE BILL AND SEC. 864 OF THE CODE)

PRESENT LAW

In general

To compute the foreign tax credit limitation, a taxpayer must determine the amount of its taxable income from foreign sources. Thus, the taxpayer must allocate and apportion deductions between items of U.S.-source gross income, on the one hand, and items of foreign-source gross income, on the other.

In the case of interest expense, the rules generally are based on the approach that money is fungible and that interest expense is properly attributable to all business activities and property of a taxpayer, regardless of any specific purpose for incurring an obligation on which interest is paid. For interest allocation purposes, all members of an affiliated group of corporations generally are treated as a single corporation (the so-called ''one-taxpayer rule'') and allocation must be made on the basis of assets rather than gross income. The term ''affiliated group'' in this context generally is defined by reference to the rules for determining whether corporations are eligible to file consolidated returns.

For consolidation purposes, the term ''affiliated group'' means one or more chains of includible corporations connected through stock ownership with a common parent corporation that is an includible corporation, but only if: (1) the common parent owns directly stock possessing at least 80 percent of the total voting power and at least 80 percent of the total value of at least one other includible corporation; and (2) stock meeting the same voting power and value standards with respect to each includible corporation (excluding the common parent) is directly owned by one or more other includible corporations.

Generally, the term ''includible corporation'' means any domestic corporation except certain corporations exempt from tax under section 501 (for example, corporations organized and operated exclusively for charitable or educational purposes), certain life insurance companies, corporations electing application of the possession tax credit, regulated investment companies, real estate investment trusts, and domestic international sales corporations. A foreign corporation generally is not an includible corporation.

Subject to exceptions, the consolidated return and interest allocation definitions of affiliation generally are consistent with each other. For example, both definitions generally exclude all foreign corporations from the affiliated group. Thus, while debt generally is considered fungible among the assets of a group of domestic affiliated corporations, the same rules do not apply as between the domestic and foreign members of a group with the same degree of common control as the domestic affiliated group.

Banks, savings institutions, and other financial affiliates

The affiliated group for interest allocation purposes generally excludes what are referred to in the Treasury regulations as ''financial corporations.'' A financial corporation includes any corporation, otherwise a member of the affiliated group for consolidation purposes, that is a financial institution (described in section 581 or section 591), the business of which is predominantly with persons other than related persons or their customers, and which is required by State or Federal law to be operated separately from any other entity that is not a financial institution. The category of financial corporations also includes, to the extent provided in regulations, bank holding companies (including financial holding companies), subsidiaries of banks and bank holding companies (including financial holding companies), and savings institutions predominantly engaged in the active conduct of a banking, financing, or similar business.

A financial corporation is not treated as a member of the regular affiliated group for purposes of applying the one-taxpayer rule to other non-financial members of that group. Instead, all such financial corporations that would be so affiliated are treated as a separate single corporation for interest allocation purposes.

Worldwide interest allocation

In general

The American Jobs Creation Act of 2004 (''AJCA'') modified the interest expense allocation rules described above (which generally apply for purposes of computing the foreign tax credit limitation) by providing a one-time election (the ''worldwide affiliated group election'') under which the taxable income of the domestic members of an affiliated group from sources outside the United States generally is determined by allocating and apportioning interest expense of the domestic members of a worldwide affiliated group on a worldwide-group basis (i.e., as if all members of the worldwide group were a single corporation). If a group makes this election, the taxable income of the domestic members of a worldwide affiliated group from sources outside the United States is determined by allocating and apportioning the third-party interest expense of those domestic members to foreign-source income in an amount equal to the excess (if any) of (1) the worldwide affiliated group's worldwide third-party interest expense multiplied by the ratio that the foreign assets of the worldwide affiliated group bears to the total assets of the worldwide affiliated group, over (2) the third-party interest expense incurred by foreign members of the group to the extent such interest would be allocated to foreign sources if the principles of worldwide interest allocation were applied separately to the foreign members of the group.

For purposes of the new elective rules based on worldwide fungibility, the worldwide affiliated group means all corporations in an affiliated group as well as all controlled foreign corporations that, in the aggregate, either directly or indirectly, would be members of such an affiliated group if section 1504(b)(3) did not apply (i.e., in which at least 80 percent of the vote and value of the stock of such corporations is owned by one or more other corporations included in the affiliated group). Thus, if an affiliated group

makes this election, the taxable income from sources outside the United States of domestic group members generally is determined by allocating and apportioning interest expense of the domestic members of the worldwide affiliated group as if all of the interest expense and assets of 80-percent or greater owned domestic corporations (i.e., corporations that are part of the affiliated group, as modified to include insurance companies) and certain controlled foreign corporations were attributable to a single corporation.

Financial institution group election

Taxpayers are allowed to apply the bank group rules to exclude certain financial institutions from the affiliated group for interest allocation purposes under the worldwide fungibility approach. The rules also provide a one-time ''financial institution group'' election that expands the bank group. At the election of the common parent of the pre-election worldwide affiliated group, the interest expense allocation rules are applied separately to a subgroup of the worldwide affiliated group that consists of (1) all corporations that are part of the bank group, and (2) all ''financial corporations.'' For this purpose, a corporation is a financial corporation if at least 80 percent of its gross income is financial services income (as described in section 904(d)(2)(C)(i) and the regulations thereunder) that is derived from transactions with unrelated persons. For these purposes, items of income or gain from a transaction or series of transactions are disregarded if a principal purpose for the transaction or transactions is to qualify any corporation as a financial corporation.

In addition, anti-abuse rules are provided under which certain transfers from one member of a financial institution group to a member of the worldwide affiliated group outside of the financial institution group are treated as reducing the amount of indebtedness of the separate financial institution group. Regulatory authority is provided with respect to the election to provide for the direct allocation of interest expense in circumstances in which such allocation is appropriate to carry out the purposes of these rules, to prevent assets or interest expense from being taken into account more than once, or to address changes in members of any group (through acquisitions or otherwise) treated as affiliated under these rules.

Effective date of worldwide interest allocation

The common parent of the domestic affiliated group must make the worldwide affiliated group election. It must be made for the first taxable year beginning after December 31, 2010, in which a worldwide affiliated group exists that includes at least one foreign corporation that meets the requirements for inclusion in a worldwide affiliated group. The common parent of the pre-election worldwide affiliated group must make the election for the first taxable year beginning after December 31, 2010, in which a worldwide affiliated group includes a financial corporation. Once either election is made, it applies to the common parent and all other members of the worldwide affiliated group or to all members of the financial institution group, as applicable, for the taxable year for which the election is made and all subsequent taxable years, unless revoked with the consent of the Secretary of the Treasury.

Phase-in rule

HERA also provided a special phase-in rule in the case of the first taxable year to which the worldwide interest allocation rules apply. For that year, the amount of the taxpayer's taxable income from foreign sources is reduced by 70 percent of the excess of (i) the amount of its taxable income from foreign sources as calculated using the worldwide interest allocation rules over (ii) the amount of its taxable income from foreign sources as calculated using the present-law interest allocation rules. For that year, the amount of the taxpayer's taxable income from domestic sources is increased by a corresponding amount. Any foreign tax credits disallowed by virtue of this reduction in foreign-source taxable income may be carried back or forward under the normal rules for carrybacks and carryforwards of excess foreign tax credits.

EXPLANATION OF PROVISION

The provision delays the effective date of worldwide interest allocation rules for seven years, until taxable years beginning after December 31, 2017. The required dates for making the worldwide affiliated group election and the financial institution group election are changed accordingly.

The provision also eliminates the special phase-in rule that applies in the case of the first taxable year to which the worldwide interest allocation rules apply.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2010.

E. MODIFICATION OF PENALTY FOR FAILURE TO FILE PARTNERSHIP OR S CORPORATION RETURNS (SEC. 16 OF THE BILL AND SECS. 6698 AND 6699 OF THE CODE)

PRESENT LAW

Both partnerships and S corporations are generally treated as pass-through entities that do not incur an income tax at the entity level. Income earned by a partnership, whether distributed or not, is taxed to the partners. Distributions from the partnership generally are tax-free. The items of income, gain, loss, deduction or credit of a partnership generally are taken into account by a partner as allocated under the terms of the partnership agreement. If the agreement does not provide for an allocation, or the agreed allocation does not have substantial economic effect, then the items are to be allocated in accordance with the partners' interests in the partnership. To prevent double taxation of these items, a partner's basis in its interest is increased by its share of partnership income (including tax-exempt income), and is decreased by its share of any losses (including nondeductible losses). An S corporation generally is not subject to corporate-level income tax on its items of income and loss. Instead, the S corporation passes through its items of income and loss to its shareholders. The shareholders take into account separately their shares of these items on their individual income tax returns.

Under present law, both partnerships and S corporations are required to file tax returns for each taxable year. The partnership's tax return is required to include the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual. The S corporation's tax return is required to include the following: the names and addresses of all persons owning stock in the corporation at any time during the taxable year; the number of shares of stock owned by each shareholder at all times during the taxable year; the amount of money and other property distributed by the corporation during the taxable year to each shareholder and the date of such distribution; each shareholder's pro rata share of each item of the corporation for the taxable year; and such other information as the Secretary may require.

In addition to applicable criminal penalties, present law imposes assessable civil penalties for both the failure to file a partnership return and the failure to file an S corporation return. Each of these penalties is currently $89 times the number of shareholders or partners for each month (or fraction of a month) that the failure continues, up to a maximum of 12 months for returns required to be filed after December 31, 2008.

EXPLANATION OF PROVISION

Under the provision, the base amount on which a penalty is computed for a failure with respect to filing either a partnership or S corporation return is increased to $195 per partner or shareholder.

EFFECTIVE DATE

The provision applies to returns for taxable years beginning after December 31, 2009.

F. EXPANSION OF ELECTRONIC FILING BY RETURN PREPARERS (SEC. 17 OF THE BILL AND SEC. 6011(E) OF THE CODE)

PRESENT LAW

The IRS Restructuring and Reform Act of 1998 (''RRA 1998'') states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA 1998 sets a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007. Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law authorizes the IRS to issue regulations specifying which returns must be filed electronically. There are several limitations on this authority. First, it can only apply to persons required to file at least 250 returns during the calendar year. Second, the Secretary is prohibited from requiring that income tax returns of individuals, estates, and trusts be submitted in any format other than paper, although these returns may be filed electronically by choice.

Regulations require corporations and tax-exempt organizations that have assets of $10 million or more and file at least 250 returns during a calendar year, including income tax, information, excise tax, and employment tax returns, to file electronically their Form 1120/1120S income tax returns and Form 990 information returns for tax years ending on or after December 31, 2006. Private foundations and charitable trusts that file at least 250 returns during a calendar year are required to file electronically their Form 990–PF information returns for tax years ending on or after December 31, 2006, regardless of their asset size. Taxpayers can request waivers of the electronic filing requirement if they cannot meet that requirement due to technological constraints, or if compliance with the requirement would result in undue financial burden on the taxpayer.

EXPLANATION OF PROVISION

The provision generally maintains the current rule that regulations may not require any person to file electronically unless the person files at least 250 tax returns during the calendar year. However, the proposal provides an exception to this rule and mandates that the Secretary require electronic filing by specified tax return preparers. ''Specified tax return preparers'' are all return preparers except those who neither prepare nor reasonably expect to prepare ten or more individual income tax returns in a calendar year. The term ''individual income tax return'' is defined to include returns for estates and trusts as well as individuals.

EFFECTIVE DATE

The provision is effective for tax returns filed after December 31, 2010.

G. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES (SEC. 18 OF THE BILL AND SEC. 6655 OF THE CODE)

PRESENT LAW

In general, corporations are required to make quarterly estimated tax payments of

their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15. In the case of a corporation with assets of at least $1 billion (determined as of the end of the preceding tax year), payments due in July, August, or September, 2014, are increased to 100.25 percent of the payment otherwise due and the next required payment is reduced accordingly.

EXPLANATION OF PROVISION

The provision increases the required payment of estimated tax otherwise due in July, August, or September, 2014, by 33 percentage points.

EFFECTIVE DATE

The provision is effective on the date of the enactment of this Act.

SETTLEMENT STATEMENTS AND MANUFACTURED HOUSING

Mr. NELSON of Florida. Mr. Chairman, the amendment requires the taxpayer to provide a settlement statement to the IRS as proof that a home was purchased. While I support that requirement, the fact is that there is no settlement statement in the case of a manufactured home that is purchased and will be either sited on land already owned by the home buyer or sited on land to be leased by the home buyer. In those instances, a retail sales contract is used to purchase the home. This contract contains all of the truth in lending disclosures, as well as all the itemized disbursements relating to the transaction. Mr. Chairman, is it the view of the Senate that the IRS should accept retail sales contracts as proof of purchase in the event that a settlement statement is not available to the taxpayer?

Mr. BAUCUS. The Senator from Florida is correct. The purpose of the legislation is to eliminate fraud by requiring documentation of the proof of purchase. It is the Senate's intent that the IRS should accept retail sales contracts from taxpayers as proof of purchase of a manufactured home in the event that a settlement statement is not available.

Mrs. LINCOLN. I thank the chairman very much for that important clarification which will provide more certainty for our constituents who wish to purchase a manufactured home.

A NEPHEW'S MEMORIES OF ''TEDDY''

Mr. KERRY. Mr. President, during his long illness, the Senate missed Ted Kennedy and Ted Kennedy missed the Senate. But Ted was especially missed by a young Senate page with whom he had a special connection—his nephew, Jack Schlossberg, Caroline Kennedy's son.

Jack worked as a page over the summer months, and I got to know him. When he wasn't busy with his page duties in the cloakroom and on the Senate floor, we talked about the lessons he had learned from his uncle.

Ted was thrilled that Jack was walking the same corridors where his Uncle Bobby and his grandfather, John F. Kennedy, had once served. When young Jack returned to school this fall, he had a chance to reflect on all that had happened during his summer in Washington, but mostly he thought about his Uncle Teddy. He wrote about it in an essay he titled ''EMK.''

Jack shared his essay with me, and I would like to share it with the Congress, because it reflects not only what a tower of strength Teddy was to his family, but also the extraordinary qualities of Ted's loving nephew, Jack Schlossberg.

Mr. President, I ask unanimous consent that Jack's essay be printed in the RECORD, and I recommend that it be read by all who knew Ted, all who called him their friend, all who benefited from his extraordinary career in the U.S. Senate:

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

EMK

(By Jack Schlossberg)

When I was little, I could only remember general things about him, like the way his voice sounded, or the feeling I got when we went sailing on his boat. As I grew up I started to understand what Uncle Teddy was saying to me and what he meant. As Teddy became sick, I understood him differently. He was still at times the same person I knew and loved, but his imperfections startled me. During his last few months I began to study every word he said. I idolized him in a way I never had before. No longer was my Uncle Teddy a summer memory or someone I heard about from my mother; he meant something to me. As I watched him go through Boston for the last time in August, I realized that I was not the only person who grew up with him this way, and that multiple generations had. Hundreds of thousands of people knew Teddy as the loving man who had always been there, and who never disappointed them.

It was my first year playing basketball and my team had made it to the championships. I was ten years old and I had never been more excited in my life. It was a tie game well into the fourth quarter when Teddy showed up. He came barreling into the gloomy PS 188 gym and sat down with my mother and father on the sidelines. He did not cheer too loud or even make himself heard, he just sat there and watched me. After my team's victory, he got up and gave me a great big hug. Soon after, he left and went home, as did I. I did not think twice about him coming to my game. I had not told him about it—he probably asked my mother what time and where it was, and moved everything that he was doing that day around my 11:00 am basketball game. That night I got a call from him: ''The game of all games,'' he shouted into the phone. ''And you scored the winning shot. I can't believe it. I just can't believe it,'' he said. Of course, I had not actually scored the winning shot, but all of sudden I believed I had. Teddy was always there to make your story a little more dramatic and entirely more fun. After he told a story about something you both had done, you started telling the story exactly as he had. At the time, I never understood how much effort he put into our relationship. Not only was he the senior Senator from Massachusetts, but also he was also quite busy, unlike many Senators. It was not as if he called me every day, every week, or even every month, but without fail, when you needed Teddy, he was there.

A year ago Teddy was diagnosed with brain cancer. A person who never made me sad, and never seemed weak, was said to have months to live. At first I was more baffled than I was upset. We were not talking about your average person, this was Teddy. He was not someone who came and went, he simply was always there. This was the first time I saw him affected by anything, and I was so confused by his vulnerability. My view of Teddy changed completely without any interaction with him. I suddenly became endlessly interested in his life. I read about him, I followed his policy and studied his speeches. Soon after his diagnosis my family and I went to visit Teddy in Florida. For the first time, I was aware of who Teddy was when he was not with me. In Florida, I asked him about his life and his politics, something I had never done before. He explained how he was seven years old (in the eighth grade because he was sent to school with his older brother) and his classmates stole his turtle and buried it: ''I cried for hours and ran outside to dig him up,'' he said with a grin. ''They were so mean over there at Riverdale.'' Although he could not express himself the way he wanted to at all times, he still stunned me with stories about civil rights and Lyndon Johnson. He also triggered the same emotions he always had. As he and his wife, Vicki, sat down to watch ''24'' one night, I saw Teddy as himself. I sat next to him as he commented on the show: ''She's always cross,'' he said about one character. He made joke after joke about every possible thing he could and had everyone in the room laughing. This was Teddy's way. It was not as if every word he said was brilliant, but his way as a person was truly unique. He could make a very depressing evening hilarious just by cracking a few jokes.

My final memories of Teddy are not really of him, but of what I learned about him. His death was both upsetting and uplifting. At first I only thought of how I would miss him and how unfair it was that he was gone. But, as I went through Boston with him for the last time, I realized that many others loved him too. The drive started slowly as we went through Hyannis and waved to the people we passed on the street. The crowds got bigger as we approached Boston, and as we passed Teddy's famed ''Rose Fitzgerald Kennedy Greenway'' the crowd was enormous. The signs people held that said ''We love you Teddy'' struck deep in my heart. We drove through all of Boston as people lined the streets everywhere. There was no animosity, no hatred, just appreciation and love for Teddy. This made me realize that I was not the only person who loved him, and that the same effort he had made for me, he had made for everyone. He is the only person I know who was capable of making the type of effort he made. Whether it was my basketball game or grandparents day, Teddy showed up and made you laugh.

The drive continued as we pulled into the JFK Library and saw news cameras, photographers, and another gigantic crowd. It became clear to me then that in both political and personal life, he had something only few have: people trusted him. Everyone who came out to see Teddy trusted that he was going to take care of them, because he always had. I never knew any of this to be true until that day. Teddy was my uncle, so naturally I figured only those who really knew him would feel like I did. But Teddy's charm was universal, although he brought it up a notch in Massachusetts. The final way in which I remember Teddy, is as someone who always was truly who they appear to be. It would have been possible for his trust to apply only to his family and friends, and for it to have been somewhat artificial, the way most people behave. However, Teddy acted

toward everyone the way he did with me, and this is the highest praise any public figure can attain.

Teddy's relationship with me during his life was spectacular. Not once did he disappoint me, and he provided continuous support and much-needed laughs. Teddy's legacy lies in many places. It lies in his legislative and political accomplishments. It lies in changes in the lives of his friends and constituents. It lies in his family bonds, and his love for the sea. However, it also lies in the way he left us. Teddy's illness at first seemed unfair and depressing. This is not the case at all. Teddy was able to teach everyone who watched him how to fight and how to succeed. Many people do not realize that he outlived everyone's initial predictions, and lived seven times as long as anyone thought possible. This was not because his doctors were wrong about the severity of his cancer, but because this prediction did not consider that they were dealing with Teddy. Not once did he stop fighting. In fact, he took the most aggressive and strenuous approach to fighting his cancer, and always remained hopeful. Teddy's death taught me that no cause is lost, and that every day is worth living.

CLEAN ENERGY JOBS AND AMERICAN POWER ACT

Mr. CARDIN. Mr. President, I was proud to cast my vote today in the Environment and Public Works Committee for S. 1733, the Clean Energy Jobs and American Power Act. At this critical juncture in our Nation's history, we face an economic crisis, an energy security crisis, and a global climate crisis. The good news is that the solutions to these problems are intertwined with one another. This bill will help us meet these challenges and emerge stronger than we are today. We have an urgent responsibility to move forward and I want to thank the chairman of our committee, Senator BARBARA BOXER, for her leadership and courage in taking action on this bill today.

If we do not act on this bill which invests in clean, domestic energy, we will be stuck with an energy policy that is undermining our national security and our economy.

If we do not act on this bill which invests in the industries of tomorrow, we will continue to lose clean energy jobs, jobs that stem from American inventions and ideas, to countries overseas.

If we do not act on this bill which provides significant investment in clean fuels and public transit, we will lose an opportunity to change the way we move people and goods around this country. Right now, the transportation sector represents 30 percent of our greenhouse gas emissions and 70 percent of our oil use. If we could double the number of transit riders in the United States, we would reduce our dependence on foreign oil by more than 40 percent, nearly the amount of we import from Saudi Arabia each year.

If we do not act on this bill, we face irreversible, catastrophic climate change. Our children and grandchildren—my two grandchildren—face a world where there is not enough clean water, food, or fuel, a world that is less diverse, less beautiful, less secure.

I am glad that the majority members of the Environment and Public Works Committee convened today in order to act. And we needed to act on this bill today because this is a global problem and we want all countries to act. In just a few weeks, the international community will meet in Copenhagen to work on an international agreement to do just that.

I am hopeful that Copenhagen will produce an agreement on the architecture of a final climate regime in which countries make a commitment to reduce greenhouse gas emissions. I hope we have an agreement that spells out the mechanism for reaching and enforcing those targets as well as outlining the financing for the developing world.

In my role as chairman of the Commission for Security and Cooperation in Europe and as a member of the Foreign Relations Committee, I speak often to our colleagues in Europe and around the world. And what other countries want to know before they take additional steps—or take first steps—on climate change is: Where is the United States? They are impressed with the action the Obama administration has taken. They are happy to see that the House has acted.

But for the countries of the world to commit to reduce greenhouse gasses in Copenhagen in just a few weeks, they want to see that both Houses of Congress are serious. They want to know that the Senate is making progress toward producing comprehensive climate legislation. The vote today in the Environment and Public Works Committee demonstrates that progress.

But this bill is good for this country and good for Maryland even if we don't get an international agreement. Marylanders understand the opportunities this bill promises. With this bill, we can invest in clean energy jobs: like those at Algenol in Baltimore where they are national leaders in making fuel from algae; like those at Volvo-Mack Truck in Hagerstown where they are making hybrid trucks; like those at Chesapeake Geosystems, a Maryland company that is an east coast leader in geothermal heating; and like those at DAP that makes spackling that is used in weatherizing homes and businesses.

With this bill, we can invest in the transportation improvements Marylanders so desperately need. Transit ridership in Maryland increased by 15 percent in 2008. But recent train and bus accidents in the DC Metro area demonstrate that we need new investment in transit. Our transit systems will not be a safe and reliable solution to our pollution and energy security problems without it.

Marylanders also know the costs of inaction. The people of Smith Island are watching their island disappear under rising sea levels. The crabs, fish, and other aquatic life Maryland's watermen rely on are disappearing along with their way of life. And it is only going to get worse. Maryland's sea levels are projected to rise 3.5 feet. That means thousands of Marylanders are going to lose their homes and farms. This bill provides critical assistance to States, especially coastal States such as Maryland, to help address these challenges and protect our treasured resources such as the Chesapeake Bay.

The vote that we took today in the Environment and Public Works Committee is just the beginning of putting America back in control of its energy future. And we must remember that even after Copenhagen, any deals we reach, any papers we sign, are still but the foundation. The work must continue with earnest followthrough, dedication to truly changing the way we work and live and move around this Earth. That is work for each of us, and we took one important step forward today.

CLEAN ENERGY PARTNERSHIPS ACT

Ms. STABENOW. Mr. President, yesterday I introduced S. 2729, the Clean Energy Partnerships Act. I am proud to have as cosponsors for this bill Senator MAX BAUCUS, Senator AMY KLOBUCHAR, Senator SHERROD BROWN, Senator TOM HARKIN, Senator MARK BEGICH, and Senator JEANNE SHAHEEN, who has been working with me on the carbon conservation program after she introduced S. 1576, the Forest Carbon Incentives Program Act.

As we work toward creating a clean energy economy in America, we need a strategy that protects our environment while protecting and creating jobs and revitalizing our economy.

The bill I introduced yesterday is an important part of that strategy. By creating partnerships among manufacturing, utilities, agriculture, and forestry, we can reduce costs now to help transition to a clean energy economy tomorrow.

As we work to develop new technologies to reduce emissions in the future, we also need to find cost-effective ways to limit emissions in the short-term that do not cost us jobs. This bill is about creating a lower cost strategy to help us reach our emission reduction goals while protecting and strengthening our economy.

We can counteract, or offset, our current carbon emissions by investing in practices like sustainable agriculture and forestry projects that capture and store carbon. A ton of carbon is a ton of carbon. That is what this offset bill is all about.

For example, we can change farming practices through more efficient application of fertilizer, the use of cover crops, or by utilizing tillage practices, called ''no till farming.'' No-till farming reduces carbon emissions by leaving old plant matter buried underground. In contrast, conventional tilling moves old plant matter from last

year's crop from under the soil to the top of the soil, where it decomposes and releases carbon into the atmosphere.

Improved forestry practices are another example of effective and scientifically-proven methods to help reduce carbon emissions. These practices must be a central component of any clean energy legislation. It is estimated that forests store up to 80 percent of aboveground carbon and nearly 70 percent of the carbon stored in the soil. Reducing deforestation, restoring forests, and better land management can all help reduce atmospheric carbon levels, not just in our country but around the world.

This bill also creates incentives to develop new technologies for reducing other greenhouse gas emissions. For example, methane is more than 20 times more potent than carbon dioxide and can be produced from landfills, coal mines, farms, natural gas systems and oil pipelines.

Equipment that can reduce or eliminate methane emissions can have a drastic impact on our environment. We can even use technologies that not only capture the methane but use it to generate cleaner electricity. That equipment can be designed and built right here in America, building on our innovative and manufacturing expertise to create good-paying jobs.

Not only will an offsets program help store carbon, it will also result in cleaner water, more wildlife habitat, and reduced costs for business and agriculture. That is why this legislation has the broad support of organizations and leaders in agriculture, forestry, conservation, utilities and manufacturing, including National Milk Producers Federation; National Farmers Union; National Corn Growers Association; National Cattlemen's Beef Association; American Farmland Trust; National Alfalfa & Forage Association; Dow Chemical Company; Duke Energy; American Electric Power; PG&E Corporation; Dominion; John Deere; Business Council for Sustainable Development; Coalition for Emission Reduction Projects; Generators for Clean Air; National Association of Forest Owners; American Forest Foundation; Binational Softwood Lumber Council; Conservation Forestry; First Environment, Inc.; Forest Guild; Hardwood Federation; Lyme Timber Company; Maine Forest Service; National Alliance of Forest Owners; National Association of State Foresters; National Association of University Forest Resource Programs; National Hardwood Lumber Association; Society of American Foresters; Weyerhaeuser; The Nature Conservancy; Association of Fish and Wildlife Agencies; and Trust for Public Land.

The legislation I introduced yesterday creates partnerships between our agricultural and manufacturing industries, protecting jobs and revitalizing our economy. It is estimated that strong agriculture and forestry offsets could be worth up to $24 billion annually to our economy. If the right clean energy policies are put in place, we have the opportunity to make this work for manufacturing and agriculture and create jobs.

Manufacturing in America created the middle class and is the backbone of our economy. We cannot have an economy if we aren't making things in this country—so any energy bill we pass must protect our industries, protect jobs, and protect our American middle class.

By creating partnerships between manufacturers and agriculture, we can link up the people who ''bring home the bacon'' with the people who actually make the bacon.

By allowing our manufacturing industries to offset their carbon emissions with savings made by sustainable agriculture and forestry practices, we can create a real win-win situation for America's economy.

In my home State of Michigan, we know how to make things and grow things. We know that to reach the clean energy future, we must link our manufacturing expertise with our agricultural expertise. Supported by some of the finest research universities in the world, we are already making key investments in clean energy technology that will reinvigorate our economy, create jobs, and protect our environment for the next generation.

That is what this bill is all about. We still have a long way to go in creating a clean energy bill that makes sense for our manufacturing and agricultural industries. But this bill is an important step toward reaching a balanced approach to energy legislation that respects our environment while also respecting the men and women who build things and grow things in this country.

ADDITIONAL STATEMENTS

TRIBUTE TO THE REVEREND JOHN (JACK) SHARP

• Mr. CARDIN. Mr. President, I rise today to pay special tribute to an outstanding community leader, the Reverend John (Jack) Sharp of Baltimore, MD. Reverend Sharp served as pastor of the Govans Presbyterian Church for 27 years. He has distinguished himself by reaching far beyond his parish to the entire Baltimore community as a visionary and activist determined to move people and social programs from inaction to accomplishment.

Reverend Sharp's mission had always been to aid the poor and the most vulnerable citizens. His boldness of purpose and tenacity, coupled with a winning and commanding personality, enabled him to unite diverse people to work for a common good. Few community activists can match his accomplishments. During his career, he encouraged neighborhoods to accept and embrace housing for the mentally ill and the homeless. In 1991, he founded the Govans Ecumenical Development Corporation, GEDCO, and he has become one of Baltimore's most dynamic and expansive nonprofit developers of senior housing and supportive services for those with special needs.

GEDCO projects and facilities are numerous, providing housing and services for the mentally ill and the homeless—including men and women with HIV/AIDS—a large community pantry, financial assistance, and job development and mentoring. Jack Sharp is most proud of the development of his grand vision, Stadium Place, a state-of-the-art senior residential campus on the grounds of the old Memorial Stadium. The campus is home to four independent living buildings for retirees, an intergenerational and interfaith community ''Y'' and playground, and shovel-ready plans for an innovative Green House long-term care residential facility.

Reverend Sharp accomplished all of this while serving as a pastor; president of the Board of Community Housing Associates of the Baltimore Mental Health Systems, Inc; president of the Glen Meadows Retirement community; and treasurer of the Baltimore Interfaith Hospitality Network. In 2008, he was honored with the Governor's Leadership in Aging Award and the National Football League—Ravens—Community Quarterback Award for Community Service.

I ask my colleagues to join me in recognizing and applauding Jack Sharp for all that he has accomplished to improve the lives of citizens in Baltimore. He made their challenges his challenge and he has made Baltimore City a better place in which to live.•

MESSAGES FROM THE HOUSE

At 11:21 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3639. An act to amend the Credit Card Accountability Responsibility and Disclosure Act of 2009 to establish an earlier effective date for various consumer protections, and for other purposes.

At 2:49 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 3548) to amend the Supplemental Appropriations Act, 2008 to provide for the temporary availability of certain additional emergency unemployment compensation, and for other purposes.

ENROLLED BILL SIGNED

At 3:25 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 3548. An act to amend the Supplemental Appropriations Act, 2008 to provide for the temporary availability of certain additional emergency unemployment compensation, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. BYRD).

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–3581. A communication from the Department of State, transmitting, pursuant to law, a report relative to the transfer of detainees (OSS Control No. 2009–1854); to the Committee on Armed Services.

EC–3582. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, a report entitled ''Notification to Congress on Transfer Authorities Used in Fiscal Year 2009''; to the Committee on Armed Services.

EC–3583. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the Uniform Resource Locator (URL) for a report relative to the FY2009 Agency Financial Report for the Department of Defense; to the Committee on Armed Services.

EC–3584. A communication from the Director of Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Senior DoD Officials Seeking Employment with Defense Contractors'' ((RIN0750–AG07) (DFARS Case 2008–D007)) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Armed Services.

EC–3585. A communication from the Director of Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Pilot Program for Transition to Follow—on Contracting After Use of Other Transaction Authority'' ((RIN0750–AG17) (DFARS Case 2008–D030)) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Armed Services.

EC–3586. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to the Dominican Republic; to the Committee on Banking, Housing, and Urban Affairs.

EC–3587. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to Ireland; to the Committee on Banking, Housing, and Urban Affairs.

EC–3588. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' ((44 CFR Part 64) (Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8101)) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–3589. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' ((44 CFR Part 65) (Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1070)) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–3590. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' ((44 CFR Part 65) (Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1067)) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–3591. A communication from the Senior Advisor, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Economic Sanctions Enforcement Guidelines'' (31 CFR Part 501) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–3592. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to defense articles and defense services that were licensed for export under Section 38 of the Arms Export Control Act during fiscal year 2008; to the Committee on Foreign Relations.

EC–3593. A communication from the Director of Congressional Affairs, Federal and State Materials and Environmental Management, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision 7'' (RIN3150–AI70) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Environment and Public Works.

EC–3594. A communication from the Assistant General Counsel of the Division of Regulatory Services, Office of Postsecondary Education, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and the Secretary's Recognition of Accrediting Agencies'' (RIN1840–AD00) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC–3595. A communication from the Deputy Director of Regulations and Policy Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Investigational New Drug Applications; Technical Amendment'' (Docket No. FDA–2009–N–0464) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC–3596. A communication from the Deputy Director of Regulations and Policy Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of the Cardiac Allograft Gene Expression Profiling Test Systems'' (Docket No. FDA–2009–N–0472) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC–3597. A communication from the Chairman, Merit System Protection Board, transmitting, pursuant to law, a report entitled ''Job Simulations: Trying Out for a Federal Job''; to the Committee on Homeland Security and Governmental Affairs.

EC–3598. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian Islands'' (RIN0648–XS57) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Commerce, Science, and Transportation.

EC–3599. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian Islands'' (RIN0648–XS59) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Commerce, Science, and Transportation.

EC–3600. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Western Aleutian Islands'' (RIN0648–XS58) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Commerce, Science, and Transportation.

EC–3601. A communication from the Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Secretarial Final Interim Action; Rule Extension'' (RIN0648–AW87) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Commerce, Science, and Transportation.

EC–3602. A communication from the Deputy Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Improving Public Safety Communications in the 800 MHz Band'' ((FCC 07–92)(WT Docket No. 02–55)) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Commerce, Science, and Transportation.

EC–3603. A communication from the Acting Division Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended'' ((WC Docket No. 07–267)(FCC09–56)) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Commerce, Science, and Transportation.

EC–3604. A communication from the Program Analyst, Office of Managing Director—Financial Operations, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Notice of Proposed Rulemaking and Order, Assessment and Collection of Regulatory Fees for Fiscal Year 2009'' ((FCC 09–38; 09–65)(MD Docket Nos. 09–65 and 08–65)) received in the Office of the President of the Senate on November 4, 2009; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUYE, from the Committee on Appropriations:

Special Report entitled ''Further Revised Allocation to Subcommittees of Budget Totals from the Concurrent Resolution, Fiscal Year 2010'' (Rept. No. 111–97).

By Mr. LEAHY, from the Committee on the Judiciary, with amendments:

S. 1490. A bill to prevent and mitigate identity theft, to ensure privacy, to provide notice of security breaches, and to enhance criminal penalties, law enforcement assistance, and other protections against security breaches, fraudulent access, and misuse of personally identifiable information.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. LEAHY for the Committee on the Judiciary.

Ketanji Brown Jackson, of Maryland, to be a Member of the United States Sentencing Commission for a term expiring October 31, 2013.

Kenyen Ray Brown, of Alabama, to be United States Attorney for the Southern District of Alabama for the term of four years.

Stephanie M. Rose, of Iowa, to be United States Attorney for the Northern District of Iowa for the term of four years.

Nicholas A. Klinefeldt, of Iowa, to be United States Attorney for the Southern District of Iowa for the term of four years.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. LANDRIEU (for herself and Mr. NELSON of Florida):

S. 2731. A bill to improve disaster assistance provided by the Small Business Administration, and for other purposes; to the Committee on Small Business and Entrepreneurship.

By Mr. MENENDEZ:

S. 2732. A bill to require the Administrator of the Federal Aviation Administration to promulgate regulations to prohibit the use of certain portable electronic devices in the cockpit of commercial aircraft during flight and to conduct a study of the safety impact of distracted pilots; to the Committee on Commerce, Science, and Transportation.

By Mr. BROWN (for himself, Ms. MIKULSKI, Mr. FRANKEN, and Mr. BENNET):

S. 2733. A bill to provide for the establishment of a Private Education Loan Ombudsman; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FRANKEN (for himself and Mr. LUGAR):

S. 2734. A bill to amend the Public Health Service Act with respect to the prevention of diabetes, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. NELSON of Florida (for himself, Ms. LANDRIEU, Mr. VITTER, and Mr. INHOFE):

S. 2735. A bill to prohibit additional requirements for the control of Vibrio vulnificus applicable to the post-harvest processing of oysters; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FRANKEN (for himself, Mr. GRASSLEY, Mrs. FEINSTEIN, and Mr. HATCH):

S. 2736. A bill to reduce the rape kit backlog and for other purposes; to the Committee on the Judiciary.

By Mr. BROWNBACK (for himself, Mr. INHOFE, Mr. KYL, Mr. CORNYN, Mr. LIEBERMAN, Mr. VITTER, and Mr. BUNNING):

S. 2737. A bill to relocate to Jerusalem the United States Embassy in Israel, and for other purposes; to the Committee on Foreign Relations.

By Mr. DODD (for himself and Mr. GRASSLEY):

S. 2738. A bill to authorize National Mall Liberty Fund D.C. to establish a memorial on Federal land in the District of Columbia to honor free persons and slaves who fought for independence, liberty, and justice for all during the American Revolution; to the Committee on Energy and Natural Resources.

By Ms. CANTWELL (for herself and Mrs. MURRAY):

S. 2739. A bill to amend the Federal Water Pollution Control Act to provide for the establishment of the Puget Sound Program Office, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. MURRAY (for herself, Mr. FRANKEN, and Mr. BROWN):

S. 2740. A bill to establish a comprehensive literacy program; to the Committee on Health, Education, Labor, and Pensions.

By Mr. UDALL of New Mexico:

S. 2741. A bill to establish telehealth pilot projects, expand access to stroke telehealth services under the Medicare program, improve access to ''store-and-forward'' telehealth services in facilities of the Indian Health Service and Federally qualified health centers, reimburse facilities of the Indian Health Service as originating sites, establish regulations to consider credentialing and privileging standards for originating sites with respect to receiving telehealth services, and for other purposes; to the Committee on Finance.

By Mr. CASEY (for himself and Mr. BROWN):

S. 2742. A bill to provide for a Climate Change Worker and Community Assistance Program, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. SNOWE (for herself, Mr. WEBB, Mrs. LINCOLN, and Ms. LANDRIEU):

S. 2743. A bill to amend title 10, United States Code, to provide for the award of a military service medal to members of the Armed Forces who served honorably during the Cold War, and for other purposes; to the Committee on Armed Services.

By Mr. BARRASSO (for himself, Mr. BINGAMAN, and Mr. ENZI):

S. 2744. A bill to amend the Energy Policy Act of 2005 to expand the authority for awarding technology prizes by the Secretary of Energy to include a financial award for separation of carbon dioxide from dilute sources; to the Committee on Energy and Natural Resources.

By Mr. DORGAN (for himself, Ms. KLOBUCHAR, Mr. ROCKEFELLER, Mr. LAUTENBERG, and Mr. FRANKEN):

S. 2745. A bill to prohibit the use of personal wireless communications devices and laptop computers by the flight crew of commercial aircraft on the flight deck of such aircraft during aircraft operations; to the Committee on Commerce, Science, and Transportation.

By Mr. SANDERS:

S. 2746. A bill to address the concept of ''Too Big To Fail'' with respect to certain financial entities; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HATCH (for himself, Mr. BINGAMAN, Mrs. MCCASKILL, Mr. COCHRAN, and Mr. RISCH):

S. Res. 338. A resolution designating November 14, 2009, as ''National Reading Education Assistance Dogs Day''; to the Committee on the Judiciary.

By Mr. SPECTER (for himself, Mr. KAUFMAN, Mr. CORNYN, Mr. FEINGOLD, Mr. DURBIN, Ms. KLOBUCHAR, Mr. WHITEHOUSE, and Mr. SCHUMER):

S. Res. 339. A resolution to express the sense of the Senate in support of permitting the televising of Supreme Court proceedings; to the Committee on the Judiciary.

By Mr. CRAPO (for himself and Mrs. LINCOLN):

S. Res. 340. A resolution expressing support for designation of a National Veterans History Project Week to encourage public participation in a nationwide project that collects and preserves the stories of the men and women who served our Nation in times of war and conflict; to the Committee on Veterans' Affairs.

By Mr. CARDIN (for himself and Mr. LUGAR):

S. Res. 341. A resolution supporting peace, security, and innocent civilians affected by conflict in Yemen; to the Committee on Foreign Relations.

By Mr. DORGAN (for himself, Mr. BARRASSO, Mr. BAUCUS, Mr. BEGICH, Mr. BINGAMAN, Ms. CANTWELL, Mr. CONRAD, Mr. CRAPO, Mr. FRANKEN, Mr. JOHNSON, Mr. MCCAIN, Mr. MERKLEY, Ms. MURKOWSKI, Mrs. MURRAY, Mr. TESTER, Mr. THUNE, Mr. UDALL of Colorado, and Mr. UDALL of New Mexico):

S. Res. 342. A resolution recognizing National American Indian and Alaska Native Heritage Month and celebrating the heritage and culture of American Indians and Alaska Natives and the contributions of American Indians and Alaska Natives to the United States; considered and agreed to.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. Con. Res. 47. A concurrent resolution recognizing the 75th anniversary of the establishment of the East Bay Regional Park District in California, and for other purposes; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 448

At the request of Mr. SPECTER, the name of the Senator from Delaware (Mr. KAUFMAN) was added as a cosponsor of S. 448, a bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

S. 456

At the request of Mr. DODD, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 456, a bill to direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop guidelines to be used on a voluntary basis to develop plans to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs, to establish

school-based food allergy management grants, and for other purposes.

S. 572

At the request of Mr. WEBB, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 572, a bill to provide for the issuance of a ''forever stamp'' to honor the sacrifices of the brave men and women of the Armed Forces who have been awarded the Purple Heart.

S. 827

At the request of Mr. ROCKEFELLER, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 827, a bill to establish a program to reunite bondholders with matured unredeemed United States savings bonds.

S. 850

At the request of Mr. KERRY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 850, a bill to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

S. 1067

At the request of Mr. FEINGOLD, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1461

At the request of Mrs. BOXER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1461, a bill to amend the Internal Revenue Code of 1986 to treat trees and vines producing fruit, nuts, or other crops as placed in service in the year in which it is planted for purposes of special allowance for depreciation.

S. 1490

At the request of Mr. LEAHY, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1490, a bill to prevent and mitigate identity theft, to ensure privacy, to provide notice of security breaches, and to enhance criminal penalties, law enforcement assistance, and other protections against security breaches, fraudulent access, and misuse of personally identifiable information.

S. 1523

At the request of Mr. BURR, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1523, a bill to amend the Public Health Service Act to establish a grant program to provide supportive services in permanent supportive housing for chronically homeless individuals and families, and for other purposes.

S. 1628

At the request of Mr. UDALL of Colorado, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 1628, a bill to amend title VII of the Public Health Service Act to increase the number of physicians who practice in underserved rural communities.

S. 1635

At the request of Mr. DORGAN, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1635, a bill to establish an Indian Youth telemental health demonstration project, to enhance the provision of mental health care services to Indian youth, to encourage Indian tribes, tribal organizations, and other mental health care providers serving residents of Indian country to obtain the services of predoctoral psychology and psychiatry interns, and for other purposes.

S. 1681

At the request of Mr. LEAHY, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1681, a bill to ensure that health insurance issuers and medical malpractice insurance issuers cannot engage in price fixing, bid rigging, or market allocations to the detriment of competition and consumers.

At the request of Mr. BENNET, his name was added as a cosponsor of S. 1681, supra.

S. 1682

At the request of Ms. CANTWELL, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1682, a bill to provide the Commodity Futures Trading Commission with clear antimarket manipulation authority, and for other purposes.

S. 1724

At the request of Mr. SCHUMER, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1724, a bill to establish a competitive grant program in the Department of Justice to be administered by the Bureau of Justice Assistance which shall assist local criminal prosecutor's offices in investigating and prosecuting crimes of real estate fraud.

S. 1756

At the request of Mr. HARKIN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1756, a bill to amend the Age Discrimination in Employment Act of 1967 to clarify the appropriate standard of proof.

S. 1792

At the request of Mr. ROCKEFELLER, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 1792, a bill to amend the Internal Revenue Code of 1986 to modify the requirements for windows, doors, and skylights to be eligible for the credit for nonbusiness energy property.

S. 1859

At the request of Mr. ROCKEFELLER, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 1859, a bill to reinstate Federal matching of State spending of child support incentive payments.

S. 1982

At the request of Mr. BROWN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1982, a bill to renew and extend the provisions relating to the identification of trade enforcement priorities, and for other purposes.

S. 2336

At the request of Mr. SESSIONS, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. 2336, a bill to safeguard intelligence collection and enact a fair and responsible reauthorization of the 3 expiring provisions of the USA PATRIOT Improvements and Reauthorization Act.

S. 2532

At the request of Mr. SPECTER, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 2532, a bill to extend the temporary duty suspensions on certain cotton shirting fabrics, and for other purposes.

S. 2729

At the request of Ms. STABENOW, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 2729, a bill to reduce greenhouse gas emissions from uncapped domestic sources, and for other purposes.

S. 2730

At the request of Mr. BROWN, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 2730, a bill to extend and enhance the COBRA subsidy program under the American Recovery and Reinvestment Act of 2009.

S. RES. 71

At the request of Mr. WYDEN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. Res. 71, a resolution condemning the Government of Iran for its state-sponsored persecution of the Baha'i minority in Iran and its continued violation of the International Covenants on Human Rights.

S. RES. 334

At the request of Mr. HATCH, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of S. Res. 334, a resolution designating Thursday, November 19, 2009, as ''Feed America Day''.

AMENDMENT NO. 2669

At the request of Mr. GRAHAM, the names of the Senator from Georgia (Mr. CHAMBLISS), the Senator from Texas (Mr. CORNYN) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of amendment No. 2669 proposed to H.R. 2847, a bill making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2685

At the request of Mr. SCHUMER, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of amendment No. 2685 intended to be proposed to H.R. 2847, a bill making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. LANDRIEU (for herself and Mr. NELSON, of Florida):

S. 2731. A bill to improve disaster assistance provided by the Small Business Administration, and for other purposes; to the Committee on Small Business and Entrepreneurship.

Ms. LANDRIEU. Mr. President, I come to the floor today to speak on an issue that is of great importance to my home State of Louisiana—Federal disaster preparedness. As you know, along the Gulf Coast, we keep an eye trained on the Gulf of Mexico during hurricane season. This is following the devastating one-two punch of Hurricanes Katrina and Rita of 2005 as well as Hurricanes Gustav and Ike last year. Our communities and businesses are still recovering from these disasters—some from a disaster that devastated the Gulf Coast almost 5 years ago. For this reason, as Chair of the Senate Committee on Small Business and Entrepreneurship disaster preparedness is one of my top priorities. While the Gulf Coast is prone to hurricanes, other parts of the country are no strangers to disaster. For example, the Midwest has tornadoes, California experiences earthquakes and wildfires, and the Northeast sees crippling snowstorms. So no part of our country is spared from disasters—disasters which can and will strike at any moment. With this in mind, we must ensure that the Federal Government is better prepared and has the tools necessary to respond quickly, effectively following a disaster.

As I mentioned, everyone around the country is familiar with the impact of Hurricanes Katrina and Rita on the New Orleans area and the southeast part of our state. Images from the devastation following these storms, and the subsequent Federal levee breaks, were transmitted around the country and around the world. This is because Katrina was the deadliest natural disaster in United States history, with 1,800 people killed—1,500 alone in Louisiana. Katrina was also the costliest natural disaster in United States history with over $81.2 billion in damage. In Louisiana, we had 18,000 businesses catastrophically destroyed and 81,000 businesses economically impacted. I believe that, across the entire Gulf Coast, some estimates ran as high as 125,000 businesses impacted by Katrina and Rita. While we have made significant progress in rebuilding infrastructure, housing, and our economy, I continue to hear from individual business owners who are struggling to fully recover. These business owners tell me that they have not been hit by one disaster but three: Hurricane Katrina in 2005, Hurricane Gustav in 2008, and the economic downturn. Louisiana was slow to feel the brunt of the credit crunch and economic meltdown but last year we began to see the drying up of investments and the shrinking of consumers' pocketbooks.

One business owner that I have met with is Charles R. ''Ray'' Bergeron. He and his wife own Fleur de Lis Car Care Center in New Orleans, Louisiana. Small Business Administration, SBA, Administrator Karen Mills and I toured Mr. Bergeron's business during a visit to New Orleans on June 30, 2009. As a result of Hurricane Katrina, Mr. and Mrs. Bergeron found themselves having to take out two loans, one for their house and another for their small business. Pre-Katrina, Fleur de Lis Car Care Center had 8 employees. As of our visit in June, they were down to 2 employees not including Mr. Bergeron. They have a $225,000 SBA disaster loan with a standard 30-year term. According to Mr. Bergeron, he will not pay it off until he is 101 years old. The business was back at about 40 percent of pre-Katrina sales, due in large measure to the population not being back. Their neighborhood is mostly empty homes. He attributes part of slow population recovery to high flood insurance premiums, high property taxes and high homeowner's insurance. These are the type of businesses that we must ensure keep their doors open: businesses that took the initiative to re-open right after the disaster. These ''pioneer'' businesses serve as anchors to the community in the early days of recovery. If residents see their favorite restaurant open or the local gas station, they are more likely to come back to rebuild their homes.

In order to help ongoing recovery efforts in the Gulf Coast, and to give the SBA more tools to respond after a future disaster, I am introducing the Small Business Administration Disaster Recovery and Reform Act of 2009. This legislation builds off of SBA disaster reforms enacted last year and also provides targeted assistance for Gulf Coast recovery. My bill also includes an important provision authorizing SBA to help families impacted by defective drywall manufactured in the People's Republic of China.

In terms of immediate recovery assistance, Title I of the bill includes three provisions which I believe will help both Gulf Coast businesses as well as families nationwide dealing with toxic drywall in their homes. First, this bill amends Section 12086 added by SBA disaster reforms in the 2008 Farm Bill. This provision created a Gulf Coast Disaster Loan Refinancing Program. The intent of the program, as I understand it from my colleagues in the House of Representatives, was to allow Gulf Coast businesses and homeowners to defer for up to 4 years, payments on SBA disaster loans. This provision certainly had good intentions, however, we are a year on and the program has yet to be implemented. That is because in practice the program would likely be re-amortizing the same debt and, under the Credit Reform Act, to refinance a $1,000,000 disaster loan would require $1,000,000 in additional funding. To try to salvage this program, my bill would require SBA to report back to Congress in 30 days with recommendations on improving this program. These recommendations could include such additional options as modifying the end of the deferment date of loans, reducing interest payments on loans, extending out the term of loans to 35 years or other changes to the program that might make it more workable. I believe this program is on the right track, Congress just needs advice from the SBA on how we can make it work better to actually help people in the Gulf Coast.

The next provision in Title I relates to minority businesses in the Gulf Coast that were impacted by Hurricanes Katrina and Rita. Everyone is familiar with the images and the cost of these storms, but they may not be too familiar with the impact on individual businesses. In particular, I am speaking about the affects of Hurricanes Katrina and Rita on minority firms in the Gulf Coast. As a result of these storms, many minority firms in the Gulf Coast were disrupted and thus lost valuable time for participating in the 8(a) program. The 8(a) business development initiative, created under the Small Business Administration, helps minority entrepreneurs access Federal contracts and allows companies to be certified for increments of three years. These contracts are vital to the revival of these impacted areas. However, as currently structured the program allows businesses to participate for a limited length of time, 9 years, after which they can never re-apply nor get back into the program. It is imperative that we provide contracting assistance to our local minority businesses.

My bill includes a provision which would tackle this problem in three important ways. First, the bill extends 8(a) eligibility for program participants in Katrina/Rita-impacted areas in Louisiana, Mississippi, and Alabama by 24 months. The bill would also apply to any areas in the state of Louisiana, Mississippi and Alabama that have been designated by the Administrator of the Small Business Administration as a disaster area as a result of Hurricanes Katrina or Rita. Lastly, the bill would require the administrator of the Small Business Administration to ensure that every small business participating in the 8(a) program before the date of enactment of the Act is reviewed and brought into compliance with this act. This requirement would ensure that any eligible previous 8(a) participants will be allowed back into

the program. As such, these key provisions would ensure that these businesses continue to play a vital role in rebuilding their communities. I note that I introduced a similar provision as part of S. 3285, the Disadvantaged Business Disaster Eligibility Act during the 110th Congress. Last Congress, the proposal passed the House of Representatives but we were unable to pass the legislation here in the Senate before we adjourned for the year. I look forward to renewing my fight this Congress as I believe that this is a commonsense proposal which would not cost a great deal. It would, however, make a huge difference for these businesses impacted by Katrina and Rita.

The last recovery-related provision in Title I of the bill is focused on families impacted by defective drywall manufactured in the People's Republic of China. Since 2006, more than 550 million pounds of drywall have been imported to the United States from China. This drywall was used because at the time there was a shortage of product by domestic drywall producers and there was increased demand due to recovery from the 2004/2005 hurricanes and the housing boom. In the last 20 months, however, countless homeowners across the country have reported serious metal corrosion, noxious fumes, and health concerns. Reported symptoms have included bloody noses, headaches, insomnia, and skin irritation. Preliminary testing has confirmed that imported defective drywall is the problem, but these tests have not been able to pinpoint the problem substance in the drywall.

Just last week, the Consumer Product Safety Commission, CPSC, released additional preliminary results of this drywall which did not identify the exact cause but did outline areas for concern. First, CPSC tested Chinese drywall and compared it with U.S.-made drywall. Chinese drywall contained elemental sulfur and higher levels of strontium—both not in domestic drywall. These findings are similar to May 2009 test results from the Environmental Protection Agency, EPA. Strontium and sulfur, in increased levels, have been linked to possible health problems. CPSC also carried out chamber testing on emissions from samples of Chinese-made and domestic drywall. Early results show that Chinese drywall emits volatile sulfur compounds at a higher rate than U.S. drywall. Further testing is underway to determine the specific compounds being emitted. Lastly, Federal officials analyzed indoor air results from 10 homes in Florida and Louisiana. This study led to a preliminary finding of detectable concentrations of two known irritants: acetaldehyde and formaldehyde. The concentrations were at levels that could worsen asthma or other conditions, especially when air conditioners were off/not working. Later this month, the CPSC is expected to release more comprehensive information on Chinese drywall. This includes results of a 50-home air sampling project and a preliminary engineering analysis of potential electrical/fire safety issues related to metal corrosion. Key to any results would be Federal recommendations on testing and remediation protocols for Chinese drywall. This would be crucial for homeowners who currently have no definitive way to prove they have Chinese drywall in their homes or procedures to remove the product for good.

In total, as of last week the CPSC had received 1,900 incident reports from 30 States, the District of Columbia and Puerto Rico. The majority of these reports, 1,317, came from Florida, with Louisiana next, 339, followed by Virginia, 69, Mississippi, 63, and Alabama, 32. These figures demonstrate that this problem is not just an obstacle to Gulf Coast recovery efforts but may also pose a threat to homeowners across the country.

To help homeowners struggling with this defective product, I have worked closely over the past few months with my Senate colleagues from Florida and Virginia. This summer, Senator BILL NELSON and I were successful, along with the leadership of the Senate Appropriations Committee, in pushing the CPSC to allocate $2,000,000 in unobligated funds to help the Chinese drywall investigation. Senator NELSON and Senators MARK WARNER and JIM WEBB from Virginia also wrote to the Internal Revenue Service inquiring if they could assist homeowners. The IRS indicated in July that homeowners may be able to claim a casualty loss on their tax returns if they have Chinese drywall that emits an unusual or severe concentration of chemical fumes that causes extreme and unusual damage. We have also written to the Federal Emergency Management Agency, FEMA, inquiring if the agency could provide emergency rental assistance as it has done in the past.

In July, my Senate colleagues and I wrote to the SBA asking what they could do under existing authority to help these families. In its October 29, 2009, response to this letter, SBA indicated that it did not currently have the authority to assist homeowners impacted by drywall. This is because, under the current law, SBA's definition of a disaster only includes typical natural disasters such as tornadoes, hurricanes, wildfires, or snowstorms. However, it is my understanding that for previous disasters, there is a precedent in Congress authorizing SBA to respond to a specific disaster and one instance where Congress tasked $25,000,000 in existing funds to help ongoing recovery efforts. Manufacturers of this product should bear the majority of the financial burden for remediation but I believe there is a limited role for SBA to play in assisting homeowners with toxic drywall.

For this reason, the legislation I am introducing today includes an authorization for the SBA Administrator to provide disaster home loans in States in which a Governor declares a disaster because of defective drywall. The provision would cover drywall which entered the United States from China from 2004 to 2008 and is demonstrated to cause corrosion or property damage. I note that this provision would not provide SBA funds for losses or damage covered by insurance or other sources. This authorization also caps the funding at this program at no more than 25 percent of the funds appropriated for SBA disaster assistance. In a normal Appropriations cycle, this would equate to about $25,000,000 in funds or $250,000,000 in actual disaster loans. If enacted, this provision would go a long way towards helping these struggling families.

While it is important to respond to ongoing recovery-related needs across the country, we must also ensure that the SBA is better prepared for future disasters. To these ends, my committee held a field hearing in Galveston, Texas on September 25, 2009. This hearing focused on the initial Federal response and ongoing recovery efforts from Hurricane Ike in 2008. The hearing was the first Congressional hearing held in Galveston since Hurricane Ike struck the Texas Gulf Coast last year. With this in mind, we were able to hear firsthand Federal, State, and local officials on the progress of rebuilding Galveston Island. My committee also heard from business owners on the challenges that emerged in the year that passed since Ike made landfall.

This hearing highlighted improvements in SBA's disaster programs since the 2005 storms. For example, after Katrina and Rita, the Federal response was slow; planning was insufficient, and staff and funding came up short. Following the 2005 storms, it took SBA 90 days to process a home loan and 70 days to process a business loan. After this woeful performance, I pushed for a change in SBA leadership and changes in the way they respond to disasters. In 2006, a new SBA Administrator, Steve Preston, took over and, at my request, he implemented a new SBA Disaster Response Plan in time for the 2007 hurricane season. This plan was a major improvement over the unwieldy, bureaucratic procedures that guided SBA post-Katrina/Rita. SBA will also be submitting to Congress in the next few weeks 2009 revisions to the Disaster Response Plan. I look forward to reviewing these changes in the event that additional improvements are needed.

Last year, as part of the 2008 Farm Bill, Congress also passed legislative reforms to SBA's disaster programs. These reforms, along with other key improvements: Increased SBA loan limits from $1.5 million to $2 million; created new tools such as bridge loans or private disaster loans following catastrophic disasters; required coordination between FEMA, SBA, and the IRS; and allowed nonprofits, for the first time, to be eligible for SBA economic injury disaster loans. Earlier this year, our committee heard testimony from

local officials in southwest Louisiana that SBA was better prepared and more responsive following Gustav and Ike. As evidence of this, I note that it took 5 days to process a home loan following Ike, compared to the 90 days after Katrina and Rita. Business loans averaged a little over a week to process, compared to the 70 days in 2005.

However, although we heard about improvements to SBA's disaster response at the Galveston hearing, we also learned of additional areas that SBA could further improve its operations. While SBA is processing loans faster, there are still complaints from disaster victims on paperwork and bureaucracy. For example, as of August 31, SBA had received about 2,400 business applications for disaster assistance in Galveston County. 536 of those applications were approved for $84 million but, to date, only $24 million has been disbursed for 280 of these loans. In light of these facts, I am concerned that 2008 disaster reforms might not have gone far enough in giving SBA the tools it needs to help businesses and homeowners after a future disaster. Title II of my legislation dovetails upon the reforms from last year to improve SBA coordination with other disaster response agencies. This section also makes SBA disaster loans more effective in reaching disaster victims most in need of assistance.

As indicated above, when Katrina hit, our businesses and homeowners had to wait months for loan approvals. I do not know how many businesses we lost because help did not come in time. Because of the scale of this disaster, what these businesses needed was immediate, short-term assistance to hold them over until SBA was ready to process the tens of thousands of loan applications it received. That is why in last year's SBA disaster reforms, I included a provision—the Expedited Disaster Assistance Loan Program—to allow the SBA Administrator with the ability to set up a program to make short-term, low-interest loans to keep them afloat. These loans will allow businesses to make payroll, begin making repairs, and address other immediate needs while they are awaiting insurance payouts or regular SBA Disaster Loans.

This provision also directed SBA to study ways to expedite disaster loans for those businesses in a disaster area that have a good, solid track record with the SBA or can provide vital recovery efforts. We had many businesses in the Gulf Coast that had paid off previous SBA loans, were major sources of employment in their communities, but had to wait months for decisions on their SBA Disaster Loan applications. I do not want to get rid of the SBA's current practice of reviewing applications on a first-come-first-served basis, but there should be some mechanism in place for major disasters to get expedited loans out the door to specific businesses that have a positive record with SBA or those that could serve a vital role in the recovery efforts. Expedited loans would jump-start impacted economies, get vital capital out to businesses, and retain essential jobs following future disasters.

While I am proud of this provision, I believe that with a few additional revisions, this program could be more successful. For this reason, Section 201 of this bill increases the loan limit from $150,000 to $250,000 and allows the SBA Administrator to utilize this program, as needed, in either a catastrophic or a major disaster. Currently, the program is limited only to a catastrophic disaster, despite the fact that another bridge loan program from the 2008 Farm Bill—the Immediate Disaster Assistance Loan Program—is available for both catastrophic and major disasters. I realize that every disaster is different and could range from a disaster on the scale of Hurricane Katrina or 9/11, to an ice storm or drought. The modification in my bill would allow SBA additional options and flexibility in the kinds of relief they can offer a community. When a tornado destroys 20 businesses in a small town in the Midwest, SBA can get the regular disaster program up and running fairly quickly. You may not need short-term loans in this instance. But if you know that SBA's resources would be overwhelmed by a storm—just as they were initially with Katrina—these expedited business loans would be very helpful. This section also changes the name of the program to the ''Pioneer Business Recovery Program'' as the intent of the program is to help ''second responder'' or ''pioneer'' businesses that want to reopen immediately following a storm.

The next provision of my bill, Section 202, increases SBA disaster loan limits. In particular, it is my understanding that SBA's disaster home loan limits have not been adjusted since the 1990s. The current limit for SBA disaster loans to replace personal property is $40,000, and the limit for SBA disaster loans to repair damaged homes is $200,000. My legislation would increase the limits to $80,000 and $400,000, respectively. The bill also increases the SBA disaster business loan limit from $2,000,000 to $4,000,000. I believe that these increases would allow SBA to better address the needs of disaster victims in the future.

Section 203 of the bill authorizes SBA to create a State Bridge Loan Guarantee Program. This program would enhance existing partnerships between SBA and States which administer bridge loan programs following disasters. Currently, SBA consults with States pre-disaster on the structure of their program. This is to ensure that these programs run effectively and do not duplicate assistance provided by the SBA disaster assistance program. There are various States, including Louisiana and Florida, which have successful bridge loan programs, and other States which would consider this type of program if there was better Federal-State coordination. Section 203 would allow the SBA Administrator to issue guidelines on an SBA-approved bridge loan program. After issuing these guidelines, SBA could then review State applications and, if necessary, guarantee bridge loans from approved States following a disaster. I would note that this provision was part of S. 3664, the Small Business Disaster Recovery Assistance Improvements Act of 2006 which I introduced in the 109th Congress.

Another provision which I would like to highlight in this bill is Section 205. This section amends the Small Business Act to make aquaculture businesses eligible for SBA Economic Injury Disaster Loans. Currently, such businesses, including crawfish farmers, oyster farmers, shellfish farmers, are excluded from eligibility for these loans. In Louisiana, our aquaculture businesses in the southern part of the State were hit hard by both Hurricane Katrina and Rita. These businesses, many crawfish far ers or those with fish farms, were ineligible for U.S. Department of Agriculture, USDA, disaster assistance, but were also ineligible for SBA disaster loans. We also learned that similar problems followed Hurricanes Gustav and Ike in 2008. I believe that the commonsense fix in my bill will give these businesses the help they need to recover from future disasters.

I am concerned about the larger problem which was raised by aquaculture businesses in my State being caught in limbo between USDA and SBA disaster programs. SBA for example provides physical and economic injury disaster loan assistance to businesses that are victims of a declared disaster. However, the Small Business Act excludes agricultural enterprises from eligibility. The act defines ''agricultural enterprises'' as ''those businesses engaged in the production of food and fiber, ranching, and raising livestock, aquaculture, and all other farming and agricultural related industries.'' Thus, if a business is an agricultural enterprise, SBA is prohibited from providing disaster loan assistance. Prior to 1976, agricultural enterprises were covered by USDA only, and between 1976 and 1986, several statutes allowed agricultural enterprises to be eligible for SBA assistance under certain conditions. As a result of a couple of factors though including duplication of benefits, disparity of service between SBA and USDA and loan shopping, Public Law. 99–272 repealed agricultural eligibility for SBA disaster loans. Since then, all agricultural enterprises have been referred to USDA for disaster loans.

Though USDA has several disaster programs, most are related to production loss of crops. The Farm Service Agency's Emergency Loan Program covers some agriculture related disaster losses, but operates under different eligibility rules from SBA. They

are limited to production on agriculture operations and restrict eligibility to ''family farm'' operations. The disparity between eligibility requirements for the SBA and USDA has resulted in many agricultural businesses being ineligible for disaster assistance at all. Included in that category are horse-related businesses, feedlots, animal breeders and sellers, nurseries, floriculture, tree farms, fish or shellfish business, seed producers, along with others. That is because, to currently be eligible for an SBA disaster loan, a primarily agricultural enterprise must have a separable non-agricultural component, which may be eligible for physical disaster loan assistance provided that it is a separate part of the agricultural enterprise, with separate income, operations, expenses, assets, etc. For economic injury disaster loan assistance, the Small Business Act limits eligibility to small businesses, small agricultural cooperatives, producer cooperatives, and private non-profit organizations. Therefore, the business must meet the eligibility requirements for a small business, and for purposes of EIDL eligibility, the activity of a business must be nonagricultural.

To try to identify some of these gaps between USDA and SBA disaster assistance, Section 209 would require SBA, in consultation with USDA, to report to Congress within 120 days. This report would identify gaps in assistance and provide recommended legislative/administrative changes to fix these problems. For my part, I would like to get these agencies on the same page to ensure that businesses in need—whether they be small businesses or agricultural businesses—are not deprived of assistance if a disaster happens in their area.

In closing, the legislation I am introducing today is an important first step for the Small Business Administration. That is because I am hopeful that, at the appropriate time, my committee can send to the full Senate legislation which will both reform SBA's disaster programs and address ongoing recovery needs across the country. With that goal in mind, I plan to work with my colleagues on both sides of the aisle in the coming months to identify their priorities on these issues.

Mr. President, I ask unanimous consent that the text of the bill and letters of support be printed in the RECORD.

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

S. 2731

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Administration Disaster Recovery and Reform Act of 2009''.

SEC. 2. DEFINITIONS.

In this Act—

(1) the terms ''Administration'' and ''Administrator'' mean the Small Business Administration and the Administrator thereof, respectively;

(2) the term ''approved State Bridge Loan Program'' means a State Bridge Loan Program approved under section 203(b);

(3) the term ''small business concern'' has the meaning given that term under section 3 of the Small Business Act; and

(4) the term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

SEC. 3. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Definitions.
Sec. 3. Table of contents.
TITLE I—GULF COAST RECOVERY AND ASSISTANCE FOR HOMEOWNERS IMPACTED BY DRYWALL MANUFACTURED IN THE PEOPLE'S REPUBLIC OF CHINA
Sec. 101. Report on the Gulf Coast Disaster Loan Refinancing Program.
Sec. 102. Extension of participation term for victims of Hurricane Katrina or Hurricane Rita.
Sec. 103. Assistance for homeowners impacted by drywall manufactured in the People's Republic of China.
TITLE II—IMPROVEMENTS TO ADMINISTRATION DISASTER ASSISTANCE PROGRAMS
Sec. 201. Improvements to the Pioneer Business Recovery Program.
Sec. 202. Increased limits.
Sec. 203. State bridge loan guarantee.
Sec. 204. Modified collateral requirements.
Sec. 205. Aquaculture business disaster assistance.
Sec. 206. Regional outreach on disaster assistance programs.
Sec. 207. Duplication of benefits.
Sec. 208. Administration coordination on economic injury disaster declarations.
Sec. 209. Coordination between Small Business Administration and Department of Agriculture disaster programs.
Sec. 210. Technical and conforming amendment.

TITLE I—GULF COAST RECOVERY AND ASSISTANCE FOR HOMEOWNERS IMPACTED BY DRYWALL MANUFACTURED IN THE PEOPLE'S REPUBLIC OF CHINA

SEC. 101. REPORT ON THE GULF COAST DISASTER LOAN REFINANCING PROGRAM.

Section 12086 of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 2184) is amended by adding at the end the following:

''(g) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 30 days after the date of enactment of this subsection, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report making recommendations regarding improvements to the program.

''(2) CONTENTS.—The report under paragraph (1) may include recommendations relating to—

''(A) modifying the end of the deferment date of Gulf Coast disaster loans;

''(B) reducing interest payments on Gulf Coast disaster loans, subject to the availability of appropriations;

''(C) extending the term of Gulf Coast disaster loans to 35 years; and

''(D) any other modification to the program determined appropriate by the Administrator.''.

SEC. 102. EXTENSION OF PARTICIPATION TERM FOR VICTIMS OF HURRICANE KATRINA OR HURRICANE RITA.

(a) RETROACTIVITY.—If a small business concern, while participating in any program or activity under the authority of paragraph (10) of section 7(j) of the Small Business Act (15 U.S.C. 636(j)), was located in a parish or county described in subsection (b) of this section and was affected by Hurricane Katrina of 2005 or Hurricane Rita of 2005, the period during which that small business concern is permitted continuing participation and eligibility in that program or activity shall be extended for 24 months after the date such participation and eligibility would otherwise terminate.

(b) PARISHES AND COUNTIES COVERED.—Subsection (a) applies to any parish in the State of Louisiana, or any county in the State of Mississippi or in the State of Alabama, that has been designated by the Administrator as a disaster area by reason of Hurricane Katrina of 2005 or Hurricane Rita of 2005 under disaster declaration 10176, 10177, 10178, 10179, 10180, 10181, 10205, or 10206.

(c) REVIEW AND COMPLIANCE.—The Administrator shall ensure that the case of every small business concern participating before the date of enactment of this Act in a program or activity covered by subsection (a) is reviewed and brought into compliance with this section.

SEC. 103. ASSISTANCE FOR HOMEOWNERS IMPACTED BY DRYWALL MANUFACTURED IN THE PEOPLE'S REPUBLIC OF CHINA.

(a) DEFINITIONS.—In this section, the term ''defective drywall'' means drywall board that the Administrator determines—

(1) was manufactured in the People's Republic of China;

(2) was imported into the United States during the period beginning on January 1, 2004, and ending on December 31, 2008; and

(3) is directly responsible for substantial metal corrosion or other property damage in the dwelling in which the drywall is installed.

(b) DISASTER ASSISTANCE FOR HOMEOWNERS IMPACTED BY DEFECTIVE DRYWALL.—

(1) IN GENERAL.—The Administrator may, upon request by a Governor that has declared a disaster as a result of property loss or damage as a result of defective drywall, declare a disaster under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) relating to the defective drywall.

(2) USES.—Assistance under a disaster declared under paragraph (1) may be used only for the repair or replacement of defective drywall.

(3) LIMITATION.—Assistance under a disaster declared under paragraph (1) may not—

(A) provide compensation for losses or damage compensated for by insurance or other sources; and

(B) exceed more than 25 percent of the funds appropriated to the Administration for disaster assistance during any fiscal year.

TITLE II—IMPROVEMENTS TO ADMINISTRATION DISASTER ASSISTANCE PROGRAMS

SEC. 201. IMPROVEMENTS TO THE PIONEER BUSINESS RECOVERY PROGRAM.

(a) IN GENERAL.—Section 12085 of the Food, Conservation, and Energy Act of 2008 (15 U.S.C. 636j) is amended—

(1) in the section heading, by striking ''**EXPEDITED DISASTER ASSISTANCE LOAN PROGRAM**'' and inserting ''**PIONEER BUSINESS RECOVERY PROGRAM**'';

(2) by striking ''expedited disaster assistance business loan program'' each place it

appears and inserting ''Pioneer Business Recovery Program'';

(3) in subsection (b) by striking ''paragraph (9)'' and all that follows and inserting ''section 7(b) of the Small Business Act (15 U.S.C. 636(b)).''; and

(4) in subsection (d)(3)(A), by striking ''$150,000'' and inserting ''$250,000''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 1651) is amended by striking the item relating to section 12085 and inserting the following:

''Sec. 12085. Pioneer Business Recovery Program.''.

SEC. 202. INCREASED LIMITS.

Section 7 of the Small Business Act (15 U.S.C. 636) is amended—

(1) in subsection (d)(6)—

(A) by striking ''$100,000'' and inserting ''$400,000''; and

(B) by striking ''$20,000'' and inserting ''$80,000'';

(2) by striking ''(e) [RESERVED].''; and

(3) by striking ''(f) [RESERVED].''.

SEC. 203. STATE BRIDGE LOAN GUARANTEE.

(a) AUTHORIZATION.—After issuing guidelines under subsection (c), the Administrator may guarantee loans made under an approved State Bridge Loan Program.

(b) APPROVAL.—

(1) APPLICATION.—A State desiring approval of a State Bridge Loan Program shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may require.

(2) CRITERIA.—The Administrator may approve an application submitted under paragraph (1) based on such criteria as the Administrator may establish under this section.

(c) GUIDELINES.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator shall issue to the appropriate economic development officials in each State, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives, guidelines regarding approved State Bridge Loan Programs.

(2) CONTENTS.—The guidelines issued under paragraph (1) shall—

(A) identify appropriate uses of funds under an approved State Bridge loan Program;

(B) set terms and conditions for loans under an approved State Bridge loan Program;

(C) address whether—

(i) an approved State Bridge Loan Program may charge administrative fees; and

(ii) loans under an approved State Bridge Loan Program shall be disbursed through local banks and other financial institutions; and

(D) establish the percentage of a loan the Administrator will guarantee under an approved State Bridge Loan Program.

SEC. 204. MODIFIED COLLATERAL REQUIREMENTS.

Section 7(d)(6) of the Small Business Act (15 U.S.C. 636(d)(6)) is amended by inserting after ''which are made under paragraph (1) of subsection (b)'' the following: '': *Provided further*, That the Administrator shall not require collateral for a loan of not more than $200,000 under paragraph (1) or (2) of subsection (b) relating to damage to or destruction of property of, or economic injury to, a small business concern''.

SEC. 205. AQUACULTURE BUSINESS DISASTER ASSISTANCE.

Section 18(b)(1) of the Small Business Act (15 U.S.C. 647(b)(1)) is amended—

(1) by striking ''aquaculture,''; and

(2) by inserting before the semicolon '', and does not include aquaculture''.

SEC. 206. REGIONAL OUTREACH ON DISASTER ASSISTANCE PROGRAMS.

(a) REPORT.—In accordance with sections 7(b)(4) and 40(a) of the Small Business Act (15 U.S.C. 636(b)(4) and 657l(a)) and not later than 60 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives, a report detailing—

(1) information on the disasters, manmade or natural, most likely to occur in each region of the Administration and likely scenarios for each disaster in each region;

(2) information on plans of the Administration, if any, to conduct annual disaster outreach seminars, including events with resource partners of the Administration, in each region before periods of predictable disasters described in paragraph (1);

(3) information on plans of the Administration for satisfying the requirements under section 40(a) of the Small Business Act not satisfied on the date of enactment of this Act; and

(4) such additional information as determined necessary by the Administrator.

(b) AVAILABILITY OF INFORMATION.—The Administrator shall—

(1) post the disaster information provided under subsection (a) on the website of the Administration; and

(2) make the information provided under subsection (a) available, upon request, at each regional and district office of the Administration.

SEC. 207. DUPLICATION OF BENEFITS.

(a) FINDINGS.—Congress finds the following:

(1) Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155) states the following:

(A) ''The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.''.

(B) ''Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.''.

(C) A recipient of Federal assistance will be liable to the United States ''to the extent that such assistance duplicates benefits available to the person for the same purpose from another source.''.

(2) The Administrator should make every effort to ensure that disaster recovery needs unmet by Federal and private sources are not overlooked in determining duplication of benefits for disaster victims.

(b) REVISED DUPLICATION OF BENEFITS CALCULATIONS.—The Administrator may, after consultation with other relevant Federal agencies, determine whether benefits are duplicated after a person receiving assistance under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) receives other Federal disaster assistance by a disaster victim.

SEC. 208. ADMINISTRATION COORDINATION ON ECONOMIC INJURY DISASTER DECLARATIONS.

Not later than 180 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives, a report providing—

(1) information on economic injury disaster declarations under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) made by the Administrator during the 10-year period ending on the date of enactment of this Act based on a natural disaster declaration by the Secretary of Agriculture;

(2) information on economic injury disaster declarations under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) made by the Administrator during the 10-year period ending on the date of enactment of this Act based on a fishery resource disaster declaration from the Secretary of Commerce;

(3) information on whether the disaster response plan of the Administration under section 40 of the Small Business Act (15 U.S.C. 657l) adequately addresses coordination with the Secretary of Agriculture and the Secretary of Commerce on economic injury disaster assistance under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2));

(4) recommended legislative changes, if any, for improving agency coordination on economic injury disaster declarations under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)); and

(5) such additional information as determined necessary by the Administrator.

SEC. 209. COORDINATION BETWEEN SMALL BUSINESS ADMINISTRATION AND DEPARTMENT OF AGRICULTURE DISASTER PROGRAMS.

(a) DEFINITIONS.—In this section—

(1) the term ''agricultural small business concern'' means a small business concern that is an agricultural enterprise, as defined in section 18(b)(1) of the Small Business Act (15 U.S.C. 647(b)(1)), as amended by this Act; and

(2) the term ''rural small business concern'' means a small business concern located in a rural area, as that term is defined in section 1393(a)(2) of the Internal Revenue Code of 1986.

(b) REPORT.—Not later than 120 days after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Agriculture, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives, a report detailing—

(1) information on disaster assistance programs of the Administration for rural small business concerns and agricultural small business concerns;

(2) information on industries or small business concerns excluded from programs described in paragraph (1);

(3) information on disaster assistance programs of the Department of Agriculture to rural small business concerns and agricultural small business concerns;

(4) information on industries or small business concerns excluded from programs described in paragraph (3);

(5) information on disaster assistance programs of the Administration that are duplicative of disaster assistance programs of the Department of Agriculture;

(6) information on coordination between the two agencies on implementation of disaster assistance provisions of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 1651), and the amendments made by that Act;

(7) recommended legislative or administrative changes, if any, for improving coordination of disaster assistance programs, in particular relating to removing gaps in eligibility for disaster assistance programs by rural small business concerns and agricultural small business concerns; and

(8) such additional information as determined necessary by the Administrator.

SEC. 210. TECHNICAL AND CONFORMING AMENDMENT.

Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is amended in the matter following paragraph (9), by striking ''section 312(a) of the Disaster Relief and Emergency Assistance Act'' and inserting ''section 312(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155(a))''.

SMALL BUSINESS ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, DC, October 28, 2009.

Hon. MARY LANDRIEU,
Chairwoman, Committee on Small Business & Entrepreneurship, U.S. Senate, Washington, DC.

DEAR MADAM CHAIRWOMAN: Thank you for your letter requesting that the U.S. Small Business Administration (SBA) review its existing authority under the Stafford Act to provide disaster assistance to affected businesses and homeowners impacted by the use of allegedly defective drywall. Having toured New Orleans earlier this year, I share your concern for the victims of Hurricane Katrina.

The Stafford Act is the general statutory authority for most Federal disaster response activities as they pertain to Federal Emergency Management Authority (FEMA) programs. When, pursuant to the Stafford Act, the President declares a Major Disaster or emergency and authorizes Federal assistance, including individual assistance, SBA is authorized to make physical disaster loans and economic injury disaster loans to disaster victims. In addition, SBA has the authority under the Small Business Act (Act) to issue disaster declarations and to make physical and economic injury disaster loans to disaster victims in SBA-declared disasters. Under the Act, a ''disaster'' is generally defined as a sudden event which causes severe damage. Product defects do not fall within the statutory definition for a ''disaster.'' Thus, SBA has never based a disaster declaration on defective products. While we are sympathetic to these victims, the installation of defective drywall likewise would not fall within this statutory definition and could not serve as the basis for an SBA disaster declaration.

In response to the specific issues raised in your letter, SBA does have the authority to disburse additional funds to existing disaster borrowers for disaster-related damage that is discovered within a reasonable time after original loan approval and before repairs are complete. However, if the repair, replacement or rehabilitation of the disaster-damaged property has been completed, SBA does not increase an existing loan.

You also asked whether SBA may issue a disaster declaration based on a request from a Governor. After SBA receives a request from a Governor that satisfies the statutory and regulatory requirements, SBA can issue a physical or economic injury disaster declaration and make low interest loans to cover uninsured losses. As noted above, however, the installation of defective drywall would not qualify as a disaster under the SBA's statutory definition.

Thank you again for your continued support of the SBA disaster loan program and the small business community. A similar response is being sent to your colleagues, Senators Nelson, Warner, and Webb.

With warmest regards,

KAREN G. MILLS.

U.S. SENATE,
Washington, DC, July 28, 2009.

Hon. KAREN G. MILLS,
Administrator, U.S. Small Business Administration, Washington, DC.

DEAR ADMINISTRATOR MILLS: As we write to you, the Consumer Product Safety Commission (CPSC) and the Environmental Protection Agency (EPA), in coordination with other Federal and State agencies, are conducting a comprehensive investigation into the health and safety impacts of Chinese-made drywall on American consumers. The U.S. Small Business Administration (SBA) has an important role in disaster response and recovery efforts—helping both homeowners and businesses impacted by manmade and natural disasters. We believe that, at the appropriate time, your agency may be of assistance to homeowners impacted by this toxic product.

Since 2006, more than 550 million pounds of drywall have been imported to the United States from China. In the last 18 months, countless homeowners across the country have reported serious metal corrosion, noxious fumes and health concerns. Reported symptoms have included bloody noses, headaches, insomnia and skin irritation. Preliminary testing has confirmed that imported defective drywall is the problem, but these tests have not been able to pinpoint the specific problem substance within the drywall. More comprehensive results are expected from CPSC and EPA in August/September. In total, the CPSC has received 608 incident reports from 21 states and the District of Columbia, demonstrating that this poses a threat to homeowners across the country.

With this in mind, we respectfully request that the SBA review its existing authority under the Stafford Act and respond no later than August 28, 2009 on the following:

Whether SBA may disburse additional funds on SBA Real Property Disaster Loans from previous disaster or emergency declarations (such as Hurricanes Katrina and Rita in 2005, the 2004 Florida Hurricanes, the 2008 Midwest floods, or other emergency/disaster declarations).

Also outline if the SBA can waive the two year time limit for requesting an increase in loan limits since extraordinary and unforeseeable circumstances may apply in this situation;

Whether SBA—following a written request from a Governor that has declared a disaster or emergency—may make a physical disaster declaration if homes, businesses or a combination of the two, have sustained uninsured losses; and

Whether SBA may make an economic injury declaration if it is demonstrated that at least five small businesses in a disaster area have suffered economic injury as a result of the disaster or emergency and are in need of financial help not otherwise available.

In closing, families in our states are, in many cases, watching their dream homes turn into nightmares. As the Federal government determines the full size and scope of this disaster, we believe it is important to marshal all appropriate Federal resources that may assist these families. We therefore thank you for your consideration of this important request.

Sincerely,

MARY L. LANDRIEU,
U.S. Senator.
BILL NELSON,
U.S. Senator.
MARK R. WARNER,
U.S. Senator.
JIM WEBB,
U.S. Senator.

By Mr. FRANKEN (for himself and Mr. LUGAR):

S. 2734. A bill to amend the Public Health Service Act with respect to the prevention of diabetes, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. FRANKEN. Mr. President, right now many of us are engaged in a worthwhile discussion about health care and health insurance. These are immensely important topics, and I look forward to working with all colleagues to pass health reform this year. In these broader discussions, it is easy to forget that the best way to become a healthier country with lower health care costs is to prevent Americans from becoming sick in the first place. A great place to prioritize wellness over sickness comes in our prevention of diabetes.

Today 24 million Americans suffer from diabetes, and the epidemic is getting worse. If we do not make some changes soon, the prevalence of the disease will double over the next 30 years. The annual cost of diabetes in the country is expected to reach $338 billion by 2020. Right now 57 million Americans are what is considered prediabetic.

That means they are at risk of developing the full-blown disease because they have high blood pressure or high glucose levels. These statistics include over a million adults and 92,000 youth in my State alone. These are Minnesotans who may find out tomorrow they have become diabetic.

We know that diabetes may become debilitating and require costly medical interventions, from daily injections of insulin all the way to amputations. We know how devastating this disease is from the stories we hear when we are back home.

This week I was on the floor and shared the story of Liz MacCaskie from Minneapolis. She lost her job in September and is 58 years old, my exact age. She lives with diabetes and was just diagnosed with kidney failure. She is paying close to $20,000 a year for her insurance and trying to live on $1,000 a month.

If we could help people such as Liz avoid the pain and suffering that comes from diabetes, it would be a healthier, more prosperous country. The good news is that we can help Americans avoid this costly and debilitating disease. Research has shown that prediabetics can avoid full-blown diabetes if they receive access to community services such as nutrition counseling and gym memberships. These are proven to cut the risk of developing diabetes in half.

I am pleased to be offering legislation with Senator LUGAR to ensure that prediabetics have access to services that will stop this disease in its tracks. The Diabetes Prevention Act is based on an NIH research study done in partnership with the YMCA in Indiana. The study showed that a 16-week intensive lifestyle program can prevent diabetes and cost less than $300 per person—less than $300 per person—per

year. Studies have shown us that this investment can save us money within 2 to 3 years.

The Minnesota Department of Health has been working with our local YMCAs in Willmar, Rochester, and Minneapolis to implement this program. We have a diverse group of instructors who speak Spanish, Hmong, Somali, and American Sign Language. They include parish nurses, dietitians, and community health educators. All these folks are helping community members to eat healthier and become more physically active. For the lucky people who get to participate in these programs, it is working. They are losing weight, getting healthier, and avoiding diabetes.

But right now, these efforts are a drop in the bucket because the epidemic is so great. With this bill, we will replicate this cost-effective program and improve the lives of millions of Americans. This bill will help communities across the country to set up diabetes prevention programs—on Indian reservations, in rural areas, and urban centers. Ultimately, health insurance companies will be reimbursing for these services because prevention saves money and it saves lives.

This is an investment in our Nation's future. I look forward to working with my colleagues to enact this important legislation.

By Mr. FRANKEN (for himself, Mr. GRASSLEY, Mrs. FEINSTEIN, and Mr. HATCH):

S. 2736. A bill to reduce the rape kit backlog and for other purposes; to the Committee on the Judiciary.

Mr. FRANKEN. Mr. President, sexual assault is a heinous crime. It is also a startlingly common one. Last year, 90,000 people were raped. We as a Nation have an obligation to help the survivors of sexual assault—by providing them prompt medical attention, and by bringing their assailants to justice.

Thanks to modern technology, we have an unparalleled tool to bring sexual predators to justice: forensic DNA analysis. Using the DNA evidence collected in a rape kit, a police department can conclusively identify an assailant—even when the survivor cannot visually identify her attacker. When DNA collected in rape kits matches existing DNA records, police can quickly capture habitual rapists before they strike again. Rape kit DNA evidence is survivors' best bet for justice. It is also communities' best bet for public safety.

Unfortunately, we have failed to make adequate use of DNA analysis. In 1999, a study commissioned by the National Institute of Justice estimated that there was a backlog of over 180,000 untested rape kits. In 2004, responding to studies like this one, then-Senator BIDEN, Chairman LEAHY and others worked to pass the Debbie Smith Act, a law named after a rape survivor whose backlogged rape kit was tested six years after her assault. That act provided federal funding for the testing of backlogged DNA evidence. Unfortunately, it did not require those funds to test DNA evidence in rape kits.

Because of this loophole—and because many States and localities simply did not use the Debbie Smith funds they were allocated—the promise of the Debbie Smith Act remains unfulfilled. Since 2004, the federal government has distributed about $500 millions in Debbie Smith grants to law enforcement agencies around the country. Local figures suggest that these funds have not had their intended effect. In March 2009, Los Angeles County had 12,500 untested rape kits in police storage. L.A. County is not alone. This fall, the Houston Police Department found at least 4,000 untested rape kits in storage, and Detroit reported a backlog of possibly 10,000 kits.

Those are just three cities. This means that potentially hundreds of thousands of rape kits are sitting, untested, in police departments and crime labs around the country. That is hundreds of thousands of women who have not seen justice. That is countless assailants still free and countless new assaults that have occurred because of this. The New York Times recently highlighted a case which occurred years after the passage of The Debbie Smith Act where a rapist struck twice while the rape kit for one of his earlier victims sat unprocessed at a State crime lab. Sadly, that lab's four month processing delay was one of the shortest in the state.

When rape kits are not tested, rapists are not caught. When rape kits are not tested, more women are raped. Having a backlog of thousands of kits endangers our communities and sends a clear message to perpetrators and survivors of sexual violence: that cases of sexual assault are not a priority. Unfortunately, because our Nation lacks any mechanism to track rape kit backlogs, we have no way of knowing the full scope of this rape kit backlog and the national tragedy that it causes.

The Justice for Survivors of Sexual Assault Act of 2009, which I am introducing today with Senator GRASSLEY, Senator FEINSTEIN, and Senator HATCH, addresses the national rape kit backlog and several other problems that work to deny justice to survivors of sexual assault. These include the denial of free rape kits to survivors of sexual assault, and the shortage of trained health professionals capable of administering rape kit exams.

First, this bill will create strong financial incentives for states to clear their rape kit backlogs once and for all. This bill will reward states who make progress in clearing up their rape kit backlog and start processing their incoming rape kits in a timely manner. It will penalize those that don't, while allowing them the opportunity to regain any lost funds. Having a backlog is not an impossible situation to remedy. In just a few years, the city of New York cleaned up their rape kit backlog, and as a result, saw its arrest rate for rapes jump from 40 to 70 percent.

Second, this bill will put measures in place to track progress and hold States and localities accountable. Law enforcement agencies will be responsible for reporting their reductions of rape kit backlogs, and the Department of Justice will be responsible for analyzing that data and reporting back to Congress.

Third, this bill will guarantee that survivors of sexual assault don't ever pay for their rape kits. Right now, States must cover the full cost of a rape kit examination, either upfront or through reimbursement. But some states don't even cover half of the cost. Survivors who live in States who are in compliance with the law still mistakenly receive bills because of the confusing nature of the reimbursement process. We don't bill criminals for fingerprint processing. Survivors of sexual assault should never see the bill for their rape kit exam, let alone pay any upfront costs.

Fourth, this bill will train more health professionals to administer rape kit exams. If survivors of sexual assault are lucky enough to have their rape kit processed, it is important to ensure it is not declared inadmissible in court due to faulty evidence collection.

Lastly, this bill will provide funds for a study on the availability of trained health professionals to administer rape kit exams at Indian Health Services facilities. Recent studies have shown that Native American women suffer a disproportionately high amount of sexual violence, and we need to make sure that IHS has the proper resources it needs to serve survivors.

We have waited too long to address the rape kit backlog in the United States to the detriment of survivors and our communities. It is time to aggressively clear rape kit backlogs and put rapists where they belong: off our streets and behind bars. With the Federal Government beginning to collect more DNA samples from convicted, non-violent offenders and dozens of State governments following its lead inaction now would mean that rape kits wait longer on the shelf, rape survivors wait longer for justice, and rapists spend more time on the streets.

Survivors of sexual assault do not deserve this. They deserve justice. I want to continue Congress's work in trying to address this issue. In doing so, I follow in the footsteps of people like Vice President BIDEN and Chairman LEAHY, who have consistently and powerfully championed sexual assault survivors within the Senate Judiciary Committee and on the floor of the Senate.

I ask that my colleagues join Senator GRASSLEY, Senator FEINSTEIN, Senator HATCH, and me in supporting the Justice for Survivors of Sexual Assault Act of 2009.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2736

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Justice for Survivors of Sexual Assault Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Rape is a serious problem in the United States.

(2) The Department of Justice reports that in 2006, there were an estimated 261,000 rapes and sexual assaults, and studies show only ⅓ of rapes are reported.

(3) The collection and testing of DNA evidence is a critical tool in solving rape cases. Law enforcement officials using the Combined DNA Index System have matched unknown DNA evidence taken from crime scenes with known offender DNA profiles in the State and National DNA database 2,371 times.

(4) Despite the availability of funding under the amendments made by the Debbie Smith Act of 2004 (title II of Public Law 108–405; 118 Stat. 2266) there exists a significant rape kit backlog in the United States.

(5) A 1999 study commissioned by the National Institute of Justice estimated that there was an annual backlog of 180,000 rape kits that had not been analyzed.

(6) No agency regularly collects information regarding the scope of the rape kit backlog in the United States.

(7) Certain States cap reimbursement for rape kits at levels that are less than ½ the average cost of a rape kit in those States. Yet, section 2010 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–4) requires that in order to be eligible for grants under part T of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.) (commonly known as ''STOP Grants'') States shall administer rape kits to survivors free of charge or provide full reimbursement.

(8) There is a lack of sexual assault nurse examiners and health professionals who have received specialized training specific to sexual assault victims.

SEC. 3. PURPOSE.

The purpose of this Act is to seek appropriate means to address the problems surrounding forensic evidence collection in cases of sexual assault, including rape kit backlogs, reimbursement for or free provision of rape kits, and the availability of trained health professionals to administer rape kit examinations.

SEC. 4. RAPE KIT BACKLOGS.

(a) ADDITIONAL PROTOCOL REQUIREMENT FOR RECEIVING EDWARD BYRNE GRANTS.—Section 502 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3752) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

''(5) A certification that the applicant has implemented a policy requiring all rape kits collected by or on behalf of the applicant to be sent to crime laboratories for forensic analysis.''.

(b) ADDITIONAL DEBBIE SMITH GRANT REQUIREMENTS; DEFINITIONS.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) in subsection (a)(2), by striking ''samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect.'' and inserting ''to eliminate a rape kit backlog and to ensure that DNA analyses of samples from rape kits are carried out in a timely manner.'';

(2) in subsection (b)—

(A) paragraph (6), by striking ''and'' at the end;

(B) in paragraph (7), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(8) if the State or unit of local government has a rape kit backlog, include a plan to eliminate the rape kit backlog that includes performance measures to assess progress of the State or local unit of government toward a 50 percent reduction in the rape kit backlog over a 2-year period; and

''(9) specify the portion of the amounts made available under the grant under this section that the State or unit of local government shall use for the purpose of DNA analyses of samples from untested rape kits.'';

(3) in subsection (f)—

(A) in paragraph (1), by striking ''and'' at the end;

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) the following:

''(2) the amount of funds from a grant under this section expended for the purposes of DNA analyses for untested rape kits; and''; and

(4) by striking subsection (i) and inserting the following:

''(i) DEFINITIONS.—In this section:

''(1) RAPE KIT.—The term 'rape kit' means DNA evidence relating to—

''(A) sexual assault (as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a))); or

''(B) conduct described in section 2251, 2251A, or 2252 of chapter 110 of title 18, United States Code, regardless of whether the conduct affects interstate commerce.

''(2) RAPE KIT BACKLOG.—The term 'rape kit backlog' means untested rape kits that are in the possession or control of—

''(A) a law enforcement agency; or

''(B) a public or private crime laboratory.

''(3) STATE.—The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

''(4) UNTESTED RAPE KIT.—The term 'untested rape kit' means a rape kit collected from a victim that—

''(A) has not undergone forensic analysis; and

''(B) for a combined total of not less than 60 days, has been in the possession or control of—

''(i) a law enforcement agency; or

''(ii) a public or private crime laboratory.''.

(c) ADJUSTING BYRNE GRANT FUNDS FOR COMPLIANCE AND NONCOMPLIANCE; STATISTICAL REVIEW.—Section 505 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3755) is amended by adding at the end the following:

''(i) ADJUSTING BYRNE GRANT FUNDS FOR COMPLIANCE AND NONCOMPLIANCE.—

''(1) DEFINITION.—In this subsection the term 'date for implementation' means the last day of the second fiscal year beginning after the date of enactment of this subsection.

''(2) ADDITIONAL FUNDS FOR COMPLIANCE.—

''(A) REDUCTION OF RAPE KIT BACKLOG.—

''(i) 50 PERCENT REDUCTION.—For any fiscal year beginning after the date of enactment of this subsection, a State or unit of local government shall receive an allocation under this section in an amount equal to 110 percent of the otherwise applicable allocation to the State or unit of local government if the State or unit of local government reduced the rape kit backlog by not less than 50 percent, as compared to the date of enactment of this subsection.

''(ii) 75 PERCENT REDUCTION.—For any fiscal year beginning after the date of enactment of this subsection—

''(I) a State or unit of local government that has received additional funds under clause (i) in any previous fiscal year shall receive an allocation under this section in an amount equal to 110 percent of the otherwise applicable allocation to the State or unit of local government if the State or unit of local government reduced the rape kit backlog by not less than 75 percent, as compared to the date of enactment of this subsection; and

''(II) a State or unit of local government that has not received additional funds under clause (i) in any previous fiscal year shall receive an allocation under this section in an amount equal to 120 percent of the otherwise applicable allocation to the State or unit of local government if the State or unit of local government reduced the rape kit backlog by not less than 75 percent, as compared to the date of enactment of this subsection.

''(iii) 95 PERCENT REDUCTION.—For any fiscal year beginning after the date of enactment of this subsection—

''(I) a State or unit of local government that has received additional funds under clause (ii) in any previous fiscal year shall receive an allocation under this section in an amount equal to 110 percent of the otherwise applicable allocation to the State or unit of local government if the State or unit of local government reduced the rape kit backlog by not less than 95 percent, as compared to the date of enactment of this subsection;

''(II) a State or unit of local government that has received additional funds under clause (i) in any previous fiscal year, and has not received additional funds under clause (ii) in any previous fiscal year, shall receive an allocation under this section in an amount equal to 120 percent of the otherwise applicable allocation to the State or unit of local government if the State or unit of local government reduced the rape kit backlog by not less than 95 percent, as compared to the date of enactment of this subsection; and

''(III) a State or unit of local government that has not received additional funds under clause (i) or (ii) in any previous fiscal year shall receive an allocation under this section in an amount equal to 130 percent of the otherwise applicable allocation to the State or unit of local government if the State or unit of local government reduced the rape kit backlog by not less than 95 percent, as compared to the date of enactment of this subsection.

''(B) TIMELY PROCESSING.—For the first fiscal year beginning after the date of enactment of this subsection, and each fiscal year thereafter, a State or unit of local government that, during the previous fiscal year, tested 95 percent of all rape kits collected from a victim during that previous fiscal year not later than 60 days after the date the rape kit was taken into the possession or control of a law enforcement agency of the State or unit of local government shall receive an allocation under this section in an amount equal to 105 percent of the otherwise applicable allocation to the State or unit of local government.

''(3) WITHHOLDING OF GRANT FUNDS FOR NONCOMPLIANCE.—

''(A) FAILURE TO REDUCE RAPE KIT BACKLOG.—

''(i) YEAR 1.—For the first fiscal year after the date for implementation, a State or unit of local government shall receive an allocation under this section in an amount equal

to 90 percent of the otherwise applicable allocation to the State or unit of local government if the State or unit of local government—

''(I) has a rape kit backlog;

''(II) received a grant under this subpart during each of the 2 previous fiscal years; and

''(III) has failed to reduce the rape kit backlog by not less than 50 percent, as compared to the date of enactment of this subsection.

''(ii) YEAR 3.—For the third fiscal year beginning after the date for implementation, a State or unit of local government shall receive an allocation under this section in an amount equal to 90 percent of the otherwise applicable allocation to the State or unit of local government if the State or unit of local government—

''(I) has a rape kit backlog;

''(II) received a grant under this subpart during the previous fiscal year; and

''(III) has failed to reduce the rape kit backlog by not less than 75 percent, as compared to the date of enactment of this subsection.

''(iii) YEARS 5, 7, AND 9.—For each of the fifth, seventh, and ninth fiscal years beginning after the date for implementation, a State or unit of local government shall receive an allocation under this section in an amount equal to 90 percent of the otherwise applicable allocation to the State or unit of local government if the State or unit of local government—

''(I) has a rape kit backlog;

''(II) received a grant under this subpart during the previous fiscal year; and

''(III) has failed to reduce the rape kit backlog by not less than 95 percent, as compared to the date of enactment of this subsection.

''(B) TIMELY PROCESSING.—For the second fiscal year beginning after the date for implementation, and each fiscal year thereafter, a State or unit of local government that, during the previous fiscal year, tested less than 95 percent of the rape kits collected from a victim during that previous fiscal year not later than 90 days after the date the rape kit was taken into the possession or control of a law enforcement agency of the State or unit of local government shall receive an allocation under this section in an amount equal to 95 percent of the otherwise applicable allocation to the State or unit of local government.

''(j) ANNUAL STATISTICAL REVIEW AND REPORT.—

''(1) IN GENERAL.—The Director of the National Institute of Justice of the Department of Justice (in this subsection referred to as the 'Director') shall conduct an annual comprehensive statistical review of the number of untested rape kits collected by Federal, State, local, and tribal law enforcement agencies.

''(2) REPORT OF DATA TO DIRECTOR.—Each law enforcement agency of the Federal Government or of a State or unit of local government receiving a grant under this subpart (in this subsection referred to as a 'covered law enforcement agency') shall record and report to the Director the number of untested rape kits administered by or on behalf of, or in the possession or control of, the covered law enforcement agency at the end of each fiscal year.

''(3) REPORT TO CONGRESS AND THE STATES.—

''(A) INITIAL REPORT.—Not later than 2 years after the date of enactment of this subsection, and annually thereafter, the Director shall submit to Congress and the States a report regarding the number of untested rape kits administered by or on behalf of, or in the possession of, a covered law enforcement agency.

''(B) SUBSEQUENT ANNUAL REPORTS.—The Director shall include, in the second report, under subparagraph (A), and each subsequent report, the percentage change in the number of untested rape kits for each covered law enforcement agency, as compared to the previous year.

''(4) PENALTY.—For fiscal year 2011, and each fiscal year thereafter, if a State or unit of local government has received a grant under this subpart, and a covered law enforcement agency of the State or local government has failed to report the data required under paragraph (2), the State or unit of local government shall receive an allocation under this section in an amount equal to 95 percent of the otherwise applicable allocation to the State or unit of local government.

''(k) DEFINITIONS.—In this section:

''(1) RAPE KIT.—The term 'rape kit' means DNA evidence relating to—

''(A) sexual assault (as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a))); or

''(B) conduct described in section 2251, 2251A, or 2252 of chapter 110 of title 18, United States Code, regardless of whether the conduct affects interstate commerce.

''(2) RAPE KIT BACKLOG.—The term 'rape kit backlog' means untested rape kits that are in the possession or control of—

''(A) a law enforcement agency; or

''(B) a public or private crime laboratory.

''(3) UNTESTED RAPE KIT.—The term 'untested rape kit' means a rape kit collected from a victim that—

''(A) has not undergone forensic analysis; and

''(B) for a combined total not less than 60 days, has been in the possession or control of—

''(i) a law enforcement agency; or

''(ii) a public or private crime laboratory.''.

SEC. 5. RAPE KIT BILLING.

(a) COORDINATION WITH REGIONAL HEALTH CARE PROVIDERS.—Section 2010(a)(1) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–4(a)(1)) is amended by striking ''assault.'' and inserting ''assault and coordinates with regional health care providers to notify victims of sexual assault of the availability of rape exams at no cost to the victims.''.

(b) REPEAL OF REIMBURSEMENT OPTION.—Effective 2 years after the date of enactment of this Act, section 2010(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–4(b)) is amended—

(1) by striking paragraph (3);

(2) in paragraph (1), by inserting ''or'' after ''victim;''; and

(3) in paragraph (2), by striking ''victims; or'' and inserting ''victims.''.

(c) PROVISION OF RAPE KITS REGARDLESS OF COOPERATION WITH LAW ENFORCEMENT.—Section 2010(d) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–4(d)) is amended by striking ''(d) RULE OF CONSTRUCTION'' and all that follows through the end of paragraph (1) and inserting the following:

''(d) NONCOOPERATION.—

''(1) IN GENERAL.—A State, Indian tribal government, or unit of local government shall not be in compliance with this section unless the State, Indian tribal government, or unit of local government complies with subsection (b) without regard to whether the victim cooperates with the law enforcement agency investigating the offense.''.

SEC. 6. SEXUAL ASSAULT NURSE EXAMINER TRAINING.

(a) DEFINITION.—Section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)) is amended—

(1) by redesignating paragraphs (29) through (37) as paragraphs (30) through (38), respectively; and

(2) inserting after paragraph (28) the following:

''(29) TRAINED EXAMINER.—The term 'trained examiner' means a health care professional who has received specialized training specific to sexual assault victims, including training regarding gathering forensic evidence and medical needs.''.

(b) ADDITIONAL PERSONNEL.—Section 2101(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh(b)) is amended by adding at the end the following:

''(14) To provide for sexual assault forensic medical personnel examiners to collect and preserve evidence, provide expert testimony, and provide treatment of trauma relating to sexual assault.''.

SEC. 7. SEXUAL ASSAULT NURSE AVAILABILITY AT INDIAN HEALTH SERVICES STUDY.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the availability of sexual assault nurse examiners and trained examiners (as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)), as amended by this Act), at all Indian Health Service facilities operated pursuant to contracts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(b) REPORT AND RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on the Judiciary and to the Committee on Indian Affairs of the Senate and to the Committee on the Judiciary and the Committee on Natural Resources of the House of Representatives a report containing the findings of the study conducted under subsection (a), and recommendations for improving the availability of sexual assault nurse examiners and trained examiners (as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)), as amended by this Act).

By Mr. BROWNBACK (for himself, Mr. INHOFE, Mr. KYL, Mr. CORNYN, Mr. LIEBERMAN, Mr. VITTER, and Mr. BUNNING):

S. 2737. A bill to relocate to Jerusalem the United States Embassy in Israel, and for other purposes; to the Committee on Foreign Relations.

Mr. BROWNBACK. Mr. President, I rise today to introduce the Jerusalem Embassy Relocation Act of 2009. My colleagues and I have sponsored this important piece of legislation in order to pave the way for the United States to correct a longstanding and—I believe—dangerous deficiency in our diplomatic relations and foreign policy. For too long, our embassy in Israel has been located in a different city than Jerusalem, which is the capital of Israel according to longstanding Israeli and American law and practice. The time has come to remove the barriers that have encouraged this state of affairs to continue, and that is precisely what this legislation will do, by repealing the waiver included in the Jerusalem Embassy Act of 1995 that has

been abused by the Executive Branch for 14 years.

Jerusalem is the spiritual center of the Jewish faith. First conquered by King David more than 3000 years ago, there has always been a Jewish presence there, a fact attested to by incalculable archaeological evidence. Although at various times the Jewish people lost sovereignty in the land of Israel—to the Babylonians, Greeks, Romans, Byzantines, Ottomans, British—Jerusalem has never served as the capital of any other political or religious entity in history. In every year during the nearly two thousand year exile in 70 A.D., Jews around the world concluded their Passover seder with the phrase, ''Next Year in Jerusalem.'' Despite the depths of despair to which the Jewish people descended throughout their long exile, Jerusalem always remained at the center of Jewish religious life.

Since 1950, just two years after the miraculous rebirth of the State of Israel, Jerusalem has served as Israel's capital. The seat of Parliament, Prime Minister's residence, and Supreme Court, all reside there, in addition to numerous ministries and government buildings. American officials conduct business with Israeli officials in Jerusalem, in de facto recognition of the status of the city. The Jerusalem Embassy Act of 1995, passed into law by an overwhelming vote of Congress, stated unequivocally as a matter of United States policy that ''Jerusalem should be recognized as the capital of the State of Israel,'' and ''the United States Embassy in Israel should be established in Jerusalem no later than May 31, 1999.

This is our policy, yet for some reason our embassy remains in Tel Aviv. This is despite the fact that the government of Israel many times has declared Jerusalem to be the eternal and undivided capital of Israel, a policy reflected in American law. Such a state of affairs constitutes an ongoing affront to the people of Israel who, under international law, have the sovereign right to choose the location of their capital. It also harms the interests of American citizens living in Israel, who face procedural and substantive harm as a result of the confusing diplomatic structure that has arisen in place of a Jerusalem embassy.

The failure of the State Department to relocate the embassy is not only inconvenient and inefficient, but also is dangerous. The State Department's refusal to acknowledge clear U.S. law and policy radicalizes Israel's opponents by creating the false hope that the U.S. would support the division of Jerusalem. Were the embassy to be moved to Jerusalem, and Israel's capital respected in both American law and in practice, then Palestinians and Arab governments would have no choice but to accept the unchanging reality of Jerusalem, which is that Israel, regardless of the political party or government in power, will not move its capital away from this city.

I and my fellow sponsors of this legislation recognize that the Executive Branch generally has discretion over diplomatic arrangements. However, when a waiver included for the limited purpose of national security becomes perfunctory and contradicts the clear will of the Congress, the time has come to reevaluate the wisdom of such a waiver. This bill simply restores the statutory effect of the Jerusalem Embassy Act, updating the timeline of fiscal years required for action, but without the waiver.

I urge my colleagues to support this necessary and appropriate legislation.

By Mr. DODD (for himself and Mr. GRASSLEY):

S. 2738. A bill to authorize National Mall Liberty Fund D.C. to establish a memorial on Federal land in the District of Columbia to honor free persons and slaves who fought for independence, liberty, and justice for all during the American Revolution; to the Committee on Energy and Natural Resources.

Mr. DODD. Mr. President, I rise today to speak about the National Liberty Memorial Act, a bill I am introducing with my colleague Senator GRASSLEY. This important legislation would authorize the construction of a memorial in Washington, DC honoring the African American patriots who fought in the Revolutionary War.

For too long, the role these brave Americans played in the founding of our Nation has been relegated to the dusty back pages of history. Fortunately, historians are now beginning to uncover their forgotten heroism, and they estimate that more than 5,000 slaves and free blacks fought in the army, navy, and militia during the Revolutionary War. They served and struggled in major battles from Lexington and Concord to Yorktown, fighting side by side with white soldiers. More than 400 of these brave Americans hailed from my home state of Connecticut.

More than 20 years ago, Congress authorized a memorial to black Revolutionary War soldiers and sailors, those who provided civilian assistance, and the many slaves who fled slavery or filed petitions to courts or legislatures for their freedom. Unfortunately, the group originally authorized to raise funds for and build the memorial was unable to conclude its task, and there remains no memorial to the important, and too often unacknowledged, contributions made by these 5,000 Americans.

But a group of committed citizens has formed the Liberty Fund DC to complete this memorial and ensure that these patriots receive the tribute they deserve here in our Nation's capital. I am honored to work alongside them in completing this mission.

The time has come to recognize the sacrifice and the impact of the African Americans who fought for the birth of our country. I urge my colleagues to support the National Liberty Memorial Act.

By Mr. UDALL, of New Mexico:

S. 2741. A bill to establish telehealth pilot projects, expand access to stroke telehealth services under the Medicare program, improve access to ''store-and-forward'' telehealth services in facilities of the Indian Health Service and Federally qualified health centers, reimburse facilities of the Indian Health Service as originating sites, establish regulations to consider credentialing and privileging standards for originating sites with respect to receiving telehealth services, and for other purposes; to the Committee on Finance.

Mr. UDALL of New Mexico. Mr. President, access to quality, affordable health care is an issue that impacts every American across our country. Whether someone is struggling to find coverage for themselves or their family members, or searching in vain for a doctor who is accepting new patients, or giving advice to a friend who has just lost his job and, and as a result, his health insurance, no American is spared.

These problems hit particularly hard in America's rural communities. Residents there are more likely to be uninsured than their urban counterparts, have higher rates of chronic disease, and are often forced to travel hundreds of miles for preventive or emergency care, if they can find it at all.

As we continue moving forward with health care reform, we must make sure we do not leave our rural communities behind. In my home State of New Mexico, for example, 30 of our 33 counties are designated as medically underserved. That is why I am please to introduce the Rural TECH Act of 2009, Rural Telemedicine Enhancing Community Health. Through this legislation, I propose that we use technology to connect experts with providers, facilities and patients in rural areas, and to extend critical health care services to underserved areas across the country.

Telehealth technology can help diagnose and treat patients, provide education and training, and conduct community-based research. It uses videoconferencing, the Internet, and handheld mobile devices to provide consultation and case reviews, direct patient care and coordinate support groups, for example. There are many benefits with telehealth, including increased access to education and care, such as connecting remote generalists to urban specialists. This knowledge bridge will help remote areas retain health care providers, and improve the continuity of care. it also would allow patients to stay in their homes and communities, rather than spend precious time and money to travel for treatment and care. In New Mexico, Dr. Steve Adelsheim at the University of New Mexico has been using telehealth during the past few months to provide therapy to a Navajo teenager who is at high risk of suicide.

My bill would create three telehealth pilot projects, expand access to stroke telehealth services, and improve access to ''store-and-forward'' telehealth services in Indian Health Service, IHS, and Federally Qualified Health Centers, FQHCs. I'd like to tell you a bit about each today.

First, the creation of three telehealth pilot projects. These projects would analyze tie clinical heath outcomes and cost-effectiveness of telehealth systems in medically underserved and tribal areas. The first pilot project focuses on using telehealth for behavioral health interventions, such as post traumatic stress disorder. A second pilot project focuses on increasing the capacity of health care workers to provide health services in rural areas, using knowledge networks like New Mexico's Project ECHO. And lastly, I am proposing a pilot project for stroke rehabilitation using telehealth technology.

Second, we will expand access to telehealth services for strokes, a leading cause of death and long-term disability. Travel time to hospitals and shortages of neurologists—especially in rural areas—are among the barriers to stroke treatment. However, Primary Stroke Centers are not accessible for much of the population. For example, there is only one certified Primary Stroke Center in my State, at the University of New Mexico Hospital. This bill would connect many more residents with needed services. In New Mexico alone, there are almost 173,000 Medicare beneficiaries who would gain access to telestroke services.

Third, we will improve access to store-and-forward telehealth services. These services allow rural health facilities to hold and share transmission of medical training, diagnostic information and other data, which is important for remote areas. This bill also would allow IHS facilities to be reimbursed as users of telehealth services. Finally, it would establish regulations for credentialing and privileging telehealth providers at rural sites, saving important resources and time as they accept telehealth services from an area of specialty.

I am pleased to note that my bill is supported by the University of New Mexico Center for Telehealth and Cybermedicine Research, the American Telemedicine Association, and the Telehealth Leadership Initiative. In addition, it is supported by the New Mexico Stroke Advisory Committee, the American Heart Association/American Stroke Association, the American Academy of Neurology, the American Physical Therapy Association, the American Occupational Therapy Association, and the American Speech-Language-Hearing Association. I want to thank each of these groups for their support and encouragement.

By Ms. SNOWE (for herself, Mr. WEBB, Mrs. LINCOLN, and Ms. LANDRIEU):

S. 2743. A bill to amend title 10, United States Code, to provide for the award of a military service medal to members of the Armed Forces who served honorably during the Cold War, and for other purposes; to the Committee on Armed Services.

Ms. SNOWE. Mr. President, I rise today with my colleagues Senator WEBB, Senator LINCOLN, and Senator LANDRIEU to introduce the Cold War Medal Act of 2009. This legislation would provide the authority for the secretaries of the military departments to award Cold War Service Medals to the courageous American patriots who for nearly half-a-century defended the Nation, and indeed, freedom-loving peoples throughout the world, against the advance of communist ideology.

From the end of World War II to dissolution of the Soviet Union in 1991, the Cold War veterans were in the vanguard of this Nation's defenses. They manned the missile silos, ships, and aircraft, on ready alert status or on far off patrols, or demonstrated their resolve in hundreds of exercises and operations worldwide. The commitment, motivation, and fortitude of the Cold War Veterans was second to none.

Astonishingly, no medal exists to recognize the dedication of our patriots who so nobly stood watch in the cause of promoting world peace. Although there have been instances where medals or ribbons, such as the Armed Forces Expeditionary Medal, Korean Defense Service Medal, and Vietnam Service Medal, have been issued, the vast majority of Cold War Veterans did not receive any medal to pay tribute to their dedication and patriotism during this extraordinary period in American history. It is only fitting that these brave servicemembers who served honorably during this era receive the recognition for their efforts in the form of the Cold War Service Medal.

Specifically, the Cold War Service Medal Act of 2009 would allow the Defense Department to issue a Cold War Service Medal to any honorably discharged veteran who served on active duty for not less than two years or was deployed for thirty days or more during the period from September 2, 1945, to December 26, 1991. In the case of those veterans who are now deceased, the medal could be issued to their family or representative, as determined by the Defense Department. The bill would also express the sense of Congress that the secretary of Defense should expedite the design of the medal and expedite the establishment and implementation mechanisms to facilitate the issuance of the Cold War Service Medal.

The award of the Cold War Service Medal is supported by the American Cold War Veterans, the American Legion, the Veterans of Foreign Wars, and many other veterans' services organizations.

With November 9, 2009, the 20th anniversary of the fall of the Berlin Wall which marked the beginning of the end of the Cold War, quickly approaching, Senator WEBB, Senator LINCOLN, Senator LANDRIEU, and I invite our colleagues to cosponsor this significant legislation to honor our Cold War Veterans.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 338—DESIGNATING NOVEMBER 14, 2009, AS ''NATIONAL READING EDUCATION ASSISTANCE DOGS DAY''

Mr. HATCH (for himself, Mr. BINGAMAN, Mrs. MCCASKILL, Mr. COCHRAN, and Mr. RISCH) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 338

Whereas reading provides children with an essential foundation for all future learning;

Whereas the Reading Education Assistance Dogs (R.E.A.D.) program was founded in November of 1999 to improve the literacy skills of children through the mentoring assistance of trained, registered, and insured pet partner reading volunteer teams;

Whereas children who participate in the R.E.A.D. program make significant improvements in fluency, comprehension, confidence, and many additional academic and social dimensions;

Whereas the R.E.A.D. program now has an active presence in 49 States, 3 provinces in Canada, Europe, Asia, and beyond with more than 2,400 trained and registered volunteer teams participating and influencing thousands of children in classrooms and libraries across the Nation;

Whereas the program has received awards and recognition from distinguished entities including the International Reading Association, the Delta Society, the Latham Foundation, the American Library Association, and PBS Television; and

Whereas the program has garnered enthusiastic coverage from national media, including major television networks NBC, CBS, and ABC, as well as international television and print coverage: Now, therefore, be it

Resolved, That the Senate, in honor of the 10th anniversary of the R.E.A.D. program, designates November 14, 2009, as ''National Reading Education Assistance Dogs Day''.

Mr. HATCH. Mr. President, I rise today to submit a resolution regarding the 10th Anniversary of the Reading Education Assistance Dogs, R.E.A.D., program by designating November 14, 2009, as ''National Reading Assistance Dogs Day.'' This is a nationwide program promoted by a number of organizations throughout the U.S. and even throughout countries around the world as an innovative, successful approach aimed at assisting some of our nation's most vulnerable citizens, our children, learn how to read.

The R.E.A.D. program was the first literacy program in the country to use therapy animals as reading companions for children. This unique method provides children an opportunity to improve their reading skills in a comfortable environment by reading aloud to dogs. After 10 years of results, the program has proven to be incredibly successful in helping children who are struggling with this most-crucial and

basic of skills. Simply put, this is a program that fills a vital place in the spectrum of a child's literary education and with over 2,400 voluntary therapy teams around the world, it would be an understatement to say this program has not touched and improved thousands of young lives.

Over the span of the previous 10 years, this is an achievement that is virtually impossible to measure, yet today, as small token of my own personal appreciation, I submit a resolution that would designate Saturday, November 14, 2009, as National Reading Education Assistance Dogs Day. Once agreed to, this resolution will recognize the thousands of lives that have been touched as a direct result of this initiative. I am grateful to be the sponsor of a resolution recognizing such an accomplishment and am joined by Senators BINGAMAN, MCCASKILL, COCHRAN, and RISCH in this effort. I commend Intermountain Therapy Animals, a nonprofit organization based in Utah, for first launching this program just ten short years ago. Therefore, in addition to the numerous news stories, television programs, and awards highlighting the value and benefit of this program, I urge my Senate colleagues and every American to join me in recognizing 10 successful years of the R.E.A.D. program with hopes of many more years of success to come.

SENATE RESOLUTION 339—TO EXPRESS THE SENSE OF THE SENATE IN SUPPORT OF PERMITTING THE TELEVISING OF SUPREME COURT PROCEEDINGS

Mr. SPECTER (for himself, Mr. KAUFMAN, Mr. CORNYN, Mr. FEINGOLD, Mr. DURBIN, Ms. KLOBUCHAR, Mr. WHITEHOUSE, and Mr. SCHUMER) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 339

Resolved,

SECTION 1. SENSE OF THE SENATE.

It is the sense of the Senate that the Supreme Court should permit live television coverage of all open sessions of the Court unless the Court decides, by a vote of the majority of justices, that allowing such coverage in a particular case would constitute a violation of the due process rights of 1 or more of the parties before the Court.

Mr. SPECTER. Mr. President, I have sought recognition to introduce a sense-of-the-Senate resolution urging the Supreme Court to permit live television coverage of its open proceedings. This is different from previous legislation which I have introduced which would require the Court to permit live television coverage.

I offer this resolution on behalf of Senator CORNYN, Senator KAUFMAN, Senator FEINGOLD, Senator DURBIN, Senator KLOBUCHAR, Senator WHITEHOUSE, and Senator SCHUMER.

The previous bills, which would have required the Supreme Court to open its proceedings to live television coverage, were voted out of the Judiciary Committee in the 109th Congress by a vote of 12 to 6 and the 110th Congress by a vote of 11 to 8.

The basis for the legislative action is on the recognized authority of Congress to establish administrative matters for the Court. For example, the Congress determines how many Justices there will be—nine; the Congress determines how many Justices are required for a quorum—six; the Congress determines that the Court will begin its operation on the first day of October; the Congress has set time limits.

The shift in the resolution for urging the Court is to take a milder approach to avoid a confrontation and to avoid a possible constitutional clash on the separation of powers.

There is no doubt that the Court would have the last word if the Congress required live television coverage. And, as I say, there are analogous administrative matters which the Congress does control. But as a first step, today the resolution urges the Court to open its proceedings for live television coverage.

The thrust of this resolution is that the Court should be televised, just as the Senate is televised, just as the House is televised, to familiarize the American people with what the Court does. The average person knows very little about what the Court does.

The Supreme Court itself has held that newspapers have a right to be in a courtroom. In an electronic age, television and radio ought to have the same standing.

The importance of the Court is seen in the scope of the cases which they decide and the kinds of cases which they do not decide. For example, the Court makes a determination on life, a woman's right to choose, makes a determination on the application of the death penalty, a determination on civil rights, on Guantanamo, on wireless wiretapping, on congressional authority, on Executive authority.

The Court is the final word since 1803, in the case of Marbury v. Madison, when the Court decided the Court would be the final word. That was the statement of Chief Justice Marshall, and it has stood for the life of our country. I believe it is a sound judgment for the Supreme Court to have the final word. But if the Framers were to rewrite the Constitution, I think the Court would now be article I instead of the Congress being article I, and the executive branch—the President—being article II.

It is also important to note what the Court does not decide. The Court declined to hear the terrorist surveillance program. That warrantless wiretap program was found unconstitutional by the Federal court in Detroit. It was reversed by the Sixth Circuit Court of Appeals on standing ground, with a very vigorous and better reasoned dissent. Standing is a very flexible doctrine and usually made when the Court simply doesn't want to take up the issue. But the terrorist surveillance program presented the sharpest conflict—perhaps the sharpest conflict between congressional authority, under article I, with the Foreign Intelligence Surveillance Act establishing the exclusive way to conduct wiretaps and the President's article II powers as Commander in Chief to conduct warrantless wiretaps.

The Supreme Court denied hearing the case of the survivors of victims of 9/11 against Saudi Arabia, even though congressional mandate is clear that sovereign immunity does not apply to foreign government officials.

Just in the past few years, the Supreme Court has decided cases of enormous importance. A few illustrate the proposition: The Court did decide cutting-edge issues on whether local school districts may fulfill the promise of Brown v. Board of Education by taking voluntary remedial steps to maintain integrated schools; whether public universities may consider race when evaluating applicants for admission in order to ensure diversity within their student bodies; whether citizens have a constitutional right to own guns; whether States may exercise the power of eminent domain to take a personal residence in order to make room for commercial development.

The Court has also declined to hear cases involving splits—that is, differences of judgment—between different courts of appeals. It is not an effective administration of the judicial system if the case may be decided differently depending on whether a person litigates in the First Circuit or in the Eleventh Circuit and then the district courts, where the circuit has not ruled, speculate as to what the court of appeals would have decided.

We had a confirmation hearing yesterday with Judge Vanaskie of the Middle District of Pennsylvania. I asked him if he had seen situations where there were circuit splits, but your circuit hasn't decided, and how do you handle that case. Judge Vanaskie pointed out that was very problematic. There are major matters where the Supreme Court has left these circuit splits standing. For example, whether jurors may consult the Bible during their deliberations in a criminal case, whether a civil lawsuit must be dismissed predicated on state secret, whether the spouse of a U.S. citizen remains eligible for an immigration visa after the citizen dies, whether an employee who alleges that he or she was unlawfully discriminated against for claiming benefits or exercising other rights under an employer-sponsored health care or pension plan, or when does a collective bargaining agreement confer on retirees the right to lifetime health care benefits? may a Federal court toll the statute of limitations in a suit brought under the Federal Tort Claims Act?

These are illustrative of very important decisions which the Supreme Court does not decide. Congress can't

tell the Supreme Court what to decide, but Congress may mandate the Court's jurisdiction. If this were in the public view, if the Court were accountable for not handling such cases, I think the Court might well take a different view.

It is not as if the Court is too busy to hear these cases. Take a brief survey of the Court's docket. In 1886, there were 1,396 cases on the Supreme Court docket. It decided 451. In 1926, there were 223 signed opinions. So it was down from 451 in 1886 to 223 in 1926. Then by 1987, it was down to 146. In 2007, the Court heard argument in only 75 cases and issued only 67 signed opinions. So it is perfectly clear that the Court's docket, with the four clerks—which each one of the Supreme Court Justices has—could well accommodate a more vigorous workload.

In the written statement that I will include when I finish these extemporaneous remarks, I have cited several recent cases where the Court has not followed well-established precedent. Well, they have the authority to overrule their own precedents, but it is something the public ought to have an idea on and an understanding of.

I think this is a particularly good time for the Court to consider televising itself under the resolution urging them to be televised since Justice Souter recently left the Court. Justice Souter made the famous statement that if the Supreme Court were to be televised, the cameras would roll in over his dead body. The members of the Supreme Court are very concerned about what their fellows think, and it may well have been that in light of a strenuous objection by Justice Souter, when he was on the Court, that would have tipped the scales. But listen to what the Justices have had to say on the issue of televising the Supreme Court.

I have made it a practice to question the nominees for the Supreme Court to get their views on television. Justice Paul Stevens said: Literally hundreds of people have stood in line for hours in order to hear oral argument only to be denied admission because the courtroom was filled.

The practice is, if you can get in at all, you stay for 3 minutes and then you are ushered out to let other people in because it is a small chamber.

Justice John Paul Stevens said: Television in the Court is worth a try.

Justice Ruth Bader Ginsburg said: I don't see any problem with having proceedings televised. I think it would be good for the public.

Justice Breyer said—at a time when he was chief judge of the First Circuit—I voted in the judicial conference in favor of experimenting with television in the courtroom. The judicial conference made an analysis of television—made a favorable recommendation—and some circuit courts and some lower courts have been televised.

Justice Sotomayor, in her recent confirmation hearing, said, referring to her experience with cameras in the courtroom, that the experience has ''generally been positive, and I would certainly recount that,'' referring to her colleagues on the Supreme Court.

Justice Alito said, in the Third Circuit, there was a debate and he argued we should do it; that is, televise it. He said: I would keep an open mind on the subject with respect to the Supreme Court.

The fact is the Justices frequently appear on television on their own. For example, Chief Justice Roberts and Justice Stevens appeared on interviews on ABC's ''Prime Time.'' Justice Ginsburg has appeared on CBS News. Justice Breyer has been on ''FOX News Sunday.'' Justices Scalia and Thomas have appeared on CBS's ''60 Minutes.'' All the Justices appeared for interviews that C–SPAN recently aired during its ''Supreme Court Week.''

Public opinion polls are strongly in favor of having the Supreme Court televised. There have been numerous editorials in support, and recently the Supreme Court of the United Kingdom opened its proceedings for television.

That is a very brief statement of a more expansive statement, which I have prepared, and I think the reasons for opening the Court are overwhelming. In a Democratic society, there should be transparency at all levels of government. The judicial independence of the Supreme Court is of vital importance to be maintained, and they have life tenure, but there is no reason why the American people should not understand what they are doing.

The American people should understand that when they take a case such as Bush v. Gore, where there is a challenge on the counting of the votes in Florida and where Justice Scalia says there would be irreparable harm in allowing the votes in Florida to be counted because it might undermine the legitimacy of the new administration, the American people ought to have maximum access to understand what the Court is doing. The American people ought to have maximum access to know that the Supreme Court of the United States declined to hear a decision on whether the President had authority to conduct warrantless wiretaps. The American people ought to know that all these circuit splits remain unresolved at a time when the workload and the agenda and the docket of the Supreme Court has declined enormously.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a ''Dear Colleague'' letter signed by Senator CORNYN and myself.

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

UNITED STATES SENATE,
WASHINGTON, DC,
November 5, 2009.

DEAR COLLEAGUE: We write to ask for your co-sponsorship on a Sense of the Senate Resolution which urges the Supreme Court to permit live television coverage of its open proceedings. This would provide a modest level of transparency and accountability to the Supreme Court whose members enjoy life tenure and decide so many cutting-edge issues which border on making the law rather than interpreting the law. There is little public understanding about the Supreme Court's role even though it decides major issues such as a woman's right to choose, the death penalty, civil rights, 2nd Amendment gun rights, and the scope of Congress's Article I power and the President's Article II power.

The Court declines to hear many important cases where conflicting decisions are rendered by different Circuit Courts of Appeals. That results in different treatment for different litigants depending on what Circuit their case is brought. It leaves uncertainty in other Circuits since there is a question about which Circuit precedent should be followed.

The Court has time to resolve Circuit splits and hear many other important cases which it declines since its docket is so light compared to prior years. In 1886, the Supreme Court decided 451 of the 1,309 cases on its docket. In 1926, the Court issued 223 signed opinions. In the first year of the Rehnquist Court, 1987, the Court issued 146 opinions. During the 2007 term, the Court held argument in 75 cases and issued 67 signed opinions.

Few Americans have any real opportunity to observe its proceedings. Most who visit the Court for an oral argument will be allowed only a three-minute seating, if they are seated at all. Recently, the UK's highest court decided to allow TV cameras into its courtroom. A recent C–SPAN poll reveals that two-thirds of Americans support televising the Court's proceedings.

This Sense of the Senate Resolution differs from previous legislative proposals in urging rather than requiring the Supreme Court to permit TV coverage. While there is substantial authority for Congress to require such coverage based on analogous administrative matters, we believe the milder approach should be followed first which may draw a favorable response and would avoid any possible confrontation.

If you have any questions or wish to cosponsor this Resolution, please contact the undersigned or have your staff contact Matthew Wiener (extension 4–6598) or Matthew Johnson (extension 4–7840).

Sincerely,

ARLEN SPECTER,
JOHN CORNYN.

Mr. SPECTER. Mr. President, I ask unanimous consent to have printed in the RECORD an extensive floor statement and that the CONGRESSIONAL RECORD contain my introduction of the floor statement. Frequently, when the floor statement occurs right after the oral extemporaneous comments, the reader may wonder why the speaker is repeating himself on so many of the same points.

So, I would like to have the full text as to what I am saying now appear in the CONGRESSIONAL RECORD so that it is understandable why the long text appears after so much of what has already been said.

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

Mr. President, I have sought recognition to introduce a sense-of-the-Senate resolution urging the Supreme Court to permit television coverage of its open proceedings.

I have previously introduced legislation on the subject. In the 109th Congress, I introduced S. 1768, on behalf of myself and Senators Allen, Cornyn, Durbin, Feingold,

Grassley, Leahy, and Schumer. It would have required the Court to permit television coverage of its proceedings. On March 30, 2006, the Committee on the Judiciary favorably reported S. 1768 by a vote of 12 to 6. In the 110th Congress, I introduced an identical bill, S. 344, on behalf of myself and Senators Comyn, Durbin, Feingold, Grassley and Schumer. On September 8, 2008, the Committee favorably reported the bill by a vote of 11 to 8. Early in this Congress I again introduced an identical bill, S. 446, this time on behalf of myself and Senators Cornyn, Durbin, Feingold, Grassley, Kaufman, Klobuchar, and Schumer.

The resolution takes a more restrained and modest approach than does S. 446 and its predecessors. It would do no more than ''urge'' the Court to allow the television coverage of its open proceedings (unless Court decides that television coverage would violate a litigant's due-process rights, which is unlikely).

I urge the Senate to pass this non-binding resolution rather than taking action on S. 446 at this time. My reason is not that S. 446 may be unconstitutional. It is not. Congress' well-founded authority to regulate various aspects of the Court's activities—to fix the number of Justices who sit on the Court (nine) and constitute a quorum (six), to set the beginning of the Court's term as the first Monday in October, and to establish the contours of its appellate jurisdiction—would sustain S. 446 against a constitutional challenge. Rather, I have four prudential reasons for proceeding with a non-binding resolution at this time:

First, the Court's most outspoken critic of television coverage, Justice Souter, has retired. Justice Souter once said that the ''day you see a camera come into our courtroom, it's going to roll over my dead body.'' Several Justices have indicated their reluctance to permit television coverage in the face of opposition by a colleague. Justice Souter's departure may lead his colleagues to revisit the issue. His replacement, Justice Sotomayor, testified during her confirmation hearings that she had favorable experiences with television coverage while sitting on the court of appeals and that, if confirmed, she would share her experiences with her new colleagues. Some commentators have raised the possibility that Justice Sotomayor will help convince her reluctant colleagues that the time for television coverage has come. (E.g., Editorial, ''Cameras in the Court,'' USA Today, July 13, 2009; Editorial, ''Camera shy justice: The Supreme Court should be televised,'' Pittsburgh Post Gazette, July 7, 2009; Editorial, ''Supreme Court TV,'' Los Angeles Times, June 11, 2009.) No one knows, of course, what Justice Sotomayor will do. But we should at least give the newly constituted Court some reasonable period of time to consider the issue.

Second, a non-binding resolution is likely to draw more support among Senators than a statutory mandate, and it need not be passed by the House or signed by the President. There is no reason to enact a law if a resolution will do.

Third, the Court may receive a non-binding resolution more favorably than a statutory mandate. The Court may perceive a mandate as an affront to its constitutional autonomy as a separate branch of government. Justice Kennedy suggested as much during testimony before a Congressional committee. It may even decide to ignore a mandate on the ground that it violates the Constitution's scheme of separation of powers. We need not provoke what might be an unnecessary constitutional challenge.

Fourth, the newly established Supreme Court of the United Kingdom has just decided to allow cameras in its courtroom. A press release announcing the Court's opening reports that ''proceedings will be routinely filmed and made available to broadcasters.'' (Supreme Court of the United Kingdom, Press Release, Oct. 1, 2009.) The press release cites the need for ''transparen[cy]'' and the ''crucial role'' that television can play in ''letting the public see how justice is done'' and ''increase[ing] awareness of the UK's legal system and the impact the law has on people's lives.'' (Ibid.) When the Court held its opening session just a few weeks ago, TV cameras sat ''discretely'' in the corners of the courtroom, according to the BBC. (BBC News, ''Supreme Court hears first appeal,'' http://news.bbc.co.uk/2/hi/uk__news/8289949 .stm.) Hopefully the experience of the United Kingdom's Supreme Court with television coverage will encourage our Supreme Court to follow suit.

My extensive floor statements of January 29, 2007, introducing S. 246, and February 13, 2009, introducing S. 446, set forth compelling reasons for allowing television coverage of the Supreme Court's open proceedings and also explained why S. 445 is constitutional. (Cong. Record, Jan. 29, 2007, S831–34; Cong. Record, Feb. 13, 2009, S2332–36.) I laid out those reasons again on August 5, 2009, when I commented on the state of the Court during the floor debate on now-Justice Sotomayor's nomination. (Cong. Record, Aug. 5, 2009, S880006.) This statement summarizes the key points of and supplements my earlier statements.

My main point was this: The American people have the right to observe the Court's proceedings. But few Americans have any meaningful opportunity to do so. There are well less than a hundred oral arguments per year. Even those who are able to visit the Court are not likely to see an argument in full. Most will be given just three minutes to watch before they are shuffled out to make room for others. In high-profile cases, most visitors will be denied even a three-minute seating. There are not nearly enough seats to accommodate the demand. Those who wish to follow the Court's proceedings must content themselves with reading the voluminous transcripts or listening to audiotapes released at the end of the Court's term. It should come as no surprise that, according to a recent C-SPAN poll, nearly two-third of Americans favor televising the Court's proceedings.

The Court decides too many cutting-edge questions of monumental importance to the American people—not just, as Justice Scalia once suggested in opposing television coverage, disputes between litigants—to deny them a meaningful opportunity to observe its proceedings. Consider just some of the issues the Court has decided in recent years: whether local school districts may fulfill the promise of Brown v. Board of Education by taking voluntary remedial steps to maintain integrated schools (Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007)); whether public universities may consider race when evaluating applicants for admission in order to ensure diversity within their student bodies (Grutter v. Bollinger, 539 U.S. 306 (2003), and Gratz v. Bollinger, 539 U.S. 2344 (2003)); whether citizens have a constitutional right to own guns (District of Columbia v. Heller, 128 S. Ct. 2783 (2008)); and whether states may exercise the power of eminent domain to take a personal residence in order to make room for a commercial development (Kelo v. City of New London, 545 U.S. 469 (2005)).

And in 2000, of course, the Supreme Court decided what was perhaps the most important—and certainly the most controversial—question of all: who the next president of the United States would be (Bush v. Gore, 531 U.S. 98 (2000)). Can anyone seriously contend that the American people were not entitled to watch the oral argument in the case that ultimately decided the Presidency? Or that reading a transcript or listening to an audio was an adequate substitute for watching the oral argument?

Trends over the last few years show that the need for public scrutiny of the Court's work, which only television coverage can adequately provide, is now more important than ever. None is more significant than the Court's declining workload and willingness to leave important issues and circuit splits unresolved.

The Court's workload has steadily declined. In 1870, the Court decided 280 of the 636 cases on its docket; in 1880, 365 of the 1,202 cases on its docket; and in 1886, 451 of the 1,396 cases on its docket. (E.g., Edward A. Hartnett, ''Questioning Certiorari: Some Reflects on Seventy Five Years After the Judges Bill,'' 100 Colum. L. Rev. 1643, 1650 (2006).) In 1926, the year Congress gave the Court nearly complete control of its docket by passing the Judiciary Act of 1925, the Court issued 223 signed opinions. The Court's output has declined significantly ever since. In the first year of the Rehnquist Court, the Court issued 146 opinions; in its last year, the Court issued only 74. (E.g., Kenneth W. Starr, ''The Supreme Court and Its Shrinking Docket: The Ghost of William Howard Taft,'' 90 Minnesota Law Review 1363, 1367–68 (2006).)

Chief Justice Rehnquist's successor, John Roberts, said during his confirmation hearing that the Court could and should take more cases. But it has not done so. During the 2005 Term, it heard argument in 87 cases, and issued 69 signed opinions; during the 2006 Term, it heard argument in 78 cases and issued 68 signed opinions; and during the 2007 Term, it heard argument in 75 cases and issued 67 signed opinions. The numbers were much the same during the recently concluded 2008 Term: The Court heard argument in 78 cases and issued 75 signed opinions. A recent article in the Duke Law Journal notes that ''[e]ven though it possess resources unimaginable to its predecessors, including . . . a bevy of talented clerks, the Supreme Court decides only a trickle of cases.'' The article goes on to observe that the ''most striking feature of contemporary Supreme Court jurisprudence is how little of it there is.'' (Tracey E. George & Christopher Guthrie, ''Remaking the United States Supreme Court in the Courts' of Appeals Image,'' 58 Duke Law Journal 1439, 1441–42 (2009).)

As Kenneth Starr has observed, Congress gave the Supreme Court control over what cases it hears so it can focus on ''two broad objectives: (i) to resolve important questions of law and (ii) to maintain uniformity in federal law.'' (Starr, supra, at 1364.) It is clear that the Court has failed to meet either objective and that only by putting its ''shoulder to the wheel and working] harder,'' to quote Mr. Starr, can it ever hope to do so. (Id. at 1385.)

The Court continues to leave important issues unresolved. Recently it even refused to decide the constitutionality of the Bush Administration's Terrorist Surveillance Program—commonly referred to as the ''warrantless wiretapping program.'' This program, which began soon after the 9–11 attacks, operated in secret until The New York Times exposed it in 2005. Well-deserved public condemnation followed its exposure. In 2006, a federal district court declared the program unconstitutional. A divided court of appeals reversed on the ground that the plaintiffs lacked standing to bring suit, thereby leaving the merits unaddressed. In 2008, the plaintiffs asked the Supreme Court to hear case, but it declined. This year I introduced legislation (S. 877) to require the

Court to exercise jurisdiction over appeals challenging the constitutionality of the Program.

More recently, the Court refused to decide whether the Foreign Sovereign Immunities Act shields Saudi Arabia and its officials from damages suits arising from their apparent complicity in the 9–11 terrorist attacks. Last year the United States Court of Appeals for the Second Circuit ruled (incorrectly, in my view) that the Act immunizes them from suit. The victims petitioned the Court for certiorari. In its certiorari-stage brief, the Solicitor General conceded that the Second Circuit had misinterpreted the Act. But late last year the Court denied the petition without dissent and, as usual, without explanation. (In re Terrorist Attacks on September 11, 2001 (No. 08–640).) The result will be to deny legal redress to thousands of 9–11's victims.

No less important, the Court also continues to leave too many circuit splits unresolved. The article in the Duke Law Journal I cited a moment ago notes that the Roberts Court ''is unable to address even half'' of the circuit splits ''identified by litigants.'' (George and Guthrie, supra, at 1449.) Mr. Starr notes that the ''Supreme Court by and large does not even pretend to maintain the uniformity of federal law.'' (Starr, supra, at 1364.) Among the questions on which the circuits have recently split are: May jurors consult the Bible during their deliberations in a criminal case and, if so, under what circumstances? Must a civil lawsuit predicated on a ''state secret'' be dismissed? Does the spouse of a United States citizen remain eligible for an immigrant visa after the citizen dies? Must an employee who alleges that he was unlawfully discriminated against for claiming benefits or exercising other rights under an employer-sponsored healthcare or pension plan ''exhaust administrative remedies'' (that is, first allow the plan to address his claim) before filing suit in court? When does a collective bargaining agreement confer on retirees the right to lifetime healthcare benefits? May a federal court ''toll'' the statute of limitations in a suit brought against the federal government under the Federal Tort Claims Act if the plaintiff establishes that the government withheld information on which his claim is based? Is a defendant convicted of drug trafficking with a gun subject to additional prison time under a penalty-enhancing statute, or is his sentence limited to the period of time provided for in the federal drug-trafficking law? When may a federal agency withhold information in response to a FOIA request or court subpoena on the ground that it would disclose the agency's ''internal deliberations.'' Should a federal admiralty claim, to which a jury trial right does not attach, be tried to a jury if it is joined with a non-admiralty claim?

Two developments since I gave my last floor speech have served only to reinforce my conclusion that public scrutiny must be brought to bear on the Court.

The first is the Court's well-documented disregard of precedent, which the Court took to new levels during its 2008 Term. (E.g., Erwin Chemerinsky, ''Forward, Supreme Court Review,'' 43 Tulsa L. Rev. 627 (2008).) Consider three especially significant opinions handed down just this year: (1) 14 Penn Plaza, LLC v. Pyett, which held that an employee can be compelled to arbitrate a statutory discrimination claim under a collectively bargained-for arbitration clause to which he or she did not consent, contrary to the Court's thirty-five-year-old decision in Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) ; (2) Gross v. FBL Financial Services, Inc. (2009), which held that in age discrimination cases, unlike cases brought under Title VII of the Civil Rights Act of 1964, the employer never bears the burden of proof no matter how compelling a showing of discrimination the plaintiff makes, contrary to the Court's thirty-year-old decision in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989); and (3) Ashcroft v. Iqbal, which gave license to district court judges to evaluate the ''plausibility'' of a complaint's allegations, contrary to well-established rules of pleadings that date back at least fifty years to Conley v. Gibson, 355 U.S. 41 (1957). Legislation to overturn each of these decisions is now pending.

Each of these examples reflects a second recent trend: the Court's bias in favor of corporate interests over the public interest. This has been the subject of extensive commentary. One commentator, Professor Jeffrey Rosen, has characterized the Court as ''Supreme Court, Inc.'' as a result of its decidedly pro-business rulings. (Jeffrey Rosen, ''Supreme Court, Inc.,'' The New York Times, Mar. 16, 2008.) Another, Professor Erwin Chemerinsky, has characterized the current Court as the ''most pro-business Court of any since the mid–1930's.'' (Chemerinsky, ''The Roberts Court at Age Three, 54 Wayne Law Review 947 (2008).)

A final point: While the Justices have so far refused to appear on television during open courtroom proceedings, they have not been shy about appearing on television outside the courtroom. Chief Justice Roberts and Stevens have appeared for interviews on ABC's ''Prime Time,'' Justice Ginsburg on CBS News, Justice Breyer on ''Fox News Sunday,'' and Justices Scalia and Thomas on CBS's ''60 Minutes.'' All of the Justices appeared for interviews that C-SPAN aired recently during its ''Supreme Court Week'' series. Justice Breyer and Auto even appeared on television to debate how the Court should interpret the Constitution and statutes. We cannot accept the Justices' plea for anonymity when they so regularly appear before the camera.

I note in conclusion that, since my last floor speech, the media has continued to call for the televising of the Supreme Court's proceedings. At least a dozen editorials have appeared during 2009 alone. (E.g., ''Televised justice would be for all,'' Boston Herald, August 7, 2009; ''Cameras in the court,'' USA Today, July 13, 2009; ''Camera shy justice: The Supreme Court should be televised,'' Pittsburgh Post Gazette, July 7, 2009; ''Supreme Court TV,'' Los Angeles Times, June 11, 2009.) One editorial writer, The National Law Journal's Tony Mauro, makes the case especially well, when he writes: ''The Internet Age demands transparency from all institutions all the time. Any government body that lags behind is in danger of losing legitimacy, relevance and, at the very least, public awareness. . . . It does not take a battery of surveys to realize that the public will learn and understand more about the Supreme Court . . . if its proceedings are on view nationwide.'' (''Court, cameras, action! Souter's departure could clear the way for far more transparency at the Supreme Court,'' USA Today, May 27, 2009.) A list of 2009 editorials, as compiled by C-SPAN, is appended.

Television coverage of the Supreme Court is long overdue. It is time for Congress to act. I urge my colleagues to support the resolution I am introducing today.

SENATE RESOLUTION 340—EXPRESSING SUPPORT FOR DESIGNATION OF A NATIONAL VETERANS HISTORY PROJECT WEEK TO ENCOURAGE PUBLIC PARTICIPATION IN A NATIONWIDE PROJECT THAT COLLECTS AND PRESERVES THE STORIES OF THE MEN AND WOMEN WHO SERVED OUR NATION IN TIMES OF WAR AND CONFLICT

Mr. CRAPO (for himself and Mrs. LINCOLN) submitted the following resolution; which was referred to the Committee on Veterans' Affairs:

S. RES. 340

Whereas the Veterans History Project was established by a unanimous vote of the United States Congress to collect and preserve the wartime stories of American veterans;

Whereas Congress charged the American Folklife Center at the Library of Congress to undertake the Veterans History Project and to engage the public in the creation of a collection of oral histories that would be a lasting tribute to individual veterans and an abundant resource for scholars;

Whereas there are 17,000,000 wartime veterans in America whose stories can educate people of all ages about important moments and events in the history of the United States and the world and provide instructive narratives that illuminate the meanings of ''service'', ''sacrifice'', ''citizenship'', and ''democracy'';

Whereas the Veterans History Project relies on a corps of volunteer interviewers, partner organizations, and an array of civic minded institutions nationwide who interview veterans according to the guidelines it provides;

Whereas increasing public participation in the Veterans History Project will increase the number of oral histories that can be collected and preserved and increase the number of veterans it so honors; and

Whereas ''National Veterans Awareness Week'' commendably preceded this resolution in the years 2005 and 2006: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes ''National Veterans Awareness Week'';

(2) supports the designation of a ''National Veterans History Project Week'';

(3) calls on the people of the United States to interview at least one veteran in their families or communities according to guidelines provided by the Veterans History Project; and

(4) encourages local, State, and national organizations, along with Federal, State, city, and county governmental institutions, to participate in support of the effort to document, preserve, and honor the service of American wartime veterans.

SENATE RESOLUTION 341—SUPPORTING PEACE, SECURITY, AND INNOCENT CIVILIANS AFFECTED BY CONFLICT IN YEMEN

Mr. CARDIN (for himself and Mr. LUGAR) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 341

Whereas the people and government of Yemen currently face tremendous security challenges, including the presence of a substantial number of al Qaeda militants, a rebellion in the northern part of the country,

unrest in southern regions, and piracy in the Gulf of Aden;

Whereas these security challenges are compounded by a lack of governance throughout portions of the country;

Whereas this lack of governance creates a de facto safe haven for al Qaeda and militant forces in regions of Yemen;

Whereas Yemen also faces significant development challenges, reflected in its ranking of 140 out of 182 countries in the United Nations Development Program's 2009 Human Development Index;

Whereas Yemen is also confronted with limited and rapidly depleting natural resources, including oil, which accounts for over 75 percent of government revenue, and water, ⅓ of which goes to the cultivation of qat, a narcotic to which a vast number of Yemenis are addicted;

Whereas government subsidies are contributing to the depletion of Yemen's scarce resources;

Whereas the people of Yemen suffer from a lack of certain government services, including a robust education and skills training system;

Whereas the Department of State's 2009 International Religious Freedom Report notes that nearly all of the once-sizeable Jewish population in Yemen has emigrated, and, based on fears for the Jewish community's safety in the country, the United States Government has initiated a special process to refer Yemeni Jews for refugee resettlement in the United States;

Whereas women in Yemen have faced entrenched discrimination, obstacles in accessing basic education, and gender-based violence in their homes, communities, and workplaces while little is done to enforce or bolster the equality of women;

Whereas these challenges pose a threat not only to the Republic of Yemen, but to the region and to the national security of the United States;

Whereas, to the extent that Yemen serves as a base for terrorist operations and recruitment, these threats must be given sufficient consideration in the global strategy of the United States to combat terrorism;

Whereas this threat has materialized in the past, including the March 18 and September 17, 2008, attacks on the United States Embassy in Sana'a and the October 12, 2000, attack on the U.S.S. Cole while it was anchored in the Port of Aden, as well as numerous other terrorist attacks;

Whereas the population of Yemen has suffered greatly from conflict and underdevelopment in Yemen;

Whereas up to 150,000 civilians have fled their homes in northern Yemen since 2004 in response to conflict between Government of Yemen forces and al-Houthi rebel forces; and

Whereas the people and government of the United States support peace in Yemen and improved security, economic development, and basic human rights for the people of Yemen: Now, therefore, be it

Resolved, That the Senate—

(1) supports the innocent civilians in Yemen, especially displaced persons, who have suffered from instability, terrorist operations, and chronic underdevelopment in Yemen;

(2) recognizes the serious threat instability and terrorism in Yemen pose to the security of the United States, the region, and the population in Yemen;

(3) calls on the President to give sufficient weight to the situation in Yemen in efforts to prevent terrorist attacks on the United States, United States allies, and Yemeni civilians;

(4) calls on the President to promote economic and political reforms necessary to advance economic development and good governance in Yemen;

(5) applauds steps that have been taken by the President and the United Nations High Commissioner for Refugees to assist displaced persons in Yemen;

(6) urges the Government of Yemen and rebel forces to immediately halt hostilities, allow medical and humanitarian aid to reach civilians displaced by conflict, and create an environment that will enable a return to normal life for those displaced by the conflict; and

(7) calls on the President and international community to use all appropriate measures to assist the people of Yemen to prevent Yemen from becoming a failed state.

Mr. CARDIN. Mr. President, today I would like to draw attention to a dangerous situation that has implications for the national security of the U.S. and our allies, a situation involving dire humanitarian circumstances, with over 150,000 displaced persons since 2004. I am speaking about the situation in Yemen.

Senator LUGAR and I are introducing a resolution supporting peace, security, and the innocent civilians affected by conflict in Yemen. This resolution calls on the President and international community to use all appropriate measures to prevent Yemen from becoming a failed state.

The gravity of the challenges Yemen faces should not be ignored. To document a few of these challenges: Yemen is home to a substantial number of al-Qaeda militants, a rebellion in the northern part of the country, unrest in southern regions, and piracy in the Gulf of Aden. Yemen has limited and rapidly depleting natural resources including oil, which accounts for over 75 percent of government revenue, and water. Yemen is underdeveloped, ranking 140th out of 182 countries in the United Nations Development Program's 2009 Human Development Index. Thousands of Yemenis are currently displaced as a result of the ongoing conflict between the Government of Yemen and al-Houthi rebel forces. Regions of Yemen have a large degree of lawlessness; religious minorities—particularly the Jewish population—have emigrated due to safety concerns; and human rights violations persist.

The U.S., the international community, and the people of Yemen must do all that we can to prevent Yemen from becoming a failed state. Disrupting, dismantling, and defeating al-Qaeda and violent extremism requires a global strategy that includes preventing Yemen from serving as a base for terrorist operations conducted elsewhere. Americans and our allies are all too familiar with the dangers of terrorists operating unimpeded. The March 18 and September 17, 2008, attacks on the U.S. Embassy in Sana'a and the October 12, 2000 attack on the U.S.S. *Cole* remind us of this threat specifically in Yemen.

Aside from Yemen's impact on the national security of America and our allies, we cannot ignore the tremendous hardships many in Yemen currently endure. Yemenis deserve to have basic security, basic human rights, and their basic needs met. We need to stand with those who want to live in peace and achieve improved living conditions. I am especially concerned with the plight of those displaced by conflict in Yemen, and I applaud efforts taken by the Obama administration and United Nations High Commissioner for Refugees to assist these displaced persons. I urge the Government of Yemen and rebel forces to halt hostilities, allow medical and humanitarian aid to reach civilians displaced by conflict, and create an environment that will enable a return to normal life for internally displaced persons in Yemen.

I would like to thank the senior Senator from Indiana, who is the Ranking Member of the Senate Foreign Relations Committee, for cosponsoring this resolution on this important issue.

SENATE RESOLUTION 342—RECOGNIZING NATIONAL AMERICAN INDIAN AND ALASKA NATIVE HERITAGE MONTH AND CELEBRATING THE HERITAGE AND CULTURE OF AMERICAN INDIANS AND ALASKA NATIVES AND THE CONTRIBUTIONS OF AMERICAN INDIANS AND ALASKA NATIVES TO THE UNITED STATES

Mr. DORGAN (for himself, Mr. BARRASSO, Mr. BAUCUS, Mr. BEGICH, Mr. BINGAMAN, Ms. CANTWELL, Mr. CONRAD, Mr. CRAPO, Mr. FRANKEN, Mr. JOHNSON, Mr. MCCAIN, Mr. MERKLEY, Ms. MURKOWSKI, Mrs. MURRAY, Mr. TESTER, Mr. THUNE, Mr. UDALL of Colorado, and MR. UDALL of New Mexico) submitted the following resolution; which was considered and agreed to:

S. RES. 342

Whereas from November 1, 2009, through November 30, 2009, the United States celebrates National American Indian and Alaska Native Heritage Month;

Whereas American Indians and Alaska Natives are descendants of the original, indigenous inhabitants of what is now the United States;

Whereas, in 2000, the United States Census Bureau reported that there were more than 4,000,000 people in the United States of American Indian and Alaska Native descent;

Whereas, on December 2, 1989, the Committee on Indian Affairs of the Senate held a hearing exploring the contributions of the Iroquois Confederacy, and its influence on the Founding Fathers in the drafting of the Constitution of the United States with the concepts of freedom of speech, the separation of governmental powers, and checks and balances among the branches of government;

Whereas the Senate has reaffirmed that a major national goal of the United States is to provide the resources, processes, and structure that will enable Indian Tribes and tribal members to obtain the quantity and quality of health care services and opportunities that will eliminate the health disparities between American Indians and the general population of the United States;

Whereas Congress recently reaffirmed its trust responsibility to improve the housing conditions and socioeconomic status of American Indians and Alaska Natives by providing affordable homes in a safe and healthy environment;

Whereas, throughout its course of dealing with Indian Tribes, the United States Government has engaged in a government-to-government relationship with Tribes;

Whereas the United States Government owes a trust obligation to Tribes, acknowledged in treaties, statutes, and decisions of the Supreme Court, to protect the interests and welfare of tribal governments and their members;

Whereas American Indians and Alaska Natives have consistently served with honor and distinction in the Armed Forces of the United States, some as early as the Revolutionary War, and continue to serve in the Armed Forces in greater numbers per capita than any other group in the United States;

Whereas American Indians and Alaska Natives speak and preserve indigenous languages and have contributed hundreds of words to the English language, including the names of people and locations in the United States;

Whereas Congress has recognized Native American code talkers who served with honor and distinction in World War I and World War II, using indigenous languages as an unbreakable military code, saving countless American lives;

Whereas American Indians and Alaska Natives are deeply rooted in tradition and culture, which drives their strength of community; and

Whereas American Indians and Alaska Natives of all ages celebrate the great achievements of their ancestors and heroes and continue to share their stories with future generations: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the celebration of National American Indian and Alaska Native Heritage Month during the month of November 2009;

(2) honors the heritage and culture of American Indians and Alaska Natives and the contributions of American Indians and Alaska Natives to the United States; and

(3) urges the people of the United States to observe National American Indian and Alaska Native Heritage Month with appropriate programs and activities.

SENATE CONCURRENT RESOLUTION 47—RECOGNIZING THE 75TH ANNIVERSARY OF THE ESTABLISHMENT OF THE EAST BAY REGIONAL PARK DISTRICT IN CALIFORNIA AND FOR OTHER PURPOSES

Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 47

Whereas November 6, 2009, will mark the 75th anniversary of the historic passage of a ballot measure to create the East Bay Regional Park District (referred to in this preamble as the ''District'') in California's San Francisco Bay Area by a convincing ''yes'' vote of a 2½ to 1 margin in 1934 during the height of the Depression;

Whereas with the help of the Civilian Conservation Corps, the Works Progress Administration, and private contractors, the District began putting people to work to establish the District's first 3 regional parks—Tilden, Temescal, and Sibley;

Whereas over the intervening 75 years, the District has grown to be the largest regional park agency in the United States with nearly 100,000 acres of parklands spread across 65 regional parks and over 1,100 miles of trails in Alameda and Contra Costa Counties;

Whereas approximately 14,000,000 visitors a year from throughout the San Francisco Bay Area and beyond take advantage of the vast and diverse District parklands and trails;

Whereas the vision of the District is to preserve the priceless heritage of the region's natural and cultural resources, open space, parks, and trails for the future, and to set aside park areas for enjoyment and healthful recreation for current and future generations;

Whereas the mission of the District is to acquire, develop, manage, and maintain a high quality, diverse system of interconnected parklands that balances public usage and education programs with the protection and preservation of the East Bay's most spectacular natural and cultural resources;

Whereas an environmental ethic guides the District in all that it does;

Whereas in 1988, East Bay voters approved the passage of Measure AA, a $225,000,000 bond to provide 20 years of funding for regional and local park acquisition and development projects;

Whereas in 2008, under the strategic leadership of its Board of Directors and General Manager Pat O'Brien, East Bay voters approved passage of the historic Measure WW, a $500,000,000 renewal of the original Measure AA bond—the largest regional or local park bond ever passed in the United States; and

Whereas throughout 2009, the District's 75th Anniversary will be recognized through special events and programs: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes the 75th anniversary of the establishment of the East Bay Regional Park District; and

(2) honors the board members, general managers, and East Bay Regional Park District staff who have dutifully fulfilled the mission of protecting open space and providing outdoor recreation opportunities for generations of families in the East Bay.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2726. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2847, making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2727. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill H.R. 2847, supra; which was ordered to lie on the table.

SA 2728. Mr. REID submitted an amendment intended to be proposed to amendment SA 2393 proposed by Mr. JOHANNS to the bill H.R. 2847, supra; which was ordered to lie on the table.

SA 2729. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2730. Mr. JOHNSON (for himself and Mrs. HUTCHISON) proposed an amendment to the bill H.R. 3082, supra.

SA 2731. Mr. BINGAMAN (for himself and Mr. UDALL, of New Mexico) submitted an amendment intended to be proposed to amendment SA 2730 proposed by Mr. JOHNSON (for himself and Mrs. HUTCHISON) to the bill H.R. 3082, supra; which was ordered to lie on the table.

SA 2732. Mr. JOHNSON (for himself and Mrs. HUTCHISON) proposed an amendment to amendment SA 2730 proposed by Mr. JOHNSON (for himself and Mrs. HUTCHISON) to the bill H.R. 3082, supra.

SA 2733. Mr. JOHNSON submitted an amendment intended to be proposed to amendment SA 2730 proposed by Mr. JOHNSON (for himself and Mrs. HUTCHISON) to the bill H.R. 3082, supra; which was ordered to lie on the table.

SA 2734. Mr. JOHNSON submitted an amendment intended to be proposed to amendment SA 2730 proposed by Mr. JOHNSON (for himself and Mrs. HUTCHISON) to the bill H.R. 3082, supra; which was ordered to lie on the table.

SA 2735. Mr. INOUYE (for himself, Mr. COCHRAN, and Mr. JOHNSON) submitted an amendment intended to be proposed to amendment SA 2730 proposed by Mr. JOHNSON (for himself and Mrs. HUTCHISON) to the bill H.R. 3082, supra; which was ordered to lie on the table.

SA 2736. Mr. AKAKA (for himself and Mr. VOINOVICH) proposed an amendment to the bill S. 806, to provide for the establishment, administration, and funding of Federal Executive Boards, and for other purposes.

TEXT OF AMENDMENTS

SA 2726. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2847, making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie ont he table; as follows:

At the appropriate place, insert the following:

SEC. ____. None of the funds appropriated or otherwise made available by this Act may be used to support, prepare for, or otherwise facilitate the transfer to or the detention in any State or territory of the United States any individual who has detained as of October 1, 2009, at Naval Station, Guatanamo Bay, Cuba.

SA 2727. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill H.R. 2847, making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 170 at the end of line 19 insert the following:

SEC. XXX. At the discretion of the Attorney General, funds appropriated under the heading ''Methamphetamine enforcement and cleanup'' under funding for the Department of Justice in the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2009 (Public Law 108–11) to the Blount, Dekalb, Etowah, Marshall, Marion, Morgan, Pickens, Walker Counties, Alabama Drug Task Forces for the Anti-Methamphetamine Project may be available to the Etowah County Drug Enforcement Unit for the Dekalb, Etowah, Marshall, Marion, Morgan, Pickens, Walker Counties, Alabama Drug Task Forces and the Blount County Sheriffs Department.

SA 2728. Mr. REID submitted an amendment intended to be proposed to amendment SA 2393 proposed by Mr. JOHANNS to the bill H.R. 2847, making

appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

The provisions of the amendment shall become effective one day after enactment.

SA 2729. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill H.R. 3082, making appropriations for military construction; the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 27, between lines 3 and 4, insert the following:

SEC. 128. (a) During each of fiscal years 2010 through 2014, the Secretary of Defense shall submit to the congressional defense committees a report analyzing alternative designs for any anticipated major construction projects related to the security of strategic nuclear weapons facilities.

(b) The report shall examine, with regard to each alternative—

(1) the costs, including full life cycle costs; and

(2) the benefits, including security enhancements.

SA 2730. Mr. JOHNSON (for himself and Mrs. HUTCHISON) proposed an amendment to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 3, 2010, and for other purposes; as follows:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes, namely:

TITLE I

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION, ARMY

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Army as currently authorized by law, including personnel in the Army Corps of Engineers and other personal services necessary for the purposes of this appropriation, and for construction and operation of facilities in support of the functions of the Commander in Chief, $3,477,673,000, to remain available until September 30, 2014: *Provided*, That of this amount, not to exceed $191,573,000 shall be available for study, planning, design, architect and engineer services, and host nation support, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor: *Provided further*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

For acquisition, construction, installation, and equipment of temporary or permanent public works, naval installations, facilities, and real property for the Navy and Marine Corps as currently authorized by law, including personnel in the Naval Facilities Engineering Command and other personal services necessary for the purposes of this appropriation, $3,548,771,000, to remain available until September 30, 2014: *Provided*, That of this amount, not to exceed $176,896,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor: *Provided further*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

MILITARY CONSTRUCTION, AIR FORCE

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Air Force as currently authorized by law, $1,213,539,000, to remain available until September 30, 2014: *Provided*, That of this amount, not to exceed $106,918,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor: *Provided further*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

MILITARY CONSTRUCTION, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, installations, facilities, and real property for activities and agencies of the Department of Defense (other than the military departments), as currently authorized by law, $3,069,114,000, to remain available until September 30, 2014: *Provided*, That such amounts of this appropriation as may be determined by the Secretary of Defense may be transferred to such appropriations of the Department of Defense available for military construction or family housing as the Secretary may designate, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided further*, That of the amount appropriated, not to exceed $142,942,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor: *Provided further*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army National Guard, and contributions therefor, as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, $497,210,000, to remain available until September 30, 2014: *Provided*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air National Guard, and contributions therefor, as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, $297,661,000, to remain available until September 30, 2014: *Provided*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

MILITARY CONSTRUCTION, ARMY RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army Reserve as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, $379,012,000, to remain available until September 30, 2014: *Provided*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

MILITARY CONSTRUCTION, NAVY RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the reserve components of the Navy and Marine Corps as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, $64,124,000, to remain available until September 30, 2014: *Provided*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

MILITARY CONSTRUCTION, AIR FORCE RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air Force Reserve as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, $47,376,000, to remain available until September 30, 2014: *Provided*, That the amounts made available under this heading shall be

expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

For the United States share of the cost of the North Atlantic Treaty Organization Security Investment Program for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area as authorized by section 2806 of title 10, United States Code, and Military Construction Authorization Acts, $276,314,000, to remain available until expended: *Provided*, That of the amount appropriated, not to exceed $41,400,000 shall be available for the United States share of the planning, design and construction of a new North Atlantic Treaty Organization headquarters.

FAMILY HOUSING CONSTRUCTION, ARMY

For expenses of family housing for the Army for construction, including acquisition, replacement, addition, expansion, extension, and alteration, as authorized by law, $273,236,000, to remain available until September 30, 2014: *Provided*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

FAMILY HOUSING OPERATION AND MAINTENANCE, ARMY

For expenses of family housing for the Army for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, $523,418,000.

FAMILY HOUSING CONSTRUCTION, NAVY AND MARINE CORPS

For expenses of family housing for the Navy and Marine Corps for construction, including acquisition, replacement, addition, expansion, extension, and alteration, as authorized by law, $146,569,000, to remain available until September 30, 2014: *Provided*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

FAMILY HOUSING OPERATION AND MAINTENANCE, NAVY AND MARINE CORPS

For expenses of family housing for the Navy and Marine Corps for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, $368,540,000.

FAMILY HOUSING CONSTRUCTION, AIR FORCE

For expenses of family housing for the Air Force for construction, including acquisition, replacement, addition, expansion, extension, and alteration, as authorized by law, $66,101,000, to remain available until September 30, 2014: *Provided*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

FAMILY HOUSING OPERATION AND MAINTENANCE, AIR FORCE

For expenses of family housing for the Air Force for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, $502,936,000.

FAMILY HOUSING CONSTRUCTION, DEFENSE-WIDE

For expenses of family housing for the activities and agencies of the Department of Defense (other than the military departments) for construction, including acquisition, replacement, addition, expansion, extension and alteration, as authorized by law, $2,859,000, to remain available until September 30, 2014: *Provided*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

FAMILY HOUSING OPERATION AND MAINTENANCE, DEFENSE-WIDE

For expenses of family housing for the activities and agencies of the Department of Defense (other than the military departments) for operation and maintenance, leasing, and minor construction, as authorized by law, $49,214,000.

DEPARTMENT OF DEFENSE FAMILY HOUSING IMPROVEMENT FUND

For the Department of Defense Family Housing Improvement Fund, $2,600,000, to remain available until expended, for family housing initiatives undertaken pursuant to section 2883 of title 10, United States Code, providing alternative means of acquiring and improving military family housing and supporting facilities.

HOMEOWNERS ASSISTANCE FUND

For the Homeowners Assistance Fund established by section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374), as amended by section 1001 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 194), $373,225,000, to remain available until expended.

CHEMICAL DEMILITARIZATION CONSTRUCTION, DEFENSE-WIDE

For expenses of construction, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), and for the destruction of other chemical warfare materials that are not in the chemical weapon stockpile, as currently authorized by law, $151,541,000, to remain available until September 30, 2014, which shall be only for the Assembled Chemical Weapons Alternatives program: *Provided*, That the amounts made available under this heading shall be expended for the projects and activities, and in the amounts specified, under this heading in the Committee recommendations and detail tables, including the table entitled ''Military Construction Projects Listing by Location'' in the report accompanying this Act.

DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990

For deposit into the Department of Defense Base Closure Account 1990, established by section 2906(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), $421,768,000, to remain available until expended.

DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 2005

For deposit into the Department of Defense Base Closure Account 2005, established by section 2906A(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), $7,479,498,000, to remain available until expended: *Provided*, That the Department of Defense shall notify the Committees on Appropriations of both Houses of Congress 14 days prior to obligating an amount for a construction project that exceeds or reduces the amount identified for that project in the most recently submitted budget request for this account by 20 percent or $2,000,000, whichever is less: *Provided further*, That the previous proviso shall not apply to projects costing less than $5,000,000, except for those projects not previously identified in any budget submission for this account and exceeding the minor construction threshold under 10 U.S.C. 2805.

ADMINISTRATIVE PROVISIONS

SEC. 101. None of the funds made available in this title shall be expended for payments under a cost-plus-a-fixed-fee contract for construction, where cost estimates exceed $25,000, to be performed within the United States, except Alaska, without the specific approval in writing of the Secretary of Defense setting forth the reasons therefor.

SEC. 102. Funds made available in this title for construction shall be available for hire of passenger motor vehicles.

SEC. 103. Funds made available in this title for construction may be used for advances to the Federal Highway Administration, Department of Transportation, for the construction of access roads as authorized by section 210 of title 23, United States Code, when projects authorized therein are certified as important to the national defense by the Secretary of Defense.

SEC. 104. None of the funds made available in this title may be used to begin construction of new bases in the United States for which specific appropriations have not been made.

SEC. 105. None of the funds made available in this title shall be used for purchase of land or land easements in excess of 100 percent of the value as determined by the Army Corps of Engineers or the Naval Facilities Engineering Command, except: (1) where there is a determination of value by a Federal court; (2) purchases negotiated by the Attorney General or the designee of the Attorney General; (3) where the estimated value is less than $25,000; or (4) as otherwise determined by the Secretary of Defense to be in the public interest.

SEC. 106. None of the funds made available in this title shall be used to: (1) acquire land; (2) provide for site preparation; or (3) install utilities for any family housing, except housing for which funds have been made available in annual Acts making appropriations for military construction.

SEC. 107. None of the funds made available in this title for minor construction may be used to transfer or relocate any activity from one base or installation to another, without prior notification to the Committees on Appropriations of both Houses of Congress.

SEC. 108. None of the funds made available in this title may be used for the procurement of steel for any construction project or activity for which American steel producers, fabricators, and manufacturers have been denied the opportunity to compete for such steel procurement.

SEC. 109. None of the funds available to the Department of Defense for military construction or family housing during the current fiscal year may be used to pay real property taxes in any foreign nation.

SEC. 110. None of the funds made available in this title may be used to initiate a new installation overseas without prior notification to the Committees on Appropriations of both Houses of Congress.

SEC. 111. None of the funds made available in this title may be obligated for architect and engineer contracts estimated by the Government to exceed $500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Sea, unless such contracts are awarded to United States firms or United States firms in joint venture with host nation firms.

SEC. 112. None of the funds made available in this title for military construction in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Sea, may be used to award any contract estimated by the Government to exceed $1,000,000 to a foreign contractor: *Provided*, That this section shall not be applicable to contract awards for which the lowest responsive and responsible bid of a United States contractor exceeds the lowest responsive and responsible bid of a foreign contractor by greater than 20 percent: *Provided further*, That this section shall not apply to contract awards for military construction on Kwajalein Atoll for which the lowest responsive and responsible bid is submitted by a Marshallese contractor.

SEC. 113. The Secretary of Defense is to inform the appropriate committees of both Houses of Congress, including the Committees on Appropriations, of the plans and scope of any proposed military exercise involving United States personnel 30 days prior to its occurring, if amounts expended for construction, either temporary or permanent, are anticipated to exceed $100,000.

SEC. 114. Not more than 20 percent of the funds made available in this title which are limited for obligation during the current fiscal year shall be obligated during the last two months of the fiscal year.

(INCLUDING TRANSFER OF FUNDS)

SEC. 115. Funds appropriated to the Department of Defense for construction in prior years shall be available for construction authorized for each such military department by the authorizations enacted into law during the current session of Congress.

SEC. 116. For military construction or family housing projects that are being completed with funds otherwise expired or lapsed for obligation, expired or lapsed funds may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any.

SEC. 117. Notwithstanding any other provision of law, any funds made available to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were made available, if the funds obligated for such project: (1) are obligated from funds available for military construction projects; and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.

SEC. 118. (a) The Secretary of Defense, in consultation with the Secretary of State, shall submit to the Committees on Appropriations of both Houses of Congress, by February 15 of each year, an annual report in unclassified and, if necessary, classified form, on actions taken by the Department of Defense and the Department of State during the previous fiscal year to encourage host countries to assume a greater share of the common defense burden of such countries and the United States.

(b) The report under subsection (a) shall include a description of—

(1) attempts to secure cash and in-kind contributions from host countries for military construction projects;

(2) attempts to achieve economic incentives offered by host countries to encourage private investment for the benefit of the United States Armed Forces;

(3) attempts to recover funds due to be paid to the United States by host countries for assets deeded or otherwise imparted to host countries upon the cessation of United States operations at military installations;

(4) the amount spent by host countries on defense, in dollars and in terms of the percent of gross domestic product (GDP) of the host country; and

(5) for host countries that are members of the North Atlantic Treaty Organization (NATO), the amount contributed to NATO by host countries, in dollars and in terms of the percent of the total NATO budget.

(c) In this section, the term ''host country'' means other member countries of NATO, Japan, South Korea, and United States allies bordering the Arabian Sea.

(INCLUDING TRANSFER OF FUNDS)

SEC. 119. In addition to any other transfer authority available to the Department of Defense, proceeds deposited to the Department of Defense Base Closure Account established by section 207(a)(1) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note) pursuant to section 207(a)(2)(C) of such Act, may be transferred to the account established by section 2906(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), to be merged with, and to be available for the same purposes and the same time period as that account.

(INCLUDING TRANSFER OF FUNDS)

SEC. 120. Subject to 30 days prior notification to the Committees on Appropriations of both Houses of Congress, such additional amounts as may be determined by the Secretary of Defense may be transferred to: (1) the Department of Defense Family Housing Improvement Fund from amounts appropriated for construction in ''Family Housing'' accounts, to be merged with and to be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund; or (2) the Department of Defense Military Unaccompanied Housing Improvement Fund from amounts appropriated for construction of military unaccompanied housing in ''Military Construction'' accounts, to be merged with and to be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund: *Provided*, That appropriations made available to the Funds shall be available to cover the costs, as defined in section 502(5) of the Congressional Budget Act of 1974, of direct loans or loan guarantees issued by the Department of Defense pursuant to the provisions of subchapter IV of chapter 169 of title 10, United States Code, pertaining to alternative means of acquiring and improving military family housing, military unaccompanied housing, and supporting facilities.

SEC. 121. (a) Not later than 60 days before issuing any solicitation for a contract with the private sector for military family housing the Secretary of the military department concerned shall submit to the Committees on Appropriations of both Houses of Congress the notice described in subsection (b).

(b)(1) A notice referred to in subsection (a) is a notice of any guarantee (including the making of mortgage or rental payments) proposed to be made by the Secretary to the private party under the contract involved in the event of—

(A) the closure or realignment of the installation for which housing is provided under the contract;

(B) a reduction in force of units stationed at such installation; or

(C) the extended deployment overseas of units stationed at such installation.

(2) Each notice under this subsection shall specify the nature of the guarantee involved and assess the extent and likelihood, if any, of the liability of the Federal Government with respect to the guarantee.

(INCLUDING TRANSFER OF FUNDS)

SEC. 122. In addition to any other transfer authority available to the Department of Defense, amounts may be transferred from the accounts established by sections 2906(a)(1) and 2906A(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), to the fund established by section 1013(d) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) to pay for expenses associated with the Homeowners Assistance Program incurred under 42 U.S.C. 3374(a)(1)(A). Any amounts transferred shall be merged with and be available for the same purposes and for the same time period as the fund to which transferred.

SEC. 123. Funds made available in this title for operation and maintenance of family housing shall be the exclusive source of funds for repair and maintenance of all family housing units, including general or flag officer quarters: *Provided*, That not more than $35,000 per unit may be spent annually for the maintenance and repair of any general or flag officer quarters without 30 days prior notification to the Committees on Appropriations of both Houses of Congress, except that an after-the-fact notification shall be submitted if the limitation is exceeded solely due to costs associated with environmental remediation that could not be reasonably anticipated at the time of the budget submission: *Provided further*, That the Under Secretary of Defense (Comptroller) is to report annually to the Committees on Appropriations of both Houses of Congress all operation and maintenance expenditures for each individual general or flag officer quarters for the prior fiscal year.

SEC. 124. Amounts contained in the Ford Island Improvement Account established by subsection (h) of section 2814 of title 10, United States Code, are appropriated and shall be available until expended for the purposes specified in subsection (i)(1) of such section or until transferred pursuant to subsection (i)(3) of such section.

(INCLUDING TRANSFER OF FUNDS)

SEC. 125. None of the funds made available in this title, or in any Act making appropriations for military construction which remain available for obligation, may be obligated or expended to carry out a military construction, land acquisition, or family housing project at or for a military installation approved for closure, or at a military installation for the purposes of supporting a function that has been approved for realignment to another installation, in 2005 under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), unless such a project at a military installation approved for realignment will support a continuing mission or function at that installation or a new mission or function that is planned for that installation, or unless the Secretary of Defense

certifies that the cost to the United States of carrying out such project would be less than the cost to the United States of cancelling such project, or if the project is at an active component base that shall be established as an enclave or in the case of projects having multi-agency use, that another Government agency has indicated it will assume ownership of the completed project. The Secretary of Defense may not transfer funds made available as a result of this limitation from any military construction project, land acquisition, or family housing project to another account or use such funds for another purpose or project without the prior approval of the Committees on Appropriations of both Houses of Congress. This section shall not apply to military construction projects, land acquisition, or family housing projects for which the project is vital to the national security or the protection of health, safety, or environmental quality: *Provided,* That the Secretary of Defense shall notify the congressional defense committees within seven days of a decision to carry out such a military construction project.

(INCLUDING TRANSFER OF FUNDS)

SEC. 126. During the 5-year period after appropriations available in this Act to the Department of Defense for military construction and family housing operation and maintenance and construction have expired for obligation, upon a determination that such appropriations will not be necessary for the liquidation of obligations or for making authorized adjustments to such appropriations for obligations incurred during the period of availability of such appropriations, unobligated balances of such appropriations may be transferred into the appropriation ''Foreign Currency Fluctuations, Construction, Defense'', to be merged with and to be available for the same time period and for the same purposes as the appropriation to which transferred.

SEC. 127. Amounts appropriated or otherwise made available in an account funded under the headings in this title may be transferred among projects and activities within that account in accordance with the reprogramming guidelines for military construction and family housing construction contained in the report accompanying this Act, and in the guidance for military construction reprogrammings and notifications contained in Department of Defense Financial Management Regulation 7000.14–R, Volume 3, Chapter 7, of December 1996, as in effect on the date of enactment of this Act.

TITLE II

DEPARTMENT OF VETERANS AFFAIRS

VETERANS BENEFITS ADMINISTRATION

COMPENSATION AND PENSIONS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation benefits to or on behalf of veterans and a pilot program for disability examinations as authorized by section 107 and chapters 11, 13, 18, 51, 53, 55, and 61 of title 38, United States Code; pension benefits to or on behalf of veterans as authorized by chapters 15, 51, 53, 55, and 61 of title 38, United States Code; and burial benefits, the Reinstated Entitlement Program for Survivors, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment of premiums due on commercial life insurance policies guaranteed under the provisions of title IV of the Servicemembers Civil Relief Act (50 U.S.C. App. 541 et seq.) and for other benefits as authorized by sections 107, 1312, 1977, and 2106, and chapters 23, 51, 53, 55, and 61 of title 38, United States Code, $47,218,207,000, to remain available until expended: *Provided,* That not to exceed $29,283,000 of the amount appropriated under this heading shall be reimbursed to ''General operating expenses'', ''Medical support and compliance'', and ''Information technology systems'' for necessary expenses in implementing the provisions of chapters 51, 53, and 55 of title 38, United States Code, the funding source for which is specifically provided as the ''Compensation and pensions'' appropriation: *Provided further,* That such sums as may be earned on an actual qualifying patient basis, shall be reimbursed to ''Medical care collections fund'' to augment the funding of individual medical facilities for nursing home care provided to pensioners as authorized.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by chapters 21, 30, 31, 33, 34, 35, 36, 39, 51, 53, 55, and 61 of title 38, United States Code, $8,663,624,000, to remain available until expended: *Provided,* That expenses for rehabilitation program services and assistance which the Secretary is authorized to provide under subsection (a) of section 3104 of title 38, United States Code, other than under paragraphs (1), (2), (5), and (11) of that subsection, shall be charged to this account.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, service-disabled veterans insurance, and veterans mortgage life insurance as authorized by title 38, United States Code, chapters 19 and 21, $49,288,000, to remain available until expended.

VETERANS HOUSING BENEFIT PROGRAM FUND

For the cost of direct and guaranteed loans, such sums as may be necessary to carry out the program, as authorized by subchapters I through III of chapter 37 of title 38, United States Code: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That during fiscal year 2010, within the resources available, not to exceed $500,000 in gross obligations for direct loans are authorized for specially adapted housing loans.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, $165,082,000.

VOCATIONAL REHABILITATION LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $29,000, as authorized by chapter 31 of title 38, United States Code: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That funds made available under this heading are available to subsidize gross obligations for the principal amount of direct loans not to exceed $2,298,000.

In addition, for administrative expenses necessary to carry out the direct loan program, $328,000, which may be paid to the appropriation for ''General operating expenses''.

NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT

For administrative expenses to carry out the direct loan program authorized by subchapter V of chapter 37 of title 38, United States Code, $664,000.

GUARANTEED TRANSITIONAL HOUSING LOANS FOR HOMELESS VETERANS PROGRAM ACCOUNT

For the administrative expenses to carry out the guaranteed transitional housing loan program authorized by subchapter VI of chapter 20 of title 38, United States Code, not to exceed $750,000 of the amounts appropriated by this Act for ''General operating expenses'' and ''Medical support and compliance'' may be expended.

VETERANS HEALTH ADMINISTRATION

MEDICAL SERVICES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs and veterans described in section 1705(a) of title 38, United States Code, including care and treatment in facilities not under the jurisdiction of the Department, and including medical supplies and equipment, food services, and salaries and expenses of healthcare employees hired under title 38, United States Code, and aid to State homes as authorized by section 1741 of title 38, United States Code; $34,704,500,000, plus reimbursements: *Provided,* That of the funds made available under this heading, not to exceed $1,600,000,000 shall be available until September 30, 2011: *Provided further,* That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall establish a priority for the provision of medical treatment for veterans who have service-connected disabilities, lower income, or have special needs: *Provided further,* That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall give priority funding for the provision of basic medical benefits to veterans in enrollment priority groups 1 through 6: *Provided further,* That, notwithstanding any other provision of law, the Secretary of Veterans Affairs may authorize the dispensing of prescription drugs from Veterans Health Administration facilities to enrolled veterans with privately written prescriptions based on requirements established by the Secretary: *Provided further,* That the implementation of the program described in the previous proviso shall incur no additional cost to the Department of Veterans Affairs: *Provided further,* That for the Department of Defense/Department of Veterans Affairs Health Care Sharing Incentive Fund, as authorized by section 8111(d) of title 38, United States Code, a minimum of $15,000,000, to remain available until expended, for any purpose authorized by section 8111 of title 38, United States Code.

MEDICAL SUPPORT AND COMPLIANCE

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law; administrative expenses in support of capital policy activities; and administrative and legal expenses of the Department for collecting and recovering amounts owed the Department as authorized under chapter 17 of title 38, United States Code, and the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.); $5,100,000,000, plus reimbursements, of which $250,000,000 shall be available until September 30, 2011.

MEDICAL FACILITIES

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities and other necessary facilities of the Veterans Health Administration; for administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction, and renovation of any facility under the jurisdiction or for the use of the Department; for oversight, engineering, and architectural activities not charged to project costs; for repairing, altering, improving, or providing facilities in the several hospitals and homes under the jurisdiction of the Department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; for leases of facilities; and for laundry services, $4,849,883,000, plus reimbursements, of

which $250,000,000 shall be available until September 30, 2011: *Provided*, That $100,000,000 for non-recurring maintenance provided under this heading shall be allocated in a manner not subject to the Veterans Equitable Resource Allocation.

MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development as authorized by chapter 73 of title 38, United States Code, $580,000,000, plus reimbursements, to remain available until September 30, 2011.

NATIONAL CEMETERY ADMINISTRATION

For necessary expenses of the National Cemetery Administration for operations and maintenance, not otherwise provided for, including uniforms or allowances therefor; cemeterial expenses as authorized by law; purchase of one passenger motor vehicle for use in cemeterial operations; hire of passenger motor vehicles; and repair, alteration or improvement of facilities under the jurisdiction of the National Cemetery Administration, $250,000,000, of which not to exceed $24,200,000 shall be available until September 30, 2011.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For necessary operating expenses of the Department of Veterans Affairs, not otherwise provided for, including administrative expenses in support of Department-Wide capital planning, management and policy activities, uniforms, or allowances therefor; not to exceed $25,000 for official reception and representation expenses; hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, and the Department of Defense for the cost of overseas employee mail, $2,086,251,000: *Provided*, That expenses for services and assistance authorized under paragraphs (1), (2), (5), and (11) of section 3104(a) of title 38, United States Code, that the Secretary of Veterans Affairs determines are necessary to enable entitled veterans: (1) to the maximum extent feasible, to become employable and to obtain and maintain suitable employment; or (2) to achieve maximum independence in daily living, shall be charged to this account: *Provided further*, That the Veterans Benefits Administration shall be funded at not less than $1,689,207,000: *Provided further*, That of the funds made available under this heading, not to exceed $111,000,000 shall be available for obligation until September 30, 2011: *Provided further*, That from the funds made available under this heading, the Veterans Benefits Administration may purchase (on a one-for-one replacement basis only) up to two passenger motor vehicles for use in operations of that Administration in Manila, Philippines.

INFORMATION TECHNOLOGY SYSTEMS

For necessary expenses for information technology systems and telecommunications support, including developmental information systems and operational information systems; for pay and associated costs; and for the capital asset acquisition of information technology systems, including management and related contractual costs of said acquisitions, including contractual costs associated with operations authorized by section 3109 of title 5, United States Code, $3,307,000,000, plus reimbursements, to be available until September 30, 2011: *Provided*, That not later than 30 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of both Houses of Congress a reprogramming base letter which sets forth, by project, the Operations and Maintenance and Salaries and Expenses costs to be carried out utilizing amounts made available by this heading: *Provided further*, That of the amounts appropriated, $800,485,000 may not be obligated or expended until the Secretary of Veterans Affairs or the Chief Information Officer of the Department of Veterans Affairs submits to the Committees on Appropriations of both Houses of Congress a certification of the amounts, in parts or in full, to be obligated and expended for each development project: *Provided further*, That amounts specified in the certification with respect to development projects under the preceding proviso shall be incorporated into the reprogramming base letter with respect to development projects funded using amounts appropriated by this heading.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, to include information technology, in carrying out the provisions of the Inspector General Act of 1978 (5 U.S.C. App.), $109,000,000, of which $6,000,000 shall be available until September 30, 2011.

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending, and improving any of the facilities, including parking projects, under the jurisdiction or for the use of the Department of Veterans Affairs, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, and 8122 of title 38, United States Code, including planning, architectural and engineering services, construction management services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, where the estimated cost of a project is more than the amount set forth in section 8104(a)(3)(A) of title 38, United States Code, or where funds for a project were made available in a previous major project appropriation, $1,194,000,000, to remain available until expended, of which $16,000,000 shall be to make reimbursements as provided in section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) for claims paid for contract disputes: *Provided*, That except for advance planning activities, including needs assessments which may or may not lead to capital investments, and other capital asset management related activities, including portfolio development and management activities, and investment strategy studies funded through the advance planning fund and the planning and design activities funded through the design fund, including needs assessments which may or may not lead to capital investments, and funds provided for the purchase of land for the National Cemetery Administration through the land acquisition line item, none of the funds appropriated under this heading shall be used for any project which has not been approved by the Congress in the budgetary process: *Provided further*, That funds provided in this appropriation for fiscal year 2010, for each approved project shall be obligated: (1) by the awarding of a construction documents contract by September 30, 2010; and (2) by the awarding of a construction contract by September 30, 2011: *Provided further*, That the Secretary of Veterans Affairs shall promptly submit to the Committees on Appropriations of both Houses of Congress a written report on any approved major construction project for which obligations are not incurred within the time limitations established above.

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities, including parking projects, under the jurisdiction or for the use of the Department of Veterans Affairs, including planning and assessments of needs which may lead to capital investments, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, 8122, and 8162 of title 38, United States Code, where the estimated cost of a project is equal to or less than the amount set forth in section 8104(a)(3)(A) of title 38, United States Code, $685,000,000, to remain available until expended, along with unobligated balances of previous ''Construction, minor projects'' appropriations which are hereby made available for any project where the estimated cost is equal to or less than the amount set forth in such section: *Provided*, That funds in this account shall be available for: (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the Department which are necessary because of loss or damage caused by any natural disaster or catastrophe; and (2) temporary measures necessary to prevent or to minimize further loss by such causes.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify, or alter existing hospital, nursing home, and domiciliary facilities in State homes, for furnishing care to veterans as authorized by sections 8131 through 8137 of title 38, United States Code, $115,000,000, to remain available until expended.

GRANTS FOR CONSTRUCTION OF STATE VETERANS CEMETERIES

For grants to assist States in establishing, expanding, or improving State veterans cemeteries as authorized by section 2408 of title 38, United States Code, $42,000,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

SEC. 201. Any appropriation for fiscal year 2010 for ''Compensation and pensions'', ''Readjustment benefits'', and ''Veterans insurance and indemnities'' may be transferred as necessary to any other of the mentioned appropriations: *Provided*, That before a transfer may take place, the Secretary of Veterans Affairs shall request from the Committees on Appropriations of both Houses of Congress the authority to make the transfer and such Committees issue an approval, or absent a response, a period of 30 days has elapsed.

(INCLUDING TRANSFER OF FUNDS)

SEC. 202. Amounts made available for the Department of Veterans Affairs for fiscal year 2010, in this Act or any other Act, under the ''Medical services'', ''Medical support and compliance'' and ''Medical facilities'' accounts may be transferred between the accounts to the extent necessary to implement the restructuring of the Veterans Health Administration accounts: *Provided*, That any transfers between the ''Medical services'' and ''Medical support and compliance'' accounts of 1 percent or less of the total amount appropriated to the account in this or any other Act may take place subject to notification from the Secretary of Veterans Affairs to the Committees on Appropriations of both Houses of Congress of the amount and purpose of the transfer: *Provided further*, That any transfers between the ''Medical services'' and ''Medical support and compliance'' accounts in excess of 1 percent, or exceeding the cumulative 1 percent for the fiscal year,

may take place only after the Secretary requests from the Committees on Appropriations of both Houses of Congress the authority to make the transfer and an approval is issued: *Provided further*, That any transfer to or from the ''Medical facilities'' account may take place only after the Secretary requests from the Committees on Appropriations of both Houses of Congress the authority to make the transfer and an approval is issued.

SEC. 203. Appropriations available in this title for salaries and expenses shall be available for services authorized by section 3109 of title 5, United States Code, hire of passenger motor vehicles; lease of a facility or land or both; and uniforms or allowances therefore, as authorized by sections 5901 through 5902 of title 5, United States Code.

SEC. 204. No appropriations in this title (except the appropriations for ''Construction, major projects'', and ''Construction, minor projects'') shall be available for the purchase of any site for or toward the construction of any new hospital or home.

SEC. 205. No appropriations in this title shall be available for hospitalization or examination of any persons (except beneficiaries entitled to such hospitalization or examination under the laws providing such benefits to veterans, and persons receiving such treatment under sections 7901 through 7904 of title 5, United States Code, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)), unless reimbursement of the cost of such hospitalization or examination is made to the ''Medical services'' account at such rates as may be fixed by the Secretary of Veterans Affairs.

SEC. 206. Appropriations available in this title for ''Compensation and pensions'', ''Readjustment benefits'', and ''Veterans insurance and indemnities'' shall be available for payment of prior year accrued obligations required to be recorded by law against the corresponding prior year accounts within the last quarter of fiscal year 2009.

SEC. 207. Appropriations available in this title shall be available to pay prior year obligations of corresponding prior year appropriations accounts resulting from sections 3328(a), 3334, and 3712(a) of title 31, United States Code, except that if such obligations are from trust fund accounts they shall be payable only from ''Compensation and pensions''.

(INCLUDING TRANSFER OF FUNDS)

SEC. 208. Notwithstanding any other provision of law, during fiscal year 2010, the Secretary of Veterans Affairs shall, from the National Service Life Insurance Fund (38 U.S.C. 1920), the Veterans' Special Life Insurance Fund (38 U.S.C. 1923), and the United States Government Life Insurance Fund (38 U.S.C. 1955), reimburse the ''General operating expenses'' and ''Information technology systems'' accounts for the cost of administration of the insurance programs financed through those accounts: *Provided*, That reimbursement shall be made only from the surplus earnings accumulated in such an insurance program during fiscal year 2010 that are available for dividends in that program after claims have been paid and actuarially determined reserves have been set aside: *Provided further*, That if the cost of administration of such an insurance program exceeds the amount of surplus earnings accumulated in that program, reimbursement shall be made only to the extent of such surplus earnings: *Provided further*, That the Secretary shall determine the cost of administration for fiscal year 2010 which is properly allocable to the provision of each such insurance program and to the provision of any total disability income insurance included in that insurance program.

SEC. 209. Amounts deducted from enhanced-use lease proceeds to reimburse an account for expenses incurred by that account during a prior fiscal year for providing enhanced-use lease services, may be obligated during the fiscal year in which the proceeds are received.

(INCLUDING TRANSFER OF FUNDS)

SEC. 210. Funds available in this title or funds for salaries and other administrative expenses shall also be available to reimburse the Office of Resolution Management of the Department of Veterans Affairs and the Office of Employment Discrimination Complaint Adjudication under section 319 of title 38, United States Code, for all services provided at rates which will recover actual costs but not exceed $34,158,000 for the Office of Resolution Management and $3,278,000 for the Office of Employment and Discrimination Complaint Adjudication: *Provided*, That payments may be made in advance for services to be furnished based on estimated costs: *Provided further*, That amounts received shall be credited to the ''General operating expenses'' and ''Information technology systems'' accounts for use by the office that provided the service.

SEC. 211. No appropriations in this title shall be available to enter into any new lease of real property if the estimated annual rental is more than $1,000,000 unless the Secretary submits a report which the Committees on Appropriations of both Houses of Congress approve within 30 days following the date on which the report is received.

SEC. 212. No funds of the Department of Veterans Affairs shall be available for hospital care, nursing home care, or medical services provided to any person under chapter 17 of title 38, United States Code, for a non-service-connected disability described in section 1729(a)(2) of such title, unless that person has disclosed to the Secretary of Veterans Affairs, in such form as the Secretary may require, current, accurate third-party reimbursement information for purposes of section 1729 of such title: *Provided*, That the Secretary may recover, in the same manner as any other debt due the United States, the reasonable charges for such care or services from any person who does not make such disclosure as required: *Provided further*, That any amounts so recovered for care or services provided in a prior fiscal year may be obligated by the Secretary during the fiscal year in which amounts are received.

(INCLUDING TRANSFER OF FUNDS)

SEC. 213. Notwithstanding any other provision of law, proceeds or revenues derived from enhanced-use leasing activities (including disposal) may be deposited into the ''Construction, major projects'' and ''Construction, minor projects'' accounts and be used for construction (including site acquisition and disposition), alterations, and improvements of any medical facility under the jurisdiction or for the use of the Department of Veterans Affairs. Such sums as realized are in addition to the amount provided for in ''Construction, major projects'' and ''Construction, minor projects''.

SEC. 214. Amounts made available under ''Medical services'' are available—

(1) for furnishing recreational facilities, supplies, and equipment; and

(2) for funeral expenses, burial expenses, and other expenses incidental to funerals and burials for beneficiaries receiving care in the Department.

(INCLUDING TRANSFER OF FUNDS)

SEC. 215. Such sums as may be deposited to the Medical Care Collections Fund pursuant to section 1729A of title 38, United States Code, may be transferred to ''Medical services'', to remain available until expended for the purposes of that account: *Provided*, That, for fiscal year 2010, $200,000,000 deposited in the Department of Veterans Affairs Medical Care Collections Fund shall be transferred to ''Medical Facilities'', to remain available until expended, for non-recurring maintenance at existing Veterans Health Administration medical facilities: *Provided further*, That the allocation of amounts transferred to ''Medical Facilities'' under the preceding proviso shall not be subject to the Veterans Equitable Resource Allocation formula.

SEC. 216. The Secretary of Veterans Affairs may enter into agreements with Community Health Centers in rural Alaska, Indian tribes and tribal organizations which are party to the Alaska Native Health Compact with the Indian Health Service, and Indian tribes and tribal organizations serving rural Alaska which have entered into contracts with the Indian Health Service under the Indian Self Determination and Educational Assistance Act, to provide healthcare, including behavioral health and dental care. The Secretary shall require participating veterans and facilities to comply with all appropriate rules and regulations, as established by the Secretary. The term ''rural Alaska'' shall mean those lands sited within the external boundaries of the Alaska Native regions specified in sections 7(a)(1)–(4) and (7)–(12) of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1606), and those lands within the Alaska Native regions specified in sections 7(a)(5) and 7(a)(6) of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1606), which are not within the boundaries of the Municipality of Anchorage, the Fairbanks North Star Borough, the Kenai Peninsula Borough or the Matanuska Susitna Borough.

(INCLUDING TRANSFER OF FUNDS)

SEC. 217. Such sums as may be deposited to the Department of Veterans Affairs Capital Asset Fund pursuant to section 8118 of title 38, United States Code, may be transferred to the ''Construction, major projects'' and ''Construction, minor projects'' accounts, to remain available until expended for the purposes of these accounts.

SEC. 218. None of the funds made available in this title may be used to implement any policy prohibiting the Directors of the Veterans Integrated Services Networks from conducting outreach or marketing to enroll new veterans within their respective Networks.

SEC. 219. The Secretary of Veterans Affairs shall submit to the Committees on Appropriations of both Houses of Congress a quarterly report on the financial status of the Veterans Health Administration.

(INCLUDING TRANSFER OF FUNDS)

SEC. 220. Amounts made available under the ''Medical services'', ''Medical support and compliance'', ''Medical facilities'', ''General operating expenses'', and ''National Cemetery Administration'' accounts for fiscal year 2010, may be transferred to or from the ''Information technology systems'' account: *Provided*, That before a transfer may take place, the Secretary of Veterans Affairs shall request from the Committees on Appropriations of both Houses of Congress the authority to make the transfer and an approval is issued.

SEC. 221. Amounts made available for the ''Information technology systems'' account may be transferred between projects: *Provided*, That no project may be increased or decreased by more than $1,000,000 of cost prior to submitting a request to the Committees on Appropriations of both Houses of Congress to make the transfer and an approval is issued, or absent a response, a period of 30 days has elapsed.

(INCLUDING TRANSFER OF FUNDS)

SEC. 222. Any balances in prior year accounts established for the payment of benefits under the Reinstated Entitlement Program for Survivors shall be transferred to and merged with amounts available under the ''Compensation and pensions'' account, and receipts that would otherwise be credited to the accounts established for the payment of benefits under the Reinstated Entitlement Program for Survivors program shall be credited to amounts available under the ''Compensation and pensions'' account.

SEC. 223. The Department shall continue research into Gulf War illness at levels not less than those made available in fiscal year 2009, within available funds contained in this Act.

SEC. 224. (a) Upon a determination by the Secretary of Veterans Affairs that such action is in the national interest, and will have a direct benefit for veterans through increased access to treatment, the Secretary of Veterans Affairs may transfer not more than $5,000,000 to the Secretary of Health and Human Services for the Graduate Psychology Education Program, which includes treatment of veterans, to support increased training of psychologists skilled in the treatment of post-traumatic stress disorder, traumatic brain injury, and related disorders.

(b) The Secretary of Health and Human Services may only use funds transferred under this section for the purposes described in subsection (a).

(c) The Secretary of Veterans Affairs shall notify Congress of any such transfer of funds under this section.

SEC. 225. None of the funds appropriated or otherwise made available by this Act or any other Act for the Department of Veterans Affairs may be used in a manner that is inconsistent with—

(1) section 842 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006 (Public Law 109–115; 119 Stat. 2506); or

(2) section 8110(a)(5) of title 38, United States Code.

SEC. 226. Of the amounts made available to the Department of Veterans Affairs for fiscal year 2010, in this Act or any other Act, under the ''Medical Facilities'' account for non-recurring maintenance, not more than 20 percent of the funds made available shall be obligated during the last 2 months of the fiscal year: *Provided*, That the Secretary may waive this requirement after providing written notice to the Committees on Appropriations of both Houses of Congress.

SEC. 227. Section 1925(d)(3) of title 38, United States Code, is amended by striking ''appropriation 'General Operating Expenses, Department of Veterans Affairs' '', and inserting ''appropriations for 'General Operating Expenses and Information Technology Systems, Department of Veterans Affairs' ''.

SEC. 228. Section 1922(a) of title 38, United States Code, is amended by striking ''(5) administrative costs to the Government for the costs of'', and inserting ''(5) administrative support performed by General Operating Expenses and Information Technology Systems, Department of Veterans Affairs, for''.

TITLE III

RELATED AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one-for-one replacement basis only) and hire of passenger motor vehicles; not to exceed $7,500 for official reception and representation expenses; and insurance of official motor vehicles in foreign countries, when required by law of such countries, $63,549,000, to remain available until expended.

FOREIGN CURRENCY FLUCTUATIONS ACCOUNT

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, such sums as may be necessary, to remain available until expended, for purposes authorized by section 2109 of title 36, United States Code.

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

SALARIES AND EXPENSES

For necessary expenses for the operation of the United States Court of Appeals for Veterans Claims as authorized by sections 7251 through 7298 of title 38, United States Code, $27,115,000, of which $1,820,000 shall be available for the purpose of providing financial assistance as described, and in accordance with the process and reporting procedures set forth, under this heading in Public Law 102–229.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, including the purchase of two passenger motor vehicles for replacement only, and not to exceed $1,000 for official reception and representation expenses, $37,200,000, to remain available until expended. In addition, such sums as may be necessary for parking maintenance, repairs and replacement, to be derived from the Lease of Department of Defense Real Property for Defense Agencies account.

Funds appropriated under this Act may be provided to Arlington County, Virginia, for the relocation of the federally owned water main at Arlington National Cemetery making additional land available for ground burials.

ARMED FORCES RETIREMENT HOME

TRUST FUND

For expenses necessary for the Armed Forces Retirement Home to operate and maintain the Armed Forces Retirement Home—Washington, District of Columbia, and the Armed Forces Retirement Home—Gulfport, Mississippi, to be paid from funds available in the Armed Forces Retirement Home Trust Fund, $134,000,000, of which $72,000,000 shall remain available until expended for construction and renovation of the physical plants at the Armed Forces Retirement Home—Washington, District of Columbia, and the Armed Forces Retirement Home—Gulfport, Mississippi.

TITLE IV

OVERSEAS CONTINGENCIES OPERATIONS

MILITARY CONSTRUCTION

MILITARY CONSTRUCTION, ARMY

For an additional amount for ''Military Construction, Army'', $924,484,000, to remain available until September 30, 2012: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects not otherwise authorized by law.

MILITARY CONSTRUCTION, AIR FORCE

For an additional amount for ''Military Construction, Air Force'', $474,500,000, to remain available until September 30, 2012: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects not otherwise authorized by law.

TITLE V

DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL SERVICES

For necessary expenses for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs and veterans described in section 1705(a) of title 38, United States Code, including care and treatment in facilities not under the jurisdiction of the Department, and including medical supplies and equipment, food services, and salaries and expenses of healthcare employees hired under title 38, United States Code, and aid to State homes as authorized by section 1741 of title 38, United States Code; $37,136,000,000, plus reimbursements, which shall become available on October 1, 2010, and shall remain available through September 30, 2011: *Provided*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall establish a priority for the provision of medical treatment for veterans who have service-connected disabilities, lower income, or have special needs: *Provided further*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall give priority funding for the provision of basic medical benefits to veterans in enrollment priority groups 1 through 6: *Provided further*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs may authorize the dispensing of prescription drugs from Veterans Health Administration facilities to enrolled veterans with privately written prescriptions based on requirements established by the Secretary: *Provided further*, That the implementation of the program described in the previous proviso shall incur no additional cost to the Department of Veterans Affairs: *Provided further*, That for the Department of Defense/Department of Veterans Affairs Health Care Sharing Incentive Fund, as authorized by section 8111(d) of title 38, United States Code, a minimum of $15,000,000, to remain available until expended, for any purpose authorized by section 8111 of title 38, United States Code.

MEDICAL SUPPORT AND COMPLIANCE

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law; administrative expenses in support of capital policy activities; and administrative and legal expenses of the Department for collecting and recovering amounts owed the Department as authorized under chapter 17 of title 38, United States Code, and the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.); $5,307,000,000, plus reimbursements, which shall become available on October 1, 2010, and shall remain available through September 30, 2011.

MEDICAL FACILITIES

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities and other necessary facilities of the Veterans Health Administration; for administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction, and renovation of any facility under the jurisdiction or for the use of the Department; for oversight, engineering, and architectural activities not charged to project costs; for repairing, altering, improving, or providing facilities in the several

hospitals and homes under the jurisdiction of the Department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; for leases of facilities; and for laundry services, $5,740,000,000, plus reimbursements, which shall become available on October 1, 2010, and shall remain available through September 30, 2011.

TITLE VI

GENERAL PROVISIONS

SEC. 601. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 602. Such sums as may be necessary for fiscal year 2010 for pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

SEC. 603. None of the funds made available in this Act may be used for any program, project, or activity, when it is made known to the Federal entity or official to which the funds are made available that the program, project, or activity is not in compliance with any Federal law relating to risk assessment, the protection of private property rights, or unfunded mandates.

SEC. 604. No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before Congress, except in presentation to Congress itself.

SEC. 605. All departments and agencies funded under this Act are encouraged, within the limits of the existing statutory authorities and funding, to expand their use of ''E-Commerce'' technologies and procedures in the conduct of their business practices and public service activities.

SEC. 606. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government except pursuant to a transfer made by, or transfer authority provided in, this or any other appropriations Act.

SEC. 607. Unless stated otherwise, all reports and notifications required by this Act shall be submitted to the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate.

This Act may be cited as the ''Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2010''.

SA 2731. Mr. BINGAMAN (for himself and Mr. UDALL of New Mexico) submitted an amendment intended to be proposed to amendment SA 2730 proposed by Mr. JOHNSON (for himself and Mrs. HUTCHISON) to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 27, between lines 3 and 4, insert the following:

SEC. 128. (a)(1) The amount appropriated or otherwise made available by this title under the heading ''MILITARY CONSTRUCTION, AIR FORCE'' is hereby increased by $37,500,000.

(2) Of the amount appropriated or otherwise made available by this title under the heading ''MILITARY CONSTRUCTION, AIR FORCE'', as increased by paragraph (1), $37,500,000 shall be available for construction of an Unmanned Aerial System Field Training Complex at Holloman Air Force Base, New Mexico.

(b) Of the amount appropriated or otherwise made available by title I of the Military Construction and Veterans Affairs Appropriations Act, 2009 (division E of Public Law 110–329; 122 Stat. 3692) under the heading ''MILITARY CONSTRUCTION, AIR FORCE'' and available for the purpose of Unmanned Aerial System Field Training facilities construction, $37,500,000 is hereby rescinded.

SA 2732. Mr. JOHNSON (for himself and Mrs. HUTCHISON) proposed an amendment to amendment SA 2730 proposed by Mr. JOHNSON (for himself and Mrs. HUTCHISON) to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

On page 56, between lines 9 and 10, insert the following:

SEC. 401. Amounts appropriated or otherwise made available by this title are designated as being for overseas deployments and other activities pursuant to sections 401(c)(4) and 423(a)(1) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

SA 2733. Mr. JOHNSON submitted an amendment intended to be proposed to amendment SA 2730 proposed by Mr. JOHNSON (for himself and Mrs. HUTCHISON) to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, after line 21, add the following:

SEC. 229. (a)(1) The amount appropriated or otherwise made available by this title under the heading ''CONSTRUCTION, MINOR PROJECTS'' is hereby increased by $50,000,000.

(2) Of the amount appropriated or otherwise made available by this title under the heading ''CONSTRUCTION, MINOR PROJECTS'', as increased by paragraph (1), $50,000,000 shall be available for renovation of Department of Veterans Affairs buildings for the purpose of converting unused structures into housing with supportive services for homeless veterans.

(b) The amount appropriated or otherwise made available by title I under the heading ''HOMEOWNERS ASSISTANCE FUND'' is hereby reduced by $50,000,000.

SA 2734. Mr. JOHNSON submitted an amendment intended to be proposed to amendment SA 2730 proposed by Mr. JOHNSON (for himself and Mrs. HUTCHISON) to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 27, between lines 3 and 4, insert the following:

SEC. 128. Not later than each of April 15, 2010, July 15, 2010, and October 15, 2010, the Secretary of Defense shall submit to the congressional defense committees a consolidated report from each of the military departments and Defense agencies identifying, by project and dollar amount, bid savings resulting from cost and scope variations pursuant to section 2853 of title 10, United States Code, exceeding 25 percent of the appropriated amount for military construction projects funded by this Act, the Supplemental Appropriations Act, 2009 (Public Law 111–32), and the Military Construction and Veterans Affairs Appropriations Act, 2009 (division E of Public Law 110-329), including projects funded through the regular military construction accounts, the Department of Defense Base Closure Account 2005, and the overseas contingency operations military construction accounts.

SA 2735. Mr. INOUYE (for himself, Mr. COCHRAN, and Mr. JOHNSON) submitted an amendment intended to be proposed to amendment SA 2730 proposed by Mr. JOHNSON (for himself and Mrs. HUTCHISON) to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 27, between lines 3 and 4, insert the following:

SEC. 128. (a)(1) The amount appropriated or otherwise made available by this title under the heading ''MILITARY CONSTRUCTION, DEFENSE-WIDE'' is hereby increased by $68,500,000, with the amount of such increase to remain available until September 30, 2014.

(2) Of the amount appropriated or otherwise made available by this title under the heading ''MILITARY CONSTRUCTION, DEFENSE-WIDE'', as increased by paragraph (1), $68,500,000 shall be available for the construction of an Aegis Ashore Test Facility at the Pacific Missile Range Facility, Hawaii. Notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and construction not otherwise authorized by law.

(b) Of the amount appropriated or otherwise made available by title I of the Military Construction and Veterans Affairs Appropriations Act, 2009 (division E of Public Law 110–329; 122 Stat. 3692) under the heading ''MILITARY CONSTRUCTION, DEFENSE-WIDE'' and available for the purpose of European Ballistic Missile Defense program construction, $68,500,000 is hereby rescinded.

SA 2736. Mr. AKAKA (for himself and Mr. VOINOVICH) proposed an amendment to the bill S. 806, to provide for the establishment, administration, and funding of Federal Executive Boards, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Executive Board Authorization Act of 2009''.

SEC. 2. FEDERAL EXECUTIVE BOARDS.

(a) IN GENERAL.—Chapter 11 of title 5, United States Code, is amended by adding at the end the following:

''§ 1106. Federal Executive Boards

''(a) PURPOSES.—The purposes of this section are to—

''(1) strengthen the coordination of Government activities;

''(2) facilitate interagency collaboration to improve the efficiency and effectiveness of Federal programs;

''(3) facilitate communication and collaboration on Federal emergency preparedness and continuity of operations for the Federal workforce in applicable geographic areas; and

''(4) provide stable funding for Federal Executive Boards.

''(b) DEFINITIONS.—In this section:

''(1) AGENCY.—The term 'agency'—

''(A) means an Executive agency as defined under section 105; and

''(B) shall not include the Government Accountability Office.

''(2) DIRECTOR.—The term 'Director' means the Director of the Office of Personnel Management.

''(3) FEDERAL EXECUTIVE BOARD.—The term 'Federal Executive Board' means an interagency entity established by the Director, in consultation with the headquarters of appropriate agencies, in a geographic area with a high concentration of Federal employees outside the Washington, DC. metropolitan area to strengthen the management and administration of agency activities and coordination among local Federal officers to implement national initiatives in that geographic area.

''(c) ESTABLISHMENT.—

''(1) IN GENERAL.—The Director shall establish Federal Executive Boards in geographic areas outside the Washington, D.C. metropolitan area. Before establishing Federal Executive Boards that are not in existence on the date of enactment of this section, the Director shall consult with the headquarters of appropriate agencies to determine the number and location of the Federal Executive Boards.

''(2) MEMBERSHIP.—Each Federal Executive Board for a geographic area shall consist of an appropriate senior officer for each agency in that geographic area. The appropriate senior officer may designate, by title of office, an alternate representative who shall attend meetings and otherwise represent the agency on the Federal Executive Board in the absence of the appropriate senior officer. An alternate representative shall be a senior officer in the agency.

''(3) LOCATION OF FEDERAL EXECUTIVE BOARDS.—In determining the location for the establishment of Federal Executive Boards, the Director shall consider—

''(A) whether a Federal Executive Board exists in a geographic area on the date of enactment of this section;

''(B) whether a geographic area has a strong, viable, and active Federal Executive Association;

''(C) whether the Federal Executive Association of a geographic area petitions the Director to become a Federal Executive Board; and

''(D) such other factors as the Director and the headquarters of appropriate agencies consider relevant.

''(d) ADMINISTRATION AND OVERSIGHT.—

''(1) IN GENERAL.—The Director shall provide for the administration and oversight of Federal Executive Boards, including—

''(A) establishing staffing policies in consultation with the headquarters of agencies participating in Federal Executive Boards;

''(B) designating an agency to staff each Federal Executive Board based on recommendations from that Federal Executive Board;

''(C) establishing communications policies for the dissemination of information to agencies;

''(D) in consultation with the headquarters of appropriate agencies, establishing performance standards for the Federal Executive Board staff;

''(E) developing accountability initiatives to ensure Federal Executive Boards are meeting performance standards; and

''(F) administering Federal Executive Board funding through the fund established in subsection (f).

''(2) STAFFING.—In making designations under paragraph (1)(B), the Director shall give preference to agencies staffing Federal Executive Boards.

''(e) GOVERNANCE AND ACTIVITIES.—

''(1) IN GENERAL.—Each Federal Executive Board shall—

''(A) subject to the approval of the Director, adopt by-laws or other rules for the internal governance of the Federal Executive Board;

''(B) elect a Chairperson from among the members of the Federal Executive Board, who shall serve for a set term;

''(C) serve as an instrument of outreach for the national headquarters of agencies relating to agency activities in the geographic area;

''(D) provide a forum for the exchange of information relating to programs and management methods and problems—

''(i) between the national headquarters of agencies and the field; and

''(ii) among field elements in the geographic area;

''(E) develop local coordinated approaches to the development and operation of programs that have common characteristics;

''(F) communicate management initiatives and other concerns from Federal officers and employees in the Washington, D.C. area to Federal officers and employees in the geographic area to achieve better mutual understanding and support;

''(G) develop relationships with State and local governments and nongovernmental organizations to help fulfill the roles and responsibilities of that Board;

''(H) in coordination with appropriate agencies and consistent with any relevant memoranda of understanding between the Office of Personnel Management and such agencies, facilitate communication, collaboration, and training to prepare the Federal workforce for emergencies and continuity of operations; and

''(I) take other actions as agreed to by the Federal Executive Board and the Director.

''(2) COORDINATION OF CERTAIN ACTIVITIES.—The facilitation of communication, collaboration, and training described under paragraph (1)(H) shall, when appropriate, be coordinated and defined through memoranda of understanding entered into between the Director and headquarters of appropriate agencies.

''(f) FUNDING.—

''(1) ESTABLISHMENT OF FUND.—The Director shall establish a fund within the Office of Personnel Management for financing essential Federal Executive Board functions—

''(A) including basic staffing and operating expenses; and

''(B) excluding the costs of the Office of Personnel Management relating to administrative and oversight activities conducted under subsection (d).

''(2) DEPOSITS.—There shall be deposited in the fund established under paragraph (1) contributions from the headquarters of each agency participating in Federal Executive Boards, in an amount determined by a formula established by the Director, in consultation with the headquarters of such agencies and the Office of Management and Budget.

''(3) CONTRIBUTIONS.—

''(A) FORMULA.—The formula for contributions established by the Director shall consider the number of employees in each agency in all geographic areas served by Federal Executive Boards. The contribution of the headquarters of each agency to the fund shall be recalculated at least every 2 years.

''(B) IN-KIND CONTRIBUTIONS.—At the sole discretion of the Director, the headquarters of an agency may provide in-kind contributions instead of providing monetary contributions to the fund.

''(4) USE OF EXCESS AMOUNTS.—Any unobligated and unexpended balances in the fund which the Director determines to be in excess of amounts needed for essential Federal Executive Board functions shall be allocated by the Director, in consultation with the headquarters of agencies participating in Federal Executive Boards, among the Federal Executive Boards for the activities under subsection (e) and other priorities, such as conducting training.

''(5) ADMINISTRATIVE AND OVERSIGHT COSTS.—The Office of Personnel Management shall pay for costs relating to administrative and oversight activities conducted under subsection (d) from appropriations made available to the Office of Personnel Management.

''(g) REPORTS.—The Director shall submit annual reports to Congress and agencies on Federal Executive Board program outcomes and budget matters.

''(h) REGULATIONS.—The Director shall prescribe regulations necessary to carry out this section.''.

(b) REPORT.—Not later than 60 days after the date of enactment of this Act, the Director of the Office of Personnel Management shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives that includes—

(1) a description of essential Federal Executive Board functions;

(2) details of basic staffing requirements for each Federal Executive Board;

(3) estimates of basic staffing and operating expenses for each Federal Executive Board; and

(4) a comparison of basic staffing and operating expenses for Federal Executive Boards operating before the date of enactment of this Act and such expenses for Federal Executive Boards after the implementation of this Act.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 11 of title 5, United States Code, is amended by inserting after the item relating to section 1105 the following:

''1106. Federal Executive Boards.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on November 5, 2009, at 9:30 a.m.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works, be authorized to meet during the session of the Senate on November 5, 2009, at 9 a.m. in room 406 of the Dirksen Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on November 5, 2009, at 2:30 p.m.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet during the session of the Senate, to conduct a hearing entitled ''Employment Non-Discrimination Act: Ensuring Opportunity for All Americans'' on November 5, 2009. The hearing will commence at 10 a.m. in room 430 of the Dirksen Senate Office Building.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on November 5, 2009, at 10 a.m. to conduct a hearing entitled ''Business Formation and Financial Crime: Finding a Legislative Solution.''

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

COMMITTEE ON THE JUDICIARY

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on November 5, 2009, at 10 a.m., in SD–226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

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

COMMITTEE ON VETERANS' AFFAIRS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on November 5, 2009 at 10 a.m. to conduct a hearing on VA and Indian Health Service Cooperation. The Committee will meet in room 418 of the Russell Senate Office Building beginning at 10 a.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Intelligence be authorized to meet during the session of the Senate on November 5, 2009, at 3 p.m.

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

SUBCOMMITTEE ON CRIME AND DRUGS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Crime and Drugs, be authorized to meet during the session of the Senate on November 5, 2009, at 2 p.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''The First Line of Defense: Reducing Recidivism at the Local Level.''

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

SUBCOMMITTEE ON WATER AND POWER

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power be authorized to meet during the session of the Senate to conduct a hearing on November 5, at 2:30 p.m., in room SD–366 of the Dirksen Senate Office Building.

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

PRIVILEGES OF THE FLOOR

Ms. MIKULSKI. Mr. President, I ask unanimous consent, on behalf of Senator DURBIN, that Richard Burkard, a detailee from the Financial Services and General Government Appropriations Subcommittee, be granted the privilege of the floor during the consideration of the Commerce-Justice-Science Appropriations Act and any votes thereon.

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

FEDERAL EXECUTIVE BOARD AUTHORIZATION ACT OF 2009

Mr. CASEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 164, S. 806.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 806) to provide for the establishment and administration and funding of Federal Executive Boards, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Homeland Security and Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Executive Board Authorization Act of 2009''.

SEC. 2. FEDERAL EXECUTIVE BOARDS.

(a) IN GENERAL.—Chapter 11 of title 5, United States Code, is amended by adding at the end the following:

''§ 1106. Federal Executive Boards

''(a) PURPOSES.—The purposes of this section are to—

''(1) strengthen the coordination of Government activities;

''(2) facilitate interagency collaboration to improve the efficiency and effectiveness of Federal programs;

''(3) facilitate communication and collaboration on Federal activities outside the Washington, D.C. metropolitan area; and

''(4) provide stable funding for Federal Executive Boards.

''(b) DEFINITIONS.—In this section:

''(1) AGENCY.—The term 'agency'—

''(A) means an Executive agency as defined under section 105; and

''(B) shall not include the Government Accountability Office.

''(2) DIRECTOR.—The term 'Director' means the Director of the Office of Personnel Management.

''(3) FEDERAL EXECUTIVE BOARD.—The term 'Federal Executive Board' means an interagency entity established by the Director, in consultation with the headquarters of appropriate agencies, in a geographic area with a high concentration of Federal employees outside the Washington, D.C. metropolitan area to strengthen the management and administration of agency activities and coordination among local Federal officers to implement national initiatives in that geographic area.

''(c) ESTABLISHMENT.—

''(1) IN GENERAL.—The Director shall establish Federal Executive Boards in geographic areas outside the Washington, D.C. metropolitan area. Before establishing Federal Executive Boards that are not in existence on the date of enactment of this section, the Director shall consult with the headquarters of appropriate agencies to determine the number and location of the Federal Executive Boards.

''(2) MEMBERSHIP.—Each Federal Executive Board for a geographic area shall consist of an appropriate senior officer for each agency in that geographic area. The appropriate senior officer may designate, by title of office, an alternate representative who shall attend meetings and otherwise represent the agency on the Federal Executive Board in the absence of the appropriate senior officer. An alternate representative shall be a senior officer in the agency.

''(3) LOCATION OF FEDERAL EXECUTIVE BOARDS.—In determining the location for the establishment of Federal Executive Boards, the Director shall consider—

''(A) whether a Federal Executive Board exists in a geographic area on the date of enactment of this section;

''(B) whether a geographic area has a strong, viable, and active Federal Executive Association;

''(C) whether the Federal Executive Association of a geographic area petitions the Director to become a Federal Executive Board; and

''(D) such other factors as the Director and the headquarters of appropriate agencies consider relevant.

''(d) ADMINISTRATION AND OVERSIGHT.—

''(1) IN GENERAL.—The Director shall provide for the administration and oversight of Federal Executive Boards, including—

''(A) establishing staffing policies in consultation with the headquarters of agencies participating in Federal Executive Boards;

''(B) designating an agency to staff each Federal Executive Board based on recommendations from that Federal Executive Board;

''(C) establishing communications policies for the dissemination of information to agencies;

''(D) in consultation with the headquarters of appropriate agencies, establishing performance standards for the Federal Executive Board staff;

''(E) developing accountability initiatives to ensure Federal Executive Boards are meeting performance standards; and

''(F) administering Federal Executive Board funding through the fund established in subsection (f).

''(2) STAFFING.—In making designations under paragraph (1)(B), the Director shall give preference to agencies staffing Federal Executive Boards.

''(e) GOVERNANCE AND ACTIVITIES.—Each Federal Executive Board shall—

''(1) subject to the approval of the Director, adopt by-laws or other rules for the internal governance of the Federal Executive Board;

''(2) elect a Chairperson from among the members of the Federal Executive Board, who shall serve for a set term;

''(3) serve as an instrument of outreach for the national headquarters of agencies relating to agency activities in the geographic area;

''(4) provide a forum for the exchange of information relating to programs and management methods and problems—

''(A) between the national headquarters of agencies and the field; and

''(B) among field elements in the geographic area;

''(5) develop local coordinated approaches to the development and operation of programs that have common characteristics;

''(6) communicate management initiatives and other concerns from Federal officers and employees in the Washington, D.C. area to Federal officers and employees in the geographic area to achieve better mutual understanding and support;

''(7) develop relationships with State and local governments and nongovernmental organizations to help in coordinating agency outreach; and

''(8) take other actions as agreed to by the Federal Executive Board and the Director.

''(f) FUNDING.—

''(1) ESTABLISHMENT OF FUND.—The Director shall establish a fund within the Office of Personnel Management for financing essential Federal Executive Board functions—

''(A) including basic staffing and operating expenses; and

''(B) excluding the costs of the Office of Personnel Management relating to administrative and oversight activities conducted under subsection (d).

''(2) DEPOSITS.—There shall be deposited in the fund established under paragraph (1) contributions from the headquarters of each agency participating in Federal Executive Boards, in an amount determined by a formula established by the Director, in consultation with the headquarters of such agencies and the Office of Management and Budget.

''(3) CONTRIBUTIONS.—

''(A) FORMULA.—The formula for contributions established by the Director shall consider the number of employees in each agency in all geographic areas served by Federal Executive Boards. The contribution of the headquarters of each agency to the fund shall be recalculated at least every 2 years.

''(B) IN-KIND CONTRIBUTIONS.—At the sole discretion of the Director, the headquarters of an agency may provide in-kind contributions instead of providing monetary contributions to the fund.

''(4) USE OF EXCESS AMOUNTS.—Any unobligated and unexpended balances in the fund which the Director determines to be in excess of amounts needed for essential Federal Executive Board functions shall be allocated by the Director, in consultation with the headquarters of agencies participating in Federal Executive Boards, among the Federal Executive Boards for the activities under subsection (e) and other priorities, such as conducting training.

''(5) ADMINISTRATIVE AND OVERSIGHT COSTS.—The Office of Personnel Management shall pay for costs relating to administrative and oversight activities conducted under subsection (d) from appropriations made available to the Office of Personnel Management.

''(g) REPORTS.—The Director shall submit annual reports to Congress and agencies on Federal Executive Board program outcomes and budget matters.

''(h) REGULATIONS.—The Director shall prescribe regulations necessary to carry out this section.''.

(b) REPORT.—Not later than 60 days after the date of enactment of this Act, the Director of the Office of Personnel Management shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives that includes—

(1) a description of essential Federal Executive Board functions;

(2) details of basic staffing requirements for each Federal Executive Board;

(3) estimates of basic staffing and operating expenses for each Federal Executive Board; and

(4) a comparison of basic staffing and operating expenses for Federal Executive Boards operating before the date of enactment of this Act and such expenses for Federal Executive Boards after the implementation of this Act.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 11 of title 5, United States Code, is amended by inserting after the item relating to section 1105 the following:

''1106. Federal Executive Boards.''.

EMERGENCY PREPAREDNESS

Mr. AKAKA. Mr. President, Senator VOINOVICH and I have offered a floor amendment to S. 806, the Federal Executive Board Authorization Act of 2009, to clearly authorize and provide guidance for the existing work of Federal Executive Boards, FEBs, in emergency preparedness and continuity of operations, COOP.

Mr. VOINOVICH. Mr. President, I want to thank Senator AKAKA for leading this amendment to recognize FEBs' role in preparing the Federal workforce for emergencies. FEBs participate in a number of activities in this regard, including working with the Department of Health and Human Services to brief the Federal workforce on points of distribution that can be set up to dispense medication during health emergencies and working with the Office of Personnel Management, OPM, and the Chief Human Officers Council to distribute information on human resources flexibilities available during snow storms and other emergencies. Our floor amendment clarifies that these activities can and should continue.

Mr. AKAKA. Mr. President, as Senator VOINOVICH has mentioned, FEBs already participate in a range of emergency preparedness efforts. These include working with OPM and individual agencies to develop COOP plans and taking other actions to prepare the Federal workforce for and protect them from public health dangers, inclement weather, and other emergencies. In 2004, the Government Accountability Office, GAO, released a report on COOP planning in the federal sector, which recognized that FEBs are uniquely positioned to coordinate emergency preparedness efforts among the Federal workforce, given their responsibility for improving coordination among federal activities outside of Washington, D.C. Following GAO's recommendation, OPM and the Federal Emergency Management Agency began more closely coordinating their efforts to improve guidance to federal agencies on emergency preparation and COOP.

Our amendment recognizes and provides guidance for such coordination. Specifically, our amendment requires FEBs to facilitate communication and collaboration on emergency preparedness and COOP activities for the Federal workforce in areas where FEBs exist. Our amendment also requires each FEB to develop relationships with State and local governments and nongovernmental organizations to help fulfill the roles and responsibilities of that FEB, and requires that the communication, collaboration, and training to prepare the Federal workforce for emergencies and COOP be defined through memoranda of understanding, MOU, between the Director of OPM and the headquarters of appropriate agencies when necessary.

We do not intend for MOUs to be created for every activity that FEBs participate in, nor with every agency participating in FEBs. As the substitute amendment states, MOUs should be created where appropriate. OPM may need MOUs with those agencies with which FEBs coordinate most actively because they play a substantial role in preparing the Federal workforce for emergencies and COOP.

Mr. VOINOVICH. Mr. President, I concur with my colleague. Our floor amendment requires FEBs to coordinate with appropriate agencies for preparedness, response, and COOP. We do not mean that OPM must enter into a memorandum of understanding with every agency that participates in an FEB or every agency that is affected by an FEB. We believe OPM should have the discretion and flexibility to determine which agencies are the ''appropriate agencies'' to coordinate with in any particular situation as well as the discretion to decide when that coordination needs to be defined in memoranda of understanding or other formal agreement.

Mr. AKAKA. Mr. President, I thank my good friend and colleague from Ohio for entering into this colloquy. Recognizing FEBs' role in emergency preparedness operations is important to supporting their efforts to prepare our Federal workforce. Again, I want to say mahalo to Senator VOINOVICH for his leadership on this important legislation.

Mr. CASEY. I ask unanimous consent the committee substitute amendment be withdrawn; that an Akaka-Voinovich substitute amendment be agreed to; the bill, as amended, be read a third time and passed; the motions to reconsider be laid upon the table, with no intervening action or debate and any statements be printed in the RECORD.

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

The amendment (No. 2736) was agreed to, as follows:

AMENDMENT NO. 2736

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Executive Board Authorization Act of 2009''.

SEC. 2. FEDERAL EXECUTIVE BOARDS.

(a) IN GENERAL.—Chapter 11 of title 5, United States Code, is amended by adding at the end the following:

''§ 1106. Federal Executive Boards

''(a) PURPOSES.—The purposes of this section are to—

''(1) strengthen the coordination of Government activities;

''(2) facilitate interagency collaboration to improve the efficiency and effectiveness of Federal programs;

''(3) facilitate communication and collaboration on Federal emergency preparedness and continuity of operations for the Federal workforce in applicable geographic areas; and

''(4) provide stable funding for Federal Executive Boards.

''(b) DEFINITIONS.—In this section:

''(1) AGENCY.—The term 'agency'—

''(A) means an Executive agency as defined under section 105; and

''(B) shall not include the Government Accountability Office.

''(2) DIRECTOR.—The term 'Director' means the Director of the Office of Personnel Management.

''(3) FEDERAL EXECUTIVE BOARD.—The term 'Federal Executive Board' means an interagency entity established by the Director, in consultation with the headquarters of appropriate agencies, in a geographic area with a high concentration of Federal employees outside the Washington, D.C. metropolitan area to strengthen the management and administration of agency activities and coordination among local Federal officers to implement national initiatives in that geographic area.

''(c) ESTABLISHMENT.—

''(1) IN GENERAL.—The Director shall establish Federal Executive Boards in geographic areas outside the Washington, D.C. metropolitan area. Before establishing Federal Executive Boards that are not in existence on the date of enactment of this section, the Director shall consult with the headquarters of appropriate agencies to determine the number and location of the Federal Executive Boards.

''(2) MEMBERSHIP.—Each Federal Executive Board for a geographic area shall consist of an appropriate senior officer for each agency in that geographic area. The appropriate senior officer may designate, by title of office, an alternate representative who shall attend meetings and otherwise represent the agency on the Federal Executive Board in the absence of the appropriate senior officer. An alternate representative shall be a senior officer in the agency.

''(3) LOCATION OF FEDERAL EXECUTIVE BOARDS.—In determining the location for the establishment of Federal Executive Boards, the Director shall consider—

''(A) whether a Federal Executive Board exists in a geographic area on the date of enactment of this section;

''(B) whether a geographic area has a strong, viable, and active Federal Executive Association;

''(C) whether the Federal Executive Association of a geographic area petitions the Director to become a Federal Executive Board; and

''(D) such other factors as the Director and the headquarters of appropriate agencies consider relevant.

''(d) ADMINISTRATION AND OVERSIGHT.—

''(1) IN GENERAL.—The Director shall provide for the administration and oversight of Federal Executive Boards, including—

''(A) establishing staffing policies in consultation with the headquarters of agencies participating in Federal Executive Boards;

''(B) designating an agency to staff each Federal Executive Board based on recommendations from that Federal Executive Board;

''(C) establishing communications policies for the dissemination of information to agencies;

''(D) in consultation with the headquarters of appropriate agencies, establishing performance standards for the Federal Executive Board staff;

''(E) developing accountability initiatives to ensure Federal Executive Boards are meeting performance standards; and

''(F) administering Federal Executive Board funding through the fund established in subsection (f).

''(2) STAFFING.—In making designations under paragraph (1)(B), the Director shall give preference to agencies staffing Federal Executive Boards.

''(e) GOVERNANCE AND ACTIVITIES.—

''(1) IN GENERAL.—Each Federal Executive Board shall—

''(A) subject to the approval of the Director, adopt by-laws or other rules for the internal governance of the Federal Executive Board;

''(B) elect a Chairperson from among the members of the Federal Executive Board, who shall serve for a set term;

''(C) serve as an instrument of outreach for the national headquarters of agencies relating to agency activities in the geographic area;

''(D) provide a forum for the exchange of information relating to programs and management methods and problems—

''(i) between the national headquarters of agencies and the field; and

''(ii) among field elements in the geographic area;

''(E) develop local coordinated approaches to the development and operation of programs that have common characteristics;

''(F) communicate management initiatives and other concerns from Federal officers and employees in the Washington, D.C. area to Federal officers and employees in the geographic area to achieve better mutual understanding and support;

''(G) develop relationships with State and local governments and nongovernmental organizations to help fulfill the roles and responsibilities of that Board;

''(H) in coordination with appropriate agencies and consistent with any relevant memoranda of understanding between the Office of Personnel Management and such agencies, facilitate communication, collaboration, and training to prepare the Federal workforce for emergencies and continuity of operations; and

''(I) take other actions as agreed to by the Federal Executive Board and the Director.

''(2) COORDINATION OF CERTAIN ACTIVITIES.—The facilitation of communication, collaboration, and training described under paragraph (1)(H) shall, when appropriate, be coordinated and defined through memoranda of understanding entered into between the Director and headquarters of appropriate agencies.

''(f) FUNDING.—

''(1) ESTABLISHMENT OF FUND.—The Director shall establish a fund within the Office of Personnel Management for financing essential Federal Executive Board functions—

''(A) including basic staffing and operating expenses; and

''(B) excluding the costs of the Office of Personnel Management relating to administrative and oversight activities conducted under subsection (d).

''(2) DEPOSITS.—There shall be deposited in the fund established under paragraph (1) contributions from the headquarters of each agency participating in Federal Executive Boards, in an amount determined by a formula established by the Director, in consultation with the headquarters of such agencies and the Office of Management and Budget.

''(3) CONTRIBUTIONS.—

''(A) FORMULA.—The formula for contributions established by the Director shall consider the number of employees in each agency in all geographic areas served by Federal Executive Boards. The contribution of the headquarters of each agency to the fund shall be recalculated at least every 2 years.

''(B) IN-KIND CONTRIBUTIONS.—At the sole discretion of the Director, the headquarters of an agency may provide in-kind contributions instead of providing monetary contributions to the fund.

''(4) USE OF EXCESS AMOUNTS.—Any unobligated and unexpended balances in the fund which the Director determines to be in excess of amounts needed for essential Federal Executive Board functions shall be allocated by the Director, in consultation with the headquarters of agencies participating in Federal Executive Boards, among the Federal Executive Boards for the activities under subsection (e) and other priorities, such as conducting training.

''(5) ADMINISTRATIVE AND OVERSIGHT COSTS.—The Office of Personnel Management shall pay for costs relating to administrative and oversight activities conducted under subsection (d) from appropriations made available to the Office of Personnel Management.

''(g) REPORTS.—The Director shall submit annual reports to Congress and agencies on Federal Executive Board program outcomes and budget matters.

''(h) REGULATIONS.—The Director shall prescribe regulations necessary to carry out this section.''.

(b) REPORT.—Not later than 60 days after the date of enactment of this Act, the Director of the Office of Personnel Management shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives that includes—

(1) a description of essential Federal Executive Board functions;

(2) details of basic staffing requirements for each Federal Executive Board;

(3) estimates of basic staffing and operating expenses for each Federal Executive Board; and

(4) a comparison of basic staffing and operating expenses for Federal Executive Boards operating before the date of enactment of this Act and such expenses for Federal Executive Boards after the implementation of this Act.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 11 of title 5, United States Code, is amended by inserting after the item relating to section 1105 the following:

''1106. Federal Executive Boards.''.

The bill (S. 806), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

TERMS OF SERVICE IN THE OFFICE OF COMPLIANCE

Mr. CASEY. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 197, S. 1860.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows.

A bill (S. 1860) to permit each current member of the Board of Directors of the Office of Compliance to serve for 3 terms.

There being no objection, the Senate proceeded to consider the bill.

Mr. CASEY. Mr. President, I ask unanimous consent the bill be read a third time, and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The bill (S. 1860) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1860

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

SECTION 1. ADDITIONAL TERM FOR MEMBERS OF BOARD OF DIRECTORS OF OFFICE OF COMPLIANCE.

Notwithstanding the second sentence of section 301(e)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1381(e)(1)), any individual serving as a member of the Board of Directors of the Office of Compliance as of September 30, 2009, may serve for 3 terms.

NATIONAL AMERICAN INDIAN AND ALASKA NATIVE HERITAGE MONTH

Mr. CASEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 342, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 342) recognizing National American Indian and Alaska Native Heritage Month and celebrating the heritage and culture of American Indians and Alaska Natives and the contributions of American Indians and Alaska Natives to the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DORGAN. Mr. President, on October 30, 2009, President Obama issued a proclamation designating November 2009 as National American Indian and Alaska Native Heritage Month. This President follows a tradition of Presidents since 1990 of issuing proclamations honoring the significant contributions of tribal governments and individual Native Americans to our Nation's history and development.

Congress also has traditionally recognized the contributions of Native Americans to the United States in the form of resolutions, findings, coins and medals. The resolution introduced here today continues in that tradition.

This resolution recognizes some of the many contributions that Native Americans have made to help build our great Nation as well as the continued contributions of Native Americans to the growth of the United States. Native Americans have made significant contributions in the fields of agriculture, medicine, music, language, and art. They were an influencing force in the founding documents of our Federal Government. Indian tribes have even made use of Native languages to develop an unbreakable military code that helped defeat the Axis powers in World War II. These remarkable tribes and individual Native Americans have shaped our Nation's history in so many very meaningful ways.

Through this resolution, we recognize and celebrate these and many other contributions of tribal governments and Native Americans during the month of November. It is particularly important that President Obama has decided to host a Tribal Leaders Summit at the White House. The President will meet with tribal leaders in Washington, DC, November 5, 2009, to discuss the many issues facing tribal communities throughout the Nation.

We have several very important pieces of legislation before this body that I hope to move in the interest of the First Americans. S. 1790, the Indian Health Care Improvement Reauthorization and Extension Act of 2009, was introduced on October 15, 2009, after much consultation and discussion among tribal leaders and Indian health experts. I will work very hard this Congress to get this important piece of legislation to the President's desk. In addition, after many, many hearings and numerous listening sessions, I introduced S. 797, the Tribal Law and Order Act of 2009, earlier this year. This important piece of legislation has strong bipartisan support and will help to improve the status of law and order on tribal lands. The bill has been approved by the Indian Affairs Committee and is waiting for approval by the full Senate.

I urge all citizens, and local, State, and Federal governments and agencies to take time this month to learn more about the many facets of Native American history, traditions, and their important contributions to the formation of the United States. Mr. President, I ask that this resolution be adopted quickly and that it act as encouragement to all people of the United States to observe the month of November as National American Indian and Alaska Native Heritage Month.

Mr. CASEY. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 342) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 342

Whereas from November 1, 2009, through November 30, 2009, the United States celebrates National American Indian and Alaska Native Heritage Month;

Whereas American Indians and Alaska Natives are descendants of the original, indigenous inhabitants of what is now the United States;

Whereas, in 2000, the United States Census Bureau reported that there were more than 4,000,000 people in the United States of American Indian and Alaska Native descent;

Whereas, on December 2, 1989, the Committee on Indian Affairs of the Senate held a hearing exploring the contributions of the Iroquois Confederacy, and its influence on the Founding Fathers in the drafting of the Constitution of the United States with the concepts of freedom of speech, the separation of governmental powers, and checks and balances among the branches of government;

Whereas the Senate has reaffirmed that a major national goal of the United States is to provide the resources, processes, and structure that will enable Indian Tribes and tribal members to obtain the quantity and quality of health care services and opportunities that will eliminate the health disparities between American Indians and the general population of the United States;

Whereas Congress recently reaffirmed its trust responsibility to improve the housing conditions and socioeconomic status of American Indians and Alaska Natives by providing affordable homes in a safe and healthy environment;

Whereas, throughout its course of dealing with Indian Tribes, the United States Government has engaged in a government-to-government relationship with Tribes;

Whereas the United States Government owes a trust obligation to Tribes, acknowledged in treaties, statutes, and decisions of the Supreme Court, to protect the interests and welfare of tribal governments and their members;

Whereas American Indians and Alaska Natives have consistently served with honor and distinction in the Armed Forces of the United States, some as early as the Revolutionary War, and continue to serve in the Armed Forces in greater numbers per capita than any other group in the United States;

Whereas American Indians and Alaska Natives speak and preserve indigenous languages and have contributed hundreds of words to the English language, including the names of people and locations in the United States;

Whereas Congress has recognized Native American code talkers who served with honor and distinction in World War I and World War II, using indigenous languages as an unbreakable military code, saving countless American lives;

Whereas American Indians and Alaska Natives are deeply rooted in tradition and culture, which drives their strength of community; and

Whereas American Indians and Alaska Natives of all ages celebrate the great achievements of their ancestors and heroes and continue to share their stories with future generations: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the celebration of National American Indian and Alaska Native Heritage Month during the month of November 2009;

(2) honors the heritage and culture of American Indians and Alaska Natives and the contributions of American Indians and Alaska Natives to the United States; and

(3) urges the people of the United States to observe National American Indian and Alaska Native Heritage Month with appropriate programs and activities.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to Public Law 110–181, and in consultation with chairmen of the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Foreign Relations, appoints the following individual to be a member of the Commission on Wartime Contracting in Iraq and Afghanistan: Katherine Schinasi of Washington, DC, vice Linda J. Gustitus of the District of Columbia.

ORDERS FOR FRIDAY, NOVEMBER 6, 2009

Mr. CASEY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Friday, November 6; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 3082, the Military Construction and Veterans Affairs appropriations bill.

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

PROGRAM

Mr. CASEY. There will be no rollcall votes during Friday's session of the Senate. As previously announced, the next vote will occur at approximately 5:30 p.m. Monday.

ADJOURNMENT UNTIL 9:30 TOMORROW

Mr. CASEY. If there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 8:31 p.m., adjourned until Friday, November 6, 2009, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate, Thursday, November 5, 2009:

DEPARTMENT OF STATE

ARTURO A. VALENZUELA, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF STATE (WESTERN HEMISPHERE AFFAIRS).

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ROLENA KLAHN ADORNO, OF CONNECTICUT, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2014.

MARVIN KRISLOV, OF OHIO, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2014.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

ANNE S. FERRO, OF MARYLAND, TO BE ADMINISTRATOR OF THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION.

DEPARTMENT OF TRANSPORTATION

CYNTHIA L. QUARTERMAN, OF GEORGIA, TO BE ADMINISTRATOR OF THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

ELIZABETH M. ROBINSON, OF VIRGINIA, TO BE CHIEF FINANCIAL OFFICER, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

DEPARTMENT OF COMMERCE

PATRICK GALLAGHER, OF MARYLAND, TO BE DIRECTOR OF THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

MERIT SYSTEMS PROTECTION BOARD

SUSAN TSUI GRUNDMANN, OF VIRGINIA, TO BE CHAIRMAN OF THE MERIT SYSTEMS PROTECTION BOARD.

SUSAN TSUI GRUNDMANN, OF VIRGINIA, TO BE A MEMBER OF THE MERIT SYSTEMS PROTECTION BOARD FOR THE TERM OF SEVEN YEARS EXPIRING MARCH 1, 2016.

ANNE MARIE WAGNER, OF VIRGINIA, TO BE A MEMBER OF THE MERIT SYSTEMS PROTECTION BOARD FOR THE TERM OF SEVEN YEARS EXPIRING MARCH 1, 2014.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF JUSTICE

IGNACIA S. MORENO, OF NEW YORK, TO BE AN ASSISTANT ATTORNEY GENERAL .

LAURIE O. ROBINSON, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT ATTORNEY GENERAL.

BENJAMIN B. WAGNER, OF CALIFORNIA, TO BE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS.

CARMEN MILAGROS ORTIZ, OF MASSACHUSETTS, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF MASSACHUSETTS FOR THE TERM OF FOUR YEARS.

EDWARD J. TARVER, OF GEORGIA, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF GEORGIA FOR THE TERM OF FOUR YEARS.