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# Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

## PRAYER

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

Let us pray.

Lord God, through whom we find liberty and peace, lead us in Your righteousness and make the way straight before our lawmakers. As they grapple with complex issues and feel the need for guidance, lead them to the decisions that will best glorify You. Looking to You to guide them, may they not be overwhelmed, remembering that in everything You are working for the good of those who love You.

May Your good blessings continue to be with us, and may we, in response to Your abiding love, ever seek to do justice, love mercy, and walk humbly with You.

We pray in Your sacred Name. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL 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. INOUYE).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, September 8, 2011.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

DANIEL K. INOUYE,
*President pro tempore.*

Mr. UDALL of New Mexico 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 any leader remarks, there will be 1 hour of morning business, with the Republicans controlling the first half and the majority controlling the final half. Following morning business, the Senate will resume consideration of the America Invents Act. There will be four rollcall votes starting about 4 p.m. That time could move a little bit but not much. We are doing that in order to complete action on this patent bill that is so important for the country. It will be the first revision of this law in more than six decades.

Senators should gather in the Senate Chamber about 6:30 this evening to proceed as a body to the House for the joint session with President Obama. When we return this evening, there will be an additional rollcall vote on the motion to proceed to S.J. Res. 25, which is a joint resolution of disapproval regarding the debt limit increase. As I indicated to everyone last night, if the motion to proceed prevails, we will be back tomorrow to complete that work, and that could take as much as 10 hours tomorrow. If the motion to proceed fails, then we will have other things to do tomorrow but there will be no votes.

## MEASURE PLACED ON THE CALENDAR—S.J. RES 26

Mr. REID. Mr. President, I am told that S.J. Res. 26 is due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will report the joint resolution by title for the second time.

The assistant legislative read as follows:

A joint resolution (S.J. Res. 26) expressing the sense of Congress that Secretary of the Treasury Timothy Geithner no longer holds the confidence of Congress or of the people of the United States.

Mr. REID. Mr. President, I object to any further proceedings with respect to this resolution.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar under rule XIV.

## JOBS AGENDA

Mr. REID. Mr. President, tonight, before a joint session of Congress, President Obama will address the Nation on the single most important issue facing our country: the unemployment crisis we have before us. I look forward to hearing the specifics of his plan. I have spoken to him, and I have a pretty good idea of what he is going to talk about.

I support his goal to create good jobs for the 14 million people who have no jobs. This is a time of dark economic times, and it is important that we do this. I applaud the commonsense, bipartisan approach the President will unveil tonight to invest in badly needed infrastructure and to cut taxes for working families and small businesses to spur job creation.

These are ideas around which Members of both parties should rally. Republicans have always supported tax cuts. They have done it in the past, and they agree we must bring America's infrastructure up to 21st-century standards. I hope that in fact is the case. But

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



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if my Republican friends oppose these proposals now—proposals they have supported in the past—the reason will be very clear: partisan politics. Republicans seem convinced that a failing economy is good for their politics. They think that if they kill every jobs bill and stall every effort to revive the economy, President Obama will lose. My good friend the Republican leader has said so. He has said the Republican Party's No. 1 goal in this Congress is to defeat the President. But Republicans aiming at the President have caught innocent Americans in the crossfire.

This week, Republican leaders have said they want to work with the President and Democrats in Congress. They want to work on job creation in a bipartisan way, they say. I hope that in fact is the case, but their actions over the last 8 months speak much louder than their words of the last few days.

For example, Republicans opposed the reauthorization of the Small Business Innovation Research Program and the Economic Development Administration. Both have proven track records of spurring innovation, encouraging entrepreneurship, and creating jobs. Republicans were willing to put more than ½ million Americans' jobs at risk and, in fact, eliminate those jobs rather than work with us to pass that legislation.

The Senate passed much needed patent reform in March. Yet House Republicans stalled for months before sending us back their version of the bill, which we will vote on today. I am hopeful we can send it back to the House untouched.

Republicans wasted weeks threatening to shut down the economy this spring. They held our economy hostage for months this summer over a routine vote on whether to pay the Nation's bills. Congress took the same vote 18 times while President Reagan was President and 7 times while George W. Bush was President and never was the vote time-consuming or contentious. Through it all, Republicans hacked away at funding for the very programs that were helping to get this Nation's economy back on its feet.

The results of their stall tactics, obstructionism, and mindless budget cuts are beginning to show. Although the private sector created jobs for the 18th month in a row, August saw no change in the national unemployment rate. Unemployment in Nevada is still the highest in the Nation. But in spite of all this, the Republicans have refused to allow us to focus on unemployment. As Democrats introduced jobs bill after jobs bill, Republicans made it clear they were more interested in pursuing a political agenda than a jobs agenda.

We will no longer allow our Republican colleagues to put politics ahead of the American people. There are two things we must get done this work period and both will create and save jobs immediately. We need to reauthorize the Federal Aviation Administration to protect both air travelers and airline workers—that is 80,000 jobs—and we must pass a highway bill to fund construction projects across the Nation. These two bills combined will save about 2 million jobs, including many jobs in the struggling construction industry, and it will do it now. But we need Republican help. We can't get it done without them. This is their chance to prove they remember the meaning of the word ''bipartisan.'' It is time for necessity to trump ideology.

Senator Robert Byrd once said, ''Potholes know no parties.'' The challenges this Nation faces today are greater than any speed bump, but the road to recovery is the same: cooperation. Partisanship will not solve our jobs crisis, but setting aside politics in service to our country certainly will.

Mr. President, we have been able to move forward this week and get some work done. I especially appreciate very much the work of Senator KYL, who is the Republican whip. His work to put the patent bill in the position it is in so we can finish that bill today—we certainly hope to be able to do that—has been very exemplary, and I appreciate it very much.

Next week, likely, our first vote will be to do something about FEMA—the Federal Emergency Management Agency—which is broke. We have had a string of natural catastrophes that have been just awful—Irene, Lee, and tornadoes that don't have names, but the one that struck Joplin, MO, killed almost 200 people and devastated that town.

I went down to S–120 last night, and they had a number of scientists showing some of the things they have developed. One of the things they have developed—and these are things they have done at universities, handmade pieces of magnificent equipment that do many things—is something they can place in the path of a storm—they have never been able to do that before—to determine from which direction the wind is coming and how hard it blows. Without belaboring the point, one of the instruments there recorded the strongest winds ever recorded in the history of the world—more than 300 miles an hour. That is basically what we had in Joplin, MO. There is no building that can withstand that. It is devastating.

The pictures you see of Joplin, MO, look like a series of bombs hit. Every building was affected, most of them knocked down. The reason I mention that is that FEMA has stopped work in Joplin, MO. People were there working for $9 an hour, just putting things back into some semblance of order, but that work has stopped. FEMA has had to look at the places that are impacted right now. They are still trying to get the water out of some places because of Lee and to restore some of the immediate damage done by Irene. We have to do something to replenish that money.

I was happy to see some of the statements from one of the Republican leaders in the House yesterday in effect changing his position on how all this has to be paid for. As we speak, we are spending billions of dollars every week in Iraq and Afghanistan. I understand that. But that is all unpaid for—unpaid for.

Certainly, we have to do something to help the American people in an emergency and figure out some other way in the future to look at how to handle other disasters. We try to prefund what we think will happen as a result of disasters, but these are acts of God—that is what we learn in law school—these hurricanes and tornadoes and floods. Along the Mississippi River, we have more than 3 million acres underwater. This is farmland. It is not just vacant land, it is farmland underwater. These people need help, and the Federal Government can help them. So we need to do that, and that is why we will have a vote, as soon as I can arrange it next week, on funding FEMA so they can continue doing the work that is so important for our country.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## RECOGNITION OF THE MINORITY LEADER

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

## ECONOMIC CLIMATE

Mr. MCCONNELL. Mr. President, later today both Houses of Congress will welcome President Obama to speak about a very serious crisis we face as a nation, namely, an economic climate that is making it impossible for millions of Americans to find the work they need to support themselves and their families.

In a two-party system such as ours, it shouldn't be surprising that there would be two very different points of view about how to solve this particular crisis. What is surprising is the President's apparent determination to apply the same government-driven policies that have already been tried and failed. The definition of insanity, as Albert Einstein once famously put it, is to do the same thing over and over again and to expect a different result. Frankly, I can't think of a better description of anyone who thinks the solution to this problem is another stimulus. The first stimulus didn't do it. Why would another?

This is one question the White House and a number of Democrats clearly don't want to answer. That is why some of them are out there coaching

people not to use the word ''stimulus'' when describing the President's plan. Others are accusing anybody who criticizes it of being unpatriotic or playing politics. Well, as I have said before, there is a much simpler reason to oppose the President's economic policies that has nothing whatsoever to do with politics: They simply don't work. Yet, by all accounts, the President's so-called jobs plan is to try those very same policies again and then accuse anyone who doesn't support them this time around of being political or overly partisan, of not doing what is needed in this moment of crisis.

This isn't a jobs plan. It is a reelection plan. That is why Republicans have continued to press for policies, policies that empower job creators, not Washington.

According to the Wall Street Journal, nearly a third of the unemployed have been out of work for more than a year. The average length of unemployment is now greater than 40 weeks, higher than it was even during the Great Depression. As we know, the longer you are out of a job, the harder it is to find one. That means, for millions of Americans, this crisis is getting harder every day. It is getting worse and worse.

We also know this: The economic policies this President has tried have not alleviated the problem. In many ways, in fact, they have made things worse. Gas prices are up. The national debt is up. Health insurance premiums are up. Home values in most places continue to fall. And, 2½ years after the President's signature jobs bill was signed into law, 1.7 million fewer Americans have jobs. So I would say Americans have 1.7 million reasons to oppose another stimulus. That is why many of us have been calling on the President to propose something entirely different tonight—not because of politics but because the kind of policies he has proposed in the past haven't worked. The problem here isn't politics. The problem is the policy. It is time the President start thinking less about how to describe his policies differently and more time thinking about devising new policies. And he might start by working with Congress instead of writing in secret, without any consultation with Republicans, a plan that the White House is calling bipartisan.

With 14 million Americans out of work, job creation should be a no-politics zone. Republicans stand ready to act on policies that get the private sector moving again. What we are reluctant to do, however, is to allow the President to put us deeper in debt to finance a collection of short-term fixes or shots in the arm that might move the needle today but which deny America's job creators the things they need to solve this crisis—predictability, stability, fewer government burdens, and less redtape. Because while this crisis may have persisted for far too long and caused far too much hardship, one thing we do have right now is the benefit of hindsight. We know what doesn't work.

So tonight the President should take a different approach. He should acknowledge the failures of an economic agenda that centers on government and spending and debt, and work across the aisle on a plan that puts people and businesses at the forefront of job creation.

If the American people are going to have control over their own destiny, they need to have more control over their economy. That means shifting the center of gravity away from Washington and toward those who create jobs. It means putting an end to the regulatory overreach that is holding job creators back. It means being as bold about liberating job creators as the administration has been about shackling them. It means reforming an outdated Tax Code and getting out of the business of picking winners and losers. It means lowering the U.S. corporate tax rate, which is currently the second highest in the world. And it means leveling the playing field with our competitors overseas by approving free trade agreements with Colombia, Panama, and South Korea that have been languishing on the President's desk literally for years.

Contrary to the President's claims, this economic approach isn't aimed at pleasing any one party or constituency. It is aimed at giving back to the American people the tools they need to do the work Washington has not been able to do on its own, despite its best efforts over the past few years.

The President is free to blame his political adversaries, his predecessor, or even natural disasters for America's economic challenges. Tonight, he may blame any future challenges on those who choose not to rubberstamp his latest proposals. But it should be noted that this is precisely what Democratic majorities did during the President's first 2 years in office, and look where that got us. But here is the bottom line: By the President's own standards, his jobs agenda has been a failure, and we can't afford to make the same mistake twice.

After the President's speech tonight calling for more stimulus spending, the Senate will vote on his request for an additional $500 billion increase in the debt limit, so Senators will have an opportunity to vote for or against this type of approach right away.

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, the Senate will be in a period of morning business for 1 hour, 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 Republicans controlling the first half and the majority controlling the final half.

The Senator from Nebraska is recognized.

(The remarks of Mr. JOHANNS and Mr. ALEXANDER pertaining to the introduction of S. 1528 are printed in today's RECORD under Statements on Introduced Bills and Joint Resolutions.)

Mr. ALEXANDER. Mr. President, I believe I have up to 20 minutes?

The PRESIDING OFFICER. There is 16½ minutes remaining on the Republican side.

Mr. ALEXANDER. Will the Chair please let me know when 5 minutes is remaining.

The PRESIDING OFFICER. Yes.

## PRESIDENTIAL ADDRESS

Mr. ALEXANDER. Mr. President, tonight we welcome President Obama to the Congress to deliver a jobs address. The President will be coming at a time when we have had persistent unemployment at a greater rate than at any time since the Great Depression. No one should blame our President for problems with an economy that he inherited, but the President should take responsibility for making the economy worse.

Unemployment is up. The debt is up. Housing values are down. The morning paper reports we may be on our way—at least the chances are 50–50, the newspaper says this morning—to a double-dip recession. The number of unemployed Americans is up about 2 million since the President took office. The amount of Federal debt is up about $4 trillion.

As I mentioned in discussing the proposals of the Senator from Nebraska, the President's policies, rather than helping over the last 2½ years, have thrown a big wet blanket over private sector job creation. They have made it more expensive and more difficult for the private sector to create jobs for Americans.

Let me be specific about that. The President chose, 2 years ago, rather than to focus exclusively on jobs, to focus on health care. His proposal was to expand a health care delivery system that already cost too much, that was already too expensive. So we have new health care taxes and mandates that make the economy worse.

Why do I say that? I met, for example, with the chief executive officers of several of the nation's largest restaurant companies. They reminded me that restaurants and hospitality organizations in the United States are the largest employers, outside of government, and that their employees are mostly young and mostly low income. One of the chief executives said because of the mandates of the health care law it would take all of his profits from last year to pay the costs, when it is fully implemented, so he will not be

investing in any new restaurants in the United States. Another said they operate with 90 employees per store, but as a result of the mandates and taxes in the health care law, their goal will be to operate with 70 employees per store. One of the largest employers is saying instead of having 90 employees per store, we are going to have 70. That doesn't help create new jobs in the United States.

Let's take the debt. The President inherited the debt but he has made it worse. The economists who look at debt say we are heading toward a level that will cost us, in the United States, 1 million jobs every year.

Undermining the right-to-work law—the President's appointees to the National Labor Relations Board have told the Nation's largest manufacturer of large airplanes that they cannot build a plant in South Carolina. It is the first new plant to build large airplanes in 40 years in this country. The Boeing Company sells those airplanes everywhere in the world. It could build them anywhere in the world. We want them to build them in the United States. Those kinds of actions by the National Labor Relations Board make it worse.

Regulations that put a big wet blanket over job creation, such as the one the Senator from Nebraska talks about, make it worse. The President's refusal to send trade agreements to Congress makes it worse. Let's be clear about this. Since the day the President took office, he has had on his desk three trade agreements, already signed by both countries. They simply need approval by Congress—one with Panama, one with South Korea, one with Colombia. We are ready to approve them in a bipartisan way if he will send them here. What will that mean in Tennessee? We make a lot of auto parts in Tennessee. We can sell them to South Korea. At the present time, Europeans sell them to South Korea at a lower price because of the tariff situation, because the President has not sent the three trade agreements to Congress. So all these steps have made the economy worse. Of course, with a bad economy home values have stayed down. That is making it worse, too.

So what can we do about this? What are the kinds of things the President could talk about tonight and that we could work on together to make it easier and cheaper to create private sector jobs? We could change the tax structure in a permanent way, not short-term fixes but long-term lowering of tax rates for everyone, closing loopholes, creating a situation where our businesses are more competitive in the world marketplace. That is one thing we could do.

We could stop the avalanche of regulations that is throwing the big wet blanket over job growth. The Senator from Nebraska suggested a few—a moratorium on new regulations; avoiding guidance, as he suggested, that circumvents the rules or regulations; stopping wacky ideas such as regulating farm dust, as if everybody did not know that all farms create dust.

More exports—the President could send, today, the three trade agreements to Congress. We could ratify them and then crops grown in Tennessee and Nebraska and every other State in this country, and auto parts, and medical devices, could be sold around the world. Our State alone has $23 billion and tens of thousands of jobs tied up in exports. This could add to that.

In addition to that, we could agree on advanced research. The President's recommendations have been good on that. But we should agree on that and move ahead with appropriations bills and a fiscal situation that permits us to do the kind of advanced research we need to do to create jobs.

We need to fix No Child Left Behind. Better schools mean better jobs. We need a long-term highway bill. We need roads and bridges in order to have the kind of country we want. We need to find more American energy and use less. We should be able to agree on that.

There is an agenda, not of more spending, not of more taxes, not of more regulation, but an agenda that would make it easier and cheaper to create private sector jobs and get the economy moving again.

In another time a President named Eisenhower said ''I should go to Korea'' and he was elected President. He went to Korea before he was inaugurated and then he said ''I shall focus my time on this single objective until I see it all the way through to the end.'' The country felt good about that, they had confidence in him, he did that, and the Korean war was ended.

President Obama chose, instead of focusing on jobs 2½ years ago in the same sort of Presidential way, to expand a health care delivery system that already was too expensive and in fact makes the problem worse. Tonight is an opportunity to make it better and we are ready to join with him in doing that, especially if he were to recommend lower tax rates, fewer loopholes on a permanent basis, fewer regulations, and if he were to send the three trade agreements to us to ratify.

I wish to turn my attention to a different subject. September 11 is Sunday. I listened carefully, as most of us in the Senate do, to words that seem to resonate with my audiences. I have consistently found there is one sentence that I usually cannot finish without the audience interrupting me before breaking into applause, and it is this: ''It is time to put the teaching of American history and civics back into its rightful place in our schools so our children can grow up learning what it means to be an American.'' The terrorists who attacked us on September 11 were not just lashing out at buildings and people. They were attacking who we are as Americans. Most Americans know this, and that is why there has been a national hunger for leadership and discussion about our values. Parents know our children are not being taught our common culture and our shared values.

National tests show that three-fourths of the Nation's 4th, 8th, and 12th graders are not proficient in civics knowledge, and one-third don't even have basic knowledge, making them civic illiterates. That is why I made making American history and civics the subject of my maiden speech when I first came to the Senate in 2003, and by a vote of 90 to 0 the Senate passed my bill to create summer residential academies for outstanding teachers of American history and civics. Every year I bring them on the Senate floor, and those teachers from all over our country have a moment to think about this Senate. They usually go find a desk of the Senator from Alaska, if they are an Alaskan teacher, or the Senator from Tennessee, or Daniel Webster's desk, or Jefferson Davis's desk, and they stop and think about our country in a special way.

The purpose of those teachers is better teaching, and the purpose of the academy is more learning of key events, key persons, key ideas, and key documents that shape the institutions of the democratic heritage of the United States.

If I were teaching about September 11, these are some of the issues I would ask my students to consider. No. 1, is September 11 the worst thing that ever happened to the United States? Of course the answer is no, but I am surprised by the number of people who say yes. It saddens me to realize that those who make such statements were never properly taught about American history. Many doubted that we would win the Revolutionary War. The British sacked Washington and burned the White House to the ground in the War of 1812. In the Civil War we lost more Americans than in any other conflict, with brother fighting against brother. The list goes on. Children should know why we made those sacrifices and fought for the values that make us exceptional.

The second question I would talk about is, What makes America exceptional? I began the first session of a course I taught at Harvard's Kennedy School of Government 10 or 11 years ago by making a list of 100 ways America is exceptional, unique—not always better but unique. America's exceptionalism has been a source of fascination ever since Tocqueville's trip across America in 1830 when he met Davy Crockett and Jim Bowie on the Mississippi River. His book, ''Democracy in America,'' is the best description of America's unique ideals in action. Another outstanding text is ''American Exceptionalism'' by Seymour Martin Lipset.

A third question I ask my students is, Why is it you cannot become Japanese or French, but you must become an American? If I were to immigrate to Japan, I could not become Japanese. I

would always be an American living in Japan. But if a Japanese citizen came here, they could become an American, and we would welcome that person with open arms. Why? It is because our identity is not based on ethnicity but on a creed of ideas and values in which most of us believe.

The story Richard Hofstadter wrote:

> It is our fate as a nation not to have ideologies, but to be one.

To become American citizens immigrants must take a test demonstrating their knowledge of American history and civics.

Fourth, what are the principles that unite us as Americans? In Thanksgiving remarks after the September 11 attacks, President George W. Bush praised our Nation's response to terror. ''I call it the American character,'' he said.

Former Vice President Gore, in his speech after the attacks, said:

> We should fight for the values that bind us together as a country.

In my Harvard course that I mentioned, we put together a list of some of those values: liberty, e. pluribus unum, equal opportunity, individualism, rule of law, free exercise of religion, separation of church and state, laissez-faire, and the belief in progress, the idea that anyone can do anything. Anything is possible if we agree on those principles.

I would say to my students, Why is there so much division in American politics? Just because we agree on the values doesn't mean we agree on how to apply those values. Most of our politics, in fact, is about the hard work of applying those principles to our everyday lives. When we do, we often conflict.

For example, when discussing President Bush's proposals to let the Federal Government fund faith-based charities, we know, in God we trust—we have it here in the Senate—but we also know we don't trust government with God. When considering whether the Federal Government should pay for scholarships that middle- and low-income families might use at any accredited school—public, private, or religious—some object that the principle of equal opportunity can conflict with the principle of separation of church and state.

What does it mean to be an American? After September 11, I proposed an idea I call Pledge Plus Three. Why not start each school day with the Pledge of Allegiance—as many schools still do—and then ask a teacher or a student to take 3 minutes to explain what it means to be an American. I would bet the best 3-minute statements of what it means to be an American would come from the newest Americans. At least that was the case with my university students. The newest Americans appreciated this country the most and could talk about it the best.

Ask students to stand and raise their right hands and recite the oath of allegiance just as immigrants do when they become American citizens. This is an oath that goes all the way back to the days of George Washington and Valley Forge. It reads like it was written in a tavern by a bunch of patriots in Williamsburg late one night. I recited this with my right hand up during a speech I recently gave on my American history and civics bill. It is quite a weighty thing and startles the audience to say:

> I absolutely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty [and agree to] bear arms on behalf of the United States when required by the law.

The oath to become an American taken by George Washington and his men and now taken today in courthouses all across America is a solemn, weighty matter. Our history is a struggle to live up to the ideas that have united us and that have defined us from the very beginning, the principles of what we call the American character. If that is what students are taught about September 11, they will not only become better informed, they will strengthen our country for generations to come.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SCHUMER. 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. SCHUMER. Mr. President, how much time is left on the majority side in morning business?

The PRESIDING OFFICER. There is 19 minutes remaining.

## REMEMBERING 9/11

Mr. SCHUMER. Mr. President, we are now approaching the 10th anniversary of 9/11. As with countless others who experienced all that happened that day, recounting 9/11, assessing its implications on our Nation is both a profound and deeply personal undertaking.

I will never forget the moments when I learned what happened. I was in the House gym. I was a Senator then and still went to the House gym. There is a little TV on top of the lockers, and somebody pointed out—one of our colleagues who was in the House with me from the other side of the aisle said: Look on the TV. It looks like a plane has crashed into the World Trade Center.

We all gathered around and watched the TV and came to the conclusion that it was probably a little turbo plane that had lost its way. We kept our eyes on the TV, and then, of course, we saw the second plane hit the second tower, and we knew it was not just an accident.

I quickly showered, dressed, rushed to get into my car, and as I was driving quickly to my office, I saw another plane flying low over the Potomac, and I saw a big plume of smoke, which obviously was the plane aimed at the Pentagon. I said to myself, ''World War III has started.''

I quickly called my wife, and our first concern was our daughter who went to high school just a few blocks from the World Trade Center. We didn't know what happened. The towers were on fire. We actually took out the almanac to see how high the trade center was to see whether it could fall in the direction of her school and whether it would hit it. For 5 hours, we couldn't find Jessica. They had successfully evacuated the school, but because they shut down the elevators in the school, they all had to walk down the stairs. She was on the ninth floor, and, being Jessica, she escorted an elderly teacher who couldn't get down very quickly and lost her way from the group. Of course, praise God, we found her.

That was just the beginning of the anguish. The next day, Senator Clinton and I flew to New York. I will never forget that scene. I think of it just about every day. The smell of death was in the air. The towers were still burning. People were rushing to the towers—firefighters, police officers, construction workers—to see if they could find the missing. The most poignant scene I think of all the time is literally hundreds of people, average folks of every background, holding up little signs—''Have you seen my daughter Sally?'' with a picture, ''Have you seen my husband Bill?''—because at that point we didn't know who was lost and who was not. It was a very rough time, and we think of it every day.

We know what happened, and it is something that will remain in our minds for the rest of our lives but, of course, not close to those who lost loved ones either during the horrible conflagration or in these later years. Now is the time for the 10th anniversary, so it is a good time to take stock of the effect of the trauma and what it means, both locally and nationally.

Obviously, every one of us in America was scared, shocked, traumatized, horrified, angry, and heartbroken. At first, we didn't know what happened. Then, as we learned who had attacked us and why, we had to confront a crisis for which we didn't feel prepared. It was an experience we as New Yorkers and Americans were not used to at all. We felt so vulnerable. Were we now going to be the subject of attack after attack from stateless, nihilistic enemies we poorly understood and were even more poorly prepared to fight? There was this doctrine of asymmetrical power: Small groups living in caves were empowered by technology to do damage to us—horrible damage—that we couldn't stop. Could it be that our vast military was a poor match for a small group of technologically savvy extremists bent on mass murder and mayhem, directed from half a world away? It seemed more likely—certain even—that attack after attack would

come our way from a small group willing to use any tactic, from a box cutter and a loaded plane to weapons of mass destruction, focused solely on massive loss of life and damage to the economy, not to mention to our collective psyche and confidence as a people.

It certainly was a hammer blow to the great city in which I live and have lived my whole life. It raised the question of its future. People everywhere were writing the obituaries on downtown Manhattan. People and businesses were leaving or seriously contemplating leaving. Being diffuse was the answer, not concentrated. Some wrote that maybe now densely populated, diverse cities such as New York would no longer have a future. A permanent exodus seemed imminent. Downtown New York would become a ghost town. Who would work here again? Who would live here? Who would dine or see a show here? What global firm would locate thousands of jobs here? It was not an exaggeration to say that New York's days as the leading city on the global stage seemed as though they could be over.

But our response was immediate, proactive, unified, and successful. In the days, weeks, and first months after 9/11, America as a society and, by extension, its political system came together and behaved in a remarkable way. New Yorkers, as always, did the same. There immediately developed a sense of shared sacrifice and common purpose that gave rise to a torrent of actions in the private and public spheres.

Amongst the American people, there was an unprecedented outpouring of voluntary help—a tradition deeply rooted in our American tradition of community service and voluntary action noted by observers as far back as Alexis de Tocqueville, who, in the earliest days of our Republic, observed:

> Americans of all ages, all conditions, all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile, very general and very particular, immense and very small.

Fueled by this reaction, our government went to work immediately, at all levels, collaborating on the Federal, State, and local levels.

In Washington, DC, the policy response to the situation at hand was remarkable for its productivity, its extraordinary speed, and, overall, the positive impacts it made both in the short term and long term. All of what we did was far from perfect, but when our government is able to be this nimble, responsive, and effective, it is worth asking what the elements of its success were so that we might think about how we can apply them to future situations such as the one we are in now.

If I were to characterize our policy actions post-9/11, I would say they were nonideological, practical, partisanship was subdued; the actions were collaborative, not vituperative; they were balanced and fair; they were bold and decisive; and they were both short- and long-term focused. Let's take a quick look at each.

We were nonideological. Post-9/11, we were driven primarily by facts, not primarily by ideology. We asked, ''What does the situation require and how might we best execute that'' not, ''How can I exploit this situation to further my world view or political agenda or pecuniary self-interest?'' We didn't have a debate about the nature of government and whether or how we ought to support disaster victims or the need for housing or to get small businesses and not-for-profits back open, nor did we wring our hands about the appropriateness of rebuilding infrastructure or responding to the lack of insurance available for developers; rather, we attacked each problem as it became apparent. We professionally engaged, we compromised, and we hammered out a plan to address each problem as it arose. And we did it fast.

We were tempered in our partisanship. Partisanship is never absent from the public stage, but the degree to which it is the dominant element in the many influences on public policy waxes and wanes. In the days after 9/11, we were able to keep partisanship on a short leash.

I remember being in the Oval Office the day after I visited New York with Senator Clinton, and we told President Bush of the damage in New York. I asked the President: We need $20 billion in New York; we need a pledge immediately. Without even thinking, the President said yes. New York is a blue State, one that didn't support President Bush. He didn't stop and weigh and calculate politically; he said yes, and, to his credit, he stuck by that promise in the years to come.

We were collaborative, not vituperative, unlike recent tragedies, such as the Fort Hood shooting, where some sought to heap blame on President Obama, or the Gabby Giffords shooting, where premature blame was mistakenly directed at the rightwing for spurring the attacker which, in turn, begat a round of unseemly recriminations. Unlike those examples, following 9/11, people refrained from using the powerful and exploitable event as an opportunity to blame President Bush or President Clinton for letting an attack happen.

Rather than looking back and hanging an iron collar of blame around the neck of a President to score political points, people from both parties were willing to look forward, to plan forward, and to act forward. This, in turn, helped create a climate where collaboration was possible. And, to his credit, the President, as I mentioned, did not think about the electoral map or political implications of supporting New York.

We were bold and decisive. We did not shrink from the big thing or fail to act on multiple levels at once. On one front, we crafted the $20 billion aid package to rebuild New York. On another, we crafted the PATRIOT Act. On still another, the military and intelligence communities planned the invasion of Afghanistan to root out al-Qaida. These were big moves, with massive implications for life, the national coffers, and the structure of our society. None of the moves was perfect, but rather than, for example, derail the $20 billion aid package to New York because you might think we do not have the money to spend or blocking the PATRIOT Act because you believe it does not do enough to produce civil liberties, in the period after 9/11, those with objections made a good-faith effort to have their points included in nascent legislation, and had some real success, such as building in punishments against those who leak information obtained from wiretaps or preventing information from unconstitutional searches from abroad from being used in a legal proceeding.

But, in the end, on the PATRIOT Act, for example, Democrats—who were in the minority and could have played the role of blocker—let it pass with a pledge to improve it over time, rather than scuttling it entirely, because while there were parts of it that some disagreed with strongly, there were parts that were absolutely necessary.

Compare this to our current stalemate on fiscal policy and the economy, where time after time the ''my way or the highway'' view seems to prevail, leading to inaction, gridlock, and failure to do what the economy truly needs.

We were balanced and fair. On the one hand, we were pragmatic. We made the airlines and owners of the World Trade Center and other potential targets immune from potentially bankrupting lawsuits. It was not an easy decision. It was strenuously opposed by some in the trial bar and other Democratic allies, but it was a reasonable one.

On the other hand, we were just. We created, with billions in financing, the Victims Compensation Fund, the VCF, so no victim or their loved one would be denied access to justice. It proved to be a win-win. The crippled airline industry, so critical to our economy, was able to get back up and running, and every injured person or loved one of those lost had an expedited and fair system to pursue a claim of loss.

This harkened back to the kind of grand bargains on big issues that are the very foundation of effective government in the system of diffused power that we were bequeathed by our Founders, the kind of bargains the current state of politics make so elusive today.

We were short- and long-term focused. We were concerned with both short-term support, via FEMA aid to

homeowners, renters, and small businesses, and with long-term competitiveness. We invested heavily in transportation infrastructure to move millions in and out of the central business districts, even while we supported the arts, community groups, parks, nonprofits, and more to create the vibrant and growing 24/7 downtown we have today—a hub that is at the very center of the Nation's economy and culture—far from the horrible view we had that the downtown would become a ghost town shortly after 9/11.

In short, the response to 9/11 by all Americans, by both parties, is a roadmap for how our political system ought to function but is not now functioning.

I am not a Pollyanna. I understand the inherent nature of conflict in the political realm, and I often partake in it. I also know the trauma of 9/11 was uncommon, and made possible uncommon action. Then we had both the shocking murder of thousands of innocent victims, the heroism of the responders to inspire us, and the advantage of a common enemy to unite us.

But what we were able to achieve then in terms of common purpose and effective collective action provides us with a model for action that we in Washington must strive to emulate and—even if just in part, even if just sporadically—to recreate. We should look back to what happened during 9/11 and apply it to our own time and see how we can make ourselves better and break the kind of gridlock, partisanship, finger pointing that seems to dominate our politics today, only 10 years later.

As we survey the current state of our national psyche and the ability of our political system to debate and then implement effective policy actions for the challenges that confront us, it is painfully clear that, in a relative blink of the eye, the ability of our political system to muster the will to take necessary actions for the common good has degenerated to a place that is much too far away from our actions after 9/11.

The question that haunts me—and should haunt all of us—is this: If, God forbid, another 9/11-like attack were to happen tomorrow, would our national political system respond with the same unity, nonrecrimination, common purpose, and effective policy action in the way it did just 10 years ago or are our politics now so petty, fanatically ideological, polarized, and partisan that we would instead descend into blame and brinksmanship and direct our fire inward and fail to muster the collective will to act in the interests of the American people?

As I ponder it, I have every confidence that the first responders—cops, firefighters, and others—would do now as they did then. Their awe-inspiring selflessness and bravery continues to be a humbling wonder and an inspiration.

I know our building trades workers would again drop everything and show up, put their lives on the line, and throw their backs into the task at hand without waiting to be asked.

I am certain that the American people would come together and find countless ways to donate their time, their energy, their ideas, and their compassion to the cause at hand.

But what of our political system?

I am an optimist, so I want to believe the answer is yes. But I am also a realist, and a very engaged player on the Washington scene, who has just been through the debt ceiling brinksmanship, amongst other recent battles, and that realistic part of me is not so sure the answer is yes.

Today, would we still pass a bipartisan $20 billion aid package to the afflicted city or would we say that is not my region or would we fail to take the long view and say we cannot afford to spend lavish sums of money like that; we have to spend within our means.

Would we be capable of coming together to pass a grand bargain such as the one that immunized the airlines from lawsuits and created the Victims Compensation Fund or instead would we embrace the politics of asphyxiation and find every excuse to block getting to ''yes'' in order to prevent our political opponents from appearing to achieve something positive.

Would all parties refrain from using the occasion to place blame on the President and on each other to gain relative political advantage or would we hear, first, the leaked whispers, then the chatter, then the recriminations that build to the ugly echo chamber of vituperation that has been the sad hallmark of more recent tragedies and national security events.

This political accord following 9/11 had its limits, especially in the aftermath of our invasion of Iraq, when one key rationale for going to war was discredited. But even for those who came to view our involvement as distracting and wrong—distracting from the more important political objective of rooting out al-Qaida and wrong because it could not work; and there was a great loss of life and treasure—even for those of us who came to abhor the war in Iraq, it would have been unthinkable then to root against our country's eventual success in Iraq. Compare that to now, when it is fathomable that some would rather America not recover its economic strength and prowess just yet.

When we think back to where we were then and to how we reacted and compare it to challenges we confront today, it is clear that while the sacrifice of the victims and the heroism of the responders were eternal, our ability to sustain both the common purpose and effective political action they inspired has proved all too ephemeral.

I will not recount details of our current dysfunction, but suffice it to say our politics are paralyzed. Domestically, we are frozen in an illogical armwrestling match between the need to get people back to work and jump-start the economy and the drive to rein in the deficit. Globally, we are confronted by an uncertain place in an increasingly competitive world.

Finally, our challenges are psychological and emotional and aspirational, much as they were in the darkest hours and days after 9/11, and these doubts whisper to us the following questions: Are we no longer able to tackle the big issues? Are we a nation in decline?

I am not saying the challenges we face today are an exact parallel for what we faced then. It is obvious they are not. Nor are all the conditions the same. But today's challenges—from the economic to the global to the social—are not intractable, and if any one of our current dilemmas were subject to the same policy environment we had post-9/11, I have no doubt we would make substantial progress in tackling it.

Confronted with a more profound, complex, and existential challenge on 9/11, we rose to the occasion. We confronted the problem before us with uniquely American doggedness, pragmatism, creativity, collaboration, and optimism—optimism—because that is what Americans do and that is who we are. We believe that no matter how bad it gets—whether hunkered down for the winter in Valley Forge after a series of humiliating military defeats or arriving, like Lincoln, in Washington, DC, in 1860 to find half our Nation and next-door neighbor States are attempting to destroy our Union or FDR confronting, in 1932, 25-percent unemployment and an unprecedented deflationary spiral in a modern industrial-financial economy or believing that, indeed, all people are created equal, even while you were rudely ushered to the back of the bus or facing down the totalitarian threats of fascism and communism, and believing that, yes, we will tear that wall down—Americans believe in a brighter tomorrow. We believe in our ability as a people, individually and collectively, both through private action and via our elected representatives who make our Nation's policy, to get things done to make that brighter tomorrow a reality.

We have, as a nation, faced bigger challenges. We have answered the call, and 9/11 was one shining example. We are in better shape now on many fronts as a result of the actions we took in the immediate aftermath of 9/11, and those are well known: rebuilding New York City, compensating families, flushing al-Qaida from its base in Afghanistan, leading to the fact that Osama bin Laden is dead.

In the Middle East it is not, as we feared after 9/11, the hateful, myopic, reactive philosophy of bin Laden that took hold and changed their societies. Rather, it is imbued with some decent measure of hope and optimism and courage that created a cascading wave of political, social, and economic aspiration that has transformed this region from Tunisia and Libya to Egypt and Syria, added and abetted by entrepreneurial innovations pioneered here in

America. This transformation is not without enormous dangers and challenges, but consider how much worse it would have been if a pro-bin Laden movement were fueling this transformation.

It is plain we need more of what we had post-9/11 now. I am not naive. I know it cannot be conjured up or wished into existence. But if we are optimistic, if we are inspired by the Americans who died here, if we truly understand our shared history and the sacred place compromise and rationality hold at the very center of the formation of our Nation and the structure of our Constitution, then we can again take up the mantle of shared sacrifice and common purpose that we wore after 9/11 and apply some of those behaviors to the problems we now confront.

The reality of our current political climate is that both sides are off in their corners; the common enemy is faded. Some see Wall Street as the enemy many others see Washington, DC, as the enemy and to still others any and all government is the enemy.

I believe the greatest problem we face is the belief that we can no longer confront and solve the problems and challenges that confront us; the fear that our best days may be behind us; that, for the first time in history, we fear things will not be as good for our kids as they are for us. It is a creeping pessimism that cuts against the can-do and will-do American spirit. And, along with the divisiveness in our politics, it is harming our ability to create the great works our forbears accomplished: building the Empire State building in the teeth of the Great Depression, constructing the Interstate Highway System and the Hoover Dam, the Erie Canal, and so much more.

While governmental action is not the whole answer to all that faces us, it is equally true that we cannot confront the multiple and complex challenges we now face with no government or a defanged government or a dysfunctional government.

As we approach the 10th anniversary of 9/11, the focus on what happened that day intensifies—what we lost, who we lost, and how we reacted—it becomes acutely clear that we need to confront our current challenges imbued with the spirit of 9/11 and determine to make our government and our politics worthy of the sacrifice and loss we suffered that day.

To return to de Tocqueville, he also remarked that:

> The greatness of America lies not in being more enlightened than any other nation, but rather in her ability to repair her faults.

So, like the ironworkers and operating engineers and trade workers who miraculously appeared at the pile hours after the towers came down with blowtorches and hard hats in hand, let's put on our gloves, pick up our hammers and get to work fixing what ails the body politic. It is the least we can do to honor those we lost.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## LEAHY-SMITH AMERICA INVENTS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1249, which the clerk will report by title.

The assistant legislative clerk read as follows:

> An Act (H.R. 1249) to amend title 35, United States Code, to provide for patent reform.

AMENDMENT NO. 600

Mr. SESSIONS. Mr. President, I ask unanimous consent to call up my amendment No. 600, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Alabama [Mr. SESSIONS], for himself, Mr. MANCHIN, Mr. COBURN, and Mr. LEE, proposes an amendment numbered 600.

Mr. SESSIONS. 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:

AMENDMENT NO. 600

> (Purpose: To strike the provision relating to the calculation of the 60-day period for application of patent term extension)
>
> On page 149, line 20, strike all through page 150, line 16.

Mr. SESSIONS. Mr. President, the amendment that I have offered is a very important amendment. It is one that I believe is important to the integrity of the U.S. legal system and to the integrity of the Senate. It is a matter that I have been wrestling with and objecting to for over a decade. I thought the matter had been settled, frankly, but it has not because it has been driven by one of the most ferocious lobbying efforts the Congress maybe has seen.

The House patent bill as originally passed out of committee and taken to the floor of the House did not include a bailout for Medco, the WilmerHale law firm, or the insurance carrier for that firm, all of whom were in financial jeopardy as a result of a failure to file a patent appeal timely.

I have practiced law hard in my life. I have been in court many times. I spent 12 years as a U.S. Attorney and tried cases. I am well aware of how the system works. The way the system works in America, you file lawsuits and you are entitled to your day in court. But if you do not file your lawsuit in time, within the statute of limitations, you are out.

When a defendant raises a legal point of order—a motion to dismiss—based on the failure of the complaining party to file their lawsuit timely, they are out. That happens every day to poor people, widow ladies. And it does not make any difference what your excuse is, why you think you have a good lawsuit, why you had this idea or that idea. Everyone is required to meet the same deadlines.

In Alabama they had a situation in which a lady asked a probate judge when she had to file her appeal by, and the judge said: You can file it on Monday. As it turned out, Monday was too late. They went to the Alabama Supreme Court, and who ruled: The probate judge—who does not have to be a lawyer—does not have the power to amend the statute of limitations. Sorry, lady. You are out.

Nobody filed a bill in the Congress to give her relief, or the thousands of others like her every day. So Medco and WilmerHale seeking this kind of relief is a big deal. To whom much has been given, much is required. This is a big-time law firm, one of the biggest law firms in America. Medco is one of the biggest pharmaceutical companies in the country. And presumably the law firm has insurance that they pay to insure them if they make an error. So it appears that they are not willing to accept the court's ruling.

One time an individual was asking me: Oh, JEFF, you let this go. Give in and let this go. I sort of as a joke said to the individual: Well, if WilmerHale will agree not to raise the statute of limitations against anybody who sues their clients if they file a lawsuit late, maybe I will reconsider. He thought I was serious. Of course WilmerHale is not going to do that. If some poor person files a lawsuit against someone they are representing, and they file it one hour late, WilmerHale will file a motion to dismiss it. And they will not ask why they filed it late. This is law. It has to be objective. It has to be fair.

You are not entitled to waltz into the U.S. Congress—well connected—and start lobbying for special relief.

There is nothing more complicated about that than this. So a couple of things have been raised. Well, they suggest, we should not amend the House patent bill, and that if we do, it somehow will kill the legislation. That is not so. Chairman LEAHY has said he supports the amendment, but he doesn't want to vote for it because it would keep the bill from being passed somehow.

It would not keep it from being passed. Indeed, the bill that was

brought to the House floor didn't have this language in it. The first vote rejected the attempt to put this language in it. It failed. For some reason, in some way, a second vote was held, and it was passed by a few votes. So they are not going to reject the legislation if we were to amend it.

What kind of system are we now involved in in the Senate if we can't undo an amendment? What kind of argument is it to say: JEFF, I agree with your amendment, and I agree it is right that they should not get this special relief, but I can't vote for it because it might cause a problem? It will not cause a problem. The bill will pass. It should never have been put in there in the first place.

Another point of great significance is the fact that this issue is on appeal. The law firm asserted they thought—and it is a bit unusual—that because it came in late Friday they had until Monday. We can count the days to Monday—the 60 days or whatever they had to file the answer. I don't know if that is good law, but they won. The district court has ruled for them. It is on appeal now to the court of appeals.

This Congress has no business interfering in a lawsuit that is ongoing and is before an appeals court. If they are so confident their district court ruling is correct, why are they continuing to push for this special relief bill, when the court of appeals will soon, within a matter of months, rule?

Another point: We have in the Congress a procedure to deal with special relief. If this relief is necessary at all, it should go through as a special relief bill. I can tell you one reason it is not going there now: you can't ask for special relief while the matter is still in litigation, it is still on appeal. Special relief also has procedures that one has to go through and justify in an objective way, which I believe would be very healthy in this situation.

For a decade, virtually—I think it has been 10 years—I have been objecting to this amendment. Now we are here, I thought it was out, and all of a sudden it is slipped in by a second vote in the House, and we are told we just can't make an amendment to the bill. Why? The Senate set up the legislation to be brought forward, and we can offer amendments and people can vote for them or not.

This matter has gotten a lot of attention. The Wall Street Journal and the New York Times both wrote about it in editorials today. This is what the New York Times said today about it:

> But critics who have labeled the provision ''The Dog Ate My Homework Act'' say it is really a special fix for one drug manufacturer, the Medicines Company, and its powerful law firm, WilmerHale. The company and its law firm, with hundreds of millions of dollars in drug sales at stake, lobbied Congress heavily for several years to get the patent laws changed.

That is what the Wall Street Journal said in their editorial. The Wall Street Journal understands business reality and litigation reality. They are a critic of the legal system at times and a supporter at times. I think they take a principled position in this instance. The Wall Street Journal editorial stated:

> We take no pleasure in seeing the Medicine Company and WilmerHale suffer for their mistakes, but they are run by highly paid professionals who know the rules and know that consistency of enforcement is critical to their businesses. Asking Congress to break the rules as a special favor corrupts the law.

I think that is exactly right. It is exactly right. Businesses, when they are sued by somebody, use the statute of limitations every day. This law firm makes hundreds of millions of dollars in income a year. Their partners average over $1 million a year, according to the New York Times. That is pretty good. They ought to be able to pay a decent malpractice insurance premium. The New York Times said WilmerHale reported revenues of $962 million in 2010, with a profit of $1.33 million per partner.

Average people have to suffer when they miss the statute of limitations. Poor people suffer when they miss the statute of limitations. But we are undertaking, at great expense to the taxpayers, to move a special interest piece of legislation that I don't believe can be justified as a matter of principle. I agree with the Wall Street Journal that the adoption of it corrupts the system. We ought not be a part of that.

I love the American legal system. It is a great system, I know. I have seen judges time and time again enter rulings based on law and fact even if they didn't like it. That is the genius and reliability and integrity of the American legal system. I do not believe we can justify, while this matter is still in litigation, passing a special act to give a wealthy law firm, an insurance company, and a health care company special relief. I just don't believe we should do that. I oppose it, and I hope my colleagues will join us.

I think we have a real chance to turn this back. Our Congress and our Senate will be better for it; we really will. The Citizens Against Government Waste have taken an interest in this matter for some time. They said:

> Congress has no right to rescue a company from its own mistakes.

Companies have a right to assert the law. Companies have a right to assert the law against individuals. But when the time comes for the hammer to fall on them for their mistake, they want Congress to pass a special relief bill. I don't think it is the right thing to do.

Mr. President, let's boil it down to several things. First, if the company is right and the law firm is right that they did not miss the statute of limitations, I am confident the court of appeals will rule in their favor, and it will not be necessary for this Senate to act. If they do not prevail in the court of appeals and don't win their argument, then there is a provision for private relief in the Congress, and they ought to pursue that. There are special procedures. The litigation will be over, and they can bring that action at that time.

That is the basic position we ought to be in. A bill that comes out of the Judiciary Committee ought to be sensitive to the legal system, to the importance of ensuring that the poor are treated as well as the rich. The oath judges take is to do equal justice to the poor and the rich.

How many other people in this country are getting special attention today on the floor of the Senate? How many? I truly believe this is not good policy. I have had to spend far more hours fighting this than I have ever wanted to when I decided 10 years ago that this was not a good way to go forward. Many battle this issue, and I hope and trust that the Members of the Senate who will be voting on this will allow it to follow the legitimate process. Let the litigation work its way through the system.

If they do not prevail in the litigation, let a private relief bill be sought and debated openly and publicly to see if it is justified. That would be the right way to do it—not slipping through this amendment and then not voting to remove it on the basis that we should not be amending a bill before us. We have every right to amend the bill, and we should amend the bill. I know Senator GRASSLEY, years ago, was on my side. I think it was just the two of us who took this position.

I guess I have more than expressed my opinion. I thank the chairman for his leadership. I thank him and Senator GRASSLEY for their great work on this important patent bill. I support that bill. I believe they have moved it forward in a fair way.

The chairman did not put this language into the bill; it was put in over in the House. I know he would like to see the bill go forward without amendments. I urge him to think it through and see if he cannot be willing to support this amendment. I am confident it will not block final passage of the legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I will speak later about the comments made by the distinguished Senator from Alabama. He has been very helpful in getting this patent bill through. He is correct that this amendment he speaks to is one added in the other body, not by us. We purposely didn't have it in our bill. I know Senator GRASSLEY will follow my remarks.

There is no question in my mind that if the amendment of the Senator from Alabama were accepted, it in effect will kill the bill. Irrespective of the merits, it can come up on another piece of legislation or as freestanding legislation. That is fine. But on this bill, after 6 years of effort to get this far, this bill would die because the other body will not take it up again.

HURRICANE IRENE

Mr. LEAHY. Mr. President, I will use my time to note some of the things happening in my own very special State of Vermont, the State in which I was born.

As Vermonters come together and continue to grapple with the aftermath of storm damage from Irene, I wish to focus today on the agriculture disaster that has hit us in Vermont and report to the Senate and our fellow citizens across the Nation about how the raging floodwaters wreaked havoc on our farming lands and infrastructure in Vermont.

It was 12 days ago now that this enormous, slow-moving storm hit Vermont and turned our calm, scenic brooks and creeks into raging gushers. In addition to our roads and historic covered bridges that were destroyed or carried away, we had barns, farmhouses, crops, parts of fields, and livestock washed away in the rising floodwaters. I recall the comments of one farmer who watched his herd of cows wash down the river, knowing they were going to die in the floodwaters.

Now the cameras have begun to turn away, but the cleanup and urgent repairs are underway. For major parts of Vermont's economy, the worst effects of this storm are yet to come. For our dairy farmers, who are the bedrock of our economy and keystones of our communities, the toll of this disaster has been heavy and the crises has lasted longer as they have struggled to take care of their animals while the floodwaters recede.

This is a photograph of East Pittsford, VT, taken by Lars Gange just over a week ago. The water we see is never there. It is there now. Look at this farm's fields, they are destroyed. Look at homes damaged and think what that water has done.

As I went around the state with our Governor and Vermont National Guard General Dubie the first couple of days after the storm hit, we went to these places by helicopter and I cannot tell you how much it tore at my heart to see the state, the birthplace to me, my parents, and grandparents. To see roads torn up, bridges that were there when my parents were children, washed away. Historic covered bridges, mills, barns, businesses just gone and what it has done to our farmers, it is hard, I cannot overstate it.

Our farmers have barns that are completely gone, leaving no shelter for animals. They are left struggling to get water for their animals, to rebuild fencing, to clean up debris from flooded fields and barns, and then to get milk trucks to the dairy farms. Remember, these cows have to be milked every single day. We also have farmers who do not have any feed or hay for their animals because it all washed away. As one farmer told me, the cows need to be milked two or three times every day, come hell or high water. This farmer thought he had been hit with both, hell and high water.

While reports are still coming in from the farms that were affected, the list of damages and the need for critical supplies, such as feed, generators, fuel, and temporary fencing is on the rise. As we survey the farm fields and communities, we know it will be difficult to calculate the economic impacts of this violent storm on our agriculture industry in Vermont.

Many of our farmers were caught by surprise as the unprecedented, rapidly rising floodwaters inundated their crops, and many have had to deal with the deeply emotional experience of losing animals to the fast-moving floodwaters. We have farms where whole fields were washed away and their fertile topsoil sent rushing down river. The timing could not have been worse. Corn, which is a crucial winter feed for dairy cows, was just ready for harvest, but now our best corn is in the river bottoms and is ruined. Other farms had just prepared their ground to sow winter cover crops and winter greens; they lost significant amounts of topsoil.

River banks gave way, and we saw wide field buffers disappear overnight, leaving the crops literally hanging on ledges above rivers, as at the Kingsbury farm in Warren, VT. Vegetable farming is Vermont's fastest growing agricultural sector, and, of course, this is harvest season. Our farmers were not able to pick these crops, this storm picked many fields clean.

Many Vermonters have highly productive gardens that they have put up for their families to get through the winter by canning and freezing. Those too have been washed away or are considered dangerous for human consumption because of the contaminated floodwaters. Vermont farmers have a challenging and precarious future ahead of them as they look to rebuild and plan for next year's crops, knowing that in our State it can be snowing in 1½ or 2 months.

I have been heartened, however, by the many stories I have heard from communities where people are coming together to help one another. For instance, at the Intervale Community Farm on the Winooski River, volunteers came out to harvest the remaining dry fields before the produce was hit by still rising floodwaters.

When the rumors spread that Beth and Bob Kennett at Liberty Hill Farm in Rochester had no power and needed help milking—well, people just started showing up. By foot, on bike, all ready to lend a hand to help milk the cows. Fortunately for them and for the poor cows, the Vermont Department of Agriculture had managed to help get them fuel and the Kennetts were milking again, so asked the volunteer farm hands to go down the road, help somebody else and they did.

Coping with damage and destruction on this scale is beyond the means and capability of a small State such as ours, and Federal help with the rebuilding effort will be essential to Vermont, as it will be to other States coping with the same disaster. I worry the support they need to rebuild may not be there, as it has been in past disasters, when we have rebuilt after hurricanes, floods, fires and earthquakes to get Americans back in their homes, something Vermonters have supported even though in these past disasters Vermont was not touched.

So I look forward to working with the Appropriations Committee and with all Senators to ensure that FEMA, USDA and all our Federal agencies have the resources they need to help all our citizens at this time of disaster, in Vermont and in all our states. Unfortunately, programs such as the Emergency Conservation Program and the Emergency Watershed Protect Program have been oversubscribed this year, and USDA has only limited funds remaining. We also face the grim fact that few of our farms had bought crop insurance and so may not be covered by USDA's current SURE Disaster Program.

But those are the things I am working on to find ways to help our farmers and to move forward to help in the commitment to our fellow Americans. For a decade, we have spent billions every single week on wars and projects in far-away lands. This is a time to start paying more attention to our needs here at home and to the urgent needs of our fellow citizens.

I see my friend from Iowa on the floor, and I yield the floor.

The PRESIDING OFFICER. The senior Senator from Iowa.

AMENDMENT NO. 600

Mr. GRASSLEY. Mr. President, I rise to rebut the points Senator SESSIONS made, and I do acknowledge, as he said on the floor, that 2 or more years ago I was on the same page he is on this issue. What has intervened, in the meantime, that causes me to differ from the position Senator SESSIONS is taking? It is a district court case giving justice to a company—as one client—that was denied that sort of justice because bureaucrats were acting in an arbitrary and capricious way.

Senator SESSIONS makes the point you get equal justice under the law from the judicial branch of government and that Congress should not try to override that sort of situation. Congress isn't overriding anything with the language in the House bill that he wants to strike because that interest was satisfied by a judge's decision; saying that a particular entity was denied equal justice under the law because a bureaucrat, making a decision on just exactly what counts as 60 days, was acting in an arbitrary and capricious way. So this language in the House bill has nothing to do with helping a special interest. That special interest was satisfied by a judge who said an entity was denied equal justice under the law because a bureaucrat was acting in an arbitrary and capricious manner.

This amendment is not about a special interest. This amendment is about

uniformity of law throughout the country because it is wrong—as the judge says—for a bureaucracy to have one sort of definition of when 60 days begins—whether it is after business hours, if something goes out, or, if something comes in, it includes the day it comes in. So we are talking about how we count 60 days, and it is about making sure there is a uniform standard for that based upon law passed by Congress and not upon one judge's decision that applies to one specific case.

I would say, since this case has been decided, there are at least three other entities that have made application to the Patent Office to make sure they would get equal justice under the law in the same way the entity that got help through the initial decision of the judge. So this is not about special relief for one company. This is about what is a business day and having a uniform definition in the law of the United States of what a business day is, not based upon one district court decision that may not be applied uniformly around our Nation.

So it is about uniformity and not about some bailout, as Senator SESSIONS says. It is not about some ferocious lobbying effort, as Senator SESSIONS has said. It is not just because one person was 1 hour late or 1 day late, because how do you know whether they are 1 hour late or 1 day late if there is a different definition under one circumstance of when 60 days starts and another definition under other circumstances of when a 60-day period tolls?

Also, I would suggest to Senator SESSIONS that this is not Congress interfering in a court case that is under appeal because the government lost this case and the government is not appealing. Now, there might be some other entity appealing for their own interests to take advantage of something that is very unique to them.

But just in case we have short memories, I would remind my colleagues that Congress does sometimes interject itself into the appeal process, and I would suggest one time we did that very recently, maybe 6 years ago—and that may not be very recent, but it is not as though we never do it—and that was the Protection of Lawful Commerce Act of 2005, when Congress interjected itself into an issue to protect gun manufacturers from pending lawsuits. It happens that 81 Senators supported that particular effort to interject ourselves into a lawsuit.

So, Mr. President, in a more formal way, I want to repeat some of what I said this past summer when I came to the Senate floor and suggested to the House of Representatives that I would appreciate very much if they would put into the statutes of the United States a uniform definition of a business day and not leave it up to a court to maybe set that standard so that it might not be applied uniformly and, secondly, to make sure it was done in a way that was treating everybody the same, so everybody gets equal justice under the law, they know what the law is, and they don't have to rely upon maybe some court decision in one part of the country that maybe they can argue in another part of the country, and also to tell bureaucrats, as the judge said, that you can't act in an arbitrary and capricious way. But bureaucrats might act in an arbitrary and capricious way, in a way unknown to them, if we don't have a uniform definition of what a business day is.

So I oppose the effort to strike section 37 from the patent reform bill for the reasons I have just given, but also for the reasons that were already expounded by the chairman of this committee that at this late date, after 6 years of trying to get a patent reform bill done—and we haven't had a patent reform bill for over a decade, and it is badly needed—we shouldn't jeopardize the possible passage of this bill to the President of the United States for his signature by sending it back to the other body and perhaps putting it in jeopardy. But, most important, I think we ought to have a clear signal of what is a business day, a definition of it, and this legislation and section 37 makes that very clear.

This past June, I addressed this issue in a floor statement, and I want to quote from that because I wanted my colleagues to understand why I hoped the House-passed bill would contain section 37 that was not in our Senate bill but that was passed out of the House Judiciary Committee unanimously. Speaking as ranking member of the Senate Judiciary Committee now and back in June when I spoke, I wanted the House Judiciary Committee to know that several Republican and Democratic Senators had asked me to support this provision as well.

Section 37 resulted from a recent Federal court case that had as its genesis the difficulty the FDA—the Food and Drug Administration—and the Patent Office face when deciding how to calculate Hatch-Waxman deadlines. The Hatch-Waxman law of the 1980s was a compromise between drug patent holders and the generic manufacturers. Under the Waxman-Hatch law, once a patent holder obtains market approval, the patent holder has 60 days to request the Patent Office to restore the patent terms—time lost because of the FDA's long deliberating process eating up valuable patent rights.

The citation to the case I am referring to is in 731 Federal Supplement 2nd, 470. The court found—and I want to quote more extensively than I did back in June. This is what the judge said about bureaucrats acting in an arbitrary and capricious way and when does the 60 days start.

> The Food and Drug Administration treats submissions to the FDA received after its normal business hours differently than it treats communications from the agency after normal business hours.

Continuing to quote from the decision:

> The government does not deny that when notice of FDA approval is sent after normal business hours, the combination of the Patent and Trademark Office's calendar day interpretation and its new counting method effectively deprives applicants of a portion of the 60-day filing period that Congress expressly granted them . . . Under PTO's interpretation, the date stamped on the FDA approval letter starts the 60-day period for filing an application, even if the Food and Drug Administration never sends the letter . . . An applicant could lose a substantial portion, if not all, of its time for filing a Patent Trademark Extension application as a result of mistakes beyond its control . . . An interpretation that imposes such drastic consequences when the government errs could not be what Congress intended.

So the judge is telling us in the Congress of the United States that because we weren't precise, there is a question as to when Congress intended 60 days to start to toll. And the question then is, If it is treated one way for one person and another way for another person, or if one agency treats it one way and another agency treats it another way, is that equal justice under the law? I think it is very clear that the judge said it was not. I say the judge was correct. Congress certainly should not expect nor allow mistakes by the bureaucracy to up-end the rights and provisions included in the Hatch-Waxman Act or any other piece of legislation we might pass.

The court ruled that when the Food and Drug Administration sent a notice of approval after business hours, the 60-day period requesting patent restoration begins the next business day. It is as simple as that.

The House, by including section 37, takes the court case, where common sense dictates to protect all patent holders against losing patent extensions as a result of confused counting calculations. Regrettably, misunderstandings about this provision have persisted, and I think you hear some of those misunderstandings in the statement by Senator SESSIONS.

This provision does not apply to just one company. The truth is that it applies to all patent holders seeking to restore the patent term time lost during FDA deliberations—in other words, allowing what Hatch-Waxman tries to accomplish: justice for everybody. In recent weeks, it has been revealed that already three companies covering four drug patents will benefit by correcting the government's mistake.

It does not cost the taxpayers money. The Congressional Budget Office determined that it is budget-neutral.

Section 37 has been pointed out as maybe being anticonsumer, but it is anything but anticonsumer. I would quote Jim Martin, chairman of the 60–Plus Association. He said:

> We simply can't allow bureaucratic inconsistencies to stand in the way of cutting-edge medical research that is so important to the increasing number of Americans over the age of 60. This provision is a commonsense response to a problem that unnecessarily has ensnared far too many pharmaceutical companies and caused inexcusable delays in drug innovations.

We have also heard from prominent doctors from throughout the United States. They wrote to us stating that section 67 ''is critically important to medicine and patients. In one case alone, the health and lives of millions of Americans who suffer from vascular disease are at stake . . . Lives are literally at stake. A vote against this provision will delay our patients access to cutting-edge discoveries and treatments. We urgently request your help in preserving section 37.''

So section 37 improves our patent system fairness through certainty and clarity, and I urge my colleagues to join me in voting to preserve this important provision as an end in itself, but also to make sure we do not send this bill back to the House of Representatives and instead get it to the President, particularly on a day like today when the President is going to be speaking to us tonight about jobs. I think having an updated patent law will help invention, innovation, research, and everything that adds value to what we do in America and preserve America's greatness in invention and the advancement of science.

In conclusion, I would say it is very clear to me that the court concluded that the Patent and Trademark Office, and not some company or its lawyers, had erred, as is the implication here. A consistent interpretation ought to apply to all patent holders in all cases, and we need to resolve any uncertainty that persists despite the court's decision.

I yield the floor.

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

Mr. LEAHY. Mr. President, I thank the distinguished Senator from Iowa for his words, and I join with the Senator from Iowa in opposing the amendment for two reasons. First, as just simply as a practical matter, the amendment would have the effect, if it passed, of killing the bill because it is not going to be accepted in the other body, and after 6 years or more of work on the patent bill, it is gone. But also, on just the merits of it, the provision this amendment strikes, section 37 of H.R. 1249, simply adopts the holding of a recent district court decision codifying existing law about how the Patent and Trademark Office should calculate 5 days for the purpose of considering a patent term extension. So those are the reasons I oppose the amendment to strike it.

The underlying provision adopted by the House is a bipartisan amendment on the floor. It was offered by Mr. CONYERS, and it has the support of Ms. PELOSI and Mr. BERMAN on the Democratic side and the support of Mr. CANTOR, Mr. PAUL, and Mrs. BACHMANN on the Republican side. I have a very hard time thinking of a wider range of bipartisan support than that.

The provision is simply about how they are calculating filing dates for patent extensions, although its critics have labeled it as something a lot more. A patent holder on a drug is entitled by statute to apply for an extension of its patent term to compensate for any delay the Food and Drug Administration approval process caused in actually bringing the drug to market. The patent holder not only has to file the extension within 60 days beginning on the date the product received permission for marketing, but there is some ambiguity as to when the date is that starts the clock running.

Only in Washington, DC, could the system produce such absurd results that the word ''date'' means not only something different between two agencies—the PTO and the FDA—but then it is given two different constructions by the FDA. If this sounds kind of esoteric, it is. I have been working on this for years and it is difficult to understand. But the courts have codified it. Let's not try to change it yet again.

What happens is that the FDA treats submissions to it after normal hours as being received the next business day. But the dates of submissions from the FDA are not considered the next business day, even if sent after hours. To complicate matters, the PTO recently changed its own method of defining what is a ''date.''

If this sounds confusing even in Washington, you can imagine how it is outside of the bureaucracy. Confusion over what constitutes the ''date'' for purposes of a patent extension has affected several companies. The most notable case involves the Medicines Company's ANGIOMAX extension application request.

The extension application was denied by the PTO because of the difference in how dates are calculated. MedCo challenged the PTO's decision in court, and last August the federal district court in Virginia held the PTO's decision arbitrary and capricious and MedCo received its patent term extension.

Just so we fully understand what that means, it means PTO now abides by the court's ruling and applies a sensible ''business day'' interpretation to the word ''date'' in the statute. The provision in the America Invents Act simply codifies that.

Senator GRASSLEY has spoken to this. As he said a few weeks ago, this provision ''improves the patent system fairness through certainty and clarity.''

This issue has been around for several years and it was a controversial issue when it would have overturned the PTO's decision legislatively. For this reason Senator GRASSLEY and others opposed this provision when it came up several years ago. But now that the court has ruled, it is a different situation. The PTO has agreed to accept the court's decision. The provision is simply a codification of current law.

Is there anyone who truly believes it makes sense for the word ''date'' to receive tortured and different interpretations by different parts of our government rather than to have a clear, consistent definition? Let's actually try to put this issue to bed once and for all.

The provision may solidify Medco's patent term extension, but it applies generally, not to this one company, as has been suggested. It brings common sense to the entire filing system.

However, if the Senate adopts the amendment of the Senator from Alabama, it will lead to real conflict with the House. It is going to complicate, delay, and probably end passage of this important bipartisan jobs-creating legislation.

Keep in mind, yesterday I said on the floor that each one of us in this body could write a slightly different patent bill. But we do not pass 100 bills, we pass 1. This bill is supported by both Republicans and Democrats across the political spectrum. People on both sides of the aisle have been working on this issue for years and years in both bodies. We have a piece of legislation. Does everybody get every single thing they want? Of course not. I am chairman of the Senate Judiciary Committee. I don't have everything in this bill I want, but I have tried to get something that is a consensus of the large majority of the House and the Senate, and we have done this.

In this instance, in this particular amendment, the House expressly considered this matter. They voted with a bipartisan majority to adopt this provision the amendment is seeking to strike. With all due respect to the distinguished Senator from Alabama, who contributed immensely to the bill as ranking member of the committee last Congress, I understood why he opposed this provision when it was controversial and would have had Congress override the PTO. But now that the PTO and court have resolved the matter as reflected in the bill, it is not worth delaying enactment of much-needed patent reform legislation. It could help create jobs and move the economy forward.

We will have three amendments on the floor today that we will vote on. This one and the other two I strongly urge Senators, Republicans and Democrats, just as the ranking member has urged, to vote them down. We have between 600,000 and 700,000 patents applications that are waiting to be taken care of. We can unleash the genius of our country and put our entrepreneur class to work to create jobs that can let us compete with the rest of the world. Let's not hold it up any longer. We have waited long enough. We debated every bit of this in this body and passed it 95 to 5. On the motion to proceed, over 90 Senators voted to proceed. It has passed the House overwhelmingly. It is time to stop trying to throw up roadblocks to this legislation.

If somebody does not like the legislation, vote against it. But this is the product of years of work. It is the best we are going to have. Let us get it done. Let us unleash the ability and inventive genius of Americans. Let us go forward.

We have a patent system that has not been updated in over a half century, yet we are competing with countries around the world that are moving light years ahead of us in this area. Let's catch up. Let's put America first. Let's get this bill passed.

I yield the floor.

AMENDMENT NO. 595

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Washington.

Ms. CANTWELL. Madam President, I call up Cantwell amendment No. 595.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Washington [Ms. CANTWELL] proposes an amendment numbered 595.

Ms. CANTWELL. Madam President, I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To establish a transitional program for covered business method patents)

On page 119, strike line 21 and all that follows through page 125, line 11, and insert the following:

**SEC. 18. TRANSITIONAL PROGRAM FOR COVERED BUSINESS-METHOD PATENTS.**

(a) REFERENCES.—Except as otherwise expressly provided, wherever in this section language is expressed in terms of a section or chapter, the reference shall be considered to be made to that section or chapter in title 35, United States Code.

(b) TRANSITIONAL PROGRAM.—

(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Director shall issue regulations establishing and implementing a transitional post-grant review proceeding for review of the validity of covered business-method patents. The transitional proceeding implemented pursuant to this subsection shall be regarded as, and shall employ the standards and procedures of, a post-grant review under chapter 32, subject to the following exceptions and qualifications:

(A) Section 321(c) and subsections (e)(2), (f), and (g) of section 325 shall not apply to a transitional proceeding.

(B) A person may not file a petition for a transitional proceeding with respect to a covered business-method patent unless the person or his real party in interest has been sued for infringement of the patent or has been charged with infringement under that patent.

(C) A petitioner in a transitional proceeding who challenges the validity of 1 or more claims in a covered business-method patent on a ground raised under section 102 or 103 as in effect on the day prior to the date of enactment of this Act may support such ground only on the basis of—

(i) prior art that is described by section 102(a) (as in effect on the day prior to the date of enactment of this Act); or

(ii) prior art that—

(I) discloses the invention more than 1 year prior to the date of the application for patent in the United States; and

(II) would be described by section 102(a) (as in effect on the day prior to the date of enactment of this Act) if the disclosure had been made by another before the invention thereof by the applicant for patent.

(D) The petitioner in a transitional proceeding, or his real party in interest, may not assert either in a civil action arising in whole or in part under section 1338 of title 28, United States Code, or in a proceeding before the International Trade Commission that a claim in a patent is invalid on any ground that the petitioner raised during a transitional proceeding that resulted in a final written decision.

(E) The Director may institute a transitional proceeding only for a patent that is a covered business-method patent.

(2) EFFECTIVE DATE.—The regulations issued pursuant to paragraph (1) shall take effect on the date that is 1 year after the date of enactment of this Act and shall apply to all covered business-method patents issued before, on, or after such date of enactment, except that the regulations shall not apply to a patent described in section 6(f)(2)(A) of this Act during the period that a petition for post-grant review of that patent would satisfy the requirements of section 321(c).

(3) SUNSET.—

(A) IN GENERAL.—This subsection, and the regulations issued pursuant to this subsection, are repealed effective on the date that is 4 years after the date that the regulations issued pursuant to paragraph (1) take effect.

(B) APPLICABILITY.—Notwithstanding subparagraph (A), this subsection and the regulations implemented pursuant to this subsection shall continue to apply to any petition for a transitional proceeding that is filed prior to the date that this subsection is repealed pursuant to subparagraph (A).

(c) REQUEST FOR STAY.—

(1) IN GENERAL.—If a party seeks a stay of a civil action alleging infringement of a patent under section 281 in relation to a transitional proceeding for that patent, the court shall decide whether to enter a stay based on—

(A) whether a stay, or the denial thereof, will simplify the issues in question and streamline the trial;

(B) whether discovery is complete and whether a trial date has been set;

(C) whether a stay, or the denial thereof, would unduly prejudice the nonmoving party or present a clear tactical advantage for the moving party; and

(D) whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court.

(2) REVIEW.—A party may take an immediate interlocutory appeal from a district court's decision under paragraph (1). The United States Court of Appeals for the Federal Circuit shall review the district court's decision to ensure consistent application of established precedent, and such review may be de novo.

(d) DEFINITION.—For purposes of this section, the term ''covered business method patent'' means a patent that claims a method or corresponding apparatus for performing data processing operations utilized in the practice, administration, or management of a financial product or service, except that the term shall not include patents for technological inventions. Solely for the purpose of implementing the transitional proceeding authorized by this subsection, the Director shall prescribe regulations for determining whether a patent is for a technological invention.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as amending or interpreting categories of patent-eligible subject matter set forth under section 101.

Ms. CANTWELL. Madam President, simply my amendment restores section 18 of the language that was passed out of the Senate. Basically it implements the Senate language.

I come to the floor today with much respect for my colleague Chairman LEAHY, who has worked on this legislation for many years, and my colleagues on the other side of the aisle who have tried to work on this important legislation and move it forward. I am sure it has been challenging. I mean no offense to my colleagues about this legislation. It simply is my perspective about where we need to go as a country and how we get there.

I am excited that we live in an information age. In fact, one of the things that I count very fortunate in my life is that this is the age we live in. I often think if I lived in the agrarian age, maybe I would be farming. That is also of great interest, given the State of Washington's interests in agriculture. Maybe I would live in the industrial age when new factories were being built. That would be interesting. But I love the fact that whether you are talking about agriculture, whether you are talking about automotive, whether you are talking about health care, whether you are talking about software, whether you are talking about communications, whether you are talking about space travel, whether you are talking about aviation, we live in an information age where innovation is created every single day. In fact, we are transforming our lives at a much more rapid pace than any other generation because of all that transformation.

I love the fact that the United States has been an innovative leader. I love the fact that the State of Washington has been an innovative leader. If there is one thing I pride myself on, it is representing a State that has continued to pioneer new technology and innovations. So when I look at this patent bill, I look at whether we are going to help the process of making innovation happen at a faster rate or more products and services to help us in all of those industries I just mentioned or whether we are going to gum up the wheels of the patent process. So, yes, I joined my colleagues who have been out here on the Senate floor, such as Senator FEINSTEIN and others who debated this issue of changing our patent system to the ''first to file,'' which will disadvantage inventors because ''first to file'' will lead to big companies and organizations getting the ability to have patents and to slow down innovation.

If you look at what Canada and Europe have done, I don't think anybody in the world market today says: Oh, my gosh, let's change to the Canadian system because they have created incredible innovation or let's look to Europe because their ''first to file'' has created such innovation.

In fact, when Canada switched to this ''first to file'' system, that actually slowed down the number of patents filed. So I have that concern about this legislation.

But we have had that discussion here on the Senate floor. I know my colleague is going to come to the floor and talk about fee diversion, which reflects the fact that the Patent Office actually

collects money on patents. That is a very viable way to make the Patent Office effective and efficient because it can take the money it collects from these patents and use it to help speed up the process of verifying these patents and awarding them. But the Senate chose good action on this issue, and good measure, and simply said that the money collected by the Patent Office should stay in the Patent Office budget.

But that is not what the House has done. The House has allowed that money to be diverted into other areas of appropriations, and the consequence will be that this patent reform bill will basically be taking the economic engine away from the Patent Office and spreading it out across government. So the reform that we would seek in patents, to make it a more expeditious process, is also going to get down.

I could spend my time here today talking about those two things and my concerns about them, but that is not even why I am here this morning. I am here to talk about how this legislation has a rifleshot earmark in it for a specific industry, to try to curtail the validation of a patent by a particular company. That is right, it is an earmark rifleshot to try to say that banks no longer have to pay a royalty to a particular company that has been awarded a patent and that has been upheld in court decisions to continue to be paid that royalty.

That is why I am here this morning. You would say she is objecting to that earmark, she is objecting to that personal approach to that particular industry giveaway in this bill. Actually, I am concerned about that, but what I am concerned about is, given the way they have drafted this language to benefit the big banks of America and screw a little innovator, this is basically drafted so broadly that I am worried that other technology companies are going to get swept up in the definition and their patents are also going to be thrown out as invalid. That is right. Every State in the United States could have a company that, under this language, could now have someone determine that their patent is no longer viable even though the Patent Office has awarded them a patent. Companies that have revenue streams from royalties that are operating their companies could now have their bank financing, everything pulled out from under them because they no longer have royalty streams. Businesses could lay off people, businesses could shut down, all because we put in broad language in the House version that exacerbates a problem that was in the Senate version to begin with.

Now I could say this is all a process and legislation follows a process, but I object to this process. I object to this language that benefits the big banks but was never debated in the committee of jurisdiction, the Judiciary Committee. It was not debated. It was not voted on. It was not discussed there. It was put into the managers' amendment which was brought to the Senate floor with little or no debate because people wanted to hurry and get the managers' amendment adopted.

Now, I objected to that process in driving this language because I was concerned about it. I sought colloquy at that point in time and was not able to get one from any of my colleagues, and I so opposed this legislation. Well, now this legislation has been made even worse in the House of Representatives by saying that this language, which would nullify patents—that is right. The Senate would be participating in nullifying patents that the Patent Office has already given to companies, and it can now go on for 8 years—8 years is what the language says when it comes back from the House of Representatives.

All I am asking my colleagues to do today is go back to the Senate language they passed. Go back to the Senate language that at least says this earmark they are giving to the big banks so they can invalidate a patent by a company because they don't like the fact they have to pay a royalty on check imaging processing to them—I am sorry you don't like to pay the royalty. But when somebody innovates and makes the technology, they have the right to charge a royalty. You have been paying that royalty. I am sorry, big banks, if you don't like paying that royalty anymore. You are making a lot of money. Trying to come to the Senate with an earmark rifle shot to X out that competition because you don't want to pay for that technology—that is not the way the Senate should be operating.

The fact that the language is so broad that it will encompass other technologies is what has me concerned. If all my colleagues want to vote for this special favor for the big banks, go ahead. The fact that my colleagues are going to basically pull us in to having other companies covered under this is a big concern.

The section I am concerned about is business method patents, and the term ''covered business method patent'' means patents or claims or method or corresponding apparatus for performing data processing or other operations. What does ''or other operations'' mean? How many companies in America will have their patents challenged because we don't know what ''or other operations'' means? How many? How many inventors will have their technology basically found null and void by the court process or the Patent Office process because of this confusing language?

I am here to ask my colleagues to do a simple thing: revert to the Senate language. It is not a perfect solution. If I had my way, I would strip the language altogether. If I had my way, I would have much more clarity and predictability to patent lawyers and the Patent Office so the next 3 or 4 years will not be spent in chaos between this change in the patent business method language and the whole process that is going to go on. Instead, we would be moving forward with predictability and certainty.

I ask my colleagues to just help this process. Help this process move forward by going back to the Senate language. I know my colleagues probably want to hurry and get this process done, but I guarantee this language with the Senate version could easily go back to the House of Representatives and be passed. What I ask my colleagues to think about is how many companies are also going to get caught in this process by the desire of some to help the big banks get out from under something the courts have already said they don't deserve to get out of.

I hope we can bring closure to this issue, and I hope we can move forward on something that gives Americans the idea that people in Washington, DC, are standing up for the little guy. We are standing up for inventors. We are standing up for those kinds of entrepreneurs, and we are not spending our time putting earmark rifle shot language into legislation to try to assuage large entities that are well on their way to taking care of themselves.

I hope if my colleagues have any questions on this language as it relates to their individual States, they would contact our office and we would be happy to share information with them.

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. SCHUMER. 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. SCHUMER. Madam President, I rise today to urge this body to complete the extensive work that has been done on the Leahy-Smith America Invents Act and send this bill to the President for signature.

The America Invents Act has been years in the making. The time has come to get this bill done once and for all.

The importance of patent law to our Nation has been evidenced since the founding. The Constitution sets control over patent law as one of the enumerated powers of the Congress. Specifically, it gives the Congress the power ''To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.''

Today we take an important step toward ensuring that the constitutional mandate of Congress is met as we modernize our patent system. This bill is the first major overhaul of our patent laws in literally decades.

My colleagues have spoken at length about the myriad ways the America Invents Act will bring our patent law

into the 21st century. What I want to focus on, of course, is jobs.

The America Invents Act is fundamentally a jobs bill. Innovation and intellectual property has always been and always will be at the heart of the American economy. By rewarding innovators for inventing newer and better products, we keep America's creative and therefore economic core healthy.

Over the last few decades, however, innovation has outpaced our patent system. We have an enormous backlog at the PTO. The result of this backlog is that it is much harder for creators to obtain the property rights they deserve in their inventions. That challenge in turn makes it harder for inventions to be marketed and sold, which reduces the incentive to be innovative. Eventually, this vicious cycle becomes poisonous.

The America Invents Act cuts this cycle by making our patent system more efficient and reliable. By providing the Patent and Trademark Office the resources it needs to reduce the backlog of nearly 700,000 patent applications, the bill will encourage the innovation that will create and protect American jobs. In addition, the bill streamlines review of patents to ensure that the poor-quality patents can be weeded out through administrative review rather than costly litigation.

I am especially pleased that H.R. 1249 contains the Schumer-Kyl provisions that we originally inserted in the Senate to help cut back on the scourge of business method patents that have been plaguing American businesses. Business method patents are anathema to the protection that the patent system provides because they apply not to novel products or services but to abstract and often very common concepts of how to do business. Often business method patents are issued for practices that have been in widespread use for years, such as check imaging or one-click checkout. Imagine trying to patent the one-click checkout long after people have been using it.

Because of the nature of the business methods, these practices aren't as easily identifiable by the PTO as prior art, and bad patents are issued. Of course, this problem extends way beyond the financial services industry. It includes all businesses that have financial practices, from community banks to insurance companies to high-tech startups. Section 18, the Schumer-Kyl provision, allows for administrative review of those patents so businesses acting in good faith do not have to spend the millions of dollars it costs to litigate a business method patent in court.

That is why the provision is supported not only by the Financial Services Roundtable and the Community Bankers, but by the Chamber of Commerce, the National Retail Foundation, and in my home State by the Partnership for a Greater New York.

Madam President, I ask unanimous consent that letters in support of section 18 from all of these organizations be printed in the RECORD.

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

INDEPENDENT COMMUNITY BANKERS OF AMERICA,
*Washington, DC, June 14, 2011.*

HOUSE OF REPRESENTATIVES,
*Washington, DC.*

DEAR MEMBER OF CONGRESS: On behalf of ICBA's nearly 5,000 community bank members, I write to voice strong support for Section 18 of the America Invents Act (H.R. 1249), which addresses the issue of poor-quality business-method patents. I strongly urge you to oppose efforts to strike or weaken the language in Section 18, which creates a program to review business-method patents against he best prior art.

Poor-quality business-method patents represent an extremely problematic aspect of the current system for granting, reviewing and litigating patents. The problems with low-quality patents are well documented and beyond dispute. On an escalating basis, financial firms are the target of meritless patent lawsuits brought by non-practicing entities. Such entities exploit flaws in the current system by bringing action in friendly venues, where they wring money from legitimate businesses by asserting low-quality business-method patents.

Section 18 addresses this problem by establishing an oppositional proceeding at the United States Patent and Trademark Office (PTO), where business-method patents can be re-examined, using the best prior art, as an alternative to costly litigation. This program applies only to business-method patents, which are defined using suggestions proffered by the PTO. Concerns about the scope of the definition have been addressed by exclusion of technological innovations. Additionally, it has been well-settled law for over 25 years that post-grant review of patent validity by the PTO is constitutional. The Federal Circuit explained that a defectively examined and therefore erroneously granted patent must yield to the reasonable Congressional purpose of facilitating the correction of governmental mistakes. This Congressional purpose is presumptively correct and constitutional. Congress has given the PTO a tool to ensure confidence in the validity of patents. Section 18 furthers this important public purpose by restoring confidence in business-method patents.

I urge you to oppose changes to Section 18, including changes that would create a loophole allowing low-quality business-method patent holders to wall off their patents from review by the PTO. Congress should ensure that final patent-reform legislation addresses the fundamental, and increasingly costly, problem of poor-quality business-method patents.

Sincerely,

CAMDEN R. FINE,
*President and CEO.*

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CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
*Washington, DC, June 14, 2011.*

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES: The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, supports H.R. 1249, the ''America Invents Act,'' which would encourage innovation and bolster the U.S. economy. The Chamber believes this legislation is crucial for American economic growth, jobs, and the future of U.S. competitiveness.

A key component of H.R. 1249 is section 22, which would ensure that fees collected by the U.S. Patent and Trademark Office (PTO) fund the office and its administration of the patent system. PTO faces significant challenges, including a massive backlog of pending applications, and this backlog is stifling domestic innovators. The fees that PTO collects to review and approve patent application are supposed to be dedicated to PTO operation. However, fee diversion by Congress has hampered PTO's efforts to hire and retain a sufficient number of qualified examiners and implement technological improvements necessary to ensure expeditious issuance of high quality patents. Providing PTO with full access to the user fees it collects is an important first step toward reducing the current backlog of 1.2 million applications waiting for a final determination and pendency time of 3 years, as well as to improve patent quality.

In addition, the legislation would help ensure that the U.S. remains at the forefront of innovation by enhancing the PTO process and ensuring that all inventors secure the exclusive right to their inventions and discoveries. The bill shifts the U.S. to a first-inventor-to-file system that we believe is both constitutional and wise, ending expensive interference proceedings. H.R. 1249 also contains important legal reforms that would help reduce unnecessary litigation against American businesses and innovators. Among the bill's provisions, Section 16 would put an end to frivolous false patent marking cases, while still preserving the right of those who suffered actual harm to bring actions. Section 5 would create a prior user right for those who first commercially use inventions, protecting the rights of early inventors and giving manufacturers a powerful incentive to build new factories in the United States, while at the same time fully protecting universities. Section 19 also restricts joinder of defendants who have tenuous connections to the underlying disputes in patent infringement suits. Section 18 of H.R. 1249 provides for a tailored pilot program which would allow patent office experts to help the court review the validity of certain business method patents using the best available prior art as an alternative to costly litigation.

The Chamber strongly opposes any amendments to H.R. 1249 that would strike or weaken any of the important legal reform measures in this legislation, including those found in Sections 16, 5, 19 and 18. The Chamber supports H.R. 1249 and urges the House to expeditiously approve this necessary legislation.

Sincerely,

R. BRUCE JOSTEN,
*Executive Vice President, Government Affairs.*

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NATIONAL RETAIL FEDERATION,
*Washington, DC, June 21, 2011.*

Hon. LAMAR S. SMITH,
*Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.*

Hon. JOHN CONYERS, Jr.,
*Ranking Member, Committee on the Judiciary, House of Representatives, Washington, DC.*

DEAR CHAIRMAN SMITH AND RANKING MEMBER CONYERS: I am writing in support of Section 18 of H.R. 1249, the American Invents Act of 2010. This provision would provide the Patent and Trademark Office (PTO) the ability to re-examine qualified business method patents against the best prior art.

As the world's largest retail trade association, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and

generated 2010 sales of $2.4 trillion. Retailers have been inundated by spurious claims, many of which, after prolonged and expensive examination, are subsequently found to be less than meritorious.

Increasingly, retailers of all types are being sued by non-practicing entities for infringing low-quality business method patents which touch all aspects of our business: marketing, payments, and customer service to name a few aspects. A vast majority of these cases are brought in the Eastern District of Texas where the statistics are heavily weighted against defendants forcing our members to settle even the most meritless suits.

Section 18 moves us closer to a unified patent system by putting business method patents on par with other patents in creating a post-grant, oppositional proceeding that is a lower cost alternative to costly patent litigation. The proceeding is necessary to help ensure that the revenues go to creating jobs and bringing innovations to our customers, not paying litigation costs in meritless patent infringement litigation.

We appreciate the opportunity to support this important section and oppose any efforts to strike or weaken the provision. Please do not hesitate to contact me with any questions.

Best regards,

DAVID FRENCH,
*Senior Vice President,*
*Government Relations.*

Mr. SCHUMER. A patent holder whose patent is solid has nothing to fear from a section 18 review. Indeed, a good patent will come out of such a review strengthened and validated. The only people who have any cause to be concerned about section 18 are those who have patents that shouldn't have been issued in the first place and who were hoping to make a lot of money suing legitimate businesses with these illegitimate patents. To them I say the scams should stop.

In fact, 56 percent of business patent lawsuits come in to one court in the Eastern District of Texas. Why do they all go to one court? Not just because of coincidence. Why do people far and wide seek this? Because they know that court will give them favorable proceedings, and many of the businesses that are sued illegitimately spend millions of dollars for discovery and everything else in a court they believe they can't get a fair trial in, so they settle. That shouldn't happen, and that is what our amendment stops. It simply provides review before costly litigation goes on and on and on.

Now, my good friend and colleague, Senator CANTWELL, has offered an amendment that would change the section 18 language and return to what the Senate originally passed last March. Essentially, Senator CANTWELL is asking the Senate to return to the original Schumer-Kyl language. Of course, I don't have an inherent problem with the original Schumer-Kyl language. However, while I might ordinarily be inclined to push my own version of the amendment, I have to acknowledge that the House made some significant improvements in section 18.

First, H.R. 1249 extends the transitional review program of section 18 from 4 to 8 years in duration. This change was made to accommodate industry concerns that 4 years was short enough, that bad actors would just wait out the program before bringing their business method patent suits. The lying-in-wait strategy would be possible under the Cantwell amendment because section 18 only allows transitional review proceedings to be initiated by those who are facing lawsuits.

On a 20-year patent, it is not hard to wait 4 years to file suit and therefore avoid scrutiny under a section 18 review. It would be much harder, however, to employ such an invasive maneuver on a program that lasts 8 years.

Second, the Cantwell amendment changes the definition of business method patents to eliminate the House clarification that section 18 goes beyond mere class 705 patents. Originally, class 705 was used as the template for the definition of business method patents in section 18. However, after the bill passed the Senate, it became clear that some offending business method patents are issued in other sections. So the House bill changes the definition only slightly so that it does not directly track the class 705 language.

Finally, the Cantwell amendment limits who can take advantage of section 18 by eliminating access to the program by privies of those who are sued. Specifically, H.R. 1249 allows parties who have shared interests with a sued party to bring a section 18 proceeding. The Cantwell amendment would eliminate that accommodation.

All of the House changes to section 18 of the Senate bill are positive, and I believe we should keep them. But to my colleagues I would say this in closing: The changes Senator CANTWELL has proposed do not get to the core of the bill, and the most profound effect they would have is to delay passage of the bill by requiring it to be sent back to the House, which is something, of course, we are all having to deal with on all three of the amendments that are coming up.

I urge my colleagues to remember that this bill and the 200,000 jobs it would create are too important to delay it even another day because of minor changes to the legislation. I urge my colleagues to vote against the amendment of my good friend MARIA CANTWELL and move the bill forward.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I rise to express my continued support for the America Invents Act. We have been working on patent reform legislation for several years now—in fact, almost the whole time I have been in the Senate—so it is satisfying to see the Senate again voting on this bipartisan bill.

It is important to note that this bill before us is the same one that was passed by the Republican-controlled House of Representatives in June. I commend House Judiciary chairman LAMAR SMITH for his leadership on this monumental legislation. He has worked hard on this for many years, and I wish to pay a personal tribute to him.

I also wish to recognize the efforts of my colleague from Vermont, Senate Judiciary Committee chairman PATRICK LEAHY. Over the years, he and I have worked tirelessly to bring about long overdue reform to our Nation's patent system, and I personally appreciate PAT for his work on this matter.

I also wish to recognize the efforts of Senate Judiciary Committee ranking member CHUCK GRASSLEY of Iowa, as well as many other Senate colleagues who have been instrumental in this legislative process.

The Constitution is the supreme law of the land and the shortest operating Constitution in the world. America's Founders put only the most essential provisions in it, listing the most essential rights of individuals and the most essential powers the Federal Government should have. What do we think made it on to that short list? Raising and supporting the Army and maintaining the Navy? No question there. Coining money? That one is no surprise. But guess what else made the list. Here is the language: The Founders granted to Congress the power ''To promote the Progress of Science and useful Arts, by securing for . . . Authors and Inventors the exclusive Right to their Respective Writing and Discoveries.''

In other words, the governance of patents and copyrights is one of the essential, specifically enumerated powers given to the Federal Government by our Nation's Founders. In my view, it is also one of the most visionary, forward-looking provisions in the entire U.S. Constitution.

Thomas Jefferson understood that giving people an exclusive right to profit from their inventions would give them ''encouragement . . . to pursue ideas which may produce utility.'' Yet Jefferson also recognized the importance of striking a balance when it came to granting patents—a difficult task. He said:

> I know well the difficulty of drawing a line between the things which are worth to the public the embarrassment of an exclusive patent and those which are not.

As both an inventor and a statesman, he understood that granting a person an exclusive right to profit from their invention was not a decision that should be taken lightly.

This bill is not perfect, but I am pleased with the deliberative process that led to its development, and I am confident that Congress followed Jefferson's lead in striking a balanced approach to patent reform.

There can be no doubt that patent reform is necessary, and it is long overdue. Every State in the country has a vested interest in an updated patent system. When patents are developed commercially they create jobs, both for the company marketing products and for their suppliers, distributors,

and retailers. One single deployed patent affects almost all sectors of our economy.

Utahns have long understood this relationship. Ours is a rich and diverse and inventive legacy. In the early 1900s, a young teenager approached his teacher after class with a sketch he had been working on. It was a drawing inspired by the rows of dirt in a potato field the teenager had recently plowed. After examining the sketch, the teacher told the young student that he should pursue his idea, and he did. That teenager was Philo Farnsworth, a Utah native who went on to patent the first all-electronic television.

Farnsworth had to fight for many years in court to secure the exclusive rights to his patent, but he continued to invent, developing and patenting hundreds of other inventions along the way.

Another Utah native developed a way to amplify sound after he had trouble hearing in the Mormon Tabernacle. His headphones were later ordered by the Navy for use during World War I. His name was Nathaniel Baldwin.

William Clayton, an early Mormon pioneer, grew tired of manually counting and calculating how far his wagon company had traveled each day. So, in the middle of a journey across the plains, he and others designed and built a roadometer, a device that turned screws and gears at a set rate based on the rotation of the wagon wheel. It worked based on the same principles that power modern odometers.

John Browning, the son of a pioneer, revolutionized the firearm, securing his inventions through a patent. He is known all over the world for the work he did.

Robert Jarvik, who worked at the University of Utah—a wonderful doctor whom I know personally—invented the first successful permanent artificial heart while at the University of Utah.

These and countless other stories illustrate the type of ingenuity that was required by the men and women who founded Utah, the type of ingenuity that has been exemplified in every generation since.

Last year, Utah was recognized as one of the most inventive States in the Union. Such a distinction did not surprise me, especially since the University of Utah recently logged the university's 5,000th invention disclosure and has over 4,000 patent applications filed to date. This impressive accomplishment follows on the heels of news that the University of Utah overtook MIT in 2009 to become America's No. 1 research institution for creating start-up companies based on university technology.

A group of students at Brigham Young University recently designed a circuit that was launched with the shuttle Endeavour, and another group developed a prosthetic leg that costs $25 versus the $10,000 a prosthetic leg may typically cost. Utah inventors contribute to everything from electronic communications, to biotechnology, to computer games.

Like my fellow Utahns, citizens across the country recognize that technological development is integral to the well-being of our economy and the prosperity of our families and communities. As technology advances, it is necessary at times to make adjustments that will ensure Congress is promoting the healthy progress of science and useful arts.

The America Invents Act will improve the patent process, giving inventors in Utah and across the country greater incentives to innovate. Strengthening of our patent system will not only help lead us out of these tough economic times, but it will help us maintain our competitive edge both domestically and abroad. Take, for example, the transition to a first-inventor-to-file system and the establishment of a post-grant review procedure. These changes alone will decrease litigation costs so that small companies and individuals will not be dissuaded from protecting their patent rights by companies with greater resources.

This bill provides the USPTO with rulemaking authority to set or adjust its own fees for 7 years without requiring a statutory change every time an adjustment is needed. Providing the USPTO with the ability to adjust its own fees will give the agency greater flexibility and control, which, in the long run, will benefit inventors and businesses.

The legislation enables patent holders to request a supplemental examination of a patent if new information arises after the initial examination. By establishing this new process, the USPTO would be asked to consider, reconsider, or correct information believed to be relevant to the patent.

Further, this provision does not limit the USPTO's authority to investigate misconduct or to sanction bad actors. I am confident this new provision will remove the uncertainty and confusion that defines current patent litigation, and I believe it will enhance patent quality.

The America Invents Act creates a mechanism for third parties to submit relevant information during the patent examination process. This provision will provide the USPTO with better information about the technology and claimed invention by leveraging the knowledge of the public. This will also help the agency increase the efficiency of examination and the quality of patents.

This bill would create a reserve fund for user fees that exceed the amount appropriated to the USPTO. I prefer the language in the Senate-passed bill, which created a new revolving fund for the USPTO separate from annual appropriations. Certainty is important for future planning, but the appropriations process is far from reliable.

While conceptually I understand why our House counterparts revised the Senate-passed language—and I am in agreement about maintaining congressional oversight—I believe this is one area that should be reconsidered. It is just that important. That is why I support Senator TOM COBURN's amendment. If passed, his amendment will preserve congressional oversight and give the USPTO the necessary flexibility to operate during these critical times.

The House-passed compromise language is a step in the right direction, especially since the chairman of the House Appropriations Committee has committed that all fees collected by the USPTO in excess of its annual appropriated level will be available to the USPTO. However, I remain concerned that the budget uncertainties that exist today may negatively impact the USPTO and its ability to implement many of the new responsibilities required by the America Invents Act.

I remain concerned about some provisions the House either expanded or added. On balance, however, the positives of this legislation far outweigh the negatives, and I am confident it will contribute to the greater innovation and productivity our economy demands. It provides essential improvements to our patent system, such as changes to the best mode disclosure requirement; expansion of the prior user rights defense to affiliates, with an exemption for university-owned patents; incentives for government laboratories to commercialize inventions; restrictions on false marking claims; removal of restrictions on the residency of Federal circuit judges; clarification of tax strategy patents; providing assistance to small businesses through a patent ombudsman program and establishing additional USPTO satellite offices.

We all know every piece of legislation has its shortcomings. That is the reality of our legislative process. However, taken as a whole, the America Invents Act further builds upon our country's rich heritage of intellectual property protections—a cornerstone provided by article I, section 8 of the Constitution.

Passage of the America Invents Act will update our patent system, help strengthen our economy, and provide a springboard for further improvements to our intellectual property laws. I urge all of my colleagues to join in this monumental undertaking, and I appreciate those who have worked so hard on these programs. Again, I mentioned with particularity the Congressman from Texas, LAMAR SMITH, and also my friend and colleague, Senator LEAHY, and others as well, Senator GRASSLEY especially. There are others as well whom I should mention, but I will leave it at that for this particular time.

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

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

THE ECONOMY

Mr. HOEVEN. Mr. President, I rise today to speak on a matter of great importance to our country, and that is jobs and our economy. I know the President will be speaking this evening. I want to emphasize the importance that we focus on a long-term strategy to get our economy going. By that I mean a pro-jobs, progrowth economic strategy for our country.

The things that go into that include building the best possible business climate. We have got to have a business climate that will stimulate private investment, that will stimulate entrepreneurship, ingenuity, that will stimulate job creation by businesses small and large across our economy. We need to build a strong business climate. We need a long-term, progrowth economic strategy to do that.

We also need to control our spending and live within our means. We need a comprehensive energy policy. All three of these things go into the right kind of long-term comprehensive approach this country needs to get our economy growing and get people back to work.

I wish to start by taking a minute to look at our current situation, to talk about where we are. If you look at unemployment, unemployment is more than 9 percent, and it has been more than 9 percent for an extended period of time. Weekly jobless claims: more than 400,000. We have more than 14 million people who are out of work. That does not include people who are underemployed or people who are no longer looking for work because they have been discouraged and are not included in the workforce—14 million people we need to get back to work.

We also have a tremendous deficit problem. If you look at our revenues today, we have revenues of about $2.2 trillion. Our spending is at a rate of $3.7 trillion. That is a $1.5 trillion deficit. That is adding up to more than a $14 trillion dollar debt—a $14 trillion debt that weighs on our economy. If we do not deal with it, it is a debt our children will have to pay. That is not acceptable for us and we have to deal with it at the same time we get this economy going.

If you look at our current situation, we are borrowing 40 cents of every dollar we spend, and deficit and our debt is growing at $4 billion a day. I brought some graphs so we can look at it graphically. Here you see revenues and spending.

Unfortunately, the spending line is the red line along the top here. Spending is more than $3.7 trillion a year. At the same time, our revenues are $2.2 trillion. That gap is a $1.5 trillion budget deficit we are accumulating on an annual basis. As I say, it is now leading to a debt that is more than $14 trillion.

If you look at this next chart, we talk about unemployment. Here you see annual unemployment. Currently we are at 9.1 percent. We have been there for an extended period of time. Again, that represents more than 14 million people who are unemployed that we need to get back to work.

The other thing you will notice on this chart is the blue line. This blue line is the chart for my home State. There you will see our unemployment is about 3.2 to 3.3 percent. For the last decade in our State, we have focused on a progrowth, pro-jobs economic strategy. By that I mean building the best possible business climate, making sure we live within our means, and building a comprehensive energy approach to develop all of our energy resources. There is no reason we cannot do the same thing at the Federal level. In fact, we need to do exactly that at the Federal level. So I am here today to talk about some of the things we need to do to make that happen.

The first is that I emphasize by building a good business climate, I mean a legal, tax, and regulatory certainty so businesses know the rules of the road so they can invest. They can invest shareholders' dollars so entrepreneurs can start new businesses, so existing businesses can expand. But to do that, they need to know the rules of the road. They need to know what our tax policy is. Right now we have a tax policy that expires at the end of the next year. So how do you as a business person go out there and start making investments when you do not know what the tax policy is going to be beyond the end of next year? We need tax reform.

How about regulation? We have an incredible regulatory burden. How do you go out there and make an investment, get a business going, hire people, if you do not know what the regulatory requirements are? We need to reduce that regulatory burden.

We need to pass trade agreements so our companies can sell not just here in the United States but they can sell globally. If you look at the history of our country, that is how we have grown this economy, how we have become the most dynamic economic engine in the world. It is through that private investment, that entrepreneurship, that American ingenuity.

The role of government is to create a business climate that unleashes that potential. We have got to roll back the regulatory burden. We have got to create clear, understandable rules and tax policy to follow so these companies can make these investments, get those 14-plus million people back to work, get a growing economy, at the same time that we get a grip on our spending and start living within our means. That is how we not only raise our standard of living and our quality of life, but we make sure we do not pass on a huge debt to our children and our grandchildren.

Let me talk about some of the kinds of laws and legislation we need to pass to make sure that happens.

Not too long ago, President Obama issued an Executive order. I hope it is something he talks about this evening in his address to the joint session of Congress. In that Executive order, he said all of the agencies—all of the Federal agencies—need to look at their regulations, at their existing regulations and any regulations they are putting out, and make sure that if those regulations are costly, burdensome, if they do not make sense, if they are outmoded or outdated, they are eliminated, they are stripped away, so we empower people and companies throughout this great country to do business. He said in that Executive order make sure all of our agencies look at their regulations and eliminate those that do not make sense, that are costly, and that are burdensome, so we can stimulate economic activity and job creation in this country. I think we need to do exactly that. In fact, let's make it a law. Let's make it the law that all of the regulatory agencies need to look at their existing regulations and any regulations they are looking at putting out, to make darn sure they are clear, straightforward, understandable, that they are workable, and not only that our regulations are clear and understandable, that the regulators work with Americans and American companies to make sure they understand them and they are able to meet them so they can pursue their business plans, their business growth, their business investment, and that they hire and put people back to work. That is how it is supposed to work.

Together, Senator PAT ROBERTS of Kansas, myself, and others have put forward the Regulatory Responsibility for Our Economy Act. That is just what it says. How much more bipartisan can we get than that? The President puts out an Executive order saying we need to roll back some of these regulations that are burdening our business base, and we as Republican Senators say: Okay, here is an act to put that Executive order into law. Let's work together in a bipartisan way to reduce this regulatory burden that is stifling economic growth and job creation in our country.

That is what Congress is supposed to do. That is what we need to do. That is what the people of this country want us to do on a bipartisan basis.

When the President comes to the Capitol this evening and talks about how we get business going, let's get it going by reducing this regulatory burden so private investment can get people back to work in this country. It is not about more government spending, it is about private investment and initiative. We have to create the framework to make it happen. We can do it, and we can do it on a bipartisan basis.

Another example is that the United States has been the leader in aviation throughout its history. Throughout the

history of aviation, since Kitty Hawk, the United States has led the world in aviation, in invention, development, and innovation, and all the things that have gone into the development of aviation. Again, throughout its history, the United States has been the leader. One of the key areas for growth in aviation right now is UAS, unmanned aerial systems or unmanned aircraft. They call them remotely piloted aircraft. Our military uses them to tremendous benefit in Iraq, Afghanistan, and around the world.

Even though our military flies UAS all over the globe, we can't fly them here in the United States together with manned aircraft. Yet if we are going to continue to lead the world in aviation innovation, we have to find a way to fly both manned and unmanned aircraft together in our airspace in the United States.

Others and I have been talking to the FAA and working with the FAA, saying that you have to promulgate rules, set the rules of the road—or, in this case, the rules of the air—so we can fly both manned and unmanned aircraft together in the U.S. airspace. The FAA has been working on this for I don't know how long but a long period of time. As of yet, they have not come out with those rules so we can fly both manned and unmanned aircraft in our airspace. But we need to, because if we don't, other countries will, and they will move ahead of us—maybe not in military aviation, where we are flying unmanned aircraft all over the world, but how about in commercial and general aviation and all the other applications it will have for unmanned aircraft.

The FAA bill, which we are now working to complete—a version was passed in the House and a version was passed in the Senate, and we are trying to reconcile the two versions. Again, we need to do this in a bipartisan way. I have included language that authorizes—in fact requires—that the FAA set up airspace in the United States so that manned and unmanned aircraft can be flown concurrently. Again, it is about making sure that we not only maintain our lead in aviation but create those exciting, good-paying jobs of the future. If the agency isn't going to take that step, we as the Congress have to make sure we take that step and move the aviation industry forward.

Another example is how we have to create the environment, the forum that encourages that type of innovation, entrepreneurship, and investment in job creation. That is our role, our responsibility, in this most important of all issues, which is getting the economy going and getting people back to work.

On the free trade agreements, we have three of them pending—one with South Korea, the U.S.-South Korea Free Trade Agreement, another is the Panama Free Trade Agreement, and the other is with Colombia. Those trade agreements have been negotiated for some time. For three years those trade agreements have been pending. It is time to take them from pending to being passed. We need the administration to bring those free trade agreements to the Senate and to the House and we will pass them. We have worked across the aisle in a bipartisan way to make sure that whatever issues needed to be dealt with to bring them to the Congress—whether it is trade adjustment authority or whatever, we have worked together in a bipartisan way to say, look, we have addressed the issues. Now the administration needs to bring the free trade agreements to the Senate floor. We will pass them.

With just one of those free trade agreements—for example, if we take the South Korea free trade agreement—we are talking about more than $10 billion in trade every year for our U.S. companies.

These free trade agreements reduce tariffs on the order of 85 percent. We are talking more than a quarter of a million jobs that will be created if we pass these agreements. For every 4-percent increase in trade, we are talking about 1 million American jobs that we can create. Again, it is about creating the environment that empowers investment, empowers our entrepreneurs in this country, and empowers businesses large and small to invest and get our economy going.

At the same time we get this economy growing, we have to start living within our means. Right now, as I indicated, we have a $1.5 trillion deficit and a debt that is closing in on $14.5 trillion. So at the same time we get the economy growing, which will grow our revenues—not higher taxes, but grow revenues from a growing economy, and with tax reform that empowers that economic growth, at the same time, we have to get control of our spending and live within our means.

Along with some fellow Senators, we have sponsored a number of pieces of legislation that I believe we can pass in a bipartisan way to make sure we get spending under control. The first is a balanced budget amendment. I come from a State where I was Governor for 10 years. We have a balanced budget amendment. Every year, we are required by our Constitution to balance the budget. States have a balanced budget requirement, and businesses and families and communities all have to live within their means. Our Federal Government has to live within its means.

If you think about it, a balanced budget amendment gets everybody involved. We not only have to pass it in the Senate and in the House with a two-thirds majority, but then it goes out to the States for ratification. What better way to get everybody throughout the country directly involved in making sure that we control our spending. Every State has to deal with a balanced budget amendment. So it is all of us working together as Americans, and it is the Congress going to the people of this great country and saying: Here is a balanced budget amendment, you tell us what you think. Again, what a great way to get everybody involved, the way we should get everybody involved in making sure we live within our means not only today but tomorrow and throughout future generations.

At the same time, we need to pass other tools that can help us get control of our spending. For example, the Reduce Unnecessary Spending Act. This is a bipartisan act that I think was originally sponsored by Senator TOM CARPER, a former Governor, a Democrat from Delaware, and Senator JOHN MCCAIN. I am proud to be a cosponsor. One of the key provisions is to give the President a line-item veto. Reaching across the aisle, we are giving our President a tool—a line-item veto—to make sure we cut out waste, fraud, and abuse, and that we control our spending. As a Governor, the most effective tool I had was the line-item veto. We need to make sure our President has it as well.

I think we also need to look at a biennial budget, so that we pass a budget on a two-year cycle—make sure we get it passed and the next year we can come back and make the adjustments we have to make; but at the same time we have time for oversight and making sure spending is going in accordance with the directive of the Congress, and whether it is waste, fraud, abuse, or duplication, that we cut it out. Again, this is absolutely what the American people want us to do.

The third area I will touch on for a minute—and I will go to the next chart—is building the right kind of energy plan, a comprehensive energy policy that will help this country develop all of its energy resources. We did it in North Dakota. I know we can do it at the Federal level.

If you think about it, energy development in this country is an incredible opportunity. It is an opportunity to produce more energy more cost effectively, with better environmental stewardship that will enable all of our industries to compete in a global high-tech economy. In addition, what a great opportunity it is to create high-paying jobs. Again, I go back to what I said before. For our energy companies looking to invest hundreds of millions and billions of dollars, they need to know the rules of the road. It comes back to creating a comprehensive energy policy that sets up those rules of the road so they know what their tax situation is and what the regulation and regulatory requirements are. When they make those investments to produce more energy more cost effectively, with good environmental stewardship, they have to know they are going to be able to get a return. They have to know they can meet the regulatory requirements. Those investments may last 40 and 50 years, and they know they are going to have to be able to recoup those investments.

This first chart gives an example of some of the energy development in our

State. Out West, there is oil and gas. North Dakota is now the fourth largest oil-producing State in the country. We have passed Oklahoma and Louisiana, and people don't realize it. Every State has some kind of energy. If you look at this map, we have oil, gas, coal, and wind. We are in the top 10 wind producers. We have biofuels, biomass, solar—we have all of them. Different States have different strengths. A lot of States have oil, gas, coal, or certainly wind, or they can develop the biofuels.

It comes down to creating that environment that stimulates private investment so companies will come in and do exactly what I am talking about—at the Federal level, as well as at the State level.

This next chart shows what is actually happening at the Federal level. This chart is the cost of major new regulations. What it shows over the last three decades is the cost of regulation by year, over the last 30 years. When the cost of regulation is high, if you go back and check, you will see our economy wasn't doing very well. When the cost of regulation was low, you will see that it was doing much better. Look at the cost of regulation today. It was $26.5 billion in 2010, the cost of meeting the regulatory requirements. That is what I am talking about. That is what is impeding job growth and economic growth and business investment. We have to address that. We have to roll back the regulatory burdens our companies and entrepreneurs face today.

This last chart gives one example of some of the new regulations EPA is putting out that somebody who wants to develop energy has to meet. If you are an energy company or a young person with a good idea to develop a new type of energy, or existing type of energy with a new technology, can you meet all of these requirements? Can you even begin to understand them? Do you have a big enough legal team and scientific team, or a deep enough wallet to try to figure that all out before you put your money or your shareholders' money at risk? That is what is impeding economic growth in our country, and we have to deal with it. Congress has to deal with it.

Again, this is not rocket science, and it is not about spending more Federal dollars. We have to create an environment that will encourage, stimulate, and empower private investment. It is that private investment throughout this land that will get our economy going and get people back to work. We can do it. It has to be a long-term strategy. It can't be a few stopgap measures that we put into place now for the next 90 days or for 1 year at a time. It has to be on a long-term sustained basis. I believe that is what the people want to hear this evening. I think they want to hear that kind of commitment to a long-term strategy, a progrowth, pro-jobs economic strategy that will get this economy going now, tomorrow, and for the long term. It has to be done in a bipartisan way to get it through this Congress and signed by the President. But it is that kind of vision we need for our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BARRASSO. Mr. President, U.S. job creation in this country, as you know, has come to a halt. The Labor Department reported last Friday that zero jobs were created in August. The economic recovery that was hoped for failed to materialize, and unemployment remains at 9.1 percent.

Hope is not enough. Our economy is stagnant. The President's latest pivot to jobs is anchored on blaming the previous administration, which is now nearly 3 years past. Yet, despite repeated assurances of improvement, President Obama's own economic policies have failed. The President's stimulus plan failed to produce the 3.5 million jobs he promised. His ''green jobs'' initiative gave us more red ink but never came close to the 5 million new jobs he predicted it would. All the while the Federal bureaucracy he controls churns out expansive and expensive new regulations that amount to an assault on private sector job creation.

The facts are inescapable. Since President Obama took office, America has lost approximately 2.3 million jobs. We are in an economic crisis—a crisis that extends to America's confidence in the President to do anything that will change the current course. What the American people want is a plan, a plan that will yield results. They want leadership, and they have rejected the President's insistence that the only way forward is through more spending.

Today, western Members of the Senate and House are calling on the President to accept a new way—a progrowth plan to create jobs in the West that will lead to broader economic recovery all across the country. The western caucus Jobs Frontier report was produced by Members of the Senate and congressional western caucuses. It contains legislative proposals already introduced in both Houses of Congress, and these are proposals that create jobs now.

The proposals we support speak largely to the economic challenges faced by Western States. They are also aimed at ruinous regulations and reliance on foreign energy and lawsuit abuse that continues to stifle our entire economy. These bills are ready to pass. They are ready to create jobs today.

Any serious job creation proposal has to start with serious steps to increase affordable American energy. For decades, westerners have worked in high-paying energy jobs, and these jobs have good benefits. Since taking office, the Obama administration has consistently pushed extreme policies and heavy-handed regulations that make it harder to develop American energy. Very simply: Fewer energy projects mean fewer American jobs. Members of the Senate and House western caucuses have proposed a wide range of proposals to increase the number of red, white, and blue jobs all across the country.

Encouraging the development of all-of-the-above energy resources will create thousands of jobs in the West and make our country less dependent on foreign energy. This administration has consistently shut down offshore energy exploration. It has arbitrarily canceled existing leases, and it continues to try to impose additional hurdles to onshore production, such as redundant environmental reviews, burdensome permitting review requirements, and delays in processing of applications.

Our bills—the ones in this report—will streamline the permitting process and break down the barriers imposed by President Obama. This will make it cheaper and easier—cheaper and easier—for the private sector to create jobs.

Westerners recognize we cannot pick and choose which forms of energy to support. When it comes to energy, we need it all, and we need it now. That is why we need a bill that will let energy producers tap existing resources of American oil and natural gas. Our plan has a bill that will do that. It is called the Domestic Jobs, Domestic Energy, and Deficit Reduction Act. It has been introduced by both Representative ROB BISHOP of Utah and Senator DAVID VITTER of Louisiana.

This bill would force the Department of the Interior to stop blocking offshore energy exploration. That department's stall tactics have gone so far that even President Bill Clinton has called them ridiculous. The Domestic Jobs, Domestic Energy, and Deficit Reduction Act would force the Obama administration to quit stalling.

The barrage of new regulations coming out of Washington continues to be a big wet blanket—a big wet blanket—thrown over the job creators in our country. In July of 2011, this administration issued 229 rules, and it finalized 379 additional rules that are going to cost our job creators over $9.5 billion. That is in July alone.

Our plan includes a bill I have introduced, called the Employment Impact Act. This bill forces Washington regulators to look before they leap when it comes to regulations that could hurt American jobs. Under the bill I have introduced, every regulatory agency would be required to prepare a jobs impact statement. They would have to do it with every new rule they propose. That statement would include a detailed assessment of the jobs that would be lost or gained or sent overseas by any given rule. It would consider whether new rules would have a bad impact on our job market in general.

The administration has also attempted to drastically increase wilderness areas, to expand Washington's jurisdiction on private waters, and to misuse the Endangered Species Act.

Western lawmakers are proposing to reassert congressional authority to ensure a proper balance between job creation and conservation. Our bills in this report will increase transparency and stop any administration from issuing regulations without considering the local economic impact.

Throughout our Nation's history, American farmers and ranchers have provided an affordable, abundant, and safe domestic supply of food and energy. In recent years, America's agricultural and forestry industries have been increasingly threatened by the surge of regulations coming from Washington—especially those from the Environmental Protection Agency. Our plan is going to push back. We will strengthen these industries and their ability to meet the world's growing food and energy needs.

Westerners also recognize the mining sector is vital to our economic recovery. We know manufacturing jobs cannot be created without the raw materials needed to produce goods. Since the Obama administration will not break down barriers to American minerals, our Nation is growing increasingly dependent on foreign minerals—countries such as China and Russia. This inaction is unacceptable and it is inexcusable.

Our plan includes Senator MURKOWSKI's bill, the Critical Minerals Policy Act, which will ensure long-term viability of American mineral production. Her bill requires the U.S. Geological Survey to establish a list of minerals critical to the U.S. economy and then provide a comprehensive set of policies to address each economic sector that relies upon those critical minerals. It also creates a high-level interagency working group to optimize the efficiency of permitting in order to facilitate increased exploration and production of domestic critical minerals.

These are just some of the ideas included in our jobs frontier plan. As it says: ''Breaking Down Washington's Barriers to America's Red, White and Blue Jobs.'' We eliminate back-door cap-and-tax regulations. Finally, we will take on excessive lawsuits against Federal agencies that have increased dramatically and destroyed jobs in the West.

Every single one of the bills in the Republican jobs plan has been written and introduced in one or both Houses of Congress. This is a plan that can be implemented now. This is a plan that will work to create jobs. This is a plan that will reduce the cost of energy and restart the economy.

There is a lot that needs to be done to fix our ailing economy. These are some ideas—western ideas—that come from the lawmakers that know best how our rural communities are suffering and how we can get folks back to work. Many of these proposals come from the States. They have the support of our western Governors and legislators. These are ideas not born in Washington.

Recent jobless numbers confirm the current approach from Washington has failed. If the President is serious about incorporating the ideas of every American in every part of the country, then he needs to look beyond Washington.

I thank every Member of the Senate and congressional western caucuses for their work and their expertise on this report. I look forward to turning these ideas into policies and in that way putting all of America back to work.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

AFGHANISTAN AND AID TO PAKISTAN

Mr. KIRK. Mr. President, I want to take some time today to talk about my views on Afghanistan and why we should rethink aid to Pakistan.

I just completed my third 2-week reserve assignment in Afghanistan. While many Members of Congress get a first-hand look at the situation on fact-finding missions, my time provided me a more indepth view, with a focus on the counternarcotics objectives of NATO's ISAF mission.

Now, first, the good news. The work of our soldiers, marines, sailors and airmen is nothing short of amazing. Serving in one of the poorest, roughest, and most remote parts of the globe, they have crushed al-Qaida's training bases, they have driven the Taliban from government, they have fostered a new elected government, and welded 47 allies into a force for human rights, development, and education—especially for girls.

Now, 42 percent of Afghans live on just $1 a day. Only one in four can read. Malnutrition is a serious problem, and infant mortality is the third highest of any country. According to the United Nations, nearly 40 percent of Afghan children under 3 are moderately or severely underweight, and more than 50 percent of children under 3 experience stunted growth. Afghanistan has more than twice the population of Illinois, but its electricity generation for the entire year is less than 2 percent of the electricity generated in Illinois just for the month of May.

The nearly 30 million people of Afghanistan are victimized by a number of terrorist groups beyond just the Taliban, such as the HIG, the ETIM, and a new threat called the Haqqani network, which I will go into detail about. But the Afghans are mostly victimized by their neighbors, the Pakistanis.

I served as a reservist in Afghanistan for the first time in 2008, and I believed then that Pakistan was complicated; that we have many issues there and that we should advance our own interests diplomatically. I no longer agree with that.

Pakistan has now become the main threat to Afghanistan. Pakistan's intelligence service is the biggest danger to the Afghan Government. Pakistan also poses a tremendous threat to the lives of American troops. Let me be clear: Many Americans died in Afghanistan because of Pakistan's ISI.

Sitting in our commander's briefs for 2 weeks and talking to our headquarters' leaders and spending a few days in the field, it became clear to me if we were working in Afghanistan alone we would have had a much better chance to turn that country around more quickly, restoring it to its status as an agricultural economy with a loose government and a high degree of autonomy given to each tribe or region. But we are not alone.

While our military reduced al-Qaida in Afghanistan to a shadow of its former self, a new force is emerging. On the 10th anniversary of 9/11, al-Qaida, I must report, is still armed and dangerous, but it is far less numerous or capable than it once was. But al-Qaida is not the most potent force that is arrayed against us.

The new face of terror is called the Haqqani network. Built around its founder Jalaluddin Haqqani and his son Siraj, it has become the most dangerous, lethal, and cancerous force in Afghanistan.

One other thing. As much as Pakistani officials claim otherwise, the Haqqanis are backed and protected by Pakistan's own intelligence service. Statements by Pakistani Government officials to the contrary are direct lies. The Haqqani network kills Americans, it attacks the elected Government of Afghanistan, and remains protected in its Pakistani headquarters of Miriam Shah. Without that Pakistani safe haven, the Haqqani network would suffer the same fate as al-Qaida. Afghan and U.S. special operations teams take out many Taliban and al-Qaida commanders, and these operators operate each night also against numerous Haqqani leaders. But the Haqqanis are able to spend all day planning attacks on Afghans and Americans and then sleeping soundly in their beds in Pakistan.

In such an environment, with our deficits and debt, military aid to Pakistan seems naive at best and counterproductive at worst. I am seriously thinking we should reconsider assistance to the Pakistani military.

Recently, our President chose to withdraw 33,000 American troops from the Afghan battle. General Petraeus and Admiral Mullen did not choose this option. Nevertheless, I think our new commander, General Allen, can withdraw the first 10,000 American troops by Christmas without suffering a military reversal in Afghanistan. Afghanistan's Army and police are growing in size—now numbering over 300,000—and capability. Despite recent reports of desertions, Afghan security forces will soon reach a level where some of our troops may safely leave the country. As we withdraw, we should consider enablements, such as a pay raise for Afghan troops, to improve their retention and morale.

I spoke with General Allen about a commander's assessment that should be delivered at the end of the year. After withdrawing 10,000 troops, I hope

he will clearly define when the next 23,000 can come out.

In the United States, politically there is little difference between withdrawing at the end of the year and withdrawing at the end of the fiscal year, but militarily there is a world of difference. The fighting season in Afghanistan runs through October. If General Allen is ordered to withdraw his troops by September 30, then many of his forces will disappear during the Taliban's key offensive months. But if the troops leave in November-December, we will guarantee another bad military year for the Taliban and the Haqqanis and an even stronger Afghan Army in the long term.

I hope the President sets an end-of-year deadline rather than an end-of-fiscal-year deadline. It is right to do militarily and politically. If he does this, he reduces the chance of a radical Islamic extremist victory on the Afghan battlefield in 2012.

While in Afghanistan, I worked to help update and rewrite ISAF's counternarcotics plan. Afghanistan is the source of over 80 percent of the world's heroin and opium. The drug economy fuels the insurgency and corruption of the Afghan Government itself. From 2001–09, Secretary Rumsfeld and then-Ambassador Holbrooke blocked ISAF from doing much about narcotics. This left a huge funding source for the insurgency untouched.

ISAF was able to change direction slightly in 2009 and 2010 by supporting interdiction and eradication and alternative livelihoods for Afghan farmers. While commendable, these programs didn't work and the size of the Afghan poppy crop is likely to go up.

The plan I worked on advocates a shift in ISAF to apply its military strength of intelligence, helicopters, and special operations to support Afghan decisions to arrest the top drug lords of Afghanistan, starting with the ones who heavily financially back the insurgency. We joined in 2005 to arrest bin Laden's banker Haji Bashir Noorzai, and we should do it again.

I strongly back the Afghan Counternarcotics Ministry idea to announce a top 10 drug lord list to emulate the early success of J. Edgar Hoover when he established the reputation of the FBI. In our remaining 2 years in Afghanistan, we can do a lot to cripple the insurgency and help the 2014 elections by removing a number of key bad actors from the battlefield.

What about the future? The President says our formal current mission will end in 2014. Much of his vision will be approved at the Chicago NATO summit in May of 2012. By 2014, I believe Afghans will be able to do nearly all of the conventional fighting, with some U.S. special operations support remaining.

But remember, while the Afghan Army is likely to win, its budget for this year is $11 billion. The Afghan Government collected only $1 billion in tax revenue in 2010. We will have to help. Without regular U.S. combat troops, we risk a Taliban-Haqqani-ISI alliance winning unless we do help that Afghan military.

On the 10th anniversary of 9/11, we should all agree that Afghanistan should never become a major threat to American families again. Should Pakistan not change its ways, we can do one other thing: an American tilt toward India, to encourage the world's largest democracy to bankroll an Afghan Government that fights terror and the ISI. Given the outright lying and duplicity of Pakistan, it appears a tilt toward India will allow us to reduce our forces in Afghanistan, knowing India will help bankroll an Afghan Government. This would allow us to reduce our troops while also reducing the possibility of Afghanistan once again becoming a terrorist safe haven.

Pakistanis would object to this pro-Indian outcome, but they will only have their own ISI to blame. September 11 teaches us that neither the United States nor India can tolerate a new formal Afghan terror state. It is too bad Pakistan has chosen to back the losing side—the terrorists—against the Afghan people and the two largest democracies on Earth.

Finally, a word about our troops. Each night they combat the most dangerous narco-insurgents on Earth, and many 19- and 20-year-old Americans volunteer to serve over 7,000 miles from home. Their generation is named after September 11, but these Americans in uniform not only carry their generation's label, they are personally employed in risking their lives to ensure that all Americans will never again witness another September 11.

They are America's best hope, and I hope to God when I am older some of them run for President. From my own nursing home, I know the country would be in good hands if one of these young Americans were to guide our Nation's destiny.

I am lucky to know many of their names. MAJ Fred Tanner, U.S. Army; LT Doug McCobb, Air Force; MG Mick Nicholson, Army; and our allies, Wg Cdr Howard Marsh, Royal Air Force; GEN Renee Martin, French Army; RADM Tony Johnstone-Brute, Royal Navy; and COL Robin Vickers, British Army. I honor them and their younger comrades, wishing all the military personnel of ISAF's 47 nations a very good day as they awake in Afghanistan tomorrow morning for another hard day's work on one of the toughest battlefields in the world.

I yield back.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I wish to talk about an amendment, but also I had one of my colleagues who was sitting in your position as President pro tempore notice an error I made on July 27. Senator WHITEHOUSE questioned my numbers and, in fact, he was right. I said $115 million in regard to the savings on limousines. It was $11.5 million per year, not $115 million. It was $115 million over 10 years. So I wish to stand to put that in the RECORD that I was in error and Senator WHITEHOUSE as a cordial colleague questioned me on it and I thank him for his accountability.

We have before the Senate now a patent bill. There is no question there is a lot of work we need to do on patents. I know the President pro tempore sits on the committee that I do and we have spent a lot of time on this. But I am very concerned, I have to say, about what we are hearing in the Senate about why we wouldn't do the right thing that everybody agrees we should be doing because somebody doesn't want us to do that in the House, and I think it is the worst answer we could ever give the American people.

When we have a 12-percent approval rating, and the Republicans have worse than that, why would we tell the American people we are not going to do the right thing for the right reason at the right time because somebody in the House doesn't want us to and that we are going to say we are not going to put these corrections into a patent bill that are obviously important and we are going to say it is going to kill the bill when, in fact, it is not going to kill the bill? But that is what we use as a rationalization. So let me describe for a minute what has gone on over the years and what has not happened.

The first point I would make is there has not been one oversight hearing of the Patent Office by the Appropriations Committee in either the House or the Senate for 10 years. So they haven't even looked at it. Yet the objection to, and what we are seeing from an appropriations objection is—and even our chairman of our Committee on the Judiciary, who is an appropriator, supports this amendment but isn't going to vote for it because somebody in the House is going to object to it.

But the point is, we have money that people pay every day. From universities to businesses to individual small inventors, they pay significant dollars into the Patent Office. Do you know what has happened with that money this year? Eighty-five million dollars that was paid for by American taxpayers for a patent examination and first looks didn't go to the Patent Office. Yet we have over 1 million patents in process at the Patent Office, and over 700,000 of those haven't ever had their first look.

So when we talk about our economy and we talk about the fact that we want to do what enhances intellectual property in our country—which is one of our greatest assets—and then we don't allow the money that people actually pay for that process to go for that process and we have backlogged for years now patent applications, we have done two things. One is we have limited the intellectual property we can capture. No. 2 is we have allowed people to take those same patents,

when we have limited ability, especially some of our smaller organizations, and patent them elsewhere. So the lack of a timely approach on that is lacking.

The process is broken. Since 1992, almost $1 billion has been taken out of the Patent Office. So we wonder, why in the world is the Patent Office behind?

The Patent Office is behind because we will not allow them to have the funds the American taxpayers who are trying to get ideas and innovations, copyrights, trademarks, and patents done—we will not allow the Patent Office to have the money.

The amendment I am going to be offering—and I have a modification on it that is trying to be cleared on the other side, and I will not actually call up the amendment at this time until I hear whether that has been accepted. The amendment I have says we will no longer divert the money that American businesses, American inventors, American universities pay to the Patent Office to be spent somewhere else; that it has to be spent on clearing their patents.

I ask unanimous consent to have printed in the RECORD—and I will submit a copy at this time—a letter I received August 1 from the head of the Patent Office.

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

UNITED STATES
PATENT AND TRADEMARK OFFICE,
*Alexandria, VA, Aug. 1, 2011.*

Hon. TOM COBURN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR COBURN: Per your request, I am writing today to follow up on our discussion last week regarding United States Patent and Trademark Office (USPTO) funding.

As you know, the House-passed version of the America Invents Act (H.R. 1249) replaces a key funding provision that would have created the USPTO Public Enterprise Fund—effectively sheltering the USPTO from the uncertainties of the appropriations process and ensuring the agency's ability to access and spend all of the fees it collects—with a provision creating the Patent and Trademark Reserve Fund. This provision keeps the USPTO in the current appropriations process, but requires that all fees collected in excess of the annual appropriated amount be deposited into the Reserve Fund, where they will be available to the extent provided for in appropriations acts. In a June 22, 2011 letter to Speaker Boehner, House Appropriations Committee Chairman Rogers committed to ensuring that the Committee on Appropriations carry language providing that all fees collected in excess of the annual appropriated amount would be available until expended only to the USPTO for services in support of fee-paying patent and trademark applicants. I was pleased to see that the fiscal year 2012 appropriations bill reported by the Committee did in fact carry this language.

I would like to reiterate how crucial it is for the USPTO to have access to all of the fees it collects. This year alone, we anticipate that the agency will collect approximately $80 million in fees paid for USPTO services that will not be available for expenditure in performing those services. Quite clearly, since the work for which these fees were paid remains pending at USPTO, at some point in the future we will have to collect more money in order to actually perform the already-paid-for services. If USPTO had received the authority to expend these funds, we would have paid for activities such as overtime to accelerate agency efforts to reduce the backlog of nearly 700,000 patent applications, as well as activities to improve our decaying IT systems, which are a constant drag on efficiency. As history has demonstrated, withholding user fees from USPTO is a recipe for failure. Effecting real reforms at the USPTO requires first and foremost financial sustainability. Ensuring that the agency has consistent access to adequate funding is a key component of achieving this.

Further, the unpredictability of the annual appropriations cycle severely hinders USPTO's ability to engage in the kind of multi-year, business-like planning that is needed to effectively manage a demand-driven, production-based organization. The only way we will be able to effectively implement our multi-year strategic plan, and achieve our goals of reducing the patent backlog and pendency to acceptable levels, is through an ongoing commitment to ensuring the USPTO has full access to its fee collections—not just in fiscal year 2012, but for each and every year beyond FY 2012. Only this assurance will enable the agency to move forward with the confidence that we are basing critical multi-year decisions about staffing levels, IT investment, production, and overtime on an accurate and reliable funding scenario.

Along these lines, if America is to maintain its position as the global leader in innovation, it is essential that American businesses and inventors not suffer the adverse effects of drawn-out continuing resolutions (CR), which have become common in recent years. The constant stops and starts associated with the CR cycle can have disastrous consequences, especially for a fee-based agency with a growing workload, as is the case for USPTO. The challenges presented by the pending patent reform legislation will be particularly difficult to undertake if the agency is not allowed to grow along a steady path to address our increasing requirements. As such, we must be assured that the USPTO will have full access to its fees throughout the year—not just after a full year appropriations act is enacted. Therefore, a commitment to include language in future continuing resolutions that will address the USPTO's unique resource needs is paramount.

As outlined in our Strategic Plan and in our FY 2012 budget submission, USPTO has a multi-year plan in place to reduce patent pendency to 10 months first action and 20 months final action pendency, and to reduce the patent application backlog to 350,000. During the next three to four years, we will continue and accelerate implementation of a series of initiatives to streamline the examination process, including efforts to improve examination efficiency and provide a new, state-of-the-art end-to-end IT system, which will support each examiner's ability to process applications efficiently and effectively.

While efficiency gains are essential, we will not reach our goals without also increasing the capacity of our examination core. As outlined in the FY 2012 budget, we plan to hire an additional 1,000 patent examiners in FY 2012, with another 1,000 examiner hires planned for FY 2013. This added capacity, combined with full overtime, will allow us to bring the backlog and pendency down to an acceptable level.

Let me also be clear that while these enhancements are necessary to allow the USPTO to tackle the current backlog, the agency is not planning to continue growing indefinitely. An important part of our multi-year plan is an eventual moderation of our workforce requirements, once we have achieved a sustainable steady state.

At the same time that USPTO is working to achieve these goals, we will also be working to restructure our fees to ensure that the agency is recovering adequate costs to sustain the organization. Once our fees have been set, we will continually monitor our collections over the next several years to ensure that our operating reserve does not grow to unacceptably high levels at the expense of USPTO's stakeholders.

Thank you again for your support and your superb leadership on this important issue. With the continued commitment of the House and Senate Committees on Appropriations to ensuring the USPTO's ongoing ability to utilize its fee collections, we can put the agency on a path to financial sustainability, and enable it to deliver the services paid for and deserved by American innovators.

Sincerely,

DAVID J. KAPPOS,
*Under Secretary and Director.*

Mr. COBURN. I must tell you that we are so fortunate that we have Director Kappos. We have a true expert in patents, with great knowledge, who has made tremendous strides in making great changes at our Patent Office. But he requires a steady stream of money, and he requires the ability to manage the organization in a way where he can actually accomplish what we have asked him to do.

Frankly, I have spent a lot of time working with the Patent Office—not with everybody else who wants an advantage in the patent system but with the Patent Office—and I am convinced we have great leadership there.

In his letter, he talks about their inability to update their IT because the money is not there because we will not let him have the money—their money, the money from the American taxpayers.

Let me give a corollary. If, in fact, you drive your car into the gas station, you give them $100 for 25 or 28 gallons of gas, and they only give you 12 gallons of gas and they say: Sorry, the Appropriations Committee said you couldn't have all the gas for the money you paid, you would be outraged. If you go to the movie, you pay the fee to go to the movie and you buy a ticket, you walk in, and halfway through the movie they stop the projection and say: Sorry, we are not going to give you the second half of the movie even though you paid for it—inventors in this country have paid the fees to have their patents examined and evaluated and reviewed. Yet we, because of the power struggle, have decided we are not going to let that money go to the Patent Office. The amendment I have says we are going to allow that to happen. If money is paid and it goes into a proper fund that is allocatable only to the Patent Office, it cannot be spent anywhere else and has to go to the Patent Office.

Some of the objections, especially from the House Appropriations Committee, are that there is no oversight.

The reason there is no oversight is because they have not done any oversight and neither have we, so you cannot claim that as an excuse as to why you are afraid. This patent bill will give an authorization for 7 years for the fees. We can change that if we want, but the fact is that we are never going to know if we need to change it if we never do oversight, which we have not done. Nobody has done oversight on patents. I am talking aggressive oversight: What did you start? What was your end? How much did you spend? Where did you spend the money? What is your employee turnover? What is your employee productivity? What should we expect?

None of that has been asked. I believe it is probably pretty good based on the fact that I have a lot of confidence in the management at the Patent Office, especially what I have seen in terms of performance for the last couple of years versus before that, but the fact is that oversight has not been done.

It is not just the Patent Office. It hasn't been done anywhere. Very little oversight has been done by the Senate, and it is one of the biggest legitimate criticisms that can be made of us as a body, that we are lazy in our oversight function. Of the $3.7 trillion that is going to be spent, we are going to have oversight of about $100 billion of the total.

The amendment does a couple of things. Let me kind of detail that for a moment. One of the things is that by returning the money to the Patent Office, the Director thinks he can actually cut the backlog in half. In other words, we have over 700,000 patents that have never been looked at sitting at the Patent Office now, and he believes that in a very short period of time they could cut that to 350,000.

From 1992 through 2011, $900 million has been taken from the PTO. In 2004 Congress diverted $100 million, in 2007 it diverted $12 million, last year it diverted $53 million, and it is $80 million to $85 million that is going to be diverted this year. In 4 years out of the last 10, Congress gave the Patent Office all the money because it was so slow, so lethargic in terms of meeting the needs of inventors. The only thing we have in the current bill is the promise of a Speaker and the promise of a chairman that they will do that. There is nothing in law that forces them to do it. There is nothing that will make sure the money is there. No matter how good we fix the patent system in this country, if there is not the money to implement it, we will not have solved the problems.

In June of 2000, the House debated the PTO funding, and an interesting exchange took place between Representative ROYBAL-ALLARD and Representative ROGERS, who was a cardinal at the time. Representative ALLARD discussed the problem of PTO fee diversion and the need for user fees to pay for the work of the agency. She asked—in the documentation of the CONGRESSIONAL RECORD, she asked Chairman ROGERS if 100 percent of the user fees would go to the PTO, and Mr. ROGERS stated that the fees would not be siphoned off for any other agency or purpose and remain in the account for future years. But according to the PTO, in fiscal year 2000, $121 million was, in fact, diverted. So when we have the chairman of the committee say we should not doubt the word of the Appropriations Committee, yet we have in the RECORD the exact opposite of what the Appropriations Committee said was going to happen, we should be concerned and we should fix it to where the money for patent examination goes for patent examination. So we have a clear record of a statement that says it was not going to happen, and, in fact, $121 million was diverted from the Patent Office.

Finally, from 1992 to 2007, $750 million more in patent and trademark fees was collected than was allowed to be spent by the Patent and Trademark Office. Had they had that money, we would have a backlog of about 100,000 patents right now, not 750,000. We would have intellectual property as a greater value in our country, with greater advantage over our trading partners because that money would have been effectively used.

On July 12, former CBO Director Douglas Holtz-Eakin wrote to Senators REID and MCCONNELL noting:

> The establishment of the Patent and Trademark reserve fund in H.R. 1249 would be ineffective in stopping the diversion of the fees from the U.S. Patent Office.

In other words, what is in this bill now will not stop the diversion of the fees.

Just so people think I am not just picking on one area, this is a bad habit of Congress. It is not just in the Patent and Trademark Office that we tell people to pay a fee to get something done and we steal the money and use it somewhere else. For example, in the Nuclear Waste Fund at the Department of Energy, utility payments by individual consumers pay for a nuclear waste fee. That money has been spent on tons of other things through the years rather than on the collection and management of nuclear waste. To the tune of $25 billion has been spent on other things.

The Securities and Exchange Commission is a fee-based agency. Since the SEC was established, it has collected money via user fees, charged for various transactions in order to cover the cost of its regulation. The primary fees are for sales of stock, registration of a new stock, mergers, tender offers. It also collects fees for penalty fines, for bad behavior. They go into the Treasury's general fund, and amounts collected above the SEC budget were diverted to other government programs.

In 2002, Congress changed the treatment of the fees of the SEC so they would only go to a special appropriation account solely for the SEC. SEC would not have access to the fees, however, should it collect more than its appropriation.

In the Dodd-Frank bill, Congress again changed the treatment of the fees and required some of the fees to go to the General Treasury and others to the reserve fund. As a result, lots of complaints with the SEC, and they still do not have access to their funds. Thus, like the PTO, if Congress chooses not to provide all the funds in the initial appropriation, they will not have them.

In the 2012 budget justification from the Securities and Exchange Commission, they noted it had significant challenges maintaining a staffing level sufficient to carry out its core mission. From 2005 to 2077, SEC had frozen or reduced budgets that forced reduction of 10 percent of their staff and 50 percent of technology investment. What happened in 2007 in this country? What were the problems? So the diversion of the money from the SEC actually contributed to the problems we had in this country. So it does not work.

Finally, one that is my favorite and that I have fought against every year that I have been here is the Crime Victims Fund, and that is a fund where people who are criminals actually have to pay into a fund to do restitution for criminal victims, and we have stolen billions of dollars from that fund. They are not taxes, they are actually restitution moneys, but the Congress has stolen it and spent it on other areas. The morality of that I don't think leads anybody to question that that is wrong.

AMENDMENT NO. 599, AS MODIFIED

Now, if I may, let me call up amendment 599. I ask that the pending amendment be set aside and ask that the amendment be modified with the changes at the desk.

The PRESIDING OFFICER (Mr. SANDERS). Is there objection?

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

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

Is there objection?

Mr. LEAHY. Reserving the right to object, the Senator from Oklahoma knows that the basic thing he is trying to do is something I had supported. As he knows, I put it in the managers' package. He also is aware that my belief is—obviously we disagree—my belief is that the acceptance of his amendment will effectively kill the bill. Even today the leadership in the House told me they would not accept that bill with it. I say this only because tactically it would be to my advantage to object to the amendment. But the distinguished Senator is one of the hardest working members of the Judiciary Committee. He is always there when I need a quorum. Out of respect for him, I will not object.

Mr. COBURN. I thank the Senator for this. This is a minor technical correction.

The PRESIDING OFFICER. Without objection, the clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. COBURN], for himself, Mr. DEMINT, Mrs. FEINSTEIN, Mrs. BOXER, Mr. UDALL of Colorado, Mr. ENZI, and Mr. BURR, proposes an amendment (No. 599), as modified.

The amendment is as follows:

(Purpose: To amend the provision relating to funding the Patent and Trademark Office by establishing a United States Patent and Trademark Office Public Enterprise Fund, and for other purposes)

On page 137, line 1, strike all through page 138, line 9, and insert the following:

**SEC. 22. PATENT AND TRADEMARK OFFICE FUNDING.**

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) DIRECTOR.—The term ''Director'' means the Director of the United States Patent and Trademark Office.

(2) FUND.—The term ''Fund'' means the public enterprise revolving fund established under subsection (c).

(3) OFFICE.—The term ''Office'' means the United States Patent and Trademark Office.

(4) TRADEMARK ACT OF 1946.—The term ''Trademark Act of 1946'' means an Act entitled ''Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the ''Trademark Act of 1946'' or the ''Lanham Act'').

(5) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Commerce for Intellectual Property.

(b) FUNDING.—

(1) IN GENERAL.—Section 42 of title 35, United States Code, is amended—

(A) in subsection (b), by striking ''Patent and Trademark Office Appropriation Account'' and inserting ''United States Patent and Trademark Office Public Enterprise Fund''; and

(B) in subsection (c), in the first sentence—

(i) by striking ''To the extent'' and all that follows through ''fees'' and inserting ''Fees''; and

(ii) by striking ''shall be collected by and shall be available to the Director'' and inserting ''shall be collected by the Director and shall be available until expended''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the later of—

(A) October 1, 2011; or

(B) the first day of the first fiscal year that begins after the date of the enactment of this Act.

(c) USPTO REVOLVING FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund to be known as the ''United States Patent and Trademark Office Public Enterprise Fund''. Any amounts in the Fund shall be available for use by the Director without fiscal year limitation.

(2) DERIVATION OF RESOURCES.—There shall be deposited into the Fund [and recorded as offsetting recipts] on or after the effective date of subsection (b)(1)—

(A) any fees collected under sections 41, 42, and 376 of title 35, United States Code, provided that notwithstanding any other provision of law, if such fees are collected by, and payable to, the Director, the Director shall transfer such amounts to the Fund, provided, however, that no funds collected pursuant to section 9(h) of this Act or section 1(a)(2) of Public Law 111–45 shall be deposited in the Fund; and

(B) any fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113).

(3) EXPENSES.—Amounts deposited into the Fund under paragraph (2) shall be available, without fiscal year limitation, to cover—

(A) all expenses to the extent consistent with the limitation on the use of fees set forth in section 42(c) of title 35, United States Code, including all administrative and operating expenses, determined in the discretion of the Under Secretary to be ordinary and reasonable, incurred by the Under Secretary and the Director for the continued operation of all services, programs, activities, and duties of the Office relating to patents and trademarks, as such services, programs, activities, and duties are described under—

(i) title 35, United States Code; and

(ii) the Trademark Act of 1946; and

(B) all expenses incurred pursuant to any obligation, representation, or other commitment of the Office.

(d) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, the Under Secretary and the Director shall submit a report to Congress which shall—

(1) summarize the operations of the Office for the preceding fiscal year, including financial details and staff levels broken down by each major activity of the Office;

(2) detail the operating plan of the Office, including specific expense and staff needs for the upcoming fiscal year;

(3) describe the long term modernization plans of the Office;

(4) set forth details of any progress towards such modernization plans made in the previous fiscal year; and

(5) include the results of the most recent audit carried out under subsection (f).

(e) ANNUAL SPENDING PLAN.—

(1) IN GENERAL.—Not later than 30 days after the beginning of each fiscal year, the Director shall notify the Committees on Appropriations of both Houses of Congress of the plan for the obligation and expenditure of the total amount of the funds for that fiscal year in accordance with section 605 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109–108; 119 Stat. 2334).

(2) CONTENTS.—Each plan under paragraph (1) shall—

(A) summarize the operations of the Office for the current fiscal year, including financial details and staff levels with respect to major activities; and

(B) detail the operating plan of the Office, including specific expense and staff needs, for the current fiscal year.

(f) AUDIT.—The Under Secretary shall, on an annual basis, provide for an independent audit of the financial statements of the Office. Such audit shall be conducted in accordance with generally acceptable accounting procedures.

(g) BUDGET.—The Fund shall prepare and submit each year to the President a business-type budget in a manner, and before a date, as the President prescribes by regulation for the budget program.

(h) SURCHARGE.—Notwithstanding section 11(i)(1)(B), amounts collected pursuant to the surcharge imposed under section 11(i)(1)(A) shall be credited to the United States Patent and Trademark Office Public Enterprise Fund.

Mr. COBURN. I thank the chairman of the Judiciary Committee. I noted earlier, before I came to the floor, he supported it in principle and we have a difference in principle about what would happen to the bill. This is a minimal technical correction that was recommended to us, and I appreciate the Senator for allowing that to be considered.

Let me spend a moment talking about the chairman and his belief that this will not go anywhere. This is a critical juncture for our country, when we are going to make a decision to not do what is right because somebody is threatening that they do not agree with doing what is right and that they will not receive it. In my life of 63 years, that is how bullies operate, and the way you break a bully is you challenge a bully.

The fact is, I have just recorded into the history of the House the statements by the chairman of the Appropriations Committee in the House in terms of his guarantee for protecting the funds for PTO, which he turned around and took $121 million out of the funds that very same year that he guaranteed on the floor that he wouldn't do. So what I would say is we ought not worry about idle threats. What we ought to be worried about is doing what is best and right for our country. What is best and right is to give the money to the Patent Office that people are paying for so the patents will get approved and our technological innovations will be protected. I don't buy the idea the House is not going to take this if we modify it.

Actually, what 95 percent of the people in this country would agree to is that the Patent Office ought to get the money we are paying for patent fees, just as the FDA should get the money paid by drug companies for new applications, just as the Park Service should put the money for the camping sites—the paid-for camping sites—back into the camping sites. Why would we run away from doing the right thing?

I find it very difficult when we rationalize down doing the correct thing that everybody agrees should be done but we will not do it for the right reasons. That is why we have a 12-percent approval rating. That is why people don't have confidence in Congress—because we walk away from the tough challenges of bullies who say they won't do something if we do what is right. I am not going to live that way. I am not going to be a Senator that way. I am going to stand on the position of principle.

This is a principle with which 95 Senators in this body agree. We are going to have several of our leaders try to get them not to do that on the basis of rationalization to a bully system that says: We will not do the oversight, but we still want to be in control.

In fact, in the process of that, America loses because we have 750,000 patents that are pending right now, and there should only be about 100,000.

The bullies have won in the past, and I am not going to take it anymore. I am going to stand up and challenge it every time. I am going to make the argument that if a person pays a fee for something in this country for the government to do, that money ought to be spent doing what it was paid to the government to do. It is outside of a tax; it is a fee. It is immoral and close

to being criminal to not correctly spend that money from that fee.

If our body decides today we are going to table this amendment, the question the American people have to ask is, Where is the courage in the Senate to do what is best for our country? Why are the Senators here if they are not going to do what is best for the country? Why are they going to play the game of rationalization and extortion on principles that matter so much to our future? I will not do that anymore. Everybody knows this is the right thing to do. We are babysitting some spoiled Members of Congress who don't want to carry out their responsibilities in an honorable way and do the oversight that is necessary. What they want to do is complain that they do not have control.

Well, this bill authorizes funds for 7 years. We can change that number of years. We can actually change the actual amount of fees if, in fact, they are not doing a good job. But right now, as already put in the RECORD, there is no history of significant oversight to the Patent Office, so they would not know in the first place. So what we are asking is to do what is right, what is transparent, what is morally correct and give the Patent Office the opportunity to do for America what it can do for them instead of handcuffing us and handicapping us where we cannot compete on intellectual property in our country.

I have said enough. I will reserve the remainder of my time when I finish talking about one other item.

There is an earmark in this patent bill for The Medicines Company. It ought not be there. This is something that is being adjudicated in the courts right now. Senator SESSIONS has an amendment that would change it. I believe it is inappropriate to specify one company, one situation on a drug that is significant to this country, and we are fixing the wrong problem. We probably would not win that amendment. I think it is something the American people ought to look at and say: Why is this here? Why is something in this big bill that is so important to our country?

I agree with our chairman. He has worked months, if not years, over the last 6 years trying to get to this process, and now we have this put in. We did not have it in ours. The chairman did not have it in ours. It came from the House.

We ought to ask the question Why is it there? Why are we interfering in something that is at the appellate court level right now? Why are we doing that? None of us can feel good about that. None of us can say it is the right thing to do. Why would we tolerate it?

It is this lack of confidence in America; it is about a lack of confidence in us. When people know and find out what has happened here, they are going to ask the question. The powerful and the wealthy advantage themselves at the expense of everybody else. They have access. Those who are lowly, those who are minimal in terms of their material assets do not. It is the type of thing that undermines the confidence we need to have.

I just wanted to say I am a cosponsor of Senator SESSIONS' amendment. I believe he is accurate. I think they have won this in court. It is on appeal. They will probably win it on appeal. This will end up being necessary, and there is a way for us to fix it if, in fact, they lose, if it is appropriate to do that. I believe it is inappropriate at this time.

I yield the floor and reserve the remainder of my time.

Mr. MCCAIN. Mr. President, I rise in support of the Sessions amendment which seeks to remove an egregious example of corporate welfare and blatant earmarking, to benefit a single interest, in the otherwise worthwhile patent reform bill before the Senate. Needed reform of our patent laws should not be diminished nor impaired by inclusion of the shameless special interest provision, dubbed ''The Dog Ate My Homework Act'' that benefits a single drug manufacturer, Medicines & Company, to excuse their failure to follow the drug patent laws on the books for over 20 years.

The President tonight will deliver another speech to tell us that unemployment is too high and that we need to get America back to work to turn around our near stagnant economy. While it may end up being more of the same policies that have not worked for the last 2½ years, I look forward to hearing what he has to say. But, look at what is going on here today, just a couple hours before the President tells us how he proposes to fix the economy, there are 14 million Americans out of work and a full day of the Senate's time is being spent debating a bailout of a prominent law firm and a drug manufacturer. I think the American people would be justified in wondering if they were in some parallel universe.

Patent holders who wish to file an extension of their patent have a 60-day window to make the routine application. There is no ambiguity in this timeframe. In fact, there is no reason to wait until the last day. A patent holder can file an extension application any time within the 60-day period. Indeed, hundreds and hundreds of drug patent extension applications have been filed since the law was enacted. Four have been late. Four!

Why is this provision in the patent reform bill? One reason: special interest lobbying to convince Congress to relieve the company and its law firm from their mistakes. Millions of dollars in branded drug profits are at stake for a single company who will face generic competition much earlier than if a patent extension would have been filed on time.

Let me read from the Wall Street Journal Editorial page today:

> As blunders go, this was big. The loss of patent rights means that generic versions of Angiomax might have been able to hit pharmacies since 2010, costing the Medicines Co. between $500 million and $1 billion in profits.
>
> If only the story ended there.
>
> Instead, the Medicines Co. has mounted a lobbying offensive to get Congress to end run the judicial system. Since 2006, the Medicines Co. has wrangled bill after bill onto the floor of Congress that would change the rules retroactively or give the Patent Office director discretion to accept late filings. One version was so overtly drawn as an earmark that it specified a $65 million penalty for late filing for ''a patent term extension . . . for a drug intended for use in humans that is in the anticoagulant class of drugs.''
>
> . . . no one would pretend the impetus for this measure isn't an insider favor to save $214 million for a Washington law firm and perhaps more for the Medicines Co. There was never a problem to fix here. In a 2006 House Judiciary hearing, the Patent Office noted that of 700 patent applications since 1984, only four had missed the 60-day deadline. No wonder critics are calling it the Dog Ate My Homework Act.

The stakes are also high for patients in our health care system. Let me read an excerpt from the Generic Pharmaceutical Association letter dated July 20, 2011:

> The Medicines Company amendment adopted during House consideration of H.R. 1249 modifies the calculation of the 60-day period to apply for a patent term extension and applies that new definition to ongoing litigation. We are deeply concerned about the precedent of changing the rules of the patent extension process retroactively, which appears to benefit only one company—The Medicines Company, which missed the filing deadline for a patent extension for its patent on the drug Angiomax.
>
> If enacted into law, this provision would change the rules to benefit one company that, by choice, waited until the last minute to file a simple form that hundreds of other companies have filed in a timely manner since the enactment of the Hatch-Waxman Act in 1984. In doing so, the amendment would ultimately cost consumers and the government hundreds of millions of dollars by delaying the entry of safe, affordable generic medications. . . .
>
> The rules and regulations that govern patents and exclusivity pertaining to both generic and brand drugs are important public policy. While it is Congress's prerogative to change or clarify statutory filing deadlines, we strongly urge you to do so in a manner that does not benefit one company's litigating position. GPhA urges you to strike section 37 from H.R. 1249.

Passing the Sessions amendment and removing the provision from the bill is not detrimental to passing the patent reform bill. The bailout provision was not included in the Senate-passed patent bill earlier this year. It was added in the House. The provision can and should be stripped in this vote today. The House can easily re-pass the bill without the bailout provision and send it to the President.

Support the Sessions amendment and send a loud signal to the American public, who are watching what we do, that laws matter and that this kind of business has no place in Congress.

Mr. LEAHY. Mr. President, this is an amendment that can derail and even kill this bill—a bill that would otherwise help our recovering economy, unleash innovation and create the jobs

that are so desperately needed. I have worked for years against Patent Office fee diversion, but oppose this amendment at this time. Its formulation was rejected by the House of Representatives, and there is no reason to believe that the House's position will change. Instead, for ideological purity, this amendment can sink years of effort and destroy the job prospects represented by this bill. So while I oppose fee diversion, I also oppose the Coburn amendment.

I kept my commitment to Senator COBURN and included his preferred language in the managers' amendment which the Senate considered last March. The difference between then and now is that the Republican leadership of the House of Representatives rejected Senator COBURN's formulation. They preserved the principle against fee diversion but changed the language.

The language in the bill is that which the House devised and a bipartisan majority voted to include. It was worked out by the House Republican leadership to satisfy House rules. The provision Senator COBURN had drafted and offers again with his amendment today apparently violates House Rule 21, which prohibits converting discretionary spending into mandatory spending. So instead of a revolving fund, the House established a reserve fund. That was the compromise that the Republican House leadership devised between Chairmen SMITH, ROGERS and RYAN. Yesterday I inserted in the RECORD the June letter for Congressmen ROGERS and RYAN to Chairman SMITH of the House Judiciary Committee. Today I ask consent to insert into the RECORD the commitment letter from Chairman ROGERS to Speaker BOEHNER.

The America Invents Act, as passed by the House, continues to make important improvements to ensure that fees collected by the U.S. Patent and Trademark Office (USPTO) are used for Patent and Trademark Office activities. That office is entirely fee-funded and does not rely on taxpayer dollars. It has been and continues to be subject to annual appropriations bills. That allows Congress greater opportunity for oversight.

The legislation that passed the Senate in March would have taken the Patent and Trademark Office out of the appropriations process, by setting up a revolving fund that would have allowed the office to set fees and collect and spend money without appropriations legislation and congressional oversight. Instead of a revolving fund, the House formulation against fee diversion establishes a separate account for the funds and directs that they be used for U.S. Patent and Trademark Office. The House Appropriations Chairman has committed to abide by that legal framework.

The House forged a compromise. Despite what some around here think, that is the essence of the legislative process. The Founders knew that when they wrote the Constitution and included the Great Compromise. Ideological purity does not lead to legislative enactments. This House compromise can make a difference and make real progress against fee diversion. It is something we can support and there are many, many companies and organizations that do support this final workout in order to get the bill enacted without further delay, as do I.

The America Invents Act, as passed by the House, creates a new Patent and Trademark Fee Reserve Fund (the ''Reserve Fund'') into which all fees collected by the USPTO in excess of the amount appropriated in a fiscal year are to be deposited. Fees in the Reserve Fund may only be used for the operations of the Patent and Trademark Office. Through the creation of the Reserve Fund, as well as the commitment by House appropriators, H.R. 1249 makes important improvements in ensuring that user fees collected for services are used by the Patent and Trademark Office for those services.

Voting for the Coburn amendment is a vote to kill this bill. It could kill the bill over a formality—the difference between a revolving fund and a reserve fund. It would require the House to reconsider the whole bill again. They spent days and weeks working out their compromise in good faith. And it was worked out by the House Republican leadership. There is no reason to think they will reconsider and allow the original Coburn language to violate their rules and avoid oversight. They have already rejected that language, the very language proposed by the Coburn amendment.

We should not kill this bill over this amendment. We should reject the amendment and pass the bill. The time to put aside individual preferences and ideological purity is upon us and we need to legislate. That is what the American people elected us to do and expect us to do. The time to enact this bill is now. Vote no on the Coburn amendment.

I have listened to the Senator from Oklahoma, and no matter what we say about it, his is an amendment that can derail and even kill this bill. He expresses concern as to why the bill should be sought because somebody objects to the bill. I sometimes ask myself that question. Of course, the distinguished Senator from Oklahoma has objected to many items going forward on his own behalf, but this is an amendment that could derail or even kill the bill. This is a bill that would otherwise help our recovering economy to unleash innovation, create the jobs so desperately needed.

I probably worked longer in this body than anybody against Patent Office fee diversion. As the Senator from Oklahoma knows, I put a provision in the managers' package to allow the fees to go to the Patent Office. Now it is a lobby to keep that in in the other body. Its formulation was rejected by the House of Representatives.

There is no reason to believe the House position will change. I checked with both the Republican and Democratic leaders over there. There is no reason to believe their position will change, but we insist on ideological purities—including something I would like. The amendment would take years of effort, destroy the job prospects represented by this bill. While I oppose the fee diversion, I also oppose this amendment.

Does this bill have every single thing in it I want? No. We could write 100 patent reform legislations in this body where each one of us has every single thing we want, and we would have 100 different bills. We only have one. It does not have all the things I like, but that is part of getting legislation passed.

I did keep my commitment to Senator COBURN. I kept his language in the managers' amendment, and I caught a lot for doing that—I am a member of the Appropriations Committee—but I kept it in there. The difference between then and now is that the Republican leadership of the House of Representatives rejected Senator COBURN's formulation. They preserved the principle against fee diversion but changed the language. In doing that, however, it is not a total rejection. They actually tried to work out a compromise. The language of the bill, which the House devised—a bipartisan majority voted to include—was worked out by the House Republican leadership to satisfy the House rules.

The provision that Senator COBURN has drafted and offers, again, with his amendment today apparently violates House rule 21 which prohibits converting discretionary spending into mandatory spending.

What the House did—and actually accomplished what both Senator COBURN and I and others want—instead of a revolving fund was to establish the reserve fund. That was the compromise that the Republican House leadership devised between Chairman SMITH, Chairman ROGERS, and Chairman RYAN.

Yesterday, I inserted into the RECORD the June letter from Congressmen ROGERS and RYAN to Chairman SMITH to the House Judiciary Committee.

I ask unanimous consent to have printed in the RECORD the commitment letter from Chairman ROGERS to Speaker BOEHNER.

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

COMMITTEE ON APPROPRIATIONS,
*Washington, DC, June 22, 2011.*

Hon. JOHN BOEHNER,
*Speaker of the House, House of Representatives, Washington, DC.*

Hon. ERIC CANTOR,
*Majority Leader, House of Representatives, Washington, DC.*

DEAR SPEAKER BOEHNER AND LEADER CANTOR: I write regarding provisions in H.R. 1249, The America Invents Act, affecting funding of the Patent Trademark Office (PTO). Following constructive discussions with Chairman Smith of the Judiciary Committee, this legislation now includes language that will preserve Congress' ''power of

the purse,'' under Article I, Section 9, Clause 7 of the Constitution. The language ensures: the PTO budget remains part of the annual appropriations process; all PTO collected fees will be available only for PTO services and activities in support of the fee paying community; and finally, this important agency will continue to be subject to oversight and accountability by the Congress on an annual basis.

To assure that all fees collected for PTO remain available for PTO services, H.R. 1249 provides that if the actual fees collected by the PTO exceed its appropriation for that fiscal year, the amount would continue to be reserved only for use by the PTO and will be held in a ''Patent Trademark Fee Reserve Fund''.

At the same time, consistent with the language included in H.R. 1249, the Committee on Appropriations will also carry language that will ensure that all fees collected by PTO in excess of its annual appropriated level will be available until expended only to PTO for support services and activities in support of the fee paying community, subject to normal Appropriations Committee oversight and review.

I look forward to working with the relevant stakeholders in efficiently implementing this new process.

I believe this approach will help U.S. innovators remain competitive in today's global economy and this in turn will contribute to significant job creation here in the United States, while holding firm to the funding principles outlined in the Constitution.

Sincerely,

HAROLD ROGERS,
*Chairman, House Committee on Appropriations.*

Mr. LEAHY. I would note that it has been suggested somehow the Appropriations chairman is not going to keep his word. Well, Chairman ROGERS is a Republican. I have worked with him a lot. He has always kept his word to me, just as we have the most decorated veteran of our military serving in either body as chairman of the Senate Appropriations Committee, the only Medal of Honor recipient now serving, Senator INOUYE. Both he and the ranking Republican, Senator COCHRAN, have always kept their word to me certainly in more than the third of a century I have served on that committee.

The America Invents Act, as passed by the House, continues to make important improvements. It ensures the fees collected by the U.S. Patent and Trademark Office are used for Patent and Trademark Office activities. The one thing in there is that we in the Congress at least have a chance to make sure they are using it the way they are supposed to.

The office is entirely fee funded. It does not rely on taxpayer dollars. It has been and continues to be subject to the annual appropriations bill which allows the oversight that we are elected and paid for by the American people to do.

The legislation we passed in March would have taken the Patent Trademark Office out of the appropriations process by setting up a revolving fund. Instead of a revolving fund, the House formulation against fee diversion established a separate account and directs that account be used only by the U.S. Patent and Trademark Office. The House Appropriations chairman is committed to abide by that legal framework. The Speaker is committed to that. The House forged a compromise. That is the essence of the legislative process.

The Founders knew when they wrote the Constitution to include the Great Compromise. Ideological purity does not lead to legislative enactments. Ideological purity does not lead to legislative enactments.

The House compromise can make a difference. It made real progress against fee diversion, which is something we can support. There are many companies and organizations that do support this in order to get the bill enacted without delay. After 6½ years, let's not delay any more.

This is going to create jobs. We have 600,000 to 700,000 patents sitting there waiting to be processed. Let's get on with it. For all of these fees and the reserve fund can only be used for the operations of the Patent and Trademark Office. I don't know what more we can do. But I would say I am perfectly willing to accept what the House did because it assures that the fees go to the Patent Office.

I am also well aware that voting for this amendment kills the bill. It could kill the bill over a formality—the difference between a reserve fund and a revolving fund.

I think the House Republican leadership worked out their compromise in good conscience, and I agree with it.

The U.S. Patent and Trademark Office is funded entirely by user fees, and the Leahy-Smith America Invents Act will ensure the PTO has access to the fees it collects. We have heard from a number of organizations which agree with that, and I ask unanimous consent that a sample of these letters from the Business Software Alliance, the Small Business and Entrepreneurship Council, DuPont, and other financial organizations be printed in the RECORD.

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

BUSINESS SOFTWARE ALLIANCE,
*June 29, 2011.*

Hon. HARRY REID,
*Majority Leader,*
*Washington, DC.*
Hon. MITCH MCCONNELL,
*Minority Leader,*
*Washington, DC.*

DEAR SENATOR REID AND SENATOR MCCONNELL: We urge you to bring H.R. 1249 to the Senate floor as soon as the Senate's schedule permits.

The Business Software Alliance (BSA) strongly supports modernizing our patent system. An efficient and well-operating patent system is necessary to promote healthy and dynamic innovation. Innovation is critically important to software and computer companies' ability to provide new and better tools and technologies to consumers and customers.

BSA member companies believe H.R. 1249 establishes a transparent and efficient patent system. It will make the Patent and Trademark Office more accessible and useful to all inventors, large and small. In addition, the provisions of H.R. 1249 on Patent and Trademark Office funding will ensure that the user fees paid to the USPTO will be available to the Office for processing patent applications and other important functions of the Office.

H.R. 1249 and S. 23 are the products of many years of skillful and difficult legislative work in both the House and the Senate. H.R. 1249 represents a thoughtful and balanced compromise that is endorsed by virtually all stakeholders. We urge the Senate to adopt H.R. 1249 as acted upon by the House and pass it without amendment as soon as possible.

Sincerely,

ROBERT W. HOLLEYMAN,
*President and CEO.*

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SBE COUNCIL,
*Oakton, VA, June 29, 2011.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: The Small Business & Entrepreneurship Council (SBE Council) has been a leading advocate for patent reform within the small business community, and we urge you to work with the leadership of the Senate to bring the America Invents Act (H.R. 1249) to the Senate floor for approval.

H.R. 1249 would improve the patent system in key ways. For example, the U.S. patent system would be brought in step with the rest of the world. The U.S. grants patents on a first-to-invent basis, rather than the first-inventor-to-file system that the rest of the world follows. First-to-invent is inherently ambiguous and costly, and that's bad news for small businesses and individual inventors.

A shift to a ''first-inventor-to-file'' system creates greater certainty for patents, and amounts to a far simpler and more transparent system that would reduce costs in the rare cases when conflict exists over who has the right to a patent. By moving to a first-inventor-to-file system, small firms will in no way be disadvantaged, as some claim, while opportunities in international markets will expand.

In addition, an Associated Press report, for example, noted ''that it takes an average of three years to get a patent approved and that the agency has a backlog of 1.2 million pending patents, including more than 700,000 that haven't reached an examiner's desk.'' Part of the problem here is that revenues from patent fees can be drained off by Congress to be spent elsewhere.

The agreement reached in the House on USPTO funding will assure that the fees paid to the USPTO by inventors will not be diverted elsewhere, but instead be made available for processing patent applications. While the Senate's approach in S. 23 to prevent diversion of USPTO funds would have been a better choice, the House bill still provides an effective option.

Patent reform is needed to clarify and simplify the system; to properly protect legitimate patents; and to reduce costs in the system, including when it comes to litigation and the international marketplace. All of this, of course, would aid small businesses and the overall economy.

H.R. 1249, like S. 23, is a solid bill, and the opportunity for long overdue and much-needed patent reform should not be lost.

Thank you for considering the views of the small business community. Please feel free to contact SBE Council with questions or if we can be of assistance on this important issue for small businesses.

Sincerely,

KAREN KERRIGAN.
*President & CEO.*

DUPONT,
*Wilmington, DE, July 6, 2011.*

Hon. PATRICK J. LEAHY,
*Chairman, Committee on the Judiciary, Washington, DC.*
Hon. CHARLES E. GRASSLEY,
*Ranking Member, Committee on the Judiciary, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: As a world leader in science and innovation, including agriculture and industrial biotechnology, chemistry, biology, materials science and manufacturing, DuPont recognizes the nation's patent system is a cornerstone in fostering innovation and creating jobs. Patents continue to be one of the engines for innovation and a process for discovery that leads to rich, new offerings for our customers and gives our company the edge to continue transforming markets and society. Our stake in the patent system is significant—in 2010, DuPont filed over 2,000 patent applications and was awarded almost 700 U.S. patents. Given the importance of its patents, DuPont has been a strong supporter of efforts to implement patent reform legislation that will improve patent quality and give the U.S. Patent and Trademark Office the resources it needs to examine and grant patents in a timely manner.

We believe that any changes to the patent system need to be made in a way that strengthens patents and supports the important goals of fostering innovation and creating jobs. In our view, the Leahy-Smith America Invents Act, H.R. 1249, achieves these objectives, and we urge you to consider adoption of this bill.

The agreement reached in the House on USPTO funding will assure that the fees paid to the USPTO by inventors will not be diverted and will be made available to the Office for processing patent applications and other important functions of the Office. While we would have preferred the Senate's approach in S. 23 to prevent diversion of USPTO funds, we believe that acceptance of the House bill provides an effective and the most immediate path forward to address problems of the patent office. H.R. 1249, like S. 23, is an excellent bill. These bills are the product of many years of skillful and difficult legislative work in both the House and the Senate. We believe the time has now come for the Senate to take the final legislative act required for enactment of these historic reforms.

We look forward to patent reform becoming a reality in the 112th Congress, due in significant measure to your leadership, and we thank you for your efforts in this critical policy area.

Very truly yours,

P. MICHAEL WALKER,
*Vice President, Assistant General Counsel and Chief Intellectual Property Counsel.*

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JUNE 29, 2011.

Hon. HARRY REID,
*Majority Leader, U.S. Senate, Washington, DC.*
Hon. MITCH MCCONNELL,
*Republican Leader, U.S. Senate, Washington, DC.*

DEAR LEADERS REID AND MCCONNELL: We are writing to encourage you to bring H.R. 1249, the ''Leahy-Smith America Invents Act,'' to the Senate floor at your earliest possible convenience and send the bill to the President's desk to be signed into law. H.R. 1249 closely mirrors the Senate bill that passed earlier this year by an overwhelming 95–5 vote.

Patent reform is essential legislation: enactment will spur innovation creating jobs and ensure that the Patent and Trademark Office (PTO) has the tools necessary to maintain our patent system as the best in the world. We strongly support the improved reexamination procedures in H.R. 1249, which will allow the experts at PTO to review low-quality business-method patents against the best prior art. Equally important, the bill provides the PTO with increased and predictable funding. This certainty is absolutely critical if the PTO is to properly allocate resources and hire and retain the expertise necessary to benefit the entire user-community.

This bill has been nearly a decade in the making and is supported by a vast cross-section of all types of inventors and businesses. It is time to send patent reform to the President for signature, and we strongly encourage the Senate to take up and pass H.R. 1249 without delay.

Sincerely,

American Bankers Association, American Council of Life Insurers, American Financial Services Association, American Insurance Association, The Clearing House Association, Consumer Bankers Association, Credit Union National Association, The Financial Services Roundtable, The Independent Community Bankers of America, Mortgage Bankers Association, National Association of Mutual Insurance Companies, Property Casualty Insurers Association of America, Securities Industry and Financial Markets Association.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be allowed to reserve the remainder of my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. COBURN. 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. COBURN. Mr. President, I wish to respond to my chairman's comments. First of all, what we have proposed came out of the Judiciary Committee in the House 32 to 3. In other words, only three people on the Judiciary Committee in the House objected to this.

The other point I wish to make is the letter from Chairman ROGERS does not bind the next Appropriations Committee chairman. I think everybody would agree with that. It only binds him and it only binds him as long as he honors his commitment. I have no doubt he will honor his commitment as long as he is chairman.

The third point I wish to make is what the House has set up doesn't make sure the funds go to the PTO, it just means they can't go somewhere else. That is what they have set up. They do not have to allow all the funds collected to go to the PTO. So they can reserve $200 million or $300 million a year and put it over there in a reserve fund and send it to the Treasury which will cause us to borrow less, but the money won't necessarily go to the PTO. There is nothing that mandates the fees collected go to the Patent and Trademark Office.

I understand my chairman. I understand his frustration with trying to get this bill through, and I understand that he sees this as a compromise. I don't. I understand we are going to differ on that and agree to disagree.

With that, I yield the floor to allow the chairman to speak, and I reserve the remainder of my time.

Mr. LEAHY. I thank the Senator. I reserve the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

FLOODING IN VERMONT

Mr. SANDERS. Mr. President, I wish to pick up on a point the senior Senator from Vermont made earlier today. Both he and I have had the opportunity to travel throughout the State of Vermont to visit many of our towns which have been devastated by one of the worst natural disasters in our State's history.

We have seen in the southern part of the State—in Wilmington, for example—the entire business district severely damaged. I have seen in central Vermont a mobile home park almost completely wiped out, with people who are in their eighties and are now having to look to find new places in which to live. I have seen a public housing project for seniors in Brattleboro severely damaged. A lot of seniors there are now having to find new places to live. We have seen the State office complex in Waterbury—the largest State office building in the State, housing 1,700 Vermont workers, the nerve center of the State—devastated. Nobody is at work there today.

We have seen hundreds of bridges and roads destroyed, and right now, as we speak, there are rains coming in the southern part of the State, causing more flooding, more damage. We have seen a wonderful gentleman from Rutland lose his life because he was doing his job to make sure the people of that area were protected. So we have seen damage the likes of which we have never seen in our lifetime.

What I would say—and I know I speak for the senior Senator from Vermont as well—is that our country is the United States of America—the United States of America. What that means is we are a nation such that when disaster strikes in Louisiana or Mississippi in terms of Hurricane Katrina—I know the Presiding Officer remembers the outpouring of support from Vermont for the people in that region. All of our hearts went out to the people in Joplin, MO, when that community suffered an incredible tornado that took 150 or so lives and devastated that city. What America is about and what a nation is about is that when disaster hits one part of the country, we unite as a nation to give support to

help those communities, those businesses, those homeowners who have been hurt get back on their feet.

I know the senior Senator from Vermont has made this point many times: Right now we are spending billions of dollars rebuilding communities in Afghanistan and Iraq. Well, I think I speak for the vast majority of the people in this country and in my State of Vermont that if we can spend billions rebuilding communities in Iraq and Afghanistan, we surely can rebuild communities in Vermont, New Jersey, North Carolina, and other parts of the United States of America that have been devastated by Hurricane Irene.

I think as a body, as a Congress, the House and Senate have to work as expeditiously as we can to come up with the funds to help rebuild all of the communities that have been so severely damaged by this terrible flood. I look forward to working with my colleagues to make that happen.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, when the America Invents Act was first considered by the Senate last March, I spoke about the contributions Vermonters have made to innovation in America since the founding of our Nation. The distinguished Presiding Officer and I know about what Vermont has done. I wish to remind everybody that from the first patent ever issued by our government to cutting-edge research and inventions produced today Vermonters have been at the forefront of innovation since the Nation's birth.

Many may think of our Green Mountain State as being an unlikely hotbed of innovation, but we have actually over the last few years issued the most patents per capita of any State in the country—actually more patents than a lot of States that are larger than we are. It is a small State, to be sure, but it is one that is bursting with creativity.

The rich history of the inventive spirit of Vermont is long and diverse. Vermonters throughout have pursued innovations from the time of the Industrial Revolution to the computer age. Vermont inventors discovered new ways to weigh large objects as well as ways to enjoy the outdoors. They have perfected new ways to traverse rivers and more environmentally friendly ways to live in our homes. Over the years, as America has grown and prospered, Vermont's innovative and creative spirit has made the lives of all Americans better and possibly made them more productive. The patent system in this country has been the catalyst that spurred these inventors to take the risks necessary to bring these ideas to the marketplace.

The story of innovation in Vermont is truly the American story. It has been driven by independent inventors and small businesses taking chances on new ideas. A strong patent system allowed these ideas to flourish and brought our country unprecedented economic growth. These same kinds of inventors exist in Vermont today, as they do throughout our great country.

But these inventors need to be assured that the patent system that served those who came before them so well can do the same today. The America Invents Act will provide that assurance for years to come.

My distinguished colleague from Vermont and I have both spoken several times on the Senate floor since the Senate came back in session about the devastation in Vermont. I cannot help but think of the devastation that Irene has caused in so many of our communities at home. Just as Senator SANDERS and Congressman WELCH and Governor Shumlin, I have seen the damage and heartbreak firsthand. But I also saw the fruits of innovation that will help bring recovery to communities throughout Vermont: the heavy machinery that helped to clear debris and that will build our roads and our bridges and our homes; the helicopters that brought food and water to stranded residents; and the bottles that allowed safe drinking water to reach them.

The American patent system has helped to develop and refine countless technologies that drive our country in times of prosperity but also in times of tragedy. It is critical we ensure that this system remains the best in the world.

Vermont and the rest of the country deserve the world's best patent system. The innovators of the past had exactly that, but we can ensure that the innovators who are among us today and those who will come in succeeding generations will have it as well by passing the America Invents Act.

I am proud of the inventive contributions that Vermonters have made since the founding of this country. I hope to honor their legacy. I hope to inspire the next generation by securing the passage of this legislation.

I have been here for a number of years, but this is one of those historic moments. The patent system is one of the few things enshrined in our Constitution, but it is also something that has not been updated for over half a century. We can do that. We can do that today with our vote. We can complete this bill. We can send it to the President. The President has assured me he will sign it. We will make America stronger. We will create jobs. We will have a better system. And it will not cost American taxpayers anything. That is something we ought to do.

Mr. President, the America Invents Act is supported by dozens of businesses and organizations, large and small, active in all 50 States.

The America Invents Act is the product of more than 6 years of debate and compromise. The stakeholders have crossed the spectrum—from small businesses to high-tech companies; financial institutions to labor organizations; life sciences to bar associations.

More than 180 companies, associations, and organizations have endorsed the Leahy-Smith America Invents Act. I ask unanimous consent that a list of these supporters be printed in the RECORD.

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

LIST OF SUPPORTERS OF THE AMERICA INVENTS ACT

3M; Abbott Adobe Systems Incorporated; Advanced Micro Devices; Air Liquide; Air Products; American Bar Association; American Bankers Association; American Council of Life Insurers; American Council on Education; American Financial Services Association; American Institute of Certified Public Accountants; American Insurance Association; American Intellectual Property Law Association; American Trucking Association; Apple, Inc.; Applied Materials, Inc.; Aruba Networks, Inc.; Assoc. for Competitive Technology; Assoc. of American Medical Colleges.

Association of American Universities; Association of Public and Land-grant Universities; Association of University Technology Managers; AstraZeneca; Atheros Communications, Inc.; Autodesk, Inc.; Avaya Inc.; Avid Technology, Inc.; Bank of America; Baxter Healthcare Corporation; Beckman Coulter; Biotechnology Industry Organization; Borealis Ventures; Boston Scientific; BP; Bridgestone American Holdings, Inc.; Bristol-Meyers Squibb; Business Software Alliance; CA, Inc.; Cadence Design Systems, Inc.; California Healthcare Institute.

Capital One; Cardinal Intellectual Property; Cargill, Inc.; Caterpillar; Charter Communications; CheckFree; Cisco Systems Citigroup; The Clearing House Association; Coalition for Patent and Trademark Information Distribution; Collexis Holdings, Inc.; Computer & Communications Ind. Assoc.; Computing Technology Industry Association; Consumer Bankers Association; Corning; Council on Government Relations; Courion; Credit Union National Association; Cummins, Inc.; Dell; The Dow Chemical Company.

DuPont; Eastman Chemical Company; Eastman Kodak; eBay Inc.; Electronics for Imaging; Eli Lilly and Company; EMC Corporation; EnerNOC; ExxonMobil; Facebook; Fidelity Investments; Financial Planning Association; FotoTime; General Electric; General Mills; Genzyme; GlaxoSmithKline; Google Inc.; Hampton Roads Technology Council; Henkel Corporation.

Hoffman-LaRoche; HSBC North America; Huntington National Bank; IAC; IBM; Illinois Technology Association; Illinois Tool Works; Independent Community Bankers of America; Independent Inventors; Infineon Technologies; Information Technology Council; Integrated DNA Technologies; Intel; Intellectual Property Owners Association; International Trademark Association; International Intellectual Property Institute; Intuit, Inc.; Iron Mountain; Johnson & Johnson; Kalido.

Lexmark International, Inc. Logitech, Inc.; Massachusetts Technology Leadership Council; Medtronic; Merck & Co, Inc.; Micron Technology, Inc.; Microsoft; Millennium

Pharmaceuticals; Milliken and Company; Molecular; Monster.com; Motorola; Mortgage Bankers Association; National Association of Federal Credit Unions; National Association of Manufacturers; National Assoc. of Mutual Insurance Cos.; National Association of Realtors; National Semiconductor Corporation; National Retail Federation; National Treasury Employees Union; Native American IP Enterprise Council; Net Coalition; Netflix, Inc.; Network Appliance, Inc.; Newegg Inc.; News Corporation; Northrop Grumman; Novartis; Numenta, Inc.; Nvidia OpenAir, Inc.; Oracle; Overstock.com; Partnership for New York City; Patent Cafe.com, Inc.; PepsiCo, Inc.; Pfizer; PhRMA; Procter & Gamble Company; Property Casualty Insurers Association of America; Red Hat.

Reed Elsevier Inc.; RIM; Salesforce.com, Inc.; SanDisk Corporation; San Jose Silicon Valley Chamber of Commerce; SAP America, Inc.; SAS Institute; Seagate Technology, LLC; Sebit, LLC; Securities Industry & Financial Markets Association; SkillSoft; Small Business and Entrepreneurship Council; Software Information and Industry Association; Sun Microsystems, Inc.; Symantec Corporation; Tax Justice Network USA; TECHQuest Pennsylvania; Teradata Corporation; Texas Instruments; Texas Society of CPAs.

The Financial Services Roundtable; Toyota Trimble Navigation Limited; The United Inventors Association of America; United Steelworkers; United Technologies; U.S. Chamber of Commerce; USG Corporation; VeriSign Inc.; Verizon; Visa Inc.; Visi-Trak Worldwide, LLC; VMware, Inc.; Vuze, Inc.; Western Digital Technologies, Inc.; Weyerhaeuser; Yahoo! Inc.; Ze-gen; Zimmer; ZSL, Inc.

Mr. LEAHY. I yield the floor.

I suggest the absence of a quorum.

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

The assistant bill clerk proceeded to call the roll.

Mr. KERRY. 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. KERRY. Madam President, regarding the parliamentary situation, how much time remains for Senator CANTWELL?

The PRESIDING OFFICER. Thirteen minutes remains.

Mr. KERRY. It is my understanding that Senator CANTWELL wants to preserve a component of that, so I would, on behalf of Senator CANTWELL, yield myself 5 minutes at this time.

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

AMENDMENT NO. 600

Mr. KERRY. Madam President, I appreciate the comments of our friend from Alabama, Senator SESSIONS, regarding his amendment to strike section 37 of the patent reform bill, but I disagree with him on substantive terms, and I ask our colleagues to look carefully at the substance of this amendment and the importance of this amendment with respect to precedent not for one company from Massachusetts or for one entity but for companies all over the country and for the application of patent law as it ought to be applied.

The only thing section 37 does—the only thing—is it codifies what a Federal district court has already said and implements what the U.S. Patent and Trademark Office is already doing. There is no breaking of new ground here. This is codifying a Federal district court, codifying what the Patent Office has done, and, in fact, codifying common sense. It is putting into effect what is the right decision with respect to how we treat patents in our country.

Section 37 is, in fact, a very important clarification of a currently confusing deadline for filing patent term extension applications under the Hatch-Waxman Act. Frankly, this is a clarification, I would say to the Senator from Alabama, that benefits everybody in the country. In fact, this is a clarification which has already been put into effect for other types of patents that were once upon a time treated with the same anomaly. They rectified that. They haven't rectified it with respect to this particular section of patent law.

So all we are doing is conforming to appropriate law, conforming to the standards the Patent Office applies, and conforming for all companies in the country, for any company that might be affected similarly. If this were a bailout for a single firm or a pharmaceutical company, as some have tried to suggest it might be, why in the world did a similar provision previously get reported out of the Senate Judiciary Committee by a vote of 14 to 2? How in the world could this provision have then passed the House of Representatives as it did? And why would many House Republicans have supported it as they did? The answer is very simple: Because it is the right thing to do under the law and under the common sense of how we want patents treated in the filing process.

The law as currently written, frankly, was being wrongly applied by the Patent and Trademark Office. And you don't have to take my word for that; that is what a Federal court has said on more than one occasion. Each time, the court has ruled that it was the Patent and Trademark Office, not an individual firm called WilmerHale or Medicines Company—not those two—that made a mistake.

Let me make that very clear so the record is as clear as it can be. The current law as it is written says that "to obtain an extension of the term of a patent under this section, the owner of record of the patent or its agent shall submit an application to the Director. . . . Such an application may be only submitted within the sixty-day period beginning on the date the product received permission" under the appropriate provision of law.

Now, the FDA reasonably interprets this language to mean that if something is received after the close of business on a given business day, it is deemed to be received the next business day. Under this interpretation, the filing by the Medicines Company was indisputably timely.

So my colleagues should not come to the floor and take away from entities that are trying to compete and be in the marketplace over some technicality: the suggestion that because something was filed electronically on a particular given day at 5 o'clock in the afternoon when people had gone home—they weren't open—that somehow they deem that not to have been appropriately filed.

But rather than accept that commonsense interpretation, the Patent and Trademark Office told the Medicines Company it was late. They just decided that. They said: You are late, despite the fact that interpretation contradicted the same-business-day rule the FDA uses when interpreting the very same statute. So as a result, the issue went to court, and guess what. The court told the PTO it was wrong. A Federal judge found that the Patent Office and FDA had been applying inconsistent interpretations of the exact same statutory language in the Hatch-Waxman Act. The FDA uses one interpretation that has the effect of extending its own internal deadlines, but the PTO insisted on using a different interpretation. The result was a "heads I win, tails you lose."

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

Mr. KERRY. Madam President, I ask unanimous consent to speak for 1 additional minute.

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

Mr. KERRY. For companies investing in innovative medicines, the court found that the PTO failed to provide any plausible explanation for this inconsistent approach. It further found that the PTO's interpretation had the effect of depriving applicants of a portion of their time for filing an application.

After considering all the relevant factors, the court adopted the FDA's interpretation. So the court told the PTO that they were wrong and it was they, and not the Medicines Company, who made a mistake.

So this is not an earmark. It isn't, as Senator SESSIONS contends, a single-company bailout. It is a codification of a court ruling. It is a clarification. It is common sense. It puts a sensible court decision into legislative language, and it is legislative language that applies to all companies across the country equally. It doesn't single out any particular company but amends the patent law for the benefit of all applicants.

I ask my colleagues to oppose the Sessions amendment on the merits. More importantly, we need to move forward with this important bill on which Chairman LEAHY and Senator GRASSLEY have worked so hard. Passing the Sessions amendment would stop that. It would require a House-Senate conference on the bill, and it would at best seriously delay and at worst make it impossible to exact patent reform during this Congress. So

this is, on the merits, for all companies. This is common sense. This is current law. This is current practice. So I ask my colleagues accordingly to vote appropriately.

Madam President, I ask unanimous consent that at 4 p.m. the Senate proceed to the votes in relation to the amendments and passage of H.R. 1249, the America Invents Act, with all other provisions of the previous order remaining in effect; that the final 10 minutes of debate be equally divided between the chairman and ranking member of the Judiciary Committee or their designees, with the chairman controlling the final 5 minutes; further, that there be 4 minutes equally divided between proponents and opponents prior to each vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KERRY. Madam President, I reserve the remainder of Senator CANTWELL's time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. May I inquire of the Chair how much time remains for me to speak before getting to the last order?

The PRESIDING OFFICER. There is 4½ minutes remaining.

TEXAS WILDFIRES

Mr. CORNYN. Madam President, I wish to speak for about 4½ minutes on the natural disasters that have been confronting our Nation and in particular Texas, where the State has had about 3½ million acres of land burned, with many people now finding themselves literally homeless as a result of fires that many of my colleagues have seen on TV or watched on the Internet but which, frankly, do not capture the scale of the devastation.

Just to give you an idea of the scope of this natural disaster, so far, in 2011, more than 18,000 wildfires have been reported in the State. As I mentioned, it has burned an area roughly the size of Connecticut. Nearly 2,900 structures have been lost and, unfortunately, there has also been a loss of life in these fires, as well as 5,000 Texans have now been evacuated from their homes. Unfortunately, these fires have been a feature of life in parts of Texas for most of the year because we are in the middle of a historic drought where, because of La Nina, the weather pattern, we have had an abnormally dry year, and, indeed, it has caused more than $5 billion of agricultural losses alone as a result of that drought.

I have not only seen some of the devastation myself before I left Austin, but I have also talked to a number of people on the ground who are well informed.

Representative Tim Kleinschmidt, who represents the Texas district east of Austin in sort of the Bastrop area, told me that as many as 1,000 people have been evacuated from their homes in that area and have been living in shelters since Sunday. Water and electricity are also down in many areas, and the wind has unfortunately swept the fire into other areas and now is only about 30 percent contained.

I have also talked to some of our other local leaders, our county judges, such as Grimes County judge Betty Shiflett, who told me that while they have no unmet needs right now, they are very concerned about the threat to life and property and are working as hard as they can to contain the fires.

I have also talked to our outstanding chief of the Texas Department of Emergency Management and the Director of the Texas Forest Service who tell me that as many as 2,000 Americans from places other than Texas have come to the State to help fight these fires and help protect property and life.

We have had a good Federal response to one extent, and that is the U.S. Forest Service has provided planes, bulldozers, and other equipment. Unfortunately, we have seen the White House so far not extend the disaster declaration beyond the original 52 counties approved for FEMA assistance on May 3. I should say that assistance ran out on May 3, more than 4 months ago. Suffice it to say, the disaster declaration should be extended to cover the rest of the State, at least 200 more Texas counties that need Federal assistance.

I am informed from reading the newspaper that President Obama reached out to Governor Perry yesterday to extend his condolences. But, frankly, more than condolences, what we need are the resources to help fight these fires to deal with the disaster and to help get people back into their homes as soon as possible.

I would just say in conclusion, Madam President, that the majority leader has raised the question of whether disaster relief should be paid for or whether it should be borrowed money. I come down on the side of believing that we can't keep borrowing money we don't have. That is what the American people keep telling us. That is what the last election was all about. That is what the financial markets are telling us, and I believe the American people believe we have plenty of money in the Federal Government for Congress to do its job by setting priorities and funding those priorities.

I believe emergency assistance to the people who have been hit hardest by these natural disasters is one of those priorities. We should fund it instead of funding wasteful spending and duplicative programs and engaging in failed Keynesian stimulus schemes.

I yield the floor.

SECTION 5

Mr. BLUNT. Madam President, a significant change contained in H.R. 1249 from S. 23, the version of the bill debated and overwhelmingly passed by the Senate earlier this year, is the inclusion of the defense of prior commercial use against infringement of a later granted patent. Specifically, section 5 of H.R. 1249 creates a prior user right for processes, or machines, or compositions of matter used in a manufacturing or other commercial process, that would otherwise infringe a claimed invention if: (1) the person commercially used the subject matter in the United States, either in connection with an internal commercial use or an actual arm's length sale or other arm's length commercial transfer of a useful end result of such commercial use; and (2) the commercial use occurred at least one year before the earlier of either the effective filing date of the claimed invention or the date on which the claimed invention was disclosed to the public in a manner that qualified as an exception from prior art.

As the distinguished chairman of the Committee on the Judiciary knows, such prior user rights, if properly crafted and understood, can be of great benefit to keeping high paying jobs in this country by giving U.S. companies a realistic option of keeping internally used technologies as trade secrets.

Mr. LEAHY. Madam President, my colleague and friend from Missouri is correct Prior user rights, if properly crafted and asserted, can be of great benefit to keeping high-paying jobs here at home.

Mr. BLUNT. I thank my good friend. A robust prior user right is not needed in today's first-to-invent regime. This is because, if a prior-user was sued for infringement, the patent could be invalidated under section 102(g)(2) because the prior-user was the first-to-invent. However, should H.R. 1249's first-to-file system become law, the prior invention bar to patentability under section 102(g)(2) will be eliminated. This switch to first-to-file then presents the question of whether a non-patent-filing manufacturer should be given some prior user rights that would continue to allow these non-patented internal uses. Section 5 of H.R. 1249 attempts to settle the question by granting prior user rights but only when the prior use is for certain ''commercial'' uses.

The prior user rights provided under section 5 of H.R. 1249 will allow developers of innovative technologies to keep internally used technologies in-house without publication in a patent. This will help U.S. industry to keep jobs at home and provide a basis for restoring and maintaining a technology competitive edge for the U.S. economy. For these reasons, I believe the Senate should support this valuable addition to the America Invents Act and I applaud the leadership of my friend from Vermont.

Mr. LEAHY. I thank the Senator.

Mr. BLUNT. However, as noted a moment ago, the utility of the prior user defense is linked to its clarity surrounding its scope and its limitations. Many innovative companies may be reticent to opt for the protection of prior user rights for fear that the defense may not stand against a charge of infringement by a later patent owner who sues for infringement. Many innovators may feel the need to rush to

the patent office in order to assure their long term freedom to operate. I do not need to belabor my colleagues with the attendant benefit the publication of patents provides to global competitors who are not respectful of intellectual property rights.

The reason for this detrimental reliance on patents for internal technology is that the utility and reliability of section 5 is dependent on the prior use being an ''internal commercial use''—a term for which there is no readily available judicial precedent. Should section 5 of H.R. 1249 become law, an innovator and his legal counsel need some reasonable assurance that an internal use will, in fact, be deemed to be a commercial use protectable under the law. These assurances are all the more important for U.S. companies in the biotechnology field with extraordinarily long lead times for commercialization of its products. Does my colleague from Vermont understand the concern I am raising?

Mr. LEAHY. Madam President, I will say to my good friend that he is not the first to raise this issue with me and the other Members of the House and Senate Judiciary Committees who have worked on this bill. I have discussed section 5 at length with the distinguished House Judiciary Committee Chairman LAMAR SMITH. Perhaps I can help provide some of the needed clarity for my colleague concerning what we intend to be within the confines of the definition of ''internal commercial use'' as it is used in section 5 of the bill.

Mr. BLUNT. I thank my colleague for his willingness to discuss this matter here on the floor of the Senate. It is my reading of the bill's language under section 5 that prior use rights shall vest when innovative technology is first put into continuous internal use in the business of the enterprise with the objective of developing commercializable products. Does the chairman of the Judiciary Committee share this understanding?

Mr. LEAHY. Yes. My colleague and I are in agreement that it is our intention, as the sponsors of this comprehensive measure, that the prior use right set forth in section 5 of H.R. 1249 shall vest when innovative technology is first put into continuous internal use in the business of an innovator's enterprise with the objective of making a commercializable product.

Mr. BLUNT. I thank my colleague from Vermont. If he would permit me to clarify this matter further. Am I correct in understanding that, so long as that use begins more than 1 year prior to the effective filing date of a subsequent patent or publication by a later inventor, the initiation of continuous internal use by an original innovator in a manufacturing of a product should guarantee the defense of prior use regardless of whether the product is a prototype with a need for quality improvements?

Mr. LEAHY. I thank my colleague for the question. His understanding is correct. So long as the prior use begins more than 1 year prior to the effective filing date of a subsequent patent or publication by a later inventor, the initiation of continuous internal use in the manufacture of products should guarantee the defense of prior use.

Mr. BLUNT. I thank my colleague. Let me illustrate by showing the impact of the ambivalence of the statutory language on agricultural research which is a major industry not only in Midwestern States like Missouri, Iowa, Kansas, Nebraska, Illinois, but in States ranging from California to Connecticut from Texas to Minnesota from North Carolina to Idaho. Virtually every State in this Union has an investment in agricultural research. The productivity of U.S. farmers provides a significant positive input to the U.S. balance of trade due in large part to the high technology adopted by U.S. farmers. That high technology is provided from multiple sources ranging from research at land grant universities, the USDA and private for-profit companies all of whom have internal technology that provides a competitive edge for maintaining agricultural competitive advantage for the U.S. economy.

To specifically illustrate let us consider that U.S. researchers are leading the world in discovering genetic markers that are associated with important agronomic traits which serves as breeding production tools. Instead of teaching foreign competitors these production tools, a preferred alternative may be to rely on prior user rights for such innovative crop breeding technology which is used in the manufacture of new plant varieties although the use may only occur once a year after each growing season and for many years to selectively manufacture a perfected crop product that is sold.

As another example let us consider an innovation in making potential new genetically modified products all of which need years of testing to verify their viability, repeatabilty and commercial value. Of the thousands of new potential prototype products made, only a few may survive initial screening to begin years of field trials. We should agree that a continuously used process qualifies as internal commercial use despite the fact that many prototypes will fail to have commercial merit.

As my examples illustrate, for section 5 to have its intended benefit, internal commercial use must vest when an innovator reduces technology to practice and takes diligent steps to maintain continuous, regular commercial use of the technology in manufacturing operations of the enterprise.

Mr. LEAHY. My colleague is correct in his reasoning and his understanding of what is intended by section 5. The methods used by Edison in producing multiple failures for electric light bulbs were no less commercial uses before the ultimate production of a commercially successful light bulb. Let us agree that internally used methods and materials do qualify for the defense of prior user rights when there is evidence of a commitment to put the innovation into use followed by a series of diligent events demonstrating that the innovation has been put into continuous—into a business activity with a purpose of developing new products for the benefit of mankind.

Mr. BLUNT. I thank my colleague.

SECTION 5

Mr. KOHL. Madam President, I have long supported reforming our patent system and was pleased with the bill the Senate passed in March. It was not what everyone wanted, but it was an effective compromise that would spur innovation and economic growth. I am disappointed with changes the House made to the bill, specifically the expansion of the ''prior user rights'' defense a provision which raises serious concerns for the University of Wisconsin's patent licensing organization which fosters innovative discoveries, spawning dozens of small businesses and spurring economic growth in Wisconsin.

Let me explain why. A patent grants an innovator the right to exclude others from using an invention in exchange for making that invention public. The publication of patents and the research behind them advance further innovation and discovery. Anyone who uses the invention without permission is liable for infringement, and someone who was using the invention prior to the patent has only a limited defense for infringement. The purpose of limiting this defense to infringement is to encourage publication and disclosure of inventions to foster innovation. So by expanding the prior user defense we run the real risk of discouraging disclosure through the patent system. This is concerning to the University of Wisconsin because they depend on publication and disclosure to further research and innovation.

I appreciate the inclusion of a carve-out to the prior user rights defense provision so that it does not apply to patents owned by a university ''or a technology transfer organization whose primary purpose is to facilitate the commercialization of technologies developed by one or more such institutions of higher education.'' However, I have some concerns about how the carve out will work in practice and I would like to clarify its application.

It is my understanding that the term ''primary purpose'' in this exception is intended to be consistent with and have a similar scope as the ''primary functions'' language in the Bayh-Dole Act. In particular, if a nonprofit entity is entitled to receive assignment of inventions pursuant to section 207(c)(7) of title 35 because one of its primary functions is the management of inventions, presumably it falls under the primary purpose prong of the prior user rights exception. Is that the Senator's understanding of the provision?

Mr LEAHY. The senior Senator from Wisconsin is correct. That is also my

view of the exception. I understand the Senator has consistently opposed the expansion of prior user rights, but I agree with his analysis of the scope of the exception in section 5 of H.R. 1249.

SECTION 18

Mr. PRYOR. I would like to ask my colleague from Vermont, the Chairman of the Judiciary Committee and lead sponsor of the America Invents Act before us today, to further clarify an issue relating to Section 18 of that legislation. Ideally, I would have liked to modify the Section 18 process in accordance with the Cantwell amendment. It is of crucial importance to me that we clarify the intent of the process and implement it as narrowly as possible.

As I understand it, Section 18 is intended to enable the PTO to weed out improperly issued patents for abstract methods of doing business. Conversely, I understand that Section 18 is not intended to allow owners of valid patents to be harassed or subjected to the substantial cost and uncertainty of the untested review process established therein. Yet I have heard concerns that Section 18 would allow just such harassment because it enables review of patents whose claims have been found valid both through previous reexaminations by the PTO and jury trials. In my mind, patent claims that have withstood multiple administrative and judiciary reviews should be considered presumptively valid. It would not only be unfair to the patent holder but would be a waste of both PTO's time and resources to subject such presumptively valid patent claims to yet another administrative review. It would be particularly wasteful and injurious to legitimate patent holders if the ''transitional review'' only considered prior art that was already considered in the previous administrative or judicial proceedings. Can the Chairman enlighten me as to how the PTO will ensure that the ''transitional process'' does not become a tool to harass owners of valid patents that have survived multiple administrative and judicial reviews''?

Mr. LEAHY. The proceeding created by Section 18 is modeled on the proposed post-grant review proceeding under Section 6 of the Act. As in other post-grant proceedings, the claims should typically be evaluated to determine whether they, among other things, meet the enablement and written description requirements of the act, and contain patentable subject matter under the standards defined in the statutes, case law, and as explained in relevant USPTO guidance. While the program will generally otherwise function on the same terms as other post-grant proceedings, the USPTO should implement Section 18 in a manner that avoids attempts to use the transitional program against patent owners in a harassing way. Specifically, to initiate a post issuance review under the new post grant or transitional proceedings, it is not enough that the request show a substantial new question of patentability but must establish that ''it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.'' The heightened requirement established by this bill means that these proceedings are even better shielded from abuse than the reexamination proceedings have been. In fact, the new higher standard for post issuance review was created to make it even more difficult for these procedures to be used as tools for harassment. Therefore, the rule that bars the PTO from reconsidering issues previously considered during examination or in an earlier reexamination still applies. While a prior district court decision upholding the validity of a patent may not preclude the PTO from considering the same issues resolved in that proceeding, PTO officials must still consider the court's decision and deviate from its findings only to the extent reasonable. As a result, I expect the USPTO would not initiate proceedings where the petition does not raise a substantial new question of patentability than those that had already been considered by the USPTO in earlier proceedings. Does that answer my colleague's question?''

Mr. PRYOR. I thank my colleague for that explanation.

SECTION 18

Mr. DURBIN. I would like to clarify an issue with my colleague from New York, who is the author of Section 18. Legislative history created during earlier consideration of this legislation makes clear that the business method patent problem that Section 18 is intended to address is fundamentally an issue of patent quality. Does the Senator agree that poor quality business method patents generally do not arise from the operation of American companies who use business method patents to develop and sell products and employ American workers in doing so?

Mr. SCHUMER. My friend from Illinois is correct. I have previously inserted into the RECORD a March 3 letter from the Independent Community Bankers of America which stated that ''Under the current system, business method patents of questionable quality are used to force community banks to pay meritless settlements to entities that may have patents assigned to them, but who have invented nothing, offer no product or service and employ no one. . . . The Schumer-Kyl amendment is critical to stopping this economic harm.''

Mr. DURBIN. I thank the Senator. I want to point out that there are a number of examples of companies that employ hundreds or thousands of American workers in developing and commercializing financial sector products that are based on business method patents. For example, some companies that possess patents categorized by the PTO as class 705 business method patents have used the patents to develop novel software tools and graphical user interfaces that have been widely commercialized and used within the electronic trading industry to implement trading and asset allocation strategies. Additionally, there are companies that possess class 705 patents which have used the patents to manufacture and commercialize novel machinery to count, sort, and authenticate currency and paper instruments. Are these the types of patents that are the target of Section 18?

Mr. SCHUMER. No. Patent holders who have generated productive inventions and have provided large numbers of American workers with good jobs through the development and commercialization of those patents are not the ones that have created the business method patent problem. While merely having employees and conducting business would not disqualify a patentholder from Section 18 review, generally speaking, it is not the understanding of Congress that such patents would be reviewed and invalidated under Section 18.

Mr. COBURN. Madam President, today, I rise to discuss section 18 of H.R. 1249, the Leahy-Smith America Invents Act. Consistent with the statement in the RECORD by Chairman LAMAR SMITH on June 23, 2011, I understand that section 18 will not make all business method patents subject to review by the U.S. Patent and Trademark Office. Rather, section 18 is designed to address the problem of low-quality business method patents that are commonly associated with the Federal circuit's 1998 State Street decision. I further understand that section 18 of the bill specifically exempts ''patents for technological inventions'' from this new review at USPTO.

Patents for technological inventions are those patents whose novelty turns on a technological innovation over the prior art and are concerned with a technical problem which is solved with a technical solution. The technological innovation exception does not exclude a patent from section 18 simply because it recites technology. Inventions related to manufacturing and machines that do not simply use known technology to accomplish a novel business process would be excluded from review under section 18.

For example, section 18 would not cover patents related to the manufacture and distribution of machinery to count, sort, and authenticate currency. It is the intention of section 18 to not review mechanical inventions related to the manufacture and distribution of machinery to count, sort, and authenticate currency like change sorters and machines that scan paper instruments, including currency, whose novelty turns on a technological innovation over the prior art. These types of patents would not be eligible for review under this program.

American innovation is an important engine for job growth and our economic revitalization. To this end, the timely consideration of patent applications and the issuance of quality patents are critical components and should remain

the primary goal of the U.S. Patent and Trademark Office.

Mr. KYL. Madam President, I rise today to say a few words about aspects of the present bill that differ from the bill that passed the Senate in March. I commented at length on the Senate bill when that bill was before this body. Since the present bill and the Senate bill are largely identical, I will not repeat what I said previously, but will simply refer to my previous remarks, at 157 Cong. Rec. 1368–80, daily ed. March 8, 2011, which obviously apply to the present bill as well.

As I mentioned earlier, Mr. SMITH negotiated his bill with Senators LEAHY, GRASSLEY, and me as he moved the bill through the House of Representatives. The final House bill thus represents a compromise, one which the Senate supporters of patent reform have agreed to support in the Senate. The provisions that Mr. SMITH has added to the bill are ones that we have all had an opportunity to consider and discuss, and which I fully support.

Section 19(d) of the present bill adds a new section 299 to title 35. This new section bars joinder of accused infringers as codefendants, or consolidation of their cases for trial, if the only common fact and transaction among the defendants is that they are alleged to have infringed the same patent. This provision effectively codifies current law as it has been applied everywhere outside of the Eastern District of Texas. See *Rudd* v. *Lux Products Corp.*, 2011 WL 148052. (N.D. Ill. January 12, 2011), and the committee report for this bill at pages 54 through 55.

H.R. 1249 as introduced applied only to joinder of defendants in one action. As amended in the mark up and in the floor managers' amendment, the bill extends the limit on joinder to also bar consolidation of trials of separate actions. When this change was first proposed, I was skeptical that it was necessary. A review of legal authority, however, reveals that under current law, even if parties cannot be joined as defendants under rule 20, their cases can still be consolidated for trial under rule 42. For example, as the district court held in *Ohio* v. *Louis Trauth Dairy, Inc.*, 163 F.R.D. 500, 503 (S.D. Ohio 1995), ''[e]ven when actions are improperly joined, it is sometimes proper to consolidate them for trial.'' The same conclusion was reached by the court in *Kenvin* v. *Newburger, Loeb & Co.*, 37 F.R.D. 473 (S.D.N.Y. 1965), which ordered severance because of misjoinder of parties, concluding that the claims against the defendants did not arise out of single transaction or occurrence, but then suggested the desirability of a joint trial, and expressly made its severance order without prejudice to a subsequent motion for consolidation under rule 42(a). Similarly, in *Stanford* v. *TVA*, 18 F.R.D. 152 (M.D. Tenn. 1955), a court found that the defendants had been misjoined, since the claims arose out of independent transactions, and ordered them severed. The court subsequently found, however, that a common question existed and ordered the defendants' cases consolidated for trial.

That these cases are not just outliers is confirmed by Federal Practice and Procedure, which comments as follows at § 2382:

> Although as a general proposition it is true that Rule 42(a) should be construed in harmony with the other civil rules, it would be a mistake to assume that the standard for consolidation is the same as that governing the original joinder of parties or claims. . . . [M]ore than one party can be joined on a side under Rule 20(a) only if there is asserted on behalf of or against all of them one or more claims for relief arising out of the same transaction or occurrence or series of transactions or occurrences. This is in addition to the requirement that there be some question of law or fact common to all the parties. But the existence of a common question by itself is enough to permit consolidation under Rule 42(a), even if the claims arise out of independent transactions.

If a court that was barred from joining defendants in one action could instead simply consolidate their cases for trial under rule 42, section 299's purpose of allowing unrelated patent defendants to insist on being tried separately would be undermined. Section 299 thus adopts a common standard for both joinder of defendants and consolidation of their cases for trial.

Another set of changes made by the House bill concerns the coordination of inter partes and postgrant review with civil litigation. The Senate bill, at proposed sections 315(a) and 325(a), would have barred a party or his real party in interest from seeking or maintaining an inter partes or postgrant review after he has filed a declaratory-judgment action challenging the validity of the patent. The final bill will still bar seeking IPR or PGR after a declaratory-judgment action has been filed, but will allow a declaratory-judgment action to be filed on the same day or after the petition for IPR or PGR was filed. Such a declaratory-judgment action, however, will be automatically stayed by the court unless the patent owner countersues for infringement. The purpose of allowing the declaratory-judgment action to be filed is to allow the accused infringer to file the first action and thus be presumptively entitled to his choice of venue.

The House bill also extends the deadline for allowing an accused infringer to seek inter partes review after he has been sued for infringement. The Senate bill imposed a 6-month deadline on seeking IPR after the patent owner has filed an action for infringement. The final bill extends this deadline, at proposed section 315(b), to 1 year. High-technology companies, in particular, have noted that they are often sued by defendants asserting multiple patents with large numbers of vague claims, making it difficult to determine in the first few months of the litigation which claims will be relevant and how those claims are alleged to read on the defendant's products. Current law imposes no deadline on seeking inter partes reexamination. And in light of the present bill's enhanced estoppels, it is important that the section 315(b) deadline afford defendants a reasonable opportunity to identify and understand the patent claims that are relevant to the litigation. It is thus appropriate to extend the section 315(b) deadline to one year.

The final bill also extends intervening rights to inter partes and postgrant review. The bill does not allow new matter to be introduced to support claims in IPR and PGR and does not allow broadening of claims in those proceedings. The aspect of intervening rights that is relevant to IPR and PGR is section 252, first paragraph, which provides that damages accrue only from the date of the conclusion of review if claim scope has been substantively altered in the proceeding. This restriction applies even if the amendment only narrowed the scope of the claims. *See Engineered Data Products, Inc.* v. *GBS Corp.*, 506 F.Supp.2d 461, 467 (D. Colo. 2007), which notes that ''the Federal Circuit has routinely applied the intervening rights defense to narrowing amendments.'' When patent-defeating prior art is discovered, it is often impossible to predict whether that prior art will be found to render the entire invention obvious, or will only require a narrowing amendment. When a challenger has discovered such prior art, and wants to practice the invention, intervening rights protect him against the risk of gong forward—provided, of course, that he is correct in his judgment that the prior art at least requires a substantive narrowing of claims.

The final bill also adds a new subsection to proposed section 257, which authorizes supplemental examination of patents. The new subsection provides that the Director shall refer to the U.S. Attorney General any ''material fraud'' on the Office that is discovered during the course of a Supplemental Examination. Chairman Smith's explanation of this addition, at 157 Cong. Rec. E1182–83 (daily ed. June 23, 2011), clarifies the purpose and effect of this new provision. In light of his remarks, I find the addition unobjectionable. I would simply add to the Chairman's remarks that, in evaluating whether a fraud is ''material'' for purpose of referral, the Director should look to the Federal Circuit's decision in *Therasense, Inc.* v. *Becton, Dickinson and Co.*, ____F.3d____, 2011 WL 2028255 (May 25, 2011). That case holds, in relevant part, that:

> [T]he materiality required to establish inequitable conduct is but-for materiality. When an applicant fails to disclose prior art to the PTO, that prior art is but-for material if the PTO would not have allowed a claim had it been aware of the undisclosed prior art. Hence, in assessing the materiality of a withheld reference, the court must determine whether the PTO would have allowed the claim if it had been aware of the undisclosed reference.

Finally, perhaps the most important change that the House of Representatives has made to the America Invents

Act is the addition of a prior-commercial-use defense. Current law, at section 273, creates a defense of prior-user rights that applies only with respect to business-method patents. The final bill rewrites section 273, creating a PCU defense that applies to all utility patents.

University researchers and their technology-transfer offices had earlier objected to the creation of such a defense. Their principal concern was that the defense would lead to a morass of litigation over whether an infringer was entitled to assert it, and the expense and burden of this litigation would ultimately prevent universities and small companies from enforcing valid patents. The compromise reached in the House of Representatives addresses university concerns by requiring a defendant to show that he commercially used the subject matter that infringes the patent at least 1 year before the patent owner either filed an application or disclosed the invention to the public. The House compromise also precludes assertion of the defense against most university-owned patents.

The PCU defense is similar to the prior-user right that exists in the United Kingdom and Germany. The defense is a relatively narrow one. It does not create a general license with respect to the patented invention, but rather only allows the defendant to keep making the infringing commercial use that he establishes that he made 1 year before the patentee's filing or disclosure. The words ''subject matter,'' as used in subsection (a), refer to the infringing acts of the defendant, not to the entire patented invention. An exception to this limit, which expands the defense beyond what would be allowed in the United Kingdom, appears in subsection (e)(3), which allows the defendant to increase the quantity or volume of the use that he establishes that he made of the invention. Subsection (e)(3) also confirms that the defendant may improve or otherwise modify his activities in ways that do not further infringe the patent, although one would think that this would go without saying.

The PCU defense is principally designed to protect the use of manufacturing processes. For many manufacturing processes, the patent system presents a catch-22: if the manufacturer patents the process, he effectively discloses it to the world. But patents for processes that are used in closed factories are difficult to police. It is all but impossible to know if someone in a factory in China is infringing such a patent. As a result, unscrupulous foreign and domestic manufacturers will simply use the invention in secret without paying licensing fees. Patenting such manufacturing processes effectively amounts to giving away the invention to competitors. On the other hand, if the U.S. manufacturer does not patent the process, a subsequent party may obtain a patent for it, and the U.S. manufacture will be forced to stop using a process that he was the first to invent and which he has been using for years.

The prior-commercial-use defense provides relief to U.S. manufacturers from this Catch-22, allowing them to make long-term use of a manufacturing process without having to give it away to competitors or run the risk that it will be patented out from under them.

Subsection (a) expands the defense beyond just processes to also cover products that are used in a manufacturing or other commercial process. Generally, products that are sold to consumers will not need a PCU defense over the long term. As soon as the product is sold to the public, any invention that is embodied or otherwise inherent in that product becomes prior art and cannot be patented by another party, or even by the maker of the product after the grace period has expired. Some products, however, consist of tools or other devices that are used only by the inventor inside his closed factory. Others consist of substances that are exhausted in a manufacturing process and never become accessible to the public. Such products will not become prior art. Revised section 273 therefore allows the defense to be asserted with respect to such products.

The defense can also be asserted for products that are not used to make a useful end result that is sold to others, but that are used in an internal commercial process. This would include, for example, customized software that is used to run a company's human-resources system. So long as use of the product is integrated into an ongoing commercial process, and not merely fleeting or experimental or incidental to the enterprise's operations, the PCU defense can be asserted with respect to that product.

The present bill requires the defendant to commercially use the invention in order to be able to assert the defense. Chairman SMITH has suggested, at 157 Cong. Rec. E1219 (daily ed. June 28, 2011), that in the future Congress should expand the defense so that it also applies when a company has made substantial preparations to commercially use an invention. Some have also suggested that the defense should be expanded to cover not just using, but also making and selling an invention if substantial preparations have been made to manufacture the invention. This would expand the defense to more fully compensate for the repeal of current section 102(g), which allows a party to invalidate a patent asserted against it if the party can show that it had conceived of the invention earlier and diligently proceeded to commercialize it.

On the one hand, universities and others have expressed concern that a ''substantial preparations'' predicate for asserting the PCU defense would lead to expensive and burdensome litigation over whether a company's activities reflect conception and diligent commercialization of the invention. Some argue that it is often the case that different companies and researchers are working on the same problem, and it is easy for the unsuccessful parties to later recharacterize their past efforts as capturing or diligently implementing the successful researcher's invention. Questions have also arisen as to how tentative preparations may be and still qualify as ''substantial preparations.'' For example, if a company had not broken ground for its factory, but had commissioned an architect to draw up plans for it, would that qualify? Would taking out a loan to build the factory qualify as substantial preparations?

On the other hand, proof of conception and diligent commercialization are currently used to apply section 102(g)(2), and I have not heard complaints that the current defense has resulted in overly burdensome litigation.

In the end, however, a substantial-preparations predicate is not included in this bill simply because that was the agreement that was struck between universities and industry in the House of Representatives last summer, and we are now effectively limited to that agreement. Perhaps this issue can be further explored and revisited in a future Congress, though I suspect that many members will want a respite from patent issues after this bill is completed.

The final bill also drops the requirement of a showing of a reduction to practice that previously appeared in subsection (b)(1). This is because the use of a process, or the use of product in a commercial process, will always constitute a reduction to practice.

One change made by the original House bill that proved contentious is the expansion of the personal nature of the defense, now at subsection (e)(1)(A), to also include uses of the invention made by contractors and vendors of the person asserting the defense. The House bill originally allowed the defendant to assert the defense if he performed the commercial use or ''caused'' its performance. The word ''caused,'' however, could be read to include even those uses that a vendor made without instructions or even the contemporaneous knowledge of the person asserting the defense. The final bill uses the word ''directed,'' which limits the provision only to those third-party commercial uses that the defendant actually instructed the vendor or contactor to use. In analogous contexts, the word ''directed'' has been understood to require evidence that the defendant affirmatively directed the vendor or contractor in the manner of the work or use of the product. See, for example, *Ortega* v. *Puccia*, 75 A.D. 54, 59, 866 N.Y.S.2d 323, 328 (N.Y. App. 2008).

Subsection (e)(1)(A)'s reference to entities that ''control, are controlled by, or under common control with'' the defendant borrows a term that is used in several federal statutes. See 12 U.S.C. 1841(k), involving bank holding companies, 15 U.S.C. 78c(a)(4)(B)(vi), involving securities regulation, 15 U.S.C. 6809(6), involving financial privacy, and 49 U.S.C. 30106(d)(1), involving motor vehicle safety. Black's Law Dictionary 378 (9th ed. 2009) defines ''control'' as the ''direct or indirect power to govern

the management and policies of a person or entity, whether through ownership of securities, by contract, or otherwise; the power or authority to manage, direct, or oversee.''

A few other aspects of the PCU defense merit brief mention. Subsection (e)(5)(A), the university exception, was extended to also include university technology-transfer organizations, such as the Wisconsin Alumni Research Foundation. Subparagraph (B), the exception to the university exception, is only intended to preclude application of subparagraph (A) when the federal government is affirmatively prohibited, whether by statute, regulation, or executive order, from funding research in the activities in question.

In the course of the recodification of former subsection (a)(2) as new (c)(2), the former's subparagraph (B) was dropped because it is entirely redundant with subparagraph (A).

Finally, subsection (e)(4), barring assertion of the defense if use of the subject matter has been abandoned, should not be construed to necessarily require continuous use of the subject matter. It is in the nature of some subject matter that it will be used only periodically or seasonally. If such is the case, and the subject has been so used, its use has not been abandoned.

I would also like to take a moment to once again address the question of the grace period created by this bill. During the House and Senate debates on the bill, opponents of the first-to-file system have occasionally asserted that they oppose the bill's move to first to file because it weakens the grace period. See 157 Cong. Rec. S1094, S1096, S1112 (daily ed. March 2, 2011), and 157 Cong. Rec. H4424, H4430 (daily ed. June 22, 2011).

Some of these arguments are difficult to understand, in part because opponents of first to file have used the term ''grace period'' to mean different things. Some have used the term to mean the period between the time when the inventor conceives of the invention and the time when he files a full or even provisional application. Obviously, if the ''grace period'' is defined as the first-to-invent system, then the move to first to file eliminates that version of the grace period. Others, however, have suggested that public uses, sales, or ''trade secrets'' will bar patenting under new section 102(b), even if they consist of activities of the inventor during the year before filing.

This is not the case, and I hope that courts and executive officials interpreting this act will not be misled by arguments made by opponents of this part of the bill. The correct interpretation of section 102 and the grace period is that which has been consistently advanced in the 2007 and 2011 committee reports for this bill, see Senate Report 110–259, page 9, and House Report 112–98, page 43, as well as by both Chairman SMITH and Chairman LEAHY, see 157 Cong. Rec. S1496–97 (daily ed. March 9, 2011), and 157 Cong. Rec. H4429 (daily ed. June 22, 2011). These two chairmen are the lead sponsors and authorizing chairmen of this year's bills, which are identical with respect to section 102. As Chairman SMITH most recently explained in his June 22 remarks, ''contrary to current precedent, in order to trigger the bar in new 102(a) in our legislation, an action must make the patented subject matter 'available to the public' before the effective filing date.'' Therefore, ''[i]f an inventor's action is such that it triggers one of the bars under 102(a), then it inherently triggers the grace period in section 102(b).''

When the committee included the words ''or otherwise available to the public'' in section 102(a), the word ''otherwise'' made clear that the preceding items are things that are of the same quality or nature. As a result, the preceding events and things are limited to those that make the invention ''available to the public.'' The public use or sale of an invention remains prior art, thus making clear that an invention embodied in a product that has been sold to the public more than a year before an application was filed, for example, can no longer be patented. Once an invention has entered the public domain, by any means, it can no longer be withdrawn by anyone. But public uses and sales are prior art only if they make the invention available to the public.

In my own remarks last March, I cited judicial opinions that have construed comparable legislative language in the same way. Since that time, no opponent of the first-to-file transition has identified any caselaw that reads this legislative language any other way, nor am I aware of any such cases. I would hope that even those opponents of first to file who believe that supporters of the bill cannot rely on committee reports and sponsors' statements would at least concede that Congress is entitled to rely on the consistent judicial construction of legislative language.

Finally, I would note that the interpretation of 102 that some opponents appear to advance—that nondisclosing uses and sales would remain prior art, and would fall outside the 102(b) grace period—is utterly irrational. Why would Congress create a grace period that allows an invention that has been disclosed to the world in a printed publication, or sold and used around the world, for up to a year, to be withdrawn from the public domain and patented, but not allow an inventor to patent an invention that, by definition, has not been made available to the public? Such an interpretation of section 102 simply makes no sense, and should be rejected for that reason alone.

Let me also address two other misstatements that have been made about the bill's first-to-file system. In remarks appearing at 157 Cong. Rec. S1095 (daily ed. March 2, 2011), it was suggested that a provisional application filed under the first-to-file system will be vulnerable to an attack that the inventor failed to disclose the best mode of the invention. This is incorrect. Section 15 of this bill precludes the use of the best-mode requirement as a basis for cancelling a claim or holding it invalid. It was also suggested, at the same place in the record, that discovery would not be allowed in the derivation proceedings created by section 3(i) of the bill. That is incorrect. Section 24 of title 35 allows discovery in any ''contested case.'' The Patent Office's regulations, at 37 CFR 41.2(2), indicate that contested cases included Board proceedings such as interferences. It is not apparent to me why these laws and regulations would suggest anything other than that discovery will be allowed in derivation proceedings.

Finally, let me close by commenting on section 18 of the bill. Some legitimate interests have expressed concern that non-business-method patents will be subject to challenge in this proceeding. I have been asked to, and am happy to, reiterate that technological inventions are excluded from the scope of the program, and that these technological inventions include inventions in the natural sciences, engineering, and computer operations—and that inventions in computer operations obviously include software inventions.

This does not mean that a patent is ineligible for review simply because it recites software elements or has been reduced to a software program. If that were the case, then very few of even the most notorious business-method patents could be reviewed under section 18. Rather, in order to fall within the technological-invention exclusion, the invention must be novel as software. If an invention recites software elements, but does not assert that it is novel as software, or does not colorably appear to be so, then it is not ineligible for review simply because of that software element. But an actual software invention is a technological invention, and is not subject to review under section 18.

Mr. LEVIN. Madam President, I support the America Invents Act.

Right now, as our economy struggles to recover, this legislation is needed to help create jobs and keep our manufacturers competitive. It will further strengthen and expand the ability of our universities to conduct research and turn that research into innovative products and processes that benefit Michigan and our Nation.

Because of this legislation, we will be able to see that boost up close in my home State of Michigan, where a new satellite Patent and Trademark Office will be established in Detroit. This office will help modernize the patent system and improve the efficiency of patent review and the hiring of patent examiners.

In addition, in an important victory after years of effort to address the problem, section 14 of the act finally

bans tax patents, ending the troubling practice of persons seeking patents for tax avoidance strategies.

Issuing such patents abuses the Tax Code by granting what some could see as a government imprimatur of approval for dubious tax strategies, while at the same time penalizing taxpayers seeking to use legitimate strategies. The section makes it clear that patents can still be issued for software that helps taxpayers prepare their tax returns, but that provision is intended to be narrowly construed and is not intended to authorize patents for business methods or financial management software.

The bill will put a halt to both new and pending tax patent applications. Although it does not apply on its face to the 130-plus tax patents already granted, if someone tries to enforce one of those patents in court by demanding that a taxpayer provide a fee before using it to reduce their taxes, I hope a court will consider this bill's language and policy determination when deciding whether such efforts are consistent with public policy.

This legislation is an important step forward and I urge my colleagues to support it.

Mr. SCHUMER. Madam President, I would like to clarify the record on a few points related to section 18 of the America Invents Act. Section 18, of which Senator KYL and I were the authors, relates to business method patents. As the architect of this provision, I would like to make crystal clear the intent of its language.

It is important that the record reflect the urgency of this provision. Just today, while the Senate has been considering the America Invents Act, Data Treasury—the company which owns the notorious check imaging patents and which has already collected over half a billion dollars in settlements—filed suit in the Eastern District of Texas against 22 additional defendants, primarily community banks. These suits are over exactly the type of patents that section 18 is designed to address, and the fact that they continue to be filed highlights the urgency of signing this bill into law and setting up an administrative review program at the PTO.

I would like to elucidate the intent behind the definition of business method patents. Other Members have attempted to suggest a narrow reading of the definition, but these interpretations do not reflect the intent of Congress or the drafters of section 18. For example, in connection with the House vote on the America Invent Act, H.R. 1249, Congressman SHUSTER submitted a statement in the RECORD regarding the definition of a ''covered business method patent'' in section 18. 157 Cong. Rec. H4497 (daily ed. June 23, 2011).

In the statement, Mr. SHUSTER states: ''I would like to place in the record my understanding that the definition of 'covered business method patent' . . . is intended to be narrowly construed to target only those business method patents that are unique to the financial services industry.'' Mr. SHUSTER's interpretation is incorrect.

Nothing in the America Invents Act limits use of section 18 to banks, insurance companies or other members of the financial services industry. Section 18 does not restrict itself to being used by petitioners whose primary business is financial products or services. Rather, it applies to patents that can apply to financial products or services. Accordingly, the fact that a patent is being used by a company that is not a financial services company does not disqualify the patent from section 18 review. Conversely, given the statutory and regulatory limitations on the activities of financial services companies, if a patent is allegedly being used by a financial services company, the patent will qualify as a ''covered business method patent.''

The plain meaning of ''financial product or service'' demonstrates that section 18 is not limited to the financial services industry. At its most basic, a financial product is an agreement between two parties stipulating movements of money or other consideration now or in the future. Types of financial products include, but are not limited to: extending credit, servicing loans, activities related to extending and accepting credit, leasing of personal or real property, real estate services, appraisals of real or personal property, deposit-taking activities, selling, providing, issuing or accepting stored value or payment instruments, check cashing, collection or processing, financial data processing, administration and processing of benefits, financial fraud detection and prevention, financial advisory or management consulting services, issuing, selling and trading financial instruments and other securities, insurance products and services, collecting, analyzing, maintaining or providing consumer report information or other account information, asset management, trust functions, annuities, securities brokerage, private placement services, investment transactions, and related support services. To be eligible for section 18 review, the patent claims must only be broad enough to cover a financial product or service.

The definition of ''covered business method patent'' also indicates that the patent must relate to ''performing data processing or other operations used in the practice, administration, or management'' of a financial product or service. This language makes it clear that section 18 is intended to cover not only patents claiming the financial product or service itself, but also patents claiming activities that are financial in nature, incidental to a financial activity or complementary to a financial activity. Any business that sells or purchases goods or services ''practices'' or ''administers'' a financial service by conducting such transactions. Even the notorious ''Ballard patents'' do not refer specifically to banks or even to financial transactions. Rather, because the patents apply to administration of a business transactions, such as financial transactions, they are eligible for review under section. To meet this requirement, the patent need not recite a specific financial product or service.

Interestingly, Mr. SHUSTER's own actions suggest that his interpretation does not conform to the plain meaning of the statute. In addition to his statement, Mr. SHUSTER submitted an amendment to the Rules Committee that would exempt particular types of business-method patents from review under section 18. That amendment was later withdrawn. Mr. SHUSTER's subsequent statement in the RECORD appears to be an attempt to rewrite through legislative history something that he was unable to change by amendment.

Moreover, the text of section 18 further demonstrates that section 18 is not limited to patents exclusively utilized by the financial services industry. As originally adopted in the Senate, subsection (a)(1)(B) only allowed a party to file a section 18 petition if either that party or its real parties in interest had been sued or accused of infringement. In the House, this was expanded to also cover cases where a ''privy'' of the petitioner had been sued or accused of infringement. A ''privy'' is a party that has a direct relationship to the petitioner with respect to the allegedly infringing product or service. In this case, it effectively means customers of the petitioner. With the addition of the word ''privy,'' a company could seek a section 18 proceeding on the basis that customers of the petitioner had been sued for infringement. Thus, the addition of the ''privy'' language clearly demonstrates that section 18 applies to patents that may be used by entities other than the financial services industry.

The fact that a multitude of industries will be able to make use of section is evident by the broad based support for the provision, including the U.S. Chamber of Commerce and the National Retail Federation, among many others.

Mr. KIRK. Madam President, I support H.R. 1249, the Leahy-Smith America Invents Act, because this long-overdue patent reform will spur innovation, create jobs and strengthen our economy.

In particular, I am proud that this legislation contains a provision I worked to include in the Senate companion, S.23, that would establish the US Patent and Trademark Office Ombudsman Program to assist small businesses with their patent filing issues. This Ombudsman Program will help small firms navigate the bureaucracy of the patent system. Small businesses are the economic engine of our economy. According to the Small Business Administration, these companies employ just over half of all private sector employees and create over fifty percent of our nonfarm GDP. Illinois alone is

home to over 258,000 small employers and more than 885,000 self-employers. Small businesses are also helping to lead the way on American innovation. These firms produce thirteen times more patents per employee than large patenting firms, and their patents are twice as likely to be the most cited among all patents. Small business breakthroughs led to the development of airplanes, FM radio and the personal computer. It is vital that these innovators spend their time developing new products and processes that will build our future, not wading through government red tape.

However, I vote for this legislation with the understanding that Section 18, which establishes a review process for business-method patents, is not too broadly interpreted to cover patents on tangible products that claim novel and non-obvious software tools used to execute business methods. H.R. 1249 seeks to strengthen our patent system in order to incentivize and protect our inventors so that Americans can grow our economy and bolster our global competiveness. Thus, it would defy the purpose of this bill if its authority were used to threaten the viable patents held by companies that employ hundreds of Americans by commercializing software products they develop and engineer.

Our Founding Fathers recognized the importance of a strong patent system. I am proud to support H.R. 1249, which will provide strong intellectual property rights to further our technological advancement.

Mr. DURBIN. Madam President, I rise to speak about the Leahy-Smith America Invents Act. This is bipartisan legislation that will enhance and protect innovation in our country. I want to commend Senator LEAHY, the chairman of the Judiciary Committee, for his leadership and tireless work on this bill. I also want to commend my Republican colleagues on the Judiciary Committee, particularly Senators GRASSLEY, KYL, and HATCH, who have worked diligently with Chairman LEAHY in this effort to reform our patent system.

In this country, if you have a good idea for a new and useful product, you can get a patent and turn that idea into a thriving business. Millions of good American jobs are created in this way. The goals of today's legislation are to improve the operations of the Patent and Trademark Office and to help inventors in this country better protect their investments in innovation. By protecting innovations, we will help grow our economy and help businesses create jobs for American workers.

I regret that after the Senate passed a version of this legislation in March in a broadly bipartisan vote of 95–5, the House of Representatives modified the Senate-passed legislation. Not all of those changes improved the bill. Today, we voted on several amendments that responded to changes made by the House. I voted in support of an amendment that sought to strike Section 37, which the House had added to the bill. This section unnecessarily interferes with a matter that is currently being considered on appeal in the federal courts. I also voted reluctantly to table an amendment to restore the Senate-passed language regarding funding of the Patent and Trademark Office. I supported the tabling motion because of the significant risk that the bill would fail if the Senate sent it back to the House with that amendment included. It is unfortunate that disagreement between the House and Senate has prevented the PTO funding issue from being more clearly resolved in the current legislation, and I believe Congress must work diligently in the future to ensure PTO has the funding and resources it needs to effectively carry out its mission.

I also voted against an amendment relating to section 18 of the bill which creates a transitional review process for certain business method patents. I cast this vote after receiving assurances from my colleagues that the scope and application of section 18 would be appropriately constrained, as it is critically important that this section not be applied in a way that would undermine the legislation's focus on protecting legitimate innovation and job creation.

I want to note specifically that there are companies in many states, including my state of Illinois, that employ large numbers of American workers in bringing to market legitimate, novel and non-obvious products that are based on and protected by business method patents. Examples of such patent-protected products include machinery that counts, sorts or authenticates currency and paper instruments, and novel software tools and graphical user interfaces that are used by electronic trading industry workers to implement trading or asset allocation strategies. Vibrant industries have developed around the production and sale of these tangible inventions, and I appreciate that patents protecting such job-creating products are not understood to be the target of section 18.

I also note that there is an exemption in section 18 for patents for technological inventions. House Judiciary Chairman SMITH provided useful clarification with respect to the scope of that exemption in the June 23, 2011, RECORD, stating that:

> Patents for technological inventions are those patents whose novelty turns on a technological innovation over the prior art and are concerned with a technical problem which is solved with a technical solution. The technological innovation exception does not exclude a patent simply because it recites technology. Inventions related to manufacturing and machines that do not simply use known technology to accomplish a novel business process would be excluded from review under Section 18.
>
> Section 18 would not cover patents related to the manufacture and distribution of machinery to count, sort, and authenticate currency. It is the intention of Section 18 to not review mechanical inventions related to the manufacture and distribution of machinery to count, sort and authenticate currency like change sorters and machines that scan currency whose novelty turns on a technological innovation over the prior art. These types of patents would not be eligible for review under this program.

I agree with Chairman SMITH, and would note again that vibrant and job-creating industries have developed around the types of mechanical inventions he describes that deal with the counting, sorting, authentication and scanning of currency and paper instruments. I am confident that the PTO will keep this in mind as it works to craft regulations implementing the technological invention exception to section 18. I also expect the PTO to keep in mind as it crafts these regulations Congress's understanding that legitimate and job-creating technological patents such as those protecting the novel electronic trading software tools and graphical user interfaces discussed above are not the target of section 18.

Overall, I am pleased that the Congress has passed patent reform legislation with strong bipartisan support and has sent the legislation to the President's desk. It has been a long time in the making, and I again want to congratulate Chairman LEAHY for his leadership and hard work on this issue.

The PRESIDING OFFICER. The Senator from Iowa has 5 minutes.

Mr. GRASSLEY. Madam President, I urge my colleagues to oppose all three amendments to the patent bill so we can send this important jobs bill to the President of the United States for his signature.

I then urge my colleagues to support final passage of the Leahy-Smith America Invents Act. This is a strong bipartisan bill that will enhance America's innovation and give us economic growth. It will protect inventors' rights and improve transparency and third-party participation in the patent review process. It will strengthen patent quality and reduce costs and will curb litigation abuses and improve certainty for investors and innovators.

The Leahy-Smith America Invents Act will also help small entities with their patent applications and provide for reduced fees for micro entities and small businesses. It will help companies do business more efficiently both here and abroad.

The bill includes a provision that will prevent patents from being issued on claims of tax strategies. These strategies can add unwarranted fees on taxpayers for attempting to comply with the Tax Code.

Finally, the bill will enhance the operations of the Patent and Trademark Office with administrative reforms, give the Patent and Trademark Office fee-setting authority which we hope will then lead to a reduction of backlog and improve the ability of the Patent and Trademark Office to manage its affairs.

I thank Chairman LEAHY and Senator HATCH, the lead sponsors of this legislation, for the tremendous amount of work they put into this America Invents Act, not only for this Congress but over the past 3 to 4 years that this bill has been worked on. This has been a long process spanning those several Congresses, and without the leadership of these two Senators on patent reform we wouldn't be ready to cross the finish line today.

In addition, I thank the staff of the Judiciary Committee: Bruce Cohen, Aaron Cooper, Curtis LeGeyt of Chairman LEAHY's staff, Matt Sandgren of Senator HATCH's staff, and Joe Matal of Senator KYL's staff. I would like to thank the floor staff for their help in processing this bill in an efficient manner, and I would like to especially thank Kolan Davis and Rita Lari Jochum of my staff for their hard work on the bill.

So for a third time I urge my colleagues to vote for the Leahy-Smith America Invents Act and to oppose the three amendments we are going to be voting on so we can keep the bill clean and send it to the President without delay.

Senator LEAHY has made it very clear to all 100 Senators that, if we support this bill, it is a gamble to say it will be law if we have to move it beyond the Senate to the House. This bill will help American inventors create innovative new products and services and stimulate job creation. The bill will upgrade and strengthen our patent system and keep America competitive in an increasingly global economy. This is a good bill, and I urge all of my colleagues to support it.

Madam President, how much time do I have?

The PRESIDING OFFICER. There is 1 minute remaining.

Mr. GRASSLEY. I would urge my colleagues—because I rebut Senator SESSIONS' amendment—to keep in mind that when somebody tells us this is to bail out one company, understand that one company has gotten justice from the judicial branch of our government because a judge has said for that company that they were denied their rights under the 60-day rule to file for an extension of patent. So what that judge said was bureaucrats in our agencies acted in an arbitrary and capricious manner by not having the same rules that designate when the 60-day period of time starts.

So we have a judge that says so, so maybe people can refer to that opinion and get what they want. But we ought to have it in the statute of what is uniform, and that is what the bill does, and the Sessions amendment would strike that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont has the remainder of the time until 4 p.m.

Mr. LEAHY. Madam President, I thank the distinguished Senator from Iowa for his strong support of this bill.

In a few moments the Senate is going to have the opportunity to make significant reforms to our Nation's patent system for the first time in more than half a century.

The America Invents Act is the product of extensive consideration. We have worked on this for four Congresses. We have had dozens of hearings, weeks of committee debate, and I have lost count of the hundreds of other meetings we have had. This bill is an opportunity to show the American people that Democrats and Republicans can come together to enact meaningful legislation for the American people. The time to do that is now.

The only remaining issues that stand in the way of this long overdue reform are three amendments. Each of them carries some merit. In the past, I might have supported them. But this is a compromise. No one Senator can have everything he or she may want.

The underlying issues have been debated. The bill as written represents a bipartisan, bicameral agreement that should be passed without changes. Any amendment to this bill risks killing it.

I would urge all Senators, Republicans and Democrats alike, to join me and join Senator GRASSLEY in opposing these amendments. They are the final hurdles standing in the way of comprehensive patent reform.

I ask unanimous consent to have printed in the RECORD letters from businesses and workers representing the spectrum of American industry and labor urging the Senate to pass the America Invents Act without amendment.

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

THE COALITION FOR 21ST CENTURY PATENT REFORM.

Hon. PATRICK J. LEAHY,
*Chairman, Committee on the Judiciary, Washington, DC.*
Hon. CHARLES E. ''CHUCK'' GRASSLEY,
*Ranking Member, Committee on the Judiciary, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: We urge you to work with the leadership of the Senate to bring H.R. 1249 to the Senate floor as soon the Senate's schedule might permit and pass the bill as is.

Our Coalition believes that this legislation will fully modernize our patent laws. Indeed, it will give the world the first truly 21st century patent law—creating patentability standards that are transparent, objective, predictable and simple in their application. It will enhance the inventor-friendly and collaboration-friendly features of our existing patent law. At the same time, it will increase public participation in the patenting process, while maintaining strong protections for inventors in the provisions that do so.

The agreement reached in the House on USPTO funding will assure that the fees paid to the USPTO by inventors will not be diverted and will be made available to the Office for processing patent applications and other important functions of the Office. While we would have preferred the Senate's approach in S. 23 to prevent diversion of USPTO funds, we believe that acceptance of the House bill provides an effective and the most immediate path forward to address problems of the patent office. H.R. 1249, like S. 23, is an excellent bill. These bills are the product of many years of skillful and difficult legislative work in both the House and the Senate. We believe the time has now come for the Senate to take the final legislative act required for enactment of these historic reforms.

Sincerely,

GARY L. GRISWOLD.

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COALITION FOR PATENT FAIRNESS,
*June 27, 2011.*

Hon. PATRICK J. LEAHY,
*Chairman, U.S. Senate, Committee on the Judiciary, Washington, DC.*
Hon. CHARLES E. GRASSLEY,
*Ranking Member, Committee on the Judiciary, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: After years of effort, both houses of Congress have now successfully passed patent reform by impressive margins. On behalf of the high tech community, we congratulate you, as well as your House colleagues, on this achievement.

The Coalition for Patent Fairness supports Senate acceptance of H.R. 1249 as passed by the House. While neither bill is as we would have written it, we believe that the House passed bill represents the best opportunity to improve the patent system at the present time. We are also quite aware that House leaders worked very hard to take into account the views of the Senate during their deliberations.

H.R. 1249, as passed, offers us a chance of consensus and we believe it should be passed and signed into law. We are looking forward to advancing other policy matters that boost innovation and growth in this country.

Sincerely,

COALITION FOR PATENT FAIRNESS.

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CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
*Washington, DC, September 6, 2011.*

TO THE MEMBERS OF THE UNITED STATES SENATE: The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly supports H.R. 1249, the ''America Invents Act,'' which would encourage innovation and bolster the U.S. economy. The Chamber believes this legislation is crucial for American economic growth, jobs, and the future of U.S. competitiveness.

A key component of H.R. 1249 is section 22, which would help ensure that fees collected by the U.S. Patent and Trademark Office (PTO) fund the office and its administration of the patent system. PTO faces significant challenges, including a massive backlog of pending applications, and this backlog is stifling domestic innovators. The fees that PTO collects to review and approve patent applications should be dedicated to PTO operation. However, fee diversion by Congress has hampered PTO's efforts to hire and retain a sufficient number of qualified examiners and implement technological improvements necessary to ensure expeditious issuance of high quality patents. Though the PTO funding compromise embodied in the House-passed bill could be strengthened to match the fee diversion provision originally passed by the Senate, as crafted, Section 22 represents a meaningful step toward ensuring that PTO has better access to the user fees it collects, and would better allow the agency to address the current backlog of 1.2 million applications waiting for a final determination and pendency time of three years, as well as to improve patent quality.

In addition, the legislation would help ensure that the U.S. remains at the forefront of

innovation by enhancing the PTO process and ensuring that all inventors secure the exclusive right to their inventions and discoveries. The bill shifts the U.S. to a first-inventor-to-file system that the Chamber believes is both constitutional and wise, ending expensive interference proceedings. H.R. 1249 also contains important legal reforms that would help reduce unnecessary litigation against American businesses and innovators. Among the bill's provisions, Section 16 would put an end to frivolous false patent marking cases, while still preserving the right of those who suffered actual harm to bring actions. Section 5 would create a prior user right for those who first commercially use inventions, protecting the rights of early inventors and giving manufacturers a powerful incentive to build new factories in the United States, while at the same time fully protecting universities. Section 19 also restricts joinder of defendants who have tenuous connections to the underlying disputes in patent infringement suits. Section 18 of H.R. 1249 provides for a tailored pilot program which would allow patent office experts to help the court review the validity of certain business method patents using the best available prior art as an alternative to costly litigation.

The Chamber strongly opposes any amendments to H.R. 1249 that would strike or weaken any of the important legal reform measures in this legislation, including those found in Sections 16, 5, 19 and 18.

The Chamber strongly supports H.R. 1249. The Chamber may consider votes on, or in relation to, H.R. 1249—including procedural votes, and any weakening Pamendments—in our annual How They Voted scorecard.

Sincerely,

R. BRUCE JOSTEN,
*Executive Vice President, Government Affairs.*

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UNITED STEELWORKERS,
*Pittsburgh, PA, July 15, 2011.*

Hon. PATRICK J. LEAHY,
*Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN LEAHY: On behalf of the United Steelworkers, I am writing to urge you to consider support for the recently passed House bill, H.R. 1249. Over the past several years the USW has been deeply involved in discussions concerning comprehensive patent reform. We were principally concerned with issues dealing with how damages are calculated for infringed patents, new post-grant review procedures, and publication requirements for pending patents. H.R. 1249, as did S. 23 which passed earlier this year, satisfactorily addresses these issues and has our support. While we prefer the provision in the Senate bill dealing with USPTO funding, we nevertheless believe that the House bill moves in the right direction and will help insure that the patent office has the appropriate and necessary resources to do its important work.

Certainly, no bill is perfect. But H.R. 1249 goes a long way toward balancing different interests on a very difficult and contentious issue. We believe it warrants your favorable consideration and enactment by the Senate so that it can be moved to the President's desk and signed into law without undue delay.

We worked closely with your office, and others in the Senate, in finding a consensus approach that would promote innovation, investment, production and job creation in the U.S. We believe that H.R. 1249, which builds on your work in the Senate, strikes a proper balance.

The U. S. economy remains in a very fragile state with high unemployment and stagnant wages. Patent reform can be an important part of a comprehensive approach to getting the economy moving again and I urge its enactment.

Sincerely,

LEO W. GERARD,
*International President.*

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JUNE 27, 2011.

Hon. PATRICK LEAHY,
*Chairman, Senate Committee on the Judiciary, Washington, DC.*

Hon. CHUCK GRASSLEY,
*Ranking Member, Senate Committee on the Judiciary, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: We write on behalf of six university, medical college, and higher education associations to encourage you to work with the leadership of the Senate to bring H.R. 1249 before the Senate as soon as possible for a vote on passage of the bill as is.

The patent system plays a critical role in enabling universities to transfer the discoveries arising from university research into the commercial sector for development into products and processes that benefit society. H.R. 1249 closely resembles S. 23; both bills contain provisions that will improve patent quality, reduce patent litigation costs, and provide increased funding for the USPTO. Although we preferred the USPTO revolving fund established in S. 23, we believe that the funding provisions adopted by the House in the course of passing H.R. 1249 provide an effective means of preventing fee diversion. Together with the expanded fee-setting authority included in both bills, H.R. 1249 will provide USPTO with the funding necessary to carry out its critical functions.

We very much appreciate the leadership of the Senate Judiciary Committee in crafting S. 23, which brought together the key elements of effective patent reform and formed the basis for H.R. 1249. These bills represent the successful culmination of a thorough, balanced effort to update the U.S. patent system, strengthening the nation's innovative capacity and job creation in the increasingly competitive global economic environment of the 21st century. Senate passage of H.R. 1249 will assure that the nation secures these benefits.

Sincerely,

HUNTER R. RAWLINGS III,
*President, Association of American Universities.*

MOLLY CORBETT BROAD,
*President, American Council on Education.*

DARRELL G. KIRCH,
*President and CEO, Association of American Medical Colleges.*

PETER MCPHERSON,
*President, Association of Public and Land-grant Universities.*

ROBIN L. RASOR,
*President, Association of University Technology Managers.*

ANTHONY P. DECRAPPEO,
*President, Council on Governmental Relations.*

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JUNE 25, 2011.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: As an independent inventor and someone who has personally interacted with thousands of other independent inventors and entrepreneurs, we urge you to work with the leadership of the Senate to bring H.R. 1249 to the Senate floor as soon the Senate's schedule might permit and pass the bill as is.

Over the past few months, my enthusiasm and belief in the legislative process has grown as I have participated in the debate over patent reform. I believe that this legislation will fully modernize our patent laws. It will give independent inventors and entrepreneurs the speed and certainty necessary to go out and commercialize their inventions, start companies, and create jobs.

There has been a great deal of compromise amongst industries to balance the unique needs of all constituents. The independent inventor has been well represented throughout this process and we are in a unique situation where there is overwhelming support for this legislation.

The fee diversion debate has been important, since it has shed light on the fact that nearly a billion dollars has been diverted from the USPTO. These are dollars that inventors have paid to the USPTO expecting the funds to be used to examine applications as expeditiously as possible. While I would have preferred the Senate's approach in S. 23 to prevent diversion of USPTO funds, I believe that acceptance of the House bill provides the best way to ensure that the funds paid to the patent office will be available to hire examiners and modernize the tools necessary for it to operate effectively.

H.R. 1249 is the catalyst necessary to incentivize inventors and entrepreneurs to create the companies that will get our country back on the right path and generate the jobs we sorely need. I hope that you will take the needs of the ''little guy'' into consideration and move this legislation forward and enact these historic reforms.

Sincerely,

LOUIS J. FOREMAN,
*CEO.*

Mr. LEAHY. The bill is important for our economy. It is important for job creation. It is a product of bipartisan and bicameral collaboration. It is the way our system is supposed to work. I look forward to passing the bill and sending it directly to the President's desk for his signature.

I know my friends both on the Republican side and Democratic side have amendments to this bill, but they are not amendments that should pass. I mentioned the one earlier. I talked about the amendment that would put all our—well, Madam President, which amendment is the first in order?

The PRESIDING OFFICER. Sessions amendment No. 600.

Mr. LEAHY. Madam President, I yield the floor. I know both Senator SESSIONS and Senator GRASSLEY wish to speak to that.

The PRESIDING OFFICER. The Senators will have 4 minutes equally divided.

The Senator from Alabama.

Mr. SESSIONS. Madam President, the oath that judges take is to do equal justice, and it says for the poor and the rich.

Every day statutes of limitations require that a litigant file a lawsuit within so many days and file petitions in so many days. I see Senator CORNYN, a former justice on the Texas Supreme Court and attorney general of Texas. He fully understands that. I know he supports my view of this issue; that is, that the rules have to be equally applied.

It is just not right to the little widow lady, it is not right that somebody

with a poor lawyer, or whatever, misses a deadline and a judge throws the case out. And they do. Big law firms such as WilmerHale file motions every day to dismiss cases based on delay in filing those cases. Big insurance companies file lawsuits, file motions to dismiss every day against individuals who file their claims too late—and they win. So when this big one has a good bit of risk, presumably they have a good errors and omissions policy—that is what they are supposed to do.

One reason they get paid the big bucks—and the average partner makes $1 million-plus a year—is because they have high responsibilities, and they are required to meet those responsibilities and be responsible.

So I believe it is improper for us, while this matter is on appeal and in litigation, to take action driven by this continual lobbying pressure that would exempt one company. They can say it is others involved, but, look, this is always about one company. I have been here for 10 years. I know how it is played out. I have seen it. I have talked to the advocates on their behalf. I just haven't been able to agree to it because I see the average person not getting the benefit they are due.

So I urge my colleagues to join in support of this amendment. The Wall Street Journal and others have editorialized in favor of it, and I urge my colleagues to support it.

Mr. GRASSLEY. How much time do I have?

The PRESIDING OFFICER. Two minutes in opposition to the amendment.

Mr. GRASSLEY. I think the Senator from Alabama has given me a reason to suggest the importance of the language of the bill he wants to strike because he said that law ought to be equally applied.

The law for this one company is that they were not given justice by bureaucrats who acted in an arbitrary and capricious manner and they were denied their rights under the law. So that company is taken care of because there was an impartial judge who believed they had been abused in their rights under Hatch-Waxman to be able to extend their patent.

You might be able to argue in other places around the country when you are likewise denied your right that you have this court case to back you up, but we cannot have one agency saying when a 60-day period of time starts for mail going in or mail going out to exercise your 60-day period, and for another agency to do it another way. That is basically what the judge said, that Congress surely could not have meant that.

The language of this section 37 does exactly what Senator SESSIONS wants, which is to guarantee in the future that no bureaucrat can act in an arbitrary and capricious way when they decide when does the 60-day period of time start. We put it in the statute of the United States so the courts look at it and the bureaucrats look at it in exactly the same way.

If you are a citizen of this country, you ought to know what your rights are. You ought to know that a bureaucrat treats you the same way they treat, in like situations, somebody else. You cannot have this sort of arbitrary and capricious action on the part of faceless bureaucrats that denies the rights. This puts it in statute and solidifies it so everybody knows what the law is, rather than relying upon one judge or in the future having to rely upon the court someplace else. I ask my colleagues not to support the Sessions amendment because it would deny equal rights to some people in this country, as this judge said those equal rights were already denied.

The PRESIDING OFFICER (Ms. KLOBUCHAR). The time has expired. The Senator from Vermont.

Mr. LEAHY. Madam President, I ask unanimous consent that after the first vote—we have several more votes—the remaining votes be 10-minute votes.

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

The Senator from Vermont.

Mr. LEAHY. Have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

The question is on agreeing to the Sessions amendment No. 600.

Mr. SESSIONS. 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 bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Indiana (Mr. COATS).

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

The result was announced—yeas 47, nays 51, as follows:

[Rollcall Vote No. 126 Leg.]

YEAS—47

| | | |
|---|---|---|
| Alexander | Enzi | Murkowski |
| Ayotte | Hatch | Paul |
| Barrasso | Heller | Portman |
| Baucus | Hoeven | Risch |
| Boozman | Hutchison | Rubio |
| Boxer | Inhofe | Sessions |
| Cantwell | Isakson | Shelby |
| Casey | Johanns | Snowe |
| Chambliss | Johnson (WI) | Stabenow |
| Coburn | Kirk | Tester |
| Conrad | Lee | Thune |
| Corker | Manchin | Toomey |
| Cornyn | McCain | Udall (CO) |
| Crapo | McCaskill | Vitter |
| DeMint | McConnell | Wicker |
| Durbin | Moran | |

NAYS—51

| | | |
|---|---|---|
| Akaka | Brown (MA) | Collins |
| Begich | Brown (OH) | Coons |
| Bennet | Burr | Feinstein |
| Bingaman | Cardin | Franken |
| Blumenthal | Carper | Gillibrand |
| Blunt | Cochran | Graham |
| Grassley | Leahy | Reed |
| Hagan | Levin | Reid |
| Harkin | Lieberman | Roberts |
| Inouye | Lugar | Sanders |
| Johnson (SD) | Menendez | Schumer |
| Kerry | Merkley | Shaheen |
| Klobuchar | Mikulski | Udall (NM) |
| Kohl | Murray | Warner |
| Kyl | Nelson (NE) | Webb |
| Landrieu | Nelson (FL) | Whitehouse |
| Lautenberg | Pryor | Wyden |

NOT VOTING—2

| | |
|---|---|
| Coats | Rockefeller |

The amendment was rejected.

Mr. LEVIN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 595

The PRESIDING OFFICER. There will now be 4 minutes equally divided prior to a vote in relation to the Cantwell amendment.

The Senator from Washington.

Ms. CANTWELL. Madam President, I encourage my colleagues to support the Cantwell amendment. The Cantwell amendment is the reinstatement of section 18 language as it passed the Senate. So casting a vote for the Cantwell amendment will be consistent with language previously supported by each Member.

The reason we are trying to reinstate the Senate language is because the House language broadens a loophole that will allow for more confusion over patents that have already been issued. It will allow for the cancellation of patents already issued by the Patent Office, throwing into disarray and legal battling many companies that already believe they have a legitimate patent.

The House language, by adding the word ''other,'' broadens the definition of section 18 and extends it for 8 years, so this chaos and disarray that is supposedly targeted at a single earmark for the banking industry to try to get out of paying royalties is now so broadened that many other technology companies will be affected.

I urge my colleagues to support the Cantwell amendment and reinstate the language that was previously agreed to.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Madam President, I rise in opposition to the amendment of my dear friend, Senator CANTWELL.

Business method patents are a real problem. They never should have been patented to begin with. Let me give an example: double click. We double click on a computer or something such as that and after it becomes a practice for awhile, someone files a patent and says they want a patent on double clicking. Because of the way the Patent Office works, the opponents of that never get a chance to weigh in as to whether it should be a patent. The Patent Office has gone way overboard in allowing these business method patents.

One might say: Then you get your day in court. That is true, except 56

percent—more than half—of all the business method patent litigation goes to one district, the Eastern District of Texas, which is known to be extremely favorable to the plaintiffs. It takes about 10 years to litigate. It costs tens of millions of dollars. So the people who are sued over and over for things such as double clicking or how to photograph a check—common things that are business methods and not patents—settle. It is a lucrative business for a small number of people, but it is wrong.

What this bill does is very simple. What the bill does, in terms of this amendment, is very simple. It says the Patent Office will make an administrative determination before the years of litigation as to whether this patent is a legitimate patent so as not to allow the kind of abuse we have seen. It applies to all financial transactions, whether it be a bank or Amazon or a store or anybody else, and it makes eminent sense.

So as much respect as I have for my colleague from Washington, I must strongly disagree with her argument and urge that the amendment be voted down.

I yield back the remainder of my time.

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

Ms. CANTWELL. 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 assistant legislative clerk called the roll.

Mr. PAUL (when his name was called). Present.

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

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

The result was announced—yeas 13, nays 85, as follows:

[Rollcall Vote No. 127 Leg.]

YEAS—13

| | | |
|---|---|---|
| Boxer | Johnson (WI) | Sessions |
| Cantwell | Lee | Udall (CO) |
| Coburn | McCaskill | Vitter |
| DeMint | Murray | |
| Hatch | Pryor | |

NAYS—85

| | | |
|---|---|---|
| Akaka | Cochran | Inhofe |
| Alexander | Collins | Inouye |
| Ayotte | Conrad | Isakson |
| Barrasso | Coons | Johanns |
| Baucus | Corker | Johnson (SD) |
| Begich | Cornyn | Kerry |
| Bennet | Crapo | Kirk |
| Bingaman | Durbin | Klobuchar |
| Blumenthal | Enzi | Kohl |
| Blunt | Feinstein | Kyl |
| Boozman | Franken | Landrieu |
| Brown (MA) | Gillibrand | Lautenberg |
| Brown (OH) | Graham | Leahy |
| Burr | Grassley | Levin |
| Cardin | Hagan | Lieberman |
| Carper | Harkin | Lugar |
| Casey | Heller | Manchin |
| Chambliss | Hoeven | McCain |
| Coats | Hutchison | McConnell |
| Menendez | Risch | Thune |
| Merkley | Roberts | Toomey |
| Mikulski | Rubio | Udall (NM) |
| Moran | Sanders | Warner |
| Murkowski | Schumer | Webb |
| Nelson (NE) | Shaheen | Whitehouse |
| Nelson (FL) | Shelby | Wicker |
| Portman | Snowe | Wyden |
| Reed | Stabenow | |
| Reid | Tester | |

ANSWERED ''PRESENT''—1

Paul

NOT VOTING—1

Rockefeller

The amendment was rejected.

AMENDMENT NO. 599, AS MODIFIED

The PRESIDING OFFICER. There is now 4 minutes equally divided prior to the vote in relation to the Coburn amendment.

The Senator from Oklahoma is recognized.

Mr. COBURN. Madam President, this is a straightforward amendment that says if you pay into the Patent Trademark Office to have a patent evaluated, that money ought to be spent on the process. We have now stolen almost $900 million from the Patent Office. We have almost a million patents in arrears. We have fantastic leadership in the Patent Office, and we will not send them the money to do their job. It is unconscionable that we will not do this.

I understand the arguments against it, and I reserve the remainder of our time.

Mrs. FEINSTEIN. Madam President, I rise today in support of Senator COBURN's amendment to prevent the diversion of patent and trademark fees to other purposes.

I am pleased to be a cosponsor of this amendment. I believe this amendment is critical for this bill to have the innovation-encouraging, job-creating effects that its proponents say it will.

Prior to 1990, taxpayers supported the operations of the Patent and Trademark Office, or PTO. In 1990, this was changed through a 69 percent user fee ''surcharge,'' so that the PTO became funded entirely through fees paid by its users, the American inventors who seek to protect the genius of their inventions from those who would copy these innovations for their own profit.

In short order, Congress began using the funds that inventors paid to protect their inventions for other purposes. In 1992, $8.1 million in user fees were diverted. In 1993, $12.3 million was diverted. In 1994, $14.7 million. And so it continued, escalating every year, until what started as a trickle became a flood in 1998, with $200.3 million in PTO user fees diverted. All told, since 1992, an estimated $886 million in fees that were paid for the efficient and effective operation of the Patent and Trademark Office have been diverted to other uses, according to the Intellectual Property Owners Association.

Meanwhile, at the same time that these fees were being taken away, the length of time that it takes to get a patent out of the Patent Office has steadily increased. In fiscal year 1991, average patent pendency was 18.2 months. By fiscal year 1999, it had increased to 25 months. By fiscal year 2010, average patent pendency had increased all the way to 35.3 months.

These are not just numbers. This is innovation being stifled from being brought to market. The longer it takes to get a patent approved, the longer a new invention, a potential technological breakthrough, sits on the shelf gathering dust instead of spurring job growth and scientific and economic progress.

Ultimately, this hurts the competitiveness of the American economy. America has a stunning record of leading the world in innovation, which has provided us a competitive edge over the decades and even centuries. By stifling the progress of our innovation within the PTO, we are dulling that competitive edge.

Obviously, there is a direct relationship between fee diversion and patent pendency. The more fees that are diverted away from the PTO, the fewer patent examiners they can hire, the more patents each examiner has to process, and the longer it takes them to get to any individual patent—a longer patent pendency.

The manager of this bill, the distinguished chairman of the Judiciary Committee, has argued that ''the bill will speed the time it takes for applications on true inventions to issue as high quality patents, which can then be commercialized and used to create jobs. . . . The America Invents Act will ensure that the PTO has the resources it needs to work through its backlog of applications more quickly. The bill accomplishes this objective by authorizing the PTO to set its fees . . .''

But what this bill gave with the one hand, in authorizing the PTO to set its fees, the House of Representatives took away with the other hand, by striking the strong antifee diversion language that the Senate included in its patent bill earlier this year. Setting higher fee levels to reduce patent pendency does no good if those fees are simply diverted away from the PTO, and not used to hire additional patent examiners. Indeed, requiring the payment of higher patent fees which are then used for general government purposes really amounts to a tax on innovation—which is the last thing we should be burdening in today's technology-driven economy.

The chairman argues that the bill ''creates a PTO reserve fund for any fees collected above the appropriated amounts in a given year—so that only the PTO will have access to these fees.'' However, with all due respect, the language that the House put into the bill is not really different from previous bill language that proved ineffective to prevent diversion.

The 1990 law that authorized the patent user surcharge provided that the surcharges ''shall be credited to a separate account established in the Treasury . . .; '' and ''shall be available only

to the Patent and Trademark Office, to the extent provided in appropriation Acts. . . .''

However, notwithstanding this language, the Congressional Budget Office found in 2008 that $230 million had been diverted from the surcharge account.

Similarly, the House changed the bill before us today to ''establish[] in the Treasury a Patent and Trademark Fee Reserve Fund . . .; '' and ''to the extent and in the amounts provided in appropriations Acts, amounts in the Fund shall be made available until expended only for obligation and expenditure by the Office . . .''

The key language is the same—''to the extent provided in appropriation Acts.'' Calling it a ''fund'' rather than an ''account'' should not lead anyone to expect a different result.

Indeed, the Senate bill that we passed earlier this year explicitly struck the existing statutory language, ''To the extent and in the amounts provided in advance in appropriations Acts . . .'' And the House specifically restored that language, omitting only the words ''in advance.'' The Coburn amendment would restore the changes we made earlier this year, eliminating that language again.

The Coburn amendment, like the Senate bill, contains other key language, providing that amounts in the fund it establishes ''shall be available for use by the Director without fiscal year limitation.'' The bill before us today provides no such protection against diversion.

In short, this bill will permit the continued diversion of patent fees, to the detriment of American inventors and innovation.

But don't just take my word for this. The Intellectual Property Owners Association, which includes more than 200 companies, just yesterday said:

> The greatest disappointment with the House-passed patent reform bill H.R. 1249 . . . is its failure to stop USPTO fee diversion. The House-passed patent reform bill creates another USPTO account, a ''reserve fund,'' but nothing in the proposed statutory language guarantees the USPTO access to the funds in this new account. The language of H.R. 1249 defers to future appropriations bills to instruct the USPTO on how to access fees in the new USPTO account. Therefore, despite some claims to the contrary, the creation of this new account, alone, will not stop diversion.

The Innovation Alliance, a major coalition of innovative companies, and CONNECT, an organization dedicated to supporting San Diego technology and life science businesses, among others, also believe that the House language is insufficient to prevent fee diversion.

Without this protection from fee diversion, this bill could well make our patent system worse, not better. Many of the changes made by this bill will impose additional burdens on the PTO. For example, the CBO found that the new post-grant review procedure would cost $140 million to implement over a 10-year period; the new supplemental review procedure would cost $758 million to implement over that period; and the changes to the inter partes reexamination procedure would cost $251 million to implement.

All told, these changes would impose additional duties on the PTO costing over $1 billion to implement over a 10-year period. If the PTO is not permitted to keep the fees it needs to meet these obligations, patents will take even longer to be issued, and the promised improvements in patent quality may prove to be ephemeral. We won't encourage innovation; we won't create new jobs.

Therefore, I urge my colleagues to support the amendment by the Senator from Oklahoma, to support the strong antidiversion language that we passed this Spring, and to end fee diversion once and for all.

Ms. MIKULSKI. Madam President, I rise in opposition to the amendment to the America Invents Act offered by the Senator from Oklahoma.

I, along with my fellow members of the Appropriations Committee, share the Senator from Oklahoma's goal of ensuring that all fees paid by inventors to the U.S. Patent and Trademark Office, PTO, are used only for the operations of the PTO. The PTO fosters American innovation and job creation by providing protections for ideas and products developed by our entrepreneurs, businesses and academic institutions.

As the chairwoman of the Appropriations Subcommittee that funds the PTO, I have worked to ensure that PTO receives every dollar it collects from inventors. But, while I share the Senator's goal, I oppose his amendment for three reasons.

First, the amendment is unnecessary. It is a solution in search of a problem. The underlying America Invents Act before the Senate today ensures that PTO can keep and spend all of the fees collected. This legislation establishes a Patent and Trademark Fee Reserve Fund. Any fees collected in excess of annual appropriations would be deposited into the fund, and those fees would remain available until expended solely for PTO operations.

The creation of this fund is not a new idea. Provisions of several bills reported out of the Senate Appropriations Committee in prior years allowed PTO to keep and spend fee revenue in excess of appropriations levels. I can assure my colleagues that the committee will continue to support such language.

Second, the amendment would significantly reduce oversight of the PTO. The Senator from Oklahoma's amendment would establish a new, off-budget revolving fund for PTO fees. This would put the PTO on autopilot, without the oversight of an annual legislative vehicle to hold the agency accountable for progress and wise use of taxpayer funding.

Since fiscal year 2004, funding for PTO has increased by over 70 percent. At the same time, however, the backlog of patent applications has climbed to more than 700,000. It now takes over three years for PTO to make a decision on a patent application. This is unacceptable. While America's inventors are waiting in line, their ideas are being stolen by other countries.

Through annual appropriations bills, the Appropriations Committee has succeeded in forcing management reforms that have slowed the growth of PTO's backlogs and improved employee retention. While further accountability is needed, the America Invents Act keeps PTO on budget and on track for continued oversight by the Appropriations Committee each year.

Finally, the Senator's amendment could have unintended consequences. If PTO were permitted to operate on autopilot, the agency could face fee revenue shortfalls and the Appropriations Committee would not be poised to assist. The committee continually monitors the agency's fee projections to ensure the agency can operate effectively. It is not widely known, but over the past 6 years, PTO has actually collected nearly $200 million less than the appropriated levels.

In fact, I recently received a letter from the Director of the PTO informing my Subcommittee that fee estimates for fiscal year 2012 have already dropped by $88 million. I will ask consent to have this letter printed in the RECORD. If PTO was put on autopilot as proposed by the Senator's amendment, the committee would no longer have the tools to provide the necessary funding to keep our patent and trademark system operating should a severe funding gap occur.

The PTO's full access to fee revenue is critical to American innovation and job creation. I commend Chairman LEAHY for his efforts to improve the patent system and ensure that PTO funding is spent wisely and effectively. I support the funding provisions of the America Invents Act and oppose the Coburn amendment. I urge my colleagues to do the same.

Madam President, I ask unanimous consent to have printed in the RECORD the letter to which I referred.

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

UNITED STATES PATENT
AND TRADEMARK OFFICE,
*Alexandria, VA, September 1, 2011.*

Hon. BARBARA A. MIKULSKI,
*Chairwoman, Subcommittee on Commerce, Justice, Science, and Related Agencies, Committee on Appropriations, U.S. Senate, Washington, DC.*

DEAR MADAM CHAIR: This letter provides you with the United States Patent and Trademark Office's (USPTO) current, revised fee collection estimates for fiscal year (FY) 2012, as requested in the report accompanying H.R. 3288 (Pub. L. No. 111–117).

The President's FY 2012 Budget supports an aggressive approach to improving operations at the Agency, reducing the patent backlog and contributing to economic recovery efforts. The fee collection estimate submitted with the FY 2012 President's Budget

earlier this year was $2,706.3 million, including a 15% interim increase to certain patent user fee rates. This increase will help fund efforts to reduce the backlog of unexamined patent applications. Using more recent information, outcomes of events, and projections of demand for USPTO services, we now expect fee collections for FY 2012 to be in the $2,431.9 million to $2,727.6 million range, with a working estimate of $2,618.2 million (a decrease of $88.1 million from the FY 2012 President's Budget estimate).

The projected decrease is attributable to factors both internal and external to the USPTO; namely, a change in strategic direction resulting in the Office not pursuing a cost recovery regulatory increase to Request for Continued Examination fee rates (this was estimated to generate about $70 million in patent application fees), the decision not to pursue a Consumer Price Index increase to patent statutory fees, and the decrease in demand for USPTO services as a result of processing reengineering gains from compact prosecution. The USPTO bases these revisions on current demand as well as discussions with our stakeholders about expected trends. The USPTO also reviews filing trends in foreign patent offices, which have experienced similar difficulties in estimating demand.

In closing, the USPTO would like to thank the subcommittee for their support of the Leahy-Smith America Invents Act. We are especially grateful for the subcommittee's support in ensuring all fees collected by the USPTO will be made available for the USPTO to use in examination and intellectual property activities supporting the fee paying community.

If you or your staff have any questions, please contact Mr. Anthony Scardino, the USPTO's Chief Financial Officer, at (571) 272–9200. Thank you for your continued support of the United States Patent and Trademark Office.

Sincerely,

DAVID J. KAPPOS,
*Under Secretary and Director*.

*Identical Letters sent to:*

The Hon. Kay Bailey Hutchison, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. ÷Senate, Washington, DC.

The Hon. Frank R. Wolf, Chairman, Subcommittee on Commerce, Justice, Science, and Related Agencies, Committee on Appropriations, House of Representatives, Washington, DC.

The Hon. Chaka Fattah, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, House of Representatives, Washington, DC.

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I understand what the Senator from Oklahoma says, but the Coburn amendment can derail and even kill this bill. So, as I have told the Senator, I will move to table in a moment. But this bill would otherwise help our recovering economy. It would unleash innovation and create jobs.

I have worked for years against Patent Office fee diversion, but I oppose this amendment. Its formulation was already rejected by the House of Representatives. They have made it very clear. There is no reason they will change. This amendment can sink years of efforts by both Republicans and Democrats in this body and the other body to pass it. Actually, this amendment could kill the bill over a mere formality: the difference between a revolving fund and a reserve fund.

We have worked out a compromise in good faith. The money, the fees—under the bill as it is here—can only be spent at the PTO, but the only thing is, we actually have a chance to take a look at what they are spending it on, so they could not buy everybody a car or they could not have a gilded palace. They actually have to spend it on getting through the backlog of patents. It will not go anywhere else. It will only go to the Patent Office.

So we should not kill the bill over this amendment. We should reject the amendment and pass the bill. It is time for us to legislate. That is what the American people elected us to do. That is what they expect us to do. Let's not kill the bill after all this work over something that will really make no difference in the long run. So I therefore will move to table the Coburn amendment.

The PRESIDING OFFICER. All time has not yet expired.

Mr. COBURN. Madam President, I think I have reserved my time.

The PRESIDING OFFICER. The Senator from Oklahoma has reserved his time. He has 1½ minutes.

Mr. COBURN. Madam President, I will make the following points, and I would ask for order before I do that.

The PRESIDING OFFICER. Could we please have order so the Senator from Oklahoma can speak.

Mr. COBURN. It is true that the House bill moves the money to where it cannot be spent elsewhere, but there is no requirement that the money be spent in the Patent Office. There is a written agreement between an appropriations chairman and the Speaker that is good as long as both of them are in their positions. This is a 7-year authorization. It will not guarantee that the money actually goes to the Patent Office.

This bill, with this amendment in it, went out of the House Judiciary Committee 32 to 3 in a strong, bipartisan vote. It was never voted on in the Senate because the appropriators objected because of a technical error, which has been corrected in this amendment. So it violates no House rules, it violates no condition and, in fact, will guarantee that the Patent Office has the funds it needs to have to put us back in the place we need to be.

This bill will not be killed because we are going to make sure the money for patents goes to the Patent Office. Anybody who wants to claim that, ask yourself what you are saying. We are not going to do the right thing because somebody says they will not do the right thing? We ought to do the right thing.

I yield back the remainder of my time.

Mr. LEAHY. Madam President, because this amendment would kill the bill, I move to table the amendment and 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. ROCKEFELLER) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Florida (Mr. RUBIO).

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

The result was announced—yeas 50, nays 48, as follows:

[Rollcall Vote No. 128 Leg.]

YEAS—50

| | | |
|---|---|---|
| Akaka | Hagan | Mikulski |
| Baucus | Harkin | Murkowski |
| Bennet | Hoeven | Murray |
| Bingaman | Inouye | Nelson (NE) |
| Blumenthal | Johnson (SD) | Nelson (FL) |
| Brown (MA) | Kerry | Pryor |
| Brown (OH) | Kohl | Reed |
| Cardin | Kyl | Reid |
| Carper | Landrieu | Sanders |
| Casey | Lautenberg | Schumer |
| Cochran | Leahy | Shaheen |
| Collins | Levin | Shelby |
| Coons | Lieberman | Stabenow |
| Durbin | Lugar | Udall (NM) |
| Franken | Manchin | Webb |
| Gillibrand | Menendez | Whitehouse |
| Grassley | Merkley | |

NAYS—48

| | | |
|---|---|---|
| Alexander | DeMint | McConnell |
| Ayotte | Enzi | Moran |
| Barrasso | Feinstein | Paul |
| Begich | Graham | Portman |
| Blunt | Hatch | Risch |
| Boozman | Heller | Roberts |
| Boxer | Hutchison | Sessions |
| Burr | Inhofe | Snowe |
| Cantwell | Isakson | Tester |
| Chambliss | Johanns | Thune |
| Coats | Johnson (WI) | Toomey |
| Coburn | Kirk | Udall (CO) |
| Conrad | Klobuchar | Vitter |
| Corker | Lee | Warner |
| Cornyn | McCain | Wicker |
| Crapo | McCaskill | Wyden |

NOT VOTING—2

| | |
|---|---|
| Rockefeller | Rubio |

The motion was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, we have one more vote. We will have 4 minutes of debate and then a vote on final passage. This is important legislation.

The President's speech is at 7 o'clock. We will gather here at 6:30 to proceed to the House Chamber.

When the President's speech is over, we will come back here, and I will move to proceed to the debt ceiling vote that we know is coming. If that motion to proceed fails, then we will be through for the week as far as votes go. If the vote to proceed is affirmative in nature, we will be back tomorrow, and there will be 10 hours allowed, but we don't have to use it all.

We will have to finish this matter tomorrow. I think it is clear that I hope we don't proceed to that, but we will have to see. I am here tomorrow. That

vote will start very quickly tonight, as soon as the speech is over. We will be in recess subject to the call of the Chair. The vote will start quickly.

Also, I have talked to the Republican leader about how we are going to proceed next week. We don't have that defined, but I am waiting to hear from the Speaker, either tonight or tomorrow, to make more definite what we need to do next week.

Again, we have one more vote after the President's speech tonight.

Mr. President, I move to reconsider the last vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. There will now be 4 minutes of debate equally divided prior to the vote on passage of the measure. Who yields time?

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, 6 months ago, the Senate approved the America Invents Act to make the first meaningful, comprehensive reforms to the Nation's patent system in nearly 60 years. Today, the Senate has come together once again, this time to send this important, job-creating legislation to the President to be signed into law.

Casting aside partisan rhetoric, and working together in a bipartisan and bicameral manner, Congress is sending to President Obama the most significant jobs bill of this Congress. The bill originated 6 years ago in the House of Representatives, when Chairman SMITH and Mr. BERMAN introduced the first patent reform proposals.

After dozens of congressional hearings, markup sessions, and briefings, and countless hours of Member and staff meetings, through two Presidential administrations, and three Congresses, patent reform is finally a reality.

The Leahy-Smith America Invents Act is a bipartisan bill and a bipartisan accomplishment. This is what we in Washington can do for our constituents at home when we come together for the benefit of the country, the economy, and all Americans.

I especially thank Senator KYL for his work in bringing this bill to the floor of the Senate—twice—and Senator GRASSLEY for his commitment to making patent reform the Judiciary Committee's top priority this year. Chairman SMITH, in the other body, deserves credit for leading the House's consideration of this important bill. I look forward to working with him on our next intellectual property priority—combating online infringement.

I thank the members of the Senate Judiciary Committee, who worked together to get quorums and get this passed. I thank them for their contribution.

Mr. President, I acknowledge several members of my Judiciary Committee staff, specifically Aaron Cooper, who sits here beside me. He spent more hours than I even want to think about, or his family wants to think about, working with me, other Senators, Members of the House, other staff, and stakeholders to preserve the meaningful reforms included in the America Invents Act, as did Susan Davis before him. Ed Pagano, my chief of staff, kept everybody together. I also thank Bruce Cohen, my chief counsel on the Judiciary Committee, who every time I thought maybe we are not going to make it would tell me ''You have to keep going,'' and he was right. Erica Chabot, Curtis LeGeyt, and Scott Wilson of my Judiciary Committee staff have also spent many hours working on this legislation.

I also commend the hard-working staff of other Senators, including Joe Matal, Rita Lari, Tim Molino, and Matt Sandgren for their dedication to this legislation. Chairman SMITH's dedicated staff deserves thanks as well, including Richard Hertling, Blaine Merritt, Vishal Amin, and Kim Smith.

I would also like to thank the majority leader for his help in passing this critical piece of legislation.

The America Invents Act is now going to be the law of the land. I thank all my colleagues who worked together on this.

In March, the Senate passed its version of the America Invents Act, S. 23, by a 95–5 vote. One of the key provisions of the legislation transitions the United States patent system from a first-to-invent system to a first-inventor-to-file system. The Senate considered and rejected an amendment to strike this provision, with 87 Senators voting to retain the transition.

When this body first considered the America Invents Act, some suggested that along with the first-inventor-to-file transition, the legislation should expand the prior user rights defense. The prior user rights defense, in general, is important for American manufacturers because it protects companies that invent and use a technology, whether embodied in a process or product, but choose not to disclose the invention through the patenting process, and instead rely on trade secret protection. The use of trade secrets instead of patenting may be justified in certain instances to avoid, for example, the misappropriation by third parties where detection of that usage may be difficult. These companies should be permitted to continue to practice the invention, even if another party later invents and patents the same invention.

In the United States, unlike in our major trading partners, prior user rights are limited to inventions on methods of doing or conducting business. The Senate bill included only a very limited expansion of this defense, and required the Director of the Patent and Trademark Office, ''PTO'', to study and report to Congress on the operation of prior user rights in other countries in the industrialized world, and include an analysis of whether there is a particular need for prior user rights given the transition to a first-inventor-to-file system.

The House-originated bill, the Leahy-Smith America Invents Act, which the Senate is considering today, makes important improvements to expand prior user rights beyond just methods of doing business. These improvements will be good for domestic manufacturing and job creation. I agree with the chairman of the House Committee on the Judiciary that inclusion of expanded prior user rights is essential to ensure that those who have invested in and used a technology are provided a defense against someone who later patents the technology.

I understand that there is some confusion regarding the scope of the defense in the bill. The phrase ''commercially used the subject matter'' is intended to apply broadly, and to cover a person's commercial use of any form of subject matter, whether embodied in a process or embodied in a machine, manufacture, or composition of matter that is used in a manufacturing or other commercial process. This is important particularly where businesses have made substantial investments to develop these proprietary technologies. And if the technology is embedded in a product, as soon as that product is available publicly it will constitute prior art against any other patent or application for patent because the technology is inherently disclosed.

The legislation we are considering today also retains the PTO study and report on prior user rights. I again agree with the chairman of the House Committee on the Judiciary, that one important area of focus will be how we protect those who make substantial investments in the development and preparation of proprietary technologies. It is my hope and expectation that Congress will act quickly on any recommendations made by the PTO.

Section 27 of the Leahy-Smith America Invents Act requires a study by the United States Patent and Trademark Office, USPTO, on effective ways to provide independent, confirming genetic diagnostic test activity where gen patents and exclusive licensing for primary genetic diagnostic tests exist. I support this section, which was championed by Ms. WASSERMAN SCHULTZ, and look forward to the USPTO's report.

I want to be clear that one of the reasons I support section 27 is that nothing in it implies that ''gene patents'' are valid or invalid, nor that any particular claim in any particular patent is valid or invalid. In particular, this section has no bearing on the ongoing litigation in *Association for Molecular Pathology* v. *Myriad Genetics*, _____ F.3d _____, 2011 WL 3211513 (Fed. Cir. July 29, 2011).

In *Kappos* v. *Bilksi*, _____ U.S. _____, 130 S. Ct. 3218 (2010), the Court found that the fact that a limited defense to business method patents existed in title 35 undermined the argument that

business method patents were categorically exempt from patentability. Specifically, the Court held that a ''conclusion that business methods are not patentable in any circumstances would render §273 [of title 35] meaningless.'' *Bilski*, 130 S. Ct. at 3228. But the section 27 study is readily distinguishable from the substantive prior user rights defense codified in title 35 referenced in Bilski. A ''gene patent'' may or may not be valid, and that has no impact on the USPTO study, which mentions the existence of gene patents issued by the USPTO (but still subject to a validity challenge), but focuses on the effect of patents and exclusive licensing of genetic diagnostic tests, regardless of whether there are relevant patents. This study will be useful and informative for policymakers no matter how section 101 of title 35 is interpreted by the courts.

There has been some question about the scope of patents that may be subject to the transitional program for covered business method patents, which is section 18 of the Leahy-Smith America Invents Act. This provision is intended to cover only those business method patents intended to be used in the practice, administration, or management of financial services or products, and not to technologies common in business environments across sectors and that have no particular relation to the financial services sector, such as computers, communications networks, and business software.

A financial product or service is not, however, intended to be limited solely to the operation of banks. Rather, it is intended to have a broader industry definition that includes insurance,brokerages, mutual funds, annuities, andan array offinancial companies outside of traditional banking.

Section 34 of the Leahy-Smith America Invents Act requires a study by the Government Accountability Office, GAO, on the consequences of patent infringement lawsuits brought by nonpracticing entities under title 35, United States Code. The legislation requires that GAO's study compile information on (1) the annual volume of such litigation, (2) the number of such cases found to be without merit, (3) the impact of such litigation on the time to resolve patent claims, (4) the related costs, (5) the economic impact, and (6) the benefit to commerce.

Following the House passage of H.R. 1249, the Comptroller General expressed concern that Section 34 may require it to answer certain questions for which the underlying data either does not exist, or is not reasonably available. Where that is the case, I want to make clear my view that GAO is under no obligation to include or examine information on a subject for which there is either no existing data, or that data is not reasonably obtainable. Further, GAO is not required to study a quantity of data that it deems unreasonable.

In my view, GAO can satisfy its requirements under section 34 by compiling reasonably available information on the nature and impact of lawsuits brought by non-practicing entities under title 35 on the topics outlined in section 34(b). Where it deems necessary, GAO may use a smaller sample size of litigation data to fulfill this obligation. GAO should simply note any limitations on data or methodology in its report.

I ask unanimous consent to have printed in the RECORD a letter from Gene L. Dodaro, Comptroller General of the United States, detailing GAO's possible limitations in complying with section 34.

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

UNITED STATES
GOVERNMENT ACCOUNTABILITY OFFICE
*Washington, DC, September 7, 2011.*

Hon. PATRICK J. LEAHY, *Chairman,*
Hon. CHARLES E. GRASSLEY, *Ranking Member, Committee on the Judiciary, U.S. Senate.*
Hon. LAMAR S. SMITH, *Chairman,*
Hon. JOHN CONYERS, Jr., *Ranking Member, Committee on the Judiciary, House of Representatives.*
Hon. JASON CHAFFETZ,
*House of Representatives.*

I am writing to express our concern regarding a provision relating to GAO in H.R. 1249, the Leahy-Smith America Invents Act. Section 34 of the bill would require GAO to conduct a study of patent litigation brought by so-called non-practicing entities, that is, plaintiffs who file suits for infringement of their patents but who themselves do not have the capability to design, manufacture, or distribute products based on those patents. As the Supreme Court and Federal Trade Commission have noted, an industry of such firms has developed; the firms obtain patents not to produce and sell goods but to obtain licensing fees from other companies.

The GAO study required by H.R. 1249 would mandate a review of: (1) the annual volume of such litigation for the last 20 years; (2) the number of these cases found to be without merit after judicial review; (3) the impacts of such litigation on the time required to resolve patent claims; (4) the estimated costs associated with such litigation; (5) the economic impact of such litigation on the economy; and (6) the benefit to commerce, if any, supplied by such non-practicing entities.

We believe this mandate would require GAO to undertake a study involving several questions for which reliable data are not available and cannot be obtained. In the first instance, the mandate would require identification of non-practicing entities that bring patent lawsuits. While some information about these entities may be obtainable, a definitive list of such entities does not exist and there is no reliable method that would allow us to identify the entire set from court documents or other available databases. Moreover, quantifying the cases found to be meritless by a court would produce a misleading result, because we understand most of these lawsuits are resolved by confidential settlement. Similarly, there is no current reliable source of information from which to estimate the effects of litigation by such entities on patent claims, litigation costs, economic impacts, or benefits to commerce. Further, because GAO does not have legal access to these private parties, we would have to rely on voluntary production of such information, a method we believe would be unreliable under these circumstances and would yield information that is not likely to be comparable from entity to entity.

Finally, empirical estimates of the effects of patent litigation on various economic variables would likely be highly tenuous. Measures of the cost of litigation or other variables related to quantifying patents or litigation would be highly uncertain and any relationships derived would likely be highly sensitive to small changes in these measures. Such relationships are likely to lead to inconclusive results, or results so heavily qualified that they likely would not be meaningful or helpful to the Congress. In that regard, we understand recent regulatory efforts to determine the economic and anticompetitive effects of such litigation have not been successful.

We appreciate your consideration of this matter and we would be happy to work with your staff regarding potential alternatives. GAO could, for example, identify what is currently known about each of the specific elements identified in Section 34. Managing Associate General Counsel Susan Sawtelle, at (202) 512–6417 or *SawtelleS@gao.gov*, or Congressional Relations Assistant Director Paul Thompson, at (202) 512–9867 or *ThompsonP@gao.gov*, may be contacted regarding these matters.

Sincerely yours,

GENE L. DODARO,
*Comptroller General of the United States.*

Mr. LEAHY. The America Invents Act is now going to be the law of the land. I thank all my colleagues who worked together on this.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, rising in opposition, this is not a patent reform bill, this is a big corporation patent giveaway that tramples on the rights of small inventors. It changes ''first to invent'' to ''first to file,'' which means if you are a big corporation and have lots of resources, you will get there and get the patent.

Secondly, it doesn't keep the money where it belongs. It belongs in the Patent Office. Yet, instead of having reforms that will help us expedite patents, it is giving away the money that is needed to make this kind of innovation work.

Third, the bill is full of special giveaways to particular industry corporations, as we have just witnessed with votes on the floor.

Fourth, by taking away the business patent method language, you will make it more complicated and have years and years of lawsuits on patents that have already been issued. If this is job creation, I have news for my colleagues; in an innovation economy, it is siding with corporate interests against the little guy. I urge a ''no'' vote.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the third reading and passage of the bill.

The bill (H.R. 1249) was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Florida (Mr. RUBIO).

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

The result was announced—yeas 89, nays 9, as follows:

[Rollcall Vote No. 129 Leg.]

YEAS—89

| | | |
|---|---|---|
| Akaka | Gillibrand | Moran |
| Alexander | Graham | Murkowski |
| Ayotte | Grassley | Murray |
| Barrasso | Hagan | Nelson (NE) |
| Baucus | Harkin | Nelson (FL) |
| Begich | Hatch | Portman |
| Bennet | Heller | Pryor |
| Bingaman | Hoeven | Reed |
| Blumenthal | Hutchison | Reid |
| Blunt | Inhofe | Risch |
| Boozman | Inouye | Roberts |
| Brown (MA) | Isakson | Sanders |
| Brown (OH) | Johanns | Schumer |
| Burr | Johnson (SD) | Sessions |
| Cardin | Kerry | Shaheen |
| Carper | Kirk | Shelby |
| Casey | Klobuchar | Snowe |
| Chambliss | Kohl | Stabenow |
| Coats | Kyl | Tester |
| Cochran | Landrieu | Thune |
| Collins | Lautenberg | Toomey |
| Conrad | Leahy | Udall (CO) |
| Coons | Levin | Udall (NM) |
| Corker | Lieberman | Vitter |
| Cornyn | Lugar | Warner |
| Crapo | Manchin | Webb |
| Durbin | McConnell | Whitehouse |
| Enzi | Menendez | Wicker |
| Feinstein | Merkley | Wyden |
| Franken | Mikulski | |

NAYS—9

| | | |
|---|---|---|
| Boxer | DeMint | McCain |
| Cantwell | Johnson (WI) | McCaskill |
| Coburn | Lee | Paul |

NOT VOTING—2

| | |
|---|---|
| Rockefeller | Rubio |

The bill (H.R. 1249) was passed.

Mr. MCCAIN. Mr. President, today I voted against passage of the patent reform bill because it contained an egregious example of corporate welfare and blatant earmarking. Unfortunately, this special interest provision was designed to benefit a single interest and was tucked into what was otherwise a worthwhile patent reform bill. As I noted earlier today when I spoke in support of the amendment offered by my colleague from Alabama, Senator SESSIONS, needed reform of our patent laws should not be diminished nor impaired by inclusion of the shameless special interest provision, dubbed ''The Dog Ate My Homework Act'' that benefits a single drug manufacturer, Medicines & Company, to excuse their failure to follow the drug patent laws on the books for over 20 years.

Again, as I said earlier today, patent holders who wish to file an extension of their patent have a 60-day window to make the routine application. There is no ambiguity in this timeframe. In fact, there is no reason to wait until the last day. A patent holder can file an extension application anytime within the 60-day period. Indeed, hundreds and hundreds of drug patent extension applications have been filed since the law was enacted. Four have been late. Four.

I remind my colleagues of what the Wall Street Journal had to say about this provision:

> As blunders go, this was big. The loss of patent rights means that generic versions of Angiomax might have been able to hit pharmacies since 2010, costing the Medicines Co. between $500 million and $1 billion in profits.
>
> If only the story ended there.
>
> Instead, the Medicines Co. has mounted a lobbying offensive to get Congress to end run the judicial system. Since 2006, the Medicines Co. has wrangled bill after bill onto the floor of Congress that would change the rules retroactively or give the Patent Office director discretion to accept late filings. One version was so overtly drawn as an earmark that it specified a $65 million penalty for late filing for ''a patent term extension . . . for a drug intended for use in humans that is in the anticoagulant class of drugs.''
>
> . . . no one would pretend the impetus for this measure isn't an insider favor to save $214 million for a Washington law firm and perhaps more for the Medicines Co. There was never a problem to fix here. In a 2006 House Judiciary hearing, the Patent Office noted that of 700 patent applications since 1984, only four had missed the 60-day deadline. No wonder critics are calling it the Dog Ate My Homework Act.

This bailout provision was not included in the Senate-passed Patent bill earlier this year. It was added by the House of Representatives. The provision should have been stripped by the Senate earlier today. The fact that it wasn't required me to vote against final passage.

● Mr. RUBIO. Mr. President, due to health concerns of my mother, I was absent for the motion to table amendment No. 599 offered by Senator COBURN to H.R. 1249, the America Invents Act, final passage of H.R. 1249, and on S.J. Res. 25.

Had I been present for the motion to table amendment No. 599 offered by Senator COBURN to H.R. 1249, I would have opposed the motion in support of the underlying amendment, and would have voted ''nay'' on final passage of the America Invents Act. H.R. 1249 is significantly different than the original Senate bill that I supported, and will ultimately not accomplish the goal of modernizing the patent process in the United States in the most effective manner.

The patent process in our country is painfully slow and inefficient. It takes years from the time an invention is submitted to the Patent and Trade Office, PTO, to the time that the patent is granted and the holder of the patent gains legal rights to their invention. Currently, there are over 700,000 patents waiting for their first review by the PTO. I supported the original Senate bill, S.23, which would have ensured that the PTO was properly funded, reducing the time between the filing of a patent and the granting of the same. This bill, which passed the Senate by a 95–5 margin on March 8, 2011, included critical provisions that would have ensured that user fees paid to the PTO would stay within the Office to cover its operating costs, rather being diverted to fund unrelated government programs.

Unfortunately, the House of Representatives removed these important provisions, which were critical to securing my support for patent reform. A modernized patent process that restricted ''fee diversion'' would have spurred innovation and job creation. Small inventors have raised concerns about the new patent processes that the bill sets forth, and without adequate protections against fee diversion, I am unable to support this bill. Additionally, I have concerns about House language that resolves certain legal issues for a limited group of patent holders. I support the underlying goals of this bill, but for the aforementioned reasons, I would have voted ''nay'' on H.R. 1249 had I been present.

Had I been present for the rollcall vote on S.J. Res. 25, I would have voted ''yea.'' I strongly disapprove of the surge in Federal spending that has pushed our national debt to $14.7 trillion, and firmly believe that Congress must cut spending immediately and send a strict constitutional balanced budget amendment to the States for ratification. We must also give job creators the certainty they need to hire new workers and expand operations, growing the economy and increasing revenue in the process. Instead of pretending that more debt-financed spending will create prosperity, Congress should take job-destroying tax hikes off the table, overhaul our burdensome regulatory system, and immediately pass the pending free trade agreements with South Korea, Colombia, and Panama.●

Mr. BENNET. Mr. President, I rise to explain my vote on one amendment today. But I would first like to commend Chairman LEAHY for his long years of work on patent reform, which culminated in final passage this evening of the America Invents Act. I proudly supported this legislation, and I am sure it's gratifying for the senior Senator from Vermont that the Senate overwhelmingly voted to send this bill to the President's desk.

But like most bills that the Senate considers, this legislation is not perfect, as I know the chairman himself has said. There is one major way that the bill we approved today could have been improved, and that is if we had retained language in the original Senate bill that guaranteed that the U.S. Patent and Trademark Office would be able to maintain an independent funding stream. For that reason, I commend Senator COBURN for his effort to amend the bill to revert back to that better funding mechanism. For years, we have asked the PTO to do more than its funding levels have allowed it to do well. And while the bill we passed today takes important steps towards committing more resources to

the PTO, I did prefer the independent funding stream approach.

Senator COBURN's amendment may have been the better approach, but I voted to table the amendment because it could well have permanently sunk this enormously important legislation. Sending the bill back to the House with new language that the House has rejected and says it would reject again would have, at best, substantially delayed the reform effort and, at worst, stymied the bill just when we were reaching the finish line. And this bill is important it can help our economy at a critical juncture and can even result in my state of Colorado getting a satellite PTO office, which would be a major jobs and economic driver. I also worked with colleagues on both sides of the aisle to include important provisions that will help small businesses. None of this would have been possible if we amended the bill at this late stage.

I remain committed to working with colleagues in the coming months and years to make sure that PTO gets the resources it needs to do the job that Congress has asked it to do.

Mr. REID. Mr. President, I move to reconsider the vote by which the bill was passed, and I also move to lay that motion on the table.

The motion to lay on the table was agreed to.

## MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to morning business until 6:10 p.m. today and that Senators, during that period of time, be permitted to speak up to 10 minutes each.

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

## PROVIDING FOR RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. REID. I ask unanimous consent that upon the conclusion of the joint session, the Senate stand in recess, subject to the call of the Chair.

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

The Senator from Montana.

## REMEMBERING 9/11

Mr. TESTER. Mr. President, on Sunday, this Nation will pause to remember a painful day in American history.

On September 11, 2001, I was glued to the radio in my pickup on a long drive back home to Big Sandy. It wasn't until I stopped at a Billings restaurant that I finally saw on TV what I had heard about all day. The pictures were surreal.

Although the attacks of 9/11 weren't America's first test of uncertainty, all of us knew this Nation would change forever.

In the hours and days and weeks following the attacks of September 11, 2001, Americans, neighbors, and perfect strangers joined together to fill the streets despite their differences. They poured out their support. They redefined the United States of America. I knew then that this great Nation would overcome. Events that unite us will always make us stronger. I was reminded of that on May 2, when Navy SEALs found and brought swift justice to Osama bin Laden, prompting spontaneous celebrations across Montana and the rest of the country.

We must never lose sight of our ability to find common ground and work together on major issues that affect us all. We have much more in common than not, and we should never forget that. It is what built this country. It is what made this the best Nation on Earth, and we need to summon that spirit again as we work to rebuild our economy.

Over the past decade, we have been reminded of some powerful truths that we can never afford to lose sight of. We can never take the security of this country for granted. There are and, sadly, always will be people out there bent on destroying what America stands for, taking innocent lives with them. They are always looking for the weakest links in our security. They are trained and well financed. But our Nation's troops, our intelligence agents, our law enforcement and border security officers are even better trained.

I am particularly concerned about weaknesses along the Montana northern border with Canada. Up until recently, only a few orange cones in the middle of a road protected the country from terrorism. Unfortunately, the days when orange cones did the trick are behind us.

I have worked on the Homeland Security Committee to improve this Nation's security, and things are better than they were a decade ago. We are still working to achieve the right mix of people, technology, and know-how to secure the northern border.

We have also been reminded that America's military can achieve anything asked of it. This comes with a cost. Similar to so many folks of the greatest generation after Pearl Harbor day, hundreds of Montanans signed up to defend our country after 9/11. I stand in deep appreciation for the men and women who, in those dark hours, stood for our country. I thank them and their families for their service, their sacrifice, and their patriotism.

In the years since 9/11, American forces have paid a tremendous price in Iraq and Afghanistan in lives and livelihoods. Until only a few years ago, veterans had to fight another battle at home trying to get access to the benefits they were promised. Too many veterans are still fighting for adequate funding and access to quality health care services that they have earned. As one veteran said, ''The day this Nation stops taking care of her veterans is the day this Nation should stop creating them.'' I couldn't agree more.

Montanans are reminded that some out there are still willing to invade our privacy and trample on our Constitution in the name of security and freedom. Measures such as the PATRIOT Act, which I have consistently opposed, forfeit some basic freedoms. Some lawmakers aren't stopping there.

In the House, a bill called the National Security and Federal Lands Protection Act would allow the Department of Homeland Security to waive laws and seize control of public lands within 100 miles of the border, even if that means closing off grazing lands, shuttering national parks, and trampling on the rights of private land owners. That would have an enormous impact on the whole of Montana. If bad bills such as that are turned into law, America loses.

Our Constitution is a powerful document, and terrorists want nothing more than to watch our rights crumble away by the weight of our own policies. We can, and we will, remain strong. But we must do it with respect to our rights and freedoms.

Today, as on Sunday, my prayers are with those Americans who have died at the hands of terrorists on and since 9/11 and for the tens of thousands of troops still on the frontlines in Afghanistan and elsewhere and for the families of thousands of American troops who have died in service to this country since that terrible day.

My wife Charlotte and I stand with all Montanans in saying thank you to the members of our military, present and past, especially those who have come home with injuries, seen and unseen. This Nation will never forget your sacrifices.

Ms. MURKOWSKI. Mr. President, many of us remember exactly where we were on the morning of September 11, 2001. We will never forget the footage from New York as the towers fell, from the Pentagon as fire raged, and from Pennsylvania, where United flight 93 was grounded in a field. We questioned who would do this, if another attack was coming, and if we were safe in our own country anymore. The tragedy suffered by our nation on that day left us with important lessons to learn, improvements to make, and a renewed sense of urgency towards the future of our society and national security.

On that Tuesday morning, we were victims of a terrible attack that killed 2,961 American citizens, destroyed $15 billion of property, and launched us into a battle we continue to fight. The actions of the terrorists also sparked the spirit of a nation united. It left us with a resolve to regroup, rebuild and recover while renewing our country's reputation as a world leader and symbol of freedom.

The impacts of 9/11 were not lost on Alaskans. Although thousands of miles away at the moment of attack, Alaskans sprung into action to help their countrymen in any way possible. Some deployed to Ground Zero, some sponsored fundraisers or blood drives, and some to this day are serving their country in the ongoing operations in

Afghanistan, Iraq and around the world.

Today, we pay homage to our fallen heroes. On Sunday, I will join my fellow Alaskans in honoring those courageous first responders at the 2011 Alaska Fallen Firefighter Memorial Ceremony and 9/11 Remembrance in Anchorage. We will remember firefighters and other first responders who gave their lives on September 11, 2001 and since then. To them, emergency response was far more than a job—it was a vocation they felt was worth risking their lives in the face of incredible danger.

I urge Alaskans to join with all Americans across the country to serve their neighbors and communities on what Congress has deemed Patriot Day.

Mr. GRASSLEY. Mr. President, our Nation will soon observe and reflect on the 10th anniversary of the terrorist attacks on September 11, 2001.

A decade after vicious terrorist attacks killed thousands of innocent people and caused immeasurable grief to victims and survivors, America has shown the world that 9/11 may have changed life as we knew it, but it has not changed America's commitment to freedom, liberty and the pursuit of happiness.

The national tragedy tapped an overwhelming sense of solidarity and sacrifice among Americans from across the country. Consider the selfless acts of courage and patriotism from the moment the hijackers commandeered three airplanes on that clear September morning 10 years ago: from the passengers aboard United flight 93, to the first responders who reported to the World Trade Center and the Pentagon, and the heroes who serve on the front lines from within the Nation's military and from behind-the-scenes in our intelligence and counterterrorism operations.

Thanks to the allegiance of public servants and private citizens, our men and women in uniform and our captains of commerce and industry, the United States of America continues to serve as a beacon of hope, freedom and opportunity to the rest of the world. Those who sought to undermine the exceptionalism of the American people underestimated the resiliency of the American people.

Consider the recent protests across the globe, where after decades of oppression, the people of Tunisia, Egypt and Libya have thrown out autocratic regimes in the pursuit of self-government, economic opportunity, higher standards of living and personal freedoms. The 10th anniversary of 9/11 offers Americans and our friends around the world the opportunity to embrace the common threads that tie us together.

For more than two centuries, the United States has attracted millions of newcomers to live and work in the land of opportunity. Generations of Americans have scaled the ladder of economic and social mobility, enjoyed the freedoms of press, speech and religion, and embraced the ups and downs of entrepreneurship, risk-taking and innovation. Unleashing the power of the individual has served as a catalyst for economic growth and prosperity for the last 235 years.

Along the way, the United States evolved as an economic, cultural and military leader in the world. The 9/11 terror attacks dealt a devastating blow to America and all of humanity. And yet, 10 years later, America still stands as the shining city on the hill. Despite the economic downturn, America still bears the promise of better days ahead. Despite high unemployment and unprecedented public debt, the American dream still serves as the magical elixir that ultimately defines the Nation's resiliency and bone-deep belief in the goodness of America.

That bone-deep belief in the goodness of America flows through the veins of those called to serve their country in the U.S. military, including one of Iowa's own hometown heroes who lost his life in the line of duty this summer. Jon Tumilson enlisted in the Navy after graduating from high school in 1995. A 35-year-old Navy SEAL from Rockford, he was one of 30 Americans killed in one of the deadliest attacks on U.S. forces since 9/11. My wife and I were able to pay our respects to this fallen Navy SEAL at his funeral in August. The long-time Iowa Hawkeye football and wrestling fan left behind family members and loved ones, including his beloved Labrador retriever named Hawkeye. The black lab led family members into the school gymnasium for the service and proceeded to lie next to the casket of his owner. They say a picture is worth a 1,000 words. The image of Tumilson's dog lying next to the flag-draped casket brought three words to mind; loyalty, loss and love.

I honor the memory of the many Iowans who've died in military service since 9/11, and all the soldiers and veterans who have served their country to protect U.S. national security and preserve our American way of life.

May their sacrifice remind us of their bone-deep belief in America's goodness. We must keep their legacy and love of country close to mind as we work to put America back on the right track towards economic growth and prosperity.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. ROCKEFELLER. Sunday is September 11. It will be 10 years after thousands perished in the worst terrorist attack the United States has ever seen. It was a day America lost fathers, mothers, sisters and brothers, and it was a day we will never forget.

With that historic date approaching, I think that it is imperative that we honor the tremendous bravery of our public safety officials. Every day they are on the front lines in one of our Nation's most pressing battles—protecting our neighborhoods, our communities, and responding fearlessly when tragedy strikes. And it is around this time every year that we particularly remember their bravery in responding to one of the most horrific tragedies of all.

The best way to honor our first responders is to make sure we are giving them the tools they need to be successful, to be safe and to do their job in a way that does not expose them to needless dangers. Right now, it is unimaginable, but we are not doing that. When it comes to public safety communications, these everyday heroes don't have the networks they need and depend on.

Too often first responders lack the interoperable networks that are essential to providing an effective response in emergencies. They lack the ability to communicate with one another, with other agencies and across different city and state lines. This hampers our ability to respond to crisis. Whether that crisis is a terrorist attack or natural disaster, it puts lives in unnecessary danger.

Shouldn't a firefighter be able to wirelessly download a floor plan of a burning building before running into it? Shouldn't a police officer be able to receive an immediate digital snapshot of a dangerous criminal? And shouldn't an emergency medical technician be able to receive life-saving medical information on a patient following an accident? If the average American traveler is able to wirelessly pull up a map to route a summer road trip why shouldn't our first responders be able to utilize the same type of technology to save lives?

Far too much time has passed for Congress to not act. That is why I have been working, side by side with the Commerce Committee's ranking member, Senator KAY BAILEY HUTCHISON, to pass S. 911, the Public Safety Spectrum and Wireless Innovation Act. This bipartisan legislation would implement a nationwide, interoperable wireless broadband communications network for our first responders.

It would set aside the 10 megahertz of spectrum known as the ''D-block'' for public safety to support the network and help foster communications for our first responders across the country.

It would also give the Federal Communications Commission the authority to hold incentive auctions based on the voluntary return of spectrum. These auctions, in turn, will provide funding to support the construction and maintenance of a public safety network and will free up additional spectrum for innovative commercial uses. In an industry that has created 420,000 new jobs over the past decade, this bill is crucial to that continued growth.

In short, this bill marries much needed resources for first responders with smart commercial spectrum policy. It can keep us safe—and help grow our economy. That is why this legislation has the support of every major public

safety organization across the country including in my State of West Virginia. It is also why this bill has strong support from governors and mayors across the country and why we have the support of our President and the administration.

This week, as we come together as a nation to remember and honor the lives lost on 9/11, I also urge my colleagues to support the Public Safety Spectrum and Wireless Innovation Act. And to those who say we cannot afford to do this now, I say we cannot afford not to. Because this effort is about saving lives. But if this reason is not compelling enough, it is important to know this: this legislation pays for itself. According to the nonpartisan Congressional Budget Office and even the industry itself, incentive auctions will bring in revenue well above what funding public safety requires, leaving billions over for deficit reduction. This is a win-win-win.

In closing, let me say that we have a once-in-a-generation opportunity to provide our public safety officials with the spectrum they need to communicate when tragedy strikes. And with voluntary incentive auctions we can pair this with funding.

Let's seize this moment. This is not Republican, this is not Democrat. It is quite simply the right thing to do. Let's do something historic—together.●

Mr. CARDIN. Mr. President, today I join my colleagues in commemorating the 10th anniversary of September 11, 2001. I remember that morning so vividly. It was stunningly clear and beautiful with a crispness in the air that hinted that fall was just around the corner. And then, with a sudden ferocity, the airliners crashed into the World Trade Center, WTC, the Pentagon, and Somerset County, PA. Barely 2 hours elapsed between the first hijacking and the collapse of the North Tower of the WTC, 2 horrific hours that forever changed our Nation and the world.

We mourn the lives that were lost in New York City, here in the Washington metropolitan area, and in Pennsylvania. The emotional trauma of those losses affected each and every American. Millions of us remained glued to our TV sets, watching unbearable images of death and destruction.

We remember the 3,000 people who perished on 9/11. The attacks spared no one: Blacks, Whites, Christians, Jews, and Muslims; the young and old; parents, children, siblings; Americans and foreigners—all these and more were among the victims. The attack was not on one ethnic group, but on a way of life. It was an attack on our freedom and our dedication to its preservation.

We honor the selfless actions of our first responders, including firefighters, police, paramedics, and other emergency and medical personnel, all of whom did not hesitate to answer the call of duty and demonstrated extraordinary bravery and courage in our hours of need.

We also honor our brave service men and women who have taken the fight to the terrorists on foreign soil. We must never forget our country's solemn obligation to our service men and women, our veterans, and their families.

There is no question that 9/11 and the days that followed were difficult ones. But they were also among our proudest ones. It brought out the best of the American spirit. Men and women waited in lines for hours to give blood, children donated their savings to help with relief efforts, communities sponsored clothing drives, and different faith groups held interfaith services.

On 9/11 and in the days and months that followed, Americans stood together. Our response showed the world that Americans have an unquenchable love of freedom and democracy. It showed American resilience, vigilance, and resolve.

Much has changed since that day in September. The 9/11 attacks propelled our Nation into a new kind of warfare, unlike any war we have ever fought. They exposed the scope, depth, and utter ruthlessness of the al-Qaida network. And the attacks revealed gaps in our national security. Evolving threats required new tools.

I am proud of how far we have come in addressing the challenge presented by al-Qaida or other terrorist organizations. While our security networks are far from perfect, in the decade since the 9/11 attacks, we created the Department of Homeland Security to streamline and better integrate the Federal departments and agencies responsible for protecting us. U.S. intelligence and law enforcement at all levels have become much more aggressive in pursuing terrorist threats at home and abroad. These measures have been largely successful.

And let us remember arguably our greatest success against al-Qaida: President Obama's bold stroke to bring Osama bin Laden to justice. The raid was the result of painstaking intelligence gathering and analysis and thorough planning, and it was a remarkable display of our Special Forces capabilities and the extraordinary heroism of our men and women in uniform.

The end of al-Qaida is in sight. Their future is bleak. They have far less global impact than they used to. They cling to an outdated and empty ideology, with little mainstream influence in the Muslim world. Indeed, the recent Arab Spring demonstrates that people in Middle Eastern countries—especially young people—are more interested in freedom and democracy than in being susceptible to al-Qaida's repressive ideology.

Even as al-Qaida becomes more and more marginalized, evolving state- and nonstate-sponsored threats to our Nation's security persist. One of our greatest challenges will be securing cyberspace. The Internet has grown into one of the most remarkable innovations in human history. But it carries risks.

Our current system allows hackers, spies, and terrorists to gain access to classified and other vital information. Today's cyber criminals, armed with the right tools, can steal our identities, corrupt our financial networks, and disrupt government operations. Tackling cybersecurity in a meaningful way will fill one of the last holes that exist in our national security regime.

As our government moves to extinguish the remnant of al-Qaida and address new threats, we must strive to maintain a careful balance between protecting our Nation and protecting our civil liberties. Commemorating 9/11 should remind us of what makes us unique as a nation. Our country's strength lies in its diversity and our ability to have strongly held beliefs and differences of opinion, while being able to speak freely and not fear that we will be discriminated against by our government or our fellow citizens.

After the 9/11 attacks, I went back to my congressional district and made three visits as a Congressman. First, I visited a synagogue and we prayed together. Then, I visited a mosque and we prayed together. Finally, I visited a church and we prayed together. On that day in September, Americans banded together, regardless of our personal belief or religion.

My message that day was clear: we needed to condemn the terrorist attacks and to take all necessary measures to eliminate safe havens for terrorists and bring them to justice. But my other message that day was equally important: we cannot allow the events of 9/11 to make us demonize a particular religion, nationality, creed, or community. In these trying times, we cannot let our society succumb to the temptation to scapegoat one group.

We did it before—with the Palmer Raids following World War I, the internment of 120,000 Japanese-American citizens during World War II, and the McCarthy-era witch hunts. These were shameful events of our history. We must strive to live up to our Nation's highest ideals and protect our precious civil liberties, even when doing so is difficult or unpopular. We must always remember how we stood united on 9/11 and showed the world the depth of our commitment to ''E Pluribus Unum.'' Out of many, one.

Our many faiths, origins, and appearances should bind us together, not break us apart. They should be a source of strength and enlightenment, not discord and enmity. All of us belong to smaller communities within the larger community we call the United States. Each community has an obligation to the larger community to promote the safety and well-being of each and every one of us. There is a mutual self-interest in preserving and nurturing our freedom.

September 11, 2001, was a dark day. We remember those who perished and mourn with those who lost family and friends. We honor those who responded and those who fought and continue to fight to keep us safe.

Archibald MacLeish wrote, ''There are those who will say that the liberation of humanity, the freedom of man and mind, is nothing but a dream. They are right. It is the American dream.'' 9/11 was a nightmare. As horrific and cruel as it was, however, it can't extinguish the dream.

## TRIBUTE TO DEBRA BROWN STEINBERG

Mr. LIEBERMAN. Mr. President, the attacks of September 11, 2001, certainly had a profound impact on all Americans. In addition to the sadness, anger, fear, and, ultimately, resolve, we all felt in the aftermath of the attacks, many were also infused with a renewed sense of patriotism and fellowship that inspired them to engage in public and community service. As we approach the tenth anniversary of this terrible tragedy, I would like to honor one individual who answered the call to service, and who has done so much to help victims of the attack, Debra Brown Steinberg.

Debra was in New York City on September 11, and from her apartment she could see the smoke pouring out from the World Trade Center. As she desperately waited for news about her stepson, she made an agreement with God: if her stepson would come home safely, she would work to help the victims of the attack. Thankfully, her stepson did come home safely, and Debra has more than fulfilled her promise.

Utilizing her sharp legal acumen and more than 30 years of professional experience, Debra has become a passionate advocate for the families of those who perished in the 9/11 attacks. A partner in the respected New York firm Cadwalader, Wickersham & Taft LLP, Debra was integral in putting together a consortium of law firms that have worked together to deliver pro bono services to 9/11 families.

Early on, Debra realized that, if her firm was going to give victims the assistance they truly needed, they would have to do more than simply offer free legal advice. Under her direction, the consortium has taken a holistic approach toward assisting the families; not just offering counsel, but also seeking to ensure they receive the services they need, and lobbying lawmakers and regulators to ensure that all victims have access to the Victim Compensation Fund. Debra has also represented many victims' families, pro bono, before the fund to ensure that they are fairly compensated.

Perhaps Debra's most amazing work has been her advocacy on behalf of some of the most vulnerable victims of the attacks: immigrants who were in the country illegally when their relatives were killed during the attacks on the World Trade Center. These individuals, as the U.S. Department of Homeland Security has put it, ''share with all Americans a moment of loss and pain and pride that is now a defining part of our national history.'' However, because of their status, they were forced to cope with their pain and sadness in isolation, afraid to seek assistance or to offer their help for fear of being found out. Our Nation cannot help but feel a deep connection and commitment to this group.

Debra has worked tirelessly to assure that we live up to this commitment and to enable these victims to participate in rebuilding after the attacks. With her guidance, 11 of these spouses and children of innocent victims of the attacks have provided assistance to the Federal Government in its 9/11 related investigations and prosecutions. Debra also successfully represented these families before the Victim Compensation Fund to ensure that they received equal consideration. Finally, she has fought doggedly to ensure that these families can continue to work and live in the United States. Due in great part to her work, these family members have so far been able to stay in the United States and their cases are now being considered for a temporary visa that would allow them to live and work legally in the United States. Let us all hope that DHS is able to quickly conduct its review so that these families can leave the shadows and rebuild their lives.

Over the years, my office has had the privilege of assisting Debra in her efforts, and I have witnessed firsthand her dedication to assisting the families of 9/11 victims. Those she has represented are certainly lucky to have had her on their side. Given all that Debra has done, it's no wonder that the American Bar Association honored her with the prestigious Pro Bono Publico award in 2006. She has also received the 9/11 Tribute Center Award in 2009 and the Ellis Island Medal of Honor in 2007. Her work has also been recognized several times by my colleagues here in the Senate, as well as in the U.S. House of Representatives and the New York State Legislature.

Mr. President, I commend Debra Brown Steinberg for her commitment to assisting families of 9/11 victims. Her efforts truly personify the American values of fairness and patriotism. The U.S. Senate, and the American People, owe her our sincerest gratitude.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

## TEXAS WILDFIRES

Mrs. HUTCHISON. Mr. President, I rise in morning business to talk about a situation in Texas, the wildfires and the drought.

Since we were mostly home during the August recess, I saw the floods in the Midwest and on the Missouri and Mississippi Rivers. I saw the hurricane that hit New York and all along the East Coast. At the same time, with all the extra water in the East, we have had as much as 60 days in parts of Texas with no rain whatsoever. The drought is killing livestock. It is killing land. It is a sad situation. What has happened, of course, is, from that, the wildfires have been able to go farther than we have ever seen in Texas before.

Just in the past 7 days, the Texas Forest Service has responded to 176 fires, destroying nearly 130,000 acres. This year alone, over 2,000 fires have burned more than 2 million acres in Texas. We have high winds and drought conditions, which are a terrible combination in this instance.

Yesterday, the Texas Forest Service responded to 20 new fires, which consumed nearly 1,500 more acres. One of the hardest hit areas is Bastrop County, which is near Austin. I was talking to some of my constituents in Houston, which is not near Austin, and they were talking about seeing and smelling the smoke in Houston from these fires in Bastrop.

An assessment has been completed as of now that says 785 homes were completely destroyed, 238 homes have been reported lost as a result of other fires over the past 3 days, and the fires are so big that they are being photographed from space.

Senator CORNYN and I have asked the President to add the recent wildfires from just this last week to his previous disaster declaration from this spring, which did include wildfires. I want the people of Texas to know that Senator CORNYN and I are working together to get all the Federal help they need. I have been in contact with the State representatives from the area, the mayors, and the county judges to get the reports. So far they feel they have gotten the help they have needed. But now, in the aftermath, we will need to be part of any kind of disaster bill that goes through this Senate or is declared by the President.

It is my hope we can work through that next week and make sure we include these most recent fires along with the flood disaster relief that supposedly will come to the floor next week. So we are going to work on it and try to help these people. We can't replace the graduation pictures and the wedding pictures and the children's pictures that are lost. This is the human loss you see in this type of a situation. But we can certainly help these people rebuild, and that is what we want to do.

We are going to be on the job trying to help in every way we can, knowing there will not be a 100-percent replacement because the photographs and the personal items and grandmother's wedding ring may not be recovered, but we are going to do what we can, as Americans always do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

## VOTING RIGHTS

Mr. DURBIN. Mr. President, this afternoon, we held a hearing in the

Constitutional Subcommittee on the Senate Judiciary Committee on new voting laws that are being passed in many States. It was one of the first hearings on Capitol Hill on the subject, and I thank you very much for attending as a member of the subcommittee.

We had an array of witnesses, starting with Members of the Senate and Members of the House of Representatives, expressing various points of view on this issue. What we discussed was the new laws in States that are establishing new standards for voting in America. It is essential for us on this subcommittee, with our jurisdiction and responsibility, to focus on this issue of voting rights.

As has been said so many times, there is no more important right in America. The right to vote is a right people have given their lives for.

As we look at the checkered history of the United States, we find that though we honor the right to vote, from the very beginning, we have compromised that principle. We started off with requirements of property ownership. We didn't allow women to vote for so long. African Americans were not given that opportunity for decades. Over the years, we have had as many as 10 different constitutional amendments focusing on extending the right to vote.

When we get to the heart of a democracy, it is about voting. That is why these new State laws are so important and so important for us to reflect on.

Requiring a photo ID for most of us at this station in life or who are in business, it seems like a very common request. We present our IDs when we get on airplanes and in so many different places. But for a substantial percentage of Americans, they don't carry a government-issued ID. They live their lives without the need of one. Now State laws are requiring these IDs for people before they can vote. It sounds like a minor inconvenience, and for many people it would be just that. But for others, it could be more.

If there is not a good opportunity for a person to acquire an ID without cost, in a fashion that doesn't create hardship, many people will be discouraged from voting. They will just think: This is another obstacle in the path of exercising my right to vote, and maybe I will stay home.

That is not good for a democracy. We should be leaning in the other direction, trying to expand the electorate, expand the voting populous in this country, expand the voice of the voters in this country, not the opposite. Many of these State laws in the seven States that have now put in photo IDs create significant hardships.

We have a problem in Wisconsin, for example, and I have written to the Governor asking him to give me his impression of how he will deal with these issues.

One out of five people in Wisconsin do not have an ID; 177,000 elderly people in Wisconsin do not have the ID required by law; more than one-third of young people don't have an ID. Particularly among African Americans under the age of 24, 70 percent do not have the ID necessary to vote in Wisconsin. So, you say, they have their chance. The election will not be until next year, they have plenty of time.

It turns out that in the State of Wisconsin there is only one Division of Motor Vehicles Office that is open on a weekend in the entire State. That to me seems unconscionable and unacceptable. We need to take a hard look at this and the first stop will be the Civil Rights Division of the Department of Justice.

They asked me after the hearing today, what are we going to do next? They said what we will do next is follow the law. The law says the Department of Justice has to weigh each of these changes, whether it is voter registration in Florida or whether it is the voter ID or the limitation on early voting and decide whether this violates the basic standards of the Voting Rights Act. They have 60 days to do so after the law is enacted.

I have spoken to the division, Civil Rights Division. It is my impression they are going to move on this in a timely fashion. This is a critical issue. I am afraid it is way too political. The forces behind change in virtually every State—not every one but virtually every State—have come from the same political side of the equation. It is not lost on those of us who do this for a living what is at stake here. If certain people are denied access to the polls, discouraged to vote, and those people turn out to be historically those voting on one side or the other, it is going to create not only a personal hardship but a distortion in the election outcome and I hope we can sincerely work together on the Judiciary Committee and with the Department of Justice to resolve this.

## TRIBUTE TO ANNE WALL

Mr. DURBIN. Mr. President, I want to take a few minutes to thank a remarkable person on my staff who is moving to a new job. Anne Wall of Chicago is one of my most trusted staff members. She has been my Senate floor director for more than two years. A few C–SPAN viewers may recognize Anne as a regular on the floor of the Senate. Those of us who worked closely with her on both sides of the aisle know she is one of the smartest, hardest working, and most gracious members of the Senate community. No matter how early in the morning or late at night, Anne Wall is always there with a smile and a good answer. If an agreement needs to be worked out, Anne is there to offer a fair and constructive solution.

Next week Anne Wall starts an exciting new chapter in her life. My loss is the gain of a former Senator from Illinois, President Barack Obama. Anne is going to the White House to work as a Special Assistant to the President. I am going to miss working with her, as everyone on my staff will. Fortunately, we are going to see her often on Capitol Hill in her new job, representing the President of the United States.

A little about her background will explain how Anne came to the Senate. Anne grew up in Palos Heights, in the south suburbs of Chicago. She is a first-generation suburbanite. Her dad Michael and mom Liz both grew up on the South Side of Chicago, which means that Anne has the South Side in her blood. In Chicago that is noteworthy.

However, when Anne was a kid, her family did something that was considered heretical. They had, as South Siders, season tickets to the Chicago Cubs. That made the Walls something of an anomaly among South Siders, and it probably helps explain why Anne is able to work so well across the aisle here in the Senate.

Politics was not discussed much in the Wall home, but Anne developed her own interest in politics at a very early age, at every level. In the eighth grade she became the first girl ever elected class president at St. Alexander Grade School. That same year, Anne Wall became the first girl in her town to serve as ''Mayor for a Day'' of Palos Heights. She won that honor on the strength of an essay she wrote.

Anne attended high school at one of the most remarkable South Side institutions, Mother McAuley—a terrific Catholic girls school which usually fields one of the best volleyball teams in the State. Anne went to the school run by the Sisters of Mercy, where she was elected president of the student council. It was in that South Side Chicago high school that Anne Wall started to go astray. While her colleagues and friends in high school were reading Rolling Stone, Anne Wall was reading Roll Call. Anne read Roll Call, not for its accounts of partisan fights, but because she wanted to know how government works. She wanted to understand the rules and the mechanics of Capitol Hill. As her mom said, ''Who does that?''

I will tell you who: Anne did; someone who wanted to serve her Nation and understand how the government can be a force for good.

She earned a bachelor's degree from Miami of Ohio College, and went on to DePaul University Law School, where she was chosen to serve on the Law Review. In her final year at law school, Anne worked as an intern in the U.S. Attorney's Office in Chicago. After law school, she clerked for two distinguished jurists, Cook County Circuit Court Judge Allen Goldberg and Cook County Circuit Court Judge Lynn Egan, before signing on as associate counsel at a prestigious Chicago law firm and making a few bucks. But that wasn't where her heart was.

In 2006, Anne Wall decided to leave the world of private law and its comfortable compensation to come to Capitol Hill. She saved up money because

she knew she was going to take a pretty significant pay cut. Our office had the good luck and good sense to hire Anne, but we started her off at the bottom of the staff ladder. She started writing constituent letters and answering e-mails. She said whenever she questioned this career move from a prestigious law firm to answering letters in the office of a Senator, she would look at another lawyer hired at the same time and also writing letters and say: And he went to Harvard.

The people of Illinois were fortunate to have talented people such as Anne working for them. She quickly discovered the glamor of staff life on Capitol Hill, however. Anne's first apartment in Washington, the only one she could afford on the meager salary which I paid her, unfortunately was infested with vermin, the roof leaked, and one night it fell in. But she didn't want her mom to worry so she told her she was living in a wonderful place on Capitol Hill.

After 1 year, we promoted Anne to serve as my office counsel. She quickly learned the ins and outs of the Senate ethics rules, and I brought her on to counsel me on close calls on ethics decisions. Her counsel was always valuable and her answer was always ''no.'' I knew that and expected it and I am glad she steered me on the right path so many times.

In 2008 I asked her to work for me on the Senate floor and once again she excelled. In January of 2009 she became my floor director here in the Senate. As my right hand on the floor, Anne Hall helped help steer the majority whip operation and the entire Senate through historic changes: health care reform, Wall Street reform, and a long list of other historic endeavors.

Whatever the task, whatever the challenge, Anne Wall has always brought good humor, intelligence, and integrity to the task. When Anne was not winning elections or reading Roll Call in high school, she played tennis. It was one of the things she loved to do. She was ranked as one of the top high school players in the State, but not being able to play tennis regularly is another one of the sacrifices Anne made to work in the Senate. The job takes too much time. I hate to tell Anne, but she won't be able to pick up her tennis racquet again in the new job she is taking in the White House.

These are challenging times for America's families and businesses and we need bright, dedicated people giving it their all to get us through to a brighter day. Fortunately, America is up to that challenge, and so is Anne Wall. I am wishing her the best of luck.

When Anne Wall left Chicago, her law firm promised they would take her back in a heartbeat if she didn't like it in Washington. They kept her office vacant for months, hoping she would return. No such luck. We feel the same way in the Durbin office about losing Anne. She is always welcome to rejoin our staff. There will always be a place for her, but we are not holding her job for her. My new floor director is a person who has been Anne's right-hand person for the last 2½ years, Reema Dodin. Reema is equally dedicated to this Nation and the Senate, and I know she will do an outstanding job.

In closing, I want to thank Anne personally for all the fine and tireless work she has given the Senate. She helped us make history. We hope she will enjoy reading about this floor tribute in Roll Call.

## REMEMBERING MICHAEL GAROFANO, SR. AND MICHAEL GAROFANO, JR.

Mr. LEAHY. Mr. President, today I would like to pay tribute to two dedicated public servants in Vermont who passed away tragically in the floods of Hurricane Irene.

Both Michael Garofano Sr. and Michael Garofano Jr. were employees at the Rutland City Water Facility in Rutland, VT, where they served at the interest of their communities until the very end. During the worst hours of Hurricane Irene in Vermont, Michael Sr. and Michael Jr. sought to protect the people of Rutland by inspecting the town's water system infrastructure. In this brave moment, both men unfortunately lost their lives as the waters of Mendon Brook rose to threatening levels. We will always remember them for their everlasting courage, evident by their extreme dedication to protecting their family and beloved community during a crisis.

Michael Sr. joined the Rutland City Water Facility as its manager in 1981. He served zealously, ensuring that the water of Rutland City was safe at all times for those living in the region. He was also a member of the American Water Works Association where he was committed to benefitting not only Vermont, but also the country, in its pursuit of clean water. Michael was highly respected and honored by those who worked under his supervision. He was known as one of the best employees the industry had to offer.

Michael Sr.'s son, Michael Garofano Jr., also had the interest of water quality at heart. As a water operator at the Rutland City Water Facility, he too braved the elements of Hurricane Irene to serve his family and community. As an independently contracted landscaper, Michael's loyalty to his community was widely recognized. At a mere 24 years of age, both his accomplishments and bravery are of honorable praise.

Michael Garofano Sr. and Jr. are survived by wife and mother, Celestine ''Sally''—Sitek—Garofano and son and brother, Thomas Garofano of Rutland, Vermont. My wife Marcelle and I wish to express our deepest condolences to Sally, Thomas, and Michael Sr. and Jr.'s extended family. In the days following the hurricane, many acts of bravery have been displayed throughout our state. All of Vermont can be proud of Michael Sr. and Michael Jr.'s incredible courage and the legacy they both have left behind.

I ask unanimous consent that the obituary for Michael Garofano Sr. and Michael Garofano Jr. from the Rutland Herald be printed in the RECORD so all may recognize two men whose acts of bravery will not soon be forgotten.

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

MICHAEL J. GAROFANO

Published in Rutland Herald from September 2 to September 3, 2011

Michael J. Garofano, 55, of Rutland died Sunday afternoon, Aug. 28, 2011, with his son Michael, as a tragic result of Hurricane Irene in Rutland.

He was born in Rutland, Vt., on March 27, 1956, the son of Patrick and Jacqueline (Roussil) Garofano.

Michael was a graduate of Rutland High School, Class of 1974. He graduated from Vermont Technical College in 1976, with an Associate Degree in Water Quality.

He was employed as the Water Treatment and Resource Manager in the Rutland City Department of Public Works since 1981.

He enjoyed his family, especially his three boys. He enjoyed puttering around the house and fixing things. Mike had a dry sense of humor and gave everyone a nickname.

Surviving are his wife, Celestine ''Sally'' (Sitek) Garofano of Rutland; a son, Thomas A. Garofano of Rutland, his parents of Rutland; two brothers, Thomas and his wife Maureen of Georgia, Vt., and Patrick and his wife Cindy of Daphne, Ala.; three sisters, Mary Goodchild and her husband Harvey of Rutland, Lynn Helrich of Anchorage, Alaska, and Stephanie Urso and her husband Frank of Proctor, Vt.; mother-in-law Valeria Sitek of Rutland, Vt.; sister-in-law Chris Giddings and her husband Fred Hellmuth of Pittsford; and several nieces, nephews, aunts, uncles and cousins.

He was predeceased by a son, Robert M. Garofano, on April 8, 2010.

Funeral services for Michael J. Garofano and his son Michael G. will be held Friday, September 9, 2011, at 11 a.m. at St. Peter's Church in Rutland.

Visiting hours for Michael J. Garofano and his son Michael G. will be held Thursday from 3 to 7 p.m. at Clifford Funeral Home in Rutland.

The family is intending to create a memorial fund to honor Michael and his son via the purchase of a plaque or similar item to be placed at the City Reservoir.

In lieu of flowers, you may send donations payable to the Garofano Memorial Fund, c/o Rutland City Treasurer's Office, PO Box 969, Rutland, VT 05702–0969.

## WOMEN'S EQUALITY DAY

Mr. ENZI. Mr. President, on August 26, 2011, we recognized the 40th anniversary of Women's Equality Day. It is on this day that we celebrate the many contributions of women in advancing our society by fighting for equality and justice. This day also marked the 91st anniversary of the 19th Amendment to the U.S. Constitution which guaranteed women the right to vote in 1920. Wyoming was the first in the world to allow women to vote and own property. Wyoming adopted it in 1820. That was 50 years before the nation adopted women's suffrage.

Wyoming has a long history of advancing women's rights and actually refused to become a state when the option was women losing their rights. Wyoming became the first State to elect a female Governor, Nellie Tayloe Ross, just 5 years after the 19th amendment was ratified by the U.S. Congress. We also had the first female Justice of the Peace, Esther Hobart Morris and her commemoration is one of only a few female statues displayed in the U.S. Capitol today.

While we are certainly proud of our past, I am honored to currently serve in Wyoming's congressional delegation alongside U.S. Congresswoman CYNTHIA LUMMIS who has been a remarkable leader for Wyoming as she continues the proud tradition of leadership of women in our state. Speaking of firsts, Congresswoman LUMMIS became the youngest woman ever elected to the Wyoming State Legislature. She was also the first woman to serve on the Cheyenne Frontier Days Rodeo Board. CYNTHIA has taken on a variety of roles ranging from a lawyer and rancher to a legislator and Wyoming State treasurer. Now in her role in the U.S. House of Representatives, her work continually impresses me as she does an outstanding job serving her constituents and fighting for their interests in Congress.

Without a doubt, the ratification of the 19th amendment to our country's Constitution was a landmark in our need to recognize the voices of women and recognize their contributions to our country. While there is no doubt we are a better country for offering full franchise to women, it needs to be recognized that on Equality Day our Nation recognizes a turning point for progress and civil rights, a watershed moment in our ongoing pursuit of liberty and justice for all.

Women serve as a pillar of strength in our country. I am proud to recognize the 141st year of Wyoming women voting and this 91st anniversary of women gaining the right to vote and look forward to welcoming their achievements and contributions in the years to come and assuring that equality is not just a word.

## BLAIR, NEBRASKA FLOOD RESPONSE EFFORTS

Mr. JOHANNS. Mr. President, as you are aware, my home State of Nebraska has battled devastating flood waters throughout much of this summer. As often occurs during disasters, it resulted in neighbors and communities coming together to help one another. On display in impressive fashion was the sense of determination and self-reliance that is woven into the character of our citizens and the fabric of our State. I have been privileged to witness the resiliency of Nebraskans many times throughout my public service as a county commissioner, mayor, Governor, secretary of agriculture and now, as a U.S. Senator. I am deeply moved by it. The flooding has been tragic, but the response has been inspiring. One shining example of this resiliency and compassion occurred in Blair, NE. In fact, the organized and dedicated response in Blair so impressed officials at the Federal Emergency Management Agency and the Nebraska Emergency Management Agency that on September 2, 2011, they issued a news release about the incredible response efforts in Blair. It is entitled, ''How the People of Blair Took Care of Their Own,''and I ask unanimous consent that it be printed in the RECORD.

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

HOW THE PEOPLE OF BLAIR TOOK CARE OF THEIR OWN

(By Paul Lomartire)

BLAIR, NE.—As the gritty, brown Missouri River just kept rising in early June, so did the will of the people in this small city northwest of Omaha. Residents of Blair's Northview Apartments and the Longview Trailer Court were forced out of their homes by flooding. Blair homes along the river were also flooded and the Cottonwood Marina and Restaurant on the Missouri River was destroyed and washed away.

''It happened so fast, the reality of this flood coming,'' recalls Harriet Waite, director of Blair's Chamber of Commerce. ''It was like, OK, we are going to do this'.''

What they did in this city of almost 8,000 residents was to form a committee of eight citizens to help house and feed their neighbors who were flooded out of their homes. With Washington County and the City of Blair governments creating green lights, the committee of eight drove the rescue bus.

Blair is on the banks of the Missouri River across from Iowa, their eastern neighbor.

When the flooding began in early June, Washington County and the City of Blair struck a deal to rent the 76-room Holling Hall on the former Dana College campus. The cost was $5,000 monthly to the bank that owned the former Lutheran college founded in 1884, which was forced to close in 2010.

''We cared about our business community staying open,'' explained Phil Green, Blair's assistant city administrator. ''When we knew the water was coming, there was a lot going on with Cargill building levees to protect their plant and levees for our water treatment plant to keep it from flooding. We had to take care of employees in Blair whether they lived here or in Iowa. Our priorities for housing at Dana were Washington County residents and Washington County workers.''

The committee of eight and other volunteers took care of everything from organizing meals at Holling Hall to maintenance, cleaning and security. Those families at Holling Hall were asked to pay $150 per family unit to offset the cost of utilities.

Move-in at the vacant Dana College facility was on the weekend of June 11–12. There were 23 adults and 11 children comprising 13 families. Blair's business community donated all the supplies for Holling Hall, including paper products, plastic ware, cleaning supplies, personal hygiene items and more. Donated meals came from mom-and-pop restaurants, national chains and local churches.

The population of flood survivors at Holling Hall hit a highpoint on July 8, with 115 people made up of 83 adults and 32 children. One-third of Dana's temporary residents were from Iowa.

Helen Mauney works at Crowell's Nursing Home in Blair and lives across the river in Mondamin, Iowa. Flooding meant that she couldn't get across the bridge to go home. Co-workers told her that she could find temporary housing help at city hall.

''They're wonderful people,'' she says of the ad hoc housing committee that administers Holling Hall, where she has lived for more than two months. ''They made it as nice as possible. I appreciate everything they did.''

The quickly-formed Washington County Cares Committee is now an efficient, tight-knit unit that delivered on its plan to have all the flood survivors relocated by the end of August and close Holling Hall.

Now the committee is transitioning into the Washington County Long-Term Recovery Committee, according to assistant city administrator Green. They are being advised by a Federal Emergency Management Agency Voluntary Agency Liaison. That help became possible on August 12, when the president declared a major disaster that designated Washington and eight other Nebraska counties eligible for Individual Assistance.

Not only has the committee of eight cared for flood survivors' daily needs for nearly two months, they also were able to assist with deposits or rental payments up to $500 to help with relocation from Holling Hall. That money came from $30,000 in donations the committee has received.

''At the core,'' says Aaron Barrow, a Blair police lieutenant and committee member, ''there's a really strong city government and local business community that has a very good working relationship with the ministries. Government didn't solve all the problems, but a partnership between government, business and churches did solve problems.''

''This city and this county are very generous,'' said Kristina Churchill, who is the Holling Hall Food Coordinator. ''It didn't surprise me that we got help. What surprised me was how much help we got.''

## ADDITIONAL STATEMENTS

### BIG SKY ALL STARS

• Mr. BAUCUS. Mr. President, Yogi Berra once said, ''I think Little League is wonderful. It keeps the kids out of the house.'' A team of talented young athletes from Montana spent a lot of time out of the house this summer on an amazing and inspiring run all the way to the Little League World Series in Williamsport, PA.

The Big Sky All Stars from Billings were the first team ever from the, State of Montana to qualify for the Little League World Series. I applaud the dedication of the teams manager Gene Carlson, coaches Mark Kieckbusch and Tom Zimmer, the players, and their families for their success and all the miles they've traveled, making Montana so proud along the way.

The team began their run in June and July by winning district and state championships back home in the Treasure State. The boys then traveled to California where they won the Northwest Regional Championship which qualified them for the Little League World Series.

Of the thousands of Little League teams that take the field across the

U.S. every season, only eight qualify for the Little League World Series. Across Montana folks from Billings to Bigfork gathered in their communities to cheer on our all-stars. The team prevailed in their first three games in the tournament with heart-stopping victories before national television audiences.

Those three wins brought them to the U.S. Championship game on August 27 where they put up a commendable fight against the Ocean View All Stars from Huntington Beach, California. The boys from Billings made their home state so proud. They reached their goals by exemplifying the Montana values of grit, determination, and hard work. Through great team work and encouragement from their coaches and families, these young men exceeded expectations.

Upon their return to Billings the team was greeted by a throng of supporters at the airport. The youngsters were also recognized with a parade and ceremonies at many local events this past week. I would like to join with Montanans from across the state and folks around the country in congratulating the Big Sky All Stars on their fantastic season and wishing them the best in the future. The lessons these young men learned this summer and the memories made will be with them forever.

Mr. President, I ask that the names of the manager, coaches, and players of the Big Sky All Stars be printed in the RECORD.

The information follows:

THE BIG SKY ALL-STARS

Manager Gene Carlson; Coach Mark Kieckbusch; Coach Tom Zimmer; Ben Askelson: #15, left field, catcher, pitcher; Jet Campbell: #2, 2nd base; Sean Jones: #21, 3rd base, pitcher; Connor Kieckbusch: #1, 2nd base, right field; Pearce Kurth: #13, 1st base; Ian Leatherberry: #5, 3rd base, pitcher; Brock MacDonald: #12, center field; Andy Maehl: #10, left field, catcher; Cole McKenzie: #17, shortstop, pitcher; Dawson Smith: #16, 1st base; Gabe Sulser: #4, right field, center field; Patrick Zimmer: #19, shortstop, pitcher.●

## TRIBUTE TO MAJOR SAM GLOVER

● Mr. GRAHAM. Mr. President, I rise to pay tribute to MAJ Sam Glover for his extraordinary service to the Nation while serving in the U.S. Army for the past 18 years. His record of distinguished service includes tours in Korea, Bosnia, Iraq, and a nominative assignment as a defense fellow in the U.S. Senate.

Major Glover started his military career as an enlisted soldier—a combat engineer—in the South Carolina National Guard. After graduating from South Carolina State University, Major Glover was commissioned as a second lieutenant in the Army Aviation Corps. After completing requirements to become a UH–60 Blackhawk pilot, he served in Korea, where he served as a platoon leader for Bravo Company, 1–52nd Aviation Regiment supporting South Korean Special Operations Forces.

After his Korea tour, Major Glover was assigned to Fort Bragg, NC. Major Glover deployed with his unit to Bosnia-Herzegovina in support of Operation Joint Forge. During this deployment he acted as forward detachment commander during the Kosovo air strikes. In addition, he provided aerial security support at the G–8 conference in Sarajevo, Bosnia, for President Clinton and other key leaders.

Following his Fort Bragg assignment, he assumed command of HHC–1–212th Aviation Company at Fort Rucker, AL. As the company commander, Major Glover managed the two largest Army heliports, training over 2,000 students and as an instructor pilot received his Army Senior Aviator Badge flying over 1,500 hours.

Following company command, Major Glover became a system evaluator for the procurement of new military system and equipment at Aberdeen Proving Ground, Maryland. He was then deployed to Iraq as an operations officer of a military transition team that trained over 830 Iraqis and conducted over 100 combat missions.

After he returned from Iraq, Major Glover was selected as an Army comptroller and worked in the Pentagon at the Army Asymmetric Warfare Office, AAWO in the Improvised Explosive Device, IED, Division. During that time he was one of the original combat vehicle architects of the Mine Resistant Ambush Program, MRAP, and worked with Congress and defense leaders to fund 12,000 vehicles valued at $17 billion.

Major Glover was then selected as a Department of Defense congressional fellow and served as an Army fellow in the U.S. Senate for 1 year. After his tenure as a military fellow, he most recently served as Army congressional legislative liaison in the Army Senate Liaison Division. He represented the Army on Capitol Hill and conducted numerous codels and staffdels across the world. He has coordinated over 1,500 Capitol Hill and White House tours for State, local, and military constituents.

Mr. President, on behalf of the grateful nation, I join my colleagues today in saying thank you to MAJ Sam Glover for his extraordinary dedication to duty and service to the country throughout his distinguished career in the U.S. Army.●

## REMEMBERING DR. LARRY MANNING ROSS

● Mr. GRAHAM. Mr. President, I would like to take a moment to recognize the passing of Dr. Larry Manning Ross, a great South Carolinian, who not only served his country honorably in uniform but also worked tirelessly as a psychologist for many years.

Dr. Ross graduated from Citadel in 1963 and served in the Vietnam war, where as a captain he was wounded in 1968. For his actions, Dr. Ross was awarded the Silver Star and the Vietnam Cross. After being medically discharged from the military, Dr. Ross went on to earn a PhD in psychology and taught at the University of South Carolina. He served in private practice until he could no longer practice.

Dr. Ross was an incredible man who made countless sacrifices for his family and for his country and for that I would like to honor him.●

## RECOGNIZING DIMILLO'S FLOATING RESTAURANT

● Ms. SNOWE. Mr. President, there are small businesses in cities and town across America that are local landmarks for a variety of reasons—whether they serve exceptional food, create a fun atmosphere, or possess a unique character. One such small business, DiMillo's Floating Restaurant in Maine's largest coastal city of Portland, enjoys all of these traits, and has been a community favorite since opening its doors in its current location in 1982. Today I commend DiMillo's for its remarkable achievements and determined resilience, and to highlight its remarkable story.

DiMillo's restaurant began serving some of Portland's favorite meals in 1982 after many reinventions of creator Tony DiMillo's dream. Tony opened his first restaurant, Anthony's, on Fore Street in 1954. After two relocations of the restaurant, he settled on changing his company's name to that of his last name, and moved the restaurant to Portland's scenic waterfront after purchasing the abandoned Long Wharf. Tony quickly evolved his business from a single restaurant to a multi faceted empire by creating DiMillo's Marina and eventually DiMillo's Yacht Sales, all on the newly renovated wharf.

The flagship of the DiMillo spirit lies in DiMillo's Floating Restaurant, a refurbished car ferry that originally ran between Delaware and New Jersey. By the time the DiMillo family purchased the vessel in 1980, its fate was sealed as a popular landmark of the Portland waterfront. DiMillo's Floating Restaurant is one of the largest converted ferries of its kind and is able to accommodate over 600 guests at any given time. The restaurant offers patrons a wide variety of the Gulf of Maine's bounty, from lobsters and haddock to scallops and clams. In homage to the family's Italian ancestry, DiMillo's also offers a number of both unique and classic Italian dishes, from seafood scampi to ricotta meatballs.

Like so many small Maine businesses, DiMillo's has been forced to adapt to the persistent economic downturn, as well as today's rising energy costs. Recently, the company announced that it will be raising a 35-foot wind turbine to help cut the cost of the electrical needs of the business. As part of their movement towards sustainability, DiMillo's has also pledged to consider adding solar panels to its energy future.

It is with great pride that I acknowledge the successes of small, family-owned businesses, because these are the firms that help maintain the character and virtue of Main Street America. The long-term success and longevity of DiMillo's Restaurant and the entire DiMillo family is a byproduct of strong work ethic, responsive customer service, and a high level of quality.

The motto of the DiMillo family has always been, ''A tradition of excellence for generations to come.'' And these words continue to ring true today, whether it is through their efforts at the restaurant, the marina, or in their yacht sales business. DiMillo's is an excellent example of our nation's unique and celebrated entrepreneurial spirit. I congratulate everyone in the DiMillo's businesses for their resilience and dedication to the community of Portland, and wish them many years of continued success.●

## TRIBUTE TO OFFICER TIM DOYLE

● Mr. THUNE. Mr. President, today I join the Rapid City Police Department in honoring Officer Tim Doyle.

Officer Doyle was serving temporarily on the Street Crimes Unit, before resuming his work as a school liaison officer. The Street Crimes Unit was specially designed to handle public nuisance issues and has made noticeable improvements to the quality of life in Rapid City neighborhoods. During what seemed to be a typical stop on August 2, 2011, Officer Doyle was one of three officers shot while on duty. Officer Doyle was shot in the face, and two of his fellow officers, Officer Ryan McCandless and Officer Nick Armstrong, later died from their injuries.

Officer Doyle left the hospital 1 week after the shooting and then returned to work in less than 3 weeks. He assumed his newly assigned position as a Central High School liaison officer in time for the first week of school, with his jaw still wired shut and a bullet lodged in his chest.

Officer Tim Doyle is a four-year veteran of the Rapid City Police Department, and a certain hero. Tim joined the Rapid City Police Department on July 30, 2007. He was hired as a police officer assigned to the Field Services Division. In August 2010, he was assigned as the school liaison officer for Southwest Middle School in Rapid City, SD.

Originally from Minnesota, he received his bachelor of science degree in chemical engineering from the South Dakota School of Mines and Technology in Rapid City. He worked as an engineer in Minnesota for more than a decade before returning to Rapid City to pursue a career in law enforcement.

Officer Doyle continues to recover quickly, due to his remarkable courage and the incredible support of his family, friends, fellow officers, and the Rapid City community.

On September 14, 2011, Officer Tim Doyle will be honored with two awards from the Rapid City Police Department. He will receive the Distinguished Service Cross, which is bestowed upon members who distinguish themselves by demonstrating exceptional bravery, despite an imminent risk of serious bodily injury or death. Officer Doyle will also receive the Purple Heart medal, awarded for a serious physical injury received in the line of duty.

So today I wish to honor this extraordinary public servant. I extend my thoughts, prayers and best wishes to Officer Doyle, his family, friends, his fellow public servants in the Rapid City Police Department, as well as the community at large who have shown outstanding support.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## PRESIDENT'S ADDRESS CONCERNING PROPOSALS TO CREATE JOBS AND IMPROVE THE ECONOMY DELIVERED TO A JOINT SESSION OF CONGRESS ON SEPTEMBER 8, 2011—PM 18

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was ordered to lie on the table:

*To the Congress of the United States:*

Mr. Speaker, Mr. Vice President, Members of Congress, and fellow Americans:

Tonight we meet at an urgent time for our country. We continue to face an economic crisis that has left millions of our neighbors jobless, and a political crisis that has made things worse.

This past week, reporters have been asking ''What will this speech mean for the President? What will it mean for Congress? How will it affect their polls, and the next election?''

But the millions of Americans who are watching right now: they don't care about politics. They have real life concerns. Many have spent months looking for work. Others are doing their best just to scrape by—giving up nights out with the family to save on gas or make the mortgage; postponing retirement to send a kid to college.

These men and women grew up with faith in an America where hard work and responsibility paid off. They believed in a country where everyone gets a fair shake and does their fair share—where if you stepped up, did your job, and were loyal to your company, that loyalty would be rewarded with a decent salary and good benefits; maybe a raise once in awhile. If you did the right thing, you could make it in America.

But for decades now, Americans have watched that compact erode. They have seen the deck too often stacked against them. And they know that Washington hasn't always put their interests first.

The people of this country work hard to meet their responsibilities. The question tonight is whether we'll meet ours. The question is whether, in the face of an ongoing national crisis, we can stop the political circus and actually do something to help the economy; whether we can restore some of the fairness and security that has defined this nation since our beginning.

Those of us here tonight can't solve all of our nation's woes. Ultimately, our recovery will be driven not by Washington, but by our businesses and our workers. But we can help. We can make a difference. There are steps we can take right now to improve people's lives.

I am sending this Congress a plan that you should pass right away. It's called the American Jobs Act. There should be nothing controversial about this piece of legislation.

Everything in here is the kind of proposal that's been supported by both Democrats and Republicans—including many who sit here tonight. And everything in this bill will be paid for. Everything.

The purpose of the American Jobs Act is simple: to put more people back to work and more money in the pockets of those who are working. It will create more jobs for construction workers, more jobs for teachers, more jobs for veterans, and more jobs for the long-term unemployed. It will provide a tax break for companies who hire new workers, and it will cut payroll taxes in half for every working American and every small business. It will provide a jolt to an economy that has stalled, and give companies confidence that if they invest and hire, there will be customers for their products and services. You should pass this jobs plan right away.

Everyone here knows that small businesses are where most new jobs begin. And you know that while corporate profits have come roaring back, smaller companies haven't. So for everyone who speaks so passionately about making life easier for ''job creators,'' this plan is for you.

Pass this jobs bill, and starting tomorrow, small businesses will get a tax cut if they hire new workers or raise workers' wages. Pass this jobs bill, and all small business owners will also see their payroll taxes cut in half next year. If you have 50 employees making an average salary, that's an $80,000 tax

cut. And all businesses will be able to continue writing off the investments they make in 2012.

It's not just Democrats who have supported this kind of proposal. Fifty House Republicans have proposed the same payroll tax cut that's in this plan. You should pass it right away.

Pass this jobs bill, and we can put people to work rebuilding America. Everyone here knows that we have badly decaying roads and bridges all over this country. Our highways are clogged with traffic. Our skies are the most congested in the world.

This is inexcusable. Building a world-class transportation system is part of what made us an economic superpower. And now we're going to sit back and watch China build newer airports and faster railroads? At a time when millions of unemployed construction workers could build them right here in America?

There are private construction companies all across America just waiting to get to work. There's a bridge that needs repair between Ohio and Kentucky that's on one of the busiest trucking routes in North America. A public transit project in Houston that will help clear up one of the worst areas of traffic in the country. And there are schools throughout this country that desperately need renovating. How can we expect our kids to do their best in places that are literally falling apart? This is America. Every child deserves a great school—and we can give it to them, if we act now.

The American Jobs Act will repair and modernize at least 35,000 schools. It will put people to work right now fixing roofs and windows; installing science labs and high-speed internet in classrooms all across this country. It will rehabilitate homes and businesses in communities hit hardest by foreclosures. It will jumpstart thousands of transportation projects across the country. And to make sure the money is properly spent and for good purposes, we're building on reforms we've already put in place. No more earmarks. No more boondoggles. No more bridges to nowhere. We're cutting the red tape that prevents some of these projects from getting started as quickly as possible. And we'll set up an independent fund to attract private dollars and issue loans based on two criteria: how badly a construction project is needed and how much good it would do for the economy.

This idea came from a bill written by a Texas Republican and a Massachusetts Democrat. The idea for a big boost in construction is supported by America's largest business organization and America's largest labor organization. It's the kind of proposal that's been supported in the past by Democrats and Republicans alike. You should pass it right away.

Pass this jobs bill, and thousands of teachers in every state will go back to work. These are the men and women charged with preparing our children for a world where the competition has never been tougher. But while they're adding teachers in places like South Korea, we're laying them off in droves. It's unfair to our kids. It undermines their future and ours. And it has to stop. Pass this jobs bill, and put our teachers back in the classroom where they belong.

Pass this jobs bill, and companies will get extra tax credits if they hire America's veterans. We ask these men and women to leave their careers, leave their families, and risk their lives to fight for our country. The last thing they should have to do is fight for a job when they come home.

Pass this bill, and hundreds of thousands of disadvantaged young people will have the hope and dignity of a summer job next year. And their parents, low-income Americans who desperately want to work, will have more ladders out of poverty.

Pass this jobs bill, and companies will get a $4,000 tax credit if they hire anyone who has spent more than six months looking for a job. We have to do more to help the long-term unemployed in their search for work. This jobs plan builds on a program in Georgia that several Republican leaders have highlighted, where people who collect unemployment insurance participate in temporary work as a way to build their skills while they look for a permanent job. The plan also extends unemployment insurance for another year. If the millions of unemployed Americans stopped getting this insurance, and stopped using that money for basic necessities, it would be a devastating blow to this economy. Democrats and Republicans in this Chamber have supported unemployment insurance plenty of times in the past. At this time of prolonged hardship, you should pass it again—right away.

Pass this jobs bill, and the typical working family will get a fifteen hundred dollar tax cut next year. Fifteen hundred dollars that would have been taken out of your paycheck will go right into your pocket. This expands on the tax cut that Democrats and Republicans already passed for this year. If we allow that tax cut to expire—if we refuse to act—middle-class families will get hit with a tax increase at the worst possible time. We cannot let that happen. I know some of you have sworn oaths to never raise any taxes on anyone for as long as you live. Now is not the time to carve out an exception and raise middle-class taxes, which is why you should pass this bill right away.

This is the American Jobs Act. It will lead to new jobs for construction workers, teachers, veterans, first responders, young people and the long-term unemployed. It will provide tax credits to companies that hire new workers, tax relief for small business owners, and tax cuts for the middle-class. And here's the other thing I want the American people to know: the American Jobs Act will not add to the deficit. It will be paid for. And here's how:

The agreement we passed in July will cut government spending by about $1 trillion over the next ten years. It also charges this Congress to come up with an additional $1.5 trillion in savings by Christmas. Tonight, I'm asking you to increase that amount so that it covers the full cost of the American Jobs Act. And a week from Monday, I'll be releasing a more ambitious deficit plan—a plan that will not only allow us to boost jobs and growth in the short-term, but stabilize our debt in the long run.

This approach is basically the one I've been advocating for months. In addition to the trillion dollars of spending cuts I've already signed into law, it's a balanced plan that would reduce the deficit by making additional spending cuts; by making modest adjustments to health care programs like Medicare and Medicaid; and by reforming our tax code in a way that asks the wealthiest Americans and biggest corporations to pay their fair share. What's more, the spending cuts wouldn't happen so abruptly that they'd be a drag on our economy, or prevent us from helping small business and middle-class families get back on their feet right away.

Now, I realize there are some in my party who don't think we should make any changes at all to Medicare and Medicaid, and I understand their concerns. But here's the truth. Millions of Americans rely on Medicare in their retirement. And millions more will do so in the future. They pay for this benefit during their working years. They earn it. But with an aging population and rising health care costs, we are spending too fast to sustain the program. And if we don't gradually reform the system while protecting current beneficiaries, it won't be there when future retirees need it. We have to reform Medicare to strengthen it.

I'm also well aware that there are many Republicans who don't believe we should raise taxes on those who are most fortunate and can best afford it. But here is what every American knows. While most people in this country struggle to make ends meet, a few of the most affluent citizens and corporations enjoy tax breaks and loopholes that nobody else gets. Right now, Warren Buffet pays a lower tax rate than his secretary—an outrage he has asked us to fix. We need a tax code where everyone gets a fair shake, and everybody pays their fair share. And I believe the vast majority of wealthy Americans and CEOs are willing to do just that, if it helps the economy grow and gets our fiscal house in order.

I'll also offer ideas to reform a corporate tax code that stands as a monument to special interest influence in Washington. By eliminating pages of loopholes and deductions, we can lower one of the highest corporate tax rates in the world. Our tax code shouldn't give an advantage to companies that can afford the best-connected lobbyists. It should give an advantage to

companies that invest and create jobs here in America.

So we can reduce this deficit, pay down our debt, and pay for this jobs plan in the process. But in order to do this, we have to decide what our priorities are. We have to ask ourselves, ''What's the best way to grow the economy and create jobs?''

Should we keep tax loopholes for oil companies? Or should we use that money to give small business owners a tax credit when they hire new workers? Because we can't afford to do both. Should we keep tax breaks for millionaires and billionaires? Or should we put teachers back to work so our kids can graduate ready for college and good jobs? Right now, we can't afford to do both.

This isn't political grandstanding. This isn't class warfare. This is simple math. These are real choices that we have to make. And I'm pretty sure I know what most Americans would choose. It's not even close. And it's time for us to do what's right for our future.

The American Jobs Act answers the urgent need to create jobs right away. But we can't stop there. As I've argued since I ran for this office, we have to look beyond the immediate crisis and start building an economy that lasts into the future—an economy that creates good, middle-class jobs that pay well and offer security. We now live in a world where technology has made it possible for companies to take their business anywhere. If we want them to start here and stay here and hire here, we have to be able to out-build, out-educate, and out-innovate every other country on Earth.

This task, of making America more competitive for the long haul, is a job for all of us. For government and for private companies. For states and for local communities—and for every American citizen. All of us will have to up our game. All of us will have to change the way we do business.

My administration can and will take some steps to improve our competitiveness on our own. For example, if you're a small business owner who has a contract with the federal government, we're going to make sure you get paid a lot faster than you do now. We're also planning to cut away the red tape that prevents too many rapidly-growing start-up companies from raising capital and going public. And to help responsible homeowners, we're going to work with Federal housing agencies to help more people refinance their mortgages at interest rates that are now near 4%—a step that can put more than $2,000 a year in a family's pocket, and give a lift to an economy still burdened by the drop in housing prices.

Other steps will require Congressional action. Today you passed reform that will speed up the outdated patent process, so that entrepreneurs can turn a new idea into a new business as quickly as possible. That's the kind of action we need. Now it's time to clear the way for a series of trade agreements that would make it easier for American companies to sell their products in Panama, Colombia, and South Korea—while also helping the workers whose jobs have been affected by global competition. If Americans can buy Kias and Hyundais, I want to see folks in South Korea driving Fords and Chevys and Chryslers. I want to see more products sold around the world stamped with three proud words: ''Made in America.''

And on all of our efforts to strengthen competitiveness, we need to look for ways to work side-by-side with America's businesses. That's why I've brought together a Jobs Council of leaders from different industries who are developing a wide range of new ideas to help companies grow and create jobs.

Already, we've mobilized business leaders to train 10,000 American engineers a year, by providing company internships and training. Other businesses are covering tuition for workers who learn new skills at community colleges. And we're going to make sure the next generation of manufacturing takes root not in China or Europe, but right here, in the United States of America. If we provide the right incentives and support—and if we make sure our trading partners play by the rules—we can be the ones to build everything from fuel-efficient cars to advanced biofuels to semiconductors that are sold all over the world. That's how America can be number one again. That's how America will be number one again.

Now, I realize that some of you have a different theory on how to grow the economy. Some of you sincerely believe that the only solution to our economic challenges is to simply cut most government spending and eliminate most government regulations.

Well, I agree that we can't afford wasteful spending, and I will continue to work with Congress to get rid of it. And I agree that there are some rules and regulations that put an unnecessary burden on businesses at a time when they can least afford it. That's why I ordered a review of all government regulations. So far, we've identified over 500 reforms, which will save billions of dollars over the next few years. We should have no more regulation than the health, safety, and security of the American people require. Every rule should meet that common sense test.

But what we can't do—what I won't do—is let this economic crisis be used as an excuse to wipe out the basic protections that Americans have counted on for decades. I reject the idea that we need to ask people to choose between their jobs and their safety. I reject the argument that says for the economy to grow, we have to roll back protections that ban hidden fees by credit card companies, or rules that keep our kids from being exposed to mercury, or laws that prevent the health insurance industry from shortchanging patients. I reject the idea that we have to strip away collective bargaining rights to compete in a global economy. We shouldn't be in a race to the bottom, where we try to offer the cheapest labor and the worst pollution standards. America should be in a race to the top. And I believe that's a race we can win.

In fact, this larger notion that the only thing we can do to restore prosperity is just dismantle government, refund everyone's money, let everyone write their own rules, and tell everyone they're on their own—that's not who we are. That's not the story of America.

Yes, we are rugged individualists. Yes, we are strong and self-reliant. And it has been the drive and initiative of our workers and entrepreneurs that has made this economy the engine and envy of the world.

But there has always been another thread running throughout our history—a belief that we are all connected; and that there are some things we can only do together, as a nation.

We all remember Abraham Lincoln as the leader who saved our Union. But in the middle of a Civil War, he was also a leader who looked to the future—a Republican president who mobilized government to build the transcontinental railroad; launch the National Academy of Sciences; and set up the first land grant colleges. And leaders of both parties have followed the example he set.

Ask yourselves—where would we be right now if the people who sat here before us decided not to build our highways and our bridges; our dams and our airports? What would this country be like if we had chosen not to spend money on public high schools, or research universities, or community colleges? Millions of returning heroes, including my grandfather, had the opportunity to go to school because of the GI Bill. Where would we be if they hadn't had that chance?

How many jobs would it have cost us if past Congresses decided not to support the basic research that led to the Internet and the computer chip? What kind of country would this be if this Chamber had voted down Social Security or Medicare just because it violated some rigid idea about what government could or could not do? How many Americans would have suffered as a result?

No single individual built America on their own. We built it together. We have been, and always will be, one nation, under God, indivisible, with liberty and justice for all; a nation with responsibilities to ourselves and with responsibilities to one another. Members of Congress, it is time for us to meet our responsibilities.

Every proposal I've laid out tonight is the kind that's been supported by Democrats and Republicans in the past. Every proposal I've laid out tonight will be paid for. And every proposal is designed to meet the urgent

needs of our people and our communities.

I know there's been a lot of skepticism about whether the politics of the moment will allow us to pass this jobs plan—or any jobs plan. Already, we're seeing the same old press releases and tweets flying back and forth. Already, the media has proclaimed that it's impossible to bridge our differences. And maybe some of you have decided that those differences are so great that we can only resolve them at the ballot box.

But know this: the next election is fourteen months away. And the people who sent us here—the people who hired us to work for them—they don't have the luxury of waiting fourteen months. Some of them are living week to week; paycheck to paycheck; even day to day. They need help, and they need it now.

I don't pretend that this plan will solve all our problems. It shouldn't be, nor will it be, the last plan of action we propose. What's guided us from the start of this crisis hasn't been the search for a silver bullet. It's been a commitment to stay at it—to be persistent—to keep trying every new idea that works, and listen to every good proposal, no matter which party comes up with it.

Regardless of the arguments we've had in the past, regardless of the arguments we'll have in the future, this plan is the right thing to do right now. You should pass it. And I intend to take that message to every corner of this country. I also ask every American who agrees to lift your voice and tell the people who are gathered here tonight that you want action now. Tell Washington that doing nothing is not an option. Remind us that if we act as one nation, and one people, we have it within our power to meet this challenge.

President Kennedy once said, ''Our problems are man-made—therefore they can be solved by man. And man can be as big as he wants.''

These are difficult years for our country. But we are Americans. We are tougher than the times that we live in, and we are bigger than our politics have been. So let's meet the moment. Let's get to work, and show the world once again why the United States of America remains the greatest nation on Earth. Thank you, God bless you, and may God bless the United States of America.

BARACK OBAMA.

THE WHITE HOUSE, *September 8, 2011*.

## MESSAGE FROM THE HOUSE

At 11:52 a.m., a message from the House of Representatives, delivered by Mr. Novotny, 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. 2832. An act to extend the Generalized System of Preferences, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 67. Concurrent resolution authorizing the use of the Capitol Grounds for the District of Columbia Special Olympics Law Enforcement Torch Run.

## MEASURES PLACED ON THE CALENDAR

The following joint resolution was read the second time, and placed on the calendar:

S.J. Res. 26. Joint resolution expressing the sense of Congress that Secretary of the Treasury Timothy Geithner no longer holds the confidence of Congress or of the people of the United States.

## 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–2996. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the OMB Sequestration Update Report for Fiscal Year 2012, referred jointly, pursuant to the order of January 30, 1975 as modified by the order of April 11, 1986; to the Special Committee on Aging; Agriculture, Nutrition, and Forestry; Appropriations; Armed Services; Banking, Housing, and Urban Affairs; the Budget; Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; Select Committee on Ethics; Finance; Foreign Relations; Health, Education, Labor, and Pensions; Homeland Security and Governmental Affairs; Indian Affairs; Select Committee on Intelligence; the Judiciary; Rules and Administration; Small Business and Entrepreneurship; and Veterans' Affairs.

EC–2997. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Importation of Peppers from Panama'' ((RIN0579–AD16) (Docket No. APHIS–2010–0002)) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2998. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Asian Longhorned Beetle; Quarantined Areas and Regulated Articles'' (Docket No. APHIS–2010–0128) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2999. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''European Larch Canker; Expansion of Regulated Areas'' (Docket No. APHIS–2011–0029) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3000. A communication from the Director of the Regulatory Management Division, Office of Policy, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benezene sodium acid; Tolerance Exemption'' (FRL No. 8888–5) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3001. A communication from the Director of the Regulatory Management Division, Office of Policy, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pseudomonas fluorescens strain CL145A; Exemption from the Requirement of a Tolerance'' (FRL No. 8884–6) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3002. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Importation of Horses from Contagious Equine Metritis-Affected Countries'' ((RIN0579–AD31) (Docket No. APHIS–2008–0112)) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3003. A communication from the Director of the Regulatory Management Division, Office of Policy, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Tebuconazole; Pesticide Tolerances'' (FRL No. 8885–4) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3004. A communication from the Commission on Wartime Contracting in Iraq and Afghanistan, transmitting, pursuant to law, a report entitled ''Transforming Wartime Contracting: Controlling Cost, Reducing Risk''; to the Committee on Armed Services.

EC–3005. A communication from the Secretary of Energy, transmitting, a legislative proposal relative to allowing the Department of Energy to restore certain information to the Restricted Data category; to the Committee on Armed Services.

EC–3006. A communication from the Director of Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Increase the Use of Fixed-Price Incentive (Firm Target) Contracts'' ((RIN0750–AH15) (DFARS Case 2011–D010)) received in the Office of the President of the Senate on September 7, 2011; to the Committee on Armed Services.

EC–3007. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Export Administration Regulations: Netherlands Antilles, Curacao, Sint Maarten and Timor-Leste'' (RIN0694–AF18) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–3008. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Implementation of a Decision Adopted under the Australia Group (AG) Intersessional Silent Approval Procedures in 2010 and Related Editorial Amendments'' (RIN0694–AF14) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–3009. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting,

pursuant to law, the notification of the President's intent to exempt all military personnel accounts from sequester for fiscal year 2012, if a sequester is necessary; to the Committee on the Budget.

EC–3010. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''2011 Annual Plan: Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program''; to the Committee on Energy and Natural Resources.

EC–3011. A communication from the Director, Office of Natural Resources Revenue, Department of the Interior, transmitting, pursuant to law, a report entitled ''Report to Congress: The Office of Natural Resources Revenue, Royalty in Kind Program'' for fiscal year 2010; to the Committee on Energy and Natural Resources.

EC–3012. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''Department of Energy Activities Relating to the Defense Nuclear Facilities Safety Board Fiscal Year 2010''; to the Committee on Energy and Natural Resources.

EC–3013. A communication from the Senior Advisor, Office of Regulations, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Requiring Use of Electronic Services'' (RIN0960–AH31) received in the Office of the President of the Senate on September 7, 2011; to the Committee on Finance.

EC–3014. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2011–0130—2011–0144); to the Committee on Foreign Relations.

EC–3015. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to law, status reports relative to Iraq for the period of April 21, 2011 through June 20, 2011; to the Committee on Foreign Relations.

EC–3016. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including, technical data, and defense services to Norway for the design, development and manufacture of the M72 Lightweight Anti-Armor Weapon system for several United States allies in Europe and Asia in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–3017. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to support the Missile Firing Unit and Stunner Interceptor Subsystems of the David's Sling Weapon System for end-use by the Government of Israel in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–3018. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, certification for the export of defense articles, to include technical data related to the export of 5.56 mm rifles and accessories to the Critical National Infrastructure Security Force of the United Arab Emirates in the amount of $1,000,000 or more; to the Committee on Foreign Relations.

EC–3019. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to U.S. military personnel and U.S. civilian contractors involved in the anti-narcotics campaign in Colombia (DCN OSS 2011–1395); to the Committee on Foreign Relations.

EC–3020. A communication from the Department of State, transmitting, pursuant to law, a report relative to a GAO Report entitled ''Nuclear Nonproliferation: US Agencies Have Limited Ability to Account for, Monitor, and Evaluate the Security of US Nuclear Material Overseas'' (DCN OSS 2011–1394); to the Committee on Foreign Relations.

EC–3021. A communication from the Department of Defense, transmitting, pursuant to law, a report relative to providing certain support to aid the government of Uzbekistan in its counter-terrorism activities in fiscal year 2011 (DCN OSS 2011–1396); to the Committee on Foreign Relations.

EC–3022. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to the United Kingdom in support of the sale of Hellfire II missiles in the amount of $25,000,000 or more; to the Committee on Foreign Relations.

EC–3023. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of defense articles, including, technical data, and defense services relative to the export of 5.56 mm rifles to the Ministry of Interior, General Directorate of Security, Turkish National Police in the amount of $1,000,000 or more; to the Committee on Foreign Relations.

EC–3024. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a technical assistance agreement for the export of defense articles, including, technical data, and defense services to Singapore for the maintenance, repair, and overhaul of the F100 engines in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–3025. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a technical assistance agreement for the export of defense articles, including, technical data, and defense services to Italy, Switzerland, and the United Kingdom for the support of mechanical, avionics, environmental and lighting systems for the Joint Cargo Aircraft C–27J and industrial baseline variants in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–3026. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to support the design, manufacturing and delivery phases of the MEXSAT–3 Commercial Communications Satellite Program in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–3027. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a technical assistance agreement for the export of defense articles, including, technical data, and defense services to the Republic of Korea for the sale of four C–130J–30 aircraft, related spares, and logistics support services in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–3028. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of defense articles, including, technical data, and defense services to the United Kingdom and Singapore for the manufacture of and repair of Display Assembly Kits, Display Monitors, Display Unit Subassemblies and Control Panel Assemblies; to the Committee on Foreign Relations.

EC–3029. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including, technical data, and defense services to the support the manufacture of Communication and Navigation Equipment for end use by the Saudi Arabian Ministry of Defense and Aviation, Royal Saudi Air Force in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–3030. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Italy for the design, development and manufacture of F135 engine parts and components for the Joint Strike Fighter Aircraft in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–3031. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Canada for the design, development and manufacture of the M72A5 Light Anti-Armor Weapon (LAW) system in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–3032. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including, technical data, and defense services to South Korea for the manufacture, assembly and maintenance support of the XTG411 Series Transmission in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–3033. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to a proposed amendments to part 126 of the International Traffic in Arms Regulations (ITAR); to the Committee on Foreign Relations.

EC–3034. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the Annual Report to Congress on the President's Emergency Plan for AIDS Relief; to the Committee on Foreign Relations.

EC–3035. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the

Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2011–0121—2011–0129); to the Committee on Foreign Relations.

EC–3036. A communication from the Board Members, Railroad Retirement Board, transmitting, pursuant to law, the Board's 2011 report for the fiscal year ended September 30, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–3037. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Food and Drug Administration's report relative to the Second Review of the Backlog of Postmarketing Requirements and Postmarketing Commitments; to the Committee on Health, Education, Labor, and Pensions.

EC–3038. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers from the Sandia National Laboratories in Albuquerque, New Mexico, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–3039. A communication from the Chairman, National Endowment for the Arts, transmitting, pursuant to law, a report relative to the Arts Endowment's inventory of commercial activities for fiscal year 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3040. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Performance Report of the Food and Drug Administration's Office of Combination Products for fiscal year 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–3041. A communication from the Deputy Director for Operations, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' (29 CFR Part 4022) received during recess of the Senate in the Office of the President of the Senate on August 4, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3042. A communication from the Deputy Director for Policy, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Disclosure to Participants'' (RIN1212–AB12) received during recess of the Senate in the Office of the President of the Senate on August 4, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3043. A communication from the Deputy Director for Policy, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' (29 CFR Part 4022) received during recess of the Senate in the Office of the President of the Senate on August 31, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3044. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act'' (RIN1210–AB44) received during recess of the Senate in the Office of the President of the Senate on August 5, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3045. A communication from the Assistant Secretary for the Employment and Training Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program; Amendment of Effective Date'' (RIN1205–AB61) received during recess of the Senate in the Office of the President of the Senate on August 11, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3046. A communication from the Program Manager, National Institutes of Health, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought and Responsible Prospective Contractors'' (RIN0925–AA53) received during recess of the Senate in the Office of the President of the Senate on August 25, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3047. A communication from the Assistant General Counsel for Regulatory Services, Office of Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Office of Special Education and Rehabilative Services—Special Demonstration Programs—National Technical Assistance Projects to Improve Employment Outcomes for Individuals with Disabilities—Final Priority'' (CFDA No. 84.235M) received during recess of the Senate in the Office of the President of the Senate on August 17, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3048. A communication from the 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; General and Plastic Surgery Devices; Classification of the Focused Ultrasound Stimulator System for Aesthetic Use'' (Docket No. FDA–2011–N–0499) received during recess of the Senate in the Office of the President of the Senate on August 4, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3049. A communication from the 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 ''Cardiovascular Devices; Classification of Electrocardiograph Electrodes'' (Docket No. FDA–2007–N–0092) received during recess of the Senate in the Office of the President of the Senate on August 4, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3050. A communication from the 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 ''Labeling for Bronchodilators to Treat Asthma; Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use'' (Docket No. FDA–1995–N–0031) received during recess of the Senate in the Office of the President of the Senate on August 4, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3051. A communication from the 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; Neurological Devices; Classification of Repetitive Transcranial Magnetic Stimulation System'' (Docket No. FDA–2011–N–0466) received during recess of the Senate in the Office of the President of the Senate on August 8, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3052. A communication from the 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 ''Immunology and Microbiology Devices; Reclassification of the Herpes Simplex Virus Serological Assay Device'' (Docket No. FDA–2010–N–0429) received during recess of the Senate in the Office of the President of the Senate on August 17, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3053. A communication from the 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 ''Effective Date of Requirement for Premarket Approval for Three Class III Preamendments Devices'' (Docket No. FDA–2010–N–0412) received during recess of the Senate in the Office of the President of the Senate on August 25, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3054. A communication from the Program Manager, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Rate Increase Disclosure and Review: Definitions of 'Individual Market' and 'Small Group Market'" (RIN0938–AR26) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3055. A communication from the 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 ''Advisory Committee; Medical Imaging Drugs Advisory Committee; Re-Establishment'' (Docket No. FDA–2010–N–0002) received in the Office of the President of the Senate on September 7, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3056. A communication from the Director, Office of Government Relations, Corporation for National and Community Service, transmitting, pursuant to law, the final report by the Office of the Inspector General on the Evaluation of the 2010 Social Innovation Fund Grant Application Review Process; to the Committee on Health, Education, Labor, and Pensions.

EC–3057. A communication from the Associate General Counsel for General Law, Office of General Counsel, Department of Homeland Security, transmitting, pursuant to law, a report relative to a vacancy in the position of Inspector General, Department of Homeland Security, received during recess of the Senate in the Office of the President of the Senate on August 11, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3058. A communication from the Acting Executive Director, Commodity Futures Trading Commission, transmitting, pursuant to law, the Commission's fiscal year 2011 FAIR Act inventory; to the Committee on Homeland Security and Governmental Affairs.

EC–3059. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–152 ''Healthy Schools Amendment Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3060. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, a report relative to the activities performed by

the agency that are not inherently governmental functions; to the Committee on Homeland Security and Governmental Affairs.

EC–3061. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, the Board's Fiscal Year 2010 Annual Report on The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002; to the Committee on Homeland Security and Governmental Affairs.

EC–3062. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Major System Acquisition; Earned Value Management'' (RIN2700–AD29) received during recess of the Senate in the Office of the President of the Senate on August 4, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3063. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''NASA Implementation of Federal Acquisition Regulation (FAR) Award Fee Language Revision'' (RIN2700–AD69) received during recess of the Senate in the Office of the President of the Senate on August 4, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3064. A communication from the Director, Employee Services, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Prevailing Rate Systems: Redefinition of the Northeastern Arizona and Southern Colorado Appropriated Fund Federal Wage System Wage Areas'' (RIN3206–AM33) received during recess of the Senate in the Office of the President of the Senate on August 22, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3065. A communication from the Executive Secretary, National Labor Relations Board, transmitting, pursuant to law, the report of a rule entitled ''Notification of Employee Rights under the National Labor Relations Act'' (RIN3142–AA07) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3066. A communication from the General Counsel, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report of a rule entitled ''Cost Accounting Standards: Change to the CAS Applicability Threshold for the Inflation Adjustment to the Truth in Negotiations Act Threshold'' (48 CFR Parts 9901 and 9903) received during recess of the Senate in the Office of the President of the Senate on August 29, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3067. A communication from the General Counsel, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report of a rule entitled ''Elimination of the Exemption from Cost Accounting Standards for Contracts and Subcontracts Executed and Performed Entirely Outside the United States, Its Territories, and Possessions'' (48 CFR part 9903) received during recess of the Senate in the Office of the President of the Senate on August 29, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3068. A communication from the Acting District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Audit of Funding Agreements Including Contracts, Loans, Grants, and Sub-grants Issued By the District of Columbia to Peaceoholics, Inc. From Fiscal Year (FY) 2006 to FY 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–3069. A communication from the Deputy General Counsel, Office of the General Counsel, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Boards and Committees'' (RIN2700–AD50) received during recess of the Senate in the Office of the President of the Senate on August 5, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3070. A communication from the Director of Regulations and Disclosure Law, Customs and Border Protection, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Courtesy Notice of Liquidation'' (RIN1515–AD67) received during recess of the Senate in the Office of the President of the Senate on August 12, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3071. A communication from the Senior Procurement Analyst, Office of the Secretary, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Acquisition Regulation Rewrite'' (RIN1093–AA11) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3072. A communication from the Senior Procurement Analyst, Office of the Secretary, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Acquisition Regulation Miscellaneous Changes'' (RIN1093–AA13) received in the Office of the President of the Senate on September 6, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–3073. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–99 ''Athletic Concussion Protection Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3074. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–100 ''Southeast Federal Center/Yards Non-Discriminatory Grocery Store Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3075. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–101 ''Closing of Streets and Alleys in and adjacent to Squares 4533, 4534, and 4535, S.O. 09–10850, Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3076. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–102 ''Brewery Manufacturer's Tasting Permit Amendment Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3077. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–103 ''Closing of a Public Alley in Square 514, S.O. 09–9099, Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3078. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–104 ''Closing of a Public Alley in Square 451, S.O. 11–03672, Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3079. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–105 ''Closing of a Portion of Bryant Street, N.E., and a Portion of 22nd Street, N.E., S.O. 06–1262 Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3080. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–106 ''Closing of a Portion of the Public Alley in Square 5148, S.O. 10–01784, Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3081. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–107 ''Arthur Capper/Carrollsburg Public Improvements Revenue Bonds Temporary Amendment Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3082. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–108 ''Heights on Georgia Avenue Development Extension Temporary Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3083. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–109 ''KIPP DC—Shaw Campus Property Tax Exemption Temporary Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3084. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–111 ''District Department of Transportation Capital Project Review and Reconciliation Temporary Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3085. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–119 ''Heat Wave Safety Temporary Amendment Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3086. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 19–151 ''Distributed Generation Amendment Act of 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–3087. A communication from the Director, Congressional Affairs, Federal Election Commission, transmitting, pursuant to law, a report relative to revisions of two disclosure forms used by political committees to report campaign finance activity; to the Committee on Rules and Administration.

EC–3088. A communication from the Management and Program Analyst, Citizenship and Immigration Services, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Immigration Benefits Business Transformation, Increment I'' (RIN1615–AB83) received during recess of the Senate in the Office of the President of the Senate on August 29, 2011; to the Committee on the Judiciary.

EC–3089. A communication from the Federal Register Liaison Officer, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Time for Payment of Certain Excise Taxes, and Quarterly Excise Tax Payments for Small Alcohol Excise Taxpayers'' (RIN1513–AB43) received in the Office of the President of the Senate on September 6, 2011; to the Committee on the Judiciary.

EC–3090. A communication from the Director, Administrative Office of the United States Courts, transmitting, pursuant to

law, a report entitled ''Report of the Proceedings of the Judicial Conference of the United States'' for the March 2011 session; to the Committee on the Judiciary.

EC–3091. A communication from the Staff Director, United States Commission on Civil Rights, transmitting, pursuant to law, the report of the appointment of members to the Oklahoma Advisory Committee; to the Committee on the Judiciary.

EC–3092. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a report entitled ''Report of the Attorney General to the Congress of the United States on the Administration of the Foreign Agents Registration Act of 1938, as amended for the six months ending December 31, 2010''; to the Committee on the Judiciary.

EC–3093. A communication from the Director of the Regulation Policy and Management Office, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Per Diem Payments for the Care Provided to Eligible Veterans Evacuated from a State Home as a Result of an Emergency'' (RIN2900–AN63) received in the Office of the President of the Senate on September 7, 2011; to the Committee on Veterans' Affairs.

EC–3094. A communication from the Director of the Regulation Policy and Management Office, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Health Care for Homeless Veterans Program'' (RIN2900–AN73) received during recess of the Senate in the Office of the President of the Senate on August 22, 2011; to the Committee on Veterans' Affairs.

EC–3095. A communication from the Director of the Regulation Policy and Management Office, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Expansion of State Home Care for Parents of a Child Who Died While Serving in the Armed Forces'' (RIN2900–AN96) received during recess of the Senate in the Office of the President of the Senate on August 19, 2011; to the Committee on Veterans' Affairs.

EC–3096. A communication from the Director of the Regulation Policy and Management Office, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Technical Revisions to Conform to the Caregivers and Veterans Omnibus Health Services Act of 2010'' (RIN2900–AN85) received during recess of the Senate in the Office of the President of the Senate on August 19, 2011; to the Committee on Veterans' Affairs.

EC–3097. A communication from the Director of the Regulation Policy and Management Office, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Clarification'' (RIN2900–AO06) received during recess of the Senate in the Office of the President of the Senate on August 22, 2011; to the Committee on Veterans' Affairs.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUYE, from the Committee on Appropriations:

Special Report entitled ''Allocation to Subcommittees of Budget Totals for Fiscal Year 2012'' (Rept. No. 112–76).

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 657. A bill to encourage, enhance, and integrate Blue Alert plans throughout the United States in order to disseminate information when a law enforcement officer is seriously injured or killed in the line of duty.

By Mrs. BOXER, from the Committee on Environment and Public Works, without amendment:

S. 1525. An original bill to extend the authority of Federal-aid highway programs.

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. JOHNSON of South Dakota, for the Committee on Banking, Housing, and Urban Affairs.

*Anthony Frank D'Agostino, of Maryland, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 2011.

*Anthony Frank D'Agostino, of Maryland, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 2014.

*Gregory Karawan, of Virginia, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 2013.

*Luis A. Aguilar, of Georgia, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2015.

*Daniel M. Gallagher, Jr., of Maryland, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2016.

*S. Roy Woodall, Jr., of Kentucky, to be a Member of the Financial Stability Oversight Council for a term of six years.

*Martin J. Gruenberg, of Maryland, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation for a term expiring December 27, 2018.

*Martin J. Gruenberg, of Maryland, to be Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation for a term of five years.

*Thomas J. Curry, of Massachusetts, to be Comptroller of the Currency for a term of five years.

By Mr. LEAHY for the Committee on the Judiciary.

Morgan Christen, of Alaska, to be United States Circuit Judge for the Ninth Circuit.

S. Amanda Marshall, of Oregon, to be United States Attorney for the District of Oregon for the term of four years.

John Malcolm Bales, of Texas, to be United States Attorney for the Eastern District of Texas for the term of four years.

Kenneth Magidson, of Texas, to be United States Attorney for the Southern District of Texas for the term of four years.

Robert Lee Pitman, of Texas, to be United States Attorney for the Western District of Texas for the term of four years.

Sarah Ruth Saldana, of Texas, to be United States Attorney for the Northern District of Texas for the term of four years.

Edward M. Spooner, of Florida, to be United States Marshal for the Northern District of Florida for the term of four years.

Scott Wesley Skavdahl, of Wyoming, to be United States District Judge for the District of Wyoming.

Sharon L. Gleason, of Alaska, to be United States District Judge for the District of Alaska.

Yvonne Gonzalez Rogers, of California, to be United States District Judge for the Northern District of California.

Richard G. Andrews, of Delaware, to be United States District Judge for the District of Delaware.

Jennifer Guerin Zipps, of Arizona, to be United States District Judge for the District of Arizona.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(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 Mr. GRAHAM:

S. 1523. A bill to prohibit the National Labor Relations Board from ordering any employers to close, relocate, or transfer employment under any circumstance; to the Committee on Health, Education, Labor, and Pensions.

By Mr. HATCH:

S. 1524. A bill to authorize Western States to make selections of public land within their borders in lieu of receiving 5 percent of the proceeds of the sale of public land lying within said States as provided by their respective enabling Acts; to the Committee on Energy and Natural Resources.

By Mrs. BOXER:

S. 1525. An original bill to extend the authority of Federal-aid highway programs; from the Committee on Environment and Public Works; placed on the calendar.

By Mrs. GILLIBRAND (for herself and Mr. JOHANNS):

S. 1526. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive for the installation and maintenance of mechanical insulation property; to the Committee on Finance.

By Mrs. HAGAN (for herself, Mr. BURR, Mr. BLUMENTHAL, Mr. ROBERTS, Mr. SCHUMER, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mrs. MCCASKILL, Mr. UDALL of Colorado, Ms. LANDRIEU, Mr. BROWN of Ohio, Mr. NELSON of Florida, Mrs. BOXER, and Mr. GRAHAM):

S. 1527. A bill to authorize the award of a Congressional gold medal to the Montford Point Marines of World War II; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. JOHANNS (for himself, Mr. GRASSLEY, Mr. LUGAR, Mr. BOOZMAN, Mr. ROBERTS, Mr. VITTER, Mr. KIRK, Mr. INHOFE, Mr. PAUL, Mr. JOHNSON of Wisconsin, Mr. SESSIONS, Mr. THUNE, Mr. ENZI, Mr. MORAN, Mr. ISAKSON, Mr. BLUNT, Mr. HOEVEN, Mr. CHAMBLISS, Mr. NELSON of Nebraska, and Mrs. MCCASKILL):

S. 1528. A bill to amend the Clean Air Act to limit Federal regulation of nuisance dust in areas in which that dust is regulated under State, tribal, or local law, to establish a temporary prohibition against revising any national ambient air quality standard applicable to coarse particulate matter, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. GILLIBRAND:

S. 1529. A bill to require the Secretary of Agriculture to protect against foodborne illnesses, provide enhanced notification of recalled meat, poultry, eggs, and related food products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. JOHANNS (for himself, Mr. BARRASSO, Ms. COLLINS, Mr. INHOFE, Ms. SNOWE, Mr. PAUL, Mr. JOHNSON of Wisconsin, Mr. GRASSLEY, and Mr. ENZI):

S. 1530. A bill to amend chapter 8 of title 15, United States Code, to provide for congressional review of agency guidance documents; to the Committee on Homeland Security and Governmental Affairs.

By Mr. JOHANNS (for himself, Mr. MCCAIN, Mr. INHOFE, Mr. PAUL, Mr. JOHNSON of Wisconsin, Mr. GRASSLEY, Mr. THUNE, Mr. BARRASSO, and Mr. ENZI):

S. 1531. A bill to provide a Federal regulatory moratorium, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BLUMENTHAL (for himself and Mr. BEGICH):

S. 1532. A bill to amend the Budget Control Act of 2011 to require the joint select committee of Congress to report findings and propose legislation to restore the Nation's workforce to full employment over the period of fiscal years 2012 and 2013; to the Committee on the Budget.

By Mr. BLUMENTHAL (for himself and Mr. BEGICH):

S. 1533. A bill to amend the Budget Control Act of 2011 to require the joint select committee of Congress to report findings and propose legislation to restore the Nation's workforce to full employment over the period of fiscal years 2012 and 2013; to the Committee on the Budget.

By Mr. NELSON of Florida:

S. 1534. A bill to prevent identity theft and tax fraud; to the Committee on Finance.

By Mr. BLUMENTHAL:

S. 1535. A bill to protect consumers by mitigating the vulnerability of personally identifiable information to theft through a security breach, providing notice and remedies to consumers in the wake of such a breach, holding companies accountable for preventable breaches, facilitating the sharing of post-breach technical information between companies, and enhancing criminal and civil penalties and other protections against the unauthorized collection or use of personally identifiable information; to the Committee on the Judiciary.

By Mr. PAUL:

S.J. Res. 27. A joint resolution disapproving a rule submitted by the Environmental Protection Agency relating to the mitigation by States of cross-border air pollution under the Clean Air Act; to the Committee on Environment and Public Works.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. MURKOWSKI (for herself, Mr. JOHNSON of South Dakota, and Mr. BEGICH):

S. Res. 259. A resolution designating September 9, 2011, as ''National Fetal Alcohol Spectrum Disorders Awareness Day''; considered and agreed to.

By Mr. WEBB (for himself and Mr. WARNER):

S. Res. 260. A resolution commemorating the 75th anniversary of the dedication of Shenandoah National Park; considered and agreed to.

## ADDITIONAL COSPONSORS

S. 217

At the request of Mr. DEMINT, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 217, a bill to amend the National Labor Relations Act to ensure the right of employees to a secret ballot election conducted by the National Labor Relations Board.

S. 260

At the request of Mr. NELSON of Florida, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 260, a bill to amend title 10, United States Code, to repeal the requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation.

S. 341

At the request of Mr. BROWN of Massachusetts, the name of the Senator from Wyoming (Mr. BARRASSO) was added as a cosponsor of S. 341, a bill to require the rescission or termination of Federal contracts and subcontracts with enemies of the United States.

S. 387

At the request of Mrs. BOXER, the names of the Senator from Pennsylvania (Mr. CASEY) and the Senator from Virginia (Mr. WARNER) were added as cosponsors of S. 387, a bill to amend title 37, United States Code, to provide flexible spending arrangements for members of uniformed services, and for other purposes.

S. 598

At the request of Mrs. FEINSTEIN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 598, a bill to repeal the Defense of Marriage Act and ensure respect for State regulation of marriage.

S. 603

At the request of Mr. NELSON of Florida, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 603, a bill to modify the prohibition on recognition by United States courts of certain rights relating to certain marks, trade names, or commercial names.

S. 657

At the request of Mr. CARDIN, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 657, a bill to encourage, enhance, and integrate Blue Alert plans throughout the United States in order to disseminate information when a law enforcement officer is seriously injured or killed in the line of duty.

S. 815

At the request of Ms. SNOWE, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 815, a bill to guarantee that military funerals are conducted with dignity and respect.

S. 933

At the request of Mr. SCHUMER, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 933, a bill to amend the Internal Revenue Code of 1986 to extend and increase the exclusion for benefits provided to volunteer firefighters and emergency medical responders.

S. 1094

At the request of Mr. MENENDEZ, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1094, a bill to reauthorize the Combating Autism Act of 2006 (Public Law 109–416).

S. 1214

At the request of Mrs. GILLIBRAND, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1214, a bill to amend title 10, United States Code, regarding restrictions on the use of Department of Defense funds and facilities for abortions.

S. 1239

At the request of Mr. CASEY, the names of the Senator from New York (Mrs. GILLIBRAND), the Senator from New Jersey (Mr. MENENDEZ), the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of S. 1239, a bill to provide for a medal of appropriate design to be awarded by the President to the memorials established at the 3 sites honoring the men and women who perished as a result of the terrorist attacks on the United States on September 11, 2001.

S. 1248

At the request of Mr. CORNYN, his name was added as a cosponsor of S. 1248, a bill to prohibit the consideration of any bill by Congress unless the authority provided by the Constitution of the United States for the legislation can be determined and is clearly specified.

S. 1263

At the request of Mr. KOHL, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1263, a bill to encourage, enhance, and integrate Silver Alert plans throughout the United States and for other purposes.

S. 1288

At the request of Mr. ROBERTS, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1288, a bill to exempt certain class A CDL drivers from the requirement to obtain a hazardous material endorsement while operating a service vehicle with a fuel tank containing 3,785 liters (1,000 gallons) or less of diesel fuel.

S. 1335

At the request of Mr. INHOFE, the names of the Senator from New Hampshire (Ms. AYOTTE), the Senator from South Carolina (Mr. DEMINT) and the Senator from Nevada (Mr. HELLER) were added as cosponsors of S. 1335, a bill to amend title 49, United States Code, to provide rights for pilots, and for other purposes.

S. 1369

At the request of Mr. CRAPO, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 1369, a bill to amend the Federal Water Pollution Control Act to exempt the conduct of silvicultural activities from national pollutant discharge elimination system permitting requirements.

S. 1438

At the request of Mr. JOHNSON of Wisconsin, the name of the Senator from Missouri (Mr. BLUNT) was added as a cosponsor of S. 1438, a bill to provide that no agency may take any significant regulatory action until the unemployment rate is equal to or less than 7.7 percent.

S. 1440

At the request of Mr. ALEXANDER, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1440, a bill to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 1468

At the request of Mrs. SHAHEEN, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 1468, a bill to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by authorizing certified diabetes educators to provide diabetes self-management training services, including as part of telehealth services, under part B of the Medicare program.

S. 1472

At the request of Mrs. GILLIBRAND, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 1472, a bill to impose sanctions on persons making certain investments that directly and significantly contribute to the enhancement of the ability of Syria to develop its petroleum resources, and for other purposes.

S. 1477

At the request of Mr. ROBERTS, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1477, a bill to require the Administrator of the Federal Aviation Administration to prevent the dissemination to the public of certain information with respect to noncommercial flights of private aircraft owners and operators.

S. 1493

At the request of Ms. MIKULSKI, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 1493, a bill to provide compensation to relatives of Foreign Service members killed in the line of duty and the relatives of United States citizens who were killed as a result of the bombing of the United States Embassy in Kenya on August 7, 1998, and for other purposes.

S. 1521

At the request of Mrs. GILLIBRAND, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1521, a bill to provide assistance for agricultural producers adversely affected by damaging weather and other conditions relating to Hurricane Irene.

S. 1522

At the request of Mr. BLUMENTHAL, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1522, a bill to establish a joint select committee of Congress to report findings and propose legislation to restore the Nation's workforce to full employment over the period of fiscal years 2012 and 2013, and to provide for expedited consideration of such legislation by both the House of Representatives and the Senate.

S.J. RES. 25

At the request of Mr. CRAPO, his name was added as a cosponsor of S.J. Res. 25, a joint resolution relating to the disapproval of the President's exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on August 2, 2011.

S. RES. 251

At the request of Mr. CARPER, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. Res. 251, a resolution expressing support for improvement in the collection, processing, and consumption of recyclable materials throughout the United States.

S. RES. 253

At the request of Mr. HOEVEN, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Res. 253, a resolution designating October 26, 2011, as ''Day of the Deployed''.

AMENDMENT NO. 599

At the request of Mr. COBURN, the names of the Senator from Utah (Mr. HATCH), the Senator from Texas (Mr. CORNYN), the Senator from Utah (Mr. LEE), the Senator from Missouri (Mr. BLUNT), the Senator from New Hampshire (Ms. AYOTTE), the Senator from Kentucky (Mr. PAUL), the Senator from South Dakota (Mr. THUNE) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of amendment No. 599 proposed to H.R. 1249, a bill to amend title 35, United States Code, to provide for patent reform.

AMENDMENT NO. 600

At the request of Mr. SESSIONS, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 600 proposed to H.R. 1249, a bill to amend title 35, United States Code, to provide for patent reform.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JOHANNS (for himself, Mr. GRASSLEY, Mr. LUGAR, Mr. BOOZMAN, Mr. ROBERTS, Mr. VITTER, Mr. KIRK, Mr. INHOFE, Mr. PAUL, Mr. JOHNSON of Wisconsin, Mr. SESSIONS, Mr. THUNE, Mr. ENZI, Mr. MORAN, Mr. ISAKSON, Mr. BLUNT, Mr. HOEVEN, Mr. CHAMBLISS, Mr. NELSON of Nebraska, and Mrs. MCCASKILL):

S. 1528. A bill to amend the Clean Air Act to limit regulation of nuisance dust in areas in which that dust is regulated under State, tribal, or local law, to establish a temporary prohibition against revising any national ambient air quality standard applicable to coarse particulate matter, and for other purposes; to the Committee on Environment and Public Works.

Mr. JOHANNS. Mr. President, I have come to the floor many times, as we all do, to discuss issues that are important to our States, in my case the State of Nebraska, on issues that are important for our Nation. Many times those comments deal with what seems to be the constant regulatory assault on our Nation's job creators.

In meetings across Nebraska—and I did 15 townhall meetings in August—the second and third questions I often got, if not the very first, concerned the regulatory burden our Federal agencies are placing on our job creators.

This administration has generated nothing short of a mountain of redtape, including hundreds of new regulations. Of these, at least 219 have been categorized as significant. What that means is they will cost more than $100 million per year, $100 million taken out of our economy to finance regulation. The administration doesn't even dispute the mountain of redtape, nor does it dispute the size of the mountain that is created.

In a letter from the President to Speaker BOEHNER, the White House identified seven regulations on its agenda, each costing not $100 million but at least $1 billion per year. These costs take important capital out of our economy. These costs weigh on our job creators. These costs punish the little guy, and there is no doubt about it.

This mountain is so massive, the administration has had to expand the Federal workforce itself to write the regulations and to enforce them. Employment at Federal agencies is up 13 percent since President Obama took office.

With unemployment in excess of 9 percent, and underemployment greater than that, this administration is expanding the size of government to fuel more job-suppressing restrictions, and it makes no sense. It makes no sense to me as an individual Senator, but it makes no sense to the people of Nebraska.

For this reason, I am introducing legislation with the senior Senator from Arizona to press the pause button on this massive wave of redtape before it engulfs our very economy.

Our legislation is very straightforward. It says: Our small businesses are getting crushed; our citizens can't find jobs. Freeze the regulatory onslaught through 2013.

But our work simply cannot stop there. We also need some targeted regulatory reforms to rein in government bureaucracies that are simply out of control. Thus, I will also be introducing two other pieces of additional legislation today to help temper the endless quest for additional power, jurisdiction and, therefore, regulation.

The first one would close a loophole that allows agencies to grab power

without opportunity for Congressional review.

Under the current state of the law, the Congressional Review Act permits Congress to use special procedures to step in and to disapprove of agency rules. However, in this administration, agencies have recently chosen to use what they call ''guidance documents'' instead of rules to achieve their policy preferences and to expand their power.

I am troubled by this trend because their efforts appear to deliberately and intentionally circumvent American law specifically crafted to protect citizens from aggressive bureaucracies. We have an example, but there are many. I wish to use this one.

I am talking about a guidance document issued jointly by EPA and the Army Corps of Engineers on May 2 of this year. It is very recent. The guidance documents's goal is clear—to expand Federal power over waterways.

But don't take my word for it. According to the EPA's own analysis, the guidance would significantly expand the waters of the United States subject to Federal control and regulation.

The Midwestern Farm Bureau has said the guidance ''defines jurisdiction in the broadest way possible.''

This is a page straight out of this administration's playbook. If their policy goal is rejected by Congress, they use their regulatory power to accomplish their agenda any way they can. Stretch the law, ignore the law, claim that the statute is too ambiguous, circumvent it, put out a guidance document to interpret it. That is exactly what they are doing. We have seen this playbook used over and over by this administration and its Federal agencies.

They should have gotten the message after an unsuccessful attempt during the last Congress to vastly expand their jurisdiction over virtually all waters, from irrigation ditches to farm ponds. But like a child that hears ''no'' from his parents, they jumped ahead, the administration went ahead anyway through this guidance document.

As the North Dakota Farm Bureau president described it, the EPA's guidance is an end run around Congress, and I am quoting:

> If you can't get what you want with Congress' blessing, make an end-run around them. That seems to be what is happening here. And make no mistake. If this guidance is adopted, EPA could regulate any or all waters found within a State, no matter how small or seemingly unconnected to a Federal interest.

The agencies could not convince Congress to change the law. So now what is happening? The same goal is being pursued in a different way that bypasses us. Notably, both the House and the Senate have expressed strong concern about this guidance document. Twenty Senators sent a letter noting that it represents a dramatic expansion of Federal power over private land.

In another letter, 41 Senators asserted that making changes to the scope of the agency's activities through guidance instead of through rulemaking is ''fundamentally unfair.'' This letter requested the agencies ''abandon any further action on this guidance document.'' This is a very significant concern. This guidance document also has shown us that there is a huge loophole through which agencies can circumvent the rulemaking process in its entirety, as well as circumventing congressional intent in order to expand Federal power.

The legislation I introduced today closes the loophole. It amends the Congressional Review Act to cover both traditional rules and guidance documents—no more end run around Congress. Consequently, agencies would be on notice that the loophole through which they intend to circumvent our will and the will of the American public is now a closed door. In other words, citizens would have another layer of protection from agencies seeking to unfairly expand Federal jurisdiction.

Finally, today I am introducing the Farm Dust Regulation Prevention Act. Farmers and ranchers across this Nation are concerned about the EPA's efforts to regulate dust. Despite what the administrator is saying in farm country, EPA is still in the midst of their review of the National Ambient Air Quality Standards for Particulate Matter or, put simply, ''farm dust.'' In rural America, farm dust is a fact of life. I grew up on a farm. It is dusty there. We kick it up while driving on unpaved roads or working in farm fields. Farm dust has long been considered to have no health concern at ambient levels. However, EPA is considering bringing down the hammer by ratcheting down that standard to a level that would be economically devastating for many in our rural areas. That defies common sense.

To restore common sense to these burdensome job-threatening regulations and to give certainty to rural America, I am introducing this legislation. The bill simply says no to EPA regulating dust in rural America. Yet it maintains the protections of the Clean Air Act to public health. It provides immediate certainty to farmers in rural areas by preventing revision of the current dust standard for a year. Afterward, EPA could regulate farm dust but only if they followed a scientific standard. First, they would need to show scientific evidence of substantial adverse health effects caused by dust. Thus far, the strongest the EPA can conjure up in terms of science is to say it is ''uncertain.'' Second, EPA would need to show that the benefit of additional regulation outweighs economic costs. These are commonsense standards. Yet the EPA has unfortunately been unable to see the light, making this legislation necessary.

These are three commonsense regulatory reforms that are sorely needed: a 2-year moratorium on job-constraining regulations; No. 2, making agency guidance documents subject to a simple up-or-down vote by Congress; and stopping the ill-advised farm dust regulation. They would provide much certainty and relief for our Nation's job creators and our American workers.

I urge my colleagues to cosponsor these important efforts. I urge the White House to support us. The runaway train of regulation is weighing down on America's ingenuity and job creation. It is time to unshackle American workers with these commonsense reforms.

I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Tennessee.

Mr. ALEXANDER. Mr. President I congratulate the Senator from Nebraska on his typically commonsense, reasonable presentation about how we might take steps to deal with the smothering regulations that are putting a big wet blanket on job growth in this country, and the idea of a timeout to stop the avalanche of new regulations makes sense. Farm dust—the idea of regulating farm dust makes no sense. Slowing down the ability of Federal agencies to get around the regulatory process by issuing guidance, that is commonsense. These are three sensible steps that would help create an environment that would make it easier and cheaper for job creators to create private sector jobs in this country and I congratulate the Senator from Nebraska for his comments.

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By Mr. NELSON of Florida:

S. 1534. A bill to prevent identity theft and tax fraud; to the Committee on Finance.

Mr. NELSON of Florida. Mr. President, today I am filing legislation aimed at stopping criminals from filing fraudulent tax returns with stolen Social Security numbers.

Specifically, the bill unveiled today would make it a felony punishable by as much as five years in Federal prison and/or a fine of no less than $25,000 for using another's Social Security number or other identifiable information to file a federal tax return and increases penalties for negligent or reckless disclosure of taxpayer information by tax preparers; require the IRS to develop a nationwide PIN system in which identity theft victims can receive a pin number to put on their tax return; and, allow identity theft victims to ''opt-out'' of electronic filing of their Federal tax returns; protect Social Security numbers of deceased taxpayers by restricting public access to the records; direct an investigation by the Treasury Inspector General for Tax Administration to examine the role of prepaid debt cards and commercial tax software in facilitating fraudulent tax refunds; and permanently extend the information-sharing authority between the IRS and Federal and state correction authorities needed to prevent inmate tax fraud and require the agency to work specifically with state and local law enforcement officials on criminal investigative matters that involve violations at Federal and State or local level.

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. 1534

*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 ''Identify Theft and Tax Fraud Prevention Act''.

**SEC. 2. CRIMINAL PENALTY FOR USING A FALSE IDENTITY IN CONNECTION WITH TAX FRAUD.**

(a) IN GENERAL.—Section 7207 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''Any person who willfully'' and inserting the following:

''(a) IN GENERAL.—Any person who willfully'',

(2) by striking ''Any person required'' and inserting the following:

''(b) INFORMATION IN CONNECTION WITH CERTAIN EXEMPT ORGANIZATIONS.—Any person required'', and

(3) by adding at the end the following:

''(c) MISAPPROPRIATION OF IDENTITY.—Any person who knowingly or willfully misappropriates another person's tax identification number in connection with any list, return, account, statement, or other document submitted to the Secretary shall be fined not less than $25,000 ($200,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and information submitted after the date of the enactment of this Act.

**SEC. 3. INCREASED PENALTY FOR IMPROPER DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS.**

(a) IN GENERAL.—Section 6713(a) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''$250'' and inserting ''$1,000'', and

(2) by striking ''$10,000'' and inserting ''$50,000''.

(b) CRIMINAL PENALTY.—Section 7216(a) of the Internal Revenue Code of 1986 is amended by striking ''$1,000'' and inserting ''$100,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures or uses after the date of the enactment of this Act.

**SEC. 4. PIN SYSTEM FOR PREVENTION OF IDENTITY THEFT TAX FRAUD.**

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury (or the Secretary's delegate) shall implement an identify theft tax fraud prevention program under which—

(1) a person who has filed an identity theft affidavit with the Secretary may elect—

(A) to be provided with a unique personal identification number to be included on any Federal tax return filed by such person, or

(B) to prevent the processing of any Federal tax return submitted in an electronic format by a person purporting to be such person, and

(2) the Secretary will provide additional identity verification safeguards for the processing of any Federal tax return filed by a person described in paragraph (1) in cases where a unique personal identification number is not included on the return.

**SEC. 5. AUTHORITY TO TRANSFER INTERNAL REVENUE SERVICE APPROPRIATIONS TO USE FOR TAX FRAUD ENFORCEMENT.**

For any fiscal year, the Commissioner of Internal Revenue may transfer not more than $10,000,000 to the ''Enforcement'' account of the Internal Revenue Service from amounts appropriated to other Internal Revenue Service accounts. Any amounts so transferred shall be used solely for the purposes of preventing and resolving potential cases of tax fraud.

**SEC. 6. LOCAL LAW ENFORCEMENT LIAISON.**

(a) ESTABLISHMENT.—The Commissioner of Internal Revenue shall establish within the Criminal Investigation Division of the Internal Revenue Service the position of Local Law Enforcement Liaison.

(b) DUTIES.—The Local Law Enforcement Liaison shall—

(1) coordinate the investigation of tax fraud with State and local law enforcement agencies;

(2) communicate the status of tax fraud cases involving identity theft, and

(3) carry out such other duties as delegated by the Commissioner of Internal Revenue.

**SEC. 7. REPORT ON TAX FRAUD.**

Subsection (a) of section 7803 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(4) ANNUAL REPORT ON TAX FRAUD.—The Commissioner shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House or Representatives an annual report detailing—

''(A) the number of reports of tax fraud and suspected tax fraud received from State and local law enforcement agencies in the preceding year, and

''(B) the actions taken in response to such reports.''.

**SEC. 8. STUDY ON THE USE OF PREPAID DEBIT CARDS AND COMMERCIAL TAX PREPARATION SOFTWARE IN TAX FRAUD.**

(a) IN GENERAL.—The Comptroller General shall conduct a study to examine the role of prepaid debit cards and commercial tax preparation software in facilitating fraudulent tax returns through identity theft.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report with the results of the study conducted under subsection (a), together with any recommendations.

**SEC. 9. RESTRICTION ON ACCESS TO THE DEATH MASTER FILE.**

(a) IN GENERAL.—The Secretary of Commerce shall not disclose information contained on the Death Master File to any person with respect to any individual who has died at any time during the calendar year in which the request for disclosure is made or the succeeding calendar year unless such person is certified under the program established under subsection (b).

(b) CERTIFICATION PROGRAM.—

(1) IN GENERAL.—The Secretary of Commerce shall establish a program to certify persons who are eligible to access the information described in subsection (a) contained on the Death Master File.

(2) CERTIFICATION.—A person shall not be certified under the program established under paragraph (1) unless the Secretary determines that such person has a legitimate fraud prevention interest in accessing the information described in subsection (a).

(c) IMPOSITION OF PENALTY.—Any person who is certified under the program established under subsection (b), who receives information described in subsection (a), and who during the period of time described in subsection (a)—

(1) discloses such information to any other person, or

(2) uses any such information for any purpose other than to detect or prevent fraud, shall pay a penalty of $1,000 for each such disclosure or use, but the total amount imposed under this subsection on such a person for any calendar year shall not exceed $50,000.

(d) EXEMPTION FROM FREEDOM OF INFORMATION ACT REQUIREMENT WITH RESPECT TO CERTAIN RECORDS OF DECEASED INDIVIDUALS.—

(1) IN GENERAL.—The Social Security Administration shall not be compelled to disclose to any person who is not certified under the program established under section 9(b) the information described in section 9(a).

(2) TREATMENT OF INFORMATION.—For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552.

**SEC. 10. EXTENSION OF AUTHORITY TO DISCLOSE CERTAIN RETURN INFORMATION TO PRISON OFFICIALS.**

(a) IN GENERAL.—Section 6103(k)(10) of the Internal Revenue Code of 1986 is amended by striking subparagraph (D).

(b) REPORT FROM FEDERAL BUREAU OF PRISONS.—Not later than 6 months after the date of the enactment of this Act, the head of the Federal Bureau of Prisons shall submit to Congress a detailed plan on how it will use the information provided from the Secretary of Treasury under section 6103(k)(10) of the Internal Revenue Code of 1986 to reduce prison tax fraud.

(c) SENSE OF SENATE REGARDING STATE PRISON AUTHORITIES.—It is the sense of the Senate that the heads of State agencies charged with the administration of prisons should —

(1) develop plans for using the information provided by the Secretary of Treasury under section 6103(k)(10) of the Internal Revenue Code of 1986 to reduce prison tax fraud, and

(2) coordinate with the Internal Revenue Service with respect to the use of such information.

**SEC. 11. TREASURY REPORT ON INFORMATION SHARING BARRIERS WITH RESPECT TO IDENTITY THEFT.**

(a) REVIEW.—

(1) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall review whether current federal tax laws and regulations related to the confidentiality and disclosure of return information prevent the effective enforcement of local, State, and federal identity theft statutes. The review shall consider whether greater information sharing between the Internal Revenue Service and State and local law enforcement authorities would improve the enforcement of criminal laws at all levels of government.

(2) CONSULTATION.—In conducting the review under paragraph (1), the Secretary shall solicit the views of, and consult with, State and local law enforcement officials.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report with the results of the review conducted under subsection (a), along with any legislative recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 259—DESIGNATING SEPTEMBER 9, 2011, AS ''NATIONAL FETAL ALCOHOL SPECTRUM DISORDERS AWARENESS DAY''

Ms. MURKOWSKI (for herself, Mr. JOHNSON of South Dakota, and Mr.

BEGICH) submitted the following resolution; which was considered and agreed to:

S. RES. 259

Whereas the term ''fetal alcohol spectrum disorders'' includes a broader range of conditions than the term ''fetal alcohol syndrome'' and therefore has replaced the term ''fetal alcohol syndrome'' as the umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy;

Whereas fetal alcohol spectrum disorders are the leading cause of cognitive disability in Western civilization, including the United States, and are 100 percent preventable;

Whereas fetal alcohol spectrum disorders are a major cause of numerous social disorders, including learning disabilities, school failure, juvenile delinquency, homelessness, unemployment, mental illness, and crime;

Whereas the incidence rate of fetal alcohol syndrome is estimated at 1 out of 500 live births and the incidence rate of fetal alcohol spectrum disorders is estimated at 1 out of every 100 live births;

Whereas, although the economic costs of fetal alcohol spectrum disorders are difficult to estimate, the cost of fetal alcohol syndrome alone in the United States was approximately $6,000,000,000 in 2007, and it is estimated that each individual with fetal alcohol syndrome will cost the taxpayers of the United States between $860,000 and $4,000,000 during the lifetime of the individual;

Whereas, in February 1999, a small group of parents of children who suffer from fetal alcohol spectrum disorders came together with the hope that they could make the world aware of the devastating consequences of alcohol consumption during pregnancy by establishing International Fetal Alcohol Syndrome Awareness Day;

Whereas the first International Fetal Alcohol Syndrome Awareness Day was observed on September 9, 1999;

Whereas Bonnie Buxton of Toronto, Canada, the co-founder of the first International Fetal Alcohol Syndrome Awareness Day, asked ''What if ... a world full of FAS/E [Fetal Alcohol Syndrome/Effect] parents all got together on the ninth hour of the ninth day of the ninth month of the year and asked the world to remember that during the 9 months of pregnancy a woman should not consume alcohol ... would the rest of the world listen?''; and

Whereas on the ninth day of the ninth month of each year since 1999, communities around the world have observed International Fetal Alcohol Syndrome Awareness Day: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates September 9, 2011, as ''National Fetal Alcohol Spectrum Disorders Awareness Day''; and

(2) calls upon the people of the United States—

(A) to observe National Fetal Alcohol Spectrum Disorders Awareness Day with appropriate ceremonies—

(i) to promote awareness of the effects of prenatal exposure to alcohol;

(ii) to increase compassion for individuals affected by prenatal exposure to alcohol;

(iii) to minimize the effects of prenatal exposure to alcohol; and

(iv) to ensure healthier communities across the United States; and

(B) to observe a moment of reflection during the ninth hour of September 9, 2011, to remember that during the 9 months of pregnancy a woman should not consume alcohol.

## SENATE RESOLUTION 260—COMMEMORATING THE 75TH ANNIVERSARY OF THE DEDICATION OF SHENANDOAH NATIONAL PARK

Mr. WEBB (for himself and Mr. WARNER) submitted the following resolution; which was considered and agreed to:

S. RES. 260

Whereas the 75th anniversary of the dedication of Shenandoah National Park corresponds with the Civil War sesquicentennial, enriching the heritage of both the Commonwealth of Virginia and the United States;

Whereas in the early to mid-1920s, as a result of the efforts of the citizen-driven Shenandoah Valley, Inc. and the Shenandoah National Park Association, the congressionally appointed Southern Appalachian National Park Committee recommended that Congress authorize the establishment of a national park in the Blue Ridge Mountains of Virginia for the purpose of providing the western national park experience to the populated eastern seaboard;

Whereas, in 1935, the Secretary of the Interior, Harold Ickes, accepted the land deeds for what would become Shenandoah National Park from the Commonwealth of Virginia, and, on July 3, 1936, President Franklin D. Roosevelt dedicated Shenandoah National Park ''to this and to succeeding generations for the recreation and re-creation they would find'';

Whereas the Appalachian Mountains extend through 200,000 acres of Shenandoah National Park and border the 8 Virginia counties of Albemarle, Augusta, Greene, Madison, Page, Rappahannock, Rockingham, and Warren;

Whereas Shenandoah National Park is home to a diverse ecosystem of 103 rare and endangered species, 1,405 plant species, 51 mammal species, 36 fish species, 26 reptile species, 23 amphibian species, and more than 200 bird species;

Whereas the proximity of Shenandoah National Park to heavily populated areas, including Washington, District of Columbia, promotes regional travel and tourism, providing thousands of jobs and contributing millions of dollars to the economic vitality of the region;

Whereas Shenandoah National Park, rich with recreational opportunities, offers 520 miles of hiking trails, 200 miles of which are designated horse trails and 101 miles of which are part of the 2,175-mile Appalachian National Historic Trail, more than 90 fishable streams, 4 campgrounds, 7 picnic areas, 3 lodges, 6 backcountry cabins, and an extensive, rugged backcountry open to wilderness camping to the millions of people who annually visit the Park;

Whereas the Park protects significant cultural resources, including—

(1) Rapidan Camp, once a summer retreat for President Herbert Hoover and now a national historic landmark;

(2) Skyline Drive, a historic district listed on the National Register of Historic Places;

(3) Massanutten Lodge, a structure listed on the National Register of Historic Places;

(4) 360 buildings and structures included on the List of Classified Structures;

(5) 577 significant, recorded archeological sites, 11 of which are listed on the National Register of Historic Places; and

(6) more than 100 historic cemeteries;

Whereas Congress named 10 battlefields in the Shenandoah Valley for preservation in the Shenandoah Valley Battlefields National Historic District and Commission Act of 1996 (section 606 of Public Law 104–333; 110 Stat. 4174), and Shenandoah National Park, an integral partner in that endeavor, provides visitors with outstanding views of pristine, natural landscapes that are vital to the Civil War legacy;

Whereas Shenandoah National Park also protects intangible resources, including aspects of the heritage of the people of the United States through the rigorous commitments of the Civilian Conservation Corps and the advancement of Civil Rights as Shenandoah's ''separate but equal'' facilities became the first to desegregate in Virginia;

Whereas, on October 20, 1976, Public Law 94–567 was enacted, designating 79,579 acres within Shenandoah National Park's boundaries as wilderness under the Wilderness Act (16 U.S.C. 1131 et seq.), which protects the wilderness character of the lands ''for the permanent good of the whole people''; and

Whereas Congress should support efforts to preserve the ecological and cultural integrity of Shenandoah National Park, maintain the infrastructure of the Park, and protect the famously scenic views of the Shenandoah Valley: Now, therefore, be it

*Resolved*, That the Senate—

(1) commemorates the 75th anniversary of the dedication of Shenandoah National Park; and

(2) acknowledges the historic and enduring scenic, recreational, and economic value of the Park.

## NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Thursday, September 15, 2011, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of this hearing is to consider the nominations of Gregory H. Woods, to be General Counsel, Department of Energy, David T. Danielson, to be an Assistant Secretary of Energy (Energy Efficiency and Renewable Energy), Department of Energy, and LaDoris G. Harris, to be Director for the Office of Minority Economic Impact, Department of Energy.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510–6150, or by email to allison_seyferth @energy.senate.gov.

For further information, please contact Sam Fowler at (202) 224–7571 or Allison Seyferth at (202) 224–4905.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HARKIN. Mr. President, I wish to announce that the Committee on Health, Education, Labor, and Pensions will meet in open session on Thursday, September 15, 2011, at 10 a.m. in SD–106 to conduct a hearing entitled ''The Future of Employment for People with the Most Significant Disabilities.''

For further information regarding this hearing, please contact Andrew Imparato of the committee staff on (202) 228–3453.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on National Parks. The hearing will be held on Wednesday, September 21, 2011, at 2:30 p.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of this hearing is to consider a recently released report by the National Park Service: A Call to Action Preparing for a Second Century of Stewardship and Engagement.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, 304 Dirksen Senate Office Building, Washington, DC 20510–6150, or by email to Jake_McCook@energy.senate.gov.

For further information, please contact please contact David Brooks (202) 224–9863 or Jake McCook (202) 224–9313.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. LEAHY. 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 September 8, 2011, at 10 a.m.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. LEAHY. 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 September 8, 2011, at 10 a.m. in room 406 of the Dirksen Senate Office Building.

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

COMMITTEE ON FINANCE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on September 8, 2011, at 9:30 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Tax Reform Options: International Issues.''

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. LEAHY. 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 ''Examining Quality and Safety in Child Care: Giving Working Families Security, Confidence, and Peace of Mind'' on September 8, 2011, at 10:15 a.m., in room 216 of the Hart Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on September 8, 2011, 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.

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, be authorized to meet during the session of the Senate, on September 8, 2011, at 2 p.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''New State Voting Laws: Barriers to the Ballot?''

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

INTERNATIONAL DEVELOPMENT AND FOREIGN ASSISTANCE, ECONOMIC AFFAIRS, AND INTERNATIONAL ENVIRONMENTAL PROTECTION SUBCOMMITTEE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on September 8, 2011, at 2:30 p.m., to hold a International Development and Foreign Assistance, Economic Affairs and International Environmental Protection subcommittee hearing entitled, ''Afghanistan: Right Sizing the Development Footprint.''

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

## AUTHORIZING USE OF THE CAPITOL GROUNDS

Mr. DURBIN. Mr. President, I ask unanimous consent the Senate proceed to consideration of H. Con. Res 67, which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 67) authorizing the use of the Capitol Grounds for the District of Columbia Special Olympics Law Enforcement Torch Run.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DURBIN. I ask unanimous consent the concurrent resolution be adopted, the motion to reconsider be laid upon the table, with no intervening action or debate, and any related statements be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 67) was agreed to.

## AUTHORIZING USE OF EMANCIPATION HALL IN THE CAPITOL VISITOR CENTER

Mr. DURBIN. Mr. President, I ask unanimous consent the Rules Committee be discharged from further consideration of S. Con. Res. 28 and the Senate proceed to its immediate consideration.

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

The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Cons. Res. 28) authorizing the use of Emancipation Hall in the Capitol Visitor Center for an event to award the Congressional Gold Medal, collectively, to the 100th Infantry Battalion, 442nd Regimental Combat Team, and the Military Intelligence Service, United States Army, in recognition of their dedicated service during World War II.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DURBIN. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, 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 concurrent resolution (S. Con. Res. 28) was agreed to, as follows:

S. CON. RES. 28

*Resolved by the Senate (the House of Representatives concurring),*

**SECTION 1. USE OF EMANCIPATION HALL FOR EVENT TO AWARD THE CONGRESSIONAL GOLD MEDAL.**

(a) AUTHORIZATION.—Emancipation Hall in the Capitol Visitor Center is authorized to be used for an event on November 2, 2011, to award the Congressional Gold Medal, collectively, to the 100th Infantry Battalion, 442nd Regimental Combat Team, and the Military Intelligence Service, United States Army, in recognition of their dedicated service during World War II.

(b) PREPARATIONS.—Physical preparations for the conduct of the event described in subsection (a) shall be carried out in accordance with such conditions as may be prescribed by the Architect of the Capitol.

## NATIONAL FETAL ALCOHOL SPECTRUM DISORDERS AWARENESS DAY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 259, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 259) designating September 9, 2011, as ''National Fetal Alcohol Spectrum Disorders Awareness Day.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

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

The resolution (S. Res. 259) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 259

Whereas the term ''fetal alcohol spectrum disorders'' includes a broader range of conditions than the term ''fetal alcohol syndrome'' and therefore has replaced the term ''fetal alcohol syndrome'' as the umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy;

Whereas fetal alcohol spectrum disorders are the leading cause of cognitive disability in Western civilization, including the United States, and are 100 percent preventable;

Whereas fetal alcohol spectrum disorders are a major cause of numerous social disorders, including learning disabilities, school failure, juvenile delinquency, homelessness, unemployment, mental illness, and crime;

Whereas the incidence rate of fetal alcohol syndrome is estimated at 1 out of 500 live births and the incidence rate of fetal alcohol spectrum disorders is estimated at 1 out of every 100 live births;

Whereas, although the economic costs of fetal alcohol spectrum disorders are difficult to estimate, the cost of fetal alcohol syndrome alone in the United States was approximately $6,000,000,000 in 2007, and it is estimated that each individual with fetal alcohol syndrome will cost the taxpayers of the United States between $860,000 and $4,000,000 during the lifetime of the individual;

Whereas, in February 1999, a small group of parents of children who suffer from fetal alcohol spectrum disorders came together with the hope that they could make the world aware of the devastating consequences of alcohol consumption during pregnancy by establishing International Fetal Alcohol Syndrome Awareness Day;

Whereas the first International Fetal Alcohol Syndrome Awareness Day was observed on September 9, 1999;

Whereas Bonnie Buxton of Toronto, Canada, the co-founder of the first International Fetal Alcohol Syndrome Awareness Day, asked ''What if ... a world full of FAS/E [Fetal Alcohol Syndrome/Effect] parents all got together on the ninth hour of the ninth day of the ninth month of the year and asked the world to remember that during the 9 months of pregnancy a woman should not consume alcohol ... would the rest of the world listen?''; and

Whereas on the ninth day of the ninth month of each year since 1999, communities around the world have observed International Fetal Alcohol Syndrome Awareness Day: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates September 9, 2011, as ''National Fetal Alcohol Spectrum Disorders Awareness Day''; and

(2) calls upon the people of the United States—

(A) to observe National Fetal Alcohol Spectrum Disorders Awareness Day with appropriate ceremonies—

(i) to promote awareness of the effects of prenatal exposure to alcohol;

(ii) to increase compassion for individuals affected by prenatal exposure to alcohol;

(iii) to minimize the effects of prenatal exposure to alcohol; and

(iv) to ensure healthier communities across the United States; and

(B) to observe a moment of reflection during the ninth hour of September 9, 2011, to remember that during the 9 months of pregnancy a woman should not consume alcohol.

## COMMEMORATING THE 75TH ANNIVERSARY OF THE DEDICATION OF SHENANDOAH NATIONAL PARK

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 260, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 260) commemorating the 75th anniversary of the dedication of Shenandoah National Park.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. 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 related statements be printed in the RECORD.

The resolution (S. Res. 260) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 260

Whereas the 75th anniversary of the dedication of Shenandoah National Park corresponds with the Civil War sesquicentennial, enriching the heritage of both the Commonwealth of Virginia and the United States;

Whereas in the early to mid-1920s, as a result of the efforts of the citizen-driven Shenandoah Valley, Inc. and the Shenandoah National Park Association, the congressionally appointed Southern Appalachian National Park Committee recommended that Congress authorize the establishment of a national park in the Blue Ridge Mountains of Virginia for the purpose of providing the western national park experience to the populated eastern seaboard;

Whereas, in 1935, the Secretary of the Interior, Harold Ickes, accepted the land deeds for what would become Shenandoah National Park from the Commonwealth of Virginia, and, on July 3, 1936, President Franklin D. Roosevelt dedicated Shenandoah National Park ''to this and to succeeding generations for the recreation and re-creation they would find'';

Whereas the Appalachian Mountains extend through 200,000 acres of Shenandoah National Park and border the 8 Virginia counties of Albemarle, Augusta, Greene, Madison, Page, Rappahannock, Rockingham, and Warren;

Whereas Shenandoah National Park is home to a diverse ecosystem of 103 rare and endangered species, 1,405 plant species, 51 mammal species, 36 fish species, 26 reptile species, 23 amphibian species, and more than 200 bird species;

Whereas the proximity of Shenandoah National Park to heavily populated areas, including Washington, District of Columbia, promotes regional travel and tourism, providing thousands of jobs and contributing millions of dollars to the economic vitality of the region;

Whereas Shenandoah National Park, rich with recreational opportunities, offers 520 miles of hiking trails, 200 miles of which are designated horse trails and 101 miles of which are part of the 2,175-mile Appalachian National Historic Trail, more than 90 fishable streams, 4 campgrounds, 7 picnic areas, 3 lodges, 6 backcountry cabins, and an extensive, rugged backcountry open to wilderness camping to the millions of people who annually visit the Park;

Whereas the Park protects significant cultural resources, including—

(1) Rapidan Camp, once a summer retreat for President Herbert Hoover and now a national historic landmark;

(2) Skyline Drive, a historic district listed on the National Register of Historic Places;

(3) Massanutten Lodge, a structure listed on the National Register of Historic Places;

(4) 360 buildings and structures included on the List of Classified Structures;

(5) 577 significant, recorded archeological sites, 11 of which are listed on the National Register of Historic Places; and

(6) more than 100 historic cemeteries;

Whereas Congress named 10 battlefields in the Shenandoah Valley for preservation in the Shenandoah Valley Battlefields National Historic District and Commission Act of 1996 (section 606 of Public Law 104–333; 110 Stat. 4174), and Shenandoah National Park, an integral partner in that endeavor, provides visitors with outstanding views of pristine, natural landscapes that are vital to the Civil War legacy;

Whereas Shenandoah National Park also protects intangible resources, including aspects of the heritage of the people of the United States through the rigorous commitments of the Civilian Conservation Corps and the advancement of Civil Rights as Shenandoah's ''separate but equal'' facilities became the first to desegregate in Virginia;

Whereas, on October 20, 1976, Public Law 94–567 was enacted, designating 79,579 acres within Shenandoah National Park's boundaries as wilderness under the Wilderness Act (16 U.S.C. 1131 et seq.), which protects the wilderness character of the lands ''for the permanent good of the whole people''; and

Whereas Congress should support efforts to preserve the ecological and cultural integrity of Shenandoah National Park, maintain the infrastructure of the Park, and protect the famously scenic views of the Shenandoah Valley: Now, therefore, be it

*Resolved*, That the Senate—

(1) commemorates the 75th anniversary of the dedication of Shenandoah National Park; and

(2) acknowledges the historic and enduring scenic, recreational, and economic value of the Park.

## RECESS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate stand in recess until 6:30 p.m.

There being no objection, the Senate, at 6:12 p.m., recessed until 6:30 p.m., and reassembled when called to order by the Presiding Officer (Mr. FRANKEN).

## JOINT SESSION OF THE TWO HOUSES—ADDRESS BY THE PRESIDENT OF THE UNITED STATES

The PRESIDING OFFICER. The Senate will now proceed as a body to the Hall of the House of Representatives to receive a message from the President of the United States.

Thereupon, the Senate, preceded by the Deputy Sergeant at Arms, Martina Bradford, the Secretary of the Senate, Nancy Erickson, and the Vice President of the United States, JOSEPH R. BIDEN, proceeded to the Hall of the House of Representatives to hear the address by the President of the United States, Barack Obama.

(The address delivered by the President of the United States to the joint session of the two Houses of Congress is printed in the proceedings of the House of Representatives in today's RECORD.)

## RECESS SUBJECT TO THE CALL OF THE CHAIR

Whereupon, at the conclusion of the joint session the Senate, at 7:46 p.m., pursuant to the previous order, recessed subject to the call of the Chair and reassembled at 7:49 p.m. when called to order by the Acting President pro tempore.

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

## DISAPPROVAL OF THE PRESIDENT'S EXERCISE OF AUTHORITY TO INCREASE THE DEBT LIMIT—MOTION TO PROCEED

Mr. REID. Mr. President, I now move to proceed to Calendar No. 153, S.J. Res. 25.

The ACTING PRESIDENT pro tempore. The clerk will report the motion.

The legislative clerk read as follows:

Motion to proceed to the joint resolution (S.J. Res. 25) relating to the disapproval of the President's exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on August 2, 2011.

The ACTING PRESIDENT pro tempore. The motion is not debatable under section 301(a) of Public Law 112–25.

Mr. REID. Mr. President, I do ask now for the yeas and nays on my motion.

The ACTING PRESIDENT pro tempore. 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. ROCKEFELLER) and the Senator from Virginia (Mr. WEBB) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Florida (Mr. RUBIO).

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

The result was announced—yeas 45, nays 52, as follows:

[Rollcall Vote No. 130 Leg.]

YEAS—45

| | | |
|---|---|---|
| Alexander | Graham | McConnell |
| Ayotte | Grassley | Moran |
| Barrasso | Hatch | Murkowski |
| Blunt | Heller | Nelson (NE) |
| Boozman | Hoeven | Paul |
| Burr | Hutchison | Portman |
| Chambliss | Inhofe | Risch |
| Coats | Isakson | Roberts |
| Coburn | Johanns | Sessions |
| Cochran | Johnson (WI) | Shelby |
| Collins | Kirk | Snowe |
| Cornyn | Kyl | Thune |
| Crapo | Lee | Toomey |
| DeMint | Lugar | Vitter |
| Enzi | McCain | Wicker |

NAYS—52

| | | |
|---|---|---|
| Akaka | Franken | Mikulski |
| Baucus | Gillibrand | Murray |
| Begich | Hagan | Nelson (FL) |
| Bennet | Harkin | Pryor |
| Bingaman | Inouye | Reed |
| Blumenthal | Johnson (SD) | Reid |
| Boxer | Kerry | Sanders |
| Brown (MA) | Klobuchar | Schumer |
| Brown (OH) | Kohl | Shaheen |
| Cantwell | Landrieu | Stabenow |
| Cardin | Lautenberg | Tester |
| Carper | Leahy | Udall (CO) |
| Casey | Levin | Udall (NM) |
| Conrad | Lieberman | Warner |
| Coons | Manchin | Whitehouse |
| Corker | McCaskill | Wyden |
| Durbin | Menendez | |
| Feinstein | Merkley | |

NOT VOTING—3

| | | |
|---|---|---|
| Rockefeller | Rubio | Webb |

The motion was rejected.

The PRESIDING OFFICER. The Senator from Maryland.

## ORDERS FOR FRIDAY, SEPTEMBER 9, 2011

Mr. CARDIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:45 a.m. on Friday, September 9; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day, and that following any leader remarks, the Senate will be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

## PROGRAM

Mr. CARDIN. Mr. President, there will be no rollcall votes during Friday's session. The next rollcall vote will be on Monday, September 12, no earlier than 5:30 p.m.

## ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. CARDIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 8:30 p.m., adjourned until Friday, September 9, 2011, at 9:45 a.m.

## NOMINATIONS

Executive nominations received by the Senate:

### NATIONAL CONSUMER COOPERATIVE BANK

CYRUS AMIR-MOKRI, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL CONSUMER COOPERATIVE BANK FOR A TERM OF THREE YEARS, VICE DAVID GEORGE NASON, TERM EXPIRED.

### DEPARTMENT OF THE TREASURY

CYRUS AMIR-MOKRI, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE MICHAEL S. BARR, RESIGNED.

### THE JUDICIARY

STEPHANIE DAWN THACKER, OF WEST VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, VICE M. BLANE MICHAEL, DECEASED.

GREGG JEFFREY COSTA, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, VICE JOHN D. RAINEY, RETIRED.

### DEPARTMENT OF JUSTICE

KATHRYN KENEALLY, OF NEW YORK, TO BE AN ASSISTANT ATTORNEY GENERAL, VICE NATHAN J. HOCHMAN, RESIGNED.

### FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE DEPARTMENT OF AGRICULTURE (APHIS) FOR PROMOTION WITHIN AND INTO THE SENIOR FOREIGN SERVICE TO THE CLASSES INDICATED:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER:

NICHOLAS E. GUTIERREZ, OF NEW MEXICO

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR:

JOHN L. SHAW, OF LOUISIANA

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED.

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS FOUR, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA.

### DEPARTMENT OF STATE

ERIK M. ANDERSON, OF NEW HAMPSHIRE
WALTER B. ANDONOV, OF NEVADA
BENJAMIN BARRY, OF THE DISTRICT OF COLUMBIA
ROBERT CRAIG BOND, OF THE DISTRICT OF COLUMBIA
JOSEPH CHARLES BRISTOL, OF WASHINGTON
KAREN L. BRONSON, OF WASHINGTON
EMILIE SUZANNE BRUCHON, OF VIRGINIA
EDWARD CHRISTOPHER BURLESON, OF TEXAS
STEPHANE MARC CASTONGUAY, OF HAWAII
JANE JERA CHONGCHIT, OF CALIFORNIA
HEATHER LYNN COBLE, OF VIRGINIA
CHRISTOPHER CORKEY, OF THE DISTRICT OF COLUMBIA
LISA TERRY CROSS, OF CALIFORNIA
CARLOS POURUSHASP DHABHAR, OF NEW YORK
KELLY L. DIIRO, OF VIRGINIA
DAVID MARSHALL DUERDEN, OF IDAHO
ACQUANIA ESCARNE, OF MARYLAND
JOHN B. EVERMAN, JR., OF VIRGINIA
HEATHER CARLIN FABRIKANT, OF THE DISTRICT OF COLUMBIA
RICHARD G. FITZMAURICE, OF FLORIDA
SUSANNA GRANSEE, OF NORTH CAROLINA
PAUL M. GUERTIN, OF RHODE ISLAND
MICHAEL THOMAS HACKETT, OF CONNECTICUT
J. MICHAEL HARVEY, OF WASHINGTON
ANDREW WILLIAM HAY, OF COLORADO
GERRY PHILIP KAUFMAN, OF THE DISTRICT OF COLUMBIA
DANIEL G.D. KEEN, OF WASHINGTON
THANH C. KIM, OF VIRGINIA
STEPHEN SETH KOLB, OF TEXAS
KELLY LEE KOPCIAL, OF VIRGINIA
KEVIN KRAPF, OF CALIFORNIA
JAMES M. KUEBLER, OF FLORIDA
JONATHAN PATRICK LALLEY, OF VIRGINIA
REID B MCCOY, OF TEXAS
BILLY E. MCFARLAND, JR., OF VIRGINIA
AMIEE REBECCA MCGIMPSEY, OF IOWA
FAITH MCCARTHY MEYERS, OF VIRGINIA
CHRISTIE MILNER, OF TEXAS
MARK R MINEO, OF FLORIDA
ADAM LOREN SHEEHAN MITCHELL, OF OKLAHOMA
THOMAS WILLIAM MOORE, OF TEXAS
SERGIO ANTONIO MORENO, OF TEXAS
GILBERT MORTON, OF NEW YORK
KALPANA MURTHY, OF WASHINGTON
CHARLOTTE SULLIVAN NUANES, OF THE DISTRICT OF COLUMBIA
MATTHEW RYAN PACKER, OF UTAH
TAMMY BETH PALTCHIKOV, OF ALABAMA
SCOTT D. PARRISH, OF CALIFORNIA
ELIZABETH J. POKELA, OF MINNESOTA
PRASHANTH RAJAN, OF THE DISTRICT OF COLUMBIA
GREGORY N. RANKIN, OF TEXAS
CHRISTOPHER MICHAEL RENDO, OF FLORIDA
OLGA B ROMANOVA, OF FLORIDA
IAN D. ROZDILSKY, OF VIRGINIA
ALEXANDER THEODORE RYAN, OF PENNSYLVANIA
TANYA YUKI SALSETH, OF CALIFORNIA
DAVINIA MICHELLE SEAY, OF THE DISTRICT OF COLUMBIA
ALYSSA TEACH SERVELLO, OF NEW YORK

ANNIE M. SIMPKINS, OF FLORIDA
JAY M. SORENSEN, OF VIRGINIA
RAVINDRA MOHAN SRIVASTAVA, OF COLORADO
ELIZABETH T. SWEET, OF THE DISTRICT OF COLUMBIA
MICHAEL P. THOMAN, OF NEW JERSEY
DAVID COLIN TURNBULL, OF NEW YORK
CAROL M. VARGAS, OF OREGON
PETER P. VELASCO, OF THE DISTRICT OF COLUMBIA
CURT WHITTAKER, OF OREGON
JUSTIN WAYNE WILLIAMSON, OF TEXAS

THE FOLLOWING—NAMED MEMBERS OF THE FOREIGN SERVICE TO BE CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF STATE

ROBERT N. BENTLEY, OF VIRGINIA
JOSE A. BERNAL, OF VIRGINIA
YEONJUNG C. BITTING, OF VIRGINIA
PATRICK F. BRENNAN, OF VIRGINIA
DANIEL S. BUGAJ, OF VIRGINIA
KIMBERLY BLACK CANNELL, OF VIRGINIA
RITA CRAGUE, OF VIRGINIA
ROBERT A. CRAMER, OF VIRGINIA
NICLAS S. ERICSSON, OF VIRGINIA
SHAWN T. FRANZ, OF VIRGINIA
JOHN EDWARD HAVASY, OF VIRGINIA
JENNIFER Y. KAWASHIMA, OF VIRGINIA
DAVID HENRY KLASEN, OF THE DISTRICT OF COLUMBIA
MATTHEW P. LENARD, OF MARYLAND
JASON MAH, OF VIRGINIA
MINDY K. MANN, OF VIRGINIA
ROBERT J. MANN, OF VIRGINIA
COLLEEN CAITRIN MARTIN, OF VIRGINIA
JOSHUA MCCALEB, OF VIRGINIA
FARRELL PATRICK MCHUGH, OF TEXAS
MELISSA K. MILLS, OF VIRGINIA
PATRICK L. MORAN, OF VIRGINIA
MICHAEL NAUD, OF TEXAS
ALYSSA PENN, OF VIRGINIA
LAWRENCE D. PETERS, OF MARYLAND
KEVIN M. POWERS, OF VIRGINIA
RAFAEL RESTO-OLIVIO, OF VIRGINIA
JINHEE CHOI SALZMAN, OF VIRGINIA
CAITLIN D. SPICER, OF THE DISTRICT OF COLUMBIA
THOMAS T. TSOUPELIS, OF VIRGINIA
RICHARD W. WALKER, OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR, EFFECTIVE JANUARY 16, 2011:

MARYRUTH COLEMAN, OF MARYLAND
JAMES J. MURPHY, OF VIRGINIA
LARRY G. PADGET, JR., OF VIRGINIA

PUBLIC HEALTH SERVICE

THE FOLLOWING CANDIDATES FOR PERSONNEL ACTION IN THE REGULAR CORPS OF THE COMMISSIONED CORPS OF THE U.S. PUBLIC HEALTH SERVICE SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW AND REGULATIONS:

*To be surgeon*

AYSHA Z. AKHTAR
SCOTT J. ASHBY
RODNEY C. CHARLES
AMINA A. CHAUDHRY
HELEN M. CHUN
RUBEN DELPILAR
YIMING A. DING
JUDITH M. EISENBERG
DAMON C. GREEN
FRANK P. HURST
ADOLPH J. HUTTER
DAVID L. MENSCHIK
QUYEN N. METZGER
KRISTINA D. MONEY
ROBERT C. MOORE
JOSEPH REINHARDT
TANGENEARE D. SINGH

*To be senior assistant surgeon*

ROBERT D. ALLISON
ADRIAN N. BILLINGS
MELISSA A. BRIGGS
STEVEN P. FONG
JEREMY C. FRANCIS
HANNA KANG
HUYI JIN KIM
BEN J. KOCHUVELI
JULEA L. MCGHEE
SHUK HAN T. WONG

*To be dental officer*

WILLIAM L. DERRICKSON
TOMORAL E. SAMS
CHRISTOPHER K. WYSZYNSKI

*To be senior assistant dental officer*

JARED C. BECK
SHEFAGH S. DARABI
JEREMY J. LAPINGTON
TATSUHIKO OSADA
TRACI M. TILEY-ESPINOSA
ANNA M. WOODS
NEIL T. WRENN

*To be assistant dental officer*

KATIE BENDICKSON
LISA T. HOANG
DAVID H. NEAL
DONNIE S. RIVERA
ROBIN S. YAMAGUMA

*To be nurse officer*

CARLETTA M. ABERLE
MANDIE E. BAGWELL
MICHAEL BONISLAWSKI
ARICA CARPENTER
VICKY D. DOWDY
DOLETA ELLIS
MICHAEL V. GWATHMEY
SHERRY A. HAMMOCK
LAURA M. HUDSON
CRYSTAL M. HUGHLEY
BEATRICE R. LUNSFORD-WILKINS
JAMILA A. MWIDAU
MICHELLE ROWAN
NOEL M. TRUSAL
ANGELA E. WESTON
KIRA A. WILDER

*To be senior assistant nurse officer*

JULIE C. BRISKI
COLLEEN E. BURKE
KAREN B. BURNS
JOYCE A. BUSSARD
KRISTIE N. CHERRY
CHERONDA L. CHERRY-FRANCE
DERBY CLARK
DEBRA A. COOPER
BENARD N. DELOACH
JENNIFER H. DRISKILL
ANGELA D. DUKATE
LISA D. ELLIS
KATRINA L. GOAN
ARLEEN T. GRAY
ERIN N. GREEN
PATRICE D. HARRIS
MELISSA L. HUBBARD
ZAMORYA S. JORDAN
ANITA M. KELLAM
OUIDA M. LACEY
SHEALYN R. LUCERO
JUANITA H. LUNA
ZENIA M. MCKOY-CHASE
CHRISTY W. MCRAE-SIEBENBRODT
SABRINA L. METIVIER
MELINDA A. MUSUMARRA
URUAKU A. OBASI
JENNIFER N. OCONNOR
LISA J. PAPPA
JASMINE PETERSON
EVA PIOTROWSKA
JENNIFER M. RAMON
ROBERT B. RATLIFF
SHARON C. RHYNES
RHONDA R. RODDEN
TANYA L. SANCHEZ
TRACY L. SANTANELLI
CELINDA A. SCOTT
MOLLY Y. SHORTY
AIMEE L. SMITH
ANGELA J. STONE
CHAD A. STUCKEY
KEBA M. TROTMAN
BILLITA WILLIAMS
LILLIE L. WILLIAMS
ANGELA K. WU

*To be assistant nurse officer*

BRYAN S. ANDERSON
OLABUSOLA AROWORAMIMO
KRISTINA R. BEHRENS
SHAWN P. BURNS
GREGORY T. CARLSON
KIMBERLY S. CARLSON-OLDAKER
BYUNGYONG CHOI
NATASHA L. COLMORE
JENNIFER M. CONN
MAHOGANEY N. DIXON
RYAN D. ERWIN
SHELDON L. FOSTER
TAMI L. GLADUE
TAWANA A. GOLDSTEIN-HAMPTON
CHARKETTA V. GORMAN
KIANA S. HARGROVE
CRYSTAL N. HARTIS
STEVEN A. HERRERA
ALEX M. HORTON
AMANDA E. HUSTON
NATASHA N. JOHNSON
JOI A. JOHNSON
ANGELA R. JONES
KRISTINA M. KELLEY
RITA B. KENAH
KANS B. LEWIS
AMY E. MCCONKEY
VIRGINIA MINTON
IFEOMA E. NNANI
SANDRA L. OLSON
MEGHAN L. POTTER
MEGAN L. POWERS
STEPHANIE T. SAI
CHIRALY T. SAINT-VAL
DEBORAH M. SCHOENFELD
TERESA M. SHEPHERD
KIRK F. SHIM
ROSSON C. SMITH
BRYAN SMITH
MELANY A. TOBIN
HEIDI J. VOSS

*To be junior assistant nurse officer*

DEIRDRE E. ABELLADA
MATTHEW J. BARLOW
MEKESHIA D. BATES
JACQUELINE T. BEE
KAY M. BLYLER
EBONY L. BOSWELL
SHAY M. BULLOCK
BRIANA C. BUSEY
FELICE N. CARLTON
AMOS C. CHEN
SARAH E. COLBERT
TOMMIE L. COLLINS
WILLARD J. COOKSON
KAITLIN P. CORONA
TAYLOR R. DONOVAN
JEREMY M. DUBINSKY
STEVEN ESSIEN
VICTORIA M. EVANS—HAJARIZADEH
CAMILLUS O. EZEIKE
SARAH E. FOWLER
LAURA F. GOULD
ELIZABETH L. HARBISON
PATRICK A. HARMON
JESSICA L. HARVEY
COREEN HEACOCK
STACY T. HEFLIN
DOROTHY W. HEINRICHS
TRENEICE HENDRIX
ELIZABETH E. HOLT
JERRELL D. JAVIER
CHRISTINE G. JELE
TONYA L. JENKINS
BRIDGET R. JOHNSON
ASHLEY T. JOHNSON
LAVANYA L. KAMINENI
JESSICA A. KAPLAN—BEELER
MELANIE A. KELLY
SHARA L. KENNEDY
REBECCA M. KIBEL
JOSEPH M. KIBIRANGO
MICHELLE A. KRAYER
ANTOINETTE D. LAFRANCE—BUSSEY
BENJAMIN A. LANDRUM
STEPHANIE N. LANHAM
KIMBERLY M. LYNES
SHARLAE E. MALDONADO
NICHOLAS C. MARTIN
AFSHEEN MASOOD
MOUSSA MBAHWE
HEATHER M. MCCLURE
KIZZY M. MCCRAY
L. MCELYEA JOY
PAULA A. MCENTIRE
SHIRLEY O. OWUSU—ANSAH
CARLEEN C. PHILLIP
JENNIFER L. POND
HEATHER S. RHODES
CATINA N. RIEVES
MARIELA RIVERA
TAQI SALAAM
CYNTHIA K. SATENAY
TIMOTHY J. SCHMIDT
CODY J. SCHNEIDER
TWYLA M. SHARP
NATHAN L. SHAW
TOTA T. SHULTZ
LYLE SIMMONS
PAULA J. SMITH
ERIKA J. SMITH
INGRID STAMAND
WILLIS R. STEORTZ
BENJAMIN TANNER
RACHEL C. TAYLOR
DANIEL THOMPSON
JOEL A. UY
ANTHONY W. VALORIC
MICHAEL VAN SICKLE
PATINA S. WALTON—GEER
EBONY S. WESTMORELAND
PATRICK J. WHEELER
JULIE M. WITMER

*To be engineer officer*

FRANCIS K. CHUA
DAVID A. GWISDALLA

*To be senior assistant engineer officer*

RHETT C. COSTELLO
THERESA A. GRANT
LEO ANGELO M. GUMAPAS
GAYLE S.W. HAGLER
PHIL NGUYEN
THOMAS RADMAN
JUSTIN A. THOMPSON

*To be assistant engineer officer*

CHRISTOPHER HUNTER
JONATHAN R. IRELAND
RIA LEESHUELING
TANYA V. NOBLE
DAVID M. THOMAS

*To be junior assistant engineer officer*

BENJAMIN C. ALTHOFF
GREGORY M. BESSETTE
MIKE W. BUCKELK
MARK GIBEAULT
SCOTT C. GONZALEZ
DANH V. HO
KYLE P. KENTCH
TYRRELL L. LANG
MITCHEL J. MILLER
EVA N. OKADA
STEVEN M. RAISOR
JESSICA A. SHARPE

*To be scientist officer*

DEANNA R. BEECH

QIAO Y. BOBO
NIZAMETTIN GUL
EDUARDO H. ONEILL
LANA M. ROSSITER

*To be senior assistant scientist officer*

PARDIS AMIRHOUSHMAND
RICHARD A. ARAGON
STAYCE E. BECK
TYANN BLESSINGTON
MICHAEL B. CHRISTENSEN
JULEEN L. CHRISTOPHER
SETH J. GOLDENBERG
WENDY A. GOOD
ELIZABETH A. IRVIN-BARNWELL
CHARLES H. MARIS
GHASI P. PHILLIPS
DARKEYAH G. REUVEN
ERIC R. RHODES
STEPHANIE A. SINCOCK
KELSEY L. SMITH
CRYSTAL B. SPINKS
AVI J. STEIN
LOCKWOOD G. TAYLOR
ANNA MARIE TORRENS-ARMSTRONG
JAMES N. TYSON
NADRA C. TYUS
SHANNON WALKER
MATTHEW J. WALTERS
SARA E. WRIGHT

*To be assistant scientist officer*

NANCY TIAN

*To be senior assistant environmental health officer*

JONATHAN M. BROOKS
EUN GYUNG LEE
JASON A. LEWIS
MICHAEL L. MCCASKILL
MARY A. PSIAKI
JOHN G. WIERZBOWSKI
JOANNA YOON

*To be assistant environmental health officer*

CHARLES M. ALOE
MARYAM T. BORTON
MATTHEW R. ELLIS
JAMILLA M. GALVEZ
MELANIE L. MOORE
EMMY S. MYSZKA
JILL A. NOGI
BETH C. WITTRY
DERRICK N. YOU

*To be junior assistant environmental health officer*

ISAAC N. AMPADU
BRIAN J. BERUBE
WILLIAM B. BURROWS
THALES J. CHENG
CALEB L. JOHNSON
YOLANY E. PALMA
MATTHEW A. SISBACH

*To be veterinary officer*

MARGARET A. SHAVER
EVAN T. SHUKAN

*To be senior assistant veterinary officer*

AMY M. BRAZIL
LAURA S. EDISON
KAYLEEN T. GLOOR
TRAVIS W. NIENHUESER
AMANDA J. OWENS
SAMANTHA J. PINIZZOTTO

*To be pharmacy officer*

NICHOLE T. BELLAND
KENT L. H. P. BUI
RICHARD H. CUTLIP
JOSHUA W. DEVINE
LORI A. ELDRED
MARK A. ELHARDT
CHIDOZIE N. EZENEKWE
DANIEL J. GARDNER
DIPTI R. KALRA
BETH N. KELLER
TAMY K. LEUNG
DORCAS A. TAYLOR
MARY J. THOENNES
QUYNH-VAN N. TRAN

*To be senior assistant pharmacy officer*

PHILIP A. BAUTISTA
DANA N. BROWN
JEREMY K. BURTENSHAW
MONICA M. CALDERON
JENNIFER CHENG
ELILTA R. DEMISSIE
JUSTIN W. EUBANKS
WILLIAM E. FREIBERG
ANDY GILLUM
BRIAN J. GILSON
JEREMY S. GUSTAFSON
JENNIFER H. HENDRIX
VICKY C. HUANG
VICTORIA O. IBUKUN
BENJAMIN C. KELLER
MICHELLE KERSHAW
JINA KWAK
ERICA R. LAFORTE
JAMIE L. LEMIRE
TEMEKA L. MAGETT
AMY K. MARCHUS
JENNIFER L. MARTI
MATTHEW M. MCCLUNG
ALIA T. MCCONNELL
THEODROS Y. NEGASH
ANTHONY G. PAZCOGUIN
JOANNE K. RIPLEY
DANA C. ROYSTON
ANNA SCHOR
ANASTASIA M. SHIELDS
NGUYET M. TON
OGOCHUKWU UMEJEI
CHALTU N. WAKIJRA
SILVIA WANIS
CHRISTOPHER G. WHITEHEAD
LINCOLN J. WRIGHT
ALEXANDER H. N. YEH

*To be assistant pharmacy officer*

DEREK S. ALBERDING
MAGGIE A. ALLEN
RYAN P. BARKER
NYEDRA W. BOOKER
JOSEPH B. BUHANAN
RUBIE M. CHASE
DACHUAN CHEN
MINDY CHOU
COREY D. COOPER
BRIAN D. COX
LEIGHA M. CURTISS
DANIEL E. DAGADU
STEPHANIE D. DANIELS
LYSETTE A. DESHIELDS
JOHN DINH
GUERLINE DORMEUS
KATHERINE P. GILLETTE
MELISSA A. GROSSHEIM
BRANDON D. HOWARD
EPIPHANIS N. IREGBU
JEREMY D. IVIE
JILL D. JAMES
BOGHOKO B. KASPA
ANDREW KIM
JESSICA E. KREGER
SASHA M. LATONIS
TIMOTHY A. LAVENS
ESTHER S. LIU
SARA M. LOUT
AMY C. LUO
REBECCA L. MAGEE
JUSTIN C. MCCORMICK
MATTHEW W. MILLER
MARISSA A. NOLAN
IFECHUKWU C. ONWUKA
KEMEJUMAKA N. OPARA
SOPHIA Y. PARK
DANIEL S. PECK
KELLY H. PHAM
CHARAN N. RICE
SHARONJIT K. SAGOO
JOHN S. SHENOUDA
MELANIE F. STEVENSON
SANGEETA TANDON
SHACARA S. THOMPSON
ALEXANDER P. VARGA
JENNIFER F. VELSOR
JAREK M. VETTER
MAVIS N. YEBOAH
ELIZABETH A. YORGANCIGIL

*To be dietitian officer*

DEIRDRA N. CHESTER
STACEY B. GYENIZSE
RHONDA A. MONA

*To be senior assistant dietitian*

TRAVIS L. SCOTT

*To be assistant dietitian officer*

JAYNE E. BERUBE
HEATHER K. BROSI
VERONICA A. HANDELAND
MELANIE A. HUETT
JOHN K. QUINN, JR
JOSEPH TIBAY

*To be junior assistant dietitian officer*

CHRISTIE L. MENNA

*To be therapist officer*

JEFFREY D. BULLOCK
JOHANNA M. GILSTRAP
CATHLEEN SHIELDS
JENNIFER J. ZENTZ

*To be senior assistant therapist officer*

JAEWOO IM
AMY E. LEATHERMAN
KERANTHA N. POOLE-CHRISTIAN
MOLLY C.P. RUTLEDGE
CHRISTOPHER O. WHARTON

*To be assistant therapist officer*

MARSOPHIA R. CROSSLEY
CHANDRA J. PREATOR

*To be health services officer*

JASON T. BOUTWELL
HEATHER A. BOYCE-JAMES
MARK H. DURHAM
ROMERL C. ELIZES
DONALD ERTEL
RAMON E. FONT
KAREN C. FORBES
ERIC J. HALDEN
LINWOOD D. JONES
PAUL N. MOITOSO
MARIE C. OCFEMIA
CHRIS L. POULSON
STACEY L. ROBINSON
OMAYRA N. RODRIGUEZ
DORCAS A. TAYLOR
BEE B. VANG
AIMEE E. WILLIAMS

*To be senior assistant health services officer*

HOLLY L. ANDERSON-CALDWELL
BRIDGET D. BAKER
JAMES A. BANASKI, JR
REBECCA A. BARRON
RICARDO R. BEATO
HOLLY B. BERILLA
CARLA S. BURCH
TYRUS J. COX
KELLY J. DALTON
RICHARD L. DUNVILLE
VICKY R. ELLIS
LORIE E. ERIKSON
COURTNEY A. FERENZ
ILISHER L. FORD
NEELAM D. GHIYA
BARBARA A. GOOLSBY
TANYA L. GRANDISON
KENNETH J. GREEN
RICHARD E. HANSON, JR
BROOKE A. HEINTZ
CARL D. HILL
MICHAEL G. HODNETT
STEPHANIE A. HOOVER
YVONNE J. IRIZARRY
KIMBERLY R. JONES
NJERI J. JONES
JONATHAN A. KWAN
TUYEN D. LE
SEUNG-EUN LEE
SANDRA J. LEMON
SHAMEIKA D. LOGAN
PAMALA T. LOVE
SHAILESH MACWAN
TARSHA M. MCCRAE
JUAN L. MIRANDA
TUNESIA L. MITCHELL
MICHAELA A. MONTECALVO
CORNELIUS O. MOORE
PAULA MURRAIN-HILL
KIMBERLY H. NGUYEN
HEATHER L. ONEILL
JUSTIN J. PEGLOWSKI
CICILY R. PHILLIPS
STACIE L. PIERCE
GABRIELA RAMIREZ-LEON
CHRISTIAN B. RATHKE
MICHAEL J. REYES
ELIZABETH B. RUSSELL
SANDRA B. SMITH
MARK A. SMITH
JENNIFER C. SMITH
YVONNE L. STANSON
JENNIFER R. TATE
LILIANA R. TAVARES
EDDIE E. TUMANENG
TERRI L. WEBBER
NIKETTA A. WOMACK

*To be assistant health services officer*

SHEENA A. ARMSTRONG
VEENA G. BILLIOUX
LARRY W. BROCKMAN
JESSE F. BURK
ERICA D. BUTLER
HIEN T. N. CHAU
BERIVAN N. DEMIRNEUBERT
JONATHAN W. EBERLY
STEPHANIE S. FELDER
NEVA E. GARNER
ELLEN T. GEE
ANSARUDDIN I. HASAN
CHARLES E. HEAUSLER
ALISHA V. HOLMES
TARA L. HOUDA
TAMEIKA N. KASTNER
ABHA KUNDI
LINDA H. KWON
NEIL A. MAFNAS
SHAUN D. MCMULLEN
LATOYA Q. MILES
OLUWAMUREWA A. OGUNTIMEIN
OLAJIDE O. OJEDIRAN
AMANDA C. ROBNIK
DANIELLE B. TERRETT
REBEKAH V. TILLER
NATASHA J. WILTSHIRE

*To be junior assistant health services officer*

VALERIE E. ALBRECHT
BRIAN R. ALEXANDER
DOLL L. DAVIS
MEGAN M. DODSON
TONYA A. FOWLER
DANIELLE E. FRANKS
COURTNEY E. GRAHAM
KIMISHA L. GRIFFIN
LEROY HERMAN I, II
LOUIS L. JOLLEY
JILL M. KISAKA
PAUL E. LEES
LIRISSIA Y. MCCOY
MAUREEN A. OKOLO
STELLA M. ONUORAH

CLAIRE N. PITTS
ERRICK ROBERTS
MARQUITA D. ROBINSON
JACLYN J. SEEFELDT
MIRANDA Q. SHROPSHIRE
DONNAMARIE A. SPENCER
JULIE M. TAYLOR
ANDERSON A. TESFAZION
AIRA N. VAZQUEZ
SUSAN A. VELARDE
ANDREA L. VELARDO
ANH D. VU
RUTH A. WILLIAMS
BRANDON F. WYCHE
MYKAH N. WYNTER

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

*To be brigadier general*

COLONEL RANDALL R. BALL
COLONEL JOHN P. BARTHOLF
COLONEL STEVEN J. BERRYHILL
COLONEL GRETCHEN S. DUNKELBERGER
COLONEL GREG A. HAASE
COLONEL SCOTT L. KELLY
COLONEL MAUREEN MCCARTHY
COLONEL MARK A. MCCAULEY
COLONEL EDWARD E. METZGAR
COLONEL MARSA L. MITCHELL
COLONEL HARRY D. MONTGOMERY, JR.
COLONEL JON K. MOTT
COLONEL BRIAN C. NEWBY
COLONEL DAVID W. NEWMAN
COLONEL DAVID SNYDER
COLONEL DEAN L. WINSLOW

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

CHRISTOPHER J. OLEKSA

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

ARTHUR L. BOUCK

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

TAMALA L. GULLEY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

MICHAEL H. HEUER

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

JAMES E. ORR

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C, SECTION 12203:

*To be colonel*

STEVEN A. CHAMBERS
ROMAN J. FONTES
JOHN S. GLASGOW
MARK W. GRIFFITH
EARL M. HAIRSTON
ANDRE L. HANCE
LORENZO MIRANDA
EDWARD RENNIE
JAMES P. WALDRON

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

*To be colonel*

SUSAN M. CAMORODA
MARK H. CHANDLER
ROGER J. KANESHIRO
JOSEPH F. LOPES
GREGORY S. MICHEL
JOHN E. SKILLICORN
GERSON S. VALLES

IN THE NAVY

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT TO THE GRADE INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

*To be lieutenant commander*

KEVIN J. OLIVER

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADE INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

*To be lieutenant commander*

MICHAEL FORTUNATO
RICKEY REYNOLDS
MATTHEW WELLOCK

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant commander*

JOSEPH H. ADAMS II
JONATHAN V. AHLSTROM
JASON A. AHMANSON
ROBERT AHO
ROBEN E. ALFONSO
PATRICK M. ALFONZO
DOUGLAS W. ALLEY
ANTHONY E. AMODEO, JR.
ERIC R. ANDREWS
ROBERT J. ARELLANES
ANTHONY R. ARENDT
LUCAS R. ARGOBRIGHT
RICHARD K. ARLEDGE
DEVIN K. ARNOLD
FRANK J. AZZARELLO
JOSHUA L. BACCA
ROBERT J. BALLARD
BRIAN J. BAUMGAERTNER
MATTHEW W. BEAGHLEY
ANDREW R. BEARD
KEVIN A. BEATLEY
JOHN C. BEHNCKE
JAYSON L. BEIER
ERIC J. BELL
ANDREW J. BELLINA
MATTHEW L. BERGER
AARON T. BERGMAN
MICHAEL T. BETSCH
DAVID M. BIGAY
ROBERT C. BIGGS
CHARLES G. BIRCHFIELD
BLYTHE A. BLAKISTONE
MATTHEW P. BLAZEL
KENNETH W. BRADFORD
CHRISTOPHER J. BRADSHAW
UBIE S. BRANTLEY
ADAM J. BROCK
CHRISTOPHER A. BROWN
DARRELL W. BROWN II
CASEY R. BRUCE
JEFFREY S. BRUNER
WILLIAM S. BUFORD
DOUGLAS J. BULLIS
MATTHEW S. BURICH
WILLIAM L. BURTON
MELANE A. BYRD
ROBERT P. CARR
WILLIAM L. CARR
BRAD A. CARSTENS
BENJAMIN R. CARTER
CHRISTOPHER J. CARTER
RYAN C. CARTER
STEVEN M. CARTER
JOHN A. CAUTHEN
ROBERT D. CERAVOLO
MICHAEL G. CHARNOTA
ANDREW J. CHAUVIN
DANIEL F. CHIAFAIR
DANIEL K. CHOUDHURY
ASHLEY E. CHURCH
CHARLES R. CLARK
JOHN R. CLARK, JR.
TOMMY M. CLARKE
JESSICA E. CLEARY
JEEN S. CLEMITSON
TODD R. CLEVELAND
DANIEL B. CNOSSEN
JAMES O. COKER II
DANIEL M. COLON
MARK A. CONLEY
RYAN P. CONOLE
JAMES V. CONSALVI
DANNY M. COOK
NATHAN M. COOK
SEAN R. COOK
LARRY E. COOPER
THOMAS M. CORCORAN
MATTHEW B. COURTNEY
SPENCER M. COX
ANDREW D. CRAIG
PAUL A. CRAIG
CALEB T. CRAMER
CHRISTOPHER M. CRISLER
MATTHEW R. CROOK
ROBERT CROSBY
STEVEN C. CROUCH
JAMES K. CUNNINGHAM
MATTHEW E. CURNEN
ROY B. DALTON III
ADDISON G. DANIEL
DAVID J. DARTEZ
MARK C. DAVID
FELIX B. DAVIGNON, JR.
MATTHEW E. DAVIN
JUSTIN P. DAVIS
JARROD D. DAY
BRANDON J. DECKER
CHARLES B. DENNISON
JEFFREY M. DESMOND
MARCOS DIAZ, JR.
TROY J. DICKEY
SARAH E. DIXON
CHRISTOPHER A. DOBSON
REBECCA M. DOMZALSKI
MEGAN M. DONNELLY
TIMOTHY G. DROSINOS
MARIUSZ K. DROZDZOWSKI
MICHAEL F. DUEZ
JULIE A. DUNNIGAN
SHANE A. DURKEE
PETER J. EBERHARDT
KATHLEEN R. EHRESMANN
BRETT E. ELKO
MATTHEW L. ENOS
CHARLES E. ESCHER
MICHAEL C. ESCOBAR
ROGELIO ESPINOZA
JOHN R. ESPOSITO
DUSTIN E. EVANS
JAMES L. EVANS
RYAN E. EVANS
JOHNPAUL A. FALARDEAU
PETER R. FANNO
JEREMY B. FARMER
STANLEY A. FAULDS
THOMAS P. FAULDS
HARRY R. FEIGEL III
CHRISTINE FELICE
SANDRA L. FENNELL
JEFFREY A. FERGUSON
MEGAN M. FINE
DANIEL K. FINNEGAN
JOHN E. FITZPATRICK
MEAGAN V. FLANNIGAN
ERIN E. FLINT
PAUL A. FLUSCHE
SYLVESTER R. FOLEY IV
DANIEL A. FOLLETT
EDWARD H. FONG
MICHELLE R. FONTENOT
TYLER W. FORREST
BENJAMIN W. FOSTER
ERICH C. FRANDRUP
ROBERT A. FRANTZ III
KURT N. FREDLAND
JOHN A. FRENCH
MICHAEL D. FRENCH
KEVIN R. FRIEL
MICHAEL D. GALDIERI
KEVIN D. GAMBLE
BRYAN E. GEISERT
THOMAS C. GENEST
KIMBERLY N. GEORGE
PHILIP D. GIFT
SHANNON N. GILBERT II
MICHAEL L. GIVENS
CHRISTOPHER D. GLANDON
MATTHEW D. GLEASON
DEREK J. GORDON
ROYAL P. GORDON IV
WALTER D. GRAHAM IV
MEGAN M. GRANGER
STUART C. GRAZIER
NICHOLAS M. GREEN
ALLEN H. GRIMES
CHRISTOPHER M. GROCKI
RYAN F. GUARD
WILLIAM M. GUHEEN III
CHRISTOPHER M. GZYBOWSKI
KEVIN R. HAAKSMA
STEVEN D. HACKER
JARROD S. HAIR
GERMAINE E. HALBERT
DANIEL A. HANCOCK
BRYAN M. HANEY
STANTON R. HANLEY
BRIAN M. HANSEN
CHRISTIAN A. HANSEN
HAYWARD W. HARGROVE III
CHAD H. HARVEY
BRIAN J. HASSE
NATHANIEL M. HATHAWAY
PETER W. HAYNES
STEVEN G. HEGGIE
MARK D. HELLER
JARED E. HENDERSON
JAMES M. HENRY
COURTNEY S. HERDT
TREVOR F. HERMANN
DIRK H. HERON
STEPHEN A. HIERS
BRIAN R. HIGGINS
JERRY C. HIGGINS
EDWARD F. V. HILL
JOHN P. HILTZ
DEVON M. HOCKADAY
GABRIEL J. HOHNER
ROBERT D. HOLT
JARED J. HOOPER
JOSHUA A. HOOPS
HEATH D. HOPPES
MATTHEW G. HORTON
TIMOTHY J. HOUSEHOLDER
BRADLEY A. HOYT
GREGORY J. HRACHO
JAMES D. HUDDLESTON
CORY D. HUDSON
DAVID E. HUDSON
ALLAN C. HUEBNER
WILLIAM T. HUEBNER, JR.
JOHN R. HUMPHREYS
NATHANIEL L. HUNTER
MICHAEL Y. HUNTSMAN
TIMOTHY P. HURLEY
VINCENT J. JAKAWICH
MARK C. JANSEN
ERIC H. JEWELL
DEBORAH A. JIMENEZ
ERIC R. JOHNSON
LUKE R. JOHNSON
SCOTT G. JOHNSON
ANDREW T. JONES
JOSHUA F. JONES
SHANE P. JONES
DOUGLAS L. KAY
KENNETH P. KEEPES

WARREN R. KEIERLEBER
MAXWELL M. KEITH
JONATHAN A. KELLEY
ERIK J. KENNY
HENRY N. KEYSER IV
CHRIS M. KIESEL
IAN J. KIRSCHKE
KRISTOPHER D. KLAIBER
CHRISTOPHER M. KLUTCH
BRIAN D. KOCH
KENNETH C. KOKKELER
JAMES KOTORA
DANIEL D. KUITU
GEORGE G. KULCZYCKI
ROBERT W. KURRLE, JR.
IAN P. LAMBERT
DANIEL W. LANDI
VICTOR M. LANGE
JOSHUA A. LARSON
JASON A. LAUTAR
COLETTE B. LAZENKA
DANIELLE M. LEDBETTER
GREGORY P. LEMBO
CHRISTOPHER K. LEMON
LEONARD M. LEOS
GARY D. LEWIS
MATTHEW K. LEWIS
WAYNE G. LEWIS, JR.
HUGO M. LIMA
EDWARD C. L. LIN
KYLE D. LINDSEY
PHILIPP A. LINES
DANIELLE L. LITCHFORD
CHARLES C. LITTON
MICHAEL E. LOFGREN
GEORGE P. LORANGER
BENGT G. LOWANDER
JAMES E. LUCAS
THOMAS W. LUFT
JEREMY N. LYON
NATHAN W. LYON
MARQUETTE H. MAGEE
GWENDOLYN N. MAJOR
NICHOLAS C. MALOKOFSKY
JAMES M. MALVASIO
ROBERT W. MARRS
MATTHEW L. MARTIN
RION W. MARTIN
CARLOS F. MARTINEZ
MICHAEL D. MARTINKO
BRANDEN R. MARTY
CHRISTOPHER M. MARTYN
DEREK MASON
SAMUEL P. MASON
ANTHONY S. MASSEY
TODD R. MATSON
DAVID B. MATSUMOTO
RICHARD T. MCCANDLESS
DAVID S. MCCLINTOCK
ANDREW P. MCCLUNE
MATTHEW L. MCDERMOTT
LOUIS P. MCFADDEN III
JACKSON R. MCFARLAND
TIMOTHY J. MCKAY
ANDREW M. MCKEE
SCOTT A. MCKEE
EDWARD P. MCKINNON
BRADFORD J. MCNEESE
CHRISTOPHER MENDOZA
JOHN C. MERWIN
MICHAEL J. MESSEMER
GEORGE U. MESSNER III
CHRISTOPHER G. METZ
BRYAN W. MILLER
MICHAEL L. MINUKAS
MATTHEW L. MINZES
MICHAEL MOODY
PHILIP C. MOORE
STEPHEN J. MOORE
DANIEL A. MORREIRA
SAMUEL P. MORRISON
JASON B. MORTON
BRIAN T. MURPHY
REBEKAH J. MURPHY
CAROLINE C. MURTAGH
ELIZABETH A. NELSON
JONATHAN P. NELSON
DOUGLAS J. NEVES
SEAN M. NEWBY
JESSE H. NICE
CHRISTOPHER J. NICOLETTI
ROBERT W. NIEMEYER
JOHN P. NILLES
GERONIMO F. NUNO
TIMOTHY D. OBRIEN
PATRICK J. OCONNOR
GEORGE A. OKVIST
MARTIN C. OLIVER
MATTHEW P. OLSON
MICHAEL L. OSULLIVAN
CHRISTOPHER J. OTTO
RYAN P. OVERHOLTZER
WENDY J. OWCZAREK
ELI C. OWRE
PAUL C. OYLER
RICHARDO V. PADILLA
CRISTINA M. PAOLICCHI
JASON N. PAPADOPOULOS
JOHN W. PARKER
JOSEPH D. PARSONS
LESTER O. PATTERSON
SCOTT W. PAUL
FORREST S. PENDLETON
BRIAN H. PENNELL
MICHAEL A. PEREZ
SAVERIO PERROTTA
JOSEPH C. PERRY
BENJAMIN D. PETERMANN
NELS E. PETERSON
ANTHONY M. PETROSINO
DUSTIN W. PEVERILL
MATTHEW M. PIANETTA
MICHAEL E. PIANO
BRADLEY S. PIKULA
BRYAN S. PINCKNEY
ALICIA J. PING
CHRISTOPHER S. PISEL
MICHAEL T. PLAGEMAN
JASON R. POHL
COREY POLITINO
JOHN P. PONTRELLO
EMELIA S. PROBASCO
STEVEN C. PUSKAS
THOMAS F. RADICH III
THOMAS G. RALSTON
CASEY M. RAYBURG
JARRED T. REDFORD
JESSE M. REED
ERIC T. REEVES
STEVE C. REIS
CRAIG M. REPLOGLE
QUINN J. RHODES
MICHAEL T. RICE
THOMAS D. RICHARDSON
DAWN T. RICKETTS
TREVOR J. RITLAND
ANDREW P. RIVAS
DUSTIN W. ROBBINS
MATTHEW P. ROCHA
MATT W. RODGERS
ARTHUR S. RODRIGUEZ
GEORGE P. ROLAND
JACOB M. ROSE
NICHOLAS A. ROTUNDA
ALEXANDER A. RUCKER
CHRISTOPHER J. SABBATINI
CRAIG R. SALVESON
JAMES O. SAMMAN
SUZANNE L. SAMPSON
ADAM SCHANTZ
JONATHAN K. SCHEIN
PETER S. SCHEU
DANIEL J. SCHLESINGER
GEORGE A. SCHMUKE
NATHAN A. SCOTT
ERIC D. SEVERSON
LUKE N. SHANK
ARDIS C. SHANNON
LEIGH C. SHANNON
KENNETH M. SHEFFIELD
MICHAEL S. SHELTON II
NIKOLAOS SIDIROPOULOS
CHRISTIAN J. SIMONSEN
BRANDON L. SIMPSON
MICHAEL J. SIMPSON
RICHARD D. SITHIBANDITH
BRANDON D. SMITH
CHARLES R. SMITH
DENNIS H. SMITH
JARED C. SMITH
JASON C. SMITH
JEFFREY A. SMITH
MICHAEL C. SMITH
WILLIAM D. SMITH
WAYNE O. SPARROW
RYAN E. SROGI
MICHAEL B. STANFIELD
SUSAN M. STARKEY
MICHAEL R. STEPHEN
JOHN W. STIGI
ROBERT G. STIMIS
JENNIFER D. STIMSON
SHARON K. STORTZ
JASON T. SUROWIEC
MATHEW J. SWENSON
JASON S. TARRANT
TYLER R. TENNILLE
DANIEL N. TERESHKO
MATTHEW S. THATCHER
JI J. THERIOT
ADAM J. THOMAS
COLIN J. THOMPSON
NATHANIEL B. THOMPSON
QUERON THOMPSON
SARAH E. THOMPSON
SCOTT M. THOMPSON
JOHN M. THORPE
DAVID A. TICKLE
DAVID M. TIGRETT
SCOTT K. TIMMESTER
MARTY D. TIMMONS
RYAN A. TOMKINS
NICHOLAS M. TRAMONTIN
JARROD M. TRANT
STEPHEN M. TROY
MICHAEL P. TRUMBULL
GEORGE A. TSUKATOS
SARAH E. TURSE
CHRISTOPHER D. TYCHNOWITZ
THOMAS J. UHL
PATRICK M. VEITH
JASON C. VINING
CLAY S. WADDILL
DORNELIEO A. WAITS
ANTHONY J. WAKEFIELD
CHRISTOPHER L. WALLACE
DONALD J. WALLACE
RICHARD B. WALSH
DAVID M. WALSTON
ANTHONY M. WATERS
BRIAN P. WATT
ROBERT C. WATTS IV
BRYAN T. WEATHERUP
WESLEY D. WEIBEL
JOSHUA W. WELLE
JASON D. WELLS
KYLE C. WELSHANS
MICHAEL F. WENDELKEN
BRIAN K. WHITE
CARL E. WHITE
TIMOTHY R. WHITE
WILLIAM R. WHITE
BRIAN R. WHITTEN
JOHN C. WIEDMANN III
DAVID B. WILLIAMS
SCOTT A. WILLIAMS
THOMAS W. WILLIAMS
JAMES P. WILLIAMSON
JUSTIN A. WILSON
ANDREW N. WINBERRY
PATRINIA R. WINFREY
CHRISTOPHER T. WINTERS
JASON M. WITT
MICHAEL A. WOEHRMAN
NATHAN M. WOLF
MATTHEW A. WRIGHT
GABRIEL D. YANCEY
JEREMY S. YARBROUGH

IN THE MARINE CORPS

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

JOHN L. HYATT, JR.