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No. 169

## House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, December 21, 2010, at 10 a.m.

## Senate

SATURDAY, DECEMBER 18, 2010

The Senate met at 9 a.m. and was called to order by the Honorable CHRISTOPHER A. COONS, a Senator from the State of Delaware.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer.  
Let us pray.

We wait patiently for You, eternal God, for You have been our help in ages past and our hope for years to come. You listen to the voice of our intercession and permit us to feel Your presence just when we need You most.

Cultivate in our lawmakers a great trust in You. Turn them away from false solutions as they seek Your wis-

dom and obey Your commands. Lord, make them Your instruments of wisdom, justice, courage, and moderation so that Your will may be done on Earth. Give them a passion to accomplish Your purposes.

We pray in Your sacred Name. Amen.

### NOTICE

If the 111th Congress, 2d Session, adjourns sine die on or before December 23, 2010, a final issue of the *Congressional Record* for the 111th Congress, 2d Session, will be published on Wednesday, December 29, 2010, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT-59 or S-123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Wednesday, December 29. The final issue will be dated Wednesday, December 29, 2010, and will be delivered on Thursday, December 30, 2010.

None of the material printed in the final issue of the *Congressional Record* may contain subject matter, or relate to any event that occurred after the sine die date.

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By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, *Chairman*.

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



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## PLEDGE OF ALLEGIANCE

The Honorable CHRISTOPHER A. COONS 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 read a communication to the Senate from the President pro tempore (Mr. INOUE).

The bill clerk read as follows:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, December 18, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHRISTOPHER A. COONS, a Senator from the State of Delaware, to perform the duties of the Chair.

DANIEL K. INOUE,  
President pro tempore.

Mr. COONS 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, Senators should expect a series of up to three or four rollcall votes beginning at 10:30 this morning or thereabouts. The first vote will be on cloture with respect to the DREAM Act. If cloture is not invoked on the DREAM Act, the Senate will proceed to a cloture vote with respect to the don't ask, don't tell repeal.

Following the cloture votes, the Senate will proceed to vote on two confirmations: Albert Diaz, of North Carolina, to be a U.S. circuit judge, and Ellen Hollander from Maryland to be a U.S. district judge.

I note the absence of a quorum.

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

The bill clerk proceeded to call the roll.

Mr. REID. 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.

## ORDER OF PROCEDURE

Mr. REID. Could the Chair advise me how long was taken in this last quorum call.

The ACTING PRESIDENT pro tempore. Seven minutes.

Mr. REID. I ask unanimous consent that the time for debate continue to be 45 minutes on each side, with the time to begin as outlined in the previous order, but the time that I took speak-

ing to whom I had to speak not count against the 90 minutes.

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

## LEGISLATIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent to resume legislative session.

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

## ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that prior to any of the succeeding votes, there be 2 minutes of debate, equally divided and controlled in the usual form; further, that after the first vote, the succeeding votes be limited to 10 minutes.

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

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Senate is now in a period of morning business, with Senators permitted to speak for a period of up to 10 minutes each.

The Senator from Alabama.

## ORDER OF PROCEDURE

Mr. SESSIONS. Mr. President, under the previous discussion we had, I had been authorized to use 15 of our 45 minutes, and I would ask unanimous consent that I be allowed to speak for 15 minutes.

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

Mr. SESSIONS. I assume this will be counted against our time.

## THE DREAM ACT

Mr. SESSIONS. Mr. President, essential to America's greatness, I truly believe, is our respect for the rule of law. The American people understand this. For years, they have asked Congress and the President to secure the borders and to enforce our immigration laws, but for years Congress has refused to do that. Indeed, as part of this legislative session, there has been no serious movement to do anything that would improve the grievous situation of illegality at our borders. So what we have is contrary to that today, when we will be dealing with the DREAM Act. Leaders in Washington have not only tolerated lawlessness but, in fact, our policies have encouraged it. Americans living near the border are the ones who often pay the steepest price. Illegal drugs, guns, people pour into States such as Arizona and Texas every day. Phoenix has turned into the kidnapping capital of the world. Ranchers in

the southern part of the State are forced to accept chaos as a part of their daily lives. Smugglers, traffickers stream across their properties, homes are broken into, livestock killed, families placed in danger. Our government has failed in its duty to protect these citizens in the peaceful possession of their property.

Consider the fate of Robert Krentz, the son of one of Arizona's oldest ranching families working land that had been in the family 100 years. His home had been robbed, their livestock slaughtered. On the night of March 27, he went to mend a fence and check his water line. He reached his brother on the radio to say he was helping someone he believed to be illegally entering the country—helping them—and that was the last time anyone heard from Mr. Krentz. He was found several hours later, shot dead.

The death of Robert Krentz is sadly just one of the many tragedies that could have been avoided if the Federal Government had done its job. Instead, when Arizona tried to support the Federal immigration authorities, they were sued by Attorney General Holder, and the Department of Justice said stay out.

They were sued for trying to protect themselves because the Federal Government would not. Yet here we are in the final days of a lameduck—some say dead duck—Congress considering a bill that would create a major problem to the effective enforcement of immigration laws. People are not happy with us, Mr. President.

I had a little recognition and recalled in the shower this morning a little event with Oliver Cromwell with the long Parliament in England. He said:

It is high time for me to put an end to your sitting in this place. You have grown intolerably odious to the whole nation. In the name of God, go.

I don't think we are odious around here, but I think the American people are not happy with us. I think it is time for us to quit trying to move political bills in a way that is not appropriate, not through the regular process.

The American people are pleading with Congress to enforce our laws. But this bill is a law that, at its fundamental core, is a reward for illegal activity. It is the third time we have tried to schedule a vote on it, and during this lameduck session it is the fifth version of this legislation that has been introduced in the past 2 months. Not one of these bills has gone through committee. Not one of them is subject to amendment.

The House passed a bill after 1 hour of debate, having announced it being brought up 1 day before. In fact, the version we are now considering is the same one that was rammed through the House.

The majority leader has filled the tree. So, once again, the legislation cannot be amended.

For 2 years, Democratic leaders have ignored the public. They have rammed

through a lot of unpopular legislation, and sometimes—and too often—the process has been skirted, and it has not been healthy for the Republic, which is one reason people have not been happy with it.

So we are at it again, in these last hours, attempting to force through legislation that is not acceptable to the people.

Proponents of the DREAM Act are sincere, and they insist this is a limited bill for young children of illegal immigrants who graduate from high school, get a college degree, and join the military. But the facts of the legislation are different. The DREAM Act would grant legislation to millions of illegal aliens, regardless of whether they go to or finish college or high school or serve in the military. It is certainly not limited to children. It would apply to people here illegally who are as old as 30. Because the bill has no cap or sunset, they will remain eligible at any future time.

Mr. President, I know my good friend, Senator DURBIN, who is such an able advocate, challenged me last night, or my staff, saying we were incorrect in saying that the Secretary of HHS would have the ability to waive some of the requirements in the bill. Just for my staff's sake, I want to read this part of the bill. He said it wasn't in there. My staff explained to his staff why they thought it was in there. The waiver section states:

The Secretary of Homeland Security may waive the ground of deportability under paragraph 1 of section 237(a) for humanitarian purposes or family unity.

Maybe we can disagree how that might all be played out, but I think that is clearly a waiver provision in the bill.

The amnesty provision—and this is an amnesty bill, because it provides every possible benefit, including citizenship, to those who are in the country illegally, and I think that is a fair definition of amnesty. The amnesty provisions are so broad that they are open to those who have had multiple criminal convictions of up to two misdemeanors—just not three—and many criminal cases that are felonies are pled down to misdemeanors, including certain sex offenses, drunk driving, and drug offenses.

But the bill goes further, offering a safe harbor to those with pending applications, even if they pose some risk to the country. In other words, if you have filed and sought protection under the act, this can stay any action against you in any deportation proceedings.

I think it is particularly dangerous because the safe harbor would apply to those even from terror-prone regions in the Middle East. In fact, the DREAM Act altogether ignores the lessons of 9/11, going so far as to open up eligibility to those who previously defrauded immigration authorities, provided false documentation, as did many of the 9/11 hijackers on their visa applications.

Some have suggested this should not be a debate about policy but instead about compassion. But good policy, faithfully followed, is compassion. I ask my friends who support the legislation, what is compassionate about ignoring the public wishes and forcing people to live with a lawless border and a lawless immigration system that must be reformed and Congress refuses to reform? I ask them, is it compassionate to put illegal aliens in front of the line, ahead of those who have patiently waited and played by the rules? Is it compassionate to act in a way that undermines the integrity and consistency of our legal system—a system that is so important to our prosperity and liberty?

The message from the public has never been in doubt. Before we consider regular status for anyone living here illegally, we first must secure the border. My friend, BEN NELSON from Nebraska, has spoken on this for a half dozen years. When he speaks, he has a sign behind him that says “border security first.” That is what Senator MCCAIN has said. He has been a champion of immigration reform. He says he has come to understand with clarity that we must have security first.

That is what the American people have told us, I am convinced. If we do not do those actions first, if we pass this amnesty, we will signal to the world that we are not serious about the enforcement of our laws or our borders. It will say that you can make plans to bring in your brother, sister, cousin, nephew, and friends into this country illegally as a teenager, and there will be no principled reason in the future for the next Congress then sitting to not pass another DREAM Act. It will only be a matter of time before that next group that is here illegally will make the same heartfelt pleas we hear today.

It is time to end the lawlessness, not surrender to it. It is time to end the lawlessness that is occurring. This is a decisive vote. I urge my colleagues to oppose this reckless bill and commit ourselves, as a nation, to creating an immigration system that is just and lawful and that befits a nation as great as ours.

Mr. President, I ask unanimous consent that the time remaining that I have not used that has been allocated to the Republicans be divided as follows, and not necessarily in this order: Senator MCCAIN, 10 minutes; Senator CHAMBLISS, 5; Senator INHOFE, 10; Senator KYL, 5.

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

Mr. SESSIONS. Mr. President, we have it within our power to fix the broken immigration system. Last year, approximately 600,000 people were arrested entering our country illegally. That is lower than it has been, but a determined leadership from the President, from the Congress, can, within a matter of 1 or 2 years, end this prob-

lem, and then we can begin to wrestle with the difficult question of those who have been in our country for some time.

I thank the Chair and yield the floor.

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

#### ORDER OF PROCEDURE

Mr. LEVIN. How much time has been used by Senator SESSIONS?

The ACTING PRESIDENT pro tempore. The Senator has used 14 minutes.

Mr. LEVIN. Mr. President, I ask unanimous consent that now the Senator from Oregon be recognized for 3 minutes, and then I be recognized for 6 minutes.

The ACTING PRESIDENT pro tempore. Without objection—

Mr. INHOFE. Mr. President, reserving the right to object, can the Senator amend that to include me for 10 minutes following his remarks?

Mr. LEVIN. I so amend my request.

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

The Senator from Oregon is recognized.

#### HEALTH CARE

Mr. WYDEN. Mr. President, Senators, let me thank all of you for your many kindnesses over the last 48 hours. When news about your prostate is ricocheting around the blogosphere, all the calls, notes, and even offers to object on my behalf have meant a lot. I only want to say that I just hope this encourages everybody to go out and get those physicals. What this is all about is prevention. We can agree that when it comes to health care that we all ought to focus on prevention.

#### DON'T ASK, DON'T TELL

Mr. WYDEN. Mr. President, briefly, it was so important for me to be here today because don't ask, don't tell is wrong. I don't care who you love. If you love this country enough to risk your life for it, you should not have to hide who you are. You ought to be able to serve.

The history of our wonderful Nation is spotted with wrongs, but this institution is at its best when it corrects those. That is the opportunity we will have today.

Don't ask, don't tell has resulted in the discharge of over 14,000 patriotic and talented service members who were otherwise qualified to serve their country.

A 2005 Government Accountability Office report says nearly 10 percent of those discharged under don't ask, don't tell have been linguists trained in critical languages such as Arabic, Farsi, and Chinese.

As a member of the Senate Intelligence Committee, let me tell you

that turning away Arabic, Farsi, and Chinese speakers is bad for national security. It makes it harder for us to win the war on terror. Don't just take my word for it. The fact is, the military now understands how important it is to make this change.

Today, the Senate has the opportunity to be on the right side of history. Don't ask, don't tell is a wrong that should never have been perpetrated. Let's move to end it today. Again, let me say thank you to all of you. I look forward to being with all of you next year.

I yield the floor.

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

Mr. LEVIN. Mr. President, I thank the Senator from Oregon for his powerful statement and powerful presence. We look forward to 110 percent of that power being back with us in the days ahead.

Mr. WYDEN. I thank the Senator.

Mr. LEVIN. The Armed Services Committee held two excellent hearings to consider the final report of the working group that reviewed the issues associated with the repeal of don't ask, don't tell. That report concluded that allowing gay and lesbian troops to serve in the U.S. Armed Forces, without being forced to conceal their sexual orientation, would present a low risk to the military's effectiveness, even during a time of war, and that 70 percent of the surveyed members believe the impact on their units would be positive, mixed, or of no consequence.

As one servicemember told the working group:

All I care about is can you carry a gun, can you walk the post.

In combat, the troops have told us that what matters is doing the job.

We also learned during the course of our hearings that while predictions of problems after repeal were higher in combat units than among troops, this commission found that the difference disappeared among those who had actual experience serving on the front lines with gay colleagues; that is, experience is a powerful antidote to negative stereotypes about gay service members.

We learned that when our close allies, Great Britain and Canada, were preparing to allow open service by gay and lesbian troops, there were concerns about problems there. Those concerns totally disappeared after they changed their policy to allow service, but those concerns—that level of concern in our allies' armies was higher than the current level of concern in our troops. Both those countries and other allies, such as Israel, made the transition with far less disruption than expected, and their militaries serve alongside ours in Afghanistan with no sign that open service diminishes their or our effectiveness.

Secretary Gates has assured everybody he is not going to certify that the military is ready for repeal until he is

satisfied with the advice of the service chiefs that we have mitigated, if not eliminated, to the extent possible, risks to combat readiness, to unit cohesion and effectiveness. We learned that Secretary Gates, Admiral Mullen, and other senior military leaders are concerned that unless we pass this law; that is, without this legislation, they are going to be forced to implement a change in policy not when they can certify that they are ready, as provided for in this legislation, but when a court orders a change. The only method of repeal that places the timing of repeal and the control of implementation in the hands of our military leaders is the enactment of this bill.

There are a lot of reasons the repeal of don't ask, don't tell can and will, hopefully, happen, but we know it can happen without harming our military's effectiveness. Those are the reasons we can do this safely, but there are other reasons why we must end this discriminatory policy. In Admiral Mullen's memorable words, it is a policy which "forces young men and women to lie about who they are in order to defend their fellow citizens." We should end this policy because it is the right thing to do.

Some have argued that this is social engineering or that this is partisan, even though this change is supported by the overwhelming majority of the American people. They are grossly mistaken.

Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. One minute.

Mr. LEVIN. Mr. President, I am not here for partisan reasons; I am here because men and women wearing the uniform of the United States who are gay and lesbian have died for this country because gay and lesbian men and women wear the uniform of this country and have their lives on the line right now in Afghanistan, Iraq, and other places for this country. One of those is a captain by the name of Jonathan Hopkins. He finished fourth in his class at West Point, commanded two companies—one in combat—and earned three Bronze Stars, including one for valor in combat. Yet that decorated combat leader had to leave the Army because of don't ask, don't tell. I am here because of SSgt Eric Alva, the first ground unit casualty of the war in Iraq. The first casualty in the war in Iraq was a gay soldier. The mine took off his right leg, and that mine that took off his right leg didn't give a darn whether he was gay or straight. We shouldn't either.

We cannot let these patriots down. Their suffering should end. It will end with the passage of this bill. I urge its passage today. It is the right thing to do.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, it is my understanding that I have 10 minutes,

and I would like to ask the Chair to let me know when I have 1 minute remaining.

The ACTING PRESIDENT pro tempore. The Chair will so notify.

Mr. INHOFE. First of all, Mr. President, we have a couple of votes today on things we should have been addressing for a long period of time in order to get to the bottom of them, and one is the DREAM Act.

I think the Senator from Alabama did a thorough job of talking about the problems. I would only say this about the DREAM Act. I have been privileged over the past 20 years to probably give more speeches at naturalization ceremonies than anybody else I know. You look at these people who did it the legal way—they came in and learned the language, and I have to say, Mr. President, they probably know more about the history of this country than many of us in this Chamber. They do it the right way. They study, and they are proud. When I see something like this, which I believe is done purely for political reasons, I just can't imagine slapping these people in the face—the people who did it in the legal way—and saying it is all right to open the door.

So enough on that. I think that was covered by the Senator from Alabama.

I do wish to speak about don't ask, don't tell. I thought back in 1993, during the Clinton administration, that this probably wouldn't work. I was shocked when I found out how well it has worked for this long period of time; that is, the don't ask, don't tell policy. We have a saying in Oklahoma: If it ain't broke, don't fix it. This isn't broke. It is working very well.

This is something else I never believed would work, but I was a product of the draft—I was drafted into the U.S. Army. Yet today we have an all-volunteer force. Our recruitment and retention today in all services is over 100 percent. I look at this, and I wonder what effect this is going to have on that. I think we have some pretty good indications on what that effect would be.

First of all, the study that was supposed to take place was supposed to have the input of the members of the services. The ones I have talked to felt that it was already over. In fact, it was. We go out and ask them for their input as to the repeal of don't ask, don't tell, how it would affect our military and their operations, and then we turn around and go ahead and pass it. We did that on May 27. So I think they didn't respond, as they normally would to a survey, because the decision was already made.

When I look at this and I see things written into this—well, first of all, like 23 percent, even on this survey, said they would leave or think about leaving sooner than they had planned. That is 23 percent. Twenty-seven percent of the military members surveyed said they would not be willing to recommend military service to a family member or close friend. Our studies

have shown us that 50 percent of those who join the service do so at the recommendation of someone who is already in the service.

So when you look at this report, everyone in the working group—and the working group is made up of a large number of people—says they didn't tabulate the results, but when pressed, they said their sense on the don't ask, don't tell policy is that the majority of views expressed were against repeal of the current policy.

I think, if you really want to know, there are four very courageous chiefs of the services who have been willing to stand up and be counted.

General Casey is the Chief of Staff of the Army. After a long statement at a hearing we had on the 3rd of this month, he said:

As such, I believe that implementation of the repeal of don't ask, don't tell in the near term will, one, add another level of stress to an already stretched force; two, be more difficult in combat arms units; and, three, be more difficult for the Army than the report suggests.

At the same December 3 hearing—so this is current stuff—General Schwartz of the Air Force said:

Nonetheless, my best military judgment does not agree with the study assessment that the short-term risk to the military effectiveness is low. . . . I remain concerned with the outlook for low short-term risk of repeal to military effectiveness in Afghanistan.

He goes on to talk about the implementation.

I therefore recommend deferring certification and full implementation until 2012, while initiating training and education efforts soon after you take any decision to repeal.

So there is General Schwartz of the U.S. Air Force agreeing with General Casey that this should not be implemented.

Then in that same hearing, General Amos said:

While the study concludes that . . . repeal can be implemented now, provided it is done in [a] manner that minimizes the burden on leaders in deployed areas, the survey data as it relates to the Marine Corps' combat arms forces does not support that assertion.

He goes on to talk about the element of risk, which is a term we use in the military when you change something, and whether that risk will be low, medium, or high. The risk in this case ranges from medium to high in the estimates of these individuals who really know what they are talking about.

I also have a quote from General Amos of just 2 days ago. This was actually on December 14, as opposed to the 3rd. He said:

When your life hangs on the line, you don't want anything distracting . . . Mistakes and inattention or distractions cost Marines' lives. So the Marines came back and said, "Look, anything that's going to break or potentially break that focus and cause any kind of distraction may have an effect on cohesion." I don't want to permit that opportunity to happen. . . . If you go up to Bethesda Hospital . . . Marines are up there with no legs, none. We've got Marines at Walter Reed with no limbs.

This is the statement of General Amos. Let me repeat. He said:

When your life hangs on the line, you don't want anything distracting . . . Mistakes and inattention or distractions cost Marines' lives.

So we are talking about marines' lives in this case, and that is the significance.

I could go on. We have been talking about this now for a long period of time as to some of the very serious problems.

I have a letter I read some time ago from 41 retired chaplains who sent a letter to President Obama and Secretary Gates stating that normalizing homosexual behavior in the Armed Forces will pose a significant threat to chaplains' and servicemembers' religious liberty. The letter warned that reversing the policy will negatively impact religious freedom and could even affect military readiness and troop levels because the military would be marginalizing deeply held religious beliefs.

I know we are very short on time—votes are going to be coming up—but I have to respond to something the distinguished chairman of the Armed Services Committee said. He was saying we will not implement this until we find out and make a determination, and he was speaking of himself, Admiral Mullen, the Chairman of the Joint Chiefs of Staff, the Secretary of Defense, and the President; that they are not going to implement this until they have studied this and determined it is not going to have the risks and all that.

But wait a minute, let's look at what they have already said. They have already made up their minds. President Obama said this year: I will work with Congress and our military to finally repeal the law that denies gay Americans the right to serve the country they love because of who they are. Secretary Gates said: I fully support the President's decision. The question before us is not whether the military prepares to make this change but how we best prepare for it. And Secretary Gates also said he strongly preferred congressional action as opposed to court action. Admiral Mullen had already made up his mind. These are his words: Mr. Chairman, speaking for myself, it is the right thing to do. That is why, when people stand up and say they are not going to do this until such time as these three people certify that it is the right thing to do, they have already done it. That is what is behind this. I don't want anyone out there to think this is an open process.

The last thing I would say is that I will be spending New Year's Eve in Afghanistan with the troops, and I know what they are going to say. They are going to say the same thing they said before: We were under the impression last January that we were going to have input in this. We haven't had input.

So I think if you want to pursue this, we should have the time to go ahead

and do it the right way, not try to do it at the last minute, before—well, one day before my 51st wedding anniversary.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent there be 5 minutes additional time on each side, an additional 5 minutes be allowed for Senator GRAHAM on this side.

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

Mr. MCCAIN. I thank the Chair and my colleagues and the Senator from Illinois.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. UDALL of Colorado. Mr. President, I start by noting it has been a pleasure to work with Senator LIEBERMAN, Senator COLLINS, Chairman LEVIN, Senator GILLIBRAND, and others in the effort to repeal this outmoded law.

I have spoken many times about the repeal of don't ask, don't tell and how it improves our national security, but I would like to make a few additional short points today before we take this important vote at 10:30.

First, repealing this law is not about scoring political points or catering to a special interest group. Rather, it is about doing the right thing for our national security, especially during a time of two wars. Instead of turning away qualified interpreters, mechanics, infantrymen, and others, we need every able-bodied man and woman who is willing to fight for their country.

An exhaustive study by the Pentagon recently revealed what numerous reports have shown, that don't ask, don't tell can be repealed without harmful effects. In fact, what it shows is our national security will be enhanced by this repeal. That is one of the reasons our Defense Secretary, Robert Gates, and the Chairman of the Joint Chiefs of Staff, Admiral Mullen, have strongly urged us to repeal the law this year, before we adjourn this week.

Second, the United States lags—sadly lags—behind the world's other top militaries which allow open service by gays and lesbians. Our troops fight next to servicemembers from many of these countries every single day. There is no evidence showing that our military operations in Afghanistan or Iraq are negatively affected by allowing gay servicemembers to serve openly alongside U.S. servicemembers.

Third, the vast majority of Americans support repealing this harmful law. As the Pentagon study showed, our servicemembers are complete professionals. They will comply with the repeal, and they will not allow open service to negatively affect the jobs they do.

Finally, if the Senate does not act to give the Department of Defense and the President the authority to end this policy, then we are leaving the issue in

the hands of the courts. Secretary Gates has said it makes far more sense to bring certainty to don't ask, don't tell through legislation rather than through lawsuits.

Let me end with the words of a Marine captain who wrote a courageous opinion piece this week that was in the Washington Post. He said:

It is time for "don't ask, don't tell" to join our other mistakes in the dog-eared chapters of history textbooks. We all bleed red, we all love our country, we are all Marines. In the end, that is all that matters.

I yield the floor.

Mr. GRAHAM. Mr. President, I think Senator MCCAIN asked I be recognized for 5 minutes. If that is correct, I would like to proceed.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. GRAHAM. Mr. President, it is a week before Christmas. I don't know where we will be next week. All I can say is, the Senate is taking up some very important matters—the don't ask, don't tell repeal. The Marine Corps Commandant said he believes changing this policy this way would cause distraction among the Marine Corps to the point that he is worried about increased casualties. Let's hope he is wrong. But you have to ask yourself, is he crazy to say that and is he the kind of man who would make such a chilling statement without having thought about it?

My advice to my colleagues is that the Marine Corps Commandant is a serious man who is telling this body and this Nation that repeal, as being envisioned today, could compromise focus on the battlefield, and we are in two wars.

The review from the military is positive in one area, negative in the other. The Army, the Air Force, particularly the Marine Corps have cautioned us not to do this now this way. Other people have said now is the time. I can only tell you that those in close combat units have the most concern about repealing this policy.

Some will say this is a civil rights issue of our time, the day has come, we need to move forward as a nation. The Marine Corps does not have that view. They have a different view, that this is about effectiveness on the battlefield at a time of war, not about civil rights.

It is up to the Members of the body to determine who is right and who is wrong; to be cautious or to boldly go forward. But to those Senators who will take the floor today and announce this as a major advancement of civil rights in America, please let it be said that you are doing it in a fashion that those who have a different view cannot offer one amendment. We are doing this in a way that the Senate, those of us who want to maybe speak for the Marine Corps and have some amendments and ideas that may make this less distracting, have zero ability to offer an amendment on a policy change that the Commandants of the Marine Corps, the Air Force, and the Army say is problematic.

To those who are pushing this process, it is not appreciated. It is not appreciated by your fellow Senators, and I don't think it is going to be appreciated by the men and women who are going to have to live under this kind of change.

Does that matter? Apparently not. That says a lot about the Senate. That says a lot about modern politics.

To the DREAM Act, I have been involved in comprehensive immigration reform for many years. Senator DURBIN and I have talked about how to make the DREAM Act part of comprehensive immigration reform. To those who have come to my office, you are always welcome to come, but you are wasting your time. We are not going to pass the DREAM Act or any other legalization program until we secure our borders. It will never be done stand-alone. It has to be part of comprehensive immigration reform.

There is a war raging in Mexico that is compromising our national security. I would argue that the best thing for the Senate to do, the House to do, the administration to do, is work together to secure our borders before we do anything else.

To those who are bringing up this bill today, I know why you are doing it. You are not doing it to advance the issue. You are doing it to advance your situation politically. It is not appreciated. You are making it harder. You care more about politics in the last 2 weeks than you care about governing the country. This will not help America do the things America does. It is not appreciated.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. LIEBERMAN. Mr. President, if I may, I would say that of the time we have, this side will yield 5 minutes to the Senator from Virginia, and I thank him for coming over to speak.

Mr. WEBB. Mr. President, I rise in support of the notion that we need to make adjustments to this policy, this don't ask, don't tell policy. I say that after many years of thought and consideration and also in light of the analysis that has been provided by the Department of Defense to the Armed Services Committee, on which I sit.

I would say to my friend from South Carolina, I take the points he has made about the concerns in small-unit cohesion and that has gone into the formula I have used myself in order to come to this conclusion.

We need, first of all, to understand what this is and what it is not. The question is not whether there should be gays and lesbians in the military. They are already there. According to General Hamm, who conducted this extensive study, approximately the same percentage of the military is gay and lesbian as in our general population. The question is not about whether anyone should be able to engage in inappropriate conduct as a result of this policy, because we will not allow that

and we will be very vigorous in our oversight of the Department of Defense to make sure that does not occur.

The question is whether this policy, as it was enacted, works today in a way that, on the one hand, can protect small-unit cohesion or to sort that out and, on the other, allow people to live honest lives.

Here is what we have. We have a Secretary of Defense, who served in the Air Force and who implemented a policy of nondiscrimination when he headed the CIA, coming forward strongly and saying he believes the alteration of this policy will work. I would remind my colleagues, he began as Secretary of Defense in the Bush administration.

We have a Chairman of the Joint Chiefs, who has an extensive career in surface warfare, starting with small destroyers up to commanding fleets, saying he believes the policy should change and that it can work.

We have a Vice Chairman of the Joint Chiefs, a marine, saying he believes this policy should change and it can work.

Most interestingly, we have General Hamm, who conducted this study, a former enlisted Army soldier, an infantry officer whose religious beliefs cause him great concerns about the notion of homosexuality, at the same time saying this policy should change and it can be changed.

That is what we are seeing. The question, and I think Senator GRAHAM laid it out very well, is whether a change in this policy will create difficulties in small-unit cohesion. That depends, as I mentioned during these hearings, on how this policy is implemented. I wrote a letter yesterday to Secretary Gates, wanting to reaffirm my understanding that this repeal would contemplate a sequenced implementation for the provisions for different units in the military as reasonably determined by the service chiefs, the combatant commanders, in coordination with the Secretary of Defense and Chairman of the Joint Chiefs.

I ask unanimous consent it be printed in the RECORD.

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

(See exhibit 1.)

Mr. WEBB. He responded to me this morning. I ask his full letter be printed in the RECORD.

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

(See exhibit 2.)

Mr. WEBB. He said:

This legislation would indeed permit a certification approach as you suggest. . . . The specific concerns you raise will be foremost in my mind as we develop an implementation plan.

Without this, I would say, I would not be voting to repeal this. I have spent my entire life in and around the military, including 5 years in the Pentagon. With this understanding and with the notion that we need to be putting a policy into place that allows an

open way of living among people who have different points of view, I am going to support this legislation.

EXHIBIT 1

U.S. SENATE,

Washington, DC, December 17, 2010.

Hon. ROBERT GATES,  
Secretary of Defense, The Pentagon, Wash-  
ington, DC.

My purpose in writing is to reconfirm my understanding that the certification requirements contained in the Don't Ask, Don't Tell Repeal Act of 2010 contemplate a sequenced implementation of its provisions for different units in the military, as reasonably determined by the service chiefs and unified combatant commanders in coordination with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff.

This was my understanding of the response I received from General Cartwright when I raised the issue during his testimony December 3, 2010. Specifically, I asked if the process could be considered service-by-service, combat arm-by-combat arm, or unit-by-unit. He agreed that this was a correct interpretation.

Knowing of your many current commitments, I would very much appreciate a short, written confirmation or clarification on this matter as soon as possible.

Sincerely,

JIM WEBB,  
U.S. Senator.

EXHIBIT 2  
SECRETARY OF DEFENSE,

Washington, DC, December 17, 2010.

Hon. JIM WEBB,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR WEBB: Thank you for your letter of December 17, 2010, regarding the certification requirements contained in the Don't Ask, Don't Tell Repeal Act of 2010.

In response to your question, it is my understanding that this legislation would indeed permit a certification approach as you suggest. We have not determined the specific methodology that would be used should this legislation pass, but I can assure you that the specific concerns that you raise will be foremost in my mind as we implement the plan. Further, the Chairman of the Joint Chiefs of Staff and I remain committed to working closely with the Service Chiefs and the Combatant Commanders in developing this process.

As Admiral Mullen and I have stated previously, neither he nor I would sign a certification until we were satisfied, after having consulted with each of the Service Chiefs and Combatant Commanders, that risks to combat readiness, unit cohesion, and effectiveness had, in fact, been mitigated, if not eliminated, to the extent possible for all Services, commands, and units.

Sincerely,

ROBERT M. GATES.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I believe under the previous order I have 5 minutes of Senator McCain's time. I would like to take a minute to speak on this issue of repeal of don't ask, don't tell. I wish to start by talking about the process.

Here we are, once again, at the end of the year, 1 week before Christmas, dealing with a very sensitive, a very emotional issue that is of critical importance to our men and women in the military, as well as every other Amer-

ican, but most significantly those men and women who are willing to put their lives in harm's way to protect America and protect Americans—and they do such a good job of that. What we have seen is the House took up a bill, passed a bill, it comes to the Senate, direct to the floor, no opportunity for amendments, limited opportunity for debate—which we will have today—and then we are going to vote.

I see the assistant majority leader is here. I wish to say that as we move into next year, get ready—get ready—because this game can be played by both sides. There will be a number of bills that are passed in the House next year that the majority is not going to want to vote on. But they better believe those bills are going to be coming to the floor of the Senate in the same way this bill is coming, and we are going to insist on that.

Second, let me just say we are in the middle of two military conflicts, where men and women are getting shot at, injured, killed, doing heroic acts, and providing for freedom in a part of the world that is of critical importance to all Americans and, at the same time, making sure, as they fight that battle in Iraq and Afghanistan, those individuals who would seek to do harm to America and Americans are not allowed to do so.

We have a policy in place called don't ask, don't tell that has been in place for 18 years now and it has worked. Admiral Mullen, in his testimony before the Senate Armed Services Committee, said that as a commander he had to terminate individuals who decided to let it be known they were a member of the gay or lesbian community, and he did.

I said in an additional question to him when he responded to that: Did you have a morale issue when you had to terminate those people? He said: No; morale remained high.

Morale today, in every branch of our service, is probably as high as it has ever been in the last several decades. Recruiting and retention are at all-time highs. But what does this survey that was sent out on this issue to military personnel and military families show? First of all, it does not address the issue of: Do you support repeal of don't ask, don't tell? They did not ask the question. The survey assumes the repeal and talks about implementation. What is interesting about the survey is that the individuals who conducted it, in addition to sending out pieces of paper, also had personal interviews, they had online, back-and-forth chats with individual members of the military, and a majority of the individuals who wear the uniform of the United States who had personal interaction with the individuals who did the survey were opposed to the repeal of don't ask, don't tell.

The survey does show that nearly 60 percent of the respondents from the Marine Corps and the Army combat arms said they believe repeal would

cause a negative impact on their unit's effectiveness. Among marine combat arms, the percentage was 67 percent. And we think this is a good idea? We think it is a good idea when 67 percent of those marines who are in foxholes and are dodging bullets around corners in Afghanistan as we speak today, who say that this is going to have an impact on them, we think it is a good idea to repeal this policy?

And, by the way, this has nothing to do with the valiant service that gays and lesbians have provided to the United States of America. That is a given. We all agree with that. But what the Marine Corps and what the Army, as well as what the Air Force Chief said is this is not the time to repeal this. In the middle of a military conflict is not the time to repeal a policy that is working, that has the potential for affecting morale, it has the potential for affecting unit cohesiveness, and it also, most significantly in my mind, according to both General Casey and General Amos, does have the potential for increasing the risk of harm and death to our men and women who are serving in combat today.

If for no other reason, we ought not to repeal this today. Should it be done at some point in time? Maybe so. But in the middle of a military conflict is not the time to do it. So as we think about this, and we think about the men and women who are serving, and the fact that, as Senator INHOFE alluded to earlier—I will not repeat all of those numbers—but the fact is that if the percentages in response to the survey turn out to be true, then we are going to have about 30 percent of marine combat forces who are going to get out early and not reenlist, and we are going to have to replace them. We have got about 25 percent of those combat troops in the Army who are not going to reenlist and who would like to get out early.

If that happens, we are going to have 250,000 soldiers and marines that need to be replaced in short order. When I asked Secretary Gates about it, he said: Well, that is not going to happen. Well, if it does happen, we are going to have serious consequences.

I do hope common sense will prevail here and that we will not get cloture, and we can move on to something that is extremely important to the men and women of America at this time in our calendar year.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Chair. I would yield myself up to 8 minutes of the time on our side.

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

Mr. LIEBERMAN. Mr. President, I want to thank Chairman LEVIN, Senator UDALL of Colorado, and Senator WEBB for their informed and informative remarks in support of the motion to concur with the House in regard to



repealing the policy that has come to be known as don't ask, don't tell.

I think that in considering this matter today we have an opportunity not just to right a wrong, not just to honor the service of a group of American patriots who happen to be gay and lesbian, not just to make our military more effective, but to advance the values that the Founders of our country articulated in our original American documents.

I want to talk very briefly about that, because it is important to set what we are doing here in the context of history. From the beginning, America has been a different Nation. We did not define ourselves based on our borders. Our Founders defined America based on our values, and none stated more powerfully than those words in the opening paragraph of the Declaration of Independence that: There are self-evident truths. This is a political statement, a constitutional statement, but also a religious statement.

There are self-evident truths, and one of them is that all of us are created equal and endowed by our Creator with those unalienable rights to life, liberty, and the pursuit of happiness. In the second paragraph, our Founders say, in the Declaration, that they are forming this new government, America, in order to secure those rights to life and liberty. The sad fact is, at the moment they adopted the Declaration of Independence, these rights were not enjoyed for a lot of Americans, including, of course, the slaves, most of all, but women had no legal rights to speak of.

One way I think I like to look at American history is as a journey to realize, generation after generation, in a more perfect way, to make ours a more perfect Union, the rights given in the Declaration of Independence, the rights promised in the Declaration of Independence and, of course, with a lot of pain and turmoil we have done that with regard to race in our country, certainly true with regard to women.

We have created an ethic. It is the promise of America, but in some sense it is what we also call the American dream, that in this country you are judged not by who you are but how you perform. In this country, no matter where you were born or how you were born, the fact is you are able to go—if you play by the rules and you work hard, you should be able to go as far as your talents will take you, not any characteristic that one might associate with you, any adjective that one might put before the noun “American” whether it is White American, Black American, Christian, Jewish American, gay or straight American, Latino, or European American, that you should be entitled to go as far as your talents and your commitment to our country will take you.

In our generation, it seems to me that the movement to realize the promise of the Declaration has been one of the places that has been most at the forefront and realized most signifi-

cantly is in regard to gay and lesbian Americans, to promise that, in our time, we will guarantee, as a matter of law, that no one will be denied equal opportunity based on their sexual orientation. They will be judged by the way they live and the way they perform their jobs. That is why the existing don't ask, don't tell policy is, in my opinion, inconsistent with basic American values.

It is not only bad for the military, it is inconsistent with our values. I want to say it is particularly bad for the military, because in our society, the American military is, in my opinion, the one institution that still commands the respect and trust of the American people, because it lives by American values. It fights for American values. It is committed to a larger cause and not divided by any division, including party.

So to force this policy as the don't ask, don't tell does on our military is to force them to be less than they want to be, and less than they can be. Admiral Mullen, the No. 1 uniformed military officer in our country today, said very powerfully:

We—

The military—

are an institution that values integrity, and then asks other people to join us, work with us, fight with us, die with us, and lie about who they are the whole time they are in the military.

That, Admiral Mullen says, is what does not make any sense to me. I agree. The fact is this is not just a theory we are talking about. The fact is that under the don't ask, don't tell policy, more than 14,000 members of our military have been discharged since 1993, not because they performed their military responsibilities inadequately, not because they violated the very demanding code of personal conduct in the military, but simply because of their sexual orientation.

I think if you view this as an issue, that can be controversial in the realm of rhetoric or theory. But if you face those 14,000—and I have talked to a lot of them—yesterday, an Air Force major, commanding more than 200 members of the Air Force—all sorts of commendations, tossed out simply because someone did not like him, found out he was gay, and he was pushed out.

A student at one of the academies, at the top of his class, same thing. Because of his sexual orientation, tossed out. You know we spend, by one estimate, more than half a billion dollars training those 14,000 members of the American military that we discharged solely because of their sexual orientation. What a waste. These people simply want to serve their country.

I know you, Mr. President, have probably had the same experience I have. When you talk to any of the 14,000, why are they lobbying, pleading with us to repeal don't ask, don't tell? They want to go back and serve our country. They want to put their lives on the line for our security and our

freedoms. Does it make any sense to say no to them simply because of a private part of their person?

In the survey that was done as part of the Pentagon report, there are some remarkable numbers. One of them is that of the gay and lesbian members of our military surveyed, only 15 percent said they would come out, that they would reveal their sexual orientation. One of them was quoted as saying, and I paraphrase: That is private. That is not part of my responsibility in the military. None of us do that in the military.

And, incidentally, when, as I hope and pray don't ask, don't tell is repealed, gay and lesbian members of the military, just as straight members, will be held to the highest demands and standards of the military code of conduct. If they are involved in any inappropriate behavior, they will be disciplined.

Mr. President, I ask unanimous consent for 2 additional minutes of the time we have.

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

Mr. LIEBERMAN. The other significant number in the survey I thought was this: Well over two-thirds of the members of our military surveyed, 120-some-odd thousand surveyed, said that they thought the military was ready for this change.

I know there has been talk about the marines. There is a fascinating number about the marines. A significant number of the marines are worried about this change in policy. But among those marines who have served in marine units with gay and lesbian marines, 84 percent say no problem. Why? Because we do not care, when we are out in combat, what somebody's race or gender or ethnicity or religion or sexual orientation is; all we care is whether they have got our back and they are a good member of the unit.

My friends have said that this simply—if, and I hope when this measure passes, and don't ask, don't tell is repealed, it authorizes the repeal, but it does not finish it. It starts a deliberative process in which, without time limit, the Secretary of Defense, the President, the Chairman of the Joint Chiefs of Staff, have to decide that it is time for the repeal to occur. It is a very reasonable process. And it saves the military, as Secretary Gates has said over and over again, from facing an order from a court that forces the military to do this immediately.

Bottom line, and I will speak personally here, I was privileged about 10 years ago—incidentally, thinking of the DREAM Act, I am a grandchild of four immigrants to America. Could they have ever dreamed that I would end up a Senator—2,000 have had the opportunity—to be the first Jewish American to run on a national ticket?

I will never forget. Someone called me up that day and said how thrilled they were, a member of another minority group, and said: You know, Joe,



here is what is significant. When a barrier falls for one group of Americans, the doors of opportunity open wider for all Americans.

I think we have that opportunity today to make our great country even greater, and our best-in-the-world military even better.

I yield the floor.

Mr. DURBIN. Mr. President, how much time remains on each side?

The ACTING PRESIDENT pro tempore. There is 23 minutes remaining for the majority, just under 16 minutes to the Republicans.

Mr. DURBIN. I yield to the Senator from California, Mrs. FEINSTEIN, for 7 minutes.

Mrs. FEINSTEIN. Mr. President, let me thank Senator LIEBERMAN for his authorship of and advocacy for repeal of don't ask, don't tell. I wish to use my time to speak about pieces of legislation.

Don't ask, don't tell has been with us now for 17 years. I just pulled a speech I made on the floor 17 years ago. The DREAM Act has been with us for 10 years. So neither of these are surprise bills. Both of these affect large numbers of people in major ways. For many, they are their life. For those who love the military, who see no life outside of the military, don't ask, don't tell is their life. The same for students, the DREAM Act becomes their life.

Let me begin with don't ask, don't tell. Seventeen years ago, Senator BOXER introduced an amendment. I spoke to that amendment. We lost by a vote of 33 to 63. Only one-third of the Senate voted to repeal don't ask, don't tell in what was a benign amendment, essentially a consent resolution, but it lost. It lost despite the testimony of legions of military.

The time has gone by, 17 long years. Many of us believe the policy is unconstitutional. We believe it does more harm than good. And 17 years later, I am only more certain that is the case. The criteria for serving in the U.S. Armed Forces should be courage, competence, and a willingness to serve. No one should be turned away because of who they are—not because of their race, their sex, or their sexual orientation. Since 1993, however, don't ask, don't tell has required gay and lesbian Americans to make a choice. You can serve the country you love, but only if you lie about who you are.

This has forced honorable American soldiers to conceal their true selves from their family, their friends, their fellow servicemembers, and their military superiors. It has deprived the U.S. military of talent and badly needed special skills.

Let me discuss one person. SGT Lacye Presley served two tours of duty in Iraq as an Army medic. The Army awarded her a Bronze Star for her heroic action in keeping several critically wounded civilians alive after a car bomb exploded in their midst. Another Army sergeant who worked with

her around the same time said this about Sergeant Presley:

I would serve with Sergeant Presley any day, no doubt about it. She's one of the best medics that I've ever seen in my 18 years of service.

Sergeant Presley was discharged after someone reported her sexual orientation to a senior commander. This is one for Sergeant Presley.

Let me discuss some other affected military personnel. Former PO2 Stephen Benjamin was an Arabic linguist for the Navy. He started his service in 2003, graduated in the top ten percent of his class from the Defense Language Institute, and spent 2 years translating for the Navy. In 2007, he was prepared to deploy to Iraq but was turned away and discharged because it was discovered that he was gay.

Army SGT Darren Manzella served two tours of duty providing medical services in Iraq. He earned three promotions over 6 years and was awarded the Combat Medical Bridge for leading over 100 patrols to treat the wounded and evacuate casualties. But after he confided in a supervisor about his sexuality, he was threatened with discharge, his sexuality was made public, and he was later discharged under don't ask, don't tell.

PVT Randy Miller of Stockton, CA, was a member of an elite Army paratroop division with a long family history of military service. He spent 2 years training in preparation for deployment and then served a tour of duty in Iraq beginning in the winter of 2005. But when he returned to the United States to be treated for a knee injury, someone reported that he was gay and he was discharged from the Army.

Finally, there is LTC Victor Fehrenbach, a 19-year veteran of the Air Force. He has flown 88 combat missions in Iraq, Afghanistan, Kosovo, and the former Yugoslavia. He received nine Air Medals and five Commendation Medals. When our country was attacked on September 11, 2001, he was hand-selected to fly patrols over Washington, DC, as part of the initial alert crew.

But Colonel Fehrenbach has been recommended for honorable discharge because his sexual orientation was made public in 2008.

These are only five stories. There are at least 13,500 more. All of these men and women volunteered to defend the country they love, only to be discharged because of who they happen to love.

Now I wish to speak about the DREAM Act. I thank those who have supported this, brought it forward—Senator HATCH, Senator DURBIN, as well as Senator LIEBERMAN and Senator COLLINS on repealing don't ask, don't tell. I have supported the DREAM Act since it was first introduced. Each year the support has grown.

Each year approximately 65,000 undocumented young people graduate

from America's high schools. Most of these did not make a choice to come to the United States. Many were brought here by their parents, some at 6 months old, 6 years, 12 years—whatever it is. Many of these young people grew up in the United States. They have little or no memory or resources in the country from which they came. They are hard-working young people, dedicated to their education or serving in the Nation's military. They have stayed out of trouble. Some are valedictorians—I happen to know one—and honor roll students. Some are community leaders and have an unwavering commitment to serving the United States.

Mr. President, I would like to tell you about a few college students in California, who would benefit from the DREAM Act.

Ana was born in Mexico. She was brought to the United States when she was 7 years old. She says one of her earliest memories is her mother waking her up early in the morning to go to school in the United States. She quickly learned English and excelled in school. She didn't find out that she was undocumented until she was 13 years old and overheard someone talking about "illegal aliens." When she asked her father what it meant, he told her that she should never ask about that word again. Like most kids, she didn't know what it meant to be undocumented.

Then, when she was ready to apply for college, her guidance counselor asked for her social security number. This is when the meaning of "undocumented" hit home. She graduated from high school with honors and is currently a sophomore at DeAnza College in California. She is active in her student government and is studying political science.

Ivan was brought to the United States when he was just 10 months old. His family settled in San Bernardino, CA, where Ivan excelled in school. He found out about his undocumented status in the 7th grade when he could not accept an award he earned at a science fair because he didn't have a Social Security number.

Ivan is a Presidential scholar who graduated within the top 1 percent of high school graduates in San Bernardino County. He is currently a senior at California State University and is a pre-med biology major. He hopes to become a doctor in the Army someday and says that it would be an honor to provide care to the brave men and women risking their lives for this country.

Blanca came to the United States in 1989, when she was 6 years old. Her family left Mexico after a devastating earthquake. Blanca's family settled in the San Francisco area, where she attended elementary school and graduated from high school. Although Blanca knew that she was undocumented, her family never spoke about it.

Despite being undocumented, Blanca was determined to get the best education she could. She attended Contra Costa Community College and the University of California Davis. She graduated from college in 2008 and hopes to become a lawyer someday so that she can work to prevent sex trafficking.

Justino was brought to the United States 10 years ago by his mother, along with his two siblings, to escape his abusive father. He attended school and graduated within the top 5 percent of his class. He attends Mount San Antonio College and is a student leader, actively engaged in community service in the Latino community.

Justino says that he has a strong love for his community and has been doing everything he can to improve it just like his role models, Martin Luther King, Jr., and Gandhi.

Because of their undocumented status, these young people are ineligible to serve in the military. They face tremendous obstacles to attending college. For many, English is actually their first language, and they are just like every other American student. Now reaching adulthood, these young people are left with a dead end. They can't use their educations to contribute to their communities. They can't serve the country they call home by volunteering for military service. In other words, they are dumbed down by their status. They are relegated to the shadows by their status. And along comes the DREAM Act. That provides an opportunity for these young people to prove themselves. It provides the incentive to prove themselves.

It would permit students to become permanent residents if they came here as children, are long-term U.S. residents, have good moral character, attend college, or enlist in the military for 2 years. So already they have to prove themselves. The legislation requires students to wait 10 years before becoming lawful permanent residents and undergo background and security checks and pay any back taxes. This is a multistep process. It is not a free pass.

Additionally, according to CBO, the DREAM Act would actually increase Federal revenues by \$2.3 billion over the 10 years and increase net direct spending by \$912 million between 2011 and 2012.

In addition, the Congressional Budget Office and the Joint Committee on Taxation indicate that enacting the bill would reduce deficits by about \$2.2 billion over 10 years.

DREAM is a winner. Repealing Don't ask, don't tell is what we should do. I hope there are "aye" votes sufficient to pass both of these today.

I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Arizona.

Mr. KYL. Could I be advised after I have spoken for 5 minutes.

Mr. President, the DREAM Act is an attempt to cure a symptom of a prob-

lem. The symptom is that some children have been brought here illegally and they are suffering the consequences of being illegal aliens under American law. The problem is illegal immigration, which causes all manner of other bad results or problems. There are huge costs to society and any number of personal tragedies as a result of illegal immigration, the DREAM Act problems being only one subset.

Just a few days ago, another Border Patrol agent was killed in the State of Arizona, illustrating again another kind of personal tragedy from illegal immigration. Unfortunately, treating symptoms of the problem might make us feel better because we are doing something for a particular group of folks, but it can allow the underlying problem to metastasize. Unfortunately, that is what is happening at our border.

In some respects, the problems are getting worse, not better. Our citizens have a right to be safe and secure. Right now that situation, at least in my home State, does not pertain. So the first point I make is that we have to secure the border and stop illegal immigration. When we do, there will not be more problems for people associated with education that would be solved by the DREAM Act or other problems associated with illegal immigration. We will have excluded or we will have limited the nature of the problem to simply those who are here now and then, obviously, we can deal with that problem. That is the first point.

Second, this bill is brought to us with no hearings or markup in a committee. It is the sixth version of a DREAM Act. I worked with Senator DURBIN on another version of the DREAM Act in connection with the comprehensive immigration law. There are problems with this bill. Those problems need to be dealt with. But the bill comes before us under a condition in which there can be no amendments. There needs to be amendments.

In the remaining 3 minutes or so I have, let me simply identify 10 particular problems we need to deal with and can only be dealt with by getting together and working it out by having amendments, which we can't do in the short time we have.

The bill would immediately put an estimated 1 to 2 million illegal immigrants on a path to citizenship, a number which will only grow because there is neither a cap nor sunset in the legislation. These people would then have access to a variety of other Federal programs, Federal welfare programs, student loans, Federal work study programs, and the like.

Third, the entire time such individuals are in conditional status, they are not required to attend college or join the military. That is a common misperception. Only when such individuals seek to get lawful permanent resident status do they then have to proceed to complete the requirements for education or military.

Fourth, the education and military requirements can be waived altogether, including for criminal activity—in other words, people who have a serious criminal background.

Five, chain migration, which is something we dealt with in the legislation in 2009, would result from this legislation because once the citizenship is obtained, the individuals would have the right to legally petition for a green card for their family members. That means the numbers could easily triple from the 2 million plus estimated right now.

Sixth, the bill has no age limit for aliens in removal status. This is supposed to be for children, but there is no age limit for people who are in removal proceedings and simply file an application for status under the DREAM Act to stay their removal. That has to be fixed.

Seven, the bill forbids the Secretary of Homeland Security from removing any alien who has a pending application for conditional nonimmigrant status regardless of age or criminal status. In other words, it provides a safe haven for illegal immigrants, some of whom we would not want to allow to stay in the United States and should be subject to removal.

Eighth, the DREAM Act as written provides that applicants who are currently ineligible under current law for status of a green card could nevertheless be eligible under this act. The reason is because some of the grounds of waiver that exist in this act do not exist under current law, but they could be waived for DREAM Act aliens—things such as document fraud, alien absconders, and marriage fraud.

Nine, the act does not actually require that an illegal alien finish any type of degree other than a high school GPD. To receive green card status, the bill requires only that the alien complete 2 years at an institution of higher education. There is not a requirement that they ever receive a degree of any kind. The requirement is that they needn't receive a degree of any kind. This is important.

For those who want to go into the military, there is the requirement for 2 years of service in the uniformed services. When you enlist in the service today, you are enlisting for a commitment of 4 years.

Finally, removal, if it can be demonstrated as resulting in a hardship either to the applicant or to a spouse, the requirements for education can be waived altogether. So a sympathetic Secretary of Homeland Security could obviously create a situation in which there is essentially just a waiver for people to come into the United States. For these reasons, I urge colleagues to vote against cloture on the DREAM Act.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DURBIN. Mr. President, I yield to three of my colleagues at this point before, I believe, Senator MCCAIN

speaks. I yield Senator BENNET 2 minutes, Senator GILLIBRAND for 2 minutes, and Senator SCHUMER for 2 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. BENNET. Mr. President, I rise today in strong support of the DREAM Act. I have a lot of sympathy for the arguments the Senator from Arizona has made about what is going on in Arizona, what is going on in the Rocky Mountain West, where I come from, which reminds me of the need we have in this country and in this Congress to finally face up to the facts and pass comprehensive immigration reform. But that is not what we are talking about today.

What we are talking about today is the DREAM Act, a narrow bill that deals with about 65,000 people a year who are here through no fault of their own and have no other country of their own but want to make a contribution to our country—as scholars, as taxpayers, as part of our military—the people who have worked hard, who have played by the rules and they want to do nothing other than make a contribution to the United States of America, much as my grandparents and my mother wanted to make when they came here as immigrants.

So I think on this Christmas Eve it would be more than appropriate for the Senate to join the House and do the right thing and pass the DREAM Act.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I rise in support of the two very important votes we are having today on the DREAM Act and the repeal of don't ask, don't tell.

The DREAM Act is a moral imperative. These are young people who have come to this country through no fault of their own, who want nothing but to achieve the American dream—either through education or through military service—but they want to be part of this community and be able to give back to this community.

In a country that was founded on immigrants, where the richness of our heritage and culture and the breath of our economy is due to our immigrants, we want to make sure every one of these young people can become American citizens.

With regard to don't ask, don't tell, I cannot think of a policy that greater undermines the integrity of our entire Armed Services and who we are as a Nation. This is a policy that is corrosive. We are saying to men and women who want nothing but to serve this country, to give their lives for this country: No, you cannot because of who you love. I cannot think of something more egregious, more undermining of our command structure and of our goodwill, and the entire fabric of the military lives of the men and women who serve.

Mr. President, I urge my colleagues to look at this as an urgent priority for

national security. When we are talking about worrying about having two wars and terrorism at every front, we need to know all of our best and brightest—how many are not serving today because of this policy; how many will return to the military when this policy is removed. All I know is, since this policy has been in place, we have lost 13,000 personnel, more than 10 percent of our foreign language speakers, and more than 800 in mission-critical areas who cannot be easily replaced.

If you care about national security, if you care about our military readiness, then you will repeal this corrosive policy.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, today we vote on two very important issues in the great, long, and often difficult march that America has made toward equality.

That is one of the greatnesses of this country, that we inexorably move to equality. Sometimes it is painful. Sometimes it is difficult. Sometimes we take two steps forward and one step back. But as the great scholar de Tocqueville wrote, when he visited America in the 1830s: The thing that separates America from all the other countries of the world is equality always prevails.

We are dealing with equality on two scores today, in two areas. One is in the military. One of the great things about our military, No. 1, is they defend us and risk their lives for our freedom. But the second is, it has always been an integrating, positive force in America. Any policy that says you cannot serve even though you want to be an American, you are an American, is wrong; bad for our military service and bad for the country.

Second, we speak of the DREAM Act. Inevitably, from the time the first settlers came to New York, the English began to displace the Dutch, and the Dutch were upset. But what does America do? We reach out to newcomers and say: Become Americans and contribute to the American dream and work hard.

There are always people who have reasons to say no. They always fail. They may not fail this morning, but they will fail because the drive for equality is a great American drive. It is part of the American dream, and on both these issues we will prevail.

I yield the floor.

Mr. MCCAIN. Mr. President, over the last 3 years, I have spent a lot of time traveling around the State of Arizona and meeting with my constituents. Many of these trips took me to the southern part of my State where I sat down with ranchers, farmers, small business owners, local officials, and law enforcement officers in the border region and discussed the issues that were important to them and their neighbors. Everywhere I went people told me of their fear and concern over the lack of security along Arizona's border with Mexico.

Due to the drug war in Mexico, the situation along the southern border has proven to be a very serious and real threat to the people living in the region. The violence that continues to plague our southern neighbor by well-armed, well-financed, and very determined drug cartels poses a threat to our national security. Despite the increased efforts of President Calderon to stamp out these bloodthirsty and vicious drug cartels, violence has increased dramatically, claiming over 31,000 lives in Mexico since 2006. The murderers carrying out these crimes are as violent and dangerous as any in the world.

Two weeks ago, the Mexican military arrested a 14-year-old U.S. citizen who has been working as a hit man for the Cartel of the South Pacific. This child assassin came to the attention of the public after YouTube videos surfaced of him decapitating kidnapping victims. When questioned by Mexican authorities, he is quoted as saying, "When we don't find the rivals, we kill innocent people, maybe a construction worker or a taxi driver." Truly disturbing behavior.

This week there was another tragic murder on the U.S. side of the border that took the life of Border Patrol Agent Brian Terry. Our thoughts and prayers go out to his family and his fellow Border Patrol agents. Agent Terry was killed outside of Rio Rico, AZ, during a shootout with a Mexican "rip-crew" that was attempting to rip off a rival drug gang. These incidents are becoming all too common and are a by-product of the lack of resources and personnel along our border.

Incidents like these are why the residents of southern Arizona tell me that they feel that they live in a lawless, forgotten region of the country where they live in constant fear in their own homes. They are begging for our help. It is time—in fact, the time is long overdue—for the Federal Government to fulfill its responsibility to secure our international borders and ensure the safety and well-being of the families and citizens living within those borders.

All of that being said, I still believe that the overwhelming majority of men and women trying to enter our country illegally are looking for nothing more than the opportunity to improve their lives and the lives of their families. Fixing our immigration system, with reforms like the DREAM Act and the implementation of a workable and labor-market-driven guest worker program would benefit our Nation's economy and our society. Such reform would also provide immigrants desperate to come to the United States to look for work a safe alternative to illegal human smugglers or "coyotes" that have cost so many people their lives and dignity. According to the U.S. Border Patrol, 253 people died attempting to cross the Arizona border between September 2009 and October 2010.

With respect to the DREAM Act, I have great sympathy for the students

who would benefit from passage of this legislation. I have met personally with many of the students advocating for the bill, and many of their stories are heart-wrenching. Through no fault of their own, they are now caught in legal limbo that leaves them unable to obtain employment in the United States and unequipped to return to the country of their birth, often a place foreign and completely unknown to them. I truly sympathize with the plight of these men and women.

But I also feel for the men and women of Arizona who live along an insecure border and have been promised for decades that the Federal Government will do its job and stop the illegal migration and drug trafficking that run through their towns, neighborhoods, and backyards.

I pity the farmers in my State who are unable to harvest their crops because they cannot navigate the burdens of the H-2A agriculture guest worker program. Most of all, however, I sympathize with the families who live in constant fear in their homes and neighborhoods, especially those who have been victimized by criminal elements crossing the border illegally. Consequently, I cannot in good faith put the priorities of these students, as tragic as their situation is, ahead of my constituents and the American people are who are demanding that the Federal Government fulfill its constitutional duty to secure our borders. Once we fulfill this commitment, we can then address the other issues surrounding and plaguing our broken immigration system.

On a practical note, I also believe that any casual, impartial observer will recognize that our inability to secure the border has made immigration reform politically unattainable as the American public insists we stop the flow of illegal entries before considering any changes to our immigration policies. In 1986, we passed what was truly an amnesty and we failed to secure our borders either before or after that bill's passage. Consequently, we now have an estimated 12 to 20 million people living in our country illegally, and the American people have said "enough is enough." They are telling us to "secure our borders first."

We have already made steps in the right direction. In fact, we have shown our ability to work in a bipartisan fashion to secure the border during this Congress. Most recently, in August, the Senate unanimously passed legislation to deploy \$600 million in personnel and new assets to the southwest border. We must continue this important work together.

While it is true that there are more assets and resources at the border now than ever before, we need a complete and comprehensive plan that incorporates the ideas of the State and local law enforcement, elected officials, and the border Governors. In the coming months, I will begin a deliberative and comprehensive process of discovering

what is truly needed to secure our borders and give the Governors of our Southern States the peace of mind and assurance they need to certify that their borders are secure.

These elected officials are on the front line and know best what assets, personnel, and technology are needed. Once the border State Governors certify their State border has been secured and the Federal Government can demonstrate such to the American people—only then should we and can we begin working on comprehensive immigration reform.

I look forward to working with my colleagues in a bipartisan matter to address all of these issues that are important to the American people and the people of Arizona.

Mr. LEAHY. Mr. President, while partisan rancor seems to have seized the Senate on so many issues this year, on at least one count, I am encouraged and hopeful. There may yet be sufficient bipartisan agreement to repeal the discriminatory don't ask, don't tell policy before this Congress ends. I commend those Senators who have pledged to support the repeal, and I renew my own commitment to this worthy effort. It is well past time to put an end to this discriminatory and harmful policy.

Today, in the U.S. Senate, the stage is being set for one of the major civil rights victories of our lifetimes. Years from now, I hope that historians will have good cause to remember this day as a day when the two parties overcame superficial differences to advance the pursuit of equal rights for all Americans. After much effort, and just as much study and discussion, the Senate finally will proceed to an up-or-down vote on repealing this counterproductive policy.

For those who still harbor concerns that enacting this repeal would somehow harm readiness, one simple fact is the clearest answer: Gay and lesbian Americans already serve honorably in the U.S. Armed Forces and have always done so. There is no doubt that they have served in the military since the earliest days of the Republic. The only reason they could do so then, and now—even under today's discriminatory policy—is because they display the same conduct and professionalism that we expect from all of our men and women in uniform. They are no different than anyone else, and they should be treated no differently.

Ending this policy will also bring to an end years of forced, discriminatory and corrosive secrecy. Giving these troops the right to serve openly, allowing them to be honest about who they are, will not cause disciplined service members to suddenly become distracted on the battlefield. It is pandering to suggest that they would be.

This is not only my view. The Chairman of the Joint Chiefs, Admiral Mullen, has said time and again that this is the right thing to do and that it will not harm our military readiness.

Every member of our armed services should be judged solely on his or her contribution to the mission. Repealing don't ask, don't tell will ensure that we stay true to the principles upon which our great Nation was founded. We ask our troops to protect freedom around the globe. It is time to protect their basic freedoms and equal rights here at home.

Throughout our history, the Senate has shown its ability to reflect and illuminate the Nation's deepest ideals and the Nation's conscience. It is my hope that the Senate will rise to this occasion by breaking through the partisan din to proceed to a debate and vote on repealing this discriminatory and counterproductive policy.

Mr. COONS. Mr. President, I rise to voice my strong support for this legislation which I am proud to co-sponsor and which effectively repeals don't ask, don't tell.

Today, we are at a historic crossroads. Our choice is to continue a policy that conflicts with our founding principles of freedom and liberty for all, or to open the doors of the military to all Americans courageous enough to serve.

Don't ask, don't tell is discrimination, plain and simple. Any American prepared to die for their country should be afforded the respect and admiration they deserve. Brave men and women in uniform are willing to fight for our freedom every day, and it is our responsibility as Senators as Americans first to fight for theirs.

President Truman had the vision and leadership to racially integrate the military at a time when he faced even stronger opposition from political and military leaders than we face today. We should act today in that tradition.

I have met with many courageous members of the military some of whom also happened to be gay or lesbian and listened to congressional testimony on this issue. I share the view of our military leaders that the most pressing question is not whether to repeal don't ask, don't tell, but rather, how to implement a repeal. This is why I am pleased the bill before us today leaves this issue in the hands of military leaders, who are granted the time needed to certify adequate preparation for a repeal reflecting the best interests of our troops.

Under the legislation, a repeal of don't ask, don't tell would be enacted 60 days after the President, Secretary of Defense, and Chairman of the Joint Chiefs certify they have done three things. First, that they have considered the Pentagon working group report on the impact of a repeal. Second, that the Department of Defense has readied the necessary regulations for implementation. Third, that the manner of implementation is consistent with the standards of military readiness, effectiveness, unit cohesion, and recruiting and retention.

This legislation does not stipulate a timeline for this process, but provides

a congressional mandate that the policy must be changed once measures are in place to mitigate any negative impact of a repeal. This includes training, education, and additional steps to ensure a smooth transition to implementing a repeal.

The issue of implementation was one concern shared by all the service chiefs who testified before the Senate Armed Services Committee on December 3, and I am pleased it is adequately addressed in this bill. Another concern shared by all service chiefs was the view that they would prefer that Congress legislate a repeal rather than leave it to the courts. They shared a concern that a court order would compel military leaders to implement a repeal without the time and flexibility required.

As the recent Department of Defense report demonstrated, 70 percent of our troops believe a repeal of don't ask, don't tell will have little impact on military readiness or unit cohesion. Sixty-nine percent believe they have served with someone who is gay or lesbian, and of that group, 92 percent responded that serving with someone who is gay or lesbian had little impact on their unit.

These report findings demonstrate a basic truth that we can deny no longer. Gay Americans have chosen to proudly serve their country, and the current don't ask, don't tell policy forces them to lie about who they are or face discharge. In fact, we have discharged nearly 14,000 brave servicemembers since the law was implemented in 1993, simply because their sexual orientation was disclosed. Those discharged include high-decorated combat veterans, national security experts, and badly needed military linguists when our nation is engaged overseas in two wars. These are losses we can ill afford.

Sexual orientation is not a choice but discrimination is. Homosexuals in the military today face the double burden of risking their lives for their country while being forced to lie about who they are or face discharge. Today, I am pleased to join my colleagues in ending this burden once and for all and repealing don't ask, don't tell.

I wish to voice my strong and unequivocal support for this bill which effectively ends the seventeen year policy of treating homosexuals as inherently unqualified for military service. It is time we join the majority of our allies in allowing those already serving in our military to do so free from discrimination, with integrity and honor.

Mr. DURBIN. Mr. President, over the past few months, we have heard a variety of justifications for why now is not the time to repeal don't ask, don't tell.

Opponents of repeal have said that we should wait for our military leaders to call for change. Well, in the past year, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff—the two highest-ranking military leaders in America—have told us now is the time for Congress to act.

We have been told that we should wait for the results of the Pentagon study on the effects of ending don't ask, don't tell and recommendations for implementing its repeal. We now have the results of that study. It concludes that the risks associated with overturning don't ask, don't tell are low, with thorough preparation. The repeal bill before us provides for just such preparation.

A survey included in the Pentagon study shows that a substantial majority of servicemembers—about 70 percent—predict little to no negative effects from allowing gay men and lesbians to openly in our military.

Rather than listen to our top military leaders and rank and file servicemembers, opponents of repeal now want to move the goal posts. After months of exhaustive study and debate, they now say they want a survey that asks different questions and to hear from different leaders.

They say the 103-question survey, 95 forums, and 140 focus groups included in the Pentagon study were not sufficient to gauge the affects of repeal.

Enough with the stalling and blocking.

The days of don't ask, don't tell are numbered. This discriminatory policy, which is harmful to our Nation's principles and or national defense, will end. The only question is whether Congress will act and give military leaders the time they seek to make an orderly transition, or continue to delay and risk that the federal courts will demand a more abrupt change.

Congress or the courts. That is the choice.

Secretary Gates warned us as much at the release of the Pentagon study. He said:

Now that we have completed this review, I strongly urge the Senate to pass this legislation and send it to the president for signature before the end of this year. I believe this is a matter of some urgency because, as we have seen in the past year, the federal courts are increasingly becoming involved in this issue.

He continued:

Just a few weeks ago, one lower court ruling forced the department into an abrupt series of changes that were no doubt confusing and distracting to men and women in the ranks. It is only a matter of time before the federal courts are drawn once more into the fray, with the very real possibility that this change would be imposed immediately by judicial fiat—by far the most disruptive and damaging scenario I can imagine, and one of the most hazardous to military morale, readiness and battlefield performance.

Just this week, another legal challenge was filed in federal court by three former servicemembers discharged under don't ask, don't tell.

Their stories illustrate once again the arbitrary and unjust the nature of the current policy, and the harm it causes.

The plaintiffs are Air Force veterans Michael Almy and Anthony Loverde, and Navy veteran Jason Knight. Let me tell you about these brave men.

MAJ Michael Almy is the son of a West Point graduate and served 13 years in the Air Force.

Major Almy deployed to the Middle East several times in the late 1990s, helping to enforce the no-fly zones in Iraq. He deployed again in 2002 and 2004 to support the invasion of Iraq and its aftermath.

Near the end of his 2004 deployment, Major Almy was named the Field Grade Officer of the Year. It was also during this deployment that a member of his unit found e-mails Major Almy sent to another man and the discharge process started.

Major Almy's superiors and subordinates provided glowing character references during the discharge.

This is what one subordinate said—Major Almy:

one of the most respected leaders in the squadron thanks to his no nonsense approach to mission accomplishment.

He added:

I can say without any reservation that Major Almy was the best supervisor I have ever had . . . It would be an absolute travesty to lose such an outstanding officer and superior leader.

Even while his discharge was pending, Major Almy's wing commander recommended his promotion to lieutenant colonel—ahead of his peers.

None of this was enough to save Major Almy's career. Despite his exemplary record, he was discharged for being gay.

The second plaintiff, SSG Anthony Loverde, is also a highly decorated veteran of Operation Iraqi Freedom. He had the difficult and job of a C-130 loadmaster.

During his deployment in 2007, Loverde found that he could no longer pretend to be someone he was not. Upon returning home, he sent his supervisor an email saying he would like to continue to serve, but he could not do so if it also meant continuing to conceal his sexual orientation. That letter started his discharge.

One month after his discharge, Sergeant Loverde received the Air Medal for "superior ability in the presence of perilous conditions."

But that is not the end of Sergeant Loverde's story.

Shortly after his discharge, he went to work for a defense contractor and headed back to Iraq, this time as an openly gay man. As a defense contractor, he shared quarters with servicemembers—without incident.

In a letter last year to the Washington Post, Sergeant Loverde wrote:

At the same time I was being discharged, my younger brother, who served a 15-month tour in Iraq during 2004-05 with the Army infantry, was stop-lossed to be sent back for another tour of duty. He had a new wife and a young son; he had fulfilled his initial commitment and wanted to leave the Army to continue his career as a civilian. But our country's needs were too great—he was told he had to keep fighting.

Why, in such a time, would we discharge decorated servicemembers who want to serve our Nation?

The third member in this latest court challenge is PO2 Jason Knight.

Petty Officer Knight enlisted in the Navy in April 2001 and served 5 years. He spent the first 3 of those years as a member of the elite Navy Ceremonial Guard at Arlington National Cemetery. He participated in more than 1,500 military funerals.

In 2004, Petty Officer Knight realized he was gay. He ended his marriage and informed his commander.

He was discharged in April 2005, but because of an error in the paperwork, he remained eligible for recall.

Sure enough, Petty Officer Knight was recalled in 2006, and deployed to Kuwait. During that deployment, he served as an openly gay man and received high praise from those with whom he served.

In 2007, responding to a statement by GEN Peter Pace, then-Chairman of the Joint Chiefs of Staff, that he viewed homosexuality as immoral, Jason Knight wrote a letter to the editor of *Stars and Stripes*.

In his letter, Petty Officer Knight wrote:

I spent four years in the Navy, buried fallen servicemembers as part of the Ceremonial Guard, served as a Hebrew Linguist in Navy Intelligence, and received awards for exemplary service. However, because I was gay, the Navy discharged me and recouped my \$13,000 sign-on bonus. Nine months later, the Navy recalled me to active duty. Did I accept despite everything that happened? Of course I did, and I would do it again. Because I love the Navy and I love my country. And despite [General] Pace's opinion, my shipmates supported me.

For writing those words, Jason Knight was discharged for a second time under don't ask, don't tell.

The men and women discharged under don't ask, don't tell are not asking to be treated as a special class. Just the opposite—they are asking to be treated like everyone else.

Some defenders of the status quo claim that things are working fine under don't ask, don't tell. How in the world can anyone say that after hearing these stories?

At a time when our Nation is fighting two wars, honorable men and women with proven records of outstanding service are being forced out of our military, they are having their careers destroyed, solely because they are gay. It is time for Congress to act and give our military leaders the time they need to bring this flawed policy to a responsible end.

We know that some branches and some members of our armed services are more skeptical than others of the ability of America's military to adapt to a repeal of don't ask, don't tell.

Lack of complete agreement is no reason to delay.

We have been here before. In 1948, when President Harry Truman signed Executive Order 981 calling for an end to segregation in the armed forces, he also created a military advisory committee and charged them with examining military rules, procedures, and

practices that interfered with equitable treatment of military personnel. It was called the President's Committee on Equality of Treatment and Opportunities in Armed Forces, but it became better known as the Fahy Committee, after its chairman.

In March of 1949, the three Service Secretaries testified before the Fahy Committee. The Secretaries of the Air Force and Navy testified in support of President Truman's executive order. But Secretary of the Army Kenneth Royall argued in favor of maintaining the status quo, saying that the Army was "not an instrument of social evolution."

As it turned out, Secretary Royall was wrong. The U.S. military—and the Army in particular—helped lead the way in creating the vibrant, integrated society we know today.

America has the best trained, most professional military in the history of the world. I am confident that our military can and will meet the challenges of ending discrimination based on sexual orientation, just as they helped lead the way in ending legalized racial discrimination in the past.

Former Senator Edward Brooke served in this body for 12 years in the 1960s and 1970s. He was the first African-American elected to the U.S. Senate since Reconstruction.

He remembers well the injustice of serving in a segregated Army. He recently wrote an impassioned plea for ending don't ask, don't tell. It appeared in the *Boston Globe*. I quoted from it when I spoke on this topic a few days ago. I want to do so again, because what he says bears repeating.

Senator Brooke wrote that don't ask, don't tell "shows disrespect both for the individuals it targets and for the values our military was created to defend."

He wrote:

Regardless of its target, prejudice is always the same. It finds novel expressions and capitalizes on new fears. But prejudice is never new and never right. One thing binds all prejudices together: irrational fear. Decades ago, black servicemembers were the objects of this fear. Many thought that integrating black and white soldiers would harm the military and society. Today, we see that segregation itself was the threat to our values.

He went on to say:

We know that laws that elevate one class of people over another run counter to America's ideals. Yet due to "don't ask, don't tell," the very people who sacrifice the most to defend our values are subject to such a law. We owe them far more.

One month before President Truman's Executive Order, a Gallup poll showed that only one in four American adults supported ending racial segregation in our military.

Today, 75 percent of Americans say that gay men and lesbians should be allowed to serve openly.

A majority of our servicemembers and our top military leaders say it is time to end the discrimination against gay men and lesbians.

The time for change has come. The only question is whether we will act responsibly and give our military leaders the time they are seeking to make this transition. Or will we continue to delay and let the courts set the timetable?

America is ready to end don't ask, don't tell. Now it is our turn to take the next step forward and end a policy that offends our national principles and harms our national security.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. MCCAIN. Mr. President, how much time is remaining on both sides?

The ACTING PRESIDENT pro tempore. The Senator from Arizona has 10 minutes. The Senator from Illinois has 10 minutes 30 seconds.

Mr. MCCAIN. Well, Mr. President, I would ask, is it true the parliamentary situation as it exists right now is that we will be voting on cloture on both what is known as don't ask, don't tell and the DREAM Act?

The ACTING PRESIDENT pro tempore. The Senator is correct. There will be cloture votes on both of those House messages.

Mr. MCCAIN. Meanwhile, on the Executive Calendar, we have the START treaty?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. MCCAIN. And there are no amendments that are in order on either the DREAM Act or don't ask, don't tell, no amendments are in order?

The ACTING PRESIDENT pro tempore. My understanding is there is no place for an amendment on either measure at this time.

Mr. MCCAIN. So here we are, about 6 weeks after an election that repudiated the agenda of the other side, and we are jamming, or trying to jam, major issues through the Senate of the United States because they know they cannot get it done beginning next January 5. They cannot do it next January 5. The American people have spoken, and they are acting in direct repudiation of the message of the American people. That is why they are jamming this through.

My friends, there is a lot of talk about compromise. There is a lot of talk about working together. You think what this "bizarro" world that the majority leader has been carrying us in, of cloture votes on this, votes on various issues that are on the political agenda of the other side—to somehow think that beginning next January 5 we will all love one another and kumbaya? I do not think so. I do not think so.

Unfortunately, the majority is using the lameduck session to push an agenda, when the fact is lameduck sessions are supposed to be to finish up the work of Congress so the new Congress can act on the issues of the day.

The American people have spoken in what the President of the United States described as a "shellacking." Everything we are doing is completely ignoring that message. Maybe it will require another election.



So, for example, I filed two amendments I believe are relevant to this bill, important to this major change. Those will not be in order.

I have always and consistently stated that I would listen to and fully consider the advice of our military and our military leadership. On December 3, the Committee on Armed Services heard from the Chiefs of our four military services—the Chiefs of our four military services.

General Amos said:

Based on what I know about the very tough fight in Afghanistan, the almost singular focus of our combat forces as they train up and deploy into theater, the necessary tightly woven culture of those combat forces that we are asking so much of at this time, and, finally, the direct feedback from the survey, my recommendation is that we should not implement repeal at this time.

Then he talks about:

Mistakes and inattention or distractions cost Marines' lives.

Cost marines' lives.

[M]arines came back—

After serving in combat—

and they said, "Look, anything that's going to break or potentially break that focus and cause any kind of distraction may have an effect on cohesion." I don't want to permit that opportunity to happen. And I'll tell you why. If you go up to Bethesda . . . Marines are up there with no legs, none. We've got Marines at Walter Reed with no limbs.

General Casey said:

I believe that the implementation of the repeal of Don't Ask, Don't Tell in the near term will, one, add another level of stress to an already stretched force; two, be more difficult in our combat arms units; and, three, be more difficult for the Army than the report suggests.

General Schwartz basically said the same thing.

I have heard from thousands—thousands—of Active-Duty and retired military personnel. I have heard from them, and they are saying: Senator McCAIN, it isn't broke, and don't fix it.

So all of this talk about how it is a civil rights issue and equality, the fact is, the military has the highest recruiting and highest retention than at any other time in its history. So I understand the other side's argument as to their social, political agenda. But to somehow allege that it has harmed our military is not justified by the facts.

I hope everybody recognizes this debate is not about the broader social issues that are being discussed in our society, but what is in the best interest of our national security and our military during the time of war.

Now, I am aware this vote will probably pass today in a lameduck session, and there will be high-fives all over the liberal bastions of America. We will see the talk shows tomorrow—a bunch of people talking about how great it is. Most of them never have served in the military or maybe even not even known someone in the military.

And, you know, we will repeal it; all over America there will be gold stars put up in windows in the rural towns and communities all over America that

do not partake in the elite schools that bar military recruiters from campus, that do not partake in the salons of Georgetown and the other liberal bastions around the country. But there will be additional sacrifice. I hear that from master sergeants. I hear that from junior officers. I hear that from leaders.

So I am confident that with this repeal our military—the best in the world—will salute and do the best they can to carry out the orders of the Commander in Chief. That is the nature—that is the nature—of our military, and I could not be more proud of them in the performance that they have given us in Iraq and Afghanistan, and before that other conflicts. They will do what is asked of them.

But do not think it will not be at great cost. I will never forget being, just a few weeks ago, at Kandahar. An Army sergeant major, with five tours in Iraq and Afghanistan, in a forward operating base, said: Senator McCAIN, we live together. We sleep together. We eat together. Unit cohesion is what makes us succeed.

So I hope when we pass this legislation we will understand we are doing great damage, and we could possibly and probably—as the Commandant of the Marine Corps said; and I have been told by literally thousands of members of the military—harm the battle effectiveness which is so vital to the survival of our young men and women in the military.

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

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, how much time is remaining on this side?

The ACTING PRESIDENT pro tempore. There remains 10½ minutes to the Senator from Illinois.

Mr. DURBIN. Mr. President, I rise today in support of the DREAM Act and in support of the repeal of don't ask, don't tell. I will focus my remarks on the DREAM Act, but I want to make it clear to my colleagues, you will not get many chances in the Senate in the course of your career to face clear votes on the issue of justice. This morning, you will have two—not one but two.

The question is whether the Senate will go on record as a Nation prepared to stop discrimination based on sexual orientation. It is a monumental question, a question of great moment, and a question we should face squarely.

There will be a vote, as well, on whether the Senate will stand by thousands of children in America who live in the shadows and dream of greatness. They are children who have been raised in this country. They stand in the classrooms and pledge allegiance to our flag. They sing our Star Spangled Banner, our national anthem. They believe in their heart of hearts this is home. This is the only country they have ever known. All they are asking for is a chance to serve this Nation.

That is what the DREAM Act is all about.

Last night, Senator BOB MENENDEZ, who has been my great ally on this, and I stayed late to speak on the Senate floor. I left and went upstairs, and there were many of these young people who were here in support of the DREAM Act, who came by my office and we spent a few minutes together. Some of them have ridden on buses for 28 hours from Austin, TX, to be here, to sit in this gallery, and to pray that 100 Senators will consider the issue of justice and stand up for them.

Some have come to the floor today and criticized this as a political stunt. I wish to tell my friends, I hope you understand my sincerity on this issue. I have been working on this issue for 10 years. These people have been waiting for more than 10 years. To say we are pushing and rushing a vote—for them, it can't come too soon because their lives hang in the balance.

I would just say this is not a procedural vote. It is not a political stunt. We are voting on a bill that has already passed the U.S. House of Representatives. If it passes on the floor of the Senate, it will become the law of the land with the President's signature.

I thank those who have brought us to this moment: the President, who was a cosponsor of the DREAM Act when he served in the Senate; Secretary of Interior Ken Salazar, who is on the floor today, as a former Member of the Senate. What a great ally you have been, Ken, throughout this entire debate; Secretary of Education Arne Duncan; Secretary of Homeland Security, Janet Napolitano; and especially my friend, Senator RICHARD LUGAR of Indiana. What an extraordinarily courageous man he has been to join me in cosponsoring this measure, which is controversial in some places.

What will this bill do? Let me make clear some of the things that have been said on the floor which are not accurate. First, when this bill is signed into law, the only people eligible to take advantage are those who have been in the United States for 5 years. Anybody who comes after 2005 cannot be eligible, and those who are eligible have 1 year to apply and to pay the \$500 fee and then they have 5 years under the bill to do one of two things: to serve in our U.S. military and risk their lives for America or to finish at least 2 years of college.

What are the odds they are going to do those things? I will tell my colleagues. Today, about half the Hispanic youth in America don't finish high school. Only 1 out of 20 enters college in this status. So the odds are against them. But that isn't the end of it. There is a long list of things they must do in order to qualify for the DREAM Act, including background checks on their moral character and criminal records. If they have been convicted of a felony, they are ineligible; if they have been convicted of more than two misdemeanors, ineligible.



There have been things said on the floor by the Senator from Alabama and others that the Secretary of Homeland Security can waive this requirement. That is not true. It is not true.

I ask unanimous consent to have printed in the RECORD a statement by the Department of Homeland Security which makes it eminently clear she has no power, no directive to have any power under the DREAM Act to waive any of these requirements which bar those with criminal records, who violate the law or have a history of terrorism or threat to national security.

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

DEPARTMENT OF HOMELAND SECURITY  
DREAM ACT

**MISLEADING CLAIM:** The DREAM Act is not limited to children.

**FACT:** The DREAM Act limits applications to persons who were children when they arrived in the United States (under 16) and are under age 30 on the date of enactment.

**MISLEADING CLAIM:** The DREAM Act will be funded on the backs of hardworking, law-abiding Americans.

**FACT:** The DREAM Act is fully paid for by applicants without cost to the Federal Government. It allows for collection of fees to recover "the full costs of providing adjudication and processing services," and requires a total of \$2,525 in surcharges paid by applicants during the process designed to ensure that the DREAM Act does not increase direct federal spending. Not only will the DREAM Act cost the government nothing, but it will actually reduce the deficit over the next ten years. Moreover, as conditional nonimmigrants, these individuals are barred from a broad range of federal public benefits as well as federal tax credits to purchase health insurance in the exchange created by the health care reform bill.

**MISLEADING CLAIM:** The DREAM Act provides safe harbor for any alien, including criminals, from being removed or deported if they simply submit an application.

**FACT:** Only individuals who can show that they are *prima facie* eligible for cancellation of removal and conditional nonimmigrant status are prohibited from being removed. A *prima facie* showing of eligibility is not a modest or low standard of legal proof and cannot be satisfied by the alien's signature. In immigration law it is a much more stringent determination.

**Prima facie** eligibility determinations are required under the existing provisions governing Temporary Protected Status. USCIS must make a determination that an applicant is *prima facie* eligible for TPS under section 244(a)(4) of the INA and implementing regulations at 8 C.F.R. 244.5. USCIS checks the applicant's nationality and verifies identity through biometrics checks. The agency also runs fingerprint checks through the FBI and conducts certain background checks in relevant systems to determine whether there is available derogatory criminal or security information that would call into question the applicant's eligibility for TPS, and thus may require further review. If this initial identity check of the applicant and the background and security checks raise no immediate concerns about TPS eligibility, the applicant will be considered "*prima facie*" eligible for TPS and provided certain "temporary treatment benefits," such as an employment and travel authorization.

DREAM Act applicants would be required to undergo a similar process to establish *prima facie* eligibility.

**MISLEADING CLAIM:** Certain inadmissible aliens, including those from high-risk regions, will be eligible for amnesty under the DREAM act.

**FACT:** The DREAM Act is not an amnesty. No one will automatically receive a green card. Rather, the DREAM Act requires a decade-long process for a narrowly tailored group of young persons who were brought to the U.S. years ago as children to resolve their immigration status, thereby allowing America to derive the full benefits of their talents. The editorial board of the Wall Street Journal opined on November 27: "[W]hat is to be gained by holding otherwise law-abiding young people, who had no say in coming to this country, responsible for the illegal actions of others?"

**MISLEADING CLAIM:** Certain criminal aliens—including drunk drivers—will be eligible for amnesty under the DREAM act.

**FACT:** Any criminal who applies for the DREAM Act will only hasten their deportation. Anyone who has committed a deportable crime and applies for the DREAM Act will have their application denied and will be placed in removal proceedings. In addition, the DREAM Act creates a new criminal offense punishable by imprisonment of 5 years for anyone who commits fraud on a DREAM Act application. Moreover, all applicants must establish that they are persons of good moral character, which is a much higher standard than that required of other immigrants becoming permanent residents.

**MISLEADING CLAIM:** Conservative estimates suggest that at least 1.3 million illegal aliens will be eligible for the DREAM act amnesty. In reality, we have no idea how many illegal aliens will apply.

**FACT:** The non-partisan Congressional Budget Office (CBO) estimates, under the DREAM Act, that 700,000 persons would be able to gain conditional non-immigrant status at the end of the 10-year conditional residency period.

The CBO and the Joint Committee on Taxation (JCT) estimates that the bill will reduce deficits by approximately \$2.2 billion over the next ten years. But that figure alone underestimates the enormous benefits to taxpayers because the CBO and JCT do not take into account the increased income that DREAM Act participants will earn due to their legal status and educational attainment. It is estimated that the average DREAM Act participant will make \$1 million over his or her lifetime simply by obtaining legal status, which will bring hundreds of thousands of additional dollars per individual for federal, state, and local treasuries.

America must increase the proportion of persons who graduate from high school and college in order to remain competitive in the global economy. The students who benefit from the DREAM Act will have opportunities to attend college and graduate school not otherwise available to them.

**MISLEADING CLAIM:** The DREAM Act does not require that an illegal alien finish any type of degree (vocational, two-year, or bachelor's degree) as a condition of amnesty.

**FACT:** In order to be eligible for the DREAM Act, a person must already have completed a GED or have earned a high school diploma. In order to satisfy the requirements of the DREAM Act, an applicant must acquire a degree from an institution of higher education in the United States or complete at least two years in good standing, or serve in the Armed Forces for at least 2 years without receiving a dishonorable or other than honorable discharge.

**MISLEADING CLAIM:** Despite their current illegal status, DREAM Act aliens will be given all the rights that legal immigrants receive—including the legal right to sponsor their parents and extended family members for immigration.

**FACT:** DREAM Act individuals will not be able to sponsor family members for permanent residency for more than a decade. For the first 10 years of their conditional status, DREAM participants would have absolutely no ability to sponsor any family members, not even spouses or minor children. Only after they have earned permanent residency—at the end of that 10-year period—would they be able to sponsor their immediate family members, spouses and children. The spouses and children would have to go to the end of the family preference line, like everyone else, a line that can take many years. Only when an eligible DREAM Act individual earns citizenship—after at least 13 years in conditional and permanent resident status—would they be able to begin the process of sponsoring their parents or siblings. But even then, spouses, children, parents, and siblings who entered the U.S. illegally would have to leave the country for at least 10 years before they could reenter legally. DREAM Act participants would NEVER be able to sponsor extended family members, such as grandparents and cousins.

**MISLEADING CLAIM:** The DREAM Act allows the Secretary to waive all grounds of inadmissibility for illegal aliens, including criminals and terrorists.

**FACT:** The DREAM Act expressly limits the Secretary's authority to waive grounds of inadmissibility and deportability. Under this bill, the Secretary may only waive health related grounds; public charge; status-related immigration violations; or violation of previous immigration status. The Secretary cannot waive other grounds of inadmissibility or deportability, including criminal and national security related grounds.

Under the structure of the INA, an alien, when being removed from the country, is either subject to grounds of inadmissibility (found at INA section 212) if they have never been legally admitted to the country, or subject to grounds of deportability (found at INA section 237) if the alien was previously lawfully admitted to the country. At the time of adjustment of status or seeking an immigration benefit (such as status under the DREAM Act), an alien is deemed to be an applicant for admission and subject to the grounds of inadmissibility at INA section 212 and would be subject to the waiver authority for section 212 grounds. The Secretary would not have authority to apply a waiver of a ground of deportability (under section 237) when applying for admission (when subject to section 212 grounds).

If an individual was previously admitted to the country (i.e.—a visa overstay), when placed in removal proceedings, the individual would be subject to grounds of deportability at INA section 237 and waiver authority at that time would have to be pursuant to INA section 237. A waiver of INA section 237(a)(1) would not waive other section 237 grounds, which include separate criminal and security grounds. INA section 237(a)(1) does not waive these other grounds of deportability. In other words, the individual would still be subject to the concurrent criminal, security, or other applicable grounds of deportability.

**MISLEADING CLAIM:** The DREAM Act allows applicants to immediately become permanent residents.

**FACT:** The DREAM Act does not allow individuals to become permanent residents immediately. In fact, they must wait many years before receiving green cards. Under section 8 of the DREAM Act, only persons who have been granted conditional non-immigrant status for at least nine years are

eligible to apply become permanent residents. Section 8(c) allows persons to apply for adjustment to permanent residence one year before the 10 year period of conditional nonimmigrant status expires so U.S. Citizenship and Immigration Service has plenty of opportunity to carefully review applications to determine that only those who meet the stringent requirements of the Act are approved.

**MISLEADING CLAIM:** The DREAM Act allows individuals to remain in nonimmigrant status indefinitely.

**FACT:** Conditional nonimmigrant status is not indefinite. It can only be granted for two 5 year periods according to section 7(a) and 7(d) of the bill. At the end of the second 5 year period, individuals can apply for adjustment to permanent residence status. There are no extensions of conditional nonimmigrant status for individuals who do not apply to become permanent residents at the end of the second 5 year extension. Let's be clear: Individuals who do not apply for adjustment by the end of the second 5 year period will no longer have legal status in the U.S.

Immigration law generally requires an individual to file an application to obtain legal status. The DREAM Act requires three such filings: the first is for the initial 5 year grant of conditional nonimmigrant status; the second is for another 5 year extension of conditional nonimmigrant status, and the last is for adjustment of status to permanent residence, starting no earlier than 9 years after the initial grant of conditional nonimmigrant status.

**MISLEADING CLAIM:** The DREAM Act does not require that an illegal alien complete military service as a condition for amnesty, and there is already a legal process in place for illegal aliens to obtain U.S. citizenship through military service.

**FACT:** The DREAM Act has been strongly embraced by the military as an important element in furthering our nation's readiness. The DREAM Act is part of the Department of Defense's 2010-2012 Strategic Plan to assist the military in its recruiting efforts. The DREAM Act streamlines and simplifies the process by which aliens who wish to serve in the Armed Forces may gain permanent status in the United States.

**MISLEADING CLAIM:** Current illegal aliens will get Federal student loans, Federal work study programs, and other forms of Federal financial aid.

**FACT:** DREAM applicants are expressly prohibited from obtaining Pell grants, Federal supplemental educational opportunity grants and other federal grants. DREAM Act beneficiaries would, like all students, be required to pay back any loans they have incurred.

Mr. DURBIN. Let me also say I join my colleague from Alabama in sadness over the loss of a life of a border guard. It is a terrible thing. These men and women are serving our country, and it is a tragedy. But can we blame these young people sitting in the galleries and across America for that, to question the border security? I am for border security.

In July, Senator SCHUMER came to the floor with Senator MCCAIN and added \$600 million more to border security without any objection from either side of the aisle. Oh, I suppose if we were playing this game of negotiating, we could have stood and said: No; no more money for border security until we get the DREAM Act. We didn't do it because we are as dedicated to border

security as anyone, and we want to make sure people have the opportunity to vote for border security and to also vote for the DREAM Act.

Let me ask, at this point, how much time is remaining.

The ACTING PRESIDENT pro tempore. There is 5 minutes.

Mr. DURBIN. Five minutes. Thank you.

I wish to say a few things about the people who are involved in this. They are faceless and nameless until we bring them to the floor. This is Benita Veliz. Benita Veliz has an amazing story which I wish to share with my colleagues. Benita was brought to the United States by her parents in 1993, when she was 8 years old. She graduated valedictorian of her class, received a full scholarship to St. Mary's University in Texas, majoring in biology and sociology. Her honors thesis was on the DREAM Act. She sent me a copy of it.

What she has asked for, basically, she says in these words: I was called to a Cinco de Mayo community celebration and asked to sing the national anthems of the United States and Mexico. I couldn't do it. I only knew the words for the American national anthem. I am an American. I want to live my dream. Benita Veliz.

Meet this young man, another who would benefit from the DREAM Act. His name is Minchul Suk. This is an amazing story as well. Brought to the United States from South Korea at the age of 9, graduated from high school with a 4.2 GPA, graduated from UCLA with a degree in microbiology, immunology, and molecular genetics. With the help of the community, they raised enough money for him to finish dental school. He has taken his boards, but he cannot become a dentist in America because he is undocumented. Do we need more dentists in America? Yes, we do, and we need a man of his quality to serve our Nation.

I want you to meet this young man too. His name is David Cho. David is a man you might have seen on television. It is kind of an amazing story. David was brought to the United States at the age of 9, graduated with a 3.9 GPA in high school. He is now a senior at UCLA and the leader of the marching band. He wants to serve in the U.S. Air Force. I say to my friends who stand on the floor and protest their true belief that the military means so much to us as Americans, why would you deny these young people a chance to serve in the military? That is all I am asking.

The last story I wish to tell is about a young man from New York: Cesar Vargas. He has an amazing story. He was brought to this country at a very young age and when 9/11 occurred, he was so mad at those who attacked America he went down to the Marine Corps and said: I want to sign up, and they said: You can't; you are undocumented. So he continued on and is attending the New York University Law School now. He speaks five languages.

He has had offers from the biggest law firms, for a lot of money. He turned them down. His dream, under the DREAM Act, is to enlist in the Marine Corps and serve in the Judge Advocate General Corps.

These are the faces of the DREAM Act, and the people who stand before us and try to characterize this as something else don't acknowledge the obvious. These are young men and women who can make America a better place.

I understand this is a difficult vote. It is a difficult vote for many. As a matter of fact, I am not asking for just a vote for the DREAM Act today. From some of my colleagues I am asking for much more. I am asking for what is, in effect, an act of political courage. Many of my colleagues have told me they are lying awake at night tossing and turning over this vote because you know how hard it is going to be politically; that some people will try to use it against you. But I would say, if you can summon the courage to vote for the DREAM Act today, you will join ranks with Senators before you who have come to the floor of this Senate and made history with their courage; who stood and said the cause of justice is worth the political risk. I am prepared to stand, they said, and vote for civil rights for African Americans, civil rights for women, civil rights for the disabled in America. I am prepared to go back home and face whatever comes.

Most of them have survived quite well because of their genuineness, their conviction and their strength and the fact that their courage is recognized and respected, even if someone disagrees with part of their vote. That is what we face today. We face the same challenge today. I hope my colleagues on both sides of the aisle will summon the courage to vote for justice. We don't get many chances. When it comes to justice for these young people of the DREAM Act or justice for those of different sexual orientation to serve in the military, this is our moment in history to show our courage.

I yield the floor.

#### RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. Mr. President, we will soon be voting on two consequential and contentious matters, the DREAM Act and repeal of the legislation concerning the Defense Department's don't ask, don't tell policy. As our ranking member on one of the two committees of jurisdiction recently made clear, the Democratic majority in the Senate is again depriving the American people of the right to have their concerns addressed through debate on amendments by depriving the minority of its right to offer amendments.

When Democrats were in the minority, my good friend, the majority leader, said: This is a "very bad practice,"

and it “runs against the basic nature of the Senate.” In fact, he suggested we should not shut off debate “before any amendments had been offered.”

With back-to-back blockage of amendments on both the DREAM Act and legislation repealing don’t ask, don’t tell, the current majority has set a dubious record by denying the minority its right to amend a total of 43 times. Let me say that again. The current majority has set a dubious record by denying the minority its right to offer amendments a total of 43 times.

To put that in perspective, in his 4 years as the majority leader, Senator Frist did this 15 times. The current Senate majority in the same amount of time has done it three times—three times—as often. In fact, the current majority has blocked the minority from offering amendments more often than the last six majority leaders combined. The current majority has blocked the minority from offering amendments more often than the last six majority leaders combined.

The danger of following this practice is underscored by the flawed process used on the very measures before us now. The DREAM Act the Senate will vote on today has never had a Senate hearing. In fact, it has not had any Senate committee action in 7 years. But, of course, this is a House bill, and the legislative record there is more sparse still. The House, similar to the Senate, has never had a legislative hearing on the DREAM Act, and it has never had a markup there either. Now the Senate majority is preventing their colleagues from addressing the concerns of the American people by shutting off the ability to offer any amendments on the floor.

So, in sum, there has never been an amendment offered to the DREAM Act at either the committee or floor stage in either House of Congress since President Bush’s first term.

I guess our Democratic colleagues believe this bill is so perfect it doesn’t need any amendments whatsoever—just a few last-minute rewrites during a lame duck session. I don’t think that is what the American people believe.

In regard to the ill-conceived effort to repeal the military policy on don’t ask, don’t tell, the majority leader has insisted on pressing forward with this effort, despite the fact that the ranking member of the Armed Services Committee has established the need for additional hearings. The All-Volunteer Force has had many successes, but has this body become so alienated from the enlisted men and women in uniform that liberal interest groups have more influence over military personnel policy than the senior enlisted leaders of the Army and Marine Corps who were denied the opportunity to testify?

This repeal will be rushed through, despite the fact that it is concerning to those in Army combat arms units, and 58 percent of those in Marine Corps combat units believe repeal will be harmful to unit readiness. Should we

ignore the volunteers charged with the most difficult missions in our military, combat with the enemy? I think not.

Democrats will deny the opportunity to amend the bill to require the service chiefs to certify that this repeal will not harm combat readiness, although they are responsible for training the force. Why would anyone oppose this change or even the opportunity to vote on this change?

This is harmful during a time of war and an irresponsible manner in which to change policies that the Commandant of the Marine Corps has actually stated could risk lives.

I am going to recommend to my colleagues to heed the advice of my friend from Nevada, which he gave a few years ago, and not vote to shut down the debate and amendment process for these bills, at least until the minority is allowed to offer, debate, and vote on a limited number of amendments, and the Senate is allowed to be the Senate once again.

I yield the floor.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I will use leader time.

I say to the people in the Senate and the American public, to hear my friend, the distinguished Republican leader, talk about our having done things procedurally brings a big yawn to the American people. Everyone knows how we have been stymied, stopped, and stunned by the procedural roadblocks of this Republican minority. So we are where we are today. No. 1, we are nearing the end of this congressional session. There is a continuing resolution that has been prepared by Senator INOUE and Senator COCHRAN. It has some things I don’t like, but it has been done because we have to do this, and we will finish that in the immediate future.

I am going to speak just briefly on don’t ask, don’t tell. But to suggest there haven’t been adequate hearings on this is simply nonsensical. Senator LEVIN has held 2 days of hearings in the last 30 days. There have been hearings held, reports done by the military. My Republican friends have said: Well, this is something we probably should do, but why don’t we have a study by the military and see what the Pentagon thinks. They did that. More than 70 percent of people who have served in the Armed Forces believe it doesn’t matter at all.

This is exemplified in a story that appears in the Las Vegas Sun newspaper today, and I will just read two paragraphs from the story:

The Pentagon’s report is done, and it concluded that repealing the law would do little to affect troop readiness. In fact, most of the troops interviewed for the report indicated they didn’t think it would be a problem. The majority of them said they had served with someone who they believed to be gay or lesbian and it didn’t bother them or affect their units’ effectiveness.

Mr. President, listen to this. For example, the report quotes a special oper-

ations soldier, who said, “We have a gay guy in the unit. He’s big, he’s mean, and he kills lots of bad guys. No one cares that he’s gay.” That says it all. As Barry Goldwater said, you don’t have to be straight to shoot straight.

Mr. President, the DREAM Act. I first must say to everybody within the sound of my voice that I came to Washington in 1982 to serve in the House of Representatives. One of the people who came in that large Democratic class we had was Dick Durbin from Illinois. I have gotten to know him extremely well. He is very good. We all know he has the ability to express himself extremely well. I have known him for all these 28 years. We have worked very closely together. He is now the assistant leader of the Senate. I have never known him to feel so strongly about an issue as he does this DREAM Act. He worked on it for more than a decade. He has shed tears while talking to me about some of the people with whom he visits. We saw the emotion he felt here today. I so admire and appreciate him for the work he has done.

I am committed to passing the DREAM Act. As we work toward a comprehensive approach to reform our country’s broken immigration policy, one thing we can do now is ensure that the next generation can contribute to our economy and to our society.

The DREAM Act applies to a very specific group of talented, motivated young people who already call America home. This is their home. It applies only to those who came here at age 15 or younger and have been here at least 5 years. Even then, in order to have a chance at permanent legal residency, they would have to graduate from high school, pass strict criminal background checks, and attend college or serve in the military for at least 2 years.

I have said on this floor before—but I will repeat it—when I first became aware of the problem we had in our country, I was in Smith Valley, NV, an agricultural community in the northeastern part of our State. I was a relatively new Senator. They had gotten all the students there in a very small high school together. I made a presentation to them. When I finished, I could tell there was a girl who wanted to talk to me. She was there; I could see her and feel her presence. I knew she was embarrassed to talk to me, so I said, “Do you want to talk to me?” And she said, “Yes.” She alone said to me:

Senator, I am the smartest kid in my class. I have the best grades. But I can’t go to college. My parents came here illegally. What am I supposed to do with my life?

At that time, I didn’t know that this brilliant, young, beautiful woman of Hispanic origin could not go to college, but she could not. That is what this is all about. I don’t know where that young woman is now, whether she has completed college or whether she is working in the onion and garlic farms up there—I just don’t know. I have thought about that many times.

When we jeopardize our education, we jeopardize our economy. The Congressional Budget Office found that letting these men and women contribute to our society will reduce the deficit by more than \$1 billion. A UCLA study found that the DREAM Act would add as much as \$3.5 trillion to our economy—that is trillion with a “t.” That comes from the University of California at Los Angeles. This bill is not only the right thing to do, it is also a very good investment.

The Defense Department also knows it is good for national security. The Pentagon has said it will help it meet the recruitment goals of our All-Volunteer Force. That is why our military made it part of its 2010 to 2012 strategic plan. That is in their plan, the Pentagon’s plan.

Some Republicans are trying to demonize these young men and women, who love this country and want to contribute to it and fight for it. The real faces of the DREAM Act are the dreamers.

I was welcomed to Washington on Thursday. There was a beautiful child there with a graduation hat on, a four-cornered hat. She was a dreamer. She wants to be able to go to college. That is all she wants. And we have others who want to be able to join the military.

The real faces belong to people such as Astrid Silva, who wrote to me from Nevada to tell me this—and I have visited her on many occasions:

I am 22 and have never even stolen a piece of gum from a 7-11; yet, I feel as though my forehead says “felon.”

Ricardo Cornejo wrote to me from Las Vegas to tell me that young men like him “would love to fight and give our entire lives for our country.”

Opponents use the word “amnesty,” hoping to trick people into thinking this bill is something it is not. They are trying to play to people’s worst fears.

One Senator said in the presence of one of these dreamers that he could not vote for it because that law said one didn’t need to serve. All you need to do is sign up. I say to this U.S. Senator and anyone else suggesting such an absurdity: Read the bill. It takes 2 years of service in the military. It will be longer than 2 years because you have to sign up for more than 2 years. We certainly get our money’s worth in that regard. The DREAM Act could not be further from amnesty. It is an opportunity that gives nothing for free and demands a great deal of those who earn legal residency. It is not granting citizenship immediately; it puts them on the pathway to citizenship. It gives nobody incentives to break the law but to contribute to our Nation and its economy.

When it passes—Mr. President, I hope it passes, as my friend Senator DURBIN said today, but it is going to pass—millions of children who grew up in America as Americans will be able to get the education they need to contribute to

our economy. Many who have volunteered to defend our country will no longer have to fear being deported.

Democrats know this is good policy. Republicans know it too. That is why Senator ORRIN HATCH coauthored it 10 years ago, and that is why the Wall Street Journal’s very conservative editorial board called it a worthy immigration bill within the last few weeks. The only question is whether we will let good policy inform our votes or let partisan politics get in the way of so many futures—not just of these children but our own.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. CARDIN). Morning business is closed.

## REMOVAL CLARIFICATION ACT OF 2010

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 5281, which the clerk will report.

The legislative clerk read as follows:

Motion to concur in the House amendment to the Senate amendment No. 3 to H.R. 5281, an act to amend title 28, United States Code, to clarify and improve certain provisions relating to the removal of litigation against Federal officers or agencies to Federal courts, and for other purposes.

Pending:

Reid motion to concur in the amendment of the House to the amendment of the Senate No. 3 to the bill.

Reid motion to concur in the amendment of the House to the amendment of the Senate No. 3 to the bill, with Reid amendment No. 4822 (to the House amendment to the Senate amendment No. 3), to change the enactment date.

Reid amendment No. 4823 (to amendment No. 4822), of a perfecting nature.

Reid motion to refer the message of the House on the bill to the Committee on the Judiciary, with instructions, Reid amendment No. 4824, to provide for a study.

Reid amendment No. 4825 (to (the instructions) amendment No. 4824), to change the enactment date.

Reid amendment No. 4826 (to amendment No. 4825), of a perfecting nature.

## CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXIII, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

## CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to concur in the House amendment to the Senate amendment No. 3 to H.R. 5281, the Removal Clarification Act [DREAM Act].

Joseph I. Lieberman, John D. Rockefeller, IV, Byron L. Dorgan, Sheldon Whitehouse, Jack Reed, Robert Menendez, Mark Begich, Benjamin L. Cardin, Bill Nelson, Michael F. Bennet, Amy Klobuchar, Patty Murray, Barbara A. Mikulski, Christopher J. Dodd, Richard J. Durbin, John F. Kerry

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

The question is, Is it the sense of the Senate that debate on the motion to concur in the House amendment to the Senate amendment to H.R. 5281, an act to amend title 28, United States Code, clarifying and improving certain provisions relating to the removal of litigation against Federal officers or agencies to Federal courts, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. MANCHIN) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from New Hampshire (Mr. GREGG), and the Senator from Utah (Mr. HATCH).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted “nay,” and the Senator from Utah (Mr. HATCH) would have voted “nay.”

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

The yeas and nays resulted—yeas 55, nays 41, as follows:

[Rollcall Vote No. 278 Leg.]

## YEAS—55

Akaka	Franken	Murkowski
Bayh	Gillibrand	Murray
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Reed
Bennett	Johnson	Reid
Bingaman	Kerry	Rockefeller
Boxer	Klobuchar	Sanders
Brown (OH)	Kohl	Schumer
Cantwell	Landrieu	Shaheen
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Coons	Lincoln	Warner
Dodd	Lugar	Webb
Dorgan	McCaskill	Whitehouse
Durbin	Menendez	Wyden
Feingold	Merkley	
Feinstein	Mikulski	

## NAYS—41

Alexander	DeMint	McConnell
Barrasso	Ensign	Nelson (NE)
Baucus	Enzi	Pryor
Bond	Graham	Risch
Brown (MA)	Grassley	Roberts
Brownback	Hagan	Sessions
Burr	Hutchison	Shelby
Chambliss	Inhofe	Snowe
Coburn	Isakson	Tester
Cochran	Johanns	Thune
Collins	Kirk	Vitter
Corker	Kyl	Voinovich
Cornyn	LeMieux	Wicker
Crapo	McCain	

## NOT VOTING—4

Bunning	Hatch
Gregg	Manchin

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote or change their vote?

The Chair reminds the galleries that expressions of approval or disapproval are not permitted.

On this vote, the yeas are 55, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. KYL. Mr. President, I move to reconsider the vote.

Mr. SESSIONS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRASSLEY. Mr. President, I would like to take a moment to discuss my vote today against ending debate on the Dream Act, a bill that would provide legal status to millions of people in this country who are illegally present. Before I discuss the substance of the bill, I want to express my frustration on the process of how this bill was brought to the floor for a vote. This bill has been around for nearly 10 years. In 2003, the Senate Judiciary Committee considered and debated the bill, and voted to send it to the full Senate for consideration. It didn't pass at that time, and since then, not one hearing has taken place on the legislation.

The bill we considered today was the sixth version of the Dream Act that we have seen in the last 2 months. Five of the six versions were introduced and immediately put on the calendar, bypassing the committee process. The Judiciary Committee, of which I am a member, didn't have the opportunity to debate it or make it better. Instead, the full Senate was asked to consider the bill as written, without the ability to amend it. You see, the majority leader used his ability to block all amendments through a process known as "filling the tree." This procedure means that no amendments could be in order. No improvements could have been made. The democratic process was effectively blocked.

Now, allow me to express some concerns that I have had about this version of the bill. The Dream Act would legalize an unlimited number of people who are here illegally, including the relatives of the alien that applies. It would put millions of individuals not just young people on a path to citizenship. The bill also leaves the door open to more fraud and abuse of our immigration system. It leaves a lot of discretion to the Secretary of Homeland Security, including authority to waive bars of inadmissibility. This latest version of this legislation provides very few assurances that criminal aliens would be barred from applying. The Dream Act, according to the Congressional Budget Office has a \$5 billion price tag, and could require hard-working Americans to foot the bill for this amnesty program. The bill fails to require individuals to graduate from college or to complete their military service, even though proponents claim that this is the sole mission of the bill. Finally, one of the most alarming provisions of the bill allows aliens who apply, no matter how frivolous their claim, to be granted safe harbor from enforcement officials by prohibiting the Secretary of Homeland Security from removing an alien who has a pending application.

I agree that we should take a hard look at protecting the youth who are forced to come here illegally, unaware

of the consequences. However, we also need to be conscious of those people standing in line, all around the world, who follow the law and wait their turn to come here legally. This bill just wouldn't be fair to those people.

Congress and this administration must come to terms with the immigration problems we have. We need true reform of our immigration laws, starting with border security and enforcement of the laws already on the books. We need to consider changes to our legal immigration system, including expanding or improving visa programs, to make sure people are incentivized to come in legally rather than illegally. These reforms will make the system better for future generations because a short term amnesty program as proposed by the Dream Act—doesn't solve the underlying problem.

I voted against ending debate today because I believe this bill required serious deliberation. I thought we deserved to have amendments considered. It is unfortunate that the majority attempted to push this bill through at the final hour, circumventing the democratic process that allows for amendments and serious debate on an issue that would dramatically undermine our rule of law.

#### SBIR/STTR REAUTHORIZATION ACT OF 1999—RESUMED

Pending:

Reid motion to concur in the amendment of the House to the amendment of the Senate to the bill.

Reid motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Reid amendment No. 4827 (to the House amendment to the Senate amendment), to change the enactment date.

Reid amendment No. 4828 (to amendment No. 4827), to change the enactment date.

Reid motion to refer the message of the House on the bill to the Committee on Armed Services, with instructions, Reid amendment No. 4829, to provide for a study.

Reid amendment No. 4830 (to (the instructions) amendment No. 4829), of a perfecting nature.

Reid amendment No. 4831 (to amendment No. 4830), of a perfecting nature.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided. The Senate will be in order. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I rise to ask my colleagues on both sides of the political aisle to support this cloture motion. The fact is that removing a form of legalized discrimination from our books, allowing people to serve our military regardless of sexual orientation, is not a liberal or conservative idea; it is not a Republican or Democratic idea; it is an American idea consistent with American values. We have come to a point in our history, I hope, where neither race nor religion, ethnicity nor gender nor sexual orientation should deprive Americans of serving our country as the patriots that they are. This measure would ac-

complish that result in an orderly way to be determined by the leaders of our military when they decide that the military is ready to implement the change, repeal don't ask, don't tell, without negative effect on military effectiveness, unit cohesion, and military morale. It is time to right a wrong and put the military in line with the best of American values.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Today is a very sad day. The Commandant of the U.S. Marine Corps says: When your life hangs on the line, you don't want anything distracting. Mistakes and inattention and distractions cost marines' lives. I don't want to permit that opportunity to happen and I will tell you why. You go up to Bethesda Naval Hospital, marines are up there with no legs, none. We have marines in Walter Reed with no limbs.

#### CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to concur in the House amendment to the Senate amendment to H.R. 2965, the SBIR/STTR Reauthorization Act.

Joseph I. Lieberman, Barbara Boxer, Ron Wyden, Michael F. Bennet, Robert Menendez, Robert P. Casey, Jr., Frank R. Lautenberg, Debbie Stabenow, Mark R. Warner, Tom Udall, Jeff Merkley, Benjamin L. Cardin, Amy Klobuchar, Christopher J. Dodd, Tom Carper, Al Franken.

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

The question is, Is it the sense of the Senate that debate on the motion to concur in the House amendment to the Senate amendment to H.R. 2965, the SBIR/STTR Reauthorization Act, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. MANCHIN) is necessarily absent.

I further announce that if present and voting, the Senator from West Virginia (Mr. MANCHIN) would vote "nay."

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from New Hampshire (Mr. GREGG), and the Senator from Utah (Mr. HATCH).

Further, if present and voting, the Senator from Utah (Mr. HATCH) would have voted "nay," and the Senator from Kentucky (Mr. BUNNING) would have voted "nay."

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

The yeas and nays resulted—yeas 63, nays 33, as follows:



[Rollcall Vote No. 279 Leg.]

## YEAS—63

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

## NAYS—33

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

## NOT VOTING—4

Bunning	Hatch
Gregg	Manchin

The PRESIDING OFFICER. On this vote, the yeas are 63, the nays are 33. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to. Closure having been invoked, the motion to refer falls.

## EXECUTIVE SESSION

# NOMINATION OF ALBERT DIAZ TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

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

The bill clerk read the nomination of Albert Diaz, of North Carolina, to be United States Circuit Court Judge for the Fourth Circuit.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided. The Chair recognizes the Senator from Vermont.

Mr. LEAHY. Mr. President, I yield my time to the Senator from North Carolina.

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

Mrs. HAGAN. Mr. President, I am thrilled that after 11 months on the Executive Calendar, we are finally voting to confirm Judge Albert Diaz to the Fourth Circuit Court of Appeals. I have spoken about Judge Diaz's qualifications a number of times here on the floor, so I will not list them again. But let me say that every Senator should feel comfortable voting to confirm this

excellent judge to the Federal bench. I have no doubt that as the first Hispanic judge on the Fourth Circuit, he will serve our Nation with distinction. The senior Senator from North Carolina, Mr. BURR, also strongly supports Judge Diaz. I wish to thank him for his work on this nomination.

I wish also to thank the chairman of the Judiciary Committee for his tireless work to confirm so many desperately needed judges, including Judge Diaz. Judge Diaz will make an outstanding addition to the Fourth Circuit. I would urge all of my colleagues to support his nomination.

I yield the floor.

Mr. LEAHY. Mr. President, today the Senate will finally consider two judicial nominations that have been stalled for months on the Executive Calendar after being reported unanimously by the Judiciary Committee.

The first nomination is Albert Diaz of North Carolina, who was nominated in November 2009 to fill a judicial emergency vacancy on the Fourth Circuit. His Republican home State senator, Senator BURR, asked nearly a year ago that the Judiciary Committee "look for an expedited review and referral to the full Senate so that that deficiency on the fourth circuit can be filled." We did and the Judiciary Committee reported his nomination after unanimous rollcall vote—19 to 0—on January 28, nearly 11 months ago. There has been no explanation for the lengthy delays preventing final consideration of his nomination.

Judge Albert Diaz is a respected and experienced North Carolina jurist who served in the Armed Forces.

He has the support of both his home State Senators, Senator HAGAN and Senator BURR. The ABA Standing Committee on the Federal Judiciary rated him unanimously "well qualified", and the North Carolina Bar Association has urged us to confirm him. When he is confirmed today, Judge Diaz will be the first Latino to sit on the Fourth Circuit. I congratulate Judge Diaz and his family on his confirmation.

In addition to Judge Diaz, there are six more superbly qualified consensus circuit court nominees ready for consideration by the Senate, four of them for judicial emergency vacancies. Five of these were reported unanimously, and another was reported with the support of 17 of the 19 Senators on the Judiciary Committee. I predict all six would be confirmed with strong bipartisan support, and I hope all six can get up-or-down votes before the Senate adjourns.

I yield the floor.

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

Mr. BURR. Mr. President, I join my colleague from North Carolina in praising the nomination of Judge Albert Diaz, and urge my colleagues to approve this nomination. The Fourth Circuit has suffered for some time under partisan politics. Good nominees have fallen by the wayside, and that time needs to stop.

Judge Diaz is immensely qualified for this position and will serve well on the court. He has proven himself already by earning a reputation as a fair and impartial judge, and also for dedicated public service in the Marines and his community.

After the treatment of some of the nominees for the Fourth Circuit and what they were subjected to, I am impressed that we still have high caliber nominees such as Judge Albert Diaz who would step forward to go through the nomination process.

It is a proud day that Judge Diaz is getting the vote that so many never did. I urge my colleagues to vote in favor of this nomination and get this good man on the Fourth Circuit.

I yield the floor.

The PRESIDING OFFICER (Mr. LEAHY.) All time has expired.

The question is, Will the Senate advise and consent to the nomination of Albert Diaz to be U.S. Circuit Judge for the Fourth Circuit?

The nomination was confirmed.

# NOMINATION OF ELLEN LIPTON HOLLANDER TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate on the Hollander nomination.

The Senator from Maryland.

Mr. CARDIN. Mr. President, I am pleased to rise today in support of the confirmation of two judicial confirmations pending before the Senate from my home State of Maryland. Both James Bredar and Ellen Hollander have been nominated by the President to be U.S. district judges for the District of Maryland.

I was pleased to work with our senior Senator, Ms. MIKULSKI, to recommend these nominations to the President last year. I chaired their confirmation hearing in May of this year before the Judiciary Committee, on which I serve. These two judges were approved by a voice vote in the Judiciary Committee in June.

Judge Ellen Hollander currently serves as a judge on the Maryland Court of Special Appeals, Maryland's second highest court, which hears mandatory appeals from our State trial courts in Maryland.

She has served as a judge on that court since 1994. Judge Hollander comes to the Senate with an impressive amount of experience in Federal and State court. She served as a Federal prosecutor in Maryland for 4 years, served as a State circuit court judge in Baltimore City for 5 years, and has served as a State appellate court judge for 16 years. As a State trial court judge, she heard thousands of criminal and civil cases—hundreds of which went to verdict or final judgment—and handled both jury trials and bench trials. As an appellate judge, she has authored over 1,000 opinions.

The American Bar Association's Standing Committee on the Federal Judiciary evaluated Judge Hollander's nomination and rated her unanimously "well qualified," the highest possible rating.

Judge Hollander, really exemplifies the spirit of public service. She is well known by lawyers and jurors alike in Maryland for her meticulous reasoning process and well-crafted legal opinions. She really is a model of a fair and impartial judge who will dispense equal justice under the law. I know Judge Hollander has also supported efforts to reduce recidivism and is a strong supporter of our drug treatment courts and juvenile diversion programs.

Judge Jim Bredar also comes to the Senate with a wide range of courtroom and litigation experience. He served as a Federal prosecutor in Colorado for 4 years before coming to Maryland and serving as a Federal public defender for 6 years. Since 1998, he has served as a U.S. magistrate judge for U.S. District Court for the District of Maryland, where he works closely with our judges of the U.S. District Court for the District of Maryland. He conducts preliminary proceedings in felony cases, all proceedings in petty offense cases, and all proceedings in misdemeanor and civil matters upon the consent of the parties. Judge Bredar has conducted over 700 mediation and settlement conferences in civil cases.

Judge Bredar has been a member of the Maryland Bar since 1995. The American Bar Association's Standing Committee on the Federal Judiciary evaluated Judge Bredar's nomination and rated him unanimously "well qualified," the highest possible rating.

With Judge Bredar, I see a nominee who is genuinely concerned about broadening the access to justice of Americans to their courts. He believes that we can do better with both our criminal and civil justice systems. I know of Judge's Bredar work as a mediator in our Federal court's alternative dispute resolution program, which has received high praise from Maryland lawyers and litigants alike.

The people of Maryland will be well served by having Judge Bredar and Judge Hollander on the Federal bench in Baltimore. I look forward to the Senate confirming these two outstanding nominations.

We are extremely pleased that we are now getting a chance to vote on the confirmation of Judge Hollander to the Maryland District Court. Senator MIKULSKI has taken the leadership in bringing forward the nominations that we strongly support, the two of us.

I would yield the time to the senior Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, it is with great pleasure that Senator CARDIN and I bring to the Senate Judge Ellen Hollander, an outstanding woman who is currently a member of the Maryland Court of Special Appeals;

has been deemed qualified, very qualified by the Maryland Bar, and every specialized bar in the State of Maryland.

She brings a sense of judicial temperament, great judicial competence, and a commitment to impartial justice. She will be a great addition to the Federal bench in Maryland and to the Federal bench of the United States. She does not live in an ivory tower. Her work on boards and commissions in the nonprofit areas shows a keen involvement in civic affairs. I urge that we adopt the nomination of Judge Hollander. I would hope that we could do it by voice.

Mr. LEAHY. Mr. President, we will now finally have a vote on the nomination of Ellen L. Hollander to serve on the U.S. District Court for the District of Maryland. Her nomination has been pending on the Senate's Executive Calendar since the Judicial Committee reported it unanimously on June 10, more than 6 months ago. Judge Hollander, a well-respected Maryland State judge for the last 16 years, was unanimously rated "well qualified" by the ABA Standing Committee on the Federal Judiciary and has the strong support of both of her home State Senators, Senator MIKULSKI and Senator CARDIN.

After the confirmations today, 30 Federal circuit and district court nominations favorably reported by the Judiciary Committee remain ready for final vote. These include 21 nominations reported unanimously and another 3 reported with strong bipartisan support and only a small number of "no" votes. These 24 nominations should have been confirmed within days of being reported.

In addition, 17 nominations ready for action on the Senate calendar are to fill judicial emergency vacancies. With judicial vacancies at historic highs, we should act on these nominations. We should do as we did during President Bush's first 2 years in office, when the Senate with a Democratic majority had up-or-down votes on all 100 judicial nominations favorably reported by the Judiciary Committee. That included controversial circuit court nominations reported during the lameduck session in 2002. In contrast, during this first Congress of President Obama's administration, the Senate has considered just 49 of the 80 nominations reported by the Judiciary Committee.

I congratulate Judge Hollander and her family on her confirmation today.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Ellen Lipton Hollander, of Maryland, to be United States District Judge for the District of Maryland.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Ellen Lipton Hollander, of Maryland, to be U.S. District Court Judge for the District of Maryland.

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

The PRESIDING OFFICER. The yeas and nays have been requested.

Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Louisiana (Ms. LANDRIEU) and the Senator from West Virginia (Mr. MANCHIN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from New Hampshire (Mr. GREGG), and the Senator from Utah (Mr. HATCH).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted "yea" and the Senator from Utah (Mr. HATCH) would have voted "yea."

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

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 280 Ex.]

#### YEAS—95

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

#### NOT VOTING—5

Bunning	Hatch	Manchin
Gregg	Landrieu	

The nomination was confirmed.

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

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

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

#### SBIR/STTR REAUTHORIZATION ACT OF 1999—Continued

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, all consent agreements that I have been involved



in over the years have been imperfect, but this is the best we could do. I think it is a pretty good one.

I ask unanimous consent that at 3 p.m. today all postcloture time be considered expired and the Reid motion to concur with amendments be withdrawn; that no further amendments or motions be in order, and without further intervening action or debate the Senate proceed to vote on the Reid motion to concur in the House amendment to the Senate amendment on H.R. 2965; that upon disposition of the House message, the Senate then resume executive session and the START treaty and there be 4 minutes of debate prior to a vote in relation to the McCain amendment, No. 4814, with the time equally divided and controlled between Senators KERRY and MCCAIN or their designees; that upon disposition of the McCain amendment, Senator RISCH be recognized to offer an amendment, with any debate time prior to disposition of the House message with respect to H.R. 2965 equally divided and controlled between the leaders or their designees.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Mr. President, reserving the right to object, and I will object, 4 minutes is not adequate for my amendment. There are a couple of speakers, including the cosponsor, Senator BARRASSO.

Mr. REID. Mr. President, I say through the Chair to my friend, the Senator from Arizona, I agree. So tell me what time you think would be appropriate. It does not matter.

Mr. KYL. Mr. President, might I join in this colloquy?

I do not think there needs to be any reference to time for debate. If I could just make a brief statement, I think the purpose for this unanimous consent agreement was to allow Members, by unanimous consent, to speak as in morning business on the don't ask, don't tell bill prior to a vote on that act—

Mr. REID. At 3 o'clock.

Mr. KYL. At 3 o'clock, but that we would be on the treaty, and if people did not want to talk about the don't ask, don't tell, then we would be on the McCain-Barrasso amendment, and that debate would conclude before 3 o'clock, and then the vote on the McCain-Barrasso amendment would follow the vote on the don't ask, don't tell.

Mr. REID. I think that is totally appropriate. I would just add and say to my friend while the Chair is considering the consent request, one of the reasons we were able to get this agreement is we have worked pretty hard in the last few days, and people felt we should have the afternoon off after we finish this information. As far as I am concerned, I will be in my office. If people want more time, that is fine. But that was one of the conditions that some people wanted on your side, and that is fine with me.

We will come in about midday tomorrow to resume consideration of the START treaty.

Mr. KERRY. Mr. President, reserving the right to object, and I will not.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, so I now understand that we now have a revised request, which is that between now and the hour of 3 o'clock, there will be an opportunity for Senators to speak either on the amendment or on don't ask, don't tell, and following the vote at 3 o'clock on don't ask, don't tell, there would then be a vote on the McCain amendment. Is that correct? I agree with that.

Mr. MCCAIN. Is that agreeable to the manager?

Mr. KERRY. I think that makes sense.

Mr. REID. I would ask, Mr. President, that the request be modified to the effect here as has been indicated.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The request is agreed to.

The Senator from Washington.

Mrs. MURRAY. Thank you, Mr. President.

Mr. President, I come to the floor today—and before I speak, I ask unanimous consent that Senator BOXER of California be the next Democratic Senator speaking after I conclude and Senator HUTCHISON has concluded on the Republican side.

Mr. MCCAIN. Mr. President, I reserve the right to object. What is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is the motion to concur on H.R. 2965. That is the pending business. As I understand the request from the Senator from Washington, on the Democratic side Senator BOXER will be the next Democrat recognized.

Mrs. MURRAY. Following the Republican speaker.

Mr. MCCAIN. Maybe I am wrong, but I thought the time would be either on the don't ask, don't tell or the START treaty.

Mrs. MURRAY. That is correct. The Senator is correct. I am merely asking for—

The PRESIDING OFFICER. The time will be equally divided between now and 3 o'clock, and the Senators may speak on either subject.

Mr. MCCAIN. I thank the Chair.

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

The Senator from Washington is recognized.

Mrs. MURRAY. Thank you, Mr. President.

Mr. President, I come to the floor this afternoon to speak and join in the effort to repeal don't ask, don't tell.

This policy has failed in its intended goals. It has done a tremendous disservice to the men and women who want nothing more than to defend our country, and it is time for this policy to go. I want to begin this afternoon by

talking about a true hero from my home State of Washington named Margaret Witt.

She joined the Air Force in 1987 and served honorably for 18 years as a flight nurse—rising to the rank of major. She was described in reviews and by her peers as being an exemplary officer, an effective leader, and a skilled and caring nurse.

But in 2004 her superiors discovered she was a lesbian and, acting under don't ask, don't tell policy they suspended and ultimately discharged her. Margaret lost the job she had given her life to, and our country lost a talented and committed flight nurse.

She did not give up. She went to court. She called witnesses. She made her case. In September of this year, U.S. District Judge Ronald Leighton ruled that she must be reinstated. Judge Leighton said the government gave no compelling reason for dismissing Major Witt, and that the application of don't ask, don't tell was not shown to further the government's interest in promoting military readiness.

That was the right decision, and it was amazing news for Major Witt. She is now working with disabled veterans in Spokane, WA, but she says she is excited to get back in the air and back to helping the troops who need her.

Major Witt is a true hero. Her commitment to our country should be recognized and honored. But she should never have been put in this position. She has the skills, the experience, and the commitment to do her job. The fact that she is a lesbian does not change that one bit.

There are so many reasons to repeal don't ask, don't tell and to do it now. This policy destroys lives. We have all heard stories like Margaret's. There are thousands like it, and for every one we hear there are so many more who suffer silently, whose lives and livelihoods are devastated—not because of something they did but because of who they are: men and women who are kicked out of the military or who are forced to lie to everyone they work with, who go to sleep petrified they will be found out about and discharged, and who wake up dreading another day of mandated deceit and dishonesty.

It is wrong. It needs to end.

Don't ask, don't tell is depriving our armed services of talented men and women at a time when we need our best on the front lines defending America. We are fighting wars in Iraq and Afghanistan, and we cannot afford to lose critical assets simply because they are gay.

Finally, we also know that repealing don't ask, don't tell will not have an adverse impact on the military. We have heard from military leaders who support this repeal. The Pentagon recently came out with their report that showed that repealing this policy would not inhibit their ability to carry out the missions they are charged with.

In fact, that report said 70 percent of servicemembers believe repeal would have little to no effect on their units.

Repealing don't ask, don't tell is the right thing to do. It is right for our country. It is right for our military. It is right for Major Witt and thousands like her. It is right for people like Rebekah. She is a young woman from Spokane in my home State. She wrote me a letter a couple of months ago and told me she is a senior at Eastern Washington University, and her dream for years has been to join the U.S. Army. She wrote to me and said:

I believe the military is an honorable calling. One of self-sacrifice and dedication—and I would be proud to call myself a soldier.

But there was a problem. Rebekah told me the very sense of honor that called her to serve her country was preventing her from acting on her dream because she told me she is a lesbian. She is very proud of who she is. As long as the official policy of the United States Army is to ask her to bury that pride, to tell her to keep secret a large part of who she is, and to ask her to live what would essentially be a lie, she simply will not be able to serve our country.

Rebekah told me that nothing would make her happier than to be able to graduate this coming spring and start her journey standing up for our Nation. She does not want to feel that she should be ashamed of who she is, and she should not have to.

We need to repeal don't ask, don't tell so young women like Rebekah will not stop dreaming of growing up to serve our country, and so that every man and woman in our Armed Forces can serve their country openly and with pride. We have heard the stories of the lives this policy has ruined. We have heard from top-ranking military officials that it simply does not work. We have heard from servicemembers that they, too, want it to change. Today, this afternoon, with this historic vote, this country will move a step forward in being proud of every man and woman who serves their country.

For far too long, men and women with courage and commitment to serve our Nation have been asked to hide the truth about who they are. It is shameful. It is a bad policy. Today, it will end.

I look forward to the vote this afternoon and the courage of this Senate to stand up and do the right thing today.

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

The PRESIDING OFFICER. The Senator from Texas is recognized.

#### NEW START TREATY

Mrs. HUTCHISON. Mr. President, I rise today to talk about the START treaty. We have been debating the START treaty off and on throughout the last few days, and there will be an amendment voted on for the resolution after the 3 o'clock vote on don't ask, don't tell.

I wish to talk about the amendment and the treaty itself. This historic

treaty is seeking, of course, to limit the strategic long-range nuclear weapons that are currently in U.S. and Russian inventory for a total of 1,550 warheads for each country. While these limits require some reductions in the number of delivery vehicles and deployed warheads both countries possess, a change in the counting of warheads will allow both countries to cut hundreds of them on paper with no actual reductions. For example, under START I, each deployed delivery vehicle was counted as carrying a specified number of warheads regardless of how many warheads were actually equipped on the missile or bomber. New START abandons these rules, instead only counting the number of warheads actually equipped on deployed missiles. In addition, strategic bombers each count as one warhead regardless of how many warheads they are actually carrying.

I also have reservations because of how New START limits our ability to conduct extensive and robust verification activities to ensure compliance with the treaty. The ability to adequately and thoroughly verify the enforcement of the treaty is crucial for two reasons—not only to ensure that both parties are holding up their end of the bargain but also as it relates to possibly one party losing control of missiles they are not accounting for. It is said in many quarters that some of the deteriorating nuclear materials in Russia have somehow gotten through to rogue nations such as North Korea or Iran. So it is very important to have a verification system that keeps count.

I am concerned about the ability to conduct onsite inspections because it has been reduced in this agreement. Under START I, the United States conducted more than 600 inspections over the course of 15 years. In New START, that number has been substantially reduced to only 180 inspections over the course of 10 years.

There are only two basic types of inspections in New START. Type one inspections focus on sites with deployed and nondeployed strategic systems. Type two focuses on sites with only nondeployed strategic systems. Each side is allowed to conduct 10 type one inspections and 8 type two inspections annually. Under the previous START treaty, there were 12 types of onsite inspections as well as continuous onsite monitoring activities at a certain facility. Even though, as has been mentioned on this floor in the debate, there are fewer facilities, this is a pretty drastic reduction in the ability to actually have the onsite investigations. Because weapons inspectors will only have 10 opportunities per year to inspect just 2 to 3 percent of Russia's force, we will be more reliant than in previous agreements on the full cooperation of Russia.

I really don't know how we could have reached an agreement to substantially reduce our most effective method of enforcement. In fact, a recent State Department report issued by the Obama administration said:

Notwithstanding the overall success of START I implementation, a significant number of long-standing compliance issues that have been raised in the START I treaty's Joint Compliance and Inspection Commission remain unresolved.

Defense. I am also concerned that proposals under the New START treaty may restrict U.S. missile defense capabilities, which could threaten our national security. Of all of the concerns that have been raised, I think this is the most important. It also is part of the amendment we are going to consider this afternoon.

Russia and the United States each issued unilateral statements when they signed New START that clarified their position on the relationship between START and missile defenses.

The official Russian statement said:

The treaty can operate and be viable only if the United States refrains from developing its missile defense capabilities quantitatively or qualitatively.

Contrary to claims by the Obama administration that missile defense will not be negatively impacted, a review of the text of the treaty shows otherwise. The most obvious limitation on missile defense is found in article V, paragraph 3 of the treaty. It says this prevents converting existing intercontinental ballistic missiles, ICBMs, and submarine-launched ballistic missiles, SLBMs, into launchers for missile defense interceptors.

The administration says: Well, it is more expensive to actually convert than to create new ones.

Well, we need to have flexibility. Whether we convert or whether we create new ones should not be a limitation on the United States. U.S. planning and force requirements might have to change in the future to respond to evolving world threats during New START's tenure. It is important that our Nation be able to adjust our military defense systems if needed. We are not just talking about Russia now. We are talking about adjusting our missile defense capabilities against any other country in the world, including rogue nations we believe have nuclear capabilities. We are not sure how far developed they are, but we know North Korea is trying to have a ballistic missile with a nuclear warhead. We know Iran is too. We know Pakistan has them, and though Pakistan is an ally, it is a fragile government at this point.

Why would we in any way link our own missile defense capabilities with the evolving threats out there, regardless of the present good terms we have with Russia? Why would we do that? That is a unilateral capability that our country must insist we keep for our sovereign Nation.

The McCain amendment would take out of the preamble to this treaty:

Recognizing the existence of the interrelationship between strategic offensive arms and strategic defensive arms, that this interrelationship will become more important as strategic nuclear arms are reduced, and that current strategic defensive arms do not undermine the viability and effectiveness of the strategic offensive arms of the Parties.

We want to take that out. It is absolutely essential that we take this out of the preamble.

Mr. President, I ask unanimous consent to be added as a cosponsor of the McCain amendment.

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

Mrs. HUTCHISON. Mr. President, we need to ensure that our defenses are not in any way inhibited by this treaty because we must defend against countries that perhaps are not enemies of Russia, but they might be ours. And to in any way restrict our defenses is not necessary to ensure that we have mutual offensive lowering of numbers.

So I am very concerned about this particular segment. If we can adopt the McCain amendment, of which I am a cosponsor, it would take me a significant way toward believing this treaty would be worthy of ratification.

I am seriously concerned that although it is clear that a number of restrictions will be placed on the United States under this treaty, the same is not necessarily true for our partner to the treaty—Russia.

Dr. Keith Payne, a former Deputy Assistant Secretary of Defense for Forces Policy, has noted that New START's limitations are of little real consequence for Russia because Russia's aged Cold War strategic launchers already have been reduced below New START ceilings. Additionally, many defense analysts predict Russia will have fewer than 1,500 nuclear warheads by 2012.

Russian defense expert Mikhail Barabonov bluntly makes the same point. He says:

The truth is, Russia's nuclear arsenal is already at or even below the new ceilings.

Already at or even below the new ceilings.

At the time of the signing of the treaty, Russia had a total of just 640 strategic delivery vehicles—only 571 of them deployed . . . It therefore becomes evident that Russia needs no actual reductions to comply. If anything, it may need to bring some of its numbers up to the new limits, not down.

That brings me to the second major point that concerns me about the treaty; that is, the modernization capabilities for our warheads that are part of our arsenal. We can do something about this outside the treaty and still go forward with the ratification, but so far we have not had the assurances that would allow us to know our modernization could be done.

According to the 2010 Nuclear Posture Review, today's nuclear weapons have aged well beyond their originally planned life, and the nuclear complex has fallen into neglect. It has been 18 years since our arsenal has been tested.

I share the concerns of my colleague, Senator KYL, who has been a leader on this issue. We must ensure—and we can do it in a separate, signed ratification resolution—that the United States has a strong plan that provides for a nuclear modernization program that ensures that if we did need to deploy be-

cause a rogue nation that is not part of any treaties or is a part of a treaty but isn't going to comply—we need to ensure our deterrent is real. Our deterrent will be real if our warheads are assured of still being capable of being a deterrent, being deployed, being used in the very worst case circumstances.

As President Reagan said, trust, but verify when you are making treaties with other countries, especially this treaty that is going to have such consequences as one that might lower our capability to defend our country from a nuclear missile, a warhead on a missile that could be delivered to our country by a rogue nation.

This has nothing to do with Russia. We don't expect them to launch a missile against the United States, that is for sure. But we do know that there are other nations that are enemies of the United States, that are trying to get, and possibly have, nuclear warheads and the capability to deliver them.

So we need to assure, first and foremost, two things: that our nuclear capabilities are viable, which means we need a modernization program that we can be assured has an arsenal that can work; No. 2, we need to make sure our ability to maintain missile defense is not negatively impacted by this treaty. There is no reason to connect it to a treaty that is going to limit offenses. As long as our missiles are capable of being deployed, that is leverage we must have. But we certainly have no reason to lower our capability to defend our country unilaterally, which I cannot imagine that any administration—and certainly not the Senate—would sign or ratify a treaty that might take away our capability to defend our country. I would hate for it to be on our watch that we lowered the defenses of the United States, because we are being rushed into ratifying a treaty without the full capability to amend it, or that we don't make sure in every detail, as Senator KYL has said so many times, that we have preserved our capabilities to defend our country against any enemy; and secondly, that we have the capability to go on offense so that any country that might decide to send a nuclear warhead into our territory, or into anyplace where our troops are on the ground fighting for freedom, that that country or that group of rogue nations would know we could respond because our arsenal of weapons is viable.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I ask unanimous consent that the next two Democrats on the list be Senator LEAHY, followed by Senator SHAHEEN.

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

Mrs. BOXER. Mr. President, I want to respond to the comments of my friend from Texas, who was very passionate in her remarks, by saying it interested me that she raised the name of President Ronald Reagan, because a lot

of major players in his administration support this treaty—George Shultz, for one, and also James Baker. In addition, the current Director of National Intelligence, who is responsible for verification, supports this treaty. And LTG Patrick O'Reilly, head of the U.S. Missile Defense Agency, says that the New START treaty actually reduces constraints on the development of missile defense.

I think her comments were very articulate, but they are not correct, because, again, I will place into the RECORD the many leaders from former Republican administrations who are pressing us hard to get this treaty done. As a matter of fact, we haven't had boots on the ground to verify what the Russians are doing for a long time now. This treaty will make sure we can verify. But whether it is Defense Secretary Robert Gates, or Patrick O'Reilly, as I said, head of the U.S. Missile Defense Agency, or the Director of National Intelligence—you also have former Secretary of Defense James Schlesinger saying he doesn't believe this inhibits missile defense. You have the former Secretary of Defense under President Clinton, William Perry, being very strong on this, along with Secretary of State Henry Kissinger, and so on. In the Washington Post, Henry Kissinger, George Shultz, James Baker, Lawrence Eagleburger, and Colin Powell made the following statement. "New START preserves our ability to deploy effective missile defenses." The testimonies of our military commanders and civilian leaders make it clear that the treaty does not limit U.S. missile defense plans.

I think the biggest danger to our country is not acting on this. If we don't act, it is a danger to the national security of this Nation. I am very pleased to see the incredible bipartisan support outside of this Chamber and, I hope, inside this Chamber. I am very hopeful. But we will find out in the coming days.

I want to also talk about the two very critical votes we cast here moments ago, which are so important to large segments of our communities. The DREAM Act, which would give a path of legality to students who are outstanding in their communities and who want to join the military, or go to college, is an important bill. Because of the filibuster we needed 60 votes. We got 55 votes—a majority—but the Republican filibuster stopped us from passing it.

Today the dreams of young, talented students who grew up in America were crushed because of a filibuster. We have to make it clear to the people who follow this that the Republicans stopped us from passing the DREAM Act, even though we had a few of them join us. I say thank you to those on the other side. We got 55 votes. We had 90 percent of Democrats voting for it and less than 10 percent of Republicans—90 percent of Republicans voted against it. Today, dreams were crushed.

I believe in America. My mother was born in a foreign land and, by the grace of God, she was naturalized, and she kissed the ground of this country. I often think to myself, what if she had a foul-up in her papers somehow, what would have happened to me? Would I be a different person? No, I would be the same human being. America would be my country.

The reason I am so passionate on this is these are young people who would make our country stronger. As a matter of fact, our military says the DREAM Act is a recruiter's dream, because we get the best and the brightest to sign up for the military. In my State, where I am so proud of our incredible diversity, we have a group of young people who are ready to go to college there, start their own businesses there, get jobs there, form their families there, work in their communities. They already are.

I have shown on the floor of the Senate many times individuals who were caught in this limbo state. A lot of them are presidents of their student bodies, A students, leaders in their communities. Studies show that if the DREAM Act passes, the gross domestic product of our Nation will increase. There is a very good study, a recent study by USC, the University of Southern California, that is very clear on the point.

It seems to me what we did today by failing to end the filibuster, even though we had a strong majority vote, we hurt our country. Why did we hurt our country? Because our children are our future. These are very bright young people, who are very motivated. They would be the only ones to benefit from the DREAM Act.

I am here today with a message: I will never give up until we pass the DREAM Act.

On the good side today, from my perspective, we made some history. We did break a filibuster—a Republican filibuster—on the issue of ending discrimination in the military against gays and lesbians. We voted to end that filibuster and take up the issue of the repeal of don't ask, don't tell. I do believe, in a few hours, that policy will be gone.

There are moments in history that come to us, and for me to be here at this time—and I know I speak for a lot of colleagues—and cast a right for civil rights, cast a vote for justice, cast a vote for equality, and to cast a vote against discrimination is a high honor.

I have to say as a point of personal privilege, I was here when that policy went into effect. It was 1993 and I was a new Member of the Senate. I thought this was the wrong policy at that time. So I said to my staff: Can't we do something and stop this? We decided the best way to try to stop it was to say let's not codify this policy. Let's not put it into law. Let's have an amendment that says it is up to the executive branch. That way, the executive branch could repeal it if it didn't work, and it would be easier.

It is interesting because our thoughts were right on target, because our President does not support don't ask, don't tell, and he would, in a heartbeat, of course, remove it as a policy through Executive order. But because we had voted it into law, we had to act.

I decided to go back to the speech I made on that day, September 9, 1993, and take a look at some of the things I said about don't ask, don't tell. First, I said, on the question of codification—that is, putting don't ask, don't tell into law:

There is no historic precedent for the codification of the military personnel policy that prevents a whole class of Americans from serving their country in the Armed Forces.

I felt it was against precedent, and I said:

There is simply no compelling reason to believe we should break with history and codify such a policy.

I mentioned that, over the past four decades, Congress had declined to impose restrictive personnel policies on the military. I quoted a former Senate Armed Services Committee chairman, Barry Goldwater, who stated:

Banning loyal Americans from the Armed Forces because of their sexual orientation is just plain un-American.

I said the policy is a policy of out-right discrimination, which flies in the face of the very American values that the military has sworn to defend.

I lauded the courage of those military personnel who were willing to come forward and testify before Congress way back then. And, of course, fast forward to today, it is incredible that brave men and women serving in uniform in Iraq and in Afghanistan, who put their careers on the line, can stand up and be counted and speak truth to power about this issue.

I think this is an important point. The military has a very strict code of conduct, which it must have. So everybody in the military must adhere to it, whether you are heterosexual, homosexual, or whatever your orientation is; you have to live by the code of conduct. In 1993 we had just come through this horrible scandal called Tailhook. It was awful. You had a series of rapes, and you had a very bad circumstance, which was brought out into the public. Action was taken. So, clearly, heterosexuals in the military, when they misbehave in a sexual way, are going to be punished. It is the same way for improper homosexual behavior. It will not be tolerated.

That is the point. I said that don't ask, don't tell is a policy of discrimination based on your status instead of your behavior.

Here is something else I said in 1993:

It is easy to lose sight of the impact that policies have on people's lives. It is easy to label people that are different from us as "those people." We might be able to temporarily fool ourselves into thinking that those people are not part of our social fabric.

I read into the RECORD some writing of a German philosopher, who wrote about World War II, in which he said:

When the Nazis came for the Jews, I didn't speak up because I was not a Jew. And when the Nazis came for the gypsies, I didn't speak up because I was not a gypsy. And when the Nazis came for the mentally defective, I didn't speak up because I was not mentally defective. When the Nazis came for me, there was no one left to speak up.

So I said: Let's not do this to gay and lesbian people. Let's have a code of behavior that affects us all and does not divide us. We fool ourselves when we say that the gay and lesbian community is not part of our social fabric; that they are not human; that they do not have an effect on our lives. That isn't right. We are all God's children and they are our sons and our daughters.

So in a couple of hours, for me, this issue comes full circle. I got 33 votes that day in 1993 for my amendment not to codify don't ask, don't tell. I got 33 votes, and I was proud of that. I remember Howard Metzenbaum—may he rest in peace—said at that time: The Boxer amendment is a civil rights amendment, and I was proud. But I was so sad to lose badly—33 votes. Today—today—we have come a long way, and we have come a long way because people have put their fear aside and they came forward and they told their stories. They took the light and they focused it on the truth. We have come a long way because of their families who love them and have spoken out. We have come a long way because the military itself, in the Pentagon's recently released survey, said it doesn't matter. Seventy percent of our servicemembers said we don't care about sexual orientation.

So this is America at its best—when we open our arms to equality and freedom and justice.

In closing, I would say there is more work we have to do on this whole issue. There is still a lot of unfairness in our laws—partners not being able to have the same rights as married couples. That is another whole issue we will work on. But I am confident that as Americans we will move forward. When we started out, only White men of property could vote. We have struggled. All this is a struggle. It is not easy. The struggle for freedom is not easy. People have died for freedom in all these communities. It is in our history. But this will be a day that will go down in American history as a day we lifted a barrier, and America is stronger because of it.

I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Wyoming.

Mr. LEAHY. Mr. President, may I ask a question of the Senator from Wyoming, just for planning purposes? I am going to be recognized next. Approximately how long does the Senator think he will take?

Mr. BARRASSO. Mr. President, 10 to 12 minutes on the START treaty.

Mr. LEAHY. I thank my friend, and I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, I come to the floor to talk about the McCain-Barrasso amendment to the New START treaty, and I appreciate hearing all the strong and passionate support for this amendment from my colleagues on the issue of missile defense. We debated this yesterday, well into the evening, and we are going to be voting on this a little after 3 this afternoon.

I think it is important that the American people are given the opportunity to hear the implications of the New START treaty. The New START treaty significantly impacts America's national security and our nuclear deterrent. I believe this treaty places limitations on the ability of our Nation to defend itself—limitations I believe should not be in the treaty.

The preamble to the New START treaty provides an explicit link between strategic nuclear offensive weapons and strategic nuclear defensive weapons. It also implies the right of Russia to withdraw from the treaty based on U.S. missile defense that is beyond "the current strategic capabilities." Well, by specifying current strategic capabilities, the intent is clear: They are signaling that future U.S. capabilities could pose a problem. Russia does not want us to improve or to expand missile defense capabilities for the United States. For me, this is absolutely unacceptable.

The administration claims the language in the preamble has no legally binding significance. They claim it is simply a nonbinding concession to Russia—a nonbinding concession to Russia. Well, it is important to note that the New START treaty is not the first attempt by Russia to limit our national defense. Russia has wanted language limiting U.S. missile defense for a long time. They are looking for grounds to claim the U.S. missile defense program violates an international agreement.

Russian threats have had an impact on our own missile defense decisions in the past. This administration abandoned previous plans to deploy missile defense systems in Poland and the Czech Republic. It is evident the administration already receives considerable pressure from Russia to limit our Nation's missile defense activities. I believe the language in the treaty will only further add to that pressure and will impact U.S. decisionmaking on our own missile defense.

I wish to emphasize, again, that the United States must always remain in charge of our own missile defense capabilities, not Russia and not any other country. It is unacceptable for the United States to make any concessions on missile defense. Defending our Nation should be a top priority.

Many of my colleagues have come to the floor over and over to highlight this very point. We share a deep concern about the concessions the New START treaty provides to Russia, especially the limitations of our missile defense. There is no legitimate reason for

the inclusion of limitations to our national security in this treaty. The New START treaty is just the first step in allowing greater concessions on U.S. missile defense in future agreements.

I think it is also important to point out the continual change in the story by the administration—the one they have provided this Senate regarding the inclusion of missile defense language in the treaty. Originally, the Senate was told the New START treaty would not contain anything on missile defense. Then the Senate was informed there would be no reference to missile defense other than in the preamble of the treaty but certainly no limitations. Then we found that article V of the treaty contains a limitation on the conversion of ICBM and SLBM launchers into launchers for missile defense. The Senate has a treaty before it now on nuclear strategic offensive weapons with several limitations on missile defense. We are now being told not to worry about these limitations on our ability to defend ourselves in the New START treaty. The administration says: Well, it is only a statement of fact. They say: It isn't legally binding or this administration doesn't plan to use it or it is only an insignificant concession to the Russians.

I do not find any of these arguments comforting. This treaty sets a terrible precedent. The United States should not be placing any constraints on our ability to defend ourselves, no matter the type, the size or the length of time.

Significant disagreements exist between the United States and Russia on missile defense provisions in the New START treaty. Some argue it doesn't matter what Russia says about the issue. Well, I believe it is vital that we examine what Russia has said about this very matter. When two countries enter into a bilateral agreement, there needs to be an actual agreement—an agreement of what is said and an agreement of what it means. Discussing the disagreements between the two parties to the treaty is imperative, and it is part of the Senate's constitutional obligation. The two parties to this treaty—the United States and Russia—need to know how both parties will be acting and how they will both be interpreting the New START treaty. We cannot ignore the differences.

Some proponents of the treaty have argued that passing the McCain-Barrasso amendment will complicate ratification. I reject that idea. I reject the idea that the Senate's advice and consent duty is to take it or leave it. I believe the Senate's advice and consent role is either to accept the treaty or improve the treaty, and that is what this amendment does—it improves the treaty. We, as a Senate, cannot simply be a rubberstamp to treaties due to fears of fixing flaws and improving important provisions.

The Congressional Research Service published a study on the role of the Senate in the treaty process. It is titled "Treaties and Other International

Agreements: The Role of The United States Senate." On page 125, the study states:

Amendments are proposed changes in the actual text of the treaty. They amount, therefore, to Senate counteroffers that alter the original deal agreed to by the United States and the other country.

So should the Senate agree to strike the missile defense section of the preamble, we are simply asking the Russians to accept it. The ball is in Russia's court. The Russians can either accept or reject the Senate's counteroffer. If the text of the preamble is just a nonbinding statement of fact, then Russia should not have any problem in eliminating that portion of the preamble. But if Russia does have a problem with eliminating a so-called nonbinding statement of fact and Russia is willing to jeopardize the entire treaty over it, then every Member of the Senate should be concerned about the provision's impact.

The treaty's preamble, the Russian unilateral statement on missile defense, and remarks by senior Russian officials all show an attempt by Russia to limit or to constrain future U.S. missile defense capabilities. Let's take a look at the Russian unilateral statement. It shows how the Russians will act under the treaty. It states:

The treaty between the Russian Federation and the United States of America on the reduction and limitation of strategic offensive arms signed in Prague on April 8, 2010, can operate and be viable only if the United States of America refrains from developing its missile defense capabilities quantitatively or qualitatively.

That is the Russian unilateral statement. Russian Foreign Minister Lavrov stated the treaty contained "legally binding linkage between strategic offensive and strategic defensive weapons." He went on:

The treaty and all obligations it contains are valid only within the context of the levels which are now present in the sphere of strategic defensive systems.

To me those statements seem very clear. The negotiators have given in and they have allowed limitations on our missile defense capabilities. I have no doubt that Russia will threaten to withdraw from the treaty, should the United States expand its current nuclear capabilities.

There should be no problem in removing the language in the preamble when treaty proponents believe that it has no legally binding significance.

I have been sitting here, visiting and discussing this treaty with Members on both sides. This amendment only strikes a portion of the treaty that people who support the treaty have called nonbinding, legally insignificant, and one Senator called it a throwaway provision. Then they should throw it away. This Senate can ensure that there is no limit on U.S. missile defense by simply passing the McCain-Barrasso amendment. Our missile defense is worth the effort and the time to get it right.

The McCain-Barrasso amendment significantly improves the treaty and I

urge my colleagues to vote in favor of this very important amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

DON'T ASK, DON'T TELL

Mr. LEAHY. Mr. President, I know in a couple of hours we will be voting on repeal of don't ask, don't tell, now that we have been able to go past the filibuster of it. I wish to speak about that for a few minutes.

While partisan rancor seems to have seized the Senate on so many occasions this year, on at least this one count I am encouraged and I am hopeful. There is yet sufficient bipartisan agreement to repeal the discriminatory don't ask, don't tell policy before this Congress ends. I commend the Senators who have pledged to support the repeal. Of course I renew my own commitment in support of the effort. It is well past time to put an end to this discriminatory and harmful policy.

Today, in the Senate, the stage is set again for one of the major civil rights victories of our lifetimes. Years from now I hope historians will have good cause to remember that today is the day when the two parties overcame superficial differences to advance the pursuit of equal rights for all Americans. After much effort and just as much study and discussion, the Senate will finally proceed to an up-or-down vote on repealing this counterproductive policy.

For too long we have said let's vote maybe, we are not quite ready for a vote, let's get the filibuster going. I think most Americans expect Senators—after all there are only 100 of us—they expect us to come here and either vote yes or vote no, not vote maybe. A filibuster is voting maybe. To Senators who keep saying I want to think about it more, I want to go longer—we have had years of study. This afternoon it is time for every man and woman in this body to step forward and vote either yes or no. For those who still harbor concerns that enacting this repeal would somehow harm readiness, one simple fact is the clearest answer. Gay and lesbian Americans already serve honorably in the U.S. Armed Forces and they have always done so. There is no doubt that they have served in the military since the earliest days of the Republic. The only reason they could do so, then and now, even under today's discriminatory policy, is because they display the same conduct and professionalism that we expect from all our men and women in uniform. They are no different from anyone else. They should be treated no differently. As one combat veteran said: I don't care whether the soldier next to me is straight or not; I care whether he can shoot straight or not.

In ending this policy we are bringing to an end years of forced discriminatory and corrosive secrecy. Giving these troops the right to serve openly, allowing them to be honest about who they are, will not cause disciplined

servicemembers to suddenly become distracted on the battlefield. It is pandering to suggest that they would be.

But that is not only my view. The Chairman of the Joint Chiefs, Admiral Mullen, has said time and time again that this is the right thing to do, that it will not harm our military readiness.

Gay soldiers and straight soldiers have fought and died for our country throughout the history of this country. Gay soldiers and straight soldiers have fought and died for our country in Iraq and Afghanistan. I think of one of the editorial cartoons showing parents at a military graveyard and they are looking at the grave of their son. One says, "They didn't ask." And the other said, "They didn't tell."

Look at this—three coffins draped in flags. The caption is, "Which is the gay one?"

Like so many other Senators, I have walked on a quiet day through the graveyard at Arlington National Cemetery. I have seen dates going back long before I was born. I see people who have died in our world wars, died in Korea, died in Vietnam, who die now in Iraq and Afghanistan. I look at the names—some from my own State—and like everybody else who walks through, I think of the sacrifice of these people and the sacrifice of their families, the life that would not be lived, the children who might not know a parent, the brother who might not know a sister or sister who might not know a brother, parents who are burying their child. Of course in the natural order, children bury their parents. Here, parents have buried their child.

Does anybody look at those graves and say: Move this one because we just found out that soldier who died in battle was gay? If anybody asked to do that there would be an uproar in this country. So I ask why any question about them serving? Every member of our armed services should be judged solely on his or her contribution to the mission. Repealing don't ask, don't tell will ensure that we stay true to the principles on which our great Nation was founded.

We ask our troops to protect freedom around the globe. Isn't it time that we protect their basic freedoms and equal rights here at home? Throughout our history the Senate has shown its ability to reflect and illuminate the Nation's deepest ideals and the Nation's conscience. It is my hope the Senate will rise to this occasion by breaking through the partisan din and proceed to debate, as we have, and now vote on repealing the discriminatory and counterproductive policy.

I see my good friend and neighbor from across the Connecticut river, Senator SHAHEEN, and I see my friend and colleague—I apologize, I did not see him—the Senator from South Dakota. I know he is waiting. I will yield to him. It is my understanding Senator SHAHEEN will be recognized after Senator THUNE.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I wish to speak to the START treaty, more specifically to the McCain-Barrasso amendment which is the amendment that is currently under consideration and on which we will vote later this afternoon. I want to point out at the outset that you do not have to watch the news very often in this country to realize we live in a dangerous world. There are lots of countries around the world that are run by regimes that not only mistreat their own populations but would love to do harm to countries that are allies of ours, as well as to the United States. That is why a debate about an issue such as missile defense is so important. That is why this particular provision in the START treaty has drawn so much attention, so much concern by many of us who are concerned about the linkage it establishes between offensive strategic arms and defensive strategic arms.

The Senate made it abundantly clear at the outset of the negotiations on the New START treaty, specifically in section 1251 of the fiscal year 2010 National Defense Authorization bill, that there should be no limitations on U.S. ballistic missile defense systems. The New START treaty not only contains specific limitations on those systems, but also reestablishes an unwise linkage between offense and defense that was broken when the ABM Treaty came to an end.

We were told as recently as March 29, by Under Secretary Tauscher, "The treaty does nothing to constrain missile defense. This treaty is about strategic weapons."

I quote again, "There is no limit on what the United States can do with its missile defense systems."

And then quote again, "There are no constraints to missile defense."

Those were all quotes made by Secretary Tauscher on March 29. But these assertions are incorrect in two ways. No. 1, not only are there specific limits on some missile defense options—and I note article V, paragraph 3 of the treaty text itself—but, second, when viewed together with the treaty's preamble, Russia's unilateral statement and statements by senior officials all provide potential for Russia to intimidate the United States by threatening to withdraw from the treaty if the United States seeks to increase its missile defense capabilities.

The treaty's supporters are going to argue that the limit on converting offensive silos for missile defense is meaningless because we don't have any such plans. But the question I come back to is simply this: Why is there a limitation at all on missile defense in a treaty that is meant to deal with nuclear weapons? Why did we concede to the Russians on this important point and can we be sure we will never have such plans. After all, we have converted offensive silos to defensive silos—for defensive purposes—in the past.



My own view is that particular provision in the treaty text is a direct linkage between offensive and defensive arms. Then you have the preamble and unilateral signing statements that I think are even more telling when it comes to that connection that is drawn between—that interrelationship between offense and defense.

Far more pernicious is the treaty's preamble and the two unilateral signing statements by the Russians and by the United States. The preamble states, "The current strategic defensive arms do not undermine the viability and effectiveness of the strategic arms of the Parties."

The statement suggests that moving beyond current systems might undermine the viability and effectiveness of strategic systems and could provide grounds for withdrawal.

The administration says that either side can withdraw anyway. That is only partially true. The withdrawal clause in the treaty, as it has been in previous treaties, deals with extraordinary events and the preamble and unilateral statements make withdrawal more likely by building in an inevitable pretext.

So you have the preamble, the language in the preamble, you have the direct linkage in the treaty text itself, and then I also want to mention the other point which I think is equally important and that is the Russian unilateral signing statement makes clear Russia's legal opinion. Here is what it says.

The treaty between the Russian Federation and the United States of America on the reduction and limitation of strategic offensive arms signed in Prague on April 8, 2010, can operate and be viable only if the United States of America refrains from developing its missile defense capabilities quantitatively or qualitatively.

It further states:

The exceptional circumstances referred to in article XIV, the withdrawal clause of the treaty, include increasing the capabilities of the United States of America's missile defense system in such a way that threatens the potential of the strategic nuclear forces of the Russian Federation.

So the Russians have built into the treaty record their threat that improvement of U.S. missile defense creates the legal pretext for their withdrawal from the treaty. It can only be read as an attempt to exert political pressure to forestall continued development and deployment of U.S. missile defenses.

Was our response to that a firm rebuttal? The answer is no. Unlike the START I agreement where the United States said quite clearly that it did not agree with Russian statements linking that treaty to the U.S. status in the ABM treaty, we did not do that this time.

Instead, the State Department said, in response to the Russian unilateral statement:

The United States of America takes note of the statement on missile defense by the Russian Federation. The United States mis-

sile defense systems would be employed to defend the United States against limited missile launches, and to defend its deployed forces, allies and partners against regional threats. The United States intends to continue improving and deploying its missile defense systems in order to defend itself against limited attack, and as part of our collaborative approach to strengthening stability in key regions.

So it would appear that the U.S. position does not contradict the Russian position in the slightest. What then to make of the U.S. missile defense plan previously announced by Secretary Gates, which talks about the deployment of SM-3 missiles in Romania by 2015, Poland by 2018, and then in 2020 the deployment in Europe of the new SM-3 2B missile for the defense of Europe and the United States against ICBMs; is this still our position or is it now the position set forth in the signing statement and as recently briefed to the NATO-Russia Council in Lisbon where the SN03 2B missile was portrayed quite clearly as being "available" rather than "deployed" in the year 2020.

It is clear to me the administration is already coming under considerable pressure by the Russians to limit its missile defense activities in the very near future. Past experience would suggest this administration may be willing to alter its plans to accommodate the Russians, as it did in the case of previous plans to deploy missile defense systems in Poland and the Czech Republic.

How will it respond if the President's prized accomplishment, the START treaty, is at risk? I think it is very clear from the language in the preamble, the direct linkage in the treaty itself, and what the signing statements say, what the Russians' intentions are with regard to this particular issue, which is why it is so important this amendment get adopted.

This amendment the Senators from Arizona and Wyoming have offered would simply strike the language in the preamble that is causing so much concern. We have heard arguments on the floor of the Senate since we started debate on the START treaty that the preamble is nonbinding; in other words, it does not mean anything.

In fact, it was said yesterday by someone on the other side that it is throwaway language. Yet at the same time, it has been argued by others on the other side that it is a treaty killer. It cannot be both. It cannot be a throwaway that is not legally binding and a treaty killer at the same time.

Essentially, what they are saying is, it means nothing and it means everything. That is a direct contradiction. That is why it is so important this amendment be adopted, which would clarify once and for all, or separate and decouple or delink this connection that exists in this treaty between offensive and defensive arms.

I think the amendment that is before us right now gets at the very heart of the matter, and we all know the Rus-

sians and Americans have different views on missile defense. But the attempt to paper over or even ignore these differences in this treaty sets the stage for future misunderstandings or confrontations as the United States continues its missile defense activities, particularly in Europe.

Confusion about U.S. plans is equally dangerous. This is not an issue on which there should be ambiguity, on which there should be confusion, and on which there should be this kind of a difference of opinion.

So I would simply say, as we come here in an hour or so to a final vote on the McCain-Barrasso amendment, that I think it is important for the Senate in our important role when it comes to treaty ratification to make sure we are doing everything that is in the national security interests of the United States and allows us in the best way possible to defend this country and our allies.

If we are limiting in any way our ability when it comes to the issue of missile defense, we are putting in jeopardy and at risk America's national security interests. So this treaty should not be approved. It should not be approved certainly until some of these changes are made, and we can start today by eliminating the linkage and the connection that exists today in the preamble by striking and deleting that language from the preamble of this treaty and making it very clear that the United States intends to preserve all options available to us when it comes to missile defense.

As I said before, this is something—this linkage was broken years ago under the Bush administration. We should not establish now the precedent of allowing those issues to be linked and to give the Russians an opportunity and an excuse to withdraw from this treaty if the United States decides to proceed with what is in its own best national security interests.

So I would urge my colleagues on this amendment—this is an important amendment. We will hopefully have debate on other amendments. I have a couple of amendments to deal with the issue of delivery vehicles which I think is also a very important part of this treaty. But there probably is no more important piece of this treaty than the issue of missile defense when it comes to the vital national security interests of the United States.

So I hope Members will, when this vote comes up later today, vote in favor of the McCain-Barrasso amendment and make it clear that there is to be no linkage, no nexus, between strategic offensive arms and strategic defensive arms so we eliminate once and for all the ambiguity that exists with regard to this issue and allow us to proceed to other amendments on the treaty.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.



DADT

Mrs. SHAHEEN. Mr. President, I am here today to express my strong support for the repeal of the don't ask don't tell policy. The Senate took a significant step toward that repeal earlier today. I want to congratulate and thank Senators LIEBERMAN and COLLINS for their strong bipartisan leadership on this issue. I was proud to be a cosponsor of this bill, and I hope we will soon send it to the President for his signature.

It is not often that the Senate gets the opportunity with a single vote to right a wrong, but we have that opportunity here today. This is a historic vote, one for which this Senate will be remembered for a long time. This is our opportunity to fix an outdated, discriminatory and broken policy and to strengthen America's security. The United States, our military, and our security will be better off because of this legislation.

I completely agree with Defense Secretary Robert Gates, who strongly endorsed the repeal and urged the Senate to pass this legislation before the end of the year. Secretary Gates and America's military leadership understand that this discriminatory policy undermines our national security and diminishes our military readiness.

A nation at war is a nation that needs the best, most qualified service members we can find regardless of sexual orientation. At a time when nearly 150,000 American men and women are serving in combat overseas, and at a time when our military is stretched thin across the globe, we simply cannot afford to lose some of our finest soldiers.

Since the policy was instituted in 1993, more than 14,000 service members have been expelled from the military, and an estimated 4,000 service members per year voluntarily leave because of this discriminatory policy. One thousand of those expelled were badly needed specialists with vital mission critical skills, like Arabic speakers and other technical experts.

Don't ask, don't tell also ignores the realities of today's combat environment, where American soldiers are fighting next to allied troops from around the world. In fact, at least 12 nations allowing gays and lesbians to serve openly have fought alongside U.S. service members in Afghanistan. At least 28 countries, including our closest allies, Great Britain, Australia, Canada, and Israel, already allow open service.

Not only is this policy costing us critical capabilities, it is also unnecessarily costing us a significant amount of money. The military spends as much as \$43,000 to replace each individual charged under the don't ask, don't tell policy. At a time of extremely tight budgets with little money to go around, it just does not make sense to spend tens of thousands of dollars to investigate, try, and replace American soldiers based only on their sexual orientation.

Repeal of this policy has earned the backing of an overwhelming majority of America's Iraq and Afghanistan veterans and countless military leaders, including retired GEN Colin Powell, who says that attitudes and circumstances have changed since the policy was first instituted 17 years ago.

In addition, we now have a good understanding of what our own military men and women feel about the repeal of this policy. The military undertook one of the largest and most comprehensive reviews in its history to make sure those most affected by this change had their views heard and incorporated. The in-depth, 9-month review included a comprehensive survey that was sent to nearly 400,000 active duty and reserve component service members as well as 150,000 military spouses.

The review's final report, released several weeks ago, found that repealing this policy could be accomplished without undermining military readiness and can be initiated immediately. The report found that more than two-thirds of those questioned found that repeal would have no effect on cohesion, effectiveness, unit readiness, or morale.

We used to tell young Americans, "Don't ask what your country can do for you." Yet now we tell the very people who have answered that call, "don't ask, don't tell." This is a civil rights issue. It is a moral issue, and it is a national security issue. Today, the Senate has an historic opportunity to fix this broken and outdated policy.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, I rise to echo the words of the distinguished Senator from New Hampshire, Mrs. SHAHEEN, and her support of the repeal of don't ask, don't tell. It is important for our military, it is important for our values, it is important for human rights, it is important for our country.

As we know, for nearly 17 years Federal law has dictated that gay and lesbian Americans serving or hoping to serve in our Nation's military must be silent about their sexual orientation. If that silence were broken, they would face the grim consequences of an almost certain discharge.

The don't ask, don't tell policy, as it has become commonly known, is inconsistent with our American values. It has robbed the military of valuable personnel who can contribute to military readiness and fulfillment of missions at home and abroad. That is why I opposed this policy in the mid-1990s and have advocated for its repeal ever since.

Throughout this debate I have heard from many Ohioans, including members of our military, expressing profound opposition to the policy of don't ask, don't tell. Ohioans such as Cadet Katherine Miller, LTC Victor Fehrenback, who spoke with me at one of my Thursday morning coffees in the Capitol, MAJ Mike Almy, and many other advocates and servicemembers

have worked in their communities. They have walked the Halls of Congress to explain why don't ask, don't tell should be overturned.

Their experiences and that of those they represent are reminders that important battles remain in the fight for human rights and justice in our country. But we know for sure that history is on their side.

Today's vote will affirm what military leaders from Defense Secretary Gates to GEN Colin Powell to Chairman of the Joint Chiefs of Staff Michael Mullen have been saying for some time: Repeal of don't ask, don't tell will make our military stronger. With our Nation at war, it is especially important that our policies promote the recruitment and retention of the very best soldiers, regardless of their race, religion, sexual orientation or gender.

President Obama and Secretary Gates have conducted a year-long review—which many people in this Chamber in both parties, especially my Republican colleagues, asked for—on the impact of fully and openly integrating lesbian and gay Americans into the military. It is no surprise that the report concluded that open service poses no threat to our military readiness or effectiveness.

It is estimated that the don't ask, don't tell policy has cost the American people somewhere between \$300 and \$500 million to implement. It has resulted in the discharge of almost 14,000 soldiers—14,000 soldiers who were discharged not for performance but because of their sexual orientation. These 14,000 Americans include hundreds of Ohioans who offered to lay down their lives for this country. They deserve better than investigations and discharge. They deserve acceptance, affirmation and, most importantly, the right to serve openly and honestly in America's military.

The strength of our Nation is measured not just by the size of the economy or the might of our military, it is measured by acts consistent with our values, the very values our servicemembers defend and that define our Nation's greatness.

The repeal of don't ask, don't tell is a long overdue victory for our military, a victory for American values, a victory for human rights and, most important, a victory for the American people. I ask support of the measure, a resounding vote out of this Senate to go along with the House so the President can sign this bill and end this policy that has not served the American people well for much of two decades.

I yield the floor, suggest the absence of a quorum, and ask unanimous consent that time under the quorum be charged equally to both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KERRY. Mr. President, it is my understanding that the Senator from Pennsylvania is here and wants to speak. Then, I think the Senator from New Jersey is on his way over to speak. Because there have been a number of speeches on the START treaty against it and a number of arguments laid out, I wish to have an opportunity to speak to them. I ask unanimous consent that at 2:30 I be permitted to speak for about 15 minutes.

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

Mr. KERRY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CASEY. Mr. President, I rise to discuss the vote that will occur in a little more than an hour on the don't ask, don't tell policy. I have some basic thoughts about it, coming from a State where we have contributed probably as many or more soldiers to almost every major conflict we have had over the last 100 years. We are a State that has over 1 million veterans. We have lost soldiers most recently in the conflicts in Iraq and Afghanistan. In Iraq, our killed-in-action number was just below 200. At last count, it was about 197. In Afghanistan, it is now up to 61, 62 who have been killed in action. People in Pennsylvania know what war is about, what sacrifice is about, because so many families have contributed to that service and that sacrifice.

When it comes to this change in policy we are advocating, I wish to focus on two basic considerations. One is basic integrity and the other is valor. We have had a number of statements made by senior military leaders, part of this administration and others, who have called for repeal of the policy. Secretary Gates, Secretary of Defense for the Obama administration and for a good while under the administration of President Bush, said:

I fully support the President's decision. The question before us is not whether the military prepares to make this change but how we best prepare for it.

So said Secretary Gates.

Admiral Mullen, Chairman of the Joint Chiefs of Staff, said in pertinent part:

It is my personal belief that allowing gays and lesbians to serve openly would be the right thing to do. No matter how I look at this issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens. For me personally, it comes down to integrity.

His statement goes on from there.

Former Secretary of State Powell fully supports the change. I could go on

from there, and I know folks have cited military leaders in the debate. I keep coming back to this question. Secretary Mullen talked about integrity and a policy that forces young men and women to lie.

Former National Security Adviser Jim Jones said, quoting in pertinent part, that the don't ask, don't tell policy:

... has to evolve with the social norms. I think times have changed. The young men and women who wish to serve their country should not have to lie in order to do that.

I wish to focus on that part of it. How can a policy long endure in this country, especially as it relates to the military, that asks people to lie? Every day they have to get up and prepare themselves for service and sometimes literally for battle, a life and death battle. Every day this policy says: But you have to lie about it. You have to keep it a secret. You can't let anyone know. You have to lie.

How can a policy endure in this country that is based upon lying and not telling the truth? That is at the core of our Republic, whether you talk about the rule of law or no man or woman is above the law. All those statements, all that philosophy is undergirded by basic integrity, that we all try to live by the same rules. If we are not telling the truth and we are forcing folks who are willing to serve their country to put themselves in harm's way, which doesn't even begin to describe the sacrifice, some of these soldiers have not only served but been gravely, grievously wounded and some, of course, have been killed in action in the current conflicts and many before that, it is a basic question about integrity. Are we going to continue to support a policy that calls upon people to lie? I don't think the American people support that.

Secondly, the basic and related question of valor. We have public officials across the country, Members of Congress, public officials in our States who stand on Veterans Day and all kinds of days when we commemorate and pay tribute to those who have sacrificed, those who gave, as Lincoln said, the last full measure of devotion to their country. There are a lot of speeches given and commendations accorded to people who have served the country. But a lot of that will ring hollow if we are saying there is one group of soldiers whom we may not want to have in the military, and if we want them in, then they are going to have to lie about it. These are young men and women who are the definition, the embodiment of service and valor and courage. We can't just get up as a politician and give a speech about patriotism and then be willing to undermine our argument and undermine our military by saying we have to perpetuate a policy that doesn't work and is in conflict with who we are.

I want to read a quotation from someone who has served in the Congress for the last 4 years but someone

who has also served our country, someone I know, and he is a friend of mine—I put that on the record—but someone we are very proud of and the work he has done in both forms of service: as a Member of Congress and serving in our military, and that is, Congressman PATRICK MURPHY from Bucks County, PA. For some who do not know their geography, that is on the east side of our State. He has been here in the Congress for 4 years. He will be leaving this month. But he has been a champion of repealing this policy, and he speaks with an integrity and a commitment which I think is unmatched because he is not speaking about this policy theoretically, he is not speaking about this policy in a textbook sense, he is speaking and has fought for the change in this policy from the vantage point of someone who has served and who served in situations where he could have been killed, sometimes every day of the week.

Here is a part of what he has said. There are many things he has said about this, but he said:

The paratroopers from the 82nd Airborne Division in the Army that I served with back in Iraq in 2003 and 2004, they didn't care who you were writing letters back home to, if you had a boyfriend or a girlfriend. They care whether you can handle your assault rifle. Can you kick down a door? Can you do your job so you all come home alive?

That is the challenge he presents to all of us, Congressman PATRICK MURPHY, former member of the 82nd Airborne Division. This policy on the battlefield is not theoretical. It is consequential in at least one sense. If we continue the policy the way it is, we are going to be less effective on the battlefield. If we continue the policy the way it is, we are going to have less people serving at a time when we need extra help.

We need soldiers on the battlefield. We need to continue to have young men and women who will volunteer to serve, knowing that once they volunteer, this is not sending you to some base somewhere for a couple of years away from conflict—knowing that when you volunteer today—maybe this was not true 10 or 15 years ago—but today when you volunteer, the likelihood of you seeing combat is very high.

So there is a special category of valor and integrity for those who are willing to volunteer to serve their country, especially when they know they could be sent into a firefight.

You do not have to take the word of one or another Senator, but I think we can take the word and base our judgment upon the experience of a Member of Congress, in this case from the House, who has also served in the 82nd Airborne Division. We should remember his words, what folks at home will care about. They care about “whether you can handle your assault rifle.” “Can you kick down a door?” “Can you do your job so you all come home alive?”

When we speak about this policy, this is not theory. This is a debate, at

least, about two very important principles: valor, and whether we are going to affirm the valor of others who serve and are willing to serve; and whether we are going to have a policy based upon a core foundational principle of our democracy, which is integrity. That is the basic question we have before us.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BAYH). The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, it is time to stop discrimination. It is time to repeal don't ask, don't tell. This is a policy that should have been repealed long ago—long ago. It should have been repealed for its discriminatory nature. It should have been repealed because the Defense Department's own report makes it clear that those who pointlessly cling to this discriminatory, wrongheaded, shortsighted policy, by claiming the mantle of national security, have absolutely no ground—no ground—to stand on.

Don't ask, don't tell is a ridiculous notion, a bad policy, and a relic of a bygone era. It is keeping brave, able, educated, technically skilled, multilingual, trained soldiers, men and women who want nothing more than to defend their country from doing so.

We are preventing them from making our military even stronger, making it better, and contributing to what we need in a modern military force. In my view, a vote to repeal this antiquated policy is a smart vote. It is the right vote. It is the fair vote. It is a just vote. It is a vote to keep our military strong, keep good people in the military, who want to serve.

Americans who now must remain anonymous, such as an anonymous marine currently serving in Afghanistan says:

So far the military has been my source of work and income for the last 6 years. I don't want that all taken away from me and me being discharged anything but honorably.

He says:

We face the same challenges as all other marines or soldiers but with an extra burden.

Or another anonymous servicemember—a decorated Midwesterner, a shining example of an American marine, with a chest full of ribbons—like others, he risked his life, but, like other marines denying who they are, he was deeply apprehensive about seeking the medical care he needed when he got home for fear of being ousted and losing everything he had worked and sacrificed for, everything he had served for.

He suffered in silence, careful in whom he confided, saying:

You never know who you can trust.

An Arabic linguist—someone whose talents we sorely need against some of the enemies we have today—named Bleu Copas was discharged under don't ask, don't tell, even though he was never identified as gay and his accuser never revealed himself. Imagine that, in a country that values the rule of law

and justice, that your accuser never has to reveal themselves, never be subject to cross-examination, never testing the veracity, the truthfulness of what they are saying, and yet have this person be discharged.

This is no way to run a military. We are talking about patriots. We are talking about men and women who want to serve, who are serving, who yearn to serve, who put their lives on the line.

When a C-17 from the 436th Airlift Wing flies into Dover, DE, when rows of flag-draped coffins fill a hangar and the solemn dignity of fallen heroes brings silence and tears to all of us as a nation, do we ask the faith, the color, the sexual preference under those flags? I think not.

Listen to the arguments and rationale of those military leaders who know best.

Former Secretary of the Army Clifford Alexander said:

The policy is an absurdity and borderlines on being an obscenity. What it does is cause people to ask of themselves that they lie to themselves, that they pretend to be something that they are not. There is no empirical evidence that would indicate that it affects military cohesion.

Former Chairman of the Joint Chiefs of Staff, General Shalikashvili, said:

Within the military, the climate has changed dramatically since 1993. . . .

Conversations I've held with servicemembers make clear that, while the military remains a traditional culture, that tradition no longer requires banning open service by gays.

Three-star Retired LTG Claudia Kennedy said:

Army values are taught to soldiers from their earliest days in the Army. Those values are: Loyalty, duty, mutual respect, selfless service, honor, integrity and personal courage. We teach our soldiers that these are the values we expect them to live up to.

She goes on to say:

I believe that as an institution, our military needs to live up to the values we demand of the servicemembers. . . .

Military leaders need to respect all servicemembers. We need to recognize that loyalty and selfless service are exhibited equally, by servicemembers of every color, gender and sexual orientation.

I think about her words "selfless service." When you voluntarily, in an all-volunteer military, come forth as an American and say: I want to serve my country, I am willing to put my life in harm's way in behalf of the defense of the Nation and my fellow Americans, does that somehow get diminished—that selfless service get diminished—because you are gay?

I think about personal courage. When you are on the battlefield, and you are being shot at, and when you are protecting those who are in your company, and when you are injured, and when you are bleeding, does that personal courage get diminished because you are gay?

Certainly not. Certainly not.

And most convincingly, and to the point, Retired Navy VADM and U.S. Congressman JOE SESTAK said this:

We have to correct this. It's just not right. I can remember being out there in command, and someone would come up to you and start to tell you—and you just want to say, no, I don't want to lose you, you're too good, [too valuable].

Let's take the advice of these military leaders who know that this is a bad policy and it should be repealed. It is a policy that the Pentagon report itself says, if repealed, presents little risk to military readiness and cohesion, and little effect on morale.

In fact, 62 percent of servicemembers responded to the Pentagon's own survey that repeal of don't ask, don't tell would have a positive or no effect on morale.

The PRESIDING OFFICER. The Democrats' time is expired.

There is 15 minutes allocated to Senator KERRY. He is not on the floor.

Mr. MENENDEZ. As a member of that committee, I ask unanimous consent for 1 minute to finish this statement.

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

Mr. MENENDEZ. Thank you, Mr. President.

Let me close by quoting from a letter from the Human Rights Campaign. I think it puts it purposely and exactly:

. . . take a moment to truly comprehend the lives ruined over the last 17 years because of this discriminatory law. The soldiers, sailors, airmen, translators, doctors and more, whose military careers were ended, whose livelihoods were threatened, whose friendships were cut off, all because the forces of bigotry and fear held out for so long.

They can never get those years back. But I hope they know that their sacrifice meant something. Their courage and integrity helped a nation understand what it means to serve. And that, more than anything else, helped bring about this historic change.

That is the vote I hope we will have—one that creates historic change and honors the courage, the integrity, and the service of these men and women.

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

Mr. KYL. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. KLOBUCHAR. Mr. President, I appreciate the Senator from Arizona and the Senator from Massachusetts allowing me to speak for a few minutes.

I wish to lend my strong support as a cosponsor of the repeal of don't ask, don't tell. I have always believed the commitment of our top military leaders is critical to successfully implementing the repeal of this policy. Since February of this year, we have heard testimony from Defense Secretary Gates as well as Chairman of the Joint Chiefs of Staff, ADM Mike Mullen. To

this day, both support the repeal of the policy.

Admiral Mullen outlined his concern with the policy pretty succinctly. He said:

No matter how I look at the issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens.

Our country is literally asking our servicemembers to lie.

Earlier this year, Secretary Gates called for a study of the repeal. That study involved comprehensive polls of the U.S. military. After the December release of the report on the implementation of the repeal, we know the majority of our military members—70 percent of Active-Duty military and National Guard and Reserve—have said this change will not have a negative impact on their ability to perform their duties.

So what we have is this: We have the support of the top brass of our military of the United States—something that was incredibly important to implementing this policy change. We have checked that box. We have the support of the majority of our soldiers in the field, who basically said they can live with this policy change or they can live with serving with a soldier who admits they are gay. The last thing we have is this body, this Chamber, and today is the day we checked that box. Today is the day we voted for the repeal.

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

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent that the remaining Republican time be equally divided between Senators MCCAIN, KYL, and SESSIONS.

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

Mr. KERRY. Mr. President, before the Senator gets going, I think we have an understanding. Just so the record is clear, how much Republican time remains at this point?

The PRESIDING OFFICER. Just under 30 minutes.

Mr. KERRY. So it is my understanding they will each have about 10 minutes. I think Senator KYL and Senator SESSIONS will speak, at which point I will have an opportunity to speak, and then Senator MCCAIN, since it is his amendment, would have the last 10 minutes at that point.

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

Mr. KERRY. I thank the Chair.

Mr. KYL. Mr. President, during one of the last votes, a Member came to me and said: I have not been able to follow this debate. What exactly is the McCain-Barrasso amendment?

With all of the to-and-fro—having votes on different subjects, then going back to the START treaty, then going back to a vote on don't ask, don't tell, then finally a vote on the McCain-

Barrasso amendment—I thought it would be good to recapitulate a little bit on what exactly the McCain-Barrasso amendment is and why it is important.

What the amendment does is it removes language that relates to missile defense from the preamble. This treaty was supposed to be about offensive strategic weapons, not about missile defense. In fact, we were told by an administration spokesman that it wouldn't relate to missile defense, but sure enough, there the words are. Why are they there? They are there because the Russians insisted they be there. Why did they insist they be there? Because for decades the Russians have been fixated on U.S. missile defense, trying to find ways to reduce the effect of our missile defense on Russian strategic capabilities. They tried it at Reykjavik with President Reagan. He said no. They tried it again in the first START treaty. They tried it again in the Moscow Treaty of 2002. And they have tried it again here.

The difference between this treaty and the previous times is that the United States always pushed back and said: No, we are going to rely on missile defense. It is the moral thing to do. We are not going to get into quid pro quos with you where we have to reduce our missile defense if you reduce your strategic offensive weapons or some other agreement like that.

In the START I treaty, when the Russians said in their signing statement: We find this interrelationship, and the United States should not advance its missile defense capabilities, the United States pushed back strongly in our statement and said no, that would not be a grounds for withdrawal from the treaty and the Russians need to understand that. They never did withdraw even though we did withdraw from the ABM Treaty so we could build missile defenses.

Well, once again, they have put it in the preamble this time and then, in their signing statement, made very clear their intent that the interrelationship between the two means that if our missile defenses are ever developed to a point where they consider it qualitatively or quantitatively better than it is currently, then they would have the right to withdraw from the treaty; that that would qualify as one of the exceptional circumstances under article XIV, which is the withdrawal clause of the treaty. Why do they want to do that? Obviously to put pressure on the United States not to develop our missile defenses in a way they don't want. They will threaten to withdraw from the treaty if we begin to do that. Some Presidents—I suspect the existing President, for example—would therefore be very wary of going forward with missile defense plans if that means the Russians would withdraw from the treaty.

My colleague Senator KERRY says: Well, the preamble is a meaningless document. It is a throwaway docu-

ment. It doesn't mean that much. But he also says: However, if we change one comma in the preamble, it will be a treaty-killing amendment.

At first, I said: Well, both of those things can't be true. It can't be both meaningless and of ultimate importance, that it would kill the treaty if we changed it.

On reflection, I think Senator KERRY actually has it right, partially. To the United States, it is meaningless. Our negotiators didn't care what the Russians put in there. It doesn't mean anything to us, but it means everything to the Russians, and that is why I think Senator KERRY is right.

This would be a big problem for the Russians. Why is that so? Because even though we were willing to walk away from that commitment we had always made in the past that there wouldn't be this connection between defense and offense, the Russians got it in here, and it means everything to them because it creates the predicate for their withdrawal from the treaty, and that is what they are trying to establish.

I will close this point by quoting from Dr. Condoleezza Rice, who wrote an op-ed in the Wall Street Journal in which she said we needed to do something about this in our ratification process. She said there are legitimate concerns that must be addressed in the ratification process.

I am quoting now:

The Senate must make absolutely clear that in ratifying this treaty, the U.S. is not reestablishing the Cold War link between offensive forces and missile defenses. New START's preamble is worrying in this regard as it recognizes the interrelationship between the two.

What this language from Senators BARRASSO and MCCAIN does is simply remove that language from the preamble, thereby removing the thorn, removing the contention, the potential and I would say almost certain conflict that is due to arise between our two countries when the time comes that we do build a missile defense that the Russians don't want.

They say: We are going to withdraw from the treaty.

We say: You can't do that; that is not an extraordinary circumstance.

They say: Yes it is. We identified it as such at the time we signed the treaty, and we are going to leave the treaty.

And then the U.S. President has a dilemma: Do we pull back on our missile defenses or allow the Russians to withdraw from the treaty and all that will portend?

That is why this is important. The amendment cures the problem by simply removing that language from the preamble.

In the remaining time, I wish to briefly respond to four points the President made in his weekly address today relating generally to the same subject.

One of the first points he made is he talked about the number of nuclear

weapons—about 25,000 on each side—and the decades that have ensued since the Cold War. Those numbers have come down dramatically, and he said that progress would not have been possible without strategic arms control treaties.

Yes, it would have. It was happening anyway. Both sides were willing to draw both of their delivery vehicles and warheads down because they couldn't afford to keep them. In fact, after the end of the Cold War, the United States, under President Bush, said: We are reducing ours, and Russia, you can do whatever you want to do.

We knew they couldn't afford to keep theirs any more than we could keep ours, and they weren't reducing theirs.

The Russians came to us and said: Gee, we need a treaty.

We said: Why? We don't care how many you have. We are reducing ours.

Eventually, we said: OK. If you want a treaty, fine.

It was a three-page treaty, but it had no connections with missile defenses or anything the Russians wanted.

The point is, it didn't require a treaty for us to bring those levels down.

How about the delivery vehicles? This treaty actually fixes the number of delivery vehicles above where the Russians are right now. They could actually build up to the level of about 140, as I recall, to get up to the level of 700.

The point is, both countries are reducing the levels to the point that we need, not because of an arms control treaty but because it is in our national interests to do so.

Secondly, the President said that without this treaty, we will risk turning back the progress we have made in our relationship with Russia. I will just repeat what I have said before. Secretary Kissinger and others who have spoken to this point have always warned: Don't predicate the support for a treaty on improving your relationship with someone. The treaty should relate to reducing arms or whatever the subject of the treaty is. It should not be based on anything other than that or you get into a morass of always trying to please the other side and risking that they will withdraw from the treaty.

Third, the President said that it is about the safety and security of the United States of America. I have yet for anybody to tell me what threat we are reducing by agreeing with the Russians that both of us are going to reduce our delivery vehicles and warheads. Actually, the Russians don't have to reduce theirs; they could actually build up under the treaty. I don't think we see any big threat there.

Finally, the President said that every minute we drag our feet is a minute we have no inspectors on the ground at those Russian nuclear sites. We just talked about the fact that we have this reset relationship with the Russians, and we need to continue these good relationships, but we can't

trust them, so we have to get our folks on the ground verifying what is going on right now. As I pointed out before, the administration created this problem on its own. We could have had a bridging agreement. We could have simply extended the verification provisions of the previous START treaty, but the Russians didn't want to do that, we are told. Fine, they didn't want to do that. That doesn't mean we had to agree that we will abide by their wishes when it comes to verification.

My colleague says: Well, you can't get them to do something, so we signed the treaty the way the Russians wanted in this regard, and we just have to live with that. The administration might have to live with that, but the Senate is not a rubberstamp, and it seems to me the Senate has a right to say: You let the verification procedures lapse; you didn't have to do that.

Senator LUGAR had a bill that related to the extension of the legal regime whereby both sides would be able to continue to have presence in the other country. We knew that was a problem at the time. For some reason, the administration didn't pursue it—I suppose because the Russians said no, but that doesn't mean the U.S. Senate has to say: OK, the Russians just say no, and I guess we have to go along with that.

The point here is that I don't think any of the arguments President Obama has made require that we ratify this treaty this week. I would urge my colleagues to seriously consider what Dr. Condoleezza Rice has said, what Senator McCain and others have said here about the necessity of cleaning up this preamble so that we don't reestablish the link with missile defense and inhibit U.S. ability to proceed with missile defense plans in the future.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I would ask to be notified after 6 minutes.

I wish to thank Senator KYL and Senator McCain for their leadership on this issue and state that I believe the McCain amendment is perhaps the most critical amendment that will be raised during this debate because the future of missile defense is critically important for America.

I chaired the Subcommittee on Strategic Forces in the Armed Services Committee. I have been the ranking member of the subcommittee and a member of the committee for 12 years, and I know all of the history on this issue. It has gone on for a great deal of time.

I believe missile defense is critical to our national security. We have invested billions of dollars over 30-plus years developing it, and now that we are actually deploying it in Alaska and California, it is proving to be a shield that will work.

We had plans for a long time to deploy a site in Central Europe. The Bush administration negotiated with the

Poles and Czechoslovakia. They signed agreements that they would allow a radar base in the Czech Republic and a missile base in Poland.

When President Obama was elected, the Russians immediately started pushing back on our missile defense plans for reasons I have never fully understood. We are only talking about 10 defensive missiles against hundreds—hundreds, maybe thousands—of Russian missile and launch vehicles. It would in no way threaten their power. Some experts—and I am inclined to agree—thought it related more to the Russian concern about us having a defense relationship with Czechoslovakia and Poland, but I don't know. For some reason, it has been a big deal for them.

They have pushed back very hard. From the Bush administration, Doug Feith, in a Wall Street Journal article recently said—he negotiated in 2002—that they pushed back on it at that time. They said they would not sign a treaty unless we agreed not to proceed with missile defense. He said no deal. They insisted, and he said no deal. They said: We won't have a treaty if you don't agree. He said: Well, we won't have a treaty. We don't have a treaty with England, India, Pakistan, China, or France, who have nuclear weapons. We don't have to have a treaty with you. We are bringing our numbers down anyway, and you are, too. We would like to have a treaty, but we are not going to limit our missile defense. The Russians signed that treaty.

Now we come and they start the same bluster against the Obama administration, which, unfortunately, gave in. These negotiations started early in the year. The treaty negotiations started in March of 2009. By September of 2009, President Obama unilaterally announced, to the shock of our Polish and Czech allies, that we were not going forward with the Polish site—much to the delight of the Russians, who had achieved a significant victory in a negotiating point that had gone on for many years.

So to say that this treaty has nothing to do with missile defense is not correct. Did the Russians say, thank you, we will be glad to work with you on the treaty? No, they still wanted language in the treaty that put them in a position to walk away from this treaty any time they wanted to if we deployed a missile defense system in Europe. They got it in there, in the preamble. It leaves not just an ambiguity, as I said earlier, it is a misunderstanding, or a disagreement of a central issue. Repeated Russian statements indicate they believe that if we move forward quantitatively or qualitatively with a missile defense system, then they would have a right to get out of the treaty.

I can hear what would happen in the Senate if we start deploying a missile defense system in Europe. A lot of our colleagues would say: If we do that, the Russians will get out of the treaty. We can't do that. It will make it difficult.

In addition, the system we were going to deploy was a GBI two-stage missile in central Europe, Poland. The President stopped this. It was ready and able to be deployed by 2016. It is the same system we have in the United States, except it is two-stage instead of three. The National Intelligence Estimate shows that Iran can reach the United States with a ICBM, and now they are developing nuclear weapons, and they can do it by 2015. We were trying to get this system in by 2016. When they canceled this, it caused an uproar. The White House said: Don't worry, we have a new plan—one I had never heard about. We are going to do an SM-3 Block 2B. We are working on it. Well, have you started? No. Is it under development? We just conjured this up. It is a bigger, rounder missile than the existing SM-3, and it is quite different.

The PRESIDING OFFICER. The Senator used 6 minutes of his time.

Mr. SESSIONS. I thank the Chair. It is a different thing. It would be ready only by 2020. So I contend that this administration, as part of the negotiations over this treaty, in their too-anxious-desire to get this treaty, to reset the relationship with the Russians, which we of course want to do, made a very serious error in capitulating on the third site—sending shock waves among our sovereign nation allies in Central Europe, which used to be a part of the Soviet empire. They have made concessions that are significant.

As a matter of fact, they pretend it had nothing to do with the treaty, but I would say there is no doubt that the abandonment of the Polish site was a way to gain support of the Russians as part of the negotiations in this treaty. And we now have this ephemeral, chimeric vision of a 2020 entirely new missile system for Poland that may or may not ever reach fruition.

Those are my concerns. The McCain amendment would say let's get this straight with the Russians and make Congress know that if it requires a new negotiation with the Russians, so be it. Maybe we can reach an understanding. You could never enter into a treaty or any contract in which the parties have a serious misunderstanding or actual disagreement on a critical part.

I thank the Chair and reserve the remainder of the time on this side.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, would you inform me when I have used 4 minutes?

The PRESIDING OFFICER. Yes.

Mr. KERRY. Our colleagues are fighting against a phantom. All of this argument they have been going on for several days with is about language that has no binding impact on this treaty whatsoever. Senator KYL acknowledged that yesterday. He also acknowledged that if you change it, it requires this treaty to go back to the Russian Government, and then we don't have this treaty. We don't have any verification for whatever number

of months that follow. I will come back to that.

A moment ago, Senator KYL said the Russians didn't want to continue the verification methods of START. He somehow insinuates that because they didn't want to continue it, what we have here is something less than what we ought to have for ourselves.

We didn't want to continue the verification and process of START as it existed. In fact, the Bush administration was told that. He knows that. This is phantom debate, what we have going on here. The target is the treaty itself, not this language, because this language doesn't have any legal binding impact on the treaty. In a moment, I will share what impact it has.

Our friends on the other side of the aisle are supplanting their judgment for the judgment of Secretary Gates. We have the right to do that, and you can do that. But I ask people to weigh whether Secretary Gates, who was appointed by George Bush and held over by President Obama, has anything except the interests of our country at heart when he makes this statement in his testimony:

So, you know, the Russians can say what they want, but, as Secretary Clinton said, these unilateral statements are totally outside the treaty. They have no standing. They are not binding. They never have been.

Do you know what the Soviets said at the U.S.-Soviet negotiations on nuclear space arms concerning the interrelationship between strategic defensive weapons compliance with the treaty—and this is START I. They said:

In connection with the treaty between the United States of America and the Union of Soviet Socialist Republics on reduction and limitations of strategic defensive arms, the Soviet side states the following: This treaty may be effective and viable only under conditions of compliance with the treaty between the United States and the USSR on the limitation of antiballistic missile systems as signed May 26, 1972.

That was their signing statement, just like this signing statement. Guess what. The United States of America saw our national security interests in getting out from under the ABM Treaty. We got out from under the ABM treaty. This language, just like the language we are debating today, meant nothing at all. They stayed in the treaty. They didn't pull out. So we are debating something that has no impact whatsoever on this treaty.

Let me go a little further. Secretary Gates said further:

So from the very beginning of this process, more than 40 years ago, the Russians have hated missile defense.

It's because we can afford it and they can't. And we're going to be able to build a good one, and are building a good one, and they probably aren't.

And they don't want to devote the resources to it, so they try and stop us from doing it, through political means. This treaty doesn't accomplish that for them.

My God, after several days, either the Secretary of Defense—and how about LTG Patrick O'Reilly, whose job it is to defend the United States

against missile attack. He is the man who runs this agency day to day. You know what he said:

Relative to the recently expired START Treaty, New START Treaty [this treaty we are voting on] actually reduces constraints on the development of the missile defense program.

We have our own leader of the Missile Defense Agency telling us that this is an advantage for the United States of America.

The PRESIDING OFFICER. The Senator has used 4 minutes.

Mr. KERRY. I thank the Chair. Let me get to the heart of the argument about why this is so critical. The other side is trying to minimize this, saying you can't say that language has no legal binding authority, it is not that important, and turn around and say we can't change it. That is the nub of their argument—that we have to be able to change it because, if we don't change it, somehow nonbinding language is enough for us to say let's have no verification at all. It is a strange tradeoff.

Here is why it matters. Because the preamble is in the instrument that is transmitted to the Senate. Even though it is not the binding component of it, the rules by which we all play are that if you change a comma, or one word, that change has to go back to the Government of Russia, and they have to decide what they want to do. Why is that important relative to this language? Because the public position that they fought for in this negotiation was to achieve binding restraints on U.S. missile defense. That is what they wanted. And as Secretary Gates said—every general and admiral who has looked at this, including Admiral Mullen and General Chilton, have all said they didn't get that. They didn't win that point. We won that point. In any negotiation, when somebody needs something to be able to feel good, or deal with their own politics, sometimes you let them have a little something that is meaningless to you but may mean something to them. That is what we gave them. Take it away and you open this whole treaty. Then they have to figure out how they deal, in other terms, with those politics. I will wait until the classified session that we are going to have on Monday. I can't go into it here, but I will lay out why this treaty is good for the United States and why we believe reopening it would be dangerous. That is why this amendment is dangerous, because it will reopen this and will force—it doesn't constrain us in the least, and the extent to which that is true, I think, will be understood by a lot of colleagues in that session.

To make this even more clear, the President of the United States has written a letter today to Majority Leader HARRY REID and to Minority Leader MCCONNELL. In the letter, which Senator REID has shared with me, it says from the President:

The New START Treaty places no limitations on the development or deployment of



our missile defense programs. As the NATO Summit meeting in Lisbon last month underscored, we are proceeding apace with a missile defense system in Europe designed to provide full coverage for NATO members on the continent, as well as deployed U.S. forces, against the growing threat posed by proliferation of ballistic missiles. The final phase of the system will also augment our current defenses against intercontinental ballistic missiles from Iran targeted against the United States.

All NATO allies agreed in Lisbon that the growing threat of missile proliferation, and our Article 5 commitment of collective defense, requires that the Alliance develop a territorial missile defense capability.

It goes on to talk about that capability. Then he says this, which is critical with respect to this debate. This is the President's letter to the leadership:

In signing the New START Treaty, the Russian Federation issued a statement that expressed its view that the extraordinary events referred to in Article XIV of the Treaty include a "build-up in the missile defense capabilities of the United States of America such that it would give rise to a threat to the strategic nuclear potential of the Russian Federation." Article XIV(3), as you know, gives each Party the right to withdraw from the Treaty if it believes its supreme interests are jeopardized.

The United States did not and does not agree with the Russian statement. We believe that the continued development or deployment of U.S. missile defense systems, including qualitative and quantitative improvements to such systems, do not and will not threaten the strategic balance with the Russian Federation, and have provided policy and technical explanations to Russia on why we believe that to be the case. Although the United States cannot circumscribe Russia's sovereign rights under article XIV, paragraph 3, we believe the continued improvement and deployment of U.S. missile defense systems do not constitute a basis for questioning the effectiveness and viability of the New START treaty and, therefore, would not give rise to circumstances justifying Russia's withdrawal from the treaty.

Regardless of Russia's actions in this regard, as long as I am President and as long as the Congress provides the necessary funding, the United States will continue to develop and deploy effective missile defenses to protect the United States, our deployed forces, and our allies and partners. My administration plans to deploy all four phases of the EPAA. While advances of technology or future changes in the threat could modify the details or timing of the later phases of the EPAA—one reason this approach is called adaptive—I will take every action available to me to support the deployment of all four phases.

Sincerely, Barack Obama, President of the United States.

I think this letter speaks for itself. I think the facts are history. I think the testimony of Secretary Gates and all those others who have come before us that makes it clear the United States has no constraints on missile defense whatsoever, makes clear this amendment is not necessary, and this amendment carries with it dangerous implications for the ultimate ratification implication of the treaty.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. How much time do I have?

The PRESIDING OFFICER. About 13 minutes.

Mr. MCCAIN. I will reserve at least the last 3 minutes for my colleague, Senator KYL.

The PRESIDING OFFICER. Very good.

Mr. MCCAIN. As we all know, we will vote very quickly on the amendment to the New START treaty. I have offered this amendment along with the Senator from Wyoming, and this amendment is an important and seminal one. It is focused on a key flaw in the treaty—the inclusion in the preamble of the following clause. I wish to read it in full. We have read it before, and I don't understand how the letter the Senator from Massachusetts just read would not then force us to negate this part of the treaty, which says:

Recognizing the existence of the interrelationship between strategic offensive arms and strategic defensive arms, that this interrelationship will become more important as strategic nuclear arms are reduced, and the current strategic defensive arms do not undermine the viability and effectiveness of the strategic offensive arms of the Parties.

This language carries a lot of historical significance and strategic weight because it recognizes an interrelationship between nuclear weapons and missile defense. Some believe this type of linkage was appropriate during the Cold War, when the United States and the Soviet Union were existential enemies, with the means to annihilate each other. But it is not appropriate for today, when the United States and the Russian Federation, for all our differences, are not devoted to one another's destruction and when one of the greatest threats to our national security comes from rogue states such as Iran and North Korea, which are developing nuclear weapons and increasingly better means to deliver them. In today's world, with so many new and constantly evolving threats, the United States can't be limited in the development, deployment, and improvements of missile defense systems that we deem to be in our national security interest.

I am concerned, as are many of my colleagues, that the Russian Government believes this clause from the preamble confers a legal obligation on the United States which constrains our missile defenses. Ever since President Reagan proposed a Strategic Defense Initiative, the Russians have sought to limit our strategic defensive arms. They have sought to limit our missile defense programs through legal obligations, and failing that, with political commitments or agreements that could be cited to confer future obligations. Words matter. Words matter.

To open ourselves to this type of political threat by accepting an outdated interrelationship between nuclear weapons and missile defense is wrong. Furthermore, by saying that "current" missile defenses do not undermine the treaty's viability and effectiveness, this clause from the treaty's preamble

establishes that future missile defense deployments could undermine the treaty, thereby establishing a political threat the Russian Federation could use to try to constrain U.S. missile defenses. In short, we have handed the Russian Government the political tool they have sought for so long to bind our future decisions and actions on strategic defensive arms.

Imagine a world, a few years from now, when—God forbid—an Iran or North Korea or some other rogue state has developed and deployed longer range ballistic missiles and a deployable nuclear capability much earlier than we assessed. Imagine we are faced with a situation where unforeseen events compel us, for the sake of our national security and that of our allies, to improve our current systems or to develop and deploy new systems in order to counter a new and far greater threat than we expected. Then consider what the Russian Federation said in a unilateral statement at the signing of the treaty.

This is the statement of the Russian Federation—something that if the Senator from Massachusetts is correct, we should be able to clarify by asking for a statement from the Russian Federation repudiating what they said at the time of the signing statement. This is what they said:

The treaty between the Russian Federation and the United States of America on Measures for the Further Reduction and Limitation of Strategic Offensive Arms signed at Prague on April 8, 2010, may be effective and viable only in conditions where there is no qualitative or quantitative buildup in the missile defense system capabilities of the United States of America.

That is clear language. That is clear, unequivocal language, and I will repeat it:

... where there is no qualitative or quantitative buildup in the missile defense system capabilities of the United States of America. Consequently, the extraordinary events referred to in Article XIV of the Treaty also include a buildup in the missile defense system capabilities of the United States of America such that it would give rise to a threat to the strategic nuclear force potential of the Russian Federation.

That is a very clear statement. It is unequivocal as to what the Russian Federation is saying. One of the things Senator GRAHAM and I and others have said is: Hey, why don't we just drop a letter to the Russian Ambassador or to Vlad or whomever and ask them, clarify this, will you? Are you standing by your statement you made at the signing? Is that the Russian Federation's official policy that has not been revoked?

This is the Russian interpretation of what our two governments have agreed to in the preamble. They seem to believe this clause limits U.S. missile defense systems. They seem to believe the language in this clause about "the effectiveness and viability of the Treaty" means that any buildup or improvement in U.S. missile defense systems would undermine the treaty.



They seem to believe there is a clear and legally binding connection between what was agreed to in this clause of the preamble and article XIV of the treaty, which establishes the rights of the parties to withdraw from the treaty and the conditions under which they may do so.

In short, the Russian Government seems to believe this nonbinding political agreement is the pretext for a legal obligation under the treaty itself, and if the United States builds up its missile defense, Russia will withdraw from the treaty.

Let's listen to what the Russian leaders have said. I mean, this is not made up. This is what they have said.

The Russian Foreign Minister, on March 28, 2010—this year—said this:

The treaty and all obligations it contains are valid only within the context of the levels which are now present in the sphere of strategic defensive weapons.

What could be more clear? Here he says again, in April of 2010—April this year.

Linkage to missile defense is clearly spelled out in the accord and is legally binding.

I mean, if there is any clarification for that statement from the preamble, he just gave it—at least what the Russian version is.

Here is President Dmitry Medvedev on November 30—18 days ago.

Either we reach an agreement on missile defense and create a full-fledged cooperation mechanism, or if we can't come to a constructive agreement, we will see another escalation of the arms race. We will have to make a decision to deploy new strike systems.

Finally, here is Prime Minister Vladimir Putin on "Larry King Live." Larry, we will miss you. I have quoted him so many times. This was on "Larry King Live" on December 1, 2010.

If the counter missiles will be deployed in the year 2012 along our borders, or [2015], they will work against our nuclear potential there, our nuclear arsenal. And certainly that worries us. And we are obliged to take some actions in response.

This is a troubling situation. And it must be corrected by this body. Let me quote again from the recent op-ed by former Secretary of State Condoleezza Rice in the Wall Street Journal:

The Senate must make absolutely clear that in ratifying this treaty, the United States is not reestablishing the Cold War link between offensive forces and missile defenses. New START's preamble is worrying in this regard, as it recognizes the interrelationship of the two.

Now that is a statement by our former Secretary of State, who, by the way, wants this treaty ratified, but she also wants us to fix this. This amendment fixes it—this amendment.

I appreciate the letter from the President of the United States. I am very grateful for it. But the fact is, letters are letters and Presidents don't last forever. But binding treaties do, until they are either broken or they are revoked. To have right in the beginning, at the preamble, a clear and

unequivocal statement that any improvement in our defensive weapon missile systems will then be grounds for withdrawal from the treaty is not anything we should let stand.

The simplest way—

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. MCCAIN. I thank the Chair. Let me finish.

The Senator from Wyoming and I are proposing the amendment which will simply strike the language from the preamble itself. I urge my colleagues to support the amendment, and I yield the remainder of my time to the Senator from Arizona.

Mr. KYL. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Arizona has 2 minutes 10 seconds remaining.

Mr. KYL. Mr. President, is there any time remaining on the Democratic side?

The PRESIDING OFFICER. Twenty-five seconds.

Mr. KYL. Is there anyone who would like to take the 25 seconds?

Senator LEVIN will take the remaining 25 seconds?

Mr. LEVIN. If no one else wants it, I will be happy to take it.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, let me just say that General Chilton, who is the commander of our U.S. Strategic Command, told the Armed Services Committee on July 20:

As the combatant command also responsible for synchronizing global defense plans, operations, and advocacy, I can say with confidence that this treaty does not constrain current or future missile defense plans.

The McCain amendment would be a treaty killer, and for that reason alone the Senate should defeat it.

On the issue of the interrelationship of offensive and defensive arms, which is the text of the Preamble, President George W. Bush agreed that such an interrelationship exists. In a joint statement with President Putin of July 22, 2001, they said: "We agree that major changes in the world require concrete discussions of both offensive and defensive systems . . . We will shortly begin intensive consultations on the interrelated subjects of offensive and defensive systems."

As all our senior civilian and military officials acknowledge, the treaty does not limit our missile defense plans or programs. Gen. Kevin Chilton, the Commander of U.S. Strategic Command, told the Armed Services Committee on July 20th that "As the combatant command also responsible for synchronizing global missile defense plans, operations, and advocacy, I can say with confidence that this treaty does not constrain any current or future missile defense plans."

On the issue of ICBM silo conversion for missile defense, which the treaty prohibits, this is not a constraint on

our missile defense plans or programs. As Lieutenant Gen. Patrick O'Reilly, the Director of our Missile Defense Agency said on June 16th: "replacing ICBMs with Ground-Based Interceptors or adapting Submarine-Launched Ballistic Missiles to be an interceptor would actually be a setback—a major setback—to the development of our missile defenses."

On the subject of the unilateral statements, these are not part of the treaty and do not in any way constrain our missile defenses. We faced a nearly identical situation with the original START treaty, where Russia issued a unilateral statement saying that if we withdrew from the ABM Treaty, that would constitute grounds for their withdrawal from the START treaty. Guess what. We did withdraw from the ABM Treaty, but Russia did not withdraw from START. Our unilateral statement makes clear that we intend to develop and deploy missile defenses, regardless of the Russian statement.

The PRESIDING OFFICER. Time has expired.

The Senator from Arizona.

Mr. KYL. Mr. President, to say the treaty doesn't constrain the United States misses the point of the argument we have been trying to make over the course of the last day and a half.

What the Russians have done is establish a legal pretext for withdrawal from the treaty. They have been very clever about it, and up to the time we had been told the President had sent us a letter, there was no pushback from the United States.

I haven't seen this letter, so it is a little hard to comment on it. It has been given to us 15 minutes before the vote is supposed to start. It hasn't been shared with us. We have no idea what all it says. We have Senator KERRY's quotation of certain parts of it. It is obviously a last-ditch effort to try to win votes or preclude an amendment from passing. It shows the administration is scrambling and making it up as it goes along. That is not the way to deal with a serious subject such as this.

Does the letter commit to the GBI—or the ground-based missile—backup for the phased adaptive approach, as was originally announced? Well, I don't know whether it says that. Does it repudiate the signing statement of the United States Department of State issued by Secretary Tauscher, which of course conflicts with the letter and is the official position of the U.S. Government? Does it conflict with the briefing in Lisbon, where the phased adaptive approach was discussed, and revealed deployment of the first three phases but the fourth phase only being available? When will the deployment occur?

The letter, apparently, says we will have effective defenses—whatever that means. What does that mean? When would those effective defenses be deployed? Iran intelligence tells us they will have an ICBM by 2015—an ICBM that would require something like the GBI to intercept. But we are told the

GBI is—well, A, we are not told whether the GBI is a contingent backup plan; and, B, we are not told whether it will be ready before 2017, which I find strange. Because I think we already have 24 GBIs in Alaska and California, and I don't know why we can't build some more to deploy in Europe.

So I don't know what to make of this letter. Obviously, it comes at the last minute and hasn't been sent to us, and I don't see how we can base a vote on such a letter.

The PRESIDING OFFICER. I believe all time has expired. The Senator from Tennessee.

Mr. CORKER. Mr. President, I would like to just interject, with tremendous respect for my friend from Arizona, this letter is something that actually I have been seeking too. I know a number of us have asked the President to send this letter. I am glad he sent it.

I am going to support the McCain amendment and wish this was not in the preamble. I talked to General Cartwright yesterday who, by the way, has reiterated about what was said about the missile defense system. The preamble in no way limits it. But I wish to say this letter is something I am glad was sent. I asked for this letter, as numbers of people on our side have asked for.

Mr. LUGAR. If the Senator will yield, let me respond. The President sent a copy of the letter to Senator MCCONNELL, our leader. Both leaders got the letter.

The PRESIDING OFFICER. Under the previous order, all postcloture time has expired and the motion to concur with amendment No. 4827 is withdrawn.

The question now is on agreeing to motion to concur in the House amendment to the Senate amendment to H.R. 2965.

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

The PRESIDING OFFICER. The yeas and nays have been requested. 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. MANCHIN) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from New Hampshire (Mr. GREGG), and the Senator from Utah (Mr. HATCH).

Further, if present and voting, the Senator from Utah (Mr. HATCH) would have voted "nay," and the Senator from Kentucky (Mr. BUNNING) would have voted "nay."

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

The Chair will remind the galleries that expressions of approval or disapproval are not in order.

The result was announced—yeas 65, nays 31, as follows:

[Rollcall Vote No. 281 Leg.]

#### YEAS—65

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

#### NAYS—31

Alexander	DeMint	McCain
Barrasso	Enzi	McConnell
Bennett	Graham	Risch
Bond	Grassley	Roberts
Brownback	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Thune
Cochran	Johanns	Vitter
Corker	Kyl	Wicker
Cornyn	LeMieux	
Crapo	Lugar	

#### NOT VOTING—4

Bunning	Hatch
Gregg	Manchin

The motion was agreed to.

Mrs. BOXER. Mr. President, I move to reconsider the vote.

Mrs. MURRAY. Mr. President, I move to lay that motion upon the table.

The motion to lay upon the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. REID. I have spoken to the Republican leader. We are going to come in tomorrow around noon. I have spoken to Senator RISCH, who has an important amendment to offer on the START treaty. He has indicated he would need about 2 hours of debate. We would hope at or near 2 o'clock to have a series of at least three votes. And today, as we indicated earlier, we are basically through except for the wrap-up. We do have another vote.

#### EXECUTIVE SESSION

#### TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume debate on the START treaty, which the clerk will report.

The bill clerk read as follows:

Treaty with Russia on Measures for Further Reduction and Limitation of Strategic Offensive Arms.

Pending:

McCain/Barrasso amendment No. 4814, to amend the preamble to strike language regarding the interrelationship between strategic offensive arms and strategic defensive arms.

The PRESIDING OFFICER. There will be 4 minutes of debate equally divided on the McCain amendment.

The Senator from Wyoming.

Mr. BARRASSO. Mr. President, currently the New START treaty establishes limits on missile defense. Placing constraints on future U.S. defense capabilities should not be up for debate and should not be placed in a treaty on strategic offensive nuclear weapons. Russia is trying to force the United States to choose between missile defense and the treaty. If that is the case, I choose missile defense. We cannot tie our hands behind our back and risk the national security of our Nation and our allies.

This treaty is a bilateral agreement between Russia and the United States. It is clear that there is a disagreement about the actual agreement made. Russia continues to claim that the treaty successfully limits our ability to defend ourselves. Supporters of the treaty claim the limitation on missile defense in the preamble is not binding and that it is legally insignificant and a throwaway provision.

We are talking about the preamble. Like the preamble to the Constitution, "we the people," this is meaningful. Some things we hold dear. The safe and the smart decision would be to eliminate the disagreement by getting rid of that provision entirely.

I urge all colleagues to support the McCain-Barrasso amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, this amendment is unnecessary because, as General Chilton, who is the commander of U.S. Strategic Command, said:

I can say with confidence that this treaty does not constrain any current or future missile defense.

Secretary Gates has said that what the Russians wanted to achieve was a restraint. He said this treaty doesn't accomplish that for them.

Even though the language is completely nonbinding, has no requirement in it whatsoever, this amendment requires us to go back to Russia, renegotiate the treaty, open whatever advantages or disadvantages they may perceive since the negotiation exists, and we would go through a prolonged negotiation. We have no verification whatsoever today because that ceased on December 5 of last year. We need to hold this treaty intact and pass it.

I yield whatever remaining time I have to the chairman of the Armed Services Committee.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, every one of our military leaders has said to the Armed Services Committee and I believe they have reiterated to the Foreign Relations Committee that there

are no constraints in this treaty on missile defense, period, end of quote. These are our top military leaders. They are in charge of missile defense. They say there are no constraints.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to amendment No. 4814.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. MANCHIN) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from New Hampshire (Mr. GREGG), and the Senator from Utah (Mr. HATCH).

Further, if present and voting, the Senator from Utah (Mr. HATCH) would have voted "yea" and the Senator from Kentucky (Mr. BUNNING) would have voted "yea."

The result was announced—yeas 37, nays 59, as follows:

[Rollcall Vote No. 282 Ex.]

YEAS—37

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bond	Enzi	Murkowski
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Burr	Hutchinson	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Snowe
Cochran	Johanns	Thune
Collins	Kirk	Vitter
Corker	Kyl	Wicker
Cornyn	LeMieux	
Crapo	Lieberman	

NAYS—59

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

NOT VOTING—4

Bunning	Hatch
Gregg	Manchin

The amendment (No. 4814) was rejected.

Mr. KERRY. I move to reconsider the vote.

Mr. NELSON of Florida. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 4839

Mr. RISCH. Mr. President, is amendment No. 4839 at the desk?

The PRESIDING OFFICER. It is.

The clerk will report.

The bill clerk read as follows:

The Senator from Idaho [Mr. RISCH] proposes an amendment numbered 4839.

Mr. RISCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend the preamble to the Treaty to acknowledge the interrelationship between non-strategic and strategic offensive arms)

In the preamble to the New START Treaty, insert after "strategic offensive arms of the Parties," the following:

Acknowledging there is an interrelationship between non-strategic and strategic offensive arms, that as the number of strategic offensive arms is reduced this relationship becomes more pronounced and requires an even greater need for transparency and accountability, and that the disparity between the Parties' arsenals could undermine predictability and stability,

Mr. RISCH. Mr. President and fellow Senators, what we are going to do is, tomorrow, at noon, we are going to start with amendment No. 4839. Amendment No. 4839 deals with the relationship between strategic weapons, which this treaty deals with, and tactical weapons, which this treaty does not deal with but should. That is essentially the purpose of this amendment.

I think virtually everyone who is involved in this debate has an opinion on this, No. 1. But almost everyone agrees that the issue of tactical weapons, namely, short-range weapons, is a very serious issue and rises to at least the level of the discussion on strategic weapons, and perhaps even more so.

So tomorrow we are going to have a spirited discussion about those issues. There has actually been quite a bit of debate already on this, and for those of you who are like me, and you take the CONGRESSIONAL RECORD home and read it in the evening, if you go back and look at the debates on the various treaties that dealt with nuclear weapons treaties, you will see that some very bright people, some of whom are still Members of this body, have already spoken on this issue.

I am looking forward to having this discussion tomorrow.

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

The PRESIDING OFFICER. The Senator from Montana.

MORNING BUSINESS

Mr. TESTER. Mr. President, I ask unanimous consent to go into morning business.

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

Mr. TESTER. Mr. President, before I talk about the Forest Jobs and Recreation Act, I want to say, you never looked better, Mr. President. So I appreciate you being in the Chair today.

FOREST JOBS AND RECREATION ACT

Mr. TESTER. Mr. President, I want to talk a little bit about the omnibus bill that was pulled down 2 nights ago

because there were not the votes from across the aisle to get the bill moving.

In that omnibus bill, there was a number of very important projects for every State in the Union. But there were a lot of very important projects for the State of Montana in that bill that I am afraid now will be put on the back burner.

Nonetheless, there was also some very important language in the omnibus bill. In my particular case, there was language in that bill that was going to help put people back to work, and that language was contained in a bill we call the Forest Jobs and Recreation Act.

What this bill does is create 660,000 acres of new wilderness. It creates 370,000 permanent acres in new recreation areas. It requires forest restoration and logging of 100,000 acres over 15 years.

It is important in Montana for several reasons. The first reason is, we have been attacked by beetles, the bark beetles that have killed a large percentage of our forests, and we need to give the Forest Service the tools they need to be able to treat that.

The second thing is that in the western part of Montana the economy has been hurt pretty badly. The unemployment rate there is the highest in our State. This bill will create jobs. Let me give you an example.

Over the last year, in Montana, 1,700 jobs were lost in the wood products industry alone. This bill would help get those folks back to work. How? Well, it would help the folks running the chain saws, doing the cutting in the woods, the mills that create dimension lumber and plywood, and those kinds of things, get back up running and employing people.

It would help provide the opportunity for biofuels with these trees, to be able to get a dependable supply, to be able to put the investment in to create biofuels, and move that industry along, to make this country more energy independent.

It would help save our timber infrastructure because, quite frankly, if you look at some of the States in the West, that timber infrastructure is gone, and our ability to manage those forests leaves us when that timber structure goes. That is not the case in Montana, but we are getting very close. It is why this bill needs to be passed. Unfortunately, it does not look as though it is going to happen at this point in time.

The other part about this bill—as I said, while there were so many projects in the omnibus, the CBO says this bill is deficit neutral, with no cost to the taxpayers. It is a bipartisan bill. It is a bill we have support for from both sides of the aisle, with Governors and Senators and Congressmen and local county commissioners, from both parties.

It is a bill that the Forest Service, through Secretary Vilsack, supports. It is popular with over 70 percent of Montanans.

As I said earlier, we are in dire need of it because our forest is dying, with

over 1 million acres of dead and dying trees. This bill has been the subject of intense public debate for the past year and a half since I dropped it in. We had a Senate hearing a year ago, a year ago yesterday, I believe it was. We have had townhall meetings, 11 in total, across Montana. We have had unprecedented transparency with this bill, with it being online and explaining and taking input and changing the bill as it has moved forward, making it a better bill. We have taken suggestions from the public, and where we have been able to address those concerns, we have been able to address them straight-up and move forward. It really is a new way of doing business for the Forest Service, for our forested lands, our government-owned forested lands in this country.

It has not been an easy go. This bill would not have happened 10 years ago. It absolutely would not have happened 20 years ago because for the last 30 years we have had gridlock in our forest industry. We have had conservationists and environmentalists and loggers and mill owners and recreationists all fighting with one another, and nothing has gotten done in the last 30 years.

Well, about 5 years ago these folks got together and they said: You know, we have all been losing. Nobody has been winning. We should set our differences aside—and this body should listen to this—set our differences aside, find a common ground, and move forward with solutions. They did exactly that. It was not easy, but they did exactly that—where everybody gives a little but gets a lot. They sat down at those tables and they met, and they met for years, and they came up with this proposal.

Shortly after I was elected, they came to me and said: Would you carry it?

I looked at it, and I said: You know what, this bill makes sense. It makes sense for Montana. It makes sense for the West.

We were on track to get this bill passed until the omnibus was pulled the other night because of a lack of support. Our No. 1 responsibility right now is jobs—jobs, jobs, jobs. This bill helped create jobs, helped put people to work in an industry that needs help.

Regardless of what happens from here, it is going to be critically important that we stay focused on jobs in this body. I will tell my colleagues that I think if we do that and we are successful in that, this country will be a better place. It will be a better place for our kids and our grandkids, and it will be a better place for people right now. Quite frankly, I haven't seen a lot of that working together in the last 4 years. When we have a piece of legislation that really isn't a Democratic piece of legislation or a Republican piece of legislation but, rather, a good piece of legislation, it gets caught up in the process.

I will continue to fight for jobs for everybody in this country, particularly

in Montana. We will continue to work to get this bill passed and bills like this passed because it is good for the country and it gives the agencies—in this case, the Forest Service—the kinds of tools they need to manage our forests.

As I said before, I was going to ask unanimous consent for the passage of this bill. I have been informed that will be objected to, so there is no reason to go through that formality. But I will say we hope to bring it up again, and hopefully next time we will be successful because it is a good bill.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from Idaho.

Mr. RISCH. Mr. President, I wish to respond briefly to my good friend from Montana.

First of all, let me say that I, of course, was at the hearings the Senator referred to in our Energy and Natural Resources Committee. Ordinarily, I wouldn't involve myself at all in the internal matters in Montana. Natural resource issues are best decided by the people who live in the particular counties and in the particular States where that resource is located. On this particular issue, however, one of the areas of land included in the landmass my good friend from Montana described in his bill is an area that is referred to as Mount Jefferson. Mount Jefferson and the area included admittedly are entirely within the State of Montana. However, the only way the southern part can be accessed is through the State of Idaho.

I couldn't agree more with my good friend from Montana in saying that we need to keep our eye on the ball, and that is jobs, jobs, jobs.

The particular area in question is not a large area. I think the total amount is 4,400 acres. The amount I am talking about is about 2,200 acres, but it is used intensively by Idaho people engaging in recreation in the wintertime. Under my good friend's bill, that would have been closed out, and the snowmobiling particularly would have been prohibited in this area, which is the south side of Mount Jefferson.

I sincerely appreciate my friend's willingness to talk about this and to work on this particular issue. As we go forward with this—and I have no doubt that his commitment to his State will cause him to continue to work with us on this issue and to deal with this particular bill and the areas of land he is talking about in this bill as we go into the next Congress. I commit to work with him, and I hope we can resolve this issue. As I say, the issue of winter snowmobiling only as far as motorized use of this particular area is of great importance to the people of the State of Idaho.

I thank the Senator for his courtesies thus far, and I look forward to working with Senator TESTER in the next Congress on this issue.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. Thank you, Mr. President.

I appreciate the remarks of the good Senator from Idaho. I understand the Senator's concern as we have talked about the Mount Jefferson issue before. Overall in the bill, just for the record, we have added 370,000 acres of recreation area for exactly that—snowmobiles. That doesn't solve the problem on Mount Jefferson of the 4,400 acres, but we will continue to work with the Senator from Idaho and move forward to try to get something as close to what meets the needs of everybody as we can. As Vince Lombardi once said, the recipe for failure is trying to please everybody.

I thank the good Senator from Idaho.

The PRESIDING OFFICER. The Senator from Iowa.

#### TRIBUTES TO RETIRING SENATORS

BYRON DORGAN

Mr. HARKIN. Mr. President, with the close of the 111th Congress, the Senate will lose one of its most popular, articulate, and outspoken Members. I will lose a kindred spirit and a fellow progressive populist, BYRON DORGAN, who has spent his entire four decades in elected office fighting on behalf of family farmers and ranchers, struggling small businesses, ordinary working Americans, and anyone who has been run roughshod over by big business, big banks, or big government.

Both Senator DORGAN and I are proud of our roots in the rural upper midwest. I was raised in Cumming, IA, population 162. He was raised in Regent, ND, population 211. BYRON always liked to joke that he graduated in the top 10 of his class of 9 students.

Senators on both sides of the aisle have come to respect and admire Senator DORGAN's distinctive voice here in the Senate, a voice that mixes keen intelligence with a great sense of humor, plus a gift for making his arguments with colorful, compelling stories and language. Throughout his more than four decades in public service, he has used that voice to speak out powerfully for farm country in rural America. He has fought hard for policies at the national level to give rural families a better chance at success. He has been a strong supporter of the farm bill's safety net provisions, including countercyclical support for farmers to get them through hard times, and he has been equally outspoken in championing strict limits on Federal farm payments to ensure that the lion's share goes to small family farms, not big agribusiness and absentee farm owners.

As a senior member of the Energy and Natural Resources Committee and chair of the Appropriations Committee's Energy and Water Development Subcommittee, Senator DORGAN has always been an outspoken champion of clean, renewable, homegrown energy, including wind and solar and biofuels.

He likes to boast that North Dakota is "the Saudi Arabia of wind." Well, my folks in Iowa might dispute that claim, but we get the point. BYRON and I have both been strong advocates of building a nationwide distribution grid for wind- and solar-generated energy.

I wish to make just one more point about Senator DORGAN. I guess I can say this now since he is retiring and a political opponent won't be able to use it against him. BYRON DORGAN is an intellectual. He has a passion for ideas and knowledge. He even writes books—actually, really good books, the kind that show up on the New York Times bestseller list. I am a great fan of his 2007 book entitled "Take This Job and Ship It: How Corporate Greed and Brain-Dead Politics Are Selling Out America." If you want a blistering and I think dead-on account of the causes of the crash of 2008, read BYRON's other book entitled "Reckless! How Debt, Deregulation, and Dark Money Nearly Bankrupted America."

I consider BYRON DORGAN a great friend, a great Senator, and a great advocate for all working people in this country. He has accomplished many things in his three terms here in the Senate, but I can think of no greater accolade than to say simply that he is a good and decent and honest person with a passion for social justice and a determination to make life better for ordinary Americans.

When the 111th Congress comes to a close, of course, my friendship with BYRON will continue, but I will miss his day-to-day counsel and good humor. I join with the entire Senate family in wishing BYRON and Kim the best in the years ahead.

KIT BOND

Mr. President, with the retirement of Senator KIT BOND at the close of this Congress, the Senate will lose one of its most respected veteran Members, and a truly distinguished individual with a distinguished career in public service will come to an end. Of course, we would expect big things from a young man who graduated with honors from Princeton and first in his class at the University of Virginia Law School, and KIT BOND did not disappoint.

At age 30, he became assistant attorney general of Missouri, serving under former Senator John Danforth. At age 33, he was elected Governor of the State of Missouri, serving two terms. In 1986, he was elected to the Senate, where he has now served for nearly a quarter of a century.

Over the years, KIT BOND has been a great friend and a frequent collaborator, especially on the Appropriations Committee. For example, in 1993, when the Midwest was devastated by historic floods, Senator BOND was the senior appropriator in the minority party from the nine impacted States, and I was the senior appropriator in the majority party. We took the lead in the Senate, working together very effectively to rally Federal assistance to victims all across the stricken Midwest.

Over the years, we have worked together to improve the locks and dams along the Upper Mississippi. I can say I think we are both proud of our work in the early part of this decade, forging an agreement to authorize the modernization of five of the critical locks so that our goods can move more efficiently up and down the river. We worked very hard for about 4 years to bring together a remarkable coalition of industry and agriculture and the environmental community to make this project possible.

Senator BOND and I are members of a breed of Senators affectionately known around here as "pavers." We both believe very strongly that it is a cardinal responsibility of the Federal Government to invest generously in a first-class national transportation infrastructure—the roads, the bridges, the locks, the dams, and so on—what we call the arteries and the veins of commerce.

Senator BOND and I have also collaborated frequently to boost the rural economy and improve the quality of life of the people who live in our rural communities. In particular, we have used funding through the Housing and Urban Development Subcommittee of Appropriations to approve housing for people of modest means, with a particular focus on rural areas. On this score, I would note Senator BOND was a "compassionate conservative" long before that term came into fashion. He cares deeply about the well-being of the less fortunate in our society, giving them both a helping hand and a hand up. In the mid-1990s, I was proud to work with Senator BOND on the first bipartisan welfare reform bill, modeled, I might say, on the very successful welfare-to-work program we had in Iowa.

Over the years, Senator BOND has recruited and retained an exceptionally talented staff.

In particular, I will cite Jon Kamarek, his outstanding lead staffer for many years on the Appropriations Committee, with whom I have had the pleasure of working on many occasions. I know Senator BOND also places great store by his long-time staffer and current chief of staff, Brian Klippenstein—who, by the way, had the good sense to marry a Democrat from the State of Iowa.

Mr. President, the Senate has been fortunate to have a Senator of KIT BOND's high caliber and character for the last 24 years. In so many ways, he represents the very best in this body—a passion for public service, a willingness to reach across the aisle to get important things done, and an insistence on the highest ethical standards. He has always been determined to do the right thing for the people of Missouri and the entire United States.

For me, it has been a great honor to be his friend and colleague for the last 24 years. Our friendship, of course, will continue. And I wish KIT and Linda the very best in the years ahead.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that at the conclusion of my remarks, Senator HARKIN be recognized again, followed by Senator CARPER, and then Senator BROWN.

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

#### COMMENDING CONGRESSMAN PATRICK J. KENNEDY

Mr. WHITEHOUSE. Mr. President, I rise to make a few brief remarks in honor of Congressman PATRICK JOSEPH KENNEDY of Rhode Island.

With PATRICK's departure from the House of Representatives to seek new challenges and enjoy some well-earned time out of the political spotlight, my home State of Rhode Island is losing a champion for working families and our country is losing a public servant who did as much as anyone else to care for and lift those in the shadows of life.

It is a moment to thank PATRICK for his many contributions to the lives of Rhode Islanders over his 16 years of service in the House but also a moment to reflect on his unique place in the political history of our country.

After all, the 112th Congress will be the first in more than half a century in which no member of the Kennedy family is serving in either the House or the Senate.

In Rhode Island, a State that he adopted, and that adopted him—he first entered public service at the young age of 21, winning his congressional seat a few short years later in 1994, one of only four GOP seats Democrats won in that election.

Over the years, PATRICK continually faced capable and well-funded opponents, but his constituents had come to recognize and welcome his humble dedication to their lives, re-electing him seven times. He was my younger, but senior, colleague on our delegation.

The arena of politics is combative—all the more so when your last name is Kennedy—but PATRICK persevered, and he persevered despite his own health and addiction challenges.

And instead of running from those challenges, instead of hiding from those challenges, PATRICK had the courage and wisdom to realize that the problem he was experiencing was a problem shared by millions of families in America. Instead of hiding from public scrutiny, he stood tall—not only on his own behalf, but also on behalf of Americans who needed a champion to bring their struggles to the forefront of the national agenda.

With that, PATRICK's campaign for mental health parity took fire, resulting in passage of the landmark Mental Health Parity Act of 2008, an achievement Speaker NANCY PELOSI described as "the legislative feat of the century."

In that fine cause, PATRICK had the chance to work with a towering champion of civil rights, the lion of the Senate, his father.

Peer to peer, man to man, they hashed out the final bill in conference. The father, with his easy, booming laugh and affectionate camaraderie; the son, with his fierce but quiet determination.

Thus did PATRICK help lift up millions of Americans. Thus did he earn a place alongside his father—a man he called his hero, his inspiration. Thus did he emerge as a champion for so many who needed one so badly. Thus did he uphold the best traditions of the family and the Nation he loved.

PATRICK has proudly carried on his family's spirit of service and their fight for social justice. And to be sure, he has always been proud to be Teddy's son. "From the countless lives he lifted," PATRICK said, "to the American promise he helped shape, My father taught me that politics at its very core/was about serving others."

In the service of others, PATRICK too brought to the rough and tumble of politics/traits that made him unique, and he left behind accomplishments that allow him to stand on his own as one of the great legislators of our time.

Indeed, of all the descendants of President Kennedy, and of Bobby Kennedy, and of our own late colleague Ted Kennedy, it was PATRICK who last held public office, PATRICK who longest held public office, PATRICK who youngest held political office, and PATRICK who most successfully used public office to further the family's mission of lifting up every American.

PATRICK'S success as a Member of Congress came not easily, not from the charm charisma so characteristic in his family but rather from simple hard work, unshakeable integrity, and his formidable determination to win what others had sought.

Henry Wadsworth Longfellow wrote in "The Ladder of St. Augustine":

The heights by great men reached and kept,

Were not achieved by sudden flight,  
But they, while their companions slept,

Were toiling upward in the night.

The story of PATRICK KENNEDY is not a story of glamorous sudden flight to glory. It is a tale of long and silent toil, upward, and in the night, in the shadow of his own challenges.

The best part of this story is that PATRICK'S work is not yet finished. Neither his father nor his uncles got to experience life after public service. But, stepping away from the Congress at the age of 43, PATRICK'S road stretches ahead for many more miles.

I know that PATRICK will continue to look for ways to give back to the State that gave him a chance to serve and the Nation that gave his family a chance to thrive. And he will always enjoy the gratitude of Rhode Islanders whom he has served so well and Americans whose burdens he has helped to relieve. And I will always be proud to consider him a legislative inspiration, a political ally, and a beloved friend.

PATRICK, thank you. And I wish you all the best in this new beginning.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

## TRIBUTES TO RETIRING SENATORS

RUSS FEINGOLD

Mr. HARKIN. Mr. President, with the close of the 111th Congress, the Senate will lose to retirement Senator RUSS FEINGOLD of Wisconsin—a proud progressive, a fearless reformer, and a genuine maverick in the very best sense of that much-abused term.

During his three terms in this body, Senator FEINGOLD has been a worthy successor to another great progressive reformer from Wisconsin, Senator Robert "Fighting Bob" LaFollette, whose desk I am proud to occupy, here on the Senate floor—and whose portrait is displayed prominently in Senator FEINGOLD'S office.

Like Senator LaFollette, RUSS FEINGOLD knows that it is not enough to be on the side of the angels. It is not enough to have our hearts in the right place. Progressivism, by its very nature, is a fight against entrenched corporate interests, entrenched economic privilege, and entrenched political power. If we are going to succeed against these forces, we have to know how to fight, and we have to be willing to fight. And, as our colleagues here in the Senate know very well, Senator FEINGOLD is equally skilled at building bridges across the aisle and tenaciously carrying the fight to those who oppose progressive change.

Most famously, we witnessed these talents during Senator FEINGOLD'S relentless campaign to pass the landmark 2002 Bipartisan Campaign Reform Act, better known as the McCain-Feingold law. Senator FEINGOLD and his legislative partner, Senator JOHN MCCAIN, championed this legislation for nearly 2 years, overcoming stiff resistance from both parties, as well as from powerful interests outside the Senate. They faced countless obstacles but refused to give up. They won.

Again, in 2007, in the wake of the Abramoff scandals, Senator FEINGOLD played the key role in pushing through the Honest Leadership and Open Government Act, a tough ethics and lobbying reform bill, which included stringent disclosure requirements and a crack-down on abusive practices by lobbyists.

As chair of the Judiciary Committee's Constitution subcommittee, Senator FEINGOLD cast the Senate's lone vote against the USA PATRIOT Act.

For nearly two decades in this body, Senator FEINGOLD has been an outspoken champion of working Americans—fighting for safer workplaces, the right to organize, stronger public schools, better access to higher education and health care. He has always stood up for Wisconsin's family farmers and rural communities.

Senator FEINGOLD has accomplished important and even historic things

during his tenure as U.S. Senator. But, in my book, the highest accolade is simply that RUSS FEINGOLD is a good and decent person, with a passion for fairness, social justice, and honest government.

For me, it has been a great honor to be his friend and colleague for the last 18 years. Our friendship, of course, will continue—as will RUSS FEINGOLD'S fight for the progressive causes we both believe in.

Our great friend Paul Wellstone used to say that "the future belongs to those with passion." By that definition, RUSS FEINGOLD has a wonderful future ahead of him. I join with the entire Senate family in wishing him the very best in the years ahead.

ROBERT BENNETT

Mr. President, in these closing days of the 111th Congress, the Senate will be saying farewell to one of our most seasoned and accomplished Members, respected on both sides of the aisle, Senator ROBERT BENNETT of Utah.

Certainly, no one in this body doubts Senator BENNETT'S staunch conservative values and principles, especially on fiscal and regulatory issues. But, throughout his 18 years in this body, Senator BENNETT has been a consensus builder, willing to reach across the aisle in order to get important things done for the people of Utah and of the entire United States. Clearly, this thoughtfulness has caused him to lose favor with the more extreme wing of his party, for which he paid a price during the primary election this year. I know I am not alone in mourning the loss of one of the Senate's most thoughtful conservatives.

For example, he partnered with Senator RON WYDEN of Oregon in advocating a legislation to provide universal health insurance coverage.

And in response to the financial crisis of 2008, as a senior member of the Senate banking committee, he supported the Emergency Economic Stabilization Act. Senator BENNETT was widely criticized by those on the right, as was I for the same vote by critics on the left. But he can take great pride in it, because facts are facts: the Troubled Assets Relief Program prevented a total meltdown of our financial system. And almost the entire \$700 billion taxpayer investment has been—or soon will be—paid back to the Treasury. In fact, just this week, the Treasury booked a \$12 billion profit on its previous \$45 billion TARP investment in Citigroup.

I have been proud to call BOB BENNETT my friend for the last 18 years, and I count myself fortunate to have served with him on the Appropriations Committee. He is a gentleman, a bridge-builder, a person of rock-solid character and integrity.

I join with the entire Senate family in wishing BOB and Joyce the very best in the years ahead.

BLANCHE LINCOLN

Mr. President, in these closing days of the 111th Congress, the Senate will



be saying farewell to one of our most popular Members, Senator BLANCHE LINCOLN of Arkansas.

During her 12 years in this body, at a time when the Senate has become increasingly partisan and ideologically divided, Senator LINCOLN has charted an alternative course. She has cultivated friendships and collaborations on both sides of the aisle, and has been skilled in forging bipartisan agreements on a wide range of issues.

Last year, Senator LINCOLN succeeded me as chair of the Agriculture Committee. I would note that she is the first Arkansan and the first woman to serve in that position.

She has used that position to champion causes that have been her passion for many years, including revitalizing rural communities, supporting family farmers, promoting biofuels and other forms of renewable energy, and advocating for better nutrition for our school-aged children.

Senator LINCOLN is leaving the Senate at the very top of her game. Just this week, President Obama signed into law the Claims Resolution Act of 2010, the culmination of Senator LINCOLN's efforts to provide justice for African-American farmers who suffered decades of discrimination in agricultural programs.

Also this week, President Obama signed into law the Healthy, Hunger-Free Kids Act, which will become a major part of Senator LINCOLN's legacy as a Senator.

When I handed over the gavel of the Senate Agriculture Committee to Senator LINCOLN last year, much work had been done on the child nutrition bill but much remained to be done. Senator LINCOLN did a fantastic job—a masterful job—of taking over the child nutrition authorization and shepherding it to a unanimous approval by the Senate. Thanks to her leadership, low-income children will have increased access to Federal nutrition programs, the nutritional quality of the programs will improve, and the financial foundation of the National School Lunch Program will be greatly reinforced.

Senator LINCOLN also exhibited extraordinary leadership earlier this year in the Wall Street reform bill. Again, as the chair of the Senate Agriculture Committee, she was able to forge bipartisan consensus for strong reform of the derivatives market. Indeed, the provision she championed will help to restore integrity to the derivatives markets, it will allow companies to safely use derivatives to manage their business risk, and it will help to prevent future financial crisis. I was proud to support her in those efforts.

For the last 12 years in this body, Senator LINCOLN has been a tireless advocate for the people of her State of Arkansas, for American agriculture, for rural Americans, and for families with small kids. She has been an outstanding Senator and a wonderful friend. I join with my colleagues on both sides of the aisle in wishing

BLANCHE and Steve and their twin boys Reece and Bennett the very best in the years ahead.

Mr. President, I yield the floor, and I thank my colleague for his forbearance.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Before Senator HARKIN leaves the floor, let me say I am so pleased that I was literally able to be here on the floor and hear you talk about our colleagues. What a wonderful thing to do, and to single out Democrats and Republicans and to reflect upon their service to their States and to our country. I had to mention that.

You mentioned BLANCHE LINCOLN. A lot of people say I respect my colleague, I think highly of my colleague, but here in the Senate we love BLANCHE. We love BLANCHE and her family. She is such a joy to work with. Always up, even during the course of the tough year she has had. I remember her more than once saying what doesn't kill you makes you stronger. And she has come through this with a smile and such grace, it is just remarkable. I loved working with her on the Finance Committee, especially on the health care bill that is designed to provide better outcomes for less money.

BOB BENNETT

You mentioned BOB BENNETT. He and I served on the Banking Committee for a number of years. In the end, he lost his seat I think because of his willingness to do what we were rewarded for in Delaware, and that is to reach across the aisle and find ways for Republicans and Democrats to do things together. We will certainly miss him.

#### RUSS FEINGOLD

RUSS FEINGOLD may be best known for his work on campaign finance reform, but I admire his work very much on helping to strengthen the President's rescission powers. I think the seeds he has planted there will bear fruit maybe next year.

So to him and the others who are leaving us, I say what a joy it was to serve with them, and I especially want to commend and thank you for remembering them as you have done today.

Mr. HARKIN. I thank the Senator very much.

#### DON'T ASK, DON'T TELL

Mr. CARPER. Mr. President, in November 1948—that was 1 year after my birth—President Harry Truman issued a highly controversial Executive Order. It called for beginning the process to bring to an end the longstanding policy of racial segregation in the Armed Forces of our Nation.

Just a few years earlier, my father and three of my uncles had served on active duty for much of World War II. One of them—Bob Patton—was killed in a kamikaze attack on his aircraft carrier, the USS Suwannee in 1944. But

all four of them—my dad and three uncles—were born and raised near the coal mining town of Beckley, WV, where my sister and I were born after the war.

Neither my father nor my uncles ever discussed with us the implication of President Truman's Executive Order. Having said that, I later learned that many of the people in my native State opposed it, as did many people in Danville, VA, the last capital of the Confederacy and the place where my sister and I would grow up.

The transition that followed President Truman's actions was not an easy one, but history would later show the steps he ordered 62 years ago this year were the right ones for our military and for our country.

Twenty years after Truman's historic action, I was commissioned an ensign in the Navy and headed for Pensacola, FL, to begin the training that would enable me to become a naval flight officer. I had just graduated from Ohio State University—the Ohio State University, I guess—which I attended on a Navy ROTC scholarship. My sister was not in our ROTC unit at Ohio State. In fact, there were no women in that unit, and to the best of my knowledge there were no women in any of our ROTC units across the country nor in our military service academies in America either.

A lot of people thought that was fine, and while there were women who served then in our Armed Forces, they were denied the opportunities that I and a lot of other men had that enabled us to advance in rank and to assume positions of ever greater responsibility. I went on to serve in Southeast Asia and retire as a Navy captain after 23 years of active and reserve duty. No women served with us in my active-duty squadron, but as the years passed that began to change. Young women gained admission into ROTC programs in colleges and universities across America and into our service academies as well. They became pilots, they flew airplanes, helicopters, served on ships, and someday, before too long, they will serve on some submarines as well.

Today, women are admirals and they are generals. While there is still resistance to the transition that continues to this day—and much of that is understandable—most of us who have lived through it would agree this change has helped to make our military and our Nation stronger.

Today, we face a different kind of transition—a challenging one, too—and that is whether to end the policy of don't ask, don't tell. Confronted with this question and how to answer it, I have sought the counsel of a number of people over the past year whose wisdom I value. Foremost among them has been our Secretary of Defense Bob Gates. He has graciously shared his thoughts on this difficult and contentious issue with me and with many of my colleagues, both in private and in public forums.

Today I stand in agreement with the Secretary and with ADM Mike Mullen, the Chairman of our Joint Chiefs of Staff. The time has come to repeal the law that requires young men and women to lie about who they are in order to serve their country.

Having said that, however, I also agree with them that this transition—like several of the others I have talked about—must be done in a way that eases the military into this change over time so that it does not adversely affect or undermine our military readiness, our ability to recruit, and our morale.

The proposal we approved an hour or so ago seeks to do exactly that. It will empower Secretary Gates and our other military leaders to carefully implement a repeal of don't ask, don't tell in the months ahead. Repeal is not something that is going to happen overnight. The Secretary and the Joint Chiefs are going to do this in a deliberate and responsible way, and it will take some time. Our military leaders have made it clear they want Congress to act now, though, to enable them to begin to implement this repeal of don't ask, don't tell in a thoughtful manner rather than to have the courts force them into it overnight.

I support that approach. I support the approach recommended by our military leaders. I stand behind Secretary Gates and our Nation's other military leaders as they prepare to lead our military and our Nation through this historic transition, rather than to allow the courts to do it for us in ways that we may some day live to regret.

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

The PRESIDING OFFICER. The Senator from Minnesota.

#### NET NEUTRALITY AND COMCAST/ NBC MERGER

Mr. FRANKEN. Mr. President, I rise today to talk about the growing threat of corporate control on the flow of information in this country.

Today we have been debating incredibly important issues, and I don't mean to detract from any of them. We need to be doing everything we can to protect our national security and to reduce the threat from nuclear weapons. But while we debate these issues in front of the public, behind the scenes, away from public scrutiny, the Federal Communications Commission is about to decide two distinct but very closely related issues that have the potential to change dramatically the way we get our entertainment, the way we communicate with one another, and, most importantly, the way we use the Internet.

The first matter before the FCC is the proposed merger of Comcast and NBC/Universal. There is no question in my mind that regardless of what you hear from industry, this merger will be bad for consumers on many levels. It will allow Comcast to exploit NBC/Universal's content, charging other

cable networks more for access to NBC shows and movies. Do you know what that will do? It will raise your cable bills. And NBC/Universal—which actually owns 37 broadcast or cable networks—will be favored by Comcast to the exclusion of other independent or competing networks. This means Comcast will pay less to carry channels such as the Discovery Network, the Food Channel, Bloomberg, or the Tennis Channel—threatening their financial viability—or these channels will be relegated to the graveyard around channel 690 or 691 or 692, or customers will have to pay even more each month to buy access to these channels.

This is bad for consumers because it is going to put many of these networks out of business. That means less choice and more Comcast/NBC programming.

But it doesn't end there. Comcast also happens to be the Nation's leading wireline broadband Internet provider, which means this single company will both own the programming and run the pipes that bring us that programming. Here again, Comcast will be able to use its overwhelming market share—and in many markets its near monopoly in the Internet business—to favor its own video services, say, its OnDemand service, over companies such as Netflix, that are cheaper and would otherwise win on a level playing field.

These are all major problems with the deal. But it might be tough to understand in the abstract how this deal will affect you, so let me take a minute or two to make this more concrete.

I ask the people sitting in the gallery, the Senate staff watching this speech, and everyone at home in Minnesota: How many of you like your cable and Internet provider?

When you call Comcast or Verizon or AT&T about a problem, how many of you get good service? How many of you like the prices you pay?

When you decide you want to sign up for broadband, and Comcast tells you that they aren't sure when they can come to install your service, and then finally you get an appointment and you have to take a day off from work to wait between 9 a.m. and 2 p.m. for a repairman to come, and then he doesn't come, is that how you feel you deserve to be treated?

Are you getting good service when you call Verizon and spend 10 minutes listening to automated messages and pressing numbers that direct you to more automated messages, and then finally—finally—you get a human being on the line but that person tells you that he or she can't help you and you get put on hold again; is that how you deserve to be treated? Are you getting good service?

When you have had enough with bad service and rapidly rising bills and you decide you want to switch to another company, how many of you have found that you don't have another choice? That there is no other cable provider in your area?

I can tell you that right now, Comcast has about 23 million cable

subscribers and about 16 million Internet subscribers. They are already the largest provider of cable service to Americans by a very large margin, and in some areas, they have a total monopoly.

And this is what cable and Internet customer service is like today. Do you think that merging the single largest cable provider, which is also the largest wireline Internet provider, with one of the biggest TV and movie studios in the country, will make any of this better? Do you think it will lead to lower prices on your cable and Internet bills? Do you think it will mean more choice for what you can watch and download at home? Do you think it will mean better customer service?

I can assure you that the answer to these questions is no, no, no, and no.

We count on competition in this country to keep corporations in check, and we have designed antitrust laws to ensure that companies are not getting too big or too powerful. These laws were designed to protect consumers, because the one thing we know about corporations is that they are created to maximize shareholder profit—not to protect consumers.

There is nothing wrong with that. We want corporations to grow, and create jobs, and provide goods and services. There are some great corporations based in Minnesota, like General Mills and 3M. In addition to providing you Cheerios and Post-it notes, these companies put a lot of Minnesotans to work.

But when you go shopping for cereal, you have a lot of choice. General Mills may produce Cheerios, but they have to compete with companies such as Kellogg's, which makes Corn Flakes, and Post, which makes Fruity Pebbles. And they all have to compete with the store or value brands.

Let's look at another example of the benefits of competition. When you go out for dinner at a restaurant, you usually have a lot of options. I am guessing you don't go back to the restaurant that served you limp lettuce, mediocre meatloaf, and cold, lumpy mashed potatoes. And I am guessing you wouldn't go back if they told you that you would be served sometime between 9 a.m. and 2 p.m.

Unfortunately, you don't always have that kind of choice when it comes to your cable and Internet service. And this is only going to get worse if the FCC allows the merger between Comcast and NBC to sail through. It is competition—and regulation where there isn't competition—that keeps corporations accountable to consumers.

But don't take my word for it. You can already see what Comcast has up its sleeve. If the merger is allowed to go through, as I mentioned before, we can expect Comcast to favor its own content and leave consumers with less choice.

Take the Tennis Channel, which filed a complaint against Comcast earlier

this year. It alleged that Comcast has been favoring the Golf Channel and its own sports channel, Versus, by making those channels available as part of its basic cable package, while putting the Tennis Channel on a so-called "premium tier." In other words, if you get cable from Comcast, you get the Golf Channel and Versus for free, but if you want to watch the Australian Open on the Tennis Channel, you need to pay another \$5 to \$8 per month.

Yet, Comcast pays the Tennis Channel only a fraction of what it pays itself to carry the Golf Channel or Versus, which are much less popular.

I fear this is a sign of things to come. As media conglomerates get bigger and bigger, they have every incentive to make their own content easier and cheaper to access than everyone else's content.

Now, I have been talking to a lot of people about the possible impact of this merger, and do you know what I keep hearing? Do you know what small businesses and cable programmers are telling me? They are coming to my office discreetly, and they are saying that they oppose this merger—but they can't speak out because they are worried about retaliation from Comcast. And to me, that is the definition of a company with too much market share.

Comcast has put out the word that this merger is a fait accompli. They have announced a slate of 43 officers for NBC, despite promising to refrain from doing so until the review of the merger is complete.

So it is no surprise that small—and some not so small—cable networks see the writing on the wall and are not willing to take the chance of opposing this deal publicly, again, for fear of retaliation by Comcast.

And they are probably right. If this deal goes through, Comcast will have the power to put them out of business. If you knew that, would you stand up and complain to the FCC about Comcast? Probably not.

This type of anticompetitive conduct is exactly why we need the Department of Justice and the FCC to stop this merger.

And this merger is only the first domino in a cascade that is sure to come. Make no mistake, if this merger is approved, if this deal goes through, it will be only a year or 2 before we see AT&T trying to buy ABC/Disney, or Verizon trying to buy CBS/Viacom. And you know what these companies will say? "You let Comcast and NBC do it, now it is our turn." And what will the FCC or the Department of Justice say then?

Now is the time to decide whether we want four or five companies owning and delivering all content. Imagine a world with no independent voices, and no competition.

But now let me go back specifically to Comcast. Not just its cable profile. Let's talk about Comcast's control of the Internet. There is no better example of how Comcast plans to use its vir-

tual monopoly than what we have seen in the last few weeks with its treatment of Netflix.

I think we can all agree that Netflix has changed the way many Americans watch movies, and it all started because one of its founders was sick of paying late fees for movie rentals. This company is one of our Nation's great success stories—it now has almost 17 million subscribers and generates hundreds of millions of dollars in revenue—and it all happened in just over a decade. But most importantly, it offered an alternative and less expensive option for consumers to watch movies.

Netflix now has a lot of money and can write big checks to buy movies and video content, so I didn't think I needed to worry about them. But then I heard that being the highest bidder for content may not be enough.

As it turns out, cable companies are worried about Netflix's success. It represents the first real competition they have seen in a long time, and they want to shut Netflix down. How can they do that? By cutting off Netflix's access to the things people want to watch. And when is this most problematic? First, it is when Netflix's competitors—like Comcast or Time Warner Cable—also own the programming that Netflix carries. Second, it is when Netflix's competitors are also the ones that sell—and control—access to the Internet.

Neither of these are theoretical. Just last week, Time Warner's CEO brazenly stated that Netflix's deals with Time Warner may not be renewed. Other studio executives are saying the same thing.

And what I am hearing is that Comcast, which is not yet even in control of NBC, plans to reverse course and ultimately pull NBC/Universal's programming from Netflix.

Comcast also recently announced that they are imposing a new fee on Level 3 Communications, the company slated to become the primary delivery mechanism and backbone for Netflix's online streaming movies and TV shows. Coincidentally, Netflix is one of Comcast's main competitors for video delivery, which makes this price hike seem just a little fishy to me.

Regardless of Comcast's motives for charging Level 3, this is a clear warning sign of what we can all expect if this deal goes through.

If this deal goes through, Comcast will make it harder and more expensive for you to watch movies online through any service other than its own. If this deal goes through, Comcast will have the power to limit your choices to watching Comcast-owned content over Comcast's services, like its video OnDemand service.

I use the phrase "if this deal goes through" because this is exactly the sort of anticompetitive behavior that the Department of Justice and the FCC are supposed to stop.

What is even more ludicrous is that this is happening when Comcast and

NBC should be on their best behavior. Right now, they are under close scrutiny by two Federal agencies, the FCC and the DOJ. Yet they seem to be making even more bold-faced power grabs without any concern about government oversight.

But in addition to the Comcast-NBC merger, what is also before the FCC is a new set of proposed rules that will make it easier for large media conglomerates—like Comcast—to do nothing short of controlling the Internet. The chairman of the FCC is calling this a "net neutrality" proposal. But let's be clear. This is not real net neutrality.

I believe this is one of the most serious issues facing our country today. Let me take a step back and explain what net neutrality is. Put simply, it is the idea that big corporations shouldn't be able to decide who wins or loses on the Internet. It is the idea that the Internet should be a level playing field for everyone, from a blogger to a media conglomerate, from a small businessperson to a powerful corporation. I believe that net neutrality is the free speech issue of our time.

The Internet wasn't created by corporations. It was created using taxpayer dollars, and it has dramatically altered our daily lives in more ways than any of us could have ever dreamed. It is an incredible source of innovation, a hotbed for creativity, and an unbelievable producer of wealth and jobs in this Nation. It was instrumental in putting President Obama in office—but it was also equally instrumental in helping the Tea Party become a powerful force in American politics.

I may not agree with everything the Tea Party movement has done, or everything it stands for, but I do firmly believe that the Tea Party has a right to organize and to post its views on the Internet.

Strong net neutrality principles would ensure that everyone—from the most liberal blogger on Daily Kos—to the most conservative fan of Fox News—would continue to have an equal right of access and an equal ability to communicate with like-minded people.

If corporations are allowed to control the Internet, all of that would change. The Internet has become the public square of the 21st century. This is why Tea Party activists and anyone who cares about personal liberties and freedoms should care about net neutrality.

One popular Minnesota blogger should be able to get his or her information to you as quickly as MSNBC. Or to say it another way, MSNBC shouldn't be able to pay millions to get their Web site to load faster on your computer. We do not want corporations to be able to drown out the voices of smaller, less powerful individuals.

Unfortunately, the proposal before the FCC—which I will admit I haven't seen because it has not been made public—would reportedly allow companies

to do just that. It would allow Internet providers to create a fast lane for companies that can afford to pay a premium. It would allow mobile networks, like AT&T and Verizon Wireless, to completely block content and applications whenever it suits them—for either political or business reasons.

Let me underscore this—this is the first time the FCC has allowed discrimination on the Internet.

Let me give you an example. Maybe you like Google Maps. Well, tough. If the FCC passes this weak rule, Verizon will be able to cutoff access to the Google Maps app on your phone and force you to use their own mapping program, Verizon Navigator, even if it is not as good, even if they charge money, when Google Maps is free.

If corporations are allowed to prioritize content on the Internet, or they are allowed to block applications you access on your iPhone, there is nothing to prevent those same corporations from censoring political speech.

The Obama campaign used a mobile app to help organize volunteers. And now there are a bunch of Tea Party apps you can download. But maybe not for long. Not if your wireless carrier doesn't want you to get them. And that is something every American should care very deeply about.

I am here on the floor today because I think Americans need to understand just how critical net neutrality really is.

This is complicated stuff. But it directly affects all of us.

And it is not just about speech, it is also about entrepreneurship and innovation. It is about our economy.

There is no question in my mind that without significant changes, the proposal currently pending before the FCC would be bad for our economy.

Think about companies like YouTube, which started in a tiny office above a pizzeria, and grew to be worth billions of dollars. At the time, Google had a competing product, Google Video, which was then the standard but was widely seen as inferior. Had Google been able to pay Comcast large amounts of money to make its website faster than YouTube's, YouTube would be nowhere. Fortunately, Google could not pay for priority access, and the rest is history.

Think about Facebook. Once upon a time, it was a small startup. Remember Friendster or MySpace? They were once the dominant social networking sites before Facebook won over users with a vastly superior product. But that might have never happened if Friendster or MySpace had paid lots of money to reach users faster. If Facebook had taken a significantly longer time to load on your computer, it never would have succeeded.

These are just some examples of how today's free and open Internet has fostered innovation, which has created jobs, and has spurred competition, which has benefited all consumers. Now think of the next Facebook or the

next YouTube or the next Amazon. The only way to guarantee that innovation will continue is to have strong net neutrality rules that will protect and maintain today's free and open Internet.

So the FCC has to make two big decisions, one on the Comcast-NBC merger, and one on net neutrality. These decisions will impact every American for years to come.

You may not know this, but the FCC is an independent agency. Independent agencies are nonpartisan. They are not beholden to Congress or to the President, and they certainly should not be beholden to the industries they regulate. That is why I am concerned when I hear that the Chairman of the FCC is calling the CEOs of companies they are supposed to be regulating, seeking their public endorsement of his net neutrality proposal.

Independent agencies are charged with acting in the public interest. So when I hear that the FCC is considering a net neutrality proposal that is supported by the largest media corporations in America, I am suspicious, and you should be too. The FCC should not be worrying about getting the sign-off from the very corporations that it is supposed to be regulating, period.

The FCC has made public its plans to act on its flawed net neutrality proposal this coming Tuesday. I sincerely hope that the FCC will make significant improvements before then, and that each of the Commissioners will think long and hard before they vote to approve a proposal that could actually make things worse for all Americans.

I have also heard that the FCC is going to be acting very soon on the NBC-Comcast merger, and it needs to do this in the light of day, not hidden in the middle of Christmas and New Year's. The American people have a right to know about this merger. I will be supremely disappointed if approval of the merger is slipped through when most of America is unwrapping presents and spending time with their families, not worrying about their cable or Internet bills.

We are at a pivotal moment and we need to stop the cascade of dominos that will forever change how we pay for TV and browse the Internet. But it is not too late. The government has a role to play here, and I hope the FCC will step up, be brave, and do what is right for the American people.

I yield the floor.

#### TRIBUTES TO RETIRING SENATORS

KIT BOND

Mr. ENZI. Mr. President, At the end of each session of Congress it has long been a tradition in the Senate to take a moment to express our appreciation and say goodbye to those who will not be returning in January for the beginning of the next Congress. One of those I know we will all miss in the months to come is KIT BOND.

I still remember the first time KIT BOND was drawn to our attention on a national basis. It was 1974 and then Governor KIT BOND was being honored for his work in state and municipal affairs by the Jaycees as one of the Ten Outstanding Young Americans of that year. He was in his thirties and he was already making his mark in the day to day life of his home State at a time when most people his age were still trying to find the "right" career to focus their energies on that would be both challenging and rewarding. After seeing him so recognized and realizing what it meant, I was inspired myself. I have been in awe of him ever since.

That honor that KIT received so many years ago proved to be one of the first to come his way during a four-decade career that now includes his service to the people of Missouri on the State and the Federal level. Over the years he has been a champion for the people of his home State and that is why they have elected and reelected him numerous times. Simply put, he has been an outstanding and highly effective legislator.

It is no secret. KIT has an amazing resume. Actually, it is more a record of success that lists what he has achieved and the results he has been able to obtain that reflect the work he has been a part of that has helped to make our country a better place for us all to live.

Looking back, KIT had already begun to make a name for himself when he graduated from the University of Virginia's law school. He was first in his class and had a number of opportunities awaiting him, some of which he explored, before he returned home to Missouri. Once there he began his career of public service as the State's assistant attorney general under former Senator John Danforth.

Soon thereafter KIT won his first statewide race when he was elected to serve as State Auditor. Two years after that, he became the State's first Republican to serve as Governor since the days of World War II. He was also the youngest Governor the State had ever had.

As Governor he learned a lot of lessons that stemmed from being a Republican Governor with a general assembly with 70 percent Democratic majorities in both Houses. He has commented that those days taught him a great deal about the meaning of bipartisanship. That is why, when he ran for and won a Senate seat, he soon became known for his ability to work with all of his colleagues on a long list of issues.

Over the years, for example, he has been a tireless supporter of our Nation's military. He has also been a fighter for our veterans and their right to the benefits they have earned through their service.

Another issue close to his heart has been the need to increase the availability of safe and affordable housing and improve the infrastructure of Missouri and the rest of the Nation.

These and many other issues that KIT has taken up during his career reflect his belief in the importance of doing everything we can today to make our tomorrows better for our children and our grandchildren—since their future is ours, too.

I know I am not the only one who will have a moment from time to time next year when I will wish KIT was still around here, walking around with that trademark smile of his, caught up in yet another battle for something he believed in, something he knew would be important to the people of Missouri and the future of our Nation.

Fortunately, whenever we feel the need for a little of his advice or an observation or two we will know where to find him—just down the street, back home in Missouri.

Now that this chapter of KIT's life has ended, I have no doubt another will soon begin. As KIT pointed out, "there are many ways to serve" and "elective office is only one of them."

As he leaves the Senate, I would like to thank him for his willingness to serve; his wife Linda for her support and encouragement along the way; his son Sam for his heroic service in our Armed Forces; and all the members of his family who stood behind him over the years.

Diana and I send our best wishes and heartfelt appreciation to them all. We especially want to thank KIT and Linda for their friendship and for all they have meant to this Senate family of ours that extends from one corner of our Nation to the other.

Keep in touch. We will always enjoy hearing from you with your thoughts about whatever we happen to be taking up on the Senate floor. Good luck and God bless.

#### MESSAGE FROM THE HOUSE

##### ENROLLED BILLS SIGNED

The President pro tempore (Mr. INOUE) announced that he had signed the following enrolled bills on December 17, 2010, which were previously signed by the Speaker of the House:

S. 3447. An act to amend title 38, United States Code, to improve educational assistance for veterans who served in the Armed Forces after September 11, 2001, and for other purposes.

H.R. 4602. An act to designate the facility of the United States Postal Service located at 1332 Sharon Copley Road in Sharon Center, Ohio, as the "Emil Bolas Post Office".

H.R. 5133. An act to designate the facility of the United States Postal Service located at 331 1st Street in Carlstadt, New Jersey, as the "Staff Sergeant Frank T. Carvill and Lance Corporal Michael A. Schwarz Post Office Building".

H.R. 5605. An act to designate the facility of the United States Postal Service located at 47 East Fayette Street in Uniontown, Pennsylvania, as the "George C. Marshall Post Office".

H.R. 5606. An act to designate the facility of the United States Postal Service located at 47 South 7th Street in Indiana, Pennsylvania, as the "James M. 'Jimmy' Stewart Post Office Building".

H.R. 5655. An act to designate the Little River Branch facility of the United States Postal Service located at 140 NE 84th Street in Miami, Florida, as the "Jesse J. McCrary, Jr. Post Office".

H.R. 5877. An act to designate the facility of the United States Postal Service located at 655 Centre Street in Jamaica Plain, Massachusetts, as the "Lance Corporal Alexander Scott Arredondo, United States Marine Corps Post Office Building".

H.R. 6392. An act to designate the facility of the United States Postal Service located at 5003 Westfields Boulevard in Centreville, Virginia, as the "Colonel George Juskalian Post Office Building".

H.R. 6400. An act to designate the facility of the United States Postal Service located at 111 North 6th Street in St. Louis, Missouri, as the "Earl Wilson, Jr. Post Office".

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HARKIN, from the Committee on Health, Education, Labor, and Pensions:

Report to accompany S. 3817, A bill to amend the Child Abuse Prevention and Treatment Act, the Family Violence Prevention and Services Act, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, and the Abandoned Infants Assistance Act of 1988 to reauthorize the Acts, and for other purposes (Rept. No. 111-378).

#### 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. TESTER:

S. 4049. A bill to sustain the economic development and recreational use of National Forest System land and other public land in the State of Montana, to add certain land to the National Wilderness Preservation System, to release certain wilderness study areas, to designate new areas for recreation, and for other purposes; to the Committee on Energy and Natural Resources.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. BROWN of Ohio, Mr. VOINOVICH, and Mr. BUNNING):

S. Res. 703. A resolution recognizing and honoring Bob Feller and expressing the condolences of the Senate to his family on his death; considered and agreed to.

By Mr. SCHUMER (for himself and Mr. BENNETT):

S. Res. 704. A resolution to authorize the printing of a revised edition of the Senate

Election Law Guidebook; considered and agreed to.

#### ADDITIONAL COSPONSORS

##### AMENDMENT NO. 4814

At the request of Mrs. HUTCHISON, her name was added as a cosponsor of amendment No. 4814 proposed to Treaty Doc. 111-5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

At the request of Mr. BARRASSO, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of amendment No. 4814 proposed to Treaty Doc. 111-5, supra.

At the request of Mr. BOND, his name was added as a cosponsor of amendment No. 4814 proposed to Treaty Doc. 111-5, supra.

##### AMENDMENT NO. 4847

At the request of Mr. LEMIEUX, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of amendment No. 4847 intended to be proposed to Treaty Doc. 111-5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 703—RECOGNIZING AND HONORING BOB FELLER AND EXPRESSING THE CONDOLENCES OF THE SENATE TO HIS FAMILY ON HIS DEATH

Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. BROWN of Ohio, Mr. VOINOVICH, and Mr. BUNNING) submitted the following resolution; which was considered and agreed to:

##### S. RES. 703

Whereas Robert William Andrew ("Bob") Feller was born on November 3, 1918, near Van Meter, Iowa;

Whereas Bob Feller learned to play baseball on his parents' farm in Dallas County, Iowa, and commented that "What kid wouldn't enjoy the life I led in Iowa? Baseball and farming, and I had the best of both worlds";

Whereas Feller attended Van Meter High School where he pitched for the baseball team;

Whereas Feller, at the age of 17, joined the Cleveland Indians, where he played for 18 years, his entire career;

Whereas Feller led the American League in wins 6 times;

Whereas Feller led the American League in strikeouts 7 times;

Whereas Feller pitched 3 no-hitters, including the only Opening Day no-hitter, and shares the major league record with 12 one-hitters;

Whereas Feller was an 8-time All-Star;

Whereas Feller was a key member of the 1948 World Series Champion Cleveland Indians;

Whereas Feller threw the second fastest pitch ever officially recorded, at 107.6 miles per hour;



Whereas Feller ended his career with 266 victories and 2,581 strikeouts;

Whereas Feller remains the winningest pitcher in Cleveland Indians history;

Whereas Feller was elected to the Baseball Hall of Fame in 1962, his first year of eligibility;

Whereas Feller enlisted in the Navy 2 days after the attack on Pearl Harbor in 1941;

Whereas Feller served with valor in the Navy for nearly 4 years, missing almost 4 full baseball seasons;

Whereas Feller was stationed aboard the U.S.S. Alabama as a gunnery specialist;

Whereas Feller earned 8 battle stars and was discharged in late 1945; and

Whereas Bob Feller, one of the greatest baseball players of all time, placed service to his country ahead of all else: Now, therefore, be it

*Resolved*, That the Senate—

(1) honors Bob Feller for transcending the sport of baseball in service to the United States and the cause of democracy and freedom in World War II;

(2) recognizes Bob Feller as one of the greatest baseball players of all time; and

(3) extends its deepest condolences to the family of Bob Feller.

#### SENATE RESOLUTION 704—TO AUTHORIZE THE PRINTING OF A REVISED EDITION OF THE SENATE ELECTION LAW GUIDEBOOK

Mr. SCHUMER (for himself and Mr. BENNETT) submitted the following resolution; which was considered and agreed to:

S. RES. 704

*Resolved*, That the Committee on Rules and Administration shall prepare a revised edition of the Senate Election Law Guidebook, Senate Document 109-10, and that such document shall be printed as a Senate document.

SEC. 2. There shall be printed, beyond the usual number, 500 additional copies of the document specified in the first section for the use of the Committee on Rules and Administration.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 4848. Mr. BROWN of Ohio (for Mr. BAUCUS) proposed an amendment to the bill H.R. 4915, to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

SA 4849. Mr. BROWN of Ohio (for Mr. BAUCUS) proposed an amendment to the bill H.R. 4915, supra.

SA 4850. Mr. BROWN of Ohio (for Mr. DODD) proposed an amendment to the bill S. 118, to amend section 202 of the Housing Act of 1959, to improve the program under such section for supportive housing for the elderly, and for other purposes.

SA 4851. Mr. SESSIONS submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table.

SA 4852. Mr. THUNE submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4853. Mr. CORNYN submitted an amendment intended to be proposed by him

to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

SA 4848. Mr. BROWN of Ohio (for Mr. BAUCUS) proposed an amendment to the bill H.R. 4915, to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

##### SECTION 1. DEFINITION OF ELIGIBLE PLAN YEAR.

(a) AMENDMENT TO ERISA.—Clause (v) of section 303(c)(2)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)(2)(D)), as added by section 201(a)(1) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, is amended—

(1) by striking “on or after the date of the enactment of this subparagraph” and inserting “on or after June 25, 2010 (March 10, 2010, in the case of an eligible plan)”;

(2) by adding at the end the following new sentence: “For purposes of the preceding sentence, a plan shall be treated as an eligible plan only if, as of the date of the election with respect to the plan under clause (i)—

“(A) the plan sponsor is not a debtor in a case under title 11, United States Code, or similar Federal or State law,

“(B) there are no unpaid minimum required contributions with respect to the plan for purposes of section 4971 of the Internal Revenue Code of 1986 (imposing an excise tax when minimum required contributions are not paid by the due date for the plan year),

“(C) there are no outstanding liens in favor of the plan under subsection (k), and

“(D) the plan sponsor has not initiated a distress termination of the plan under section 4041.”.

(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Clause (v) of section 430(c)(2)(D) of the Internal Revenue Code of 1986, as added by section 201(b)(1) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, is amended—

(1) by striking “on or after the date of the enactment of this subparagraph” and inserting “on or after June 25, 2010 (March 10, 2010, in the case of an eligible plan)”;

(2) by adding at the end the following new sentence: “For purposes of the preceding sentence, a plan shall be treated as an eligible plan only if, as of the date of the election with respect to the plan under clause (i)—

“(A) the plan sponsor is not a debtor in a case under title 11, United States Code, or similar Federal or State law,

“(B) there are no unpaid minimum required contributions with respect to the plan for purposes of section 4971 (imposing an excise tax when minimum required contributions are not paid by the due date for the plan year),

“(C) there are no outstanding liens in favor of the plan under subsection (k), and

“(D) the plan sponsor has not initiated a distress termination of the plan under section 4041 of the Employee Retirement Income Security Act of 1974.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by the provisions of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 to which the amendments relate.

#### SEC. 2. ELIGIBLE CHARITY PLANS.

(a) DEFINITION OF ELIGIBLE CHARITY PLANS.—

(1) IN GENERAL.—Section 104(d) of the Pension Protection Act of 2006, as added by section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, is amended to read as follows:

“(d) ELIGIBLE CHARITY PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible charity plan for a plan year if—

“(1) the plan is maintained by one or more employers employing employees who are accruing benefits based on service for the plan year,

“(2) such employees are employed in at least 20 States,

“(3) more than 98 percent of such employees are employed by an employer described in section 501(c)(3) of such Code and the primary exempt purpose of each such employer is to provide services with respect to children, and

“(4) the plan sponsor elects (at such time and in such form and manner as shall be prescribed by the Secretary of the Treasury) to be so treated.

Any election under this subsection may be revoked only with the consent of the Secretary of the Treasury.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the amendment made by the provision of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 to which the amendment relates (determined after application of the amendment made by subsection (c)), except that a plan sponsor may elect to apply such amendment to plan years beginning on or after January 1, 2011.

(b) REGULATIONS.—The Secretary of the Treasury may prescribe such regulations as may be necessary to carry out the purposes of the amendments made by section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 and the amendment made by subsection (a).

(c) APPLICATION OF NEW RULES TO ELIGIBLE CHARITY PLANS.—

(1) IN GENERAL.—Paragraph (2) of section 202(c) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 is amended to read as follows:

“(2) ELIGIBLE CHARITY PLANS.—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2010, except that a plan sponsor may elect to apply such amendments to plan years beginning after an earlier date.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the amendment made by the provision of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 to which the amendment relates.

#### SEC. 3. SUSPENSION OF CERTAIN FUNDING LEVEL LIMITATIONS.

(a) LIMITATIONS ON BENEFIT ACCRUALS.—Section 203 of the Worker, Retiree, and Employer Recovery Act of 2008 (Public Law 110-458; 122 Stat. 5118) is amended—

(1) by striking “the first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009” and inserting “any plan year beginning during the period beginning on October 1, 2008, and ending on December 31, 2011”;



(2) by striking “substituting” and all that follows through “for such plan year” and inserting “substituting for such percentage the plan’s adjusted funding target attainment percentage for the last plan year ending before September 30, 2009,”; and

(3) by striking “for the preceding plan year is greater” and inserting “for such last plan year is greater”.

(b) SOCIAL SECURITY LEVEL-INCOME OPTIONS.—

(1) ERISA AMENDMENT.—Section 206(g)(3)(E) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new sentence: “For purposes of applying clause (i) in the case of payments the annuity starting date for which occurs on or before December 31, 2011, payments under a social security leveling option shall be treated as not in excess of the monthly amount paid under a single life annuity (plus an amount not in excess of a social security supplement described in the last sentence of section 204(b)(1)(G)).”.

(2) IRC AMENDMENT.—Section 436(d)(5) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: “For purposes of applying subparagraph (A) in the case of payments the annuity starting date for which occurs on or before December 31, 2011, payments under a social security leveling option shall be treated as not in excess of the monthly amount paid under a single life annuity (plus an amount not in excess of a social security supplement described in the last sentence of section 411(a)(9)).”.

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to annuity payments the annuity starting date for which occurs on or after January 1, 2011.

(B) PERMITTED APPLICATION.—A plan shall not be treated as failing to meet the requirements of sections 206(g) of the Employee Retirement Income Security Act of 1974 (as amended by this subsection) and section 436(d) of the Internal Revenue Code of 1986 (as so amended) if the plan sponsor elects to apply the amendments made by this subsection to payments the annuity starting date for which occurs before January 1, 2011.

(c) REPEAL OF RELATED PROVISIONS.—The provisions of, and the amendments made by, section 203 of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 are repealed and the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and the Worker, Retiree, and Employer Recovery Act of 2008 (Public Law 110-458; 122 Stat. 5118) shall be applied as if such section had never been enacted.

#### SEC. 4. OPTIONAL USE OF 30-YEAR AMORTIZATION PERIODS.

(a) AMENDMENT TO ERISA.—Paragraph (8) of section 304(b) of the Employee Retirement Income Security Act of 1974, as amended by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, is amended by striking “after August 31, 2008” each place it appears in subparagraphs (A)(i), (B)(i)(I), and (B)(i)(II), and inserting “on or after June 30, 2008”.

(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Paragraph (8) of section 431(b) of the Internal Revenue Code of 1986, as amended by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, is amended by striking “after August 31, 2008” each place it appears in subparagraphs (A)(i) and (B)(i)(I) and inserting “on or after June 30, 2008”.

(c) EFFECTIVE DATE AND SPECIAL RULES.—The amendments made by this section shall take effect as of the first day of the first plan year beginning on or after June 30, 2008, except that any election a plan sponsor

makes pursuant to this section or the amendments made thereby that affects the plan’s funding standard account for any plan year beginning before October 1, 2009, shall be disregarded for purposes of applying the provisions of section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 to that plan year.

**SA 4849.** Mr. BROWN of Ohio (for Mr. BAUCUS) proposed an amendment to the bill H.R. 4915, to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes; as follows:

Amend the title so as to read: “An Act to amend the Internal Revenue Code of 1986 to make technical corrections to the pension funding provisions of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010.”.

**SA 4850.** Mr. BROWN of Ohio (for Mr. DODD) proposed an amendment to the bill S. 118, to amend section 202 of the Housing Act of 1959, to improve the program under such section for supportive housing for the elderly, and for other purposes; as follows:

On page 45, strike line 1 and all that follows through page 50, line 8.

On page 50, after line 8, insert the following:

#### TITLE IV—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010 SEC. 401. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

**SA 4851.** Mr. SESSIONS submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (c), add the following:

(14) NUCLEAR DETERRENCE.—The Senate declares that it will not support further nuclear reductions that put the United States on a path to zero nuclear weapons, would require the elimination of a leg of the United States nuclear triad, or require significant changes to the nuclear posture or doctrine of the United States in a manner that would undermine the credibility of the nuclear deterrent, the assurance of extended deterrence, or the dissuasive effect of the posture or doctrine on would-be nuclear states or potential nuclear competitors.

**SA 4852.** Mr. THUNE submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, Treaty between the United States of America and the Russian Federation on Meas-

ures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a), add the following:

(11) DEVELOPMENT OF REPLACEMENT HEAVY BOMBER.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the President has made a commitment to develop a replacement heavy bomber that is both nuclear and conventionally capable.

**SA 4853.** Mr. CORNYN submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a), add the following:

(11) PRESIDENTIAL CERTIFICATION REJECTING INTERRELATIONSHIP BETWEEN STRATEGIC OFFENSIVE AND STRATEGIC DEFENSIVE ARMS.—The New START Treaty shall not enter into force until the President certifies to the Senate and notifies the President of the Russian Federation in writing that the President rejects the following recognition stated in the preamble to the New START Treaty: “Recognizing the existence of the interrelationship between strategic offensive arms and strategic defensive arms, that this interrelationship will become more important as strategic nuclear arms are reduced, and that current strategic defensive arms do not undermine the viability and effectiveness of the strategic offensive arms of the Parties”.

#### PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that two additional staff members from Senator LIEBERMAN’s office be granted floor privileges for the duration of the debate on the vote to invoke cloture on the motion to concur in the House amendment to the Senate amendment to H.R. 2965.

We do not need their names. You are entitled to two and he wants to be able to have four. So I ask that consent.

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

#### REAL PROPERTY CONVEYANCE

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 6510 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 6510) to direct the Administrator of General Services to convey a parcel

of real property in Houston, Texas, to the Military Museum of Texas, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. BROWN of Ohio. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the measure be printed in the RECORD.

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

The bill (H.R. 6510) was ordered to a third reading, was read the third time, and passed.

#### AIRPORT AND AIRWAY EXTENSION ACT OF 2010

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6473, which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 6473) to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend the airport improvement program, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The bill (H.R. 6473) was ordered to a third reading, was read the third time, and passed.

#### LOCAL COMMUNITY RADIO ACT OF 2010

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6533, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 6533) to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I have long argued in favor of greater diversity and localism in broadcasting. Today, Congress takes a positive step by making available more radio broadcast outlets for local content.

I am pleased that Congress has finally passed and sent to the President the Local Community Radio Act, which will increase the number of frequencies available for low power FM,

LPFM, radio stations. I am a cosponsor of the Senate version of this legislation, and have been an original cosponsor of similar legislation in each of the previous two Congresses. I commend Senator CANTWELL for her hard work in reaching an agreement with full power broadcasters that will ensure they are protected.

The rash of nationwide consolidation we have witnessed in the broadcast industry over the last decade has been alarming, if predictable. Low power FM stations offer a valuable counterweight to this trend. By using low power stations, community groups can access underutilized spectrum and provide content tailored to smaller communities. The Local Community Radio Act rolls back unnecessary restrictions that have limited the number of frequencies on which LPFM stations can operate.

This legislation is important because LPFM stations provide opportunities for local organizations to serve local communities. Vermont has 11 LPFM stations serving local communities in Vermont from Hyde Park to Brattleboro to Warren. There is room for more in Vermont and across the country.

Low Power FM provides the opportunity for truly local content to flourish, and today's legislation will make more such stations available.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 6533) was ordered to a third reading, was read the third time, and passed.

#### FEDERAL AVIATION ADMINISTRATION EXTENSION ACT OF 2010

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 4915 and the Senate proceed to its consideration.

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

The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 4915) to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. BROWN of Ohio. I ask unanimous consent that the Baucus substitute amendment at the desk be considered and agreed to; the bill, as amended, be read a third time, passed, and the motion to reconsider be laid on the table; that the title amendment which is at the desk be considered and agreed to,

and that any statements related thereto be printed in the RECORD.

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

The amendment (No. 4848) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The amendment (No. 4849) was agreed to, as follows:

(Purpose: To amend the title)

Amend the title so as to read: "An Act to amend the Internal Revenue Code of 1986 to make technical corrections to the pension funding provisions of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010."

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 4915), as amended, was read the third time and passed.

#### HONORING AMBASSADOR RICHARD HOLBROOKE

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 335 just received from the House and at the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 335) honoring the exceptional achievements of Ambassador Richard Holbrooke and recognizing the significant contributions he has made to United States national security, humanitarian causes, and peaceful resolutions of international conflict.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. KERRY. Mr. President, today the Senate has been asked to concur with our colleagues in the House and approve a resolution honoring our friend and a great public servant, Ambassador Richard Holbrooke, who passed away on Monday.

We remember Richard not just as one of America's most distinguished and accomplished statesmen, but as a man who—from Vietnam to his last mission in Afghanistan—really was a warrior for peace. It is fitting that we honor him by approving this resolution.

Richard was an incredible combination of the best qualities of the human spirit—a serious thinker who embraced relentless action; a tough-as-nails negotiator who commanded an enormous and infectious sense of humor; and perhaps above all, a diplomat who knew firsthand just how difficult and frustrating engagement could be, but in his life's legacy reminded all of us just how much engagement could accomplish.

Richard's passing is almost incomprehensible, not just because it was so sudden, but because I cannot imagine Richard Holbrooke in anything but a state of perpetual motion. He was always working. Always hard-charging in the best sense of the word—he had an immense presence—and a brilliance matched only by his perseverance and

his passion. He once complained that the bureaucracy in Washington all too often saw suffering around the world as an abstraction. He took Hannah Arendt's famous phrase and flipped it around, saying that sometimes our biggest battles were against the "evils of banality."

Well, Richard waged—and won—his share of battles against banality and inertia. He was always a man on a mission, the toughest mission, and that mission was waging peace through never-quit diplomacy—and Richard's life's work saved more lives in more places than we can measure. He simply got up every day knowing that—even in difficult circumstances where history's verdict is yet to be handed down—every ounce of energy and every drop of sweat held the promise of making things better for people.

Yes, Richard had an outsized personality, and it was one that he himself could joke about, even relish. He earned the nickname "The Bulldozer" for a reason. But Richard did not push people away. He drew people to him. He was incredibly appreciative of those who worked with him and was unfailingly loyal to them. I remember last January, when Richard came to the Foreign Relations Committee to testify on the war in Afghanistan, he stopped the hearing to introduce his top staff—some 16 people. More than just colleagues, they were his partners. He knew their families and he knew the names of their children. At the State Department he didn't just create an office for Afghanistan and Pakistan, he built a family.

His staff returned his affection and loyalty many times over. Foggy Bottom is filled with men and women inspired and mentored by Richard. Ever since Richard fell ill last Friday morning, dozens of friends and family and staff gathered in the lobby of George Washington Hospital to show their support and wait for news of his condition. When I stopped by on Sunday night, I couldn't help but be moved by the love and the concern. And when news of his passing spread, people began spontaneously gathering at the hospital. And then—something that Richard would have understood and appreciated—they went out together and shared stories about him.

It was impossible to know Richard and not come away with "Holbrooke stories." Certainly I have my share. Our public careers were intertwined in so many ways, from Vietnam to my Presidential campaign to the conflict in Afghanistan. There were long conference calls, impromptu policy debates when we found ourselves on the same shuttle to LaGuardia, stories shared about our children and lessons learned about being modern Dads, and wonderful wine-filled dinners where we came up with brilliant plans for peace that didn't always seem so brilliant—if they were remembered at all—in the light of day. Richard always made it fun because it is a pleasure to be in the

company of someone who loved the job they were doing for the country they loved. And make no mistake—just shy of 70, with a back-breaking schedule—Richard Holbrooke loved what he was doing.

And so, wherever chaos and violence threatened American interests and human lives for nearly a half century, wherever there was a need for courage and insight, Richard Holbrooke showed up for duty. He spent his formative years as a young Foreign Service officer in Vietnam, where he worked in the Mekong Delta and then on the staffs of two American ambassadors, Maxwell Taylor and Henry Cabot Lodge. Given the storied expanse of his career, people sometimes forget that Richard wrote a volume of the "Pentagon Papers," the seminal work that helped turn the course of the Vietnam war. And as with all of us who served in Vietnam, Richard's experience there informed his every judgment, and left him with the conviction that time spent working even against long odds to see that peace and diplomacy prevailed over war and violence, was time well-invested for the most powerful of nations and the most determined of diplomats.

He was a pragmatist devoted to principle. He believed that the United States could help people around the world at the same time as we defended our interests. Richard once wrote about a meeting he attended in the Situation Room in 1979, when he was Assistant Secretary for East Asia and the Pacific. The South China Sea was being flooded with tens of thousands of refugees from Vietnam. They were fleeing the regime there, looking for safe haven somewhere else. But most of them were not making it. Instead, they were drowning.

The Seventh Fleet was nearby and could divert to rescue them. But there were those in our government who did not want the Navy to be distracted from its other missions. And besides, what would we do with the refugees? And wouldn't our actions just encourage more people to set sail in rickety boats in an attempt to find freedom? Back and forth the debate went. Ultimately, Vice President Mondale made the decision: America would not stand idly by while people drowned. Richard wrote this: "At this time and distance it may be hard to conceive that the decision, so clearly right, was almost not made. There are people who are alive today because of Mondale's decision; of very few actions by a government official can such a thing be said."

Well, we can certainly say that—and more—of Richard Holbrooke. Earlier this week, we marked the 15th anniversary of what was perhaps his greatest legacy. On December 14, 1995, the Dayton Peace Accords brought an end to a 3½ year war in Bosnia that had claimed tens of thousands of lives and displaced millions. It is a war that would have inflicted far more misery if Richard had not tirelessly shuttled be-

tween the Serbs and the Croats and the Bosnians. He laid the groundwork for the peace talks. And then, over 20 days, he charmed, he cajoled, and ultimately he convinced the three principal leaders to end a war. In the years since, "Dayton" has become a byword for the kind of aggressive diplomacy that Richard practiced. At Dayton, Richard Holbrooke brought himself and the Nation he represented great honor.

We loved that energy, we loved that resolve—that is who Richard was, and he died giving everything he had to one last difficult mission for the country he loved. It is almost a bittersweet bookend that a career of public service that began trying to save a war gone wrong, now ends with a valiant effort to keep another war from going wrong. Over the last 2 years, he and I worked closely together on our policy in Afghanistan and Pakistan. His honesty could be bracing, and I loved that about him. He was always solution-seeking—and always so committed to the mission that he never hesitated to leverage the skills of those around him because it was success he sought, not spotlights.

Through this resolution, we acknowledge his extraordinary public service and we extend our heartfelt sympathy to his family, especially his extraordinary wife Kati; Richard's two sons, David and Anthony; his stepchildren Elizabeth and Chris Jennings; and his daughter-in-law Sarah. We are reminded how much richer all of our lives have been thanks to the intelligence, humor, and warmth that Richard brought to every day of his life. And we mourn your loss with you.

I will miss working with Richard Holbrooke. And I will remember something he said last year about his enduring faith in America despite the many trials we now face. He said, "I still believe in the possibility of the United States . . . persevering against any challenge." It is difficult to imagine wrestling with the challenges of Afghanistan and Pakistan without him, but we are all sustained by the decades-long example Richard set making the possibility of American perseverance more of a reality. And for that our Nation will always be grateful.

Mr. BROWN of Ohio. Mr. President, I thank Ambassador Holbrooke for the Dayton Accords, held in Dayton, OH, in which Ambassador Holbrooke played such a key roll in bringing forward.

I ask unanimous consent that the concurrent resolution and preamble be agreed to en bloc; the motions to reconsider be laid on the table en bloc; and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 335) was agreed to.

The preamble was agreed to.



## AUTHORITY TO PRINT

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 704 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

A resolution (S. Res. 704) to authorize the printing of a revised edition of the Senate Election Law Guide book.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BROWN of Ohio. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid on the table, with no intervening action or debate, and any statements related thereto be printed in the RECORD.

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

The resolution (S. Res. 704) was agreed to, as follows:

## S. RES. 704

*Resolved*, That the Committee on Rules and Administration shall prepare a revised edition of the Senate Election Law Guidebook, Senate Document 109-10, and that such document shall be printed as a Senate document.

SEC. 2. There shall be printed, beyond the usual number, 500 additional copies of the document specified in the first section for the use of the Committee on Rules and Administration.

## SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY ACT OF 2009

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 657, S. 118.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (S. 118) to amend section 202 of the Housing Act of 1959, to improve the program under such section for supportive housing for the elderly, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing, and Urban Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

## SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) *SHORT TITLE*.—This Act may be cited as the “Section 202 Supportive Housing for the Elderly Act of 2010”.

(b) *TABLE OF CONTENTS*.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

## TITLE I—NEW CONSTRUCTION REFORMS

Sec. 101. Selection criteria.

Sec. 102. Development cost limitations.

Sec. 103. Owner deposits.

Sec. 104. Definition of private nonprofit organization.

Sec. 105. Nonmetropolitan allocation.

## TITLE II—REFINANCING

Sec. 201. Approval of prepayment of debt.

Sec. 202. Use of unexpended amounts.

Sec. 203. Use of project residual receipts.

Sec. 204. Additional provisions.

## TITLE III—ASSISTED LIVING FACILITIES AND SERVICE-ENRICHED HOUSING

Sec. 301. Amendments to the grants for conversion of elderly housing to assisted living facilities.

Sec. 302. Monthly assistance payment under rental assistance.

## TITLE IV—NATIONAL SENIOR HOUSING CLEARINGHOUSE

Sec. 401. National senior housing clearinghouse.

## TITLE I—NEW CONSTRUCTION REFORMS

## SEC. 101. SELECTION CRITERIA.

Section 202(f)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(f)(1)) is amended—

(1) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(2) by inserting after subparagraph (E) the following new subparagraph:

“(F) the extent to which the applicant has ensured that a service coordinator will be employed or otherwise retained for the housing, who has the managerial capacity and responsibility for carrying out the actions described in subparagraphs (A) and (B) of subsection (g)(2);”.

## SEC. 102. DEVELOPMENT COST LIMITATIONS.

Section 202(h)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(h)(1)) is amended, in the matter preceding subparagraph (A), by inserting “reasonable” before “development cost limitations”.

## SEC. 103. OWNER DEPOSITS.

Section 202(j)(3)(A) of the Housing Act of 1959 (12 U.S.C. 1701q(j)(3)(A)) is amended by inserting after the period at the end the following: “Such amount shall be used only to cover operating deficits during the first 3 years of operations and shall not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.”.

## SEC. 104. DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.

Section 202(k)(4) of the Housing Act of 1959 (12 U.S.C. 1701q(k)(4)) is amended to read as follows:

“(4) The term ‘private nonprofit organization’ means—

“(A) any incorporated private institution or foundation—

“(i) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

“(ii) which has a governing board—

“(I) the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located; and

“(II) which is responsible for the operation of the housing assisted under this section, except that, in the case of a nonprofit organization that is the sponsoring organization of multiple housing projects assisted under this section, the Secretary may determine the criteria or conditions under which financial, compliance and other administrative responsibilities exercised by a single-entity private nonprofit organization that is the owner corporation responsible for the operation of an individual housing project may be shared or transferred to the governing board of such sponsoring organization; and

“(iii) which is approved by the Secretary as to financial responsibility; and

“(B) a for-profit limited partnership the sole general partner of which is—

“(i) an organization meeting the requirements under subparagraph (A);

“(ii) a for-profit corporation wholly owned and controlled by one or more organizations meeting the requirements under subparagraph (A); or

“(iii) a limited liability company wholly owned and controlled by one or more organizations meeting the requirements under subparagraph (A).”.

## SEC. 105. NONMETROPOLITAN ALLOCATION.

Paragraph (3) of section 202(l) of the Housing Act of 1959 (12 U.S.C. 1701q(l)(3)) is amended by

inserting after the period at the end the following: “In complying with this paragraph, the Secretary shall either operate a national competition for the nonmetropolitan funds or make allocations to regional offices of the Department of Housing and Urban Development.”.

## TITLE II—REFINANCING

## SEC. 201. APPROVAL OF PREPAYMENT OF DEBT.

Subsection (a) of section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) in the matter preceding paragraph (1), by inserting “, for which the Secretary’s consent to prepayment is required,” after “Affordable Housing Act”);

(2) in paragraph (1)—

(A) by inserting “at least 20 years following” before “the maturity date”; and

(B) by inserting “project-based” before “rental assistance payments contract”; and

(C) by inserting “project-based” before “rental housing assistance programs”; and

(D) by inserting “, or any successor project-based rental assistance program,” after “1701s”);

(3) by amending paragraph (2) to read as follows:

“(2) the prepayment may involve refinancing of the loan if such refinancing results in—

“(A) a lower interest rate on the principal of the loan for the project and in reductions in debt service related to such loan; or

“(B) a transaction in which the project owner will address the physical needs of the project, but only if, as a result of the refinancing—

“(i) the rent charges for unassisted families residing in the project do not increase or such families are provided rental assistance under a senior preservation rental assistance contract for the project pursuant to subsection (e); and

“(ii) the overall cost for providing rental assistance under section 8 for the project (if any) is not increased, except, upon approval by the Secretary to—

“(I) mark-up-to-market contracts pursuant to section 524(a)(3) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by nonprofit organizations; or

“(II) mark-up-to-budget contracts pursuant to section 524(a)(4) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by eligible owners (as such term is defined in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)); and”;

(4) by adding at the end the following:

“(3) notwithstanding paragraph (2)(A), the prepayment and refinancing authorized pursuant to paragraph (2)(B) involves an increase in debt service only in the case of a refinancing of a project assisted with a loan under such section 202 carrying an interest rate of 6 percent or lower.”.

## SEC. 202. USE OF UNEXPENDED AMOUNTS.

Subsection (c) of section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) by striking “USE OF UNEXPENDED AMOUNTS.” and inserting “USE OF PROCEEDS.”;

(2) by amending the matter preceding paragraph (1) to read as follows: “Upon execution of the refinancing for a project pursuant to this section, the Secretary shall ensure that proceeds are used in a manner advantageous to tenants of the project, or are used in the provision of affordable rental housing and related social services for elderly persons that are tenants of the project or are tenants of other HUD-assisted senior housing by the private nonprofit organization project owner, private nonprofit organization project sponsor, or private nonprofit organization project developer, including—”;

(3) by amending paragraph (1) to read as follows:

“(1) not more than 15 percent of the cost of increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services, except that upon the request of the non-profit owner, sponsor, or organization and determination of the Secretary, such 15 percent limitation may be waived to ensure that the use of unexpended amounts better enables seniors to age in place;”;

(4) in paragraph (2), by inserting before the semicolon the following: “, including reducing the number of units by reconfiguring units that are functionally obsolete, unmarketable, or not economically viable”;

(5) in paragraph (3), by striking “or” at the end;

(6) in paragraph (4), by striking “according to a pro rata allocation of shared savings resulting from the refinancing.” and inserting a semicolon; and

(7) by adding at the end the following new paragraphs:

“(5) rehabilitation of the project to ensure long-term viability; and

“(6) the payment to the project owner, sponsor, or third party developer of a developer's fee in an amount not to exceed or duplicate—

“(A) in the case of a project refinanced through a State low income housing tax credit program, the fee permitted by the low income housing tax credit program as calculated by the State program as a percentage of acceptable development cost as defined by that State program; or

“(B) in the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development cost.

For purposes of paragraph (6)(B), the term ‘acceptable development cost’ shall include, as applicable, the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs.”.

#### SEC. 203. USE OF PROJECT RESIDUAL RECEIPTS.

Paragraph (1) of section 811(d) of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) by striking “not more than 15 percent of”; and

(2) by inserting before the period at the end the following: “or other purposes approved by the Secretary”.

#### SEC. 204. ADDITIONAL PROVISIONS.

Section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended by adding at the end the following new subsections:

“(e) SENIOR PRESERVATION RENTAL ASSISTANCE CONTRACTS.—Notwithstanding any other provision of law, in connection with a prepayment plan for a project approved under subsection (a) by the Secretary or as otherwise approved by the Secretary to prevent displacement of elderly residents of the project in the case of refinancing or recapitalization and to further preservation and affordability of such project, the Secretary shall provide project-based rental assistance for the project under a senior preservation rental assistance contract, as follows:

“(1) Assistance under the contract shall be made available to the private nonprofit organization owner—

“(A) for a term of at least 20 years, subject to annual appropriations; and

“(B) under the same rules governing project-based rental assistance made available under section 8 of the Housing Act of 1937 or under the rules of such assistance as may be made available for the project.

“(2) Any projects for which a senior preservation rental assistance contract is provided shall be subject to a use agreement to ensure continued project affordability having a term of the longer of (A) the term of the senior preservation rental assistance contract, or (B) such term as is required by the new financing.

“(f) SUBORDINATION OR ASSUMPTION OF EXISTING DEBT.—In lieu of prepayment under this

section of the indebtedness with respect to a project, the Secretary may approve—

“(1) in connection with new financing for the project, the subordination of the loan for the project under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act) and the continued subordination of any other existing subordinate debt previously approved by the Secretary to facilitate preservation of the project as affordable housing; or

“(2) the assumption (which may include the subordination described in paragraph (1)) of the loan for the project under such section 202 in connection with the transfer of the project with such a loan to a private nonprofit organization.

“(g) FLEXIBLE SUBSIDY DEBT.—The Secretary shall waive the requirement that debt for a project pursuant to the flexible subsidy program under section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a) be prepaid in connection with a prepayment, refinancing, or transfer under this section of a project if the financial transaction or refinancing cannot be completed without the waiver.

“(h) TENANT INVOLVEMENT IN PREPAYMENT AND REFINANCING.—The Secretary shall not accept an offer to prepay the loan for any project under section 202 of the Housing Act of 1959 unless the Secretary—

“(1) has determined that the owner of the project has notified the tenants of the owner's request for approval of a prepayment; and

“(2) has determined that the owner of the project has provided the tenants with an opportunity to comment on the owner's request for approval of a prepayment, including on the description of any anticipated rehabilitation or other use of the proceeds from the transaction, and its impacts on project rents, tenant contributions, or the affordability restrictions for the project, and that the owner has responded to such comments in writing.

“(i) DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.—For purposes of this section, the term ‘private nonprofit organization’ has the meaning given such term in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).”.

### TITLE III—ASSISTED LIVING FACILITIES AND SERVICE-ENRICHED HOUSING

#### SEC. 301. AMENDMENTS TO THE GRANTS FOR CONVERSION OF ELDERLY HOUSING TO ASSISTED LIVING FACILITIES.

(a) TECHNICAL AMENDMENT.—The section heading for section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) is amended by inserting “AND OTHER PURPOSES” after “ASSISTED LIVING FACILITIES”.

(b) EXTENSION OF GRANT AUTHORITY.—Section 202b(a)(2) of the Housing Act of 1959 (12 U.S.C. 1701q–2(a)(2)) is amended—

(1) by striking “(2) CONVERSION.—Activities” and inserting the following:

“(2) CONVERSION.—

“(A) ASSISTED LIVING FACILITIES.—Activities”; and

(2) by adding at the end the following:

“(B) SERVICE-ENRICHED HOUSING.—Activities designed to convert dwelling units in the eligible project to service-enriched housing for elderly persons.”.

(c) AMENDMENT TO APPLICATION PROCESS.—Section 202b(c)(1) of the Housing Act of 1959 (12 U.S.C. 1701q–2(c)(1)) is amended by inserting “for either an assisted living facility or service-enriched housing” after “activities”.

(d) REQUIREMENTS FOR SERVICES.—Section 202b(d) of the Housing Act of 1959 (12 U.S.C. 1701q–2(d)) is amended to read as follows:

“(d) REQUIREMENTS FOR SERVICES.—

“(1) SUFFICIENT EVIDENCE OF FIRM FUNDING COMMITMENTS.—The Secretary may not make a grant under this section for conversion activities unless an application for a grant submitted pursuant to subsection (c) contains sufficient evidence, in the determination of the Secretary, of

firm commitments for the funding of services to be provided in the assisted living facility or service-enriched housing, which may be provided by third parties.

“(2) REQUIRED EVIDENCE.—The Secretary shall require evidence that each recipient of a grant for service-enriched housing under this section provides relevant and timely disclosure of information to residents or potential residents of such housing relating to—

“(A) the services that will be available at the property to each resident, including—

“(i) the right to accept, decline, or choose such services and to have the choice of provider;

“(ii) the services made available by or contracted through the grantee;

“(iii) the identity of, and relevant information for, all agencies or organizations providing any services to residents, which agencies or organizations shall provide information regarding all procedures and requirements to obtain services, any charges or rates for the services, and the rights and responsibilities of the residents related to those services;

“(B) the availability, identity, contact information, and role of the service coordinator; and

“(C) such other information as the Secretary determines to be appropriate to ensure that residents are adequately informed of the services options available to promote resident independence and quality of life.”.

(e) AMENDMENTS TO SELECTION CRITERIA.—Section 202b(e) of the Housing Act of 1959 (12 U.S.C. 1701q–2(e)) is amended—

(1) in paragraph (2)—

(A) by inserting “or service-enriched housing” after “facilities”; and

(B) by inserting “service-enriched housing” after “facility”;;

(2) in paragraph (5), by inserting “or service-enriched housing” after “facility”; and

(3) in paragraph (6), by inserting “or service-enriched housing” after “facility”.

(f) AMENDMENTS TO SECTION 8 PROJECT-BASED ASSISTANCE.—Section 202b(f) of the Housing Act of 1959 (12 U.S.C. 1701q–2(f)) is amended—

(1) in paragraph (1), by inserting “or service-enriched housing” after “facilities” each time that term appears; and

(2) in paragraph (2), by inserting “or service-enriched housing” after “facility”.

(g) AMENDMENTS TO DEFINITIONS.—Section 202b(g) of the Housing Act of 1959 (12 U.S.C. 1701q–2(g)) is amended to read as follows:

“(g) DEFINITIONS.—For purposes of this section—

“(1) the term ‘assisted living facility’ has the meaning given such term in section 232(b) of the National Housing Act (1715w(bb));

“(2) the term ‘service-enriched housing’ means housing that—

“(A) makes available through licensed or certified third party service providers supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy;

“(B) includes the position of service coordinator, which may be funded as an operating expense of the property; ;

“(C) provides separate dwelling units for residents, each of which contains a full kitchen and bathroom and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the housing; and

“(D) provides residents with control over health care and supportive services decisions, including the right to accept, decline, or choose such services, and to have the choice of provider; and

“(3) the definitions in section 1701(q)(k) of this title shall apply.”.

**SEC. 302. MONTHLY ASSISTANCE PAYMENT UNDER RENTAL ASSISTANCE.**

Clause (iii) of section 8(o)(18)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(18)(B)(iii)) is amended by inserting before the period at the end the following: “, except that a family may be required at the time the family initially receives such assistance to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such an amount or percentage that is reasonable given the services and amenities provided and as the Secretary deems appropriate.”.

**TITLE IV—NATIONAL SENIOR HOUSING CLEARINGHOUSE**

**SEC. 401. NATIONAL SENIOR HOUSING CLEARINGHOUSE.**

(a) **ESTABLISHMENT.**—Not later than 360 days after the date of enactment of this Act, the Secretary of Housing and Urban Development shall establish and operate a clearinghouse to serve as a national repository to receive, collect, process, assemble, and disseminate information regarding the availability and quality of multifamily developments for elderly tenants, including—

(1) the availability of—

(A) supportive housing for the elderly pursuant to section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), including any housing unit assisted with a project rental assistance contract under such section;

(B) properties and units eligible for assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

(C) properties eligible for the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986;

(D) units in assisted living facilities insured pursuant to section 221(d)(4) of the National Housing Act (12 U.S.C. 1715l(d)(4));

(E) units in any multifamily project that has been converted into an assisted living facility for elderly persons pursuant to section 202b of the Housing Act of 1959 (12 U.S.C. 1701q-2); and

(F) any other federally assisted or subsidized housing for the elderly;

(2) the number of available units in each property, project, or facility described in paragraph (1);

(3) the number of bedrooms in each available unit in each property, project, or facility described in paragraph (1);

(4) the estimated cost to a potential tenant to rent or reside in each available unit in each property, project, or facility described in paragraph (1);

(5) the presence of a waiting list for entry into any available unit in each property, project, or facility described in paragraph (1);

(6) the number of persons on the waiting list for entry into any available unit in each property, project, or facility described in paragraph (1);

(7) the amenities available in each available unit in each property, project, or facility described in paragraph (1), including—

(A) the services provided by such property, project, or facility;

(B) the size and availability of common space within each property, project, or facility;

(C) the availability of organized activities for individuals residing in such property, project, or facility; and

(D) any other additional amenities available to individuals residing in such property, project, or facility;

(8) the level of care (personal, physical, or nursing) available to individuals residing in any property, project, or facility described in paragraph (1);

(9) whether there is a service coordinator in any property, project, or facility described in paragraph (1); and

(10) any other criteria determined appropriate by the Secretary.

(b) **COLLECTION AND UPDATING OF INFORMATION.**—

(1) **INITIAL COLLECTION.**—Not later than 180 days after the date of enactment of this Act, the Secretary of Housing and Urban Development shall conduct a survey requesting information from each owner of a property, project, or facility described in subsection (a)(1) regarding the provisions described in paragraphs (2) through (10) of such subsection.

(2) **RESPONSE TIME.**—Not later than 60 days after receiving the request described under paragraph (1), the owner of each such property, project, or facility shall submit such information to the Secretary of Housing and Urban Development.

(3) **PUBLIC AVAILABILITY.**—Not later than 120 days after the Secretary of Housing and Urban Development receives the submission of any information required under paragraph (2), the Secretary shall make such information publicly available through the clearinghouse.

(4) **UPDATES.**—The Secretary of Housing and Urban Development shall conduct a biennial survey of each owner of a property, project, or facility described in subsection (a)(1) for the purpose of updating or modifying information provided in the initial collection of information under paragraph (1). Not later than 30 days after receiving such a request, the owner of each such property, project, or facility shall submit such updates or modifications to the Secretary. Not later than 60 days after receiving such updates or modifications, the Secretary shall inform the clearinghouse of such updated or modified information.

(c) **FUNCTIONS.**—The clearinghouse established under subsection (a) shall—

(1) respond to inquiries from State and local governments, other organizations, and individuals requesting information regarding the availability of housing in multifamily developments for elderly tenants;

(2) make such information publicly available via the Internet website of the Department of Housing and Urban Development, which shall include—

(A) access via electronic mail; and

(B) an easily searchable, sortable, downloadable, and accessible index that itemizes the availability of housing in multifamily developments for elderly tenants by State, county, and zip code;

(3) establish a toll-free number to provide the public with specific information regarding the availability of housing in multifamily developments for elderly tenants; and

(4) perform any other duty that the Secretary determines necessary to achieve the purposes of this section.

(d) **RELATIONSHIP WITH OTHER DATABASES.**—The Secretary of Housing and Urban Development may make the clearinghouse established under subsection (a) a part of any other multifamily housing database the Secretary is required to establish.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as necessary to carry out this section.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be considered, that a Dodd amendment which is at the desk be agreed to, the committee-substitute amendment, as amended, be agreed to, the bill, as amended, be read a third time, and that a budgetary pay-go statement be read.

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

The amendment (No. 4850) was agreed to, as follows:

(Purpose: To comply with the Statutory Pay-As-You-Go-Act of 2010)

On page 45, strike line 1 and all that follows through page 50, line 8

On page 50, after line 8, insert the following:

**TITLE IV—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010**

**SEC. 401. BUDGETARY EFFECTS.**

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

The committee-reported substitute amendment, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The clerk will read the pay-go statement.

The bill clerk read as follows:

Mr. Conrad: This is the Statement of Budgetary Effects of PAYGO Legislation for S. 118.

Total Budgetary Effects of S. 118 for the 5-year Statutory PAYGO Scorecard: net increase in the deficit of \$5 million.

Total Budgetary Effects of S. 118 for the 10-year Statutory PAYGO Scorecard: net increase in the deficit of \$5 million.

Also submitted for the RECORD as part of this statement is a table prepared by the Congressional Budget Office, which provides additional information on the budgetary effects of this act, as follows:

CBO ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR S. 118, THE SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY ACT OF 2010, AS PROVIDED TO CBO BY THE SENATE COMMITTEE ON THE BUDGET ON DECEMBER 17, 2010

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
Net Increase in the Deficit												
Statutory Pay-As-You-Go Impact <sup>a</sup>	5	0	0	0	0	0	0	0	0	0	5	5

Note: The language transmitted to CBO on December 17, 2010 included an amendment that would strike Title IV of S. 118 as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on September 20, 2010.  
<sup>a</sup> S. 118 would amend the American Homeownership and Economic Opportunity Act of 2000 to increase the number of properties that are eligible to prepay loans issued under Section 202 of the Housing Act of 1959. The bill also would expand the eligible uses for savings generated by refinancing Section 202 loans.



Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the bill be passed, and the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The bill (S. 118), as amended, was passed, as follows:

S. 118

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

# **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Section 202 Supportive Housing for the Elderly Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

**TITLE I—NEW CONSTRUCTION REFORMS**

Sec. 101. Selection criteria.

Sec. 102. Development cost limitations.

Sec. 103. Owner deposits.

Sec. 104. Definition of private nonprofit organization.

Sec. 105. Nonmetropolitan allocation.

## **TITLE II—REFINANCING**

Sec. 201. Approval of prepayment of debt.

Sec. 202. Use of unexpended amounts.

Sec. 203. Use of project residual receipts.

Sec. 204. Additional provisions.

## **TITLE III—ASSISTED LIVING FACILITIES AND SERVICE-ENRICHED HOUSING**

Sec. 301. Amendments to the grants for conversion of elderly housing to assisted living facilities.

Sec. 302. Monthly assistance payment under rental assistance.

## **TITLE IV—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010**

Sec. 401. Budgetary effects.

## **TITLE I—NEW CONSTRUCTION REFORMS**

### **SEC. 101. SELECTION CRITERIA.**

Section 202(f)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(f)(1)) is amended—

(1) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(2) by inserting after subparagraph (E) the following new subparagraph:

“(F) the extent to which the applicant has ensured that a service coordinator will be employed or otherwise retained for the housing, who has the managerial capacity and responsibility for carrying out the actions described in subparagraphs (A) and (B) of subsection (g)(2);”.

### **SEC. 102. DEVELOPMENT COST LIMITATIONS.**

Section 202(h)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(h)(1)) is amended, in the matter preceding subparagraph (A), by inserting “reasonable” before “development cost limitations”.

### **SEC. 103. OWNER DEPOSITS.**

Section 202(j)(3)(A) of the Housing Act of 1959 (12 U.S.C. 1701q(j)(3)(A)) is amended by inserting after the period at the end the following: “Such amount shall be used only to cover operating deficits during the first 3 years of operations and shall not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.”.

### **SEC. 104. DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.**

Section 202(k)(4) of the Housing Act of 1959 (12 U.S.C. 1701q(k)(4)) is amended to read as follows:

“(4) The term ‘private nonprofit organization’ means—

“(A) any incorporated private institution or foundation—

“(i) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

“(ii) which has a governing board—

“(I) the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located; and

“(II) which is responsible for the operation of the housing assisted under this section, except that, in the case of a nonprofit organization that is the sponsoring organization of multiple housing projects assisted under this section, the Secretary may determine the criteria or conditions under which financial, compliance and other administrative responsibilities exercised by a single-entity private nonprofit organization that is the owner corporation responsible for the operation of an individual housing project may be shared or transferred to the governing board of such sponsoring organization; and

“(iii) which is approved by the Secretary as to financial responsibility; and

“(B) a for-profit limited partnership the sole general partner of which is—

“(i) an organization meeting the requirements under subparagraph (A);

“(ii) a for-profit corporation wholly owned and controlled by one or more organizations meeting the requirements under subparagraph (A); or

“(iii) a limited liability company wholly owned and controlled by one or more organizations meeting the requirements under subparagraph (A).”.

### **SEC. 105. NONMETROPOLITAN ALLOCATION.**

Paragraph (3) of section 202(l) of the Housing Act of 1959 (12 U.S.C. 1701q(l)(3)) is amended by inserting after the period at the end the following: “In complying with this paragraph, the Secretary shall either operate a national competition for the nonmetropolitan funds or make allocations to regional offices of the Department of Housing and Urban Development.”.

## **TITLE II—REFINANCING**

### **SEC. 201. APPROVAL OF PREPAYMENT OF DEBT.**

Subsection (a) of section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) in the matter preceding paragraph (1), by inserting “, for which the Secretary’s consent to prepayment is required,” after “Affordable Housing Act”; and

(2) in paragraph (1)—

(A) by inserting “at least 20 years following” before “the maturity date”; and

(B) by inserting “project-based” before “rental assistance payments contract”; and

(C) by inserting “project-based” before “rental housing assistance programs”; and

(D) by inserting “, or any successor project-based rental assistance program,” after “1701s)”; and

(3) by amending paragraph (2) to read as follows:

“(2) the prepayment may involve refinancing of the loan if such refinancing results in—

“(A) a lower interest rate on the principal of the loan for the project and in reductions in debt service related to such loan; or

“(B) a transaction in which the project owner will address the physical needs of the project, but only if, as a result of the refinancing—

“(i) the rent charges for unassisted families residing in the project do not increase or such families are provided rental assistance under a senior preservation rental assistance contract for the project pursuant to subsection (e); and

“(ii) the overall cost for providing rental assistance under section 8 for the project (if

any) is not increased, except, upon approval by the Secretary to—

“(I) mark-up-to-market contracts pursuant to section 524(a)(3) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by nonprofit organizations; or

“(II) mark-up-to-budget contracts pursuant to section 524(a)(4) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by eligible owners (as such term is defined in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)); and”; and

(4) by adding at the end the following:

“(3) notwithstanding paragraph (2)(A), the prepayment and refinancing authorized pursuant to paragraph (2)(B) involves an increase in debt service only in the case of a refinancing of a project assisted with a loan under such section 202 carrying an interest rate of 6 percent or lower.”.

### **SEC. 202. USE OF UNEXPENDED AMOUNTS.**

Subsection (c) of section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) by striking “USE OF UNEXPENDED AMOUNTS.—” and inserting “USE OF PROCEEDS.—”; and

(2) by amending the matter preceding paragraph (1) to read as follows: “Upon execution of the refinancing for a project pursuant to this section, the Secretary shall ensure that proceeds are used in a manner advantageous to tenants of the project, or are used in the provision of affordable rental housing and related social services for elderly persons that are tenants of the project or are tenants of other HUD-assisted senior housing by the private nonprofit organization project owner, private nonprofit organization project sponsor, or private nonprofit organization project developer, including—”;

(3) by amending paragraph (1) to read as follows:

“(1) not more than 15 percent of the cost of increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services, except that upon the request of the non-profit owner, sponsor, or organization and determination of the Secretary, such 15 percent limitation may be waived to ensure that the use of unexpended amounts better enables seniors to age in place;”;

(4) in paragraph (2), by inserting before the semicolon the following: “, including reducing the number of units by reconfiguring units that are functionally obsolete, unmarketable, or not economically viable”; and

(5) in paragraph (3), by striking “or” at the end;

(6) in paragraph (4), by striking “according to a pro rata allocation of shared savings resulting from the refinancing.” and inserting a semicolon; and

(7) by adding at the end the following new paragraphs:

“(5) rehabilitation of the project to ensure long-term viability; and

“(6) the payment to the project owner, sponsor, or third party developer of a developer’s fee in an amount not to exceed or duplicate—

“(A) in the case of a project refinanced through a State low income housing tax credit program, the fee permitted by the low income housing tax credit program as calculated by the State program as a percentage of acceptable development cost as defined by that State program; or

“(B) in the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development cost.

For purposes of paragraph (6)(B), the term ‘acceptable development cost’ shall include, as applicable, the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs.”.

#### SEC. 203. USE OF PROJECT RESIDUAL RECEIPTS.

Paragraph (1) of section 811(d) of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) by striking “not more than 15 percent off”; and

(2) by inserting before the period at the end the following: “or other purposes approved by the Secretary”.

#### SEC. 204. ADDITIONAL PROVISIONS.

Section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended by adding at the end the following new subsections:

“(e) SENIOR PRESERVATION RENTAL ASSISTANCE CONTRACTS.—Notwithstanding any other provision of law, in connection with a prepayment plan for a project approved under subsection (a) by the Secretary or as otherwise approved by the Secretary to prevent displacement of elderly residents of the project in the case of refinancing or recapitalization and to further preservation and affordability of such project, the Secretary shall provide project-based rental assistance for the project under a senior preservation rental assistance contract, as follows:

“(1) Assistance under the contract shall be made available to the private nonprofit organization owner—

“(A) for a term of at least 20 years, subject to annual appropriations; and

“(B) under the same rules governing project-based rental assistance made available under section 8 of the Housing Act of 1937 or under the rules of such assistance as may be made available for the project.

“(2) Any projects for which a senior preservation rental assistance contract is provided shall be subject to a use agreement to ensure continued project affordability having a term of the longer of (A) the term of the senior preservation rental assistance contract, or (B) such term as is required by the new financing.

“(f) SUBORDINATION OR ASSUMPTION OF EXISTING DEBT.—In lieu of prepayment under this section of the indebtedness with respect to a project, the Secretary may approve—

“(1) in connection with new financing for the project, the subordination of the loan for the project under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act) and the continued subordination of any other existing subordinate debt previously approved by the Secretary to facilitate preservation of the project as affordable housing; or

“(2) the assumption (which may include the subordination described in paragraph (1)) of the loan for the project under such section 202 in connection with the transfer of the project with such a loan to a private nonprofit organization.

“(g) FLEXIBLE SUBSIDY DEBT.—The Secretary shall waive the requirement that debt for a project pursuant to the flexible subsidy program under section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a) be prepaid in connection with a prepayment, refinancing, or transfer under this section of a project if the financial transaction or refinancing cannot be completed without the waiver.

“(h) TENANT INVOLVEMENT IN PREPAYMENT AND REFINANCING.—The Secretary shall not accept an offer to prepay the loan for any project under section 202 of the Housing Act of 1959 unless the Secretary—

“(1) has determined that the owner of the project has notified the tenants of the own-

er’s request for approval of a prepayment; and

“(2) has determined that the owner of the project has provided the tenants with an opportunity to comment on the owner’s request for approval of a prepayment, including on the description of any anticipated rehabilitation or other use of the proceeds from the transaction, and its impacts on project rents, tenant contributions, or the affordability restrictions for the project, and that the owner has responded to such comments in writing.

“(i) DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.—For purposes of this section, the term ‘private nonprofit organization’ has the meaning given such term in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).”.

### TITLE III—ASSISTED LIVING FACILITIES AND SERVICE-ENRICHED HOUSING

#### SEC. 301. AMENDMENTS TO THE GRANTS FOR CONVERSION OF ELDERLY HOUSING TO ASSISTED LIVING FACILITIES.

(a) TECHNICAL AMENDMENT.—The section heading for section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) is amended by inserting “AND OTHER PURPOSES” after “ASSISTED LIVING FACILITIES”.

(b) EXTENSION OF GRANT AUTHORITY.—Section 202b(a)(2) of the Housing Act of 1959 (12 U.S.C. 1701q–2(a)(2)) is amended—

(1) by striking “(2) CONVERSION.—Activities” and inserting the following:

“(2) CONVERSION.—

“(A) ASSISTED LIVING FACILITIES.—Activities”; and

(2) by adding at the end the following:

“(B) SERVICE-ENRICHED HOUSING.—Activities designed to convert dwelling units in the eligible project to service-enriched housing for elderly persons.”.

(c) AMENDMENT TO APPLICATION PROCESS.—Section 202b(c)(1) of the Housing Act of 1959 (12 U.S.C. 1701q–2(c)(1)) is amended by inserting “for either an assisted living facility or service-enriched housing” after “activities”.

(d) REQUIREMENTS FOR SERVICES.—Section 202b(d) of the Housing Act of 1959 (12 U.S.C. 1701q–2(d)) is amended to read as follows:

“(d) REQUIREMENTS FOR SERVICES.—

“(1) SUFFICIENT EVIDENCE OF FIRM FUNDING COMMITMENTS.—The Secretary may not make a grant under this section for conversion activities unless an application for a grant submitted pursuant to subsection (c) contains sufficient evidence, in the determination of the Secretary, of firm commitments for the funding of services to be provided in the assisted living facility or service-enriched housing, which may be provided by third parties.

“(2) REQUIRED EVIDENCE.—The Secretary shall require evidence that each recipient of a grant for service-enriched housing under this section provides relevant and timely disclosure of information to residents or potential residents of such housing relating to—

“(A) the services that will be available at the property to each resident, including—

“(i) the right to accept, decline, or choose such services and to have the choice of provider;

“(ii) the services made available by or contracted through the grantee;

“(iii) the identity of, and relevant information for, all agencies or organizations providing any services to residents, which agencies or organizations shall provide information regarding all procedures and requirements to obtain services, any charges or rates for the services, and the rights and responsibilities of the residents related to those services;

“(B) the availability, identity, contact information, and role of the service coordinator; and

“(C) such other information as the Secretary determines to be appropriate to ensure that residents are adequately informed of the services options available to promote resident independence and quality of life.”.

(e) AMENDMENTS TO SELECTION CRITERIA.—Section 202b(e) of the Housing Act of 1959 (12 U.S.C. 1701q–2(e)) is amended—

(1) in paragraph (2)—

(A) by inserting “or service-enriched housing” after “facilities”; and

(B) by inserting “service-enriched housing” after “facility”;

(2) in paragraph (5), by inserting “or service-enriched housing” after “facility”; and

(3) in paragraph (6), by inserting “or service-enriched housing” after “facility”.

(f) AMENDMENTS TO SECTION 8 PROJECT-BASED ASSISTANCE.—Section 202b(f) of the Housing Act of 1959 (12 U.S.C. 1701q–2(f)) is amended—

(1) in paragraph (1), by inserting “or service-enriched housing” after “facilities” each time that term appears; and

(2) in paragraph (2), by inserting “or service-enriched housing” after “facility”.

(g) AMENDMENTS TO DEFINITIONS.—Section 202b(g) of the Housing Act of 1959 (12 U.S.C. 1701q–2(g)) is amended to read as follows:

“(g) DEFINITIONS.—For purposes of this section—

“(1) the term ‘assisted living facility’ has the meaning given such term in section 232(b) of the National Housing Act (1715w(b));

“(2) the term ‘service-enriched housing’ means housing that—

“(A) makes available through licensed or certified third party service providers supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy;

“(B) includes the position of service coordinator, which may be funded as an operating expense of the property; ;

“(C) provides separate dwelling units for residents, each of which contains a full kitchen and bathroom and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the housing; and

“(D) provides residents with control over health care and supportive services decisions, including the right to accept, decline, or choose such services, and to have the choice of provider; and

“(3) the definitions in section 1701(q)(k) of this title shall apply.”.

#### SEC. 302. MONTHLY ASSISTANCE PAYMENT UNDER RENTAL ASSISTANCE.

Clause (iii) of section 8(o)(18)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(18)(B)(iii)) is amended by inserting before the period at the end the following: “, except that a family may be required at the time the family initially receives such assistance to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such an amount or percentage that is reasonable given the services and amenities provided and as the Secretary deems appropriate.”.

### TITLE IV—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010

#### SEC. 401. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement

titled "Budgetary Effects of PAYGO Legislation" for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

# RECOGNIZING AND HONORING BOB FELLER

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 703, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 703) recognizing and honoring Bob Feller and expressing the condolences of the Senate to his family on his death.

There being no objection, the Senate proceeded to consider the resolution.

Mr. HARKIN. Mr. President, today I have submitted a resolution honoring Robert "Bob" Feller, who passed away 2 days ago.

Bob Feller was a great Iowan, great baseball player, and most importantly, a great patriot.

He was born and raised in Van Meter, IA. His father ran the family farm, and his mother was a registered nurse and teacher. His father built a baseball diamond on the farm that he named "Oak View Park." Feller attended Van Meter High School, where he was a starting pitcher. Feller recalled his childhood: "What kid wouldn't enjoy the life I led in Iowa? Baseball and farming, and I had the best of both worlds."

Bob Feller went on to have one of the greatest baseball careers ever. His career spanned 16 seasons, during which he had 2,581 strikeouts and 266 wins. He had three no-hitters and 12 one-hitters. It is no surprise that Mr. Feller was inducted into the Hall of Fame in 1962, his first year of eligibility.

But, we do not just honor Feller because of his athletic achievements. We recognize him as a great American and patriot. He served our Nation in the Navy during World War II, enlisting 2 days after the attack on Pearl Harbor. Although he lost four baseball seasons due to his war service, he never regretted his choice.

Feller said recently, "A lot of folks say that had I not missed those almost four seasons to World War II—during what was probably my physical prime—I might have had 370 or even 400 wins. But I have no regrets. None at all. I did what any American could and should do: serve his country in its time of need. The world's time of need. I knew then, and I know today, that winning World War II was the most important thing to happen to this country in the last 100 years."

Mr. President, this week we lost a great American.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be

agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 703) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

## S. RES. 703

Whereas Robert William Andrew ("Bob") Feller was born on November 3, 1918, near Van Meter, Iowa;

Whereas Bob Feller learned to play baseball on his parents' farm in Dallas County, Iowa, and commented that "What kid wouldn't enjoy the life I led in Iowa? Baseball and farming, and I had the best of both worlds";

Whereas Feller attended Van Meter High School where he pitched for the baseball team;

Whereas Feller, at the age of 17, joined the Cleveland Indians, where he played for 18 years, his entire career;

Whereas Feller led the American League in wins 6 times;

Whereas Feller led the American League in strikeouts 7 times;

Whereas Feller pitched 3 no-hitters, including the only Opening Day no-hitter, and shares the major league record with 12 one-hitters;

Whereas Feller was an 8-time All-Star;

Whereas Feller was a key member of the 1948 World Series Champion Cleveland Indians;

Whereas Feller threw the second fastest pitch ever officially recorded, at 107.6 miles per hour;

Whereas Feller ended his career with 266 victories and 2,581 strikeouts;

Whereas Feller remains the winningest pitcher in Cleveland Indians history;

Whereas Feller was elected to the Baseball Hall of Fame in 1962, his first year of eligibility;

Whereas Feller enlisted in the Navy 2 days after the attack on Pearl Harbor in 1941;

Whereas Feller served with valor in the Navy for nearly 4 years, missing almost 4 full baseball seasons;

Whereas Feller was stationed aboard the U.S.S. Alabama as a gunnery specialist;

Whereas Feller earned 8 battle stars and was discharged in late 1945; and

Whereas Bob Feller, one of the greatest baseball players of all time, placed service to his country ahead of all else: Now, therefore, be it

*Resolved*, That the Senate—

(1) honors Bob Feller for transcending the sport of baseball in service to the United States and the cause of democracy and freedom in World War II;

(2) recognizes Bob Feller as one of the greatest baseball players of all time; and

(3) extends its deepest condolences to the family of Bob Feller.

Mr. BROWN of Ohio. Mr. President, I would like to take a moment to speak about this last resolution. Bob Feller was a Clevelander through and through. Senator HARKIN is the prime sponsor of this resolution. I have joined him on it. Senator HARKIN sponsored the resolution because Bob Feller was born in Van Meter, IA.

He was signed by the Cleveland Indians at the age of 16, apparently for \$1 and an autographed baseball. He struck

out 15 batters in his first Major League start. He struck out 17 in a game at the age of 17. He is the only Major League player in history to strike out in one game the number of batters comparable to his age.

His greatness was he was, perhaps, the hardest throwing pitcher ever in Major League Baseball. He pitched three no-hitters, then a record. It has been passed since. He pitched 12 one-hitters also, sharing that Major League record.

He would have shattered, perhaps, all pitching records short of Cy Young's number of career wins, perhaps, and Walter Johnson's, if he had not served his country for almost 4 years in World War II.

He gladly did it. He won eight battle stars. He served on the USS Alabama as a gunnery specialist. He was so proud of his service to his country. He turned down a huge contract with the Indians in 1942—huge in those days—to join the military to serve his country. He spoke about it frequently and was always very proud of that service.

He barnstormed the country with Satchel Page, the great Black pitcher who was not allowed in the Major Leagues in those days before the color line was broken. Feller and he traveled the country in the "White Major League Baseball" offseason and drew huge crowds, with Page and he facing each other in game after game after game.

He was a key member of the last Indians World Championship in 1948.

I saw Bob Feller pitch once. I was 4 years old, so I do not really remember it. My dad took my brothers Bob and Charlie and me to Bob Feller Day at old Cleveland Municipal Stadium in, I believe, 1957.

My dad loved Bob Feller. He was a legend in Cleveland. His statue is the only professional athlete's statue in Cleveland. Right outside Jacobs Field, on East 9th Street, you can see Bob Feller's statue, with his famous wind-up.

When you go to an Indians game in the new ballpark at Progressive Field—new, it is now more than 15 years old—when you go to the ballpark, people always say: I will meet you at the Bob Feller statue. That is sort of the place where you meet up with your friends and get your tickets and all of that.

He brought great joy to so many, such as my father. He was, perhaps, the greatest pitcher who ever lived. He died at the age of 92 in Gates Mill. He is survived by his wife Anne; his children Steve, Martin, and Bruce.

I was proud to have gotten to speak a number of times to Bob Feller. I do not pretend to have known him well. But he was always a major presence in Cleveland baseball and a major presence in Cleveland civic life. We are all grateful to him and indebted to him for his service to his country in World War II and to our community before, during, and after World War II. So I wanted to honor with that resolution, with Senator HARKIN, his name and his life.

### MODIFIED ORDER OF RECOGNITION

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the previous order relating to recognition of Senator SPECTER on Tuesday, December 21, be modified to provide that he be recognized at 10:30 a.m. that day.

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

### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider en bloc Calendar Nos. 1090 and 1091; that the nominations be confirmed en bloc; the motions to reconsider be laid upon the table en bloc; that any statements related to the nominations be printed in the RECORD as if read; that the President be immediately notified of the Senate's action; and that the Senate then resume legislative session.

Further, as if in executive session, I ask unanimous consent that on Sunday, December 19, following any vote with respect to the Risch amendment to the START treaty, the Senate then proceed to consider the following nominations: Calendar Nos. 892 and 1092; and vote immediately on confirmation of the nominations, with 2 minutes of debate prior to each confirmation vote, equally divided and controlled between Senator LEAHY and Senator SESSIONS or their designees; that upon confirmation, the motions to reconsider be considered made and laid upon the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session; further, after the first vote in this sequence, the succeeding votes be limited to 10 minutes each.

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

The nominations considered and confirmed are as follows:

#### THE JUDICIARY

Edmond E-Min Chang, of Illinois, to be United States District Judge for the Northern District of Illinois.

Leslie E. Kobayashi, of Hawaii, to be United States District Judge for the District of Hawaii.

Mr. BROWN. Mr. President, as if in executive session, I ask unanimous consent that at a time to be deter-

mined by the majority leader, following consultation with the Republican leader, the Senate proceed in executive session to consider the following nominations: Calendar No. 703, Benita Pearson, from the Northern Ohio District—if I could for a moment say that she was selected by a committee of 17 appointees from Senator VOINOVICH and me, and Judge Magistrate Pearson was chosen unanimously by this group, submitted to the President by—I submitted her name to the President, the President nominated her. She was voted out of committee in February of this year, out of the Judiciary Committee. I will be thrilled to move forward on that and discuss that tomorrow—also, Calendar No. 813, William Martinez; that debate on each nomination be limited to 60 minutes, equally divided and controlled between Senators LEAHY and SESSIONS or their designees; that upon the use or yielding back of all time, the Senate then proceed to vote on confirmation of the nominations in the order listed; that prior to the second vote, there be 2 minutes of debate divided as specified above; that the second vote be limited to 10 minutes; that upon confirmation, the motion to reconsider be considered made and laid upon the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

### ORDER OF PROCEDURE

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that on Sunday, December 19, following any leader remarks, the Senate resume executive session in and consideration of the START treaty; that there then be 3 hours of debate with respect to the Risch amendment No. 4839, with the time divided as follows: 1 hour under the control of Senator KERRY or his designee and 2 hours under the control of Senator RISCH or his designee; that no amendments be in order to the Risch amendment; further, that upon the use or yielding back of the time, the Senate proceed to vote with respect to the amendment.

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

### ORDERS FOR SUNDAY, DECEMBER 19, 2010

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 12 noon, on Sunday, December 19; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate resume executive session to consider the New START treaty, as provided under the previous order.

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

### PROGRAM

Mr. BROWN of Ohio. Mr. President, Senators should expect up to three rollcall votes, beginning at approximately 3 p.m. Those votes will be in relation to the Risch amendment to the START treaty and on confirmation of two judges.

### ADJOURNMENT UNTIL 12 NOON TOMORROW

Mr. BROWN of Ohio. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 5:19 p.m., adjourned until Sunday, December 19, 2010.

### CONFIRMATIONS

Executive nominations confirmed by the Senate, Saturday, December 18, 2010:

#### THE JUDICIARY

ALBERT DIAZ, OF NORTH CAROLINA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT.

ELLEN LIPTON HOLLANDER, OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND.

EDMOND E-MIN CHANG, OF ILLINOIS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

LESLIE E. KOBAYASHI, OF HAWAII, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF HAWAII.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.