United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, SECOND SESSION

Vol. 156 WASHINGTON, MONDAY, JUNE 21, 2010 *No. 93*

Senate

The Senate met at 2 p.m. and was called to order by the Honorable MARK BEGICH, a Senator from the State of Alaska.

PRAYER

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

Almighty God, the giver of blessings, fill us with Your peace. As our lawmakers learn to trust You, may they overflow with hope through the power of Your Holy Spirit. Strengthen them to guard and protect an unwavering strength in You, energized by their confidence in Your promises. Lord, give them a fresh vision of the unlimited possibilities available to those who trust You as their God. Enable them to sense Your spirit's presence working through people, arranging details and solving complexities.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK BEGICH led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 21, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK BEGICH, a Senator from the State of Alaska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

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

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

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent the order for the quorum call be rescinded.

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks there will be a period for morning business until 5:15 today with Senators allowed during that period of time to talk for up to 10 minutes each. At that time, the Senate will turn to the Executive Calendar and debate until 6 o'clock. We will turn to executive session with debate until 6 p.m. equally divided and controlled between Senators LEAHY and SESSIONS or their designees. At 6 p.m. the Senate will proceed to vote on the confirmation of Mark Goldsmith from Michigan, Marc Treadwell of Georgia, and Josephine Tucker of California, all to be district court judges.

This week the Senate could resume consideration of the tax extenders legislation or turn to FAA reauthorization, first responders collective bargaining, small business jobs bills or, if they are available, conference reports on the Wall Street reform, Iran sanctions, or the emergency supplemental appropriations bill.

MEASURE READ THE SECOND TIME—H.R. 5297

Mr. REID. I am told that H.R. 5297 is at the desk and due for a second reading.

The PRESIDING OFFICER. The Senator is correct. The clerk will read the title of the bill for the second time.

The legislative clerk read as follows:

A bill (H.R. 5297) to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, and for other purposes.

Mr. REID. Mr. President, I now object to any further proceedings on this matter.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

FAR-REACHING CONSEQUENCES

Mr. REID. Mr. President, what we do on the Senate floor has consequences far beyond this building. We know our work has real world costs, far beyond the beltway. But it is not just what we do that touches our constituents' lives and livelihoods, it is also what we do not do. When the Senate refuses to pass good bills, the people in our States pay the price. I hope we can avoid more of that this week and we can come together and work productively.

Right now, loopholes reward corporations for shipping jobs out of America, putting them out of reach of the many unemployed workers in each of our States. Every day we do not act, the loopholes remain wide open, those jobs vanish, and those we represent get hurt.

Right now, small businesses are desperate for tax incentives to create jobs at home. Every day we don't act, those small businesses have a harder time hiring, and the unemployment rate has a harder time falling.

Right now, Nevada's unemployment rate is the highest in the country. Victims of the recession who have been

out of work for a long time are struggling to make ends meet while they are looking for a job. This bill extends the emergency unemployment assistance they need, critical help that, for many, has expired or dried up.

Every day we don't act, those families in Nevada and across the Nation continue to suffer unnecessary pain. This will be the eighth week since March the Senate has debated the tax-cutting, job-creating bill currently on the Senate floor. That is 2 full months, 2 full months we have been waiting and they have been waiting—the people in our States—for us to respond to an emergency. That is unacceptable.

The richest corporations continue to get richer while the unemployed remain out of work. Every minute we waste, it gets worse. It is our job to debate and not to delay. It is our job to legislate; it is our job to do something about the plight of the people in America. We need to legislate relief.

As we serve our citizens, it would serve the Senate well to remember the consequences of decisions that are driven by politics, purely, and the consequences of our actions and our inaction alike.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. REID. If I can just interrupt my friend for a minute, does the Senator have some consent agreements he wants to do or would he rather I come back?

Mr. MCCONNELL. I have one consent in here, yes.

Mr. REID. I will just wait. I am happy to be here.

UNANIMOUS-CONSENT REQUEST—S. 3421

Mr. MCCONNELL. Mr. President, it should be perfectly clear by now that Democrats here in Washington have no intention of being encumbered by the will of the American people. Whether it is health care, financial reform, creating private sector jobs, spending, debt, or even the oilspill, Americans say they want one thing and Democrats do another.

And we are seeing the same thing in the ongoing debate over the deficit extenders bill that is on the floor. Americans are anxious in a way they have never been about our monstrous national debt. Yet for nearly 3 weeks now, Democrats in Congress have been arguing among themselves not about how much they should cut the debt down but about how much they should increase it.

So we can add this to the list of crises Americans are begging Congress to address but which Democrats are either ignoring or exploiting to advance their agenda. The White House likes to talk about inflection points. Well, for most Americans, a $13 trillion debt should have marked an inflection point for Democrats on the issue of debt. But the debate over this extenders bill has shown Democrats to be oblivious to the gravity of this crisis.

At a moment when certain European countries appear to be coming apart because of their own debt, Democrats in Washington still can't break the habit. Economists are warning us every day to get the debt under control. Just today, in fact, it was reported that Germany's Economy Minister is pleading with the Obama administration to cut spending and to restore fiscal balance or risk instability.

Yet nearly 3 weeks into the debate over the extenders bill, Democrats still can't agree to pass it without borrowing more money to pay for it. Republicans offered a fully offset 30-day extension of this bill that didn't just cover its cost but actually reduced the deficit in the process. Democrats rejected it. We offered an amendment that would have provided a long term extension of the expired provisions and lowered the deficit by $55 billion over 10 years. Democrats rejected that too.

This should be an easy one, but Democrats are making it difficult because they just can't seem to bring themselves to pay for legislation.

But the American people aren't conflicted on this issue. And they want us to show we are serious, that we are willing to make the same kinds of tough choices they themselves have been forced to make in this recession. So I say to my friend from Nevada I am going to ask, now, a unanimous consent.

I again ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 411, S. 3421; further, that the bill be read a third time and passed, and the motion to reconsider be laid upon the table. Before the chair rules, for clarity, this is a paid-for 30-day extension of the extenders bill.

The PRESIDING OFFICER. Is there objection?

The majority leader.

Mr. REID. Mr. President, reserving the right to object, I realize very much the financial situation our country finds itself in today. Everyone on this side of the aisle recognizes that. We also recognize the fact that the problems dealing with the economy were not created by the Democrats or even President Obama. The problems were created by virtue of 8 years of wild spending by a prior administration, a war costing $1 trillion that was unpaid for, and tax cuts amounting to more than $1 trillion, unpaid for, that caused this huge recession.

President Obama has been doing his best, working with us to get our way out of that financial situation in which we find ourselves. I am very amazed at the logic of my friends on the other side of the aisle suddenly seeing fiscal austerity as the way to go when the wild spending went on for 8 years without a word having been spoken.

We are doing everything we can to make sure the country continues on an upward scale. It has now. We have a long ways to go. But as economists say, the hemorrhaging has stopped, and we are trying to work our way into a vibrant economy. We are a long ways from that, and I recognize that.

In today's newspaper a number of columnists are talking about being very careful what we do. We are very aware of the pain people are feeling out there; for example, those people who are unemployed, long-term unemployed. As I have said on this floor before, Mark Zandi—JOHN MCCAIN's financial adviser when he ran for President—has said the most important thing we can do is give those people unemployment benefits because it goes right back into the economy and helps the economy.

A Nobel Prize-winning economist writes a column several times a week in the New York Times. Today he talks about the fact that we have to be very careful how we rein in spending. We know we have to do it, but we have to be very careful doing it.

In 1937, after we had pulled our way out of the economic crisis we found ourselves in, spending was reined in too quickly and it caused the country to go back into, not a depression but a recession. World War II saved our country financially in that regard.

I know my friend's heart is in the right place, but his logic is in the wrong place, and I object.

The PRESIDING OFFICER. Objection is heard.

The Republican leader.

Mr. MCCONNELL. Mr. President, our good friends on the other side still do not seem to get it. They are twisting and turning, not in an effort to cut the debt but to borrow as much as they can with the minimum votes they need to pass this bill. And the best part of all is their justification. You guessed it. They want to blame President Bush for their own unwillingness to pay for this bill. They say that because the debt grew during his administration they are immune to any criticism for dramatically increasing it themselves.

Well, I have some news for our friends on the other side: Nobody is buying that anymore, because there is not any comparison here. When President Obama took office, the deficits he inherited were projected to $4.3 trillion over the next 10 years. One year later, one year after President Bush left office, the Congressional Budget Office had to put out a revised estimate: After 1 year of Democrats controlling Washington, estimated deficits just over the next decade had nearly doubled to $8.1 trillion, in the middle of a recession; in other words, at a time when projected revenues coming in are actually decreasing.

Or consider this: The largest annual deficit ever accumulated by the previous administration was $455 billion.

The largest annual deficit ever accumulated by the previous administration was $455 billion. So what did President Obama do when he took office? He wrote a budget that guarantees average annual deficits of more than double that every year for the next 10 years. More than doubles the largest deficit we had during the Bush years and anticipates that for every year for the next decade.

So the kind of spending and debt Democrats are engaged in and which they are committed to continue year after year is like nothing this country has ever seen. We have never seen anything like this. It threatens not only the livelihoods of our children, it threatens our national security and the very safety net Democrats claim they want to protect.

The fact is, the longer we wait to address this debt in a serious manner, the more that safety net actually frays and the harder this crisis will be to address. At some point a choice has to be made, and that point is now.

I noticed that the President's Chief of Staff had some ideas over the weekend about how to frame up the November elections. I cannot think of a better example of how detached the Democrats seem to be at this moment from the concerns of the American people. Americans want to know what is being done to fix a broken pipe at the bottom of the Gulf, not what is being done to fix the election. The White House might view the upcoming election as its biggest crisis at the moment, but the American people are focused on fixing this pipe and cleaning up this mess. Two months of delays and bureaucratic redtape have done nothing to solve the crisis, but they have done a lot to discredit the kind of big-government solutions that Democrats continue to promote. Every day the oil continues to flow is a day Americans' faith in government ends.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, my friend says he has never seen anything like this. Well, I have never seen anything like this reasoning. Everyone knows that President Obama did not cause the oil gushing into the ocean, and he has done his utmost to try to alleviate the pain and suffering of the people in the gulf. He had the good fortune of getting the company responsible for this oil gushing out of the ocean to come up with a $20 billion trust fund to pay the people who suffered. There were some Republicans last week who said they thought it was wrong for the President to do that. But that was a very small minority who believed that. I have never seen anything like this. So President Obama is not responsible for the oil gushing out of the Earth into the ocean, and President Obama is not responsible for the severe recession that hit this country in the last few months of the Bush administration.

I cannot imagine anyone thinking we should not have taken the measures we did to help bolster the economy. The economic recovery package created millions of jobs. There is still money in the pipeline to create more jobs. And as it says in this one op-ed piece in the New York Times today:

> And some of the most vocal deficit scolds in Congress are working hard to reduce taxes for the handful of lucky Americans who are heirs to multimillion-dollar estates. This would do nothing for the economy now, but it will reduce revenue by billions of dollars a year, permanently.

It will be interesting to see in the next few weeks how these same budget hawks feel about the estate taxes that we have to address. I would hope we can all be calm and deliberate here. We have a few weeks left. We have 2 weeks in this week period, 4 or 5 the next work period to get some things done here.

We have appropriations bills we have to do. We have these tax extenders we have been working on, as I indicated, for 8 weeks. We have the unemployment benefits we need to extend. People are now desperate for that money. We have also something to help States called FMAP, which helps for Medicaid, which has been such a drain on the States because of the tremendous problems we have had with people being out of work and needing to go on Medicaid because there is no place else for them to go for health care.

I would hope we can move forward on the legislation that we tried try to finish last week. I am grateful we were able to finally get the short-term fix on the patients who are Medicare recipients. Now if we can get something done in the House there, doctors will be able to be reimbursed not at the fat and sassy rate, but at least it will be better than the 21-percent cut that was going to go into effect today or tomorrow.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. There will now be a period of morning business until 5:15 p.m., with Senators permitted to speak for up to 10 minutes each, with no motions in order.

The Senator from Arizona is recognized.

HEALTH CARE

Mr. KYL. Mr. President, I want to speak briefly today about some broken promises related to the health care bill, specifically, President Obama's promise that if Americans liked their current coverage, they would be able to keep it.

Remember that promise. Last June, the President promised on national television that:

> Government is not going to make you change plans under health reform.

In his September address to Congress, he reassured Americans:

> If you have health insurance through your job, nothing in our plan requires you to change what you have.

Well, those two statements are true as far as they go. The law does not require. The problem is, everything written into the law will, nevertheless, result in that happening.

What we are seeing is new developments every week that prove that what we had said would happen will, in fact, happen. Many Americans are not going to be able to keep the coverage they have, even though they like it. That includes many who have employer-based coverage in addition to many seniors who rely on private Medicare plans known as Medicare Advantage.

So how does this happen? First, with regard to the 170 million Americans who have employer-based coverage, regulations are being written right now by the administration, specifically by the Labor and Health and Human Services Departments and the IRS that will have a direct impact on people not being able to keep their plans. These regulations deal with existing plans called ''grandfathered plans.'' Grandfathered status was supposed to allow employers to continue offering their current plans even if they did not meet all of the government's new cost-increasing mandates and requirements, such as minimum standards for what a plan must offer. That was the whole point of grandfathering.

It was also intended to protect Americans enrolled in their plans from ''rate shock'' or significant premium increases as a result of the new government mandates. But according to the administration's own report, new regulations could mean that two-thirds of all workers at small businesses would have to relinquish their grandfathered status, exposing them to these new mandates and requirements.

The worst-case scenario, according to the report, is that a whopping 80 percent of small firms' plans would lose their grandfathered status. By 2013, the report concludes, more than half of all workers' plans, 51 percent, will be subject to new Federal requirements. So much for the idea that if you like your plan you get to keep it.

These requirements drive up the cost of insurance, impede an employer's ability to adjust to rising health care costs, and ultimately provide an incentive to employers to drop their coverage altogether and instead pay a fine or, to put it another way, it creates a disincentive to keeping your coverage and an incentive to dropping their coverage and forcing them to buy the coverage through the so-called exchange.

The individual mandate provision in the bill would then require these workers whose coverage has been dropped to purchase the government-approved insurance from the new government-dictated exchange, replete with the highest costs, more mandates, and so on.

Of the new regulations, James Gelfand, who is health policy director

at the U.S. Chamber of Commerce, said:

These rules are extremely strict. Almost no plan is going to be able to maintain grandfathered status.

So what has happened? The President said: If you like your plan, you get to keep it. We will grandfather it in.

Now the rules and regulations are being written in such a way that virtually none of the plans will be grandfathered so that the employers all have an incentive to send their employees to the new health exchange and therefore to drop the coverage they currently have and like.

This frankly validates concerns that we voiced throughout the debate, that despite the President's claims, his health care bill will force Americans to accept unwanted health care coverage changes and that, in fact, therefore it amounts to a government takeover of health care.

I mentioned American seniors. This is the second area in which they will not get to keep their plans even though they like them. The White House recently sent out a promotional mailer to seniors, saying:

Your guaranteed Medicare benefits won't change—whether you get them through original Medicare or a Medicare Advantage plan. Instead, you will see new benefits and cost savings.

Wrong. Seniors are normally skeptical about such a claim, given the President's bill is funded by $\frac{1}{2}$ trillion in Medicare cuts. Republicans brought this up repeatedly during the health care debate. Democrats assured seniors not to worry, that if they liked their plan they could keep it. They were promised the law would strengthen Medicare. Yet now we are seeing and hearing from the experts that millions of seniors too will lose their Medicare Advantage benefits.

In fact, the White House's claims to the contrary are flatly contradicted by the administration's own expert, Richard Foster. He is the CMS Actuary, and he says:

The new provisions [in the health care law] will generally reduce [Medicare Advantage] rebates to plans and thereby result in less generous benefits packages.

That is the administration's own actuary telling us that seniors who have Medicare Advantage will not get to keep what they have. Here is how a Wall Street Journal op-ed summed up the expert's conclusions:

In an April memo, Richard Foster estimated that the $206 billion hole in Advantage will reduce benefits, cause insurers to withdraw from the program, and reduce overall enrollment by half. Doug Elmendorf and his team at the Congressional Budget Office came to the same conclusion, as did every other honest expert.

In conclusion, we have a number of experts, not partisans, on the record saying that seniors who use Medicare Advantage will see their benefits eliminated and their coverage changed.

The administration is trying to soften the blow by sending some seniors a $250 rebate check. I am sure people are happy to get the check. But it is not much of a gain for those seniors who face skyrocketing premiums and may not have access to the same Medicare Advantage plans they now enjoy.

These developments are consistent with a pattern. It is a pattern ever since the bill was passed and signed into law by the President of broken promises. Americans never liked or wanted this bill, and they are continually reminded why they opposed it in the first place. The fact is, it turns out they will not get to keep what they have even if they like it. That is just one of the reasons why a strong majority of Americans want to see it repealed.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I ask unanimous consent to speak for 30 minutes in morning business.

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

DEFICITS AND DEBT

Mr. DORGAN. Mr. President, I listened to the leaders today. I was thinking about Will Rogers, who once said: You could call me a hick or call me a rube, but the fact is, I would sooner be the person who buys the Brooklyn Bridge than the person who sells it. I was thinking of the fiction in that clever Will Rogers quote and some of the fiction I hear on the floor of the Senate.

Everybody here understands—if not, they better understand quickly—the dilemma of the unbelievable growth of deficits or debt for this country. It is unsustainable. There is no question about that. But it is interesting to me that just recently we have had the minority side of the aisle decide this is their life's calling despite the fact that this President, the day he was inaugurated and walked across the door into the White House, had this President done nothing but sleep for the next year, he inherited a Federal deficit of $1.3 trillion. This stuff about he said, we said, she said, they said, the American people aren't very interested in all that. What they are interested in is what caused this problem and who is going to step up and fix it.

Let's talk about what caused this problem. What ran this country into the ditch and what has caused this unbelievable runup in debt? No. 1, early on in 2001, I and others stood on the floor when President Bush—yes, President Bush; and I am not here just to tarnish his Presidency, I am here to talk about his record—said: We now have 10 years of expected budget surpluses. Let's do something with that money. President Bush had inherited a record budget surplus from the Clinton Administration. The new President took over and said: We have to have very big tax cuts to get rid of these surpluses.

I stood on this floor and said: These surpluses don't exist yet. Let's be a little conservative.

He said: ''Katy, bar the door,'' we are going to give this money away.

Very big tax cuts, the largest benefits went to the highest income earners in the country. Then what did we experience? Very quickly, a recession, an attack against our country on 9/11, wars in Iraq and Afghanistan. Then we sent soldiers off to war and didn't pay for one penny of it. Everybody in this Chamber knows better than that. You don't fight a war by asking people to go risk their lives but we won't risk anything by asking the American people to pay for the cost of the war. We will just put it on the debt.

As all this was going on, we had a bunch of new regulators who came to town from the new administration who said: It is a new day. We are going to have business-friendly regulation in this town. We won't look. We won't watch. We don't care what you do.

As a result, we had an unbelievable outpouring of greed that ran this country into the ditch by some of the biggest financial enterprises in the country.

I am not sure either side is much of a bargain for the American people these days. I understand that. But I don't think we ought to rewrite history. This President inherited the biggest mess since Franklin Delano Roosevelt came to the Presidency. That is a fact. Now we have to try to work together to figure out what we do about it. How do we deal with this? How do we respond to the burgeoning Federal budget deficits?

By the way, some say: Let's make our stand by shutting down unemployment insurance for folks at the bottom, the folks who don't have a job, those people who have been told: Your job doesn't exist anymore; you are done; you are out of here. And we have about 20 million fewer jobs than we need in this country. In the last 9 years, we lost more than 5 million jobs of people who work in the factories.

Will Rogers also once said: I see where Congress passed a bill to help bankers' mistakes. You can always count on us helping those who have lost part of their fortune, but the whole history records nary a case where the loan was for the person who had absolutely nothing.

And so it is in this Congress—hundreds of billions here and there in tax cuts and bailouts. But now it is about helping people with unemployment. That is where we make our stand, according to some. It is pretty unbelievable. We need to start working together to find common solutions. Describing where the other side is wrong is hardly a productive enterprise. It is pretty easy to do, in fact.

That is not why I came to talk, but it does get tiresome trying to rewrite history here on the floor of the Senate. I am not suggesting one Presidency is good or bad. I am saying this President

inherited a $1.3 trillion deficit. That is a fact. That doesn't come from me; that comes from the Congressional Budget Office. I understand, at least in part, why that happened. Some of us on the floor of the Senate did not support giving away tax revenues we didn't have. Some of us didn't support going to war without paying for it. I had that discussion. How about paying for some of this? The previous President said: You try to pay for it, I will veto the bill. Is it surprising, then, that we are deep in debt? Not particularly surprising to me. Those are not very thoughtful decisions.

FINANCIAL REFORM

Mr. DORGAN. Mr. President, 16 years ago I wrote a cover article for the Washington Monthly magazine. The title was ''Very Risky Business,'' the subtitle, ''If we don't watch out, a new kind of Wall Street gambling—exotic derivatives trading—could shake the market and put taxpayers on the line for another bailout.'' I talked about $35 trillion in derivatives. That is now a fraction of what is out there. I talked about banks that were trading on derivatives on their own proprietary accounts. I said they might just as well have a roulette wheel or a craps table in their lobby. It is just flatout gambling, and it ought to be stopped.

It is not surprising to me because I made the same point 5 years after that, when they tried to repeal Glass-Steagall—and did successfully—in order for us to compete with the Europeans. That took apart the protections that existed after the Great Depression. It was decided that we don't need those protections anymore. They took it apart. I was one of eight Senators to vote no. I warned on the floor then that another taxpayer bailout would come within a decade. It did, regrettably.

Now the question is, as we put together a piece of legislation to address these issues, what do we do that doesn't have us just having a press conference to say: Look at what we did. What is it we have to do to make sure this doesn't happen again? Have we really tightened the regulations?

Let me go through a couple things. Will we have dealt with too big to fail? The answer is no, not really. Too big to fail means there are some businesses in this country in the financial services industry, some of the biggest financial institutions, that are determined ''too big to fail,'' and their failure would cause grievous harm to the economy, perhaps bring the entire economy down. Therefore, if they are too big to fail, they are, by definition, going to be bailed out.

I happen to believe that if you are too big to fail, you are simply too big. You ought to be pared back, trimmed down until you are not too big to fail. That is not what is happening here. We are going to pass a piece of legislation in which the biggest financial institutions are bigger than they were before we got into this mess. Too big to fail doesn't mean you are too big. In fact, you can get bigger with the kind of legislation that is being considered in conference.

Proprietary trading. Will they still allow banks to trade on their own proprietary accounts? Will they put a restriction, finally, on banks' ability to make speculative bets using their own capital in their own lobby? We will see. It doesn't look like it.

What about the issue of naked credit default swaps, CDSs? They have no insurable interest on any side of them, just flatout betting. No, this isn't going on in Atlantic City or Las Vegas; it is going on across the country with financial institutions. Will this be trimmed down? It doesn't look like it.

How about the ratings agencies, the agencies that gave AAA ratings to fundamentally worthless securities, had a bunch of people left with bad securities in the bowels of financial balance sheets? What about that? There was an amendment on the floor of the Senate to deal with that. That has now been watered down. Or capital standards.

I won't go on except to say that I hope the sum total of this conference between the House and Senate on financial reform is about working for the American people and not the interests that helped create this mess. I hope this is a time to suck it up and do the right thing. I hope the conferees understand that if this bill is excessively weakened—and it wasn't strong leaving here—they should not assume they will have the votes to automatically pass that kind of legislation back in the Senate and perhaps the House.

This is very important. This is not some other issue. This is about whether the economy will continue to provide strength and expand and promote hiring. It will be what our children and grandchildren experience in terms of opportunities for the future in our great country.

It is a conference that is pushed by all sides to do various things for various interests. I hope they understand that this is something that will revisit us again in 2 years, 5 years, 10 years from now unless we do the right thing and make certain we address the key issues.

ENERGY POLICY

Mr. DORGAN. Mr. President, I wish to talk about energy legislation. I have been reading today all the stories in the newspapers about the caucus we had last week in which we described energy legislation and climate change legislation and what we should or should not do.

There are two challenges for this country at this point: No. 1, we are far too dependent on foreign oil. Over 60 percent of the oil we receive comes from outside of our country; 70 percent of the oil we use goes into the transportation sector. We are far too dependent on foreign oil. If something should happen to shut off the supply of foreign oil to our country, our economy will be flat on its back for a long while. We need to be less dependent on foreign oil. No. 2, there is something happening to our climate. We are not completely sure what that is, but I don't think there is any question that there is a wide scientific consensus that something is happening to the global climate.

We should work on both, no question about that. But there is a practical limitation of what we will be able to consider and do between now and the end of this year. I have said previously that I support a cap on carbon. I support pricing carbon. I have said I will not support what is called classic cap and trade, which would serve the interests of Wall Street by creating a $1 trillion carbon securities market so they can trade carbon securities on Monday and Tuesday and tell us what the cost of our energy is going to be on Thursday and Friday. I have no interest in doing that, nor would I support it. But there are ways for us to price carbon and to restrict carbon. I understand that.

The question has lingered now about a piece of legislation that came out of the Energy Committee 1 year ago this month. We had 12 weeks of markup. It was a very difficult markup. We passed, at the conclusion of the markup, a bipartisan piece of energy legislation that advances our country's energy interests and will make us less dependent on foreign oil. It will substantially reduce carbon emissions because it will dramatically change the amount of production that comes from renewable energy, wind, solar, biomass, and so on.

For a year we have now waited for that legislation to come to the floor. It has not come to the floor because some say: If we can't do comprehensive climate change legislation, then we don't want to do any legislation. Even that which would reduce carbon, even that which would substantially increase production from sources of energy where the wind blows and the Sun shines so we can collect this energy and put it on a grid.

It does not make any sense, that we would not consider a bipartisan energy bill and end this year having failed to address something that, A, was bipartisan, and B, will in fact reduce carbon and will give us an opportunity to be less dependent on foreign oil. That makes no sense, not to be able to take advantage of that kind of success.

It seems to me there are not 60 votes in the Senate to bring up a comprehensive climate change bill in June or July of this year. I know some people will have heartburn when I say that. I just think that is the case. If that is the case, let's not block a bipartisan energy bill that does address production, efficiency, and a lower carbon future.

We need to produce more in this country. We need to save more, that is, conserve more. Even as we do that, we

need to produce more energy in a different way—wind energy, solar energy, the biofuels, obviously, that are renewable and, generally speaking, reduce carbon.

Building an interstate highway of transmission capability is essential because it is not the case that all people live in areas where they get the best sunshine or the most significant amount of wind. If we are going to get the most energy available from wind and solar, we need the kind of transmission that is capable of getting the wind energy and solar energy and then moving it to where it is needed.

The building efficiency plan that contains the best and quickest capability for saving energy is also in the bill we have written.

We will and we should produce more domestic oil. We are doing unbelievable things in new kinds of horizontal drilling. The Bakken shale in my State is the largest assessed reserve of recoverable oil ever registered in the history of the lower 48—just in the last 2 years—up to 4.3 billion barrels of technically recoverable oil.

Coal development, including carbon capture and sequestration, an especially beneficial use of carbon—all of that is capable of being done; and, yes, some nuclear energy. I support loan guarantees for nuclear plants, like requested by the Administration.

I think all of this is capable of being done in a way that reduces our dependence on foreign oil and is good for our economy. I understand change is hard and that is never demonstrated more concretely than in this Chamber. Change is very hard. I mentioned some while ago that a man named Rudolf Diesel showed up at the World's Fair in Europe about 110 years ago. Rudolf Diesel showed up with a new engine which we now know as the diesel engine. He was very proud of the engine he had developed, and it ran on vegetable oil. Yes, that was 110 years ago. Rudolf Diesel's new engine ran on vegetable oil. Most of what we can and should and I hope will do, does not need to represent a new idea.

Ninety-seven percent of our transportation sector runs on oil. So Senator ALEXANDER, myself, and Senator MERKLEY have just introduced the electric drive transportation bill. We are moving toward electric drive vehicles, and we are establishing the capability of demonstration cities for infrastructure and all the things that are necessary, including battery investment and so on. I think ultimately we will have a 400- or 500-mile battery in vehicles that are electric drive vehicles.

Think of the changes in transportation, and it is pretty unbelievable. Nobody knows exactly what the future is going to hold, but we either decide to make that future or we just let it happen. I am a big believer in making it happen. In 1935, it took 3 weeks to go from Chicago to New York. Twenty-five years later, it took 3 days by railroad, then the cars, and then the jet airplanes, and all of a sudden things changed dramatically.

From the Roman legions time until when Lewis and Clark came and spent the winter in North Dakota on their wonderful expedition, there was no change to speak of in travel. One could travel as fast as a horse or a river stream could take them, and that was it. All of a sudden, in the last century, century and a half, things have exploded. But it has required a great deal of energy.

So the question is, What kind of energy? How do we produce it? What makes us less dependent, for example on foreign oil, so we do not find ourselves, at some point, tipped over in an economy that cannot work because we do not have the energy? How do we address the energy issue, still paying attention to the issue of climate change? Those are the issues.

As I indicated, very few people can see the future. In fact, most people are skeptical about anything. They say Fulton, when he developed the steam engine—he apparently was with Napoleon, talking to Napoleon about his idea—and Napoleon said: Are you kidding me?

He probably did not quite say it that way. He said: You are saying you are going to make a boat sail against the wind by putting a fire under its deck? I don't think so. That was Napoleon's response to Fulton.

Or Einstein said: There is no evidence whatsoever that nuclear energy will ever be achievable. I do not know, has anybody ever said Einstein lacked clarity about the future?

David Sarnoff once famously said about the wireless music box, which we now call the radio: Who on Earth would pay for someone to send a message that goes to no one in particular? Or Harry Warner who said: Who would pay to hear actors talk? So much for prognosis. Watson, at IBM, said he thought there was a market worldwide for about five computers. That was his assessment.

So it is very hard to predict the future. No one can see very far. The question, it seems to me is: Are we going to decide reasonably what we want our future to be, with new technology—perhaps using old technology—and move there, or are we just going to sit around and let things happen?

That is why this Energy bill is so important. We are charting a new path. RES—we say we want 15 percent, and if we can get the bill to the floor, I am going to offer an amendment for 20 percent. We want 20 percent of all electricity produced in America coming from renewable sources. Driving renewable energy will make us less dependent on foreign oil.

I also support domestic production of oil and gas and domestic production of coal. By the way, coal is one of the most significant quantities of resources in our country for energy, and there is great concern because it produces carbon when you burn it, and that is tough for the environment and goes against the issue of the global climate change matter. So what do we do about that? Well, one of the things I am convinced we can do is understand that carbon is a product, not just a problem.

What can we do with carbon? Well, we can produce fuel with carbon. We have work going on at Sandia National Laboratories that uses a heat engine. You put CO_2 in one side and water in the other side, and you fracture the molecules and chemically recombine them, and you produce fuel. So take carbon and air and produce fuel, along with some water.

I do not think these problems are unsolvable. But in order to get there, we have to get this Energy bill to the floor of the Senate, and it has now been 1 year. I noticed this morning there were 15 or 20 of my colleagues who said: If a bill does not contain climate change, we would not support any bill coming to the floor.

Well, do you know what? Climate change means you want to reduce carbon to try to protect our environment. How do you reduce carbon? With the very kinds of policies that exist in this Energy bill, and we have done it on a bipartisan basis.

So my hope is, in the next couple of weeks or so, that we might finally, at last—at long, long last—get to the point where we are bringing up a piece of legislation that is out of the committee, that is bipartisan, that will protect our environment but, most importantly, will invest in virtually every form of energy production and conservation and make us less dependent—much less dependent—on foreign oil.

That ought to be the goal of all Americans. We do not think much of it, we do not talk much about it because we just assume energy is going to be a part of our lives beginning tomorrow morning. We get up in the morning, we turn off the alarm—that was electricity—we turn on the light—that is electricity—make a piece of toast—that is electricity—get a cup of coffee—that is electricity—take a shower—that is electricity to heat the water. We get in the car and turn the key to start the engine—that is oil.

The fact is, we use energy in a prodigious way all day long and never think much about it. But if, God forbid, tomorrow morning something happens that shuts off the supply of foreign oil to this country, our economy would be in deep, desperate trouble. We would be smart, we would be wise, to understand that over dependence, that excessive dependence on foreign oil, is a detriment to this county's future. We better get about the business of trying to address it. There is a way to do that, and a way to do that at the same time that is very helpful to this country's environment by restricting and limiting CO_2 emissions because we are going more and more toward the development of renewable sources of energy for the future.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

GULF OILSPILL

Mr. LEMIEUX. Mr. President, I just want to make some brief remarks this afternoon concerning the ongoing tragedy in the Gulf of Mexico and the Deepwater Horizon response.

Sixty-one days ago is when the tragedy started. We are here, 61 days later, and we still have this tremendous pouring of oil from the bottom of the sea floor into the Gulf of Mexico. In fact, the amount of oil that is coming into the gulf now equals the size of the Exxon Valdez oilspill every 2½ days.

Yet while this oil continues to gush, and while we have hope that the containment dome will capture more and more of this oil as it comes from the bottom of the ocean, we are still seeing a weak, at best, response from the Federal Government in trying to keep this oil from coming ashore.

Last week—a week ago tomorrow—I met with the President of the United States and Admiral Allen in Pensacola. At the same time, I raised the issue of skimmers. Why are there so few skimmers in the Gulf of Mexico? Why were there only, at that time, 32 skimmers off the coast of Florida? The President and Admiral Allen told me they were making every effort they could to get more skimmers to the gulf and that they were welcoming skimmers from foreign countries coming to our country to aid in the effort.

I told them at that time there was a State Department report saying that 21 offers of assistance have been made from 17 foreign countries, and they had been refused. I was informed back that, no; that is not the case and in fact we are using skimmers from foreign countries. I came to find out, through discussions with my office, there are still offers and there have been offers from foreign countries for skimmers and, in fact, those offers were refused.

I will come to the floor tomorrow to talk about that in more detail.

But the state of affairs is there are now only 20 skimmers off the coast of Florida, when there were 32 last week. There are now just 20, while there are 2,000 skimmers available in the United States alone. That number comes from Admiral Allen. I spoke to Admiral Allen last week, along with my colleague from Alabama, Senator SESSIONS, and we said: Where are the skimmers?

I showed him information like I have today, which is the Deepwater Horizon response report from the incident command in the State of Florida. Then it showed 20 skimmers. Today it still shows 20 skimmers.

I asked him to reconcile this for me. If we are asking for all these skimmers, if we are calling for all of them to come here, where are they? The response is anemic at best. So today I have sent a letter to Admiral Allen asking for an inventory of the 2,000 skimmers that he has said are available in the United States of America.

When I talked to the President and Admiral Allen about this last week, they said: Look, some of these skimmers are not available because we may need them for an oilspill. Well, we have an oilspill. Just because they may be required to stand on watch somewhere in case an oilspill happens someplace else, that is like saying to the people of Pensacola: Your home is on fire, but we can't send the fire engine because there may be a fire someplace else. It does not make any sense.

So, Mr. President, I ask unanimous consent that this letter be printed in the RECORD, as well as this report from the State of Florida about the 20 skimmers off the coast of Florida.

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

U.S. SENATE,
Washington, DC, June 21, 2010.

Admiral THAD W. ALLEN,
Commandant, U.S. Coast Guard,
Washington, DC.

I am tremendously concerned over the lack of skimmer vessels responding to the Deepwater Horizon disaster in the Gulf of Mexico. It is clear that we are facing a disaster of unprecedented size that requires a response with an unprecedented scope. As a result, every available skimming resource should be responding to the Gulf to combat the encroaching oil that is befouling Gulf beaches—including Florida's.

As of June 20, there were only 20 skimmers responding to the oil spill in the waters off Florida's coast, yet you have stated that there are approximately 2,000 skimmers in the United States alone. For Floridians, these numbers do not add up.

I respectfully request that you provide me with a current inventory of all domestic skimmer vessels, including their current locations and operational responsibilities. Also, please detail whether each of these skimmers has been solicited by the Unified Command to assist in the ongoing oil response.

Also, I am troubled by the apparent lack of communication between the Unified Command and elected officials regarding the actual location of skimmers responding in the Gulf on a daily basis. As a result, I respectfully request a daily update via e-mail as to the number and location of skimmers throughout the Gulf region and specifically off Florida's shores.

More and more environmental and economic damage is being wrought on the Gulf with each passing day. These damages should not be further exacerbated by a lack of appropriate response vessels or poor communication between response leaders. I appreciate your continued leadership in this unprecedented effort and look forward to your prompt response.

Sincerely,

GEORGE S. LEMIEUX,
U.S. Senator.

DEEPWATER HORIZON RESPONSE

Charlie Crist
Governor

David Halstead
State Coordinating Officer

Snapshot Report # 32
Monday, June 21, 2010 at 0900 hrs EDT

Mobile Unified Command Boom Operations:

Tier	Proposed/ Need	Deployed	Staged	Shortage	Percent Under
1	303,600	194,700	57,350	51,550	16.98%
2	280,100	132,800	0	147,300	52.59%
Total	583,700	327,500	57,350	198,850	34.07%

County Contracted Boom Tier 3 Totals:

County	Deployed	Proposed	Staged
Escambia	20,000	N/A	0
Santa Rosa	12,100	N/A	0
Okaloosa	36,500	N/A	0
Walton	0	N/A	0
Bay	85,500	N/A	9,961
Gulf	0	N/A	11,700
Franklin	0	139,800	98,600
Wakulla	N/A	71,500	0
Jefferson	N/A	18,835	0
Taylor	N/A	N/A	N/A
Total	154,100	230,135	120,261

Vessel Assets Deployed:

Type	Working	Staged	Ordered	Location Deployed
Off-Shore Skimmer	111 (9 are skimmers)		2	*TF 701*- Chandler Islands, Ala to 3NM off FLA *TF 702*- 20NM off FLA shore *TF 703*- Chandler Islands, Ala to 3NM off FLA *TF 704*- Chandler Islands, Ala to 3NM off FLA *TF 705*- 2-10NM off Panama City
Near Shore Skimmer	37 (11 are skimmers)	0		*TF1*- Destin - Panama City *TF3*- Pensacola-Destin *TF4*- Perdido Pass *TF5*- Petit Bois Island
Total	148	0	2	

Vessels of Opportunity (VOO):

VOO LSA	Off Shore Assets	Near Shore Assets	FLA Assets	Total VOO Assets	Deployed VOO Assets
Pensacola	75	40	80	195	381 74 using Sorbent, Snare & Containment
Destin	200	100	112	412	
Panama City	153	60	84	297	
Port St Joe	100	50	42	192	
Apalachicola	100	50	37	187	
Carabelle			12	12	
Total	628	300	367	1295	

Product Collection at Source:

06-20-10	Enterprise	Q4000	Total
Oil	14,574	8,716	23,290
Gas	32.5	15.8	48.3

BP Reported FLA Product and Trash Recovered:

Staging area	Daily Product	Cumulative Total
Pensacola	13.81	141.97 tons
Panama City	0	1.46 tons
Total	13.81	143.43 tons

Small Business Administration Loan Applications:

Issued	Accepted	Declined	Approved
382	95	17	5
Loan amount approved: $255,000.00			

Clean-up Teams:

Team	Personnel	Staging Location
Emergency Response Team (USCG)	18	Pensacola
Emergency Response Team (USCG)	9	Panama City
Emergency Response Team (USCG)	9	Port St. Joe
Total	36	

(BP) Contractor Personnel	Personnel	Staging Location
Beach cleanups	1621	Pensacola, Panama City
Qualified Community Responders	313	Pensacola, Panama City
Gross Vessel Decon	27	Pensacola
	27	Panama City
Boom Operations	541	Pensacola, Panama City
Total	1955	

SCAT Teams:

Team ID	County
SCAT 4	Escambia
SCAT 6	Escambia
SCAT 7	Okaloosa
SCAT 9	Bay
SCAT 10	Walton

County EOC Activations:

County	Activation Level
Escambia	2
Santa Rosa	2
Okaloosa	2
Walton	2
Bay	2
Gulf	2
Franklin	2
Wakulla	2

Recon Teams:

County	ATVs Staged	ATVs Deployed
Escambia	0	7
Santa Rosa	0	1
Okaloosa	0	5
Walton	0	4
Bay (FWC)	0	5
Gulf (FWC)	0	2
Franklin	0	1
On Stand-By	7	0
Total	7	25
County or Agency	**Resources Staged**	**Resources Deployed**
Walton	0 – Command Bus	1 – Command Bus
FWC	0 – Boats	42 – Boats
FWC & CAP & USCG	1 – Planes	3 – Planes
FWC	0 – Helicopters	3 – Helicopter
FLNG	0 – Planes	2 – Planes
FLNG	0 – Helicopter	2 – Helicopter

State Personnel:

Area Of Operation	DEM	DEP	FWC	DOT	DMS	AWI	DOH	DOF	FLNG	CAP	SMT	INT
SEOC	30	2	6	1	2		27	2	47	9		5
Mobile	7	4	3	1	1	1	1		2		7	6
Panhandle	3	40	85									
Peninsula	1											
Total	41	46	94	2	3	1	28	2	49	9	7	11

BP Claims:

BP Claims in Florida	Claims	Approx. Paid
Grand Total	*17,083*	$15,221,896.03
One claimant has one claim which may have multiple events		

Recovered Oiled Wildlife:

	Recovered alive*	Released	Died or euthanized	Still in Rehab	Recovered dead
6/20/10	1		0	28	0
Total #	58	2	27		38

*Does not include marine mammals or turtles. (2 live visibly oiled sea turtles have been rescued)
*Primarily northern gannets and brown pelicans, pied-billed grebes.
See the consolidated wildlife report updated by noon each day:
http://www.deepwaterhorizonresponse.com/go/doctype/2931/55963

Mr. LEMIEUX. I again call for the fact that every skimmer in the world that is available should be welcomed by this government. They should be steaming toward the Gulf of Mexico, and we should be doing everything we can to make sure we are cleaning up this oil before it gets on our beaches, before it gets into our estuaries and our coastal waterways. It is beyond belief we are not doing more. It is beyond belief this administration has no sense of urgency about stopping the oil from coming ashore.

I ask, Mr. President—and I will continue to come every day to the floor to ask the question—where are the skimmers? Where is the help? Where are the domestic skimmers? Why aren't we doing the job we should for the American people to protect our beaches, our waterways, and our estuaries?

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I see our distinguished colleague from Pennsylvania on the Senate floor, and I know he expects to speak for a little more extended time. He has graciously allowed me to go first.

NOMINATION OF ELENA KAGAN

Mr. CORNYN. Mr. President, I rise to speak briefly on the nomination of Elena Kagan to the U.S. Supreme Court. Of course, this vacancy is being left by the retirement of Justice John Paul Stevens.

The President has the constitutional prerogative to nominate whosoever he chooses, but it is important to recognize the Constitution does not stop there. It also provides a second constitutional obligation or responsibility, in this case upon the Senate, when it comes to the duty of advice and consent.

We know there are only nine Justices on the U.S. Supreme Court and that each has that job for life. It goes without saying—or it should, I would add—that the process in the Senate must be fair and dignified. I wish I could tell you it has always been that way, but I believe the confirmation process of Judge Sotomayor to the U.S. Supreme Court was conducted in that way, and I certainly believe so will this confirmation process as well. But in addition to being fair and dignified, it must also be careful, thorough, and comprehensive.

Our job is particularly difficult because of the fact that Solicitor General Kagan has never been a judge. She is a blank slate in that regard. We do not have any prior opinions to study. While that is not unprecedented, it is somewhat unusual for someone to come to the U.S. Supreme Court without ever having served as a judge. In addition, we know General Kagan has practiced law only very briefly. She was an entry level lawyer in a Washington law firm for about 2 years and then, of course, last year she was chosen by the President to be Solicitor General at the Justice Department. But that brief experience tells us virtually nothing about how she would approach cases as a member of the U.S. Supreme Court.

What we do know about Elena Kagan begins, and largely ends, with her resume. We know the jobs she has held. We know the positions she has occupied and the employers she has chosen to work for. A review of her resume shows us two things. First, Ms. Kagan is very smart. Her academic records are impressive. Second, we know Ms. Kagan has been a political strategist for a quarter of a century, but she has never been a judge. We know she has served extensively and repeatedly as a political operative, adviser, and a policymaker—quite a different job than that she would assume should she be confirmed.

We know General Kagan's political causes date back to at least college, when she volunteered to help a Senate candidate in her native State of New York.

We know that after law school, she worked for two of the most activist Federal judges in the 20th century, Abner Mikva and Thurgood Marshall. Justice Marshall often described his judicial philosophy as ''do what you think is right.'' I wish he had mentioned something about applying the law, but he said to do whatever you think is right. Elena Kagan has called Justice Marshall her judicial hero.

We know that Solicitor General Kagan volunteered for a time in the Michael Dukakis campaign for President in 1988, where she did opposition research.

We know that a few years later, Ms. Kagan advised then-Senator JOE BIDEN during the nomination of Ruth Bader Ginsburg.

We know General Kagan gave up her teaching job to work at the Clinton White House where she was a leading policy adviser on many of the hot button issues of the day. She was a deputy assistant to the President on domestic policy. She was a deputy director of the Domestic Policy Council. During that time, she was a leading policy adviser on a number of controversial issues regarding abortion, gun rights, and affirmative action.

After she left the Clinton White House, Ms. Kagan's political skills helped her become dean of the Harvard Law School and, by all accounts, she was successful in that job as an administrator and as a fundraiser. The one clear legal position she took as dean was her position against military recruiters that the Supreme Court rejected 9 to 0.

Solicitor General Kagan returned to government a year ago when she became Solicitor General following the election of her friend Barack Obama.

Ms. Kagan's resume shows that she is very comfortable in the world of politics and political campaigns. She has worked hard as a policy and political strategist in some very intense political environments. As a policy and political adviser, her record indicates she has been successful.

The question raised by this nomination, though, is whether Elena Kagan can step outside of her past role as political adviser and policy strategist in order to become a Federal judge. I have had the honor of being a State court judge and I know firsthand that being a judge is much different from being a political strategist. The job of a political strategist is to help enact policies. The job of a judge is to apply the law wherever it takes them.

The goal of a political adviser is to try to win for your team. On the other hand, a good judge doesn't root for or fight for a team but, rather, is impartial or, as sometimes stated, is disinterested in results, in winners and in losers.

The important question is whether Solicitor General Kagan can and will set aside her considerable skills as a political adviser to take on a very different job as a neutral judge. Will she apply the law fairly, regardless of the politics involved? Will Solicitor General Kagan appreciate the traditionally narrow role of a judge who must apply the law rather than the activist role of a judge who thinks it is proper to make up the law? Can she make the transition from political strategist to judge?

The hearings on Ms. Kagan's nomination are 1 week from today. I hope the hearings will be a substantive and meaningful opportunity for Elena Kagan to explain how she plans to make that shift from political strategist to judge. Because she has never been a judge, the hearings will be a chance to learn about what she expects her judicial philosophy and approach will be.

Every candidate for the Supreme Court has the burden of proof to show they are qualified to serve on the Supreme Court. Most nominees have a much longer record, including a record of judicial service, which could help satisfy that burden of proof, but not so in Ms. Kagan's case. Given Ms. Kagan's sparse record, however, the hearings themselves must be particularly substantive.

In 1995, then-Professor Kagan gave advice in a Law Review article to the U.S. Senate on how to scrutinize a Supreme Court nominee. She wrote that the ''critical inquiry'' must be ''the perspective [the nominee] would add'' and ''the direction in which she would move the institution.''

I agree. Given Solicitor General Kagan's sparse record and her lack of judicial experience, it is important that the hearings be an opportunity to fill in the blank slate that is Elena Kagan.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

SEPARATION OF POWERS

Mr. SPECTER. Mr. President, I have sought recognition to again alert my

colleagues to what I consider to be a very important matter, and that is that the Supreme Court of the United States is materially changing the traditional separation of powers and that, as a result, the Congress of the United States continues to lose very substantial power in the Federal scheme under the Constitution of the United States. This is a theme I have submitted over the course of the last 30 years, since 1981, with the confirmation proceedings of Justice Sandra Day O'Connor. And in now the 12th proceeding that I will personally have participated in, I raise this issue again to urge my colleagues to take a stand.

The only opportunity we have to influence the process is through the confirmation of Supreme Court Justices. But we have witnessed a series of cases where instead of the traditional doctrine of separation of power, there has been a very material concentration of power which has gone principally through the Court and secondarily to the executive branch.

The Framers put the Congress under Article I. It was thought at the time the Constitution was adopted that Congress would be the foremost branch representing the people. The executive branch is Article II, and the judiciary branch is Article III. Were the Constitution to be written today, I think we would find the course inverted. But what we have seen here is that recent decisions of the Supreme Court have abrogated the traditional deference given by the judicial branch to findings of fact and the determination of public policy arising from what Congress finds in its extensive legislative hearings, with the Court substituting its judgment with a variety of judicial doctrines. During the confirmation process where we examine the nominees, we continue to receive lip service about congressional authority but, once confirmed, we find that the nominees have a very different attitude and engage in very substantial jolts to the constitutional law in effect.

The generalized standard for what would be the basis for upholding an act of Congress was articulated by Justice Harlan in Maryland v. Wirtz in 1968 interpreting the commerce clause, saying:

> Where we find that the legislation as a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end.

That is the general legislative standard which had been adopted by the Court in reviewing acts of Congress until the case of City of Boerne v. Flores in 1997. There, the Supreme Court adopted a new standard. They articulated it as congruence and proportionality, with the Supreme Court of the United States reviewing the act of Congress to decide whether it was congruent and proportional to what the Congress sought to achieve, and that entailed an analysis of the record, giving very little deference to what Congress had found.

On its face, the standard of congruence and proportionality suggests that the Court can come out anywhere it chooses. That was the view of a very strong dissent by Justice Scalia in a subsequent case, where he said:

> The congruence and proportionality standard, like all such flabby tests, is a standing invitation to judicial arbitrariness and policy-driven decisionmaking.

So that when you take a standard of that sort and undercut the traditional deference to congressional fact-finding, you end up with the Court making law instead of interpreting law. Under that decision, we have seen a whole torrent of Supreme Court decisions declaring acts of Congress unconstitutional. Illustrative are the Morrison case, involving the Violence Against Women Act, the Garrett case under the Americans With Disabilities Act, and repeatedly the issue was undercut.

As a result, in the confirmation hearings, many of us—this Senator included—sought to establish an understanding of a nominee's approach to giving the deference to congressional findings. Illustratively—and I have spoken on this subject before—Chief Justice Roberts and Justice Alito used all the right language, but when we find the application of the language, they have done a reverse course. Justice Roberts spoke eloquently about the need for modesty and for the Court not to jolt the system, but to follow stare decisis. With respect to fact-finding, this is what Chief Justice Roberts had to say in his confirmation hearing:

> I appreciate very much the differences in institutional competence between the judiciary and the Congress when it comes to basic questions of fact finding, development of a record, and also the authority to make the policy decisions about how to act on the basis of a particular record. It's not just disagreement over a record. It's a question of whose job it is to make a determination based on the record. . . . [A]s a judge, you may be beginning to transgress into the area of making a law . . . when you are in a position of re-evaluating legislative findings, because that doesn't look like a judicial function.

So there you have a very flat statement by the nominee saying that it is not the Court's role to transgress into the area of lawmaking, which is what does happen in reevaluating legislative findings.

Justice Alito said about the same thing. This is his testimony in his confirmation hearing:

> I think that the judiciary should have great respect for findings of fact that are made by Congress. The judiciary is not equipped at all to make findings about what is going on in the real world—not these sort of legislative findings. And Congress, of course, is in the best position to do that. Congress can have hearings and examine complex social issues, receive statistical data, hear testimony from experts, analyze that and synthesize that, and reduce that to findings. And when Congress makes findings on questions that have a bearing on the constitutionality of legislation, I think they are entitled to great respect.

The decision in Citizens United found the Court reversing recent decisions in the Austin and McConnell cases. Instead of giving the deference to the congressional findings, which was articulated by Chief Justice Roberts and Justice Alito, they did an about-face.

In raising this consideration, I do not challenge the good faith of Chief Justice Roberts or Justice Alito. I recognize and acknowledge the difference between testifying in a confirmation hearing and what happens during the course of a decision when deciding a specific case in controversy. But when we take a look at what happened in Citizens United—and again, this is a matter of the illustration—we have the enormous record that was created by the Congress in enacting McCain-Feingold and the findings of fact there to support what the Congress did, which was invalidated by the Supreme Court of the United States in Citizens United, which upset 100 years of precedent in allowing corporations to engage in political advertising.

The scope and detail of the congressional findings were outlined by Justice Stevens in his dissenting opinion in Citizens United. The statement of facts by Justice Stevens on commenting on the record is not a matter of disagreeing on opinions. People are entitled to their own opinions but not to their own facts, as has been reiterated so frequently. This is what Justice Stevens noted on the congressional fact-finding:

> Congress crafted in the McCain-Feingold legislation ''in response to a virtual mountain of research on the corruption that previous legislation failed to avert.'' The Court now negates Congress's efforts without a shred of evidence on how section 203 or its State law counterparts have been affecting any entity other than Citizens United.

Justice Stevens said this to emphasize not only that the Court's holding ran counter to outstanding congressional judgment but also ''the common sense of the American people,'' who have recognized a need to prevent corruption from undermining self governing since the founding and who have fought against the distinctive corrupting potential of corrupt electioneering since the days of Theodore Roosevelt.

Justice Stevens went on to point out that the record compiled in the context of the congressional legislation was more than 100,000 pages long. He noted that judicial deference is particularly warranted, whereas here we deal with the congressional judgment that has remained essentially unchanged throughout a century of legislative adjustment.

Now, as a result of what happened in Citizens United, we found that, illustratively, Chief Justice Roberts did substantially differently when on the Court in contrast with what he did in his confirmation hearing. In the confirmation hearing, Chief Justice Roberts did acknowledge that the act was a product of an ''extraordinarily extensive legislative record.''

''My reading of the Court's opinion,'' Chief Justice Roberts went on, ''is that

was the case where the Court's decision was driven in large part by the record that had been compiled by Congress. The determination there was based on the extensive record carrying a lot of weight with the justices.''

The matter was particularly problemsome. As Justice Stevens noted:

The Congress relied upon the decision of the Supreme Court in the Austin case.

Stevens noted that overruling Austin was especially significant because Congress had specifically relied on that decision in drafting the McCain-Feingold Act.

So essentially what you have here is relatively recent decisions by the Supreme Court of the United States in Austin and McConnell. You have a very extensive congressional record, which sets forth the factors about the need to avoid corrupt practices and electioneering brought about by money and, beyond the actual corrupt practices, the appearance of corruption, and the legislative effort to set this kind of a factual basis. And you have Justices in confirmation hearings committing to respecting and being deferential to congressional findings. But when the decision comes, 100 years of precedent is overturned. You don't have a modest decision; you have a decision which jolts the system.

It is a difficult matter where we proceed candidly as to where we go beyond getting the most positive assurances we can from the nominees. I suggest to my colleagues that when we begin the confirmation process with Solicitor General Kagan next week, this should be a focus of attention because what is happening is that the power of Congress is being diluted. If you have legislative findings that go for 100,000 pages and then you have Justices who have under oath said that they will give deference to congressional findings; you have Congress enacting the McCain-Feingold law based upon the standards set by the Supreme Court of the United States in the Austin case; you have the relatively recent precedents of Austin and McConnell, for instance, the Federal Election Commission; and then you have a case like Citizens United coming down, that ought to be a sharp focus of attention.

My sense is that the reality is that this body and our counterpart across the Rotunda pay relatively little attention to what the Supreme Court of the United States does. They have the final say. It is often noted that they are right only because they are final. When we have an opportunity, through the confirmation process, to focus on these issues, I suggest to my colleagues that it is high time we do so.

There is a second area where the authority of Congress has been very materially undermined. It has been where the Supreme Court of the United States declines to decide cases. We have a situation where the Court hears and decides relatively few cases. This is against the backdrop where, historically, the Supreme Court of the United States decided many more cases. Going back to 1886, the Supreme Court of the United States had on its docket 1,396 cases and decided 451 cases. In 1987, the Supreme Court issued 146 majority opinions. In 2006, less than 20 years later, the Supreme Court heard arguments in only 78 cases and handed down opinions in only 68 cases. A year later, 2007, the Supreme Court heard arguments in 75 cases and handed down opinions in only 67 cases. In 2008, arguments in 78 cases, decisions in 65 cases. This is in a context where Chief Justice Roberts testified in his confirmation hearing that he thought the Court ought to hear more cases.

In a letter I will submit for the RECORD, there is a detailing of the tremendous number of important circuit splits where the Supreme Court of the United States does not decide which circuit is correct or you have one circuit deciding a case one way or another circuit deciding a case another way, and then the situation arises in yet a third circuit, and there is no guiding precedent. There is confusion, and I suggest that the Court really has the duty to take up these circuit splits and make a definitive decision so that the law is clarified, so that litigants and lawyers can know where the law stands on a specific case. Stated simply and directly, the Court is not too busy to take up these circuit splits.

There are other major cases where the Court declines to hear cases, which I respectfully submit that the Court ought to hear. Illustrative of one of the major constitutional conflicts in the history of the United States has been the controversy over warrantless wiretaps. You have the Foreign Intelligence Surveillance Act of 1978, which in very emphatic terms says the exclusive way a wiretap may be obtained would be through a warrant, where the Federal investigative authorities filed an affidavit of probable cause with a Federal judge or a Federal magistrate, and only after that permission is granted may the wiretap be activated. That is to protect the very basis of privacy and the very strong interdiction of the Fourth Amendment to the U.S. Constitution, which prohibits unreasonable search and seizure.

It has been 5 years since it was disclosed that the executive branch, under the so-called Terrorist Surveillance Program, was undertaking warrantless wiretapping. The activity was being undertaken under the contention that the President had power as Commander-in-Chief, executive authority under Article II to disregard the act of Congress.

It is standard hornbook law. The Congress cannot legislate in violation of the Constitution. But if, in fact, the President of the United States, under certain circumstances, has the authority as Commander-in-Chief to engage in conduct, Congress may not proscribe it, may not eliminate it, may not limit the power of the President that the President has under constitutional authority.

But 5 years have passed and there has been no decision in the case. A Federal district court judge in Detroit declared the act unconstitutional. The case was appealed to the Court of Appeals for the Sixth Circuit, and in a 2-to-1 decision the court decided that there was no standing, which is a popular doctrine for declining to hear a case and ducking the issue.

I believe any fair analysis of the opinion of the court of the dissenting opinion gave much additional weight to the dissenters or, in any event, a very close question, one of paramount importance that ought to have been decided by the Sixth Circuit.

The case was then taken to the Supreme Court of the United States, which denied certiorari. Those issues are still very much in play.

In a case in the U.S. district court in San Francisco, Judge Vaughn Walker has declared the act unconstitutional. It is questionable whether that is a final ruling in the case. But the Supreme Court of the United States, with as many law clerks as they have—four and five each; many more than they have had in earlier days—and with the very light docket they have, there is no reason that a case such as the Terrorist Surveillance Program should not be adjudicated by the Supreme Court so we would know what the law was on that subject.

Another case which I have spoken about on the floor of the Senate involves the litigation brought by survivors of the September 11 attacks on the United States where some 3,000 people were killed. A lawsuit was begun to get damages from the Government of Saudi Arabia, from five Saudi princes, from a Saudi charitable organization which was an instrumentality of the government, and other defendants.

The Congress of the United States in the sovereign immunity law specifically decided that the sovereign should not have immunity in any case where there was a domestic tort involved, such as the conduct involved in 9/11.

The Court of Appeals for the Second Circuit decided the legislation did not apply because it applied only in situations where a nation had been declared a terrorist state. That exception is nowhere in the statute. It had no place in the decision.

When application was made for certiorari to have the case considered by the Supreme Court, the Solicitor General's Office, headed by Solicitor General Kagan, took the position that the Second Circuit was wrong but urged the Court not to take the case on the ground that there were important foreign policy questions involved. Solicitor General Kagan took the position that where no acts occurred within the United States, the Foreign Sovereign Immunities Act did not apply.

Again, this reading was pulled literally out of thin air. Nothing in legislative history or background would

suggest that the victims of 9/11 ought not have a case against the Government of Saudi Arabia and the princes and the charitable organization, an instrumentality of the state. Under those circumstances, no distinction between the acts occurred, but there was plenty of repercussion and plenty of consequence from that tortious conduct when America was attacked. Here the Supreme Court of the United States has denied to hear the case, which leaves the Congress subservient to the executive branch.

The business about being deferential to foreign powers, in my judgment, is not an adequate basis for disregarding the legitimate claims of the people who were killed on 9/11, not sufficient to disregard the congressional enactment which held that there ought not to be sovereign immunity where there is tortious conduct involved; that the doctrine of sovereign immunity ought to apply to commercial transactions but not to conduct such as was evidenced on 9/11.

Again, we have as an adjunct of what happens when the Court disregards congressional findings. You have the action of the Court in declining to hear cases such as the Terrorist Surveillance Program, such as the litigation brought by the survivors of the victims of 9/11 where the authority of Congress is materially undercut.

There has been other action taken by the Supreme Court of the United States. It is hard to pick the description which is sufficiently forceful, whether it is surprising or whether it is astounding. But litigation was brought in a case captioned McComish v. Bennett where the district court in Arizona held that Arizona's Citizens Clean Elections Act was unconstitutional.

In that case, the State of Arizona had decided to provide for matching funds in order to deal with the problems of campaign financing, trying to deal with the issues of corrupting influence of money, both the fact of corruption and the appearance of corruption.

I am not going to take the time now to go through the long list of cases where Members of Congress have been convicted of illegal campaign contributions which rose to the level of being a quid pro quo and a bribe. But the Federal district court in Arizona said the Arizona legislation, captioned the Citizens Clean Elections Act, was not supported by a compelling State interest, not narrowly tailored, and not the least restrictive alternative and, therefore, was unconstitutional under the First Amendment.

The Court of Appeals for the Ninth Circuit reversed saying there was an ample record to support the legislative enactment.

On June 1 of this year, 20 days ago, the Supreme Court of the United States denied an application to vacate the stay. The Court of Appeals for the Ninth Circuit had stayed the decision of the district court so that the Arizona elections could go forward pursuant to the Arizona Citizens Clean Elections Act.

When the Ninth Circuit heard the case, the Ninth Circuit issued a stay that stopped the carrying out of the district court decision on unconstitutionality so that the elections in Arizona this year could proceed under that act. The losing parties in the Ninth Circuit decision then applied to the Supreme Court to eliminate the stay so the district court opinion would remain in effect.

The Supreme Court, on June 1, denied the application to vacate the stay ''without prejudice to a renewed application if the parties represent that they intend to file a timely petition for a writ of certiorari.''

A week later, the Court reversed course and granted the application to vacate the stay on the district court's injunction ''pending filing and disposition of a petition for writ of certiorari.''

This is complex legalese, but what it does is reinstate the conclusion of the Federal district court in Arizona that the Arizona law is unconstitutional and may not be enforced.

It is a little hard to fathom how the Court can do that without even the filing of a petition for a writ of certiorari.

What we essentially have is the Supreme Court was deciding the Arizona case without the submission of a petition for a writ of certiorari, without following the rules of the Supreme Court for the filing of briefs, or without an argument before a decision was made. It has all the earmarks of a flagrant denial of due process of law.

It is true technically that the Supreme Court may reverse and remand and enter judgment as they choose. But in a contest where the procedures are established, in case after case the practice of the Court—you want to have the Supreme Court of the United States review a case? File a petition for writ of certiorari. Then you have to prepare a brief, then you appear before the Court for argument, and then the Court makes a determination, after hearing the case, what ought to be done.

Here we have the Arizona elections disrupted by a conclusion of the Supreme Court of the United States. It is not even a judgment. It is a reinstatement of a stay.

We have the Supreme Court of the United States today on issues of enormous importance—the election of Federal, State, and local officials, an Arizona law trying to deal in a sensible way with the problems of having candidates spend so much of their time on electioneering. A recent study showed those of us in Congress spent about 25 percent of our time on raising money. I think that is a fairly realistic estimate. I think I saw an affirmative nod from the Presiding Officer, the Senator from Virginia.

I would say that is not much off the mark from my own experiences. My first campaign cost less than $2 million, and the last campaign cost some $23 million. We all have offices away from our office so we comply with the law which prohibits us from making telephone calls to raise money or undertaking any of it on Federal property. It takes a lot of time.

We have a number of former Members of Congress who are in jail today across this land, and we have a lot of public skepticism about the influence of money on congressional decisions. We had eight Members of the House of Representatives in one of the Hill newspapers last week about an investigation of a House Ethics Committee where there was an appearance of some issue where votes were changed in the wake of campaign contributions.

Here we have the Supreme Court eliminating the Arizona law without even having a hearing in the case but reinstating the stay. That is a subject I intend to ask Nominee Kagan about next week.

I have submitted a series of letters to Solicitor General Kagan, one dated May 25, one dated June 15, and I am sending another one today, and I ask unanimous consent to have printed in the RECORD the full text of these letters.

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

U.S. SENATE,
Washington, DC, May 25, 2010.

Hon. ELENA KAGAN,
Solicitor General of the U.S.,
Washington, DC.

DEAR SOLICITOR GENERAL KAGAN: At our meeting on February 4, 2009, your confirmation for Solicitor General was pending before the Senate. We discussed, among other things, two cases that raise important questions about Executive-branch incursions on Congress's law-making powers with respect to the jurisdiction of the lower federal courts: Weiss v. Assicurazioni Generali, S.P.A. (hereafter Generali), 529 F.3d 113 (2d Cir. 2010), and In re Terrorist Attacks on September 11, 2001, 538 F.3d 71 (2d Cir. 2008), cert. denied, 129 S. Ct. 2859 (2009) (hereafter 9/11 Litigation). I write to notify you of the topics I intend to cover at your upcoming confirmation hearing with respect to these and related cases.

HOLOCAUST LITIGATION (GENERALI)

This litigation was brought by victims of the Holocaust and their heirs to recover on unpaid World War II-era insurance policies issued by an Italian insurance company. Just a few months ago, the United States Court of Appeals for the Second Circuit affirmed the dismissal of the plaintiffs' claims on the ground that they were preempted by an Executive-branch foreign policy favoring the resolution of such claims through an international commission. The Second Circuit did so in reliance on the Supreme Court's decision in American Insurance Association v. Garamendi, 539 U.S. 396 (2003). There the Court held that this policy, though not formalized in an executive agreement or treaty, preempted a state law requiring insurers to disclose information about certain Holocaust-era insurance policies. The Court relied on cases addressing the preemptive effect of executive agreements purporting to settle claims of private litigants in federal courts. A post-Garamendi development of

note is the Court's decision in Medellin v. Texas, 552 U.S. 491 (2008), where the Chief Justice suggested that the executive branch could settle claims by executive agreement only in the face of acquiescence by Congress.

I intend to ask you, among other questions:

(1) whether you understand the Supreme Court's case law to require a finding of Congressional acquiescence as a condition of giving preemptive effect to an executive agreement;

(2) whether you agree with Justice Ginsburg's dissenting opinion in Garamendi (joined by Justices Stevens, Scalia and Thomas) that an Executive-branch foreign policy not formalized in a treaty or an executive agreement cannot preempt state law; and

(3) what considerations you would bring to bear in deciding whether to vote to grant certiorari in this case, if confirmed. (My office has been advised that a petition for certiorari will be filed soon.)

9/11 LITIGATION

This litigation was brought by over 6,000 victims of the September 11 terrorist attacks against, among other defendants, the Kingdom of Saudi Arabia and five Saudi princes. The plaintiffs pleaded various claims arising from their allegation that the defendants financed the attacks. None of these defendants, though, ever had to defend the case on the merits. The United States Court of Appeals for the Second Circuit ruled that they were immune from suit under the Foreign Sovereign Immunities Act (FSIA). The plaintiffs petitioned the Supreme Court for certiorari. You filed a brief on behalf of the United States urging the Supreme Court to deny the petition. The New York Times reported that your filing came less than a week before President Obama's trip to the Middle East to meet with Saudi Arabia's King Abdullah. See Eric Lichtblau, ''Justice Department Backs Saudi Royal Family on 9/11 Lawsuit,'' New York Times, May 30, 2009. The Court denied the petition.

One of the two key questions in the petition was whether, as the Second Circuit had held, the FSIA addressed the immunity of the Saudi officials. There is, as you acknowledged in your brief, a circuit split on the question: Some circuits have concluded that the FSIA governs the immunity of foreign officials, as distinct from foreign states. Others have concluded that their immunity is governed by non-statutory principles articulated by the Executive branch. The United States argued that the split was not worthy of the Court's review because the ''disagreement appears to be of little practical consequence.'' In earlier cases, however, the United States argued repeatedly that the distinction is indeed of practical consequence in numerous respects. And you have since filed a brief on behalf of the United States in Samantar v. Yousuf (No. 08–1555) urging the Court to hold that the FSIA does not displace ''principles adopted by the Executive branch'' governing the immunity of foreign officials.

The second of the questions raised was whether the defendants could be sued under the FSIA's domestic tort exception. That exception permits suits against sovereigns arising from injuries ''occurring in the United States and caused by the tortuous act or omission of the foreign state.'' 28 U.S.C. 1605(a)(5). You argued in your brief that the exception did not apply.

I intend to ask you, among other questions:

(1) whether you would have voted to grant certiorari in the 9/11 Litigation had you been sitting on the Court;

(2) whether the United States may have placed diplomatic concerns above the rights of 9/11 victims in urging the Court not to grant certiorari;

(3) whether the FSIA governs all questions of sovereign immunity in the federal courts; and

(4) whether you believe that the FSIA's tort exception should have been interpreted to confer immunity on the defendants.

At our meeting on May 13, 2010, when we discussed your confirmation for the Supreme Court, we discussed, among other things, the constitutionality of the Terrorist Surveillance Program (TSP), which brought into sharp conflict Congress's authority under Article I to establish the 'exclusive means' for wiretaps under the Foreign Intelligence Surveillance Act with the President's authority under Article II as Commander-in-Chief to order warrantless wiretaps.

The TSP operated secretly from shortly after 9/11 until a New York Times article detailed the program in December 2005. In August 2006, the United States District Court for the Eastern District of Michigan found the program unconstitutional. In July 2007, the Sixth Circuit reversed 2–1, finding lack of standing. The Supreme Court then denied certiorari.

The dissenting opinion in the Sixth Circuit demonstrated the flexibility of the standing requirement to provide the basis for a decision on the merits. As Judge Gilman noted, ''the attorney-plaintiffs in the present case allege that the government is listening in on private person-to-person communications that are not open to the public. These are communications that any reasonable person would understand to be private.'' After analyzing the standing inquiry under a recent Supreme Court decision, Judge Gilman would have held that ''[the attorney-plaintiffs have thus identified concrete harms to themselves flowing from their reasonable fear that the TSP will intercept privileged communications between themselves and their clients.''

I intend to ask you, among other questions, whether you would have voted to grant certiorari in this case had you been on the Supreme Court.

Sincerely,

ARLEN SPECTER.

U.S. SENATE,
Washington, DC, June 15, 2010.

Hon. ELENA KAGAN,
Solicitor General of the United States, Washington, DC.

DEAR SOLICITOR GENERAL KAGAN: By letter dated May 25, 2010, I identified three subjects that I intend to cover at your confirmation hearing. I write to identify four additional subjects that I intend to cover.

The Supreme Court's workload

The Supreme Court's workload has steadily declined. In 1870, the Court decided 280 of the 636 cases on its docket; in 1880, 365 of the 1,202 cases on its docket; and in 1886, 451 of the 1,396 cases on its docket. In 1926, the year Congress gave the Court nearly complete control of its docket by passing the Judiciary Act of 1925, the Court issued 223 signed opinions. The Court's output has declined significantly ever since. In the first year of the Rehnquist Court, the Court issued 146 opinions; in its last year, it issued only 74.

Chief Justice Rehnquist's successor, John Roberts, testified during his confirmation hearing that the Court could and should take additional cases. But the Court has not done so. During the 2005 Term, it heard argument in 87 cases and issued 69 signed opinions; during the 2006 Term, it heard argument in 78 cases and issued 68 signed opinions; during the 2007 Term, it heard argument in 75 cases and issued 67 signed opinions; and during the 2008 Term, the Court heard argument in 78 cases and issued 75 signed opinions. The figures for the pending 2009 term will likely be in accord.

The Court continues to leave important issues unresolved. They include, as noted in my May 25 letter, the constitutionality of the Bush administration Terrorist Surveillance Program (TSP) and the contours of the Foreign Sovereign Immunity Act's domestic tort exception as applied to acts of terrorism.

Equally significant are unresolved circuit splits. Two prominent academic commentators note that the Roberts Court ''is unable to address even half'' of the circuit splits ''identified by litigants.'' Tracey E. George & Christopher Guthrie, Remaking the United States Supreme Court in the Courts' of Appeals Image, 58 Duke L.J. 1439, 1449 (2009). Questions on which the circuits have split include: May jurors consult the Bible during their deliberations in a criminal case and, if so, under what circumstances? Must a civil lawsuit predicated on a ''state secret'' be dismissed? When may a federal agency withhold information in response to a FOIA request or subpoena on the ground that it would disclose the agency's ''internal deliberations''? Do federal district courts have jurisdiction over petitions to expunge criminal records?

I intend to ask you, among other questions:

(1) Whether you agree with the Chief Justice Roberts's statement at his confirmation hearing that the ''Court could contribute more to clarity and uniformity of the law by taking more cases;''

(2) Whether the Court has the capacity to hear substantially more cases than it has in recent years;

(3) Whether you favor reducing the number of Justices required to grant petitions for certiorari in cases involving circuit splits or otherwise; and

(4) Whether, if you are confirmed, you will join the Court's cert. pool or follow the practice of Justice Stevens (and the Justice for whom you clerked, Justice Thurgood Marshall) in reviewing petitions for certiorari yourself with the assistance of your law clerks?

Deference to Congressional factfinding in reviewing the constitutionality of federal legislation

The constitutionality of federal legislation often turns on how much deference the Supreme Court gives to justificatory factual findings made by Congress. Recent nominees to the Court have emphasized that such findings are entitled to substantial deference. Chief Justice Roberts was especially emphatic on the point. He even testified that when a judge finds himself ''in a position of re-evaluating legislative findings,'' he or she ''may be beginning to transgress into an area of making law. . . .''

In too many cases during the last decade, however, the Court has disregarded Congressional findings of fact to an unprecedented degree. The most recent example was *Citizens United* v. *Federal Election Commission*, 130 S. Ct. 876 (2010), where in striking down the federal ban on independent campaign expenditures by corporations, the Court disregarded what Justice Stevens called in dissent a ''virtual mountain of evidence'' assembled by Congress establishing the corrupting influence of such contributions on the political process. And the Court did so, again in Justice Stevens' words, ''without a shred of evidence'' as to how the challenged provision ''have been affecting any entity'' other than the petitioner in the case.

The Court's disregard of Congressional factfinding has been especially pronounced in cases striking down laws enacted to remediate civil rights violations (whether under

the commerce clause or the Fourteenth Amendment to the Constitution). These included two cases about which I have questioned prior nominees to the Court: (1) *United States* v. *Morrison*, 529 U.S. 598 (2000), which struck the provision of the Violence Against Women Act providing a federal civil remedy for victims of sex-based violence, despite Congress's well-documented findings of relevant constitutional violations nationwide; and (2) *Board of Trustees of the University of Alabama* v. *Garrett*, 531 U.S. 356 (2001), which struck the provision of the Americans With Disabilities Act prohibiting disability-based discrimination in employment by states, despite Congress's compilation (in the dissenter's words) of ''a vast legislative record,'' based on task force hearings attended by more than 30,000 people, ''documenting 'massive, society-wide discrimination' against persons with disabilities.'' As I noted in pre-confirmation-hearing letters to Chief Justice Roberts and Justice Sotomayor, the Court in Morrison even went out of its way to disparage Congress's fact-finding competency. Justice Souter noted in a dissent joined by three other Justices that the Court had departed from its longstanding practice of assessing no more than the ''rationality of the congressional [factual] conclusion[s].''

Chief Justice Roberts's statements during oral argument in *Northwest Austin Municipal District* v. *Holder*, 129 S. Ct. 2504 (2009), may portend even worse things to come. The case concerned the constitutionality of a key section of the Voting Rights Act that Congress extended (by a Senate vote of 98 to 0) for another 25 years during my chairmanship of the Judiciary Committee. Ultimately the Court avoided the constitutional question in Northwest Austin by deciding the case on narrow statutory grounds. But during oral argument, Chief Justice Roberts called into question the validity of Congress's legislative findings as to the need for the reauthorization. He said that, in extending the Act, ''Congress was sweeping far more broadly than they need to.''

I intend to ask you, among other questions, whether you think that the Court has been sufficiently deferential to Congressional factfinding and whether you would go about analyzing the sufficiency of the record underlying the reauthorization of the Voting Rights Act.

Television coverage of the Supreme Court

Although the public has the undisputed right to observe the Court's proceedings, few Americans have any meaningful opportunity to do so. Even those who are able to visit the Court are not likely to see an argument in full. There are not nearly enough seats. Most will be given just three minutes to watch before they are shuffled out to make room for others. In high-profile cases, most visitors will be denied even a three-minute seating. As Justice Stevens observed during an interview, ''literally thousands of people have stood in line for hours in order to attend an oral argument, only to be denied admission because the courtroom was filled.'' Those who wish to follow the Court's proceedings must content themselves with reading the voluminous transcripts or listening to audiotapes released at the end of the Court's term. (The Court regularly denies, without explanation, requests to release the audiotapes of oral argument on a same-day basis.) It should come as no surprise that, according to a recent poll taken by C–SPAN, nearly two-thirds of Americans favor television coverage of the Supreme Court's proceedings.

In April 2010, the Senate Committee favorably reported both my resolution (S. Res. 339) expressing the sense of the Senate that the Court should permit television coverage and my legislation (S. 446) requiring it to allow coverage. In the last two Congresses, the Committee favorably reported nearly identical legislation (S. 1768 in the 109th Congress and S. 344 in the 110th Congress) that I introduced.

Statements made by the current Justices indicate that a majority of them—Chief Justice Roberts, Justices Stevens, Ginsburg, Breyer, Alito, and Sotomayor—are favorably disposed toward allowing coverage or at least have an open mind on the matter. Justice Stevens, whom you would replace, has said that allowing cameras in the Supreme Court is ''worth a try.''

Your past statements suggest that you are a proponent of coverage. Soon after becoming Solicitor General, you told the Ninth Circuit Judicial Conference that ''if cameras were in the courtroom, the American public would see an extraordinary event. . . . When C–SPAN first came on, they put cameras in legislative chambers. And it was clear that nobody was there. I think if you put cameras in the courtroom, people would say, 'wow.' They would see their government working at a really high level—at a really high level. That is one argument for doing so.''

I intend to ask you whether, if confirmed, you will support television coverage and, if you will, whether you will try to persuade your reluctant colleagues to do likewise.

Constitutionality of regulation of campaign finance

In *Citizens United* v. *Federal Election Commission*, 130 S. Ct. 876 (2010), the Supreme Court held unconstitutional provisions of federal law prohibiting corporations and unions from making certain independent campaign expenditures in support of candidates for federal office, thereby putting corporations on the same footing as individuals (including citizens). Some organizations opposed to campaign-finance reform have heralded Citizens United as the beginning of the end of campaign finance regulation. The next step, according to the policy briefs of these organizations, is to challenge the prohibition on corporate campaign contributions and, in doing, attempt to eliminate the remaining case-law distinctions between the speech rights of individual natural persons and of corporations. Under existing federal law, corporations may not make campaign contributions. (They may do so only through tightly regulated PACs.) The Supreme Court has upheld this restriction against First Amendment challenge.

Some organizations have even advocated an end to limits on campaign contributions—as distinct from campaign-related expenditures—by individuals. In *Buckley* v. *Valeo*, 424 U.S. 1 (1976), the Supreme Court upheld limits on contributions by individuals, even as it struck down a provision of federal law prohibiting independent expenditures in support of candidates for office. The Court accepted Congress's finding that allowing ''large individual financial contributions'' threatens to corrupt the political process and undermine public confidence in it. Buckley's holding on this point has been well-settled law for nearly 35 years.

I intend to ask you, among other questions:

(1) Whether, under First Amendment law, there remains anything left of the distinction between contributions from a corporation and those from natural persons.

(2) What considerations would you bring to bear in deciding whether to overrule the portion of *Buckley* v. *Valeo*, 424 U.S. 1 (1976), upholding limits on campaign contributions by individuals?

Sincerely,

ARLEN SPECTER.

JUNE 21, 2010.

Hon. ELENA KAGAN,
Solicitor General of the United States, Washington, DC.

DEAR SOLICITOR GENERAL KAGAN: By letters dated May 25, 2010, and June 15, 2010, I identified several subjects I intend to cover at your nomination hearing. I write to identify in advance an additional subject that I intend to cover.

Constitutionality of State Provisions for Publicly Financed Campaign Matching Funds

In the wake of Davis v. FEC, __ U.S. __, 130 S.Ct. 876 (2008), a district court in Arizona struck down that state's provision, passed by popular voter referendum, to trigger matching public funds when a candidate's opponent expended certain threshold amounts in a primary election. In McComish v. Brewer, 2010 WL 2292213, *1 (D. Ariz. 2010), the district court held that Arizona's ''Citizens Clean Elections Act'' was not supported by a compelling state interest, was not narrowly tailored, and was not the least restrictive alternative. Hence, the district court held the Act was ''unconstitutional under the First Amendment.'' Id. at 10.

The Court of Appeals for the Ninth Circuit reversed. In McComish v. Bennett, 605 F.3d 720 (9th Cir. 2010), the intermediate appellate court wrote, ''Plaintiffs bemoan that matching funds deny them a competitive advantage in elections. The essence of this claim is not that they have been silenced, but that the speech of their opponents has been enabled.'' The court noted that ''the burden that Plaintiffs allege is merely a theoretical chilling effect on donors who might dislike the statutory result of making a contribution or candidates who may seek a tactical advantage related to the release or timing of matching funds.'' Describing this burden as ''minimal,'' the court applied intermediate scrutiny to the Act. Thereafter, the court considered whether Arizona's interest ''in eradicating the appearance of quid pro quo corruption to restore the electorate's confidence in its system of government'' was compelling. Quoting the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1, 96 (1976) the Ninth Circuit recalled that ''[i]t cannot be gainsaid that public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest.''

On June 1, 2010, the Supreme Court denied the application to vacate the stay ''without prejudice to a renewed application if the parties represent that they intend to file a timely petition for writ of certiorari'' to the Court. __ S.Ct. __, 2010 WL 2161754 (Jun 1, 2010). A week later, the Court reversed course and granted the application to vacate the stay on the District Court's injunction ''pending filing and disposition of a petition for writ of certiorari.'' __ S.Ct. __, 2010 WL 2265319 (Jun 8, 2010). The practical effect of the Supreme Court vacating the appellate court's stay of the district court's injunction is that Arizona's Citizens Clean Elections Act is, for present purposes, struck down and participating candidates are not going to receive matching funds even if their opponents exceed the triggering expenditures.

I intend to ask you, among other questions:

(1) Whether you would have voted to vacate the stay pending disposition of a petition for certiorari, as five justices appear to have voted in McComish v. Bennett; and

(2) Whether you think that reducing the appearance or reality of quid pro quo corruption serves a compelling state interest.

Sincerely,

ARLEN SPECTER.

Mr. SPECTER. Mr. President, a good bit of the substance of the questions

which I have been directing toward Solicitor General Kagan involves the question as to whether she would have voted to grant cert. I believe that is an appropriate question, whether she would agree that a case ought to be heard. There is a view that questions ought not to be asked as to what a nominee would do once a case is pending before the Court. I think even that doctrine has some limitations. I think cases such as Brown v. Board of Education, cases such as McCulloch v. Maryland, cases which are well established in the law of the land, ought to be the subject for commitment. But I think there is no doubt—in my opinion, there is no doubt—we should ask her whether she would take a case such as the Terrorist Surveillance Program, or a case such as the litigation involving the claims brought by the survivors of victims of 9/11.

The hearings next week on Solicitor General Kagan will give us an opportunity to move deeply into a great many of these important subjects. While it is true that in many instances we do not get a great deal of information from the nominees, I think the hearings are very important to inform the public as to what goes on with the Court. This is in line with the efforts which I have made to provide for legislation which would call for televising the Supreme Court. The Judiciary Committee has twice passed out of committee, by significant votes—once 12 to 6 and once 13 to 6—legislation which would call for the Supreme Court to be televised.

The Congress of the United States has the authority to make directives on administrative matters—things such as how many Justices constitute a quorum, when they begin their term, how many members there are of the Supreme Court. Congress has the authority to mandate what cases the Supreme Court will hear, and—in the cases which I intend to ask Solicitor General Kagan, such as the terrorist surveillance program—whether she would have granted cert.

There are underlying concerns, which I have raised today, of a certain disrespect which characterizes a good many of the Supreme Court opinions. For example, the opinion by Chief Justice Rehnquist in striking down the legislation protecting women against violence, notwithstanding a very voluminous record—a radical change in the interpretation of the Commerce Clause—where the Court, through Chief Justice Rehnquist, said that the Court disagreed with Congress's ''method of reasoning.''

It is a little hard to understand how the method of reasoning is so much improved when you move across the green from the Judiciary Committee hearing room past confirmation; or where you have the language used by Justice Scalia—and I have quoted some of it earlier—in the case of Tennessee v. Lane, where Justice Scalia had objected to the congruence and proportionality standard, which he said was a flabby test and a standing invitation to traditional arbitrariness and policy decisionmaking.

Then he went on to criticize his colleagues for, as Justice Scalia said, inappropriate criticism of an equal branch. This is what he had to say about the proportionality and congruent standard

> Worse still, it casts this court in the role of Congress's taskmaster. Under it, the courts—and ultimately this Court—must regularly check Congress's homework to make sure that it has identified sufficient constitutional violations to make its remedy congruent and proportional. As a general matter, we are ill-advised to adopt or adhere to constitutional rules that bring us into constant conflict with the coequal branch of government. And when such conflict is unavoidable, we should not come to do battle with the United States Congress armed only with a test of congruence and proportionality that has no demonstrable basis in the text of the Constitution and cannot objectively be shown to have been met or failed.

So that is fairly strong language in disagreeing with what the Court has done in establishing the test. And Justice Stevens minced no words in his criticism of Citizens United in saying that the decision by the Supreme Court showed a disrespect for Congress. There the Court, in Citizens United, overruled both McConnell v. Federal Elections Commission and the Austin case. Overruling Austin was very significant, Justice Stevens noted, because Congress specifically relied on that decision in drafting McCain-Feingold. Justice Stevens then said that pulling out the rug beneath Congress in this matter ''shows great disrespect for a coequal branch.''

Well, my colleagues, the Congress has an opportunity to assert itself, to demand the appropriate respect which the Constitution calls for and has been implemented under the doctrine of separation of powers. We can find ways to make sure that commitments about respected congressional fact-finding will be observed, or that the rule of stare decisis will be respected; that when there are major decisions coming before the Supreme Court of the United States which involve the power of Congress vis-a-vis the executive branch, that those decisions will be made.

So let's sharpen our lines of questioning, colleagues, as we move forward to the hearings on Solicitor General Kagan a week from today.

I thank the Chair, and I yield the floor.

I had noticed my colleague standing there. I hope I haven't kept him waiting too long.

Mr. BUNNING. The Senator can speak all he likes.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

AMENDMENT NO. 4380

Mr. BUNNING. Mr. President, I rise to speak in morning business on my amendment to the extenders package, Bunning amendment No. 4380.

First, let me explain why this amendment is needed. When the Senate passed the first version of the extenders package in March, the bill extended all parts of the alternative fuel credit that expired at the end of last year. This included the coal-to-liquids portion of the alternative fuel credit.

I was pleased to hear President Obama mention coal to liquids as an important part of our energy strategy in his State of the Union Address earlier this year. That is why I am surprised to see coal to liquids deliberately excluded from the extenders package, first in the Reid substitute and again in the Baucus substitute.

Let me be clear: The bill doesn't just omit or remain silent on the coal-to-liquids credit. This bill specifically says that the coal-to-liquids credit expired on December 31, 2009, and isn't renewed. That is in the bill.

My colleagues probably know that I have many problems with the underlying bill. It adds tens of billions to our national debt and it contains job-killing tax increases. Options to pay fully for this bill by cutting spending have been offered and rejected, so our children and my grandchildren will foot the bill. But I thought that one element both parties could agree on is that expired tax provisions that taxpayers count on—and have been extended routinely in the past—should be extended.

My amendment is simple: It ensures that the coal-to-liquids portion of the alternative fuel credit will be extended until the end of the year, just like the other expiring parts of the alternative fuel credits included in this bill. The Senate already voted to extend all parts of the alternative fuel credit when it passed the extenders package last March.

Many difficult innovative fuels qualify for the alternative fuel credit, but coal to liquids is the only one that specifically requires reduced emissions. The reduction was originally 50 percent but was raised to 75 percent last year as a bipartisan agreement. I do not understand why the extenders package fails to extend the only part of the alternative fuel credit that called for reduced emissions.

My colleagues who are deficit hawks will be glad to know that this amendment will not add one dime to the deficit. This is because no coal-to-liquids projects will come on line in 2010, so no tax credit will be received. However, if the credit is allowed to remain expired and is not renewed, this will have a very damaging effect on investments in this extremely promising technology.

My amendment is also bipartisan. I am grateful to Senators ROCKEFELLER, BYRD, and ENZI, who are cosponsors. I know that the Senator from Montana, who is the manager of the extenders

package and the chairman of the Finance Committee, is familiar with the coal to liquids because of its potential benefit to his home State.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Billings Gazette entitled ''Crow Coal-To-Liquids Plant Could Be Boon for Montana,'' at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BUNNING. The article describes the efforts of the Crow Nation to build a coal-to-liquids plant on a reservation in Montana in one of the poorest counties in the entire Nation. The project will be designed with carbon capture and storage. The Crow Nation hopes to begin producing the fuel 6 years from now, but losing the benefit of the alternative fuel credit would be a serious setback. The tribe is already hearing about investors who are now reluctant to invest in the project because of the uncertainty around coal to liquids.

Because the Senator from Montana has a reputation for fighting to keep jobs in his home State, I hope he will support the Crow Nation's request to extend the coal-to- liquids credit in the extenders package.

Failing to extend the credit has the potential to destroy thousands of jobs that are planned in an extremely poor county in Montana.

This is not something that can wait for a yet-to-be determined energy bill. Almost all of the alternative fuel credit is already contained in the extenders package.

It makes no sense to specifically exclude parts of the alternative fuel credit in this bill, with the promise that it will be looked at later. It will only become more difficult, the longer the credit is expired.

It will only make extending coal-to-liquids that much harder if it is delayed to a bill that has not been written yet and will probably be filled with controversial items.

I am certain the Senator from Montana understands the political reality that the extenders package is the last best opportunity to extend a provision that is very important to his home State.

I hope the Senator from Montana will support the Bunning-Rockefeller-Byrd-Enzi amendment and include it in any new substitute he introduces to the extenders package.

Coal-to-liquids is an important part of our national energy strategy. President Obama has recognized this in his State of the Union Address.

We will never end our dependence on foreign oil until we develop alternative sources of fuel.

Coal is abundant and it is here in America. It is not owned and used as leverage against us by hostile nations.

American coal can be used in a way that both reduces emissions and fuels our energy needs.

It would be a tragic mistake to turn our backs on coal-to-liquids when it is a crucial part of America's strategy to end our dependence on foreign oil.

I urge my colleagues to support this amendment.

EXHIBIT 1

[From the Billings Gazette, Aug. 10, 2008]

CROW COAL-TO-LIQUIDS PLANT COULD BE BOON FOR MONTANA

(By Matthew Brown)

CROW AGENCY, MT.—A $7 billion coal-to-liquids plant proposed for southeastern Montana's Crow reservation promises an economic boon for the region, but must first overcome economic and political hurdles that have kept any such plant from being built in the United States.

The Many Stars plant—a partnership between the tribe and Australian-American Energy Co.—would convert the reservation's sizable coal reserves into 50,000 barrels a day of diesel and other fuels.

State officials said Friday it represents the most valuable economic development project in Montana history.

''We're talking about one of the most technologically advanced, sophisticated energy projects on the planet,'' Gov. Brian Schweitzer said at a news conference detailing the project.

Covering the plant's $7 billion price tag will be a challenge in the current economic slowdown. And environmental groups have pledged to step in to oppose the plant if it does not include measures to capture greenhouse gases.

Yet Australian-American Energy Chairman Allan Blood said he was 90 percent certain the Crow project would be completed.

''In my country we have a record of people who have visions and dreams and make them happen,'' Blood said.

Over the next several years, the company plans to sink $100 million into preliminary engineering and environmental work, with a goal of starting construction on the plant by 2012. It could begin producing fuel by 2016.

For Crow leaders, the project offers an opportunity to lift the tribe out of poverty. Up to 4,000 people would be employed during its construction. And up to 900 permanent jobs would be created with the plant and a new mine on the reservation that would supply the coal.

''Our kids will have something to look forward to,'' said tribal Chairman Carl Venne. ''Not the six or seven or eight dollars an hour they are making now just to get by. You're looking at $70,000, $80,000—even $100,000-a-year jobs.''

But representatives of several environmental groups said they remained wary. An agreement between the tribe and Australian-American Energy calls for the Crow to commit up to 50,000 acre-feet of water annually to the project. One acre-foot is equal to nearly 326,000 gallons.

That prospect is raising flags for southeastern Montana's ranching community, which is worried the project could deplete precious water supplies.

Also, while the tribe and company have pledged to capture 95 percent of the plant's emissions of carbon dioxide—a main contributor to global warming—environmentalists said living up to that promise could be difficult.

Without capturing those emissions and storing the gas underground, coal-based liquid fuels can churn out significantly more greenhouse gases than conventional petroleum, according to the U.S. Department of Energy.

''(Coal-to-liquids) developers have been saying we'll do something about carbon, but they've been unwilling to put it into their permits. It's been a lot of empty promises,'' said Bruce Nilles, director of the Sierra Club's national campaign against coal plants.

Officials with Australian-American Energy said the Crow plant would be built on the assumption that Congress, in the next few years, will pass legislation compelling companies to capture carbon dioxide. Such laws do not yet exist.

Working in the project's favor are high oil prices and the idea of replacing imported oil with homegrown fuels derived from coal. Despite a recent slide, crude prices closed above $115 a barrel on Friday.

Still, industry officials said the economic downturn has reduced investors' willingness to sink cash into large projects such as the Many Stars plant. Meanwhile, costs have soared due to rising global demand for construction materials and skilled labor.

''You have the optimum oil scenario playing out with prices skyrocketing, but you have the bottom dropping out of Wall Street,'' said Corey Henry with the Coal-to-Liquids Coalition, a group funded by the mining industry. ''It's been tough sledding to try to get the money to build these plants.''

About a dozen coal-to-liquids plants are on the drawing boards in the United States. Only two such plants exist worldwide; both are in South Africa.

The biggest hurdle in the United States will be getting the first few plants built, Henry said. Once those are operational, he predicted investors would be more willing to fund similar plants.

Blood said he was not concerned, noting he initiated one coal-to-liquids project in Australia that was later sold for $5 billion. In June, he announced a second project in Australia, a $2 billion plant to convert coal into liquid fertilizer.

''You hear about the problems in the capital markets, but what people don't hear is there are dozens and dozens of projects, hundreds of projects, being funded,'' Blood said.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Montana.

Mr. BAUCUS. Mr. President, I note with great interest the comments of my good friend from Kentucky, Senator BUNNING, about the need for coal-to-liquids technology. I agree. I agree wholeheartedly. In fact, as the Senator from Kentucky undoubtedly knows, I have urged this technology. He also knows regrettably the other body is opposed to this technology. We have had some difficulty in finding a way to resolve coal to liquids in both the House and the Senate.

I might say to my friend from Kentucky, I am not sure that adding this provision is going to speed the passage of the so-called extenders bill. In fact, I might tease my good friend from Kentucky by saying I think my friend from Kentucky is opposed to passage of the extenders bill.

Maybe, if I could ask the Senator, if he would support passage of the extenders bill?

Mr. BUNNING. Most of them.

Mr. BAUCUS. Again, Mr. President, I am teasing. I ask my friend, somewhat in jest, if he were to fully support passage of the extenders bill if this provision he mentioned were in the bill? The fact is, we are having a hard time passing the extenders bill. Anything we add to the extenders bill is one more additional weight. I do not think that would further the passage of the bill at

this time. Rather, I think the appropriate place for coal-to-liquids technology will be in the Energy bill and there will be an Energy bill, of that I am positive. There is a question of what will be contained in that energy bill, but there will be one, I am sure, brought up on the floor of this body to help make this country more secure in its national energy position so we are less reliant on foreign countries to produce energy.

MONTANA DISASTERS

Mr. BAUCUS. I also rise to call attention to a pair of disasters that recently struck Montana and pledge my support for the recovery effort. Last week the Big Sandy Creek spilled over its banks and flooded into the Lower Box Elder Road and the surrounding area. The flooding displaced 30 families at the Rocky Point Boy's Indian Reservation in north central Montana.

As is the tradition in our States, folks with the Chippewa Creek Tribe are pulling together to help one another. The Vo-Tech Center in Box Elder has been converted to a makeshift home for those left homeless by the flooding. The American Red Cross of Montana is providing beds and other services at that center. The area is still under a stage two flood advisory. I just talked to the chairman of the Rocky Boy's about half an hour ago, who told me there have been about 7 inches of rain there and he had an extremely difficult time with the water problems and sewage problems. Homes have been displaced. He has never seen anything like it.

Initial estimates exceed $1 million at this point. I will work with the Bureau of Indian Affairs and Indian Health Service to see that Rocky Boy's receives the assistance they need. I might add I will work with any agency that is relevant to make sure the people at Rocky Boy's Indian Reservation receive the assistance they need.

Just as folks at Rocky Boy's began assessing damage yesterday afternoon, another disaster beset Montana. A tornado with wind speeds between 111 and 135 miles an hour crashed into our State's largest city—Billings. Folks in Yellowstone County have not seen such a destructive twister since 1958.

The tornado hurled hail the size of golf balls, ripped the roof off our sports arena, the Metrapark—that is the largest facility, I might add, in Billings, MT. After striking it, it tore through a number of nearby small businesses. The tornado left a path of destruction in its wake—power outages, flooding in some places up to 2 feet of water. The winds damaged at least 10 businesses in Billings: the Main Street Casino, a laundromat, a dance studio, Reiter's Marina. The tornado also ripped the roof from Fast-Break Auto Glass. The roof was later found in a nearby creek. Witnesses saw big pieces of metal hanging from power lines near the arena. Insulation and metal debris was thrown far across town. One look at these photos gives one a sense of the size of the destruction.

I might add, if you look at the photo to my right, that is what is left of the Metra arena, Billings' largest facility. You can see the Metra almost entirely destroyed, roof completely gone, walls collapsing. I talked to two county commissioners and the mayor today and they explained the deep problems they have with reconstructing this facility, to say nothing about all the bookings that have been made about 2 years in advance that have to be dealt with because of this destruction.

The Metra sports arena is part of the fabric of life in Billings. Montanans gathered at the Metra to cheer on the Billings Outlaws, for example, an indoor football team. Fans say their home field advantage is recognized around the league. The arena also houses the Chase Hawks Memorial Rough Stock Rodeo. Lots of events take place in this arena. I was there a couple of months ago for a high school graduation. Event after event occurs, it seems, around the clock at this arena. It is totally destroyed by the tornado.

The Metra was also visited by American Presidents—President Kennedy, President Reagan, President Clinton, and President Bush. It is part of our State's history. In Montana we work together to solve problems and we will work together through this disaster as well. Yesterday, utility crews worked to shut off a gas leak at a commercial strip mall near Main Street. Crews were also working to repair downed power lines.

Yellowstone County requested a state of emergency, requested that declaration from our Governor last night. They were given an oral declaration and clearly will receive a written declaration today.

The Montana National Guard has deployed to the area to help keep security around the crumbling arena. I am committed to working with local officials, the Governor, as well as Senator TESTER and Congressman REHBERG to coordinate any and all possible Federal assistance, coordinating with all Federal agencies to make sure all resources are available when requested. I have sent my staff to work with local and State officials on the ground to assess the extent of the damage and I will be there every step of the way during the recovery and rebuilding process.

My thoughts and prayers are with the people of Billings, particularly those injured during the storm and those whose property and homes were damaged by the winds.

Today, business owners are returning to the rubble that once was their place of business, their livelihood. Many homeowners are drying out as floodwaters recede. They will work hard in the coming days and months to make sure every Federal resource is made available to help folks in Billings as well as the Rocky Boy's Reservation as they recover from these twin disasters. Our officials have done this before and nobody can handle this better than the great team we have in Montana.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. WICKER. I ask unanimous consent Senator CARDIN and I be allowed to engage in a colloquy for 20 minutes.

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

INTERNATIONAL DUE PROCESS RIGHTS

Mr. WICKER. Mr. President, I am appreciative that I am able to join today with my friend and colleague, Senator CARDIN. I appreciate his joining me today to discuss an issue of great concern to both of us and to human rights advocates around the world. That is the ongoing trial in Russia of Mikhail Khodorkovsky and his business partner Platon Lebedev. In June of last year, Senator CARDIN joined me in introducing a resolution urging the Senate to recognize that Khodorkovsky and Lebedev have been denied basic due process rights under international law for political reasons. It is particularly appropriate, I think, that Senator CARDIN and I be talking about this this afternoon because in a matter of days, Russian President Medvedev will be coming to the United States and meeting with President Obama. I think this would be a very appropriate topic for the President of the United States to bring up to the President of the Russian Federation.

I can think of no greater statement that the Russian President could make on behalf of the rule of law and a movement back toward human rights in Russia than to end the show trial of these two individuals and dismiss the false charges against them.

Since his conviction, Khodorkovsky has spent his time either in a Siberian prison camp or a Moscow jail cell. Currently, he spends his days sitting in a glass cage enduring a daily farce of a trial that could send him back to Siberia for more than 20 years. Amazingly, Mikhail Khodorkovsky remains unbroken.

I think it appropriate that President Obama and Secretary of State Clinton have committed to resetting relations with the country. I support them in this worthwhile goal. Clearly, our foreign relations can always stand to be improved. I support strengthening our relations, particularly with Russia. However, this strengthening must not be at the expense of progress on the issue of the rule of law and an independent judiciary. The United States cannot publicly extol the virtues of rule of law and an independent judiciary and at the same time turn a blind eye to what has happened to Khodorkovsky and Lebedev.

I urge President Obama and Secretary Clinton to put the release of these two men high on the agenda as

we continue to engage with Russia, and high on the agenda for President Medvedev's upcoming meeting here in Washington, DC.

Mr. CARDIN. Mr. President, I thank Senator WICKER for taking this time for this colloquy. He has been a real champion on human rights issues and on bringing out the importance for Russia to move forward on a path of democracy and respect for human rights. He has done that as a Senator from Mississippi. He has done that as a very active member of the Helsinki Commission. I have the honor of chairing the Helsinki Commission, which I think is best known because of its fight on behalf of human rights for the people, particularly in those countries that were behind the Iron Curtain—particularly before the fall of the Soviet Union, where we were regularly being the voices for those who could not have their voices heard otherwise because of the oppressive policies of the former Soviet Union.

So in the 1990s, there was great euphoria that at the end of the Cold War, the reforms that were talked about in Russia—indeed, the privatization of many of its industries—would at last bring the types of rights to the people of Russia that they so needed. But, unfortunately, there was a mixed message, and in the 1990s, I think contrary to Western popular opinion at the time, Russia did not move forward as aggressively as we wanted with freedom and democracy.

It is interesting that Mikhail Khodorkovsky, who was part of the Communist elite, led the country into privatization in the right way. He took a company, Yukos Oil Company, and truly made it transparent and truly developed a model of corporate governance that was unheard of at the time in the former Soviet Union and unheard of in the Russian Federation, and he used that as a poster child to try to help the people of Russia. He started making contributions to the general welfare of the country, which is what we would like to see from the business and corporate community. He did that to help his own people. But he ran into trouble in the midst of the shadowy and violent Russian market, and his problems were encouraged many times by the same people who we thought were leading the reform within the Russian Federation.

By 1998, with the collapse of the ruble, the people of Russia were disillusioned; they found their prosperity was only temporary. The cost of imports was going up. The spirit of nationalism, this nationalistic obsession, became much more prominent within the Russian Federation, and the move toward privatization lost a lot of its luster.

The rise of Mr. Putin to power also established what was known as vertical power, and independent companies were inconsistent with that model he was developing to try to keep control of his own country. Therefore, what he did under this new rubric was to encourage nationalization spirit, to the detriment of independent companies and to the detriment of the development of opposition opportunity, democracy, and personal freedom. We started to see the decline of the open and free and independent media.

All of this came about, and a highly successful and independent company such as Yukos under the leadership of Mikhail Khodorkovsky was inconsistent with what Mr. Putin was trying to do in Russia. As a result, there was a demise of the company, and the trials ensued. My friend Senator WICKER talked about what happened in the trial. It was a miscarriage of justice. It was wrong. We have expressed our views on it. And it is still continuing to this day. I thank Senator WICKER for continuing to bring this to the Members' attention and I hope to the people of Russia so they will understand there is still time to correct this miscarriage of justice.

Mr. WICKER. I thank my colleague.

I will go on to point out that things started coming to a head when Mr. Khodorkovsky started speaking out against the Russian Government, led by President Putin, and his company that he headed, Yukos, came into the sights of the Russian Federation.

Mr. Khodorkovsky visited the United States less than a week before his arrest. He was in Washington speaking to Congressman Tom Lantos, the late Tom Lantos, a venerated human rights advocate from the House of Representatives, who had seen violations of human rights in his own rights. Mr. Khodorkovsky told Congressman Lantos that he had committed no crimes but he would not be driven into exile. He said: ''I would prefer to be a political prisoner rather than a political immigrant.'' And, of course, a political prisoner is what he is now.

Shortly after his arrest, government officials accused Yukos Oil of failing to pay more than $300 billion in taxes. At the time, Yukos was Russia's largest taxpayer. Yet they were singled out for tax evasion. And PricewaterhouseCoopers had recently audited the books of Yukos, and the government tax office had approved the 2002 to 2003 tax returns just months before this trumped-up case was filed.

The Russian Government took over Yukos, auctioned it off, and essentially renationalized the company, costing American stockholders $7 billion and stockholders all around the country who had believed Russia was liberalizing and becoming part of the market society. A Swiss court has ruled the auction illegal. A Dutch court has ruled the auction illegal. But even more so, they tried these two gentlemen and placed them in prison. Mr. Khodorkovsky apparently had the mistaken impression that he was entitled to freedom of speech, and we discovered that in Russia, at the time of the trial and even today, he was not entitled, in the opinion of the government, to his freedom of speech.

A recent foreign policy magazine called Khodorkovsky the ''most prominent prisoner'' in Vladimir Putin's Russia and a symbol of the peril of challenging the Kremlin, which is what Mr. Khodorkovsky did.

I would quote a few paragraphs from a recent AP story by Gary Peach about the testimony of a former Prime Minister who actually served during the Putin years:

A former Russian prime minister turned fierce Kremlin critic came to the defense of an imprisoned tycoon on Monday—

This is a May 24 article—

telling a Moscow court that prosecutors' new charges of massive crude oil embezzlement are absurd.

What we now find is that when Mr. Khodorkovsky is about to be released from his first sentence, new charges have arisen all of a sudden. After years and years of imprisonment in Siberia, new charges have arisen.

Mikhail Kasyanov, who headed the government in 2000–2004, told the court that the accusations against Khodorkovsky, a former billionaire now serving an eight-year sentence in prison, had no basis in reality.

This is a former Prime Minister of the Russian Federation.

Prosecutors claim that Khodorkovsky, along with his business partner [who is also in prison] embezzled some 350 million tons—or $25 billion worth—of crude oil while they headed the Yukos Oil Company.

That's all the oil Yukos produced over six years, from 1998 to 2003. I consider the accusation absurd.

He said that while Prime Minister, he received regular reports about Russia's oil companies and that Yukos consistently paid its taxes. Kasyanov, who served as Prime Minister during most of President Putin's first term, said that both the current trial and the previous one, which ended with a conviction, were politically motivated. So I would say this is indeed a damning accusation of the current trial going on, even as we speak, in Moscow.

Mr. CARDIN. Senator WICKER has pointed out in I think real detail how the dismantling of the Yukos Oil Company was done illegally under any international law; it was returning to the Soviet days rather than moving forward with democratic reform. As Senator WICKER has pointed out, the personal attack on its founders—imprisoning them on charges that were inconsistent with the direction of the country after the fall of the Soviet Union—was another miscarriage of justice, and it is certainly totally inconsistent with the statements made after the fall of the Soviet Union.

The early Putin years were clearly a return to nationalism in Russia and against what was perceived at that time by the popular Western view that Russia was on a path toward democracy. It just did not happen. And it is clearly a theft of a company's assets by the government and persecution, not prosecution, of the individuals who led the company toward privatization, which was a clear message given by the

leaders after the fall of the Soviet Union.

This cannot be just left alone. I understand the individuals involved may have been part of the elite at one time within the former Soviet Union. I understand, in fact, there may have been mixed messages when you have a country that is going through a transition. But clearly what was done here was a violation of their commitments under the Helsinki Commission, under the Helsinki Final Act. It was a violation of Russia's statements about allowing democracy and democratic institutions. It was a violation of Russia's commitments to allow a free market to develop within their own country. All of that was violated by the manner in which they handled Mr. Khodorkovsky as well as his codefendant and the company itself. And it is something we need to continue to point out should never have happened.

The real tragedy here is that this is an ongoing matter. As Senator WICKER pointed out, there is now, we believe, an effort to try him on additional charges even though he has suffered so much. And it is a matter that—particularly with the Russian leadership visiting the United States, with direct meetings between our leaders, between Russia and the United States—I hope can get some attention and a chance for the Russian Federation to correct a miscarriage of justice.

Mr. WICKER. Indeed, the second show trial of Mr. Khodorkovsky has entered its second year. We have celebrated the anniversary of the second trial.

I ask unanimous consent to have printed in the RECORD an editorial by the Washington Post dated June 9, 2010, at this point.

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

[From the Washington Post, June 9, 2010]

SHOW TRIAL: SHOULD TIES TO RUSSIA BE LINKED TO ITS RECORD ON RIGHTS?

Russia's government has calculated that it needs better relations with the West to attract more foreign investment and modern technology, according to a paper by its foreign ministry that leaked to the press last month. Prime Minister Vladimir Putin has recently made conciliatory gestures to Poland, while President Dmitry Medvedev sealed a nuclear arms treaty with President Obama. At the United Nations, Russia has agreed to join Western powers in supporting new sanctions against Iran.

Moscow's new friendliness, however, hasn't led to any change in its repressive domestic policies. The foreign ministry paper says Russia needs to show itself as a democracy with a market economy to gain Western favor. But Mr. Putin and Mr. Medvedev have yet to take steps in that direction. There have been no arrests in the more than a dozen outstanding cases of murdered journalists and human rights advocates; a former KGB operative accused by Scotland Yard of assassinating a dissident in London still sits in the Russian parliament.

Perhaps most significantly, the Russian leadership is allowing the trial of Mikhail Khodorkovsky, a former oil executive who has become the country's best-known political prisoner, to go forward even though it has become a showcase for the regime's cynicism, corruption and disregard for the rule of law. Mr. Khodorkovsky, who angered Mr. Putin by funding opposition political parties, was arrested in 2003 and convicted on charges of tax evasion. His Yukos oil company, then Russia's largest, was broken up and handed over to state-controlled firms.

A second trial of Mr. Khodorkovsky is nearing its completion in Moscow, nearly a year after it began. Its purpose is transparent: to prevent the prisoner's release when his first sentence expires next year. The new charges are, as Mr. Putin's own former prime minister testified last week, absurd: Mr. Khodorkovsky and an associate, Platon Lebedev, are now accused of embezzling Yukos's oil production, a crime that, had it occurred, would have made their previously alleged crime of tax evasion impossible.

Mr. Khodorkovsky, who acquired his oil empire in the rough and tumble of Russia's transition from communism, is no saint, but neither is he his country's Al Capone, as Mr. Putin has claimed. In fact, he is looking more and more like the prisoners of conscience who have haunted previous Kremlin regimes. In the past several years he has written numerous articles critiquing Russia's corruption and lack of democracy, including one on our op-ed page last month.

Mr. Obama raised the case of Mr. Khodorkovsky last year, and the State Department's most recent human rights report said the trial ''raised concerns about due process and the rule of law.'' But the administration has not let this obvious instance of persecution, or Mr. Putin's overall failure to ease domestic repression, get in the way of its ''reset'' of relations with Moscow. If the United States and leading European governments would make clear that improvements in human rights are necessary for Moscow to win trade and other economic concessions, there is a chance Mr. Putin would respond. If he does not, Western governments at least would have a clearer understanding of where better relations stand on the list of his true priorities.

Mr. WICKER. The editorial points out that Russia's Government is trying to think of ways to attract more foreign investment, and it juxtaposes this desire for more Western openness and investment with the Khodorkovsky matter and says that this trial has become a showcase for the Russian regime's cynicism, corruption, and disregard for the rule of law.

It goes on to say: The new charges are, as Mr. Putin's own Prime Minister testified last week, absurd. Mr. Khodorkovsky and his associate, Platon Lebedev, are now accused of embezzling Yukos Oil's production—a crime that, had it occurred, would have made their previously alleged crime of tax evasion impossible.

So the cynicism of these charges is that they are inconsistent with each other. Yet, in its brazenness, the Russian Federation Government and its prosecutors proceed with these charges.

The article goes on to say: Mr. Khodorkovsky is looking more and more like a prisoner of conscience who haunted the previous criminal regime.

It says:

Mr. Obama raised the case of Mr. Khodorkovsky last year, and the State Department's most recent human rights report said the trial ''raised concerns about due process and the rule of law.''

I will say they raised concerns.

Let me say in conclusion of my portion—and then I will allow my good friend from Maryland to close—this prosecution and violation of human rights and the rule of law of Lebedev and Khodorkovsky has brought the censure of the European Court of Human Rights that ruled that Mr. Khodorkovsky's rights were violated. A Swiss court has condemned the action of the Russian Federation and ruled it illegal. A Dutch court has said it is illegal. It has been denounced by such publications as Foreign Policy magazine, the Washington Post, a former Prime Minister who actually served under Mr. Putin. It has been denounced in actions and votes by the European Parliament, by other national parliaments, by numerous human rights groups, and by the U.S. State Department.

I submit, for those within the sound of my voice—and I believe there are people on different continents listening to the sound of our voices today—it is time for the Russian President to step forward and put an end to this farce, admit that this trial has no merit in law, and it is time for prosecutors in Moscow to cease and desist on this show trial and begin to repair the reputation of the Russian Federation when it comes to human rights and the rule of law.

Mr. CARDIN. Mr. President, I thank Senator WICKER for bringing out the details of this matter. It has clearly been recognized and condemned by the international community as against international law. It is clearly against the commitments Russia had made when the Soviet Union fell. It is clearly of interest to all of the countries of the world. Originally, when Yukos oil was taken over, investors outside of Russia also lost money. So there has been an illegal taking of assets of a private company which have affected investors throughout the world, including in the United States. It has been offensive to all of us to see imprisoned two individuals who never should have been tried and certainly should not be in prison today. All that is offensive to all of us. But I would think it is most offensive to the Russian people.

The Russian people believed their leaders, when the Soviet Union collapsed, that there would be respect for the rule of law; that there would be an independent judiciary, and their citizens could get a fair trial.

We all know—and the international community has already spoken about this—that Mikhail Khodorkovsky did not get a fair trial. So the commitment the Russian leaders made to its own people of an independent and fair judiciary has not been adhered to. This is not an isolated example within Russia. We know investigative reporters routinely are arrested, sometimes arrested with violence against them. We know

opposition parties have virtually no chance to participate in an open system, denying the people a real democracy. But here with justice, Russia has a chance to do so.

I find it remarkable that Mr. Khodorkovsky's spirits are still strong, as Senator WICKER pointed out. Let me read a recent quote from Mr. Khodorkovsky himself, who is in prison:

> You know, I really do love my country, my Moscow. It seems like one huge apathetic and indifferent anthill, but it's got so much soul. . . . You know, inside I was sure about the people, and they turned out to be even better than I'd thought.

I think Senator WICKER and I both believe in the Russian people. We believe in the future of Russia. But the future of Russia must be a nation that embraces its commitments under the Helsinki Final Act. It has to be a country that shows compassion for its citizens and shows justice. Russia can do that today by doing what is right for Mr. Khodorkovsky and his codefendant: release them from prison, respect the private rights and human rights of its citizens, and Russia then will be a nation that will truly live up to its commitment to its people to respect human rights and democratic principles.

Again, I thank Senator WICKER for bringing this matter to the attention of our colleagues. It is a matter that can be dealt with, that should be dealt with, and we hope Russia will show justice in the way it handles this matter.

Mr. WICKER. I thank my colleague and yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank my colleagues for their remarks. It is worthy of all of us giving most serious consideration. Perhaps we have been too silent in failing to criticize some of the activities of Russia. We want to be friends with them, but good friends tell friends the truth. I believe my colleagues are speaking the truth.

NOMINATION OF ELENA KAGAN

Mr. SESSIONS. Mr. President, the Judiciary Committee is now reviewing the record of Elena Kagan, President Obama's nominee to the Supreme Court. The truth is, her legal record is thin. She has never been a judge and has very limited experience even in the practice of law. She has never tried a case, never cross-examined a witness or made a closing argument in a trial.

A lack of judicial experience is not a total disqualifier for the job of Supreme Court Justice, but it is true and fair to say this nominee has less real legal experience than any nominee confirmed to the Court in the last 50 years. That fact concerns me and many Americans. Ms. Kagan's lack of experience puts even greater emphasis on the central question in the nomination process: If confirmed, what kind of judge will Elena Kagan be? Will she take the traditional view that judges are impartial umpires who decide cases based on the rule of law under the Constitution? Or is she from the activist school, which teaches that judges may take sides and reinterpret the meaning of our laws to advance certain political agendas the judge may find acceptable or desirable or better? Are judges empowered to do that in the American system?

The American people have a right to know. This is no time for a stealth candidacy to the Court. We know one thing. We know her political views are leftist and progressive. That is clear from her record. She has a rather extensive political record. But with no judicial record and little legal record, clues to Ms. Kagan's judicial philosophy can be found perhaps by looking at people she admires, her mentors, judges she thinks represent the best way of conducting their office.

The three judges Ms. Kagan most often mentions are Judge Abner Mikva, Justice Thurgood Marshall, and former Israeli Judge Aharon Barak. Together I think it is fair to say these three judges represent the vanguard of a judicial activist movement that has certain intellectual roots and is quite afoot in our law schools and some of our legal commentators.

Each of these judges affirms the concept that a judge's own views, their personal views, may—sometimes even should—guide their interpretations of the law. In effect, this philosophy argues that the outcome of the case is more important than the legal process that guides the decisions, more important than fidelity to the Constitution. These Kagan heroes believe judges should have the power to make law. This results-oriented philosophy raises questions about whether Ms. Kagan may see judicial power as a way to advance her philosophy. It is a liberal, big government agenda for America. She has been active in that philosophy throughout her lifetime.

Let's look at some of her heroes in more detail. Judge Mikva is someone with whom she has been close. He was appointed to the bench by President Carter a number of years ago to the DC Circuit Court of Appeals.

She clerked for Judge Mikva in 1986 and 1987 and later worked for him in the Clinton White House. After he had resigned from the bench and came into the Clinton White House, she was hired to work with him in that office. On the day she accepted President Obama's nomination, Ms. Kagan noted that Judge Mikva ''represented the best in public service'' and that working for him was part of the ''great good fortune'' that had marked her career. He served five terms as a Congressman from Chicago, where he earned the reputation as ''the darling of American liberals.'' He has advocated for strict gun control, reportedly referring to the National Rifle Association as a ''street-crime lobby.'' He was a fierce opponent of the war in Vietnam and has said he supports the results in Roe v. Wade. The results.

Regarding how to interpret the Constitution or statute, Mikva has said that for ''most law, there is no original intent.'' The general view is that one should find out what the law was intended to mean when it was passed.

Some people dismiss that and are cynical about that, think that is an impossible goal. That is what Judge Mikva apparently believes. He has defined judicial activism as ''the decisional process by which judges fill in the gaps'' in the law and the Constitution. That is similar to President Obama's theory—which I think is flawed—that for ''the five percent of the cases that are truly difficult,'' the judge's decision depends on ''the depth and breadth of one's empathy.''

So the critical ingredient is supplied by what is in a judge's heart. Whatever a heart is, it is not the mind and it is not, therefore, objective judgment. It is more akin to something else. I have said this kind of thinking is more akin to politics than law. It is certainly not law, not in the American tradition of law.

Ms. Kagan also clerked for Justice Thurgood Marshall, whom she refers to as her hero. Indeed, Marshall is a historic figure. He was courageous at a time when courage was definitely needed and an effective leader in the civil rights movement. He was a great attorney and a fierce advocate for his clients and his ideals. He could be a hero of anyone as an American advocate and a person who played a fundamental role in the breakdown of segregation in America. But he also became one of the most active judges on the Court in our Nation's history.

In describing his own judicial philosophy, Marshall said that ''[y]ou do what you think is right and let the law catch up.'' He dissented in all death penalty cases because he and Justice Brennan declared the prohibition of ''cruel and unusual'' punishment that is in the Constitution barred any death penalty.

That might sound plausible in one sense. But in truth, this can never be a fair interpretation of the cruel and unusual clause in the Constitution, since there are multiple references in the Constitution to the death penalty and how it should be carried out.

How could you possibly construe the document as a whole to say that ''cruel and unusual'' prevents the death penalty? Well, they did not like the death penalty; Marshall and Brennan did not. They thought it was wrong. They thought the world had developed and moved forward to a ''higher land'' and they were just going to declare it and the law would follow.

Well, according to Kagan, in Justice Marshall's view, ''constitutional interpretation demanded . . . that the courts show a special solicitude for the despised and disadvantaged.'' Certainly the courts should be sure that the despised or disadvantaged have a fair day

in court. But the way this plays out, I believe, as suggested in the full remarks, is that it untethers the judge from the rule of law. I think it contradicts, in fact, the sworn oath of a judge, which reads ''I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me under the Constitution and laws of the United States, so help me God.'' Even so, Ms. Kagan said that showing ''a special solicitude'' for certain groups was Marshall's ''vision of the Court and Constitution. And . . . it [was] a thing of glory.'' Well, it certainly represents a great vision for an advocate, but I do think we need to be sure that the judge who puts on the robe is going to follow their oath to be impartial and to decide matters based on the law and facts.

But, interestingly, the judge Ms. Kagan praises the most happens to be perhaps the most activist judge on Earth: Aharon Barak, the former president—or chief justice—of the Israel Supreme Court. The respected Federal judge Richard Posner flatly described Barak as a ''judicial activist.'' Elena Kagan described him as her ''judicial hero.''

To judicial activists around the world, Aharon Barak is an icon. After inviting him to Harvard, Ms. Kagan called him ''a great, great judge'' who ''presided over the development of one of the most principled legal systems in the world.'' Her comments are troubling to anyone who believes in limited government and democracy and a limited role for judges. Under Barak, the Israeli court assumed extraordinary governmental power over the people of Israel. The basic democratic rights we take for granted in our country were ignored in his actions. The unelected court in Israel assumed the authority to set aside legislation and executive actions when there were disagreements about policy—not violations of the constitution, but disagreements about policy. It would alter the meaning of enacted laws and override even national defense measures.

Judge Posner wrote that Barak inhabits ''a completely different—and, to an American, a weirdly different—juristic universe.'' He goes on to say: ''What Barak created . . . was a degree of judicial power undreamed of even by our most aggressive Supreme Court justices.'' Judge Posner compared Barak's actions to ''Napoleon's taking [of] the imperial crown out of the Pope's hands and crowning himself.''

Well, is that what we want in the Court? Do we want someone who sees this judge as one of the most admirable judges in the world? Do we want to allow a disregard for the limits of governmental power to further infect our own government? Is that disrespect for the views of ordinary men and women something to which we should aspire? In other words, do unelected, lifetime judges, who are unaccountable to the people—are they entitled to this kind of power? Is this progressive idea that ''experts'' know best consistent with the American view of individual responsibility and popular sovereignty? I think not.

What is Judge Barak's judicial philosophy, as he expresses it? He has written that a judge's role ''is not restricted to adjudicating disputes'' between parties, as is required by the cases and controversies clause of our Constitution. Rather, he says:

> The judge may give a statute new meaning. . . .
>
> ''The judge may give a statute new meaning''—
>
> a dynamic meaning, that seeks to bridge the gap between law and life's changing reality without changing the statute itself. The statute remains as it was, but its meaning changes, because the court has given it a new meaning that suits new social needs.

Well, I would say that Justice Barak let the cat out of the bag. In America, activist judges firmly deny this is what they are doing, but in reality, often that is exactly what they are doing—just taking plain statutes and giving the words new meaning and making them say what they would like for them to have said had they written them in that given period of time.

I believe that to the American people, those words, are offensive and strike at the heart of our democracy. I do not know how you would describe that philosophy, but I do not think it is law, not the law in the great American English tradition of law, a tradition that has attracted people all over the world because they believe they have an opportunity to achieve justice here. Again, I think it is more akin to politics, which should not be a judge's role. There is no place for politics in the courtroom.

Perhaps we should not be surprised that Ms. Kagan—President Obama's nominee—so greatly admires someone who endorses a results-oriented approach, however, because President Obama's Press Secretary, Robert Gibbs, just recently described the President himself as ''results-oriented'' when it comes to law and judging. Amazingly, Gibbs said this about President Obama's view of judging:

> The president is a very pragmatic person who is far less wedded to the process and the mechanics of how you get something done and more wedded to what will the results be.

He is results-oriented, Gibbs said. What do we mean by ''results-oriented''? Results-oriented judging can only mean that a judge enters the courtroom with a preconceived idea of what the results should be, even before he has reviewed the law or heard the facts of the case. And what kinds of conclusions do they have in mind before the trial starts? Well, it is based on the judge's political views or personal feelings about parties or issues in the case. What else could they be? He or she might suggest that those views are somehow provided to them as knowing better than anyone else and that they, therefore, have a duty to impose those ''wise'' ideas on the people and the parties in the case. But I think most of us are not so willing to acknowledge judges are any wiser than anyone else. And what if the Constitution does not support such a result? The judge simply would then declare the law to mean something other than it says.

So that is the philosophy, I contend, that has been endorsed, frankly, by the President. I fundamentally disagree with his philosophy, which is also a philosophy shared by the heroes of Ms. Kagan.

This nominee has a very slim legal record, and it is difficult to evaluate that. She does have a very clear liberal political record. What legal record she has seems to be outside the concept that a judge must serve under the law and under the Constitution.

So it is fair to ask, Does she agree with her heroes? Does she agree with her President? Does she see her lifetime appointment to the Court as an opportunity to promote ideas she desires and then let the law catch up? To that question, we cannot simply accept a confirmation testimony: I will follow the Constitution. Too often, nominees have testified before the committee like Chief Justice John Roberts and gone on to rule more like Aharon Barak. Lipservice to the rule of law is not enough. Activists who have a postmodern view of the law think the Constitution really has no set meaning, there is no way to honestly interpret what it means. So it is easy for them to promise to follow the law because the law, to them, is something that can be changed. It is malleable. It is inexact. It is not finite. They can make it say what they want it to say.

So the question is, Is that the approach Ms. Kagan will take at the hearing? And is that her basic philosophy of judging? She has written that judges should be forthcoming at the confirmation process, and I think we will need to talk about those issues. It is an important confirmation. It is not a coronation. This is a lifetime appointment. This young nominee could easily serve for more than three decades. Indeed, the man she is replacing is—if she lives to his age and serves to his age, she would serve 40 years.

So I think she is entitled to fair and respectful treatment. She is entitled to have an opportunity to discuss and respond to the questions I have raised and others will raise. That is absolutely true, and we cannot use unfairness to besmirch a nominee. But we do need to know: Is this her philosophy of law? What kind of judge will she be? Isn't it true that a person's heroes tell a great deal about who they really are? Few would dispute that these heroes of hers represent three of the most well-known activist judges in the world. So I think the questions are important.

As I have said before, I will oppose—and every Senator should oppose—any

nominee who does not understand and fully accept that their duty is to serve, as the oath says, ''under the Constitution and laws of the United States.'' That is why I think it is only fair to state these concerns before the hearing. I hope my colleagues will be following it. I know our committee members are working hard. It is being a bit rushed, but we are doing our best to be ready next Monday to commence the hearing. I think it will be a good time. I look forward to it, and I hope people who see it will feel as if it was fairly conducted and beneficial not only to Senators, who must vote, but to the American public at large.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. The Senator from California.

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

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

HEALTH INSURANCE RATE AUTHORITY ACT

Mrs. FEINSTEIN. Mr. President, tomorrow the President of the United States will address the Nation on the 90-day anniversary of the passage of health care reform, so I have come to the floor at this time to discuss an omission from the health care bill, and that omission is the protection of consumers from unfair medical insurance premium rate increases, which, as I will show in the next 15 minutes, are now taking place virtually all over this Nation.

On March 4, I introduced legislation to provide the Secretary of Health and Human Services with the ability to set up a rate review procedure to provide that insurance premium rate increases are reasonable. Senators BOXER, BURRIS, CASEY, GILLIBRAND, LAUTENBERG, MIKULSKI, REED, SANDERS, and WHITEHOUSE have all cosponsored this bill. I originally proposed the amendment during the health care reform debate. We worked with the Administration in putting it together. We worked with the Finance Committee. We worked with Representative SCHAKOWSKY in the House, who has introduced the same legislation. President Obama decided to include it in his health care reform proposal, but unfortunately it did not meet the criteria for reconciliation and therefore had to be dropped. On March 4, I introduced a bill to provide this rate review, and on April 20 Senator HARKIN was good enough to hold a full hearing in the HELP Committee.

The time has come to take action. The time has come to protect consumers from the egregious abuse of insurance companies that are, in fact, taking place across this very Nation today.

Health insurance premiums have been spiraling upwards at out-of-control rates—10, 20, 30 percent per year—all while big national insurance companies enjoy increasing profits.

Everyone by now is familiar with the increases that Anthem Blue Cross, a subsidiary of WellPoint, was set to impose—as much as 39 percent—for 800,000 Californians in the individual market. It turns out that Anthem Blue Cross used flawed data to calculate these health insurance premium increases for hundreds of thousands of California policyholders, resulting in increases that were larger than necessary. The State insurance commissioner ordered an independent actuarial study, and here is what they found: They found that the 25-percent average increase proposed by Anthem should only have been 15.2 percent.

What is most disturbing is that Anthem's case is not an aberration. Far from it. The five major insurers in the small group market in California—Blue Shield, Kaiser Permanente, Anthem Blue Cross, Aetna, and United Health Care—have just announced rate increases for small businesses that will average 12 to 23 percent. Some will be hit with rate increases as much as 76 percent. That likely means people will lose their insurance. This means that over 1.6 million Californians will shortly see increases in premiums. These premium increases have been going on all along. As a matter of fact, literally hundreds of thousands of Californians have had to lose their insurance because they can't pay these premium increases.

This is not a problem unique to California. The White House reports that premium rates have been rising across the Nation with substantial geographic variation. For employer-sponsored family coverage, premiums have increased 88 percent in Michigan over the past decade compared with a 145-percent increase in Alaska.

A recent report by the Center for American Progress Action Fund found that WellPoint is pursuing double-digit increases in the individual market for 10 other States in addition to California: Colorado, Connecticut, Georgia, Indiana, Maine, Nevada, New Hampshire, New York, Virginia, and Wisconsin.

Here are a few examples of those rate increases in the individual market. Average rates in Colorado will increase by 19.9 percent. Some consumers will see increases as high as 24.5 percent. In Maine, Anthem Blue Cross Blue Shield requested a 23-percent increase in 2010. They then sued the State's insurance commissioner for rejecting an 18.5-percent increase last year on top of it. But in April a Maine court upheld the insurance commissioner's decision. In Indiana, rates are expected to increase 21 percent in 2010.

Other insurance companies are also raising rates. Health Care Service Corporation of New Mexico proposed 24.6 percent increases for about 40,000 individual policies last fall. The school district in Weston, CT, is served by CIGNA, which proposed a 23-percent increase in the district's insurance premiums for the 2010–2011 fiscal year.

In a recent Kaiser Family Foundation survey, 77 percent of people purchasing insurance in the individual market report being asked for premium increases. That is over three-fourths. These increases are averaging 20 percent. We don't know the extent of the problem nationwide, but the reporting requirements in the health reform law will improve the information available. However, right now, until changes go into effect, there is a glaring loophole which allows for private for-profit medical insurance companies—the big ones—to increase rates as much as they possibly want to and possibly can.

The recently signed health care bill does require insurance companies to provide justification for unreasonable premium increases to the Secretary of Health and Human Services. They must also post these justifications on their Web sites. This provides transparency, granted, but it leaves the loophole. Simply stated, the Secretary has no authority to do anything about these rate increases. So an insurance company can argue the large increase is justified, but in some States there is no review to see that it is. In other States, officials may not have the authority to block an increase that is not justified. We need to close this loophole.

The bill we have introduced will do just that. This legislation gives the Secretary of Health and Human Services the authority to block premium or other rate increases that are unreasonable. In some States, insurance commissioners already have that authority, and that is fine. The bill doesn't touch them. In Maine, for example, the State superintendent of insurance was able to block Anthem's proposed 18.5-percent increase last year. She approved only a 10.9-percent increase.

In 23 States, including my own—California—companies are not required to receive approval for rate increases before they take effect.

So this legislation we have introduced simply creates a Federal fallback, allowing the Secretary to conduct reviews of potentially unreasonable rates in States where the insurance commissioner does not—and I repeat, does not—already have the authority or the capability to do so. That is in 23 States.

The Secretary would review potentially unreasonable premium increases and take corrective action. This could include blocking an increase, providing rebates to consumers, or adjusting an increase.

Under this proposal, the Secretary would work with the National Association of Insurance Commissioners to implement the rate review process. She would identify States that have the authority and capability to review rates. States already doing this work will continue to do so unabated and unfettered. The legislation would not affect

them. However, for the consumers in the other 23 States with no authority, such as California, protection from unfair rate hikes would be provided.

This proposal would also create a Rate Authority, a seven-member advisory body to assist the Secretary with these responsibilities. A wide range of interests would be represented, including consumers, the insurance industry, medical practitioners, and other experts.

I think this proposal strikes the right balance. There is no need for involvement in States with insurance commissioners that are able to protect consumers. So the legislation I have introduced simply provides Federal protection for consumers who are currently at the mercy of large health insurance companies whose top priority is their bottom line.

We, in fact, are the only industrialized country in the world that relies heavily on a for-profit medical insurance industry to provide basic health care. As T.R. Reid says in his book ''The Healing of America'': No country with a large for-profit medical insurance industry has been able to really reform health care costs.

So what we have in America today are multiple large, for-profit insurance companies. They are public companies. They are focused on profits. They are heavily concentrated. They leave consumers with few alternatives when their premiums increase. They have merged over the years and they have gained market concentration in a way that no other business or industry is allowed to do in the United States because they have an antitrust exemption. Major League Baseball has that exemption. The health insurance industry is one of only a few industries with this exemption.

The Judiciary Committee has passed out legislation which would remove that antitrust exemption, and that legislation should be passed as soon as possible. In 2007, just two carriers—WellPoint and United Health Group—gained control of 35 percent of the national market for commercial health insurance. That is because they have merged and acquired using that antitrust exemption.

According to a study by the American Medical Association, more than 94 percent of American health insurance markets have a highly concentrated market share. This means these companies could raise premiums or reduce benefits with little fear that consumers will end their contracts or move to a more competitive carrier because they have bought up the more competitive carriers.

In my State of California, just two companies—WellPoint and Kaiser Permanente—control more than 58 percent of the market. In Los Angeles, these two carriers controlled 62 percent of the market in 2008. Before health care reform, these companies had little incentive to be efficient with the premium dollars they collected. These large insurance companies have large and substantial profit margins while continuing to raise premiums for consumers.

According to Health Care for America Now!, four of the five largest health insurance companies—WellPoint, United Health, Humana, CIGNA—saw profits increase 56 percent from 2008 to 2009; that is, from $7.7 billion to $12.1 billion. Only Aetna saw their profits decrease.

In the first 3 months of 2010, the five largest for-profit medical health insurance companies—WellPoint Inc., United Health Group, Inc., Aetna Inc., Humana Inc., and CIGNA Corp.—recorded a combined net income of $3.2 billion. That is in the first 3 months of this year.

Here is the significance: That is a 31-percent jump over the first 3 months of 2009. So just in the first 3 months of this year, through premium increases they now have a $3.2 billion or 31-percent increase in profits.

Here are the company profits for the first quarter of 2010:

WellPoint, $876.8 million; that is a 51-percent increase over the same quarter in 2009. Humana, $258.8 million; that is a 26-percent increase in the first quarter 2010 over first quarter 2009. Aetna, a $562.6 million profit; that is a 29-percent increase for the first quarter 2010 over first quarter 2009. UnitedHealth, $1.19 billion; that is a 21-percent increase first quarter 2010 over first quarter of 2009. Cigna, $283 million; that is a 36-percent increase first quarter over first quarter of last year.

See, this is amazing. They receive these huge profit margins, then they turn around and raise premiums on consumers, many of whom are struggling to keep their insurance because they have lost their jobs, and many of whom have had a double-digit increase last year and even the year before.

In 2009, despite the worst economic downturn since the Great Depression, these insurers set a full-year profit record. This caps a decade of enormous profit growth in the industry. Between 2000 and 2007, profits at 10 of the largest publicly traded health insurance companies soared 428 percent—from $2.4 billion in 2000 to $12.9 billion in 2007.

The rapidly increasing insurance premiums are a piece of a larger problem. Multiple factors, including the large profit sustained by many hospitals, now are contributing to the cost of health care in the United States. So what we are seeing is an increase in costs charged by major hospitals.

But it is important to note that while the cost of medical care is increasing, premiums are rising much faster than the cost of medical inflation. I must say, there are predictions that we will build into our budget deficit a structural deficit, and that structural deficit will come from these very rising health care costs. Mr. President, we must do something about it.

From 2000 to 2008, premiums for employer-sponsored health plans increased 97 percent for families and 90 percent for individuals. At the same time, the payments that private insurers made to health care providers increased 72 percent, medical inflation increased 39 percent, wages increased 29 percent, and overall inflation increased 21 percent. So figure inflation increased 21 percent, wages 29, medical inflation 39, and payments to health care providers increased 72 percent, yet insurance premiums increased 97 percent. Much more than the increase in medical costs. That is the problem. If we let it happen, we have no one to blame but ourselves.

Meanwhile, consumers struggle to afford these continued rate hikes. Between December 31, 2008, and March 31, 2010, the combined commercial enrollment of these five companies fell by 2.8 million Americans. So insurers make increasing profits by increasing rates and, at the same time, they push 2.8 million Americans off of medical insurance because of those increasing rates. This is very real. It is happening out there every day, every week, every month. We must do something about it.

Let me give you one personal story. Laurel Kaufer is a 48-year-old single mother of two sons. She lives in Woodland Hills in my State. She is a self-employed mediator and lawyer. She has had Blue Cross for 25 years. Her son, Brandon, is 21 and he attends the University of Arizona. Her son, Zack, is 19 and goes to USC.

Anthem Blue Cross has raised her health insurance rates 550 percent over the last 10 years. Between February of 2001 and March of 2010, Ms. Kaufer has spent $52,128 on health insurance premiums alone. That doesn't include deductibles.

She has no choice but to pay the increases. With her two sons in college, she doesn't have any disposable income. She seeks medical treatment only when she has to. She and her son do their annual checkups, but as Ms. Kaufer says:

> Sometimes I don't get a test that a doctor says I should have, because it costs me money, and I wait it out to see if I can do without it.

This is a family with insurance, passing up tests because they already spend over $52,000 on premiums.

There are numerous stories like these. Individuals and families have to choose whether to buy groceries, pay their mortgage, or purchase health insurance.

As I pointed out, in the last few years, 2.8 million Americans who were previously insured by for-profit insurance companies have severed their policies or lost their insurance because they can't pay the bill.

I strongly believe we need to take action on this and soon because it is going to continue and it is going to spiral. These companies are going to take every advantage of a loophole in the law to raise premiums, to be able to increase their profit margin and push more people off of insurance.

This bill is very necessary. Premiums are increasing every day. I urge my colleagues to join me in supporting this legislation, the Health Insurance Rate Authority of 2010, which will close this loophole.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is closed.

EXECUTIVE SESSION

NOMINATION OF MARK A. GOLDSMITH TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

NOMINATION OF MARC T. TREADWELL TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA

NOMINATION OF JOSEPHINE STATON TUCKER TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

The assistant legislative clerk read the nominations of Mark A. Goldsmith, of Michigan, to be United States District Judge for the Eastern District of Michigan; Marc T. Treadwell, of Georgia, to be United States District Judge for the Middle District of Georgia; Josephine Staton Tucker, of California, to be United States District Judge for the Central District of California.

The PRESIDING OFFICER. Under the previous order, the time until 6 p.m. will be for debate on the nominations, with the time equally divided and controlled by the Senator from Vermont, Mr. LEAHY, and the Senator from Alabama, Mr. SESSIONS.

The Senator from Georgia.

Mr. ISAKSON. Mr. President, I rise briefly, and with great pride, to commend to my colleagues the confirmation of Marc Treadwell from the State of Georgia to be a U.S. district court judge of the Middle District of Georgia.

Marc is all Georgian. He was born in Blackshear, and he traveled around as the son of an Army officer. But he came back and attended Valdosta State where he earned his bachelor's degree, and then he graduated from Mercer University's Walter F. George Law School in Macon.

After graduating, he came to Atlanta and, ironically, practiced law at the firm of Kilpatrick & Cody, which represented my company for years in Atlanta. It is one of the most distinguished law firms in the State of Georgia.

Marc has been inducted into the American College of Trial Lawyers, and Martindale-Hubbell gave him an ''AV,'' its highest designation.

Marc now teaches at his alma mater, Mercer, and he has written more than 50 publications for Law Reviews and other publications. He is recognized as a leading authority and expert in Georgia evidence law.

Marc is married to his beautiful wife Wimberly. They have two sons, Thomas and John. In addition to juggling his law practice, teaching, and family duties, Marc finds time to be an active member of the Vineville United Methodist Church in Macon.

It is my privilege and honor to thank Chairman LEAHY and Ranking Member SESSIONS for their diligence on this confirmation in the committee.

I commend Marc Treadwell with my highest recommendation for confirmation to the court of the United States of America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Like my friend from Georgia, I rise today also with great pride to strongly support the nomination of Judge Mark Goldsmith, to be a judge for the U.S. District Court for the Eastern District of Michigan.

I have known Judge Goldsmith for a long time. He is a friend and someone for whom I have the greatest admiration both as a person and as a judge. He is extremely intelligent. He is highly respected in Michigan as a judge. Since joining the Oakland County Circuit Court in 2004, he has proven himself to be someone who is highly respected by all sides. He is known for his integrity and fairness. That is certainly what we look for as we look to these important confirmations on the Federal bench.

After graduating from the University of Michigan in 1974, he went on to receive his law degree from Harvard University in 1977. Before joining the State court, he was a partner at Honigman Miller in Detroit. He has also served as an adjunct professor of the law at Wayne State University's law school.

Judge Goldsmith is well known in the community where he formerly served on many boards and is someone who is known for giving back to the community, working with the poor, and working with those who need his help in the Detroit area. He has been recognized for his pro bono involvement and his community work, most notably at B'nai B'rith Antidefamation League and Forgotten Harvest, an organization that collects surplus perishable foods from grocery stores, restaurants, and caterers and provides them to emergency food providers in the metro Detroit area.

The American Bar Association has given him the rating of ''unanimously well qualified,'' which is their highest rating for judicial nominees.

He has been a judge in Michigan since 2002 when he was appointed as a part-time magistrate hearing traffic violations and civil infractions. In 2004, he was appointed to the Oakland County Circuit Court, which has jurisdiction over felonies and major civil claims cases. He was elected to that position in November of 2004 and reelected in 2006.

In the cases that have come before him, he has always been known to be fair and impartial, willing to listen to both sides and make careful rulings based on the law. It has been my great honor and privilege to know him and to join with Senator LEVIN in making a recommendation to the President regarding his possible nomination. We were very pleased when President Obama chose to nominate him to the Federal bench.

I urge my colleagues to support him unanimously, as the American Bar Association has done—again, giving him their highest rating for judicial nominees of ''unanimously well qualified.'' I hope we will do this soon today.

I yield the floor.

Mr. President, I ask that the time be equally divided between both sides, and I suggest the absence of a quorum.

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

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

Mr. CHAMBLISS. Mr. President, I rise this afternoon to say a few words about an excellent lawyer from Macon, GA, Marc Treadwell, who has been nominated to serve as a U.S. District Court Judge for the Middle District of Georgia, the district I was privileged to practice in for 26 years.

He is a native of Blackshear, GA, but as an ''Army brat,'' he grew up near various bases around the United States and abroad.

He is a graduate of Valdosta State University, as well as the Walter F. George School of Law at Mercer University in Macon.

At Mercer, Marc served on the law review and was a member of the school's prestigious Brainerd Currie Honor Society.

After graduation, Marc went to Atlanta to begin his practice of law and returned to Macon in 1985 and has practiced in Macon ever since. He currently is a partner with the Macon firm of Adams, Jordan & Treadwell.

Marc has been inducted into the American College of Trial Lawyers and Martindale-Hubbell and his colleagues have given him the highest rating available to a lawyer in the country with an AV rating.

He now teaches at his alma mater, Mercer, and has written more than 50 publications for law reviews and other publications. Marc is also recognized as a leading authority on the evidence law in our State of Georgia.

Marc and his wife Wimberly have two sons, Thomas and John. In addition to juggling his law practice, teaching and family duties, Marc is an active member of the Vineville United Methodist Church in Macon.

I am pleased to commend Marc Treadwell to my colleagues, and I believe he will serve Georgians and Americans very well as a Federal judge and will be a fine addition to the bench.

Marc gets the highest remarks from his colleagues with whom I have talked over the last several months. I am extremely pleased to be here today to recommend to all of my colleagues the confirmation of Marc Treadwell to be a U.S. district judge for the Middle District of Georgia.

Mrs. FEINSTEIN. Mr. President, I rise to express my strong support for the nomination of California Superior Court Judge Josephine Staton Tucker to sit on the U.S. District Court for the Central District of California.

Judge Tucker brings a wealth of relevant experience as a lawyer and a judge to her candidacy for the Federal bench.

For the last 8 years, she has been a trial judge on the Orange County Superior Court. She has managed a judicial calendar of up to 500 pending cases at a time. She has presided over trials on topics as diverse as commercial contract disputes, negligence and discrimination actions, felony criminal cases, and family law matters. And she has served for 2 years on the Appellate Division of the court by special appointment from the chief justice of California, giving her important experience with appeals as well as trials.

Additionally, Judge Tucker brings 15 years of litigation experience as an associate and then a partner at the law firm of Morrison Foerster LLP.

Her work in private practice included representation of both plaintiffs and defendants in all aspects of employment law, including individual and class action litigation regarding employment discrimination, wrongful discharge, trade secrets and unfair competition, privacy, and wage and hour issues. She represented clients before State courts, Federal courts, and administrative agencies, and she also provided training to employers regarding compliance with federal and state employment laws.

From 1996 to 2002, Tucker was the cochair of Morrison & Foerster's 50-lawyer employment law practice. In 2001, the Orange County Trial Lawyers Association recognized her work by naming her their Employment Lawyer of the Year.

Judge Tucker has also written prolifically. Her published work includes: The California Employers Guide to Employee Handbooks and Personnel Policy Manuals, a widely used reference book in California; three articles and over 50 case critiques for the California Employment Law Reporter, and 60 discussions of the law confronting employers and employees in the Los Angeles Times Sunday Edition.

Finally, she has been active in community work, providing volunteer services to the San Francisco AIDS Foundation, the Orange Coast Interfaith Shelter, the Make-A-Wish Foundation, and the Intercommunity Child Guidance Center.

Judge Tucker is a summa cum laude graduate of William Jewell College, a graduate of Harvard Law School, and a former law clerk to Judge John Gibson on the U.S. Court of Appeals for the Eighth Circuit. In sum, she is a highly qualified candidate for the Federal Court.

Judge Tucker is also well respected in the Orange County legal community where she works. I have long used a committee process involving local lawyers to identify the most highly qualified candidates for the Federal courts in California. Judge Tucker was recommended to me by my current committee after diligent research into the quality of her work and her reputation among local lawyers. I believe she will be a wonderful addition to the U.S. district court in Orange County.

I thank Senator BOXER for her support of Judge Tucker, and I urge my colleagues to vote in favor of confirmation.

I want to say briefly that while I will be very glad to see Judge Tucker confirmed today, there is much more work to be done in confirming the President's nominees. Let me give one example that is important to me.

The President first nominated Magistrate Judge Edward Chen to serve on the Federal District Court for the Northern District of California over 300 days ago. He has been voted out of committee twice and has been pending on the floor most recently for 137 days without a vote.

Like Judge Tucker, Judge Chen came out of my committee process. He has excellent credentials, including 9 years as a magistrate judge, and has strong, bipartisan support in the community he has been nominated to serve. I understand that certain members of the minority have concerns because Chen worked for the ACLU before becoming a magistrate judge and because of two lines that have been excerpted from his speeches and caricatured in the Washington Times. Chen has a long record as an adjudicator, however, and it is available for all to review.

He has spent 9 years as a magistrate judge and written over 200 published opinions. There has not been a single objection in committee or on the floor to even one of his decisions.

In 2008, an impartial Federal Magistrate Judge Merit Selection Review Panel reviewed his full record. The Panel unanimously recommended him for reappointment. Federal prosecutors they interviewed were ''uniformly positive'' about Chen and called his rulings ''balanced'' and ''well reasoned.'' Similarly, the local civil bar called him ''well prepared,'' ''very intelligent,'' and ''decisive.''

His reputation is stellar among the district judges he works with—whether they are Republican or Democratic appointees. District Judge Lowell Jensen who served as the No. 2 official in the Reagan Justice Department said Chen's decisions ''reflect not only good judgment, but a complete commitment to the principles of fair trial and the application of the rule of law.''

Two bipartisan selection committees have recommended Chen for the district court—one in the Bush administration and the committee I have established to review candidates for the current Administration.

The American Bar Association has also unanimously rated him well qualified.

There is a long track record that shows that Chen understands the difference between his work as a lawyer almost a decade ago and the work of a judge, which he has been doing for the last nine years with great success.

It is long past time for the minority to agree to a time agreement and for the full Senate to have an up-or-down vote on Judge Chen's nomination.

I will be very pleased to see Judge Tucker confirmed today, and I also believe that we should move forward to confirm other nominees pending.

Mrs. BOXER. Mr. President, I wish to express my strong support for California Superior Court Judge Josephine Staton Tucker, who will be confirmed today to the U.S. District Court for the Central District of California. Judge Tucker was recommended to the President by my colleague, Senator FEINSTEIN, and will be a great addition to the Federal bench.

Judge Tucker has had a distinguished career. After graduating from Harvard Law School, she served as a Federal clerk for Judge Gibson of the Eighth Circuit Court of Appeals. Following her clerkship, she practiced labor and employment law at Morrison & Foerster in San Francisco and Irvine, CA, becoming a partner at the firm in 1995. In 2002, she was appointed by then-Governor Gray Davis to the Orange County Superior Court.

I congratulate Judge Tucker and her family on this important day, and wish her the best as she begins her tenure as a Federal judge.

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

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

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

Mr. LEAHY. Mr. President, I apologize for the voice. There is a fair amount of pollution in the air. It will be much better as soon as I get to Vermont at the end of the week.

Mr. President, this evening the Senate is being allowed to confirm a few

more of the 26 judicial nominations that have been reported by the Senate Judiciary Committee over the past several months, but that continue to be stalled by the Republican leadership. We have yet to be allowed to consider nominations reported last November. In addition to the three nominations being considered today, there are more than a dozen more judicial nominations that were reported unanimously by the Judiciary Committee, and a total of almost two dozen that are being held up without good reason. There is no excuse for these months of delay.

The Senate Republican leadership refuses to enter into time agreements on these nominations. Their stalling and obstruction is unprecedented. They refuse to enter into a time agreement to consider the North Carolina nominees to the Fourth Circuit, who were reported by the committee in January, one unanimously and one with only a single negative vote. They refuse to enter into a time agreement to debate and vote on the Sixth Circuit nominee from Tennessee who was reported last November. I have told Senator ALEXANDER that all Democrats are prepared to vote on that nominee and have agreed to do so since November. It is his own leadership that continues to obstruct the nominee from Tennessee.

The Senate is well behind the pace I set for President Bush's judicial nominees in 2001 and 2002. A useful comparison is that in 2002, the second year of the Bush administration, the Democratic Senate majority's hard work led to the confirmation of 72 Federal circuit and district judges nominated by a President from the other party. In this second year of the Obama administration, we have confirmed just 19 so far—72 to 19.

In the first 2 years of the Bush administration, we confirmed a total of 100 Federal circuit and district court judges. So far in the first 2 years of the Obama administration, the Republican leadership has successfully obstructed all but 31 of his Federal circuit and district court nominees—100 to 31. Today that number will rise, but to just 34. Meanwhile Federal judicial vacancies around the country hover around 100.

By this date in President Bush's Presidency, the Senate had confirmed 57 of his judicial nominees. Despite the fact that President Obama began sending us judicial nominations 2 months earlier than did President Bush, the Senate has to date only confirmed 31 of his Federal circuit and district court nominees—57 to 31.

Last year, Senate Republicans refused to move forward on judicial nominees. The Senate confirmed the fewest number of judges in 50 years. The Senate Republican leadership allowed only 12 Federal circuit and district court nominees to be considered and confirmed despite the availability of many more for final action. They have continued their obstruction throughout this year. By every measure the Republican obstruction is a disaster for the Federal courts and for the American people.

To put this into historical perspective, consider this: In 1982, the second year of the Reagan administration, the Senate confirmed 47 judges. In 1990. the second year of the George H.W. Bush administration, the Senate confirmed 55 judges. In 1994, the second year of the Clinton administration, the Senate confirmed 99 judges. In 2002, the second year of the George W. Bush administration, the Senate confirmed 72 judges. The only year comparable to this year's record-setting low total of 16 was 1996, when the Republican Senate majority refused to consider President Clinton's judicial nominees and only 17 were confirmed all session.

Senate Democrats moved forward with judicial nominees whether the President was Democratic—1994—or Republican—1982, 1990, 2002—and whether we were in the Senate majority—1990, 1994, 2002—or in the Senate minority—1982. Senate Republicans, by contrast, have shown an unwillingness to consider judicial nominees of Democratic Presidents—1996, 2009, 2010.

Over the last recess, I sent a letter to Senator MCCONNELL and to the majority leader concerning these matters. In that letter, I urged, as I have since last December, the Senate to schedule votes on these nominations without further obstruction or delay. I called on the Republican leadership to work with the majority leader to schedule immediate votes on consensus nominations—many, like those finally being considered today, I expect will be confirmed unanimously—and consent to time agreements on those on which debate is requested. As I said in the letter, if there are judicial nominations that Republicans truly wish to filibuster—after arguing during the Bush administration that such action would be unconstitutional and wrong—then they should so indicate to allow the majority leader to seek cloture to end the filibuster. It is outrageous that the majority leader may be forced to file cloture petitions to get votes on the North Carolina, Tennessee and other nominees.

The three nominees being considered today were all reported unanimously by the Judiciary Committee in March, more than 3 months ago. They could and should have been confirmed long before now. They are supported by their home State Senators. I congratulate them on their confirmation today.

After these votes, there will still be 23 judicial nominees favorably reported by the Judiciary Committee being stalled from Senate consideration by the Republican leadership. We should change this course, and schedule confirmation votes without further delay.

Mr. President, I realize about half the time remaining is mine. No one else is seeking recognition.

First off, I wish to thank Senator ISAKSON for his kind words earlier.

As I announced last month, the confirmation hearing on the President's nomination of Elena Kagan to be an Associate Justice of the Supreme Court will begin next Monday. On Monday, I will give each Senator who is a member of the committee an opportunity to deliver an opening statement. After the nominee is presented to the committee, she will proceed with her opening statement. On Tuesday morning we will ask questions of the nominee. I hope that we will conclude the hearing by the end of the week, including testimony from a few public witnesses, as has become our custom.

Over the last few weeks, I have come to the Senate floor to outline the qualifications and achievements of the nominee, and to comment on the attacks that have been launched against her. I have noted my disappointment that too many Republican Senators seem predisposed to oppose the nomination.

When he set out to find a well-qualified nominee to replace retiring Justice John Paul Stevens, the President said this:

> I will seek someone who understands that justice isn't about some abstract legal theory or footnote in a casebook. It's also about how laws affect the daily realities of people's lives—whether they can make a living and care for their families, whether they feel safe in their homes and welcome in our nation.

In introducing Solicitor General Kagan as his Supreme Court nominee, President Obama praised her ''understanding of the law, not as an intellectual exercise or words on a page, but as it affects the lives of ordinary people.''

President Obama is not alone in recognizing the value of judges and Justices who are aware that their duties require them to understand how the law works, and the effects it has in the real world. Within the last month, two Republican appointees to the Supreme Court have made the same point. Last month, Justice Anthony Kennedy told a joint meeting of the Palm Beach and Palm Beach County Bar Associations that, as a Justice:

> You certainly can't formulate principles without being aware of where those principles will take you, what their consequences will be. Law is a human exercise and if it ceases to be that it does not deserve the name law.

In addition, Justice David Souter, who retired and was succeeded by Justice Sotomayor last year, delivered a thoughtful commencement address at Harvard University. He spoke about judging and explained why thoughtful judging requires consideration of human experience and grappling with the complexity of constitutional questions in a way that takes the entire Constitution into account. He spoke about the need to ''keep the constitutional promises our nation has made.'' Justice Souter concluded:

> If we cannot share every intellectual assumption that formed the minds of those who framed that charter, we can still address the constitutional uncertainties the way they must have envisioned, by relying on reason, by respecting all the words the Framers wrote, by facing facts, and by seeking to understand their meaning for living people.

Justice Souter understood the real-world impact of the Supreme Court's decisions, as does, I believe, his successor Justice Sotomayor. Across a range of fields including bankruptcy, the fourth amendment, statutory construction, and campaign finance, Justice Sotomayor has written and joined opinions that have paid close attention to the significance of the facts in the record, to the considered and long-standing judgments of the Congress, to the arguments on each side, to the Supreme Court's precedents, and to the real-world ramifications of the Supreme Court's decisions. She has voted to keep the courthouse doors open in important employment discrimination and pension rights cases.

A hallmark of real-world judging is acknowledging the challenges of construing the Constitution's broad language given our social and technological developments. I am talking about getting away from sloganeering and being concrete. I appreciate Justices like Justice John Paul Stevens, Justice David Souter and Justice Sandra Day O'Connor who are grounded, who draw on the lessons of experience and use common sense. In the real world of judging, there are complex cases with no easy answers. In some, as Justice Souter pointed out, different aspects of the Constitution point in different directions, toward different results, and need to be reconciled.

This approach to judging is not only mainstream, it is as old as the Constitution itself and has been evident throughout American history. Chief Justice John Marshall wrote for a unanimous Supreme Court in the 1819 landmark case of McCulloch v. Maryland that for the Constitution to contain detailed delineation of its meaning ''would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind.'' He understood, as someone who served with Washington, Jefferson, Adams and Madison, that its terms provide ''only its great outlines'' and that its application in various circumstances would need to be deduced. The ''necessary and proper'' clause of the Constitution entrusts to Congress the legislative power ''to make all laws which shall be necessary and proper for carrying into execution'' the enumerated legislative powers of article I, section 8, of our Constitution as well as ''all other powers vested by this Constitution in the Government of the United States.'' In construing it, Chief Justice Marshall explained that expansion clause ''is in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.'' He went on to declare how, in accordance with a proper understanding of the ''necessary and proper'' clause and the Constitution, Congress should not by judicial fiat be deprived ''of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to human affairs'' by judicial fiat. Chief Justice Marshall understood the Constitution, knew its text and knew the Framers. He rejected stagnant construction of the Constitution.

McCulloch v. Maryland was the Supreme Court's first construction of the ''necessary and proper'' clause. The most recent was just last month in United States v. Comstock. That case upheld the power of Congress to enact the Adam Walsh Child Protection and Safety Act, which included provisions authorizing civil commitment of sexually dangerous Federal prisoners who had engaged in sexually violent conduct or child molestation and were mentally ill. Quoting Chief Justice Marshall's language from McCullough, Justice Breyer wrote in an opinion joined by a majority of the Supreme Court, including Chief Justice Roberts, about the ''foresight'' of the Framers who drafted a Constitution capable of resilience and adaptable to new developments and conditions.

Justice Breyer's judicial philosophy is well known. A few years ago, he authored ''Active Liberty'' in which he discussed how the Constitution and constitutional decisionmaking protects our freedoms and, in particular, the role of the American people in our democratic government. When he writes about how our constitutional values applying to new subjects ''with which the framers were not familiar,'' he looks to be faithful to the purposes of the Constitution and the consequences of various decisions.

During the Civil War, in the 1863 Prize Cases decision, the Supreme Court upheld the constitutionality of President Lincoln's decision to blockade southern ports before a formal congressional declaration of war against the Confederacy. Justice Grier explained that it was no less a war because it was a rebellion against the lawful authority of the United States. Noting that Great Britain and other European nations had declared their neutrality in the conflict, he wrote that the Court should not be asked ''to affect a technical ignorance of the existence of a war, which all the world acknowledges to be the greatest civil war known in the history of the human race.'' That, too, was real-world judging.

In the same way, the Supreme Court decided more recently in Rasul v. Bush, that there was jurisdiction to decide claim under the Great Writ securing our freedom, the writ of habeas corpus, from those in U.S. custody being held in Guantanamo. Justice Stevens, a veteran of World War II, engaged in real-world judging, recognizing that the United States exercised full and exclusive authority at Guantanamo if not ultimate, territorial sovereignty. The ploy by which the Bush administration had attempted to circumvent all judicial review of its actions was rejected recognizing that ours is a government of checks and balances.

Examples of real-world judging abound in the Supreme Court's decisions upholding our individual freedoms. For example, the First Amendment expressly protects freedom of speech and the press, but the Court has applied it, without controversy, to television, radio broadcasting, and the Internet. Our privacy protection from the fourth amendment has been tested but survived the invention of the telephone and institution of Government wiretapping because the Supreme Court did not limit our freedom to tangible things and physical intrusions but sought to ensure privacy consistent with the principles embodied in the Constitution.

Real-world judging is precisely what the Supreme Court did in its most famous and admired modern decision in Brown v. Board of Education. I recently saw the marvelous production of the George Stevens, Jr., one-man play ''Thurgood'' starring Laurence Fishburne. It was an extraordinary evening recalling one of the great legal giants of America. At one point, Justice Marshall reads a few lines from the unanimous decision of the Supreme Court in 1954 that declared racial discrimination in education unconstitutional. Chief Justice Warren had written:

> In approaching this problem, we cannot turn the clock back to 1868, when the [Fourth] Amendment was adopted or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

That was real-world judging that helped end a discriminatory—and dark—chapter in our history. The Supreme Court did not limit itself to Constitution as written in 1787. At that point in our early history, ''We the People'' did not include Native Americans or African-American slaves, and our laws failed to accord half the population equality or the right to vote because they were female. Real-world judging takes into account that the world and our Constitution have changed since 1788. It took into account not only the Civil War, but the Civil War amendments to the Constitution adopted between 1865 and 1870.

Would anyone today, even Justice Scalia, really read the eighth amendment's limitation against cruel and unusual punishment to allow the cutting off of ears that was practiced in colonial times? Of course not, because the standard of what is cruel and unusual punishment was not frozen for all time in 1788. Does anyone dispute today that the fundamental rights set forth in the Bill of Rights are correctly applied to the States through the due process clause of the 14th amendment? Literally, the freedoms in our Bill of Rights were expressed only as limitations on the authority of Congress. Does anyone think that the equal protection clause of the 14th amendment cannot be read to prohibit gender discrimination? It was most assuredly not

women that its drafter had in mind when it was adopted.

Our Constitution was written before Americans had ventured into outer space, or cyberspace. It was written before automobiles, airplanes or even steamboats. Yet the language and principles of the Constitution remain the same as it is applied to new developments. The Constitution mentions our ''Armed Forces'' but there was no air force when the Constitution was written. Similarly, in construing the ''commerce clause'' and the intellectual property provisions to provide copyright and patent protection for ''writings and discoveries,'' the Supreme Court has engaged in real-world judging as it applies our constitutional principles to the inventions, creations and conditions of the 21st century. Jefferson and Madison may have mastered the quill pen, but never envisioned modern computers.

There are unfortunately occasions on which the current conservative, sometimes activist, majority on the Supreme Court did not engage in real-world judging. One such case, the Lilly Ledbetter case, would have perpetuated unequal pay for women, by using a rigid, results-oriented, cramped reading of a statute to defy congressional intent. We corrected that case by statute. Similarly, the Gross decision seeks to close our courts to those treated unfairly. The legislature must correct it. And, of course, the Citizens United case wrongly reversed 100 years of legal developments to unleash corporate influence in elections.

We saw yet another troubling example in a narrow 5–4 decision handed down earlier today in a case called Rent-A-Center v. Jackson, in which the conservative activists in the majority, once again, have ruled in favor of big business at the expense of hardworking Americans. With this narrow decision, the five Justices in the majority have overridden the intent of Congress in passing the Federal Arbitration Act and abandoned our longstanding tradition of allowing people to go to court to challenge unconscionable agreements. Just as it was in the wake of the Ledbetter case, it will be up to Congress to correct this error and undo the damage it has done to thousands of people who have no choice but to sign unfair agreements in order to get a job and put food on their table for their families.

The issue before the Court was whether a court or an arbitrator should decide the enforceability of an agreement to settle disputes that may arise. Justice Stevens, writing for the four dissenting Justices noted that the question whether a legally binding arbitration agreement existed is an issue that the Federal Arbitration Act assigns to the courts. Congress did not intend to prevent employers from having access to an impartial court's determination whether the agreement was unconscionable. Today's ruling turns that purpose, and even the Court's own precedent, upside down.

It is estimated that more than one hundred million Americans work under binding mandatory arbitration agreements. Most Americans are not even aware that according to the new Supreme Court ruling, they will have waived their constitutional rights to a jury trial when they accept a job to provide for their families. This divisive decision not only closes the courthouse doors to millions of American workers and their families, it gives big business even more incentive to require their employees to sign one-sided arbitration agreements as a condition of employment.

Considering how the law will work in the real world is an indispensable part of a judge's responsibility. I expect that Elena Kagan learned that lesson early in her legal career when she clerked for Justice Marshall. In 1993, upon the death of Justice Thurgood Marshall, she observed:

> Above all, he had the great lawyer's talent . . . for pinpointing a case's critical fact or core issue. That trait, I think, resulted from his understanding of the pragmatic—of the way in which the law acted on people's lives.

If confirmed, Elena Kagan would be the third member of the current Supreme Court to have had experience working in all three branches of the government prior to being nominated. Some have criticized her work during the Clinton administration as political. I suggest that a fair reading of her papers indicates that she has the ability to take many factors into account in analyzing legal problems and that her skills include practicality, principle and pragmatism. These were all used in their service to the American people by Justices Sandra Day O'Connor, Souter and Stevens.

I have always thought that a nominee's judicial philosophy was important. Nearly 25 years ago, I noted in an earlier hearing for a Supreme Court nominee:

> There can hardly be an issue closer to the heart of the Senate's role than a full and public exposition of the nominee's approach to the Constitution and to the role of the courts in discerning and enforcing its commands. That is what I mean by judicial philosophy.

It is only recently that some Republican Senators conceded that judicial philosophy matters. I hope this means that they will abandon the false premise that all a Justice does is mechanically apply obvious legal dictates to reach preordained outcomes. There is more to serving the country as a Supreme Court Justice. A Supreme Court Justice needs to exercise judgment, should appreciate for the proper role of the courts in our democracy, and should consider the consequences of decisions on the fundamental purposes of the law and in the lives of Americans—in other words, engage in real-world judging.

I intend to ask the nominee about her judicial philosophy and about real-world judging. That is what I have done through the course of a dozen Supreme Court nominations hearings. Real-world judging is an important part of American constitutional life.

As I have said, I reject the ideological litmus test that Senate Republicans would apply to Supreme Court nominees. Unlike those on the right who drove President Bush to withdraw his nomination of Harriet Miers and those who opposed Justice Sotomayor, I do not require every Supreme Court nominee to swear fealty to the judicial approach and outcomes ordained by adhering to the narrow views of Justice Scalia and Justice Thomas. I expect judges and Justices to faithfully interpret the Constitution and apply the law, and also to look to the legislative intent of our laws and to consider the consequences of their decisions. I hope that judges and Justices will respect the will of the people, as reflected in the actions of their democratically elected representatives in Congress, and serve as a check on an overreaching executive.

What others seem to want is assurance that a nominee for the Supreme Court will rule the way they want so that they will get the end results they want in cases before the Supreme Court. Lack of such assurances was why they vetoed President Bush's nomination of Harriet Miers, the third woman to be nominated to the Supreme Court in our history and the only one not to be confirmed. They forced Ms. Miers to withdraw even while Democrats were preparing to proceed with her hearing. They do not want an independent judiciary. They demand Justices who will guarantee the results they want. That is their ideological litmus test. As critics level complaints against Elena Kagan, I suspect that the real basis of that discontent will be that the nominee will not guarantee a desired litigation outcome.

Of course that is not judging. That is not even umpiring. That is fixing the game. It is conservative activism plain and simple. It is the kind of conservative activism we saw when the Supreme Court in Ledbetter disregarded the plain language and purpose of title VII. It is the kind of activism we saw when, this past January, a conservative activist majority turned its back on the Supreme Courts own precedents, the considered judgment of Congress, the interests of the American people and our long history of limiting corporate influence in elections in their Citizens United decision.

We can do better than that. In fact, we always have done better than that. In reality, we can expect Justices who are committed to do the hard work of judging required of the Supreme Court. In practice, this means that we want Justices who will pay close attention to the facts in every case that comes before them, to the arguments on every side, to the particular language and purposes of the statutes they are charged with interpreting, to their own precedents, to the traditions and longstanding historical practices of this

Nation, and to the real-world ramifications of their decisions. Judging is not just textual and is not automatic. If it were, a computer could do it. If it were, important decisions would not be made 5 to 4.

The resilience of the Constitution is that its great concepts and phrases are not self-executing. They involve constitutional values that need to be applied. Cases often involve competing constitutional values. In the hard cases that come before the Court in the real world, we want—and need—Justices who have the good sense to appreciate the significance of the facts in the cases in front of them as well the ramifications of their decisions in human and institutional terms. I expect in close cases that hard-working Justices will sometimes disagree about results. I do not expect to agree with every decision of every Justice. I understand that. I support judicial independence. I voted for Justice Stevens, Justice O'Connor and Justice Souter, who were all nominees of Republican Presidents.

A year ago, most Republican Senators opposed the nomination of Justice Sotomayor to the Supreme Court, in spite of her outstanding record for more than 17 years as a Federal district and court of appeals judge. Most Republican Senators opposed Justice Sotomayor's nomination not because she lacked the requisite professional qualifications or because there were issues about her character or integrity. Her record was impeccable. Sadly, the complaints about both Justice Sotomayor and now being echoed in opposition to Solicitor General Kagan are based on the two nominees' unwillingness to promise to deliver results that align with a narrow political ideology.

We 100 who are charged with giving our advice and consent on Supreme Court nominations should consider whether those nominated have the skills, temperament and good sense to independently assess in every case the significance of the facts and the law and real-world ramifications of their decisions. I have urged Republican and Democratic Presidents to nominate people from outside the judicial monastery because I think real-world experience is helpful and because I know that real-world judging matters in the lives of the American people. The American people live in a real world of great challenges. We have a guiding charter that provides great promise. At the end of the day, the Supreme Court functions in the real world that affects all Americans. Judicial nominees need to appreciate that simple, undeniable fact. history—segregation.

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

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. Six and a half minutes.

Mr. SESSIONS. Mr. President, since Ms. Kagan was nominated, President Obama and his administration have attempted to defend not only her discriminatory treatment of the military at Harvard but to do so through misleading and even untrue statements. Indeed, Vice President BIDEN said Ms. Kagan's policy was ''right,'' and he suggested she was merely following the law, both of which were not correct.

The recent statements made by the White House after the release late Friday of relevant records on this matter are most troubling. The records not only prove Ms. Kagan deliberately obstructed military activity at the Harvard campus during wartime, but they reveal her actions were even more concerning than previously known. The White House continues to insist she worked to accommodate military recruiters—which is just the opposite of accurate—that she assiduously worked to follow the law—not so—and to ensure that Harvard law students could choose a career in the military service. Well, I guess they could, but she certainly was not furthering that opportunity.

The documents revealed late Friday night show these statements are not accurate and really seem to be part of a campaign to rewrite what happened there. The documents show that Ms. Kagan reversed Harvard's policy—which allowed the military to come and recruit, as any other group would—without basis or notice, in order to block the access of the recruiters, not to accommodate them. That is not disputed. It shouldn't be disputed.

The documents further show that she defied Federal law, forcing the Department of Defense to use its authority to bring Harvard into compliance. They had to threaten to cut off Harvard's money. They showed she did not ensure access to military careers and recruiters, but that the Office of Career Services prevented the military from even posting job openings on campus. They show that she sanctioned a demeaning second-class entry system for the military that the Department of Defense finally stood up to and said: No, that is intolerable and we will not accept it.

The documents also show that Ms. Kagan continued to fight military recruitment even when her defiance of the law meant that Harvard could lose $½ billion a year. In a memorandum we obtained from the Department of Defense, Larry Summers—then president of Harvard, now President Obama's chief economic adviser—approved the entrance of the military recruiters fully on campus over the objection of Dean Kagan. Now, that is the fact.

So this policy was designed to obstruct recruiters and not only to end recruiting on campus, really, but to punish and demean the military in an attempt to force them to change the ''Don't Ask Don't Tell'' policy. But that rule was not enacted by the military. It was enacted by Congress and Ms. Kagan's former boss, President Bill Clinton, in whose White House she worked for 5 years—without apparently any serious objection to his signing of the policy.

Ms. Kagan's actions, combined with the fact that she had little to say about recruiting policy while working with President Clinton, raise questions about whether this is just a hostility to the military. They were just saluting and following the policy of Congress and the President. Why should they be blamed for this? Why should people who risk their lives to ensure Harvard's freedom be given second-class treatment on the Harvard campus? It was absolutely unacceptable then; it is unacceptable now.

I was involved, and this Congress had to pass a new law, an updated Solomon amendment, to end this policy. And Dean Kagan was one of the leaders of the law school's efforts. That is just a fact. And to suggest otherwise is misleading.

Here are some quotes from some of the e-mails that were released.

> Harvard Law School is delaying and providing a ''slow role'' to Air Force's efforts to recruit during the Spring recruiting season. Seems they have delayed sufficiently in providing permission that the Season may already be ''too late.''

That was in February 2005, when she was dean.

In March 2005, this memo was written:

> The Army was stonewalled at Harvard. Phone calls and e-mails went unanswered and the standard response was—we're waiting to hear from our higher authority.

How about another one? This was in April of 2006:

> We're all searching for a way to limit the polarizing nature of the anti Solomonites—

Those are the people who were trying to have the Solomon amendment passed in Congress thrown out—

> who now rattle sabers over an intent to shout down the military. Dean Kagan is a case in point below as she reportedly ''encouraged students to demonstrate against the presence of recruiters . . . . (and to) express their views clearly and forcefully.''

Indeed, she sent out e-mails to students explaining why she thought this was so important. She was a national leader in this effort.

Another e-mail, March 10 of 2005. This military person said he explained to Harvard that the Third Circuit opinion they were using as a pretext to not follow the law had issued a stay of injunction and the Solomon amendment remained current law. He goes on to say:

> I asked him if I could at least post a job posting via their office and he said no. He stressed that I could contact interested students via the Harvard veterans Student Group but that his office could not provide any support to us.

So we need a fair and honest evaluation. I, for one, have frankly been disappointed in this administration's obfuscation, deliberately attempting to hide the nature of what happened at Harvard, because it was, in fact, inexcusable. The administration should not defend this. They should give her a

chance. Maybe she would say she made a mistake; maybe she would defend it. But I can't imagine an administration would to want defend this kind of policy.

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

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

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. There is 2 minutes 40 seconds remaining.

Mr. LEVIN. First, Mr. President, I wish to thank Senator LEAHY and members of the Judiciary Committee for the hearing they gave to Mark Goldsmith for the Eastern District of Michigan. He is an extraordinary judge. He has proved it already on the bench in Michigan. He has wonderful judicial temperament, he knows how to listen, he knows how to think, and he brings to the bench—and will bring to the bench when, hopefully, we confirm him—the kind of judicial temperament we want in our district court judges. So I thank Senator LEAHY and Senator SESSIONS, while he is on the floor. I have talked to Senator SESSIONS about Mark Goldsmith, and I thank him for his receptiveness.

I believe all the members of the Judiciary Committee who had the chance to read the record or to be there at the hearing will agree that this is an unusually well-qualified nominee for our district court bench, and I thank them for their unanimous vote to bring him out of the committee.

Judge Goldsmith has had an impressive legal career. He graduated with high distinction and honors in economics from the University of Michigan in 1974. He was a member of the Honors Program in Economics at the University of Michigan and founded and served as editor-in-chief of the Michigan Undergraduate Journal of Economics. He graduated cum laude from Harvard Law School in 1977.

Judge Goldsmith has served on the Oakland County Circuit Court in the civil/criminal division since March 19, 2004, when he was appointed by Governor Jennifer Granholm. He also served as a magistrate at the 45–B District Court and as a Special Counsel to the State Bar Committee on the Unauthorized Practice of Law, a hearing panelist for the Attorney Discipline Board and as an adjunct instructor at Wayne State University Law School.

Prior to his service as a circuit court judge, Judge Goldsmith practiced law for nearly 25 years. He is admitted to practice in several states, as well as the U.S. Supreme Court, U.S Court of Appeals for the Sixth Circuit, U.S. Court of Military Appeals, U.S. Air Force Court of Military Review and numerous U.S. District Courts.

Judge Goldsmith is also committed to legal community service. He served as president of the Federal Bar Association, Eastern District of Michigan Chapter and has served for many years as that organization's pro bono chair, receiving certificates of recognition from the U.S. District Court, Eastern District of Michigan for his pro bono involvement. He is currently a member of the executive board of Wayne State University's Center for the Study of Citizenship and a member of the Fair Housing Advisory Board of Legal Aid and Defender Association, Inc. Further, he helped establish the Circle of Friends—teaching language and acculturation skills to immigrants—and has served on the board of Forgotten Harvest—a distributor of food to the needy—and on the Regional Advisory Board of the B'nai B'rith Anti-Defamation League.

Judge Goldsmith will be an excellent addition to the Eastern District Court and will serve with great distinction. I wish him well and thank my colleagues for supporting his nomination.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent to have printed in the RECORD the e-mails I made reference to earlier.

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

To: Sullivan, John, Mr., DoD OGC, Koffsky, Paul, Mr., DoD OGC

Subject: FW: AF Phase I Letter to Harvard Background

I just got back and going through my e-mails . . . Harvard Law School is delaying and providing a ''slow role'' to Air Force's efforts to recruit during the Spring recruiting season. Seems they have delayed sufficiently in providing permission that the Season ending March 4th may already be ''too late''. Any advice? I recommend a Phase I letter if another phone call on Feb 22–24 comes up negative or ''inconclusive''. What do you advise?

Subject: AF Phase I Letter to Harvard Background

Good Morning—AF provided the basis for which they would like to send the Phase I letter to Harvard. Both e-mails attached for your files.

V/R.

Subject RE: Harvard Phase I Pushups

. . . checked with Army JAG Recruiting and Major Jackson provided the following.

''Hi, Ma'am—

The Army was stonewalled at Harvard Phone calls and emails went unanswered and the standard response was—we're waiting to hear from higher authority.

The CSD refused to inform students that we were coming to recruit and the CSD refused to collect resumes or provide any other assistance.

V/R''

Subject FW: Harvard Phase I Pushups

Do you know, . . .

Subject RE: Harvard Phase I Pushups

Thanks, . . . Did the other services run into the same problems, or only the AF'' (It would be odd if the law school treated the AF differently from other services).

Subject FW: Harvard Phase I Pushups

See below.

To Sullivan, John, Mr., DoD OGC, . . . Koffsky, Paul, Mr., DoD OGC

Subject FW: Harvard Phase I Pushups

I have modified the proposed P&R Action Memo and the proposed DSD Info Memo because the Spring recruiting program will come and go by the time this gets to DSD and without Harvard LS notifying the Air Force . . .

To: Carr, Bill, CIV, OSD–P&R

Subject: RE: Solomon Olive Branch

Bill:

I have been discussing this with our Legal Counsel office. We have some concerns and will talk to Paul Koffsky when he returns from leave on Tuesday. Please hold off taking any action until Paul and I can get together and talk to you about this.

From: Carr, Bill, Mr., OSD PR [mailto :bill.carr@osd.mil]

Subject: Solomon Olive Branch

. . . we had discussed merit of conveying to public an outreach for calm and reason WRT Solomon. You asked that we convey the draft for P&HP review. It is attached, and edits are welcome.

Doubt we can make it an appealing length for an Op-Ed, so maybe best to think of it as an article for professional journals (e.g., Chronicle of Higher Ed or—more congently—a publication circulated widely among law schools).

To those ends, would you be willing to take a whack at it, Bob? Many thanks. Bill.

From: Carr, Bill, CIV, OSD–P&R [mailto :bil.carr@osd.mil]

To: Dr. Curt Gilroy, SES, OSD–P&R

Subject: S: 3-22-06/Solomon Olive Branch—Or Not

Curt, I have a mission that requires an ambassadorial type with strong writing talent. . . . comes to mind, particularly since she will reap the fruits of this labor over the forthcoming year(s).

I spoke with Paul Koffsky today. We're all searching for a way to limit the polarizing nature of the anti-Solomonites who now rattle sabers over an intent to shout down the military. Dean Kagan is a case in point below as she reportedly ''encouraged students to demonstrate against the presence of recruiters . . . (and to) express their views clearly and forcefully.'' Not a true fan of ''equal in quality and scope'' it would appear.

Despite that (or because of it) we'll want to reach out to academe to find a sober means of accomplishing our varied purposes within statutory intent, but we lack a venue . . . and AALS is too hostile to constructively . . .

Subject Re: Harvard Law School

Thanks, . . . share with the other recruiters. I will pass it to OSD.

Thanks.

AP/JAX

Subject Harvard Law School

Thursday 10 March 2005

Sir, I just received a phone call from Mr. Mark Weber, Assistant Dean for Career Services, Harvard Law School. All my previous communication has been with one of his staff members, Ms. Kathleen Robinson, the recruitment manager. He stated that he was calling because he ''felt bad that they had left us without an answer'' and wanted to pass on the contact data of the president of the Harvard Veterans Student Group. He stated that the faculty had still not decided whether to allow us to participate in on-campus interviews and that the official on-campus interview program for Spring 2005

had already concluded. I asked him if we'd be allowed to participate in the Fall 2005 on-campus interview program and he said he did not know.

Mr. Weber, asked me what our current position on the Solomon Amendment was, and I explained that since the 3rd Circuit had issued a stay of the injunction, the Solomon Amendment was current law and that we were in the process of following the procedures outlined in 32 CPR 216. He asked me when they could expect a letter and I stated that I did not know. We then briefly discussed the utility of on-campus interviews.

I asked him what generated the phone call and he responded that he ''felt bad they had left us with no answer but still had no answer.''

I asked him if I could at least post a job posting via their office and he said no. He stressed that I could contact interested students via the Harvard Veterans Student Group but that his office could not provide any support to us.

Sir, would you like me to forward the above to Mr. Reed and LCDR Syring as well as to my fellow Service recruiters (i.e., Maj. Jackson, LCDR Passarello, and Capt. Houtz?) Also, should I contact the Harvard Veterans Student Group's president. There's danger there, since in the past they were the de facto ''replacement'' for the CSO office's service.

Interesting timing of the phone call.

v/r

___

. . . that a decision has been made to allow military recruiting, they have engaged in a ''practice'' that in effect denied the Air Force an opportunity to recruit in a manner that is at least equal in quality and scope with other prospective employers who participated in the HLS recruiting program. By delaying until the last minute (or never providing an answer) to the AF request to recruit, the AF is unable to organize and schedule the recruiting effort in time to participate in the HLS program which ends on March 4, 2005. We shouldn't allow HLS to ''play this game.''

Please review and provide comments before I go back to . . . in P&R.

___

Subject FW: Harvard Phase I Pushups

. . .

Good Afternoon—Mr. Carr requested that I draft an info paper to DSD as outlined below. Attached is draft of info paper. Would you like me to provide a package for formal coordination on the paper or will informal e-mail review be okay?

Thanks, V/R

___

Subject: Harvard Phase I Pushups

. . . before sending Harvard Phase I letter, we must do following pushups per agreement Koffsky/Carr:

1. (AP) Info paper to DSD outlining what we're about to do and why (since DSD has had personal involvement), once done (and absent immediate objections);

2. (OGC) Mr. Koffsky will then alert Jeff Smith, out of house counsel for Harvard on Solomon, who has generally worked faithfully with us, then;

3. (AP) Notify AF that it is clear to launch.

Over to you for step 1 Tks' Bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

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

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

The question is, Will the Senate advise and consent to the nomination of Mark A. Goldsmith, of Michigan, to be United States District Judge for the Eastern District of Michigan?

The clerk will call the roll.

The bill clerk called the roll.

Mr. REID. I announce that the Senator from Indiana (Mr. BAYH), the Senator from West Virginia (Mr. BYRD), the Senator from Illinois (Mr. DURBIN), the Senator from Florida (Mr. NELSON), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Senator from Missouri (Mr. BOND), the Senator from New Hampshire (Mr. GREGG), the Senator from Texas (Mrs. HUTCHISON), the Senator from South Dakota (Mr. THUNE), and the Senator from Louisiana (Mr. VITTER).

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

The result was announced—yeas 89, nays 0, as follows:

[Rollcall Vote No. 195 Ex.]

YEAS—89

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

NOT VOTING—11

Bayh	Durbin	Thune
Bennett	Gregg	Vitter
Bond	Hutchison	Wyden
Byrd	Nelson (FL)	

The nomination was confirmed.

VOTE ON NOMINATION OF MARC T. TREADWELL

The PRESIDING OFFICER. There is now 2 minutes of debate evenly divided before the vote on the next nominee.

Mr. CONRAD. Madam President, I yield back all time.

The PRESIDING OFFICER. Without objection, all time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Marc T. Treadwell, of Georgia, to be U.S. District Judge for the Middle District of Georgia?

Mr. CONRAD. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Indiana (Mr. BAYH), the Senator from West Virginia (Mr. BYRD), the Senator from Florida (Mr. NELSON), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. MCCONNELL. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Senator from Missouri (Mr. BOND), the Senator from New Hampshire (Mr. GREGG), the Senator from Texas (Mrs. HUTCHISON), the Senator from Arizona (Mr. KYL), the Senator from South Dakota (Mr. THUNE), and the Senator from Louisiana (Mr. VITTER).

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

The result was announced—yeas 89, nays 0, as follows:

[Rollcall Vote No. 196 Ex.]

YEAS—89

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

NOT VOTING—11

Bayh	Gregg	Thune
Bennett	Hutchison	Vitter
Bond	Kyl	Wyden
Byrd	Nelson (FL)	

The nomination was confirmed.

VOTE EXPLANATION

Mr. DURBIN. Mr. President, due to travel delays, I was not present for vote No. 195, the vote on the nomination of Mr. Mark Goldsmith to serve as a U.S. district judge for the Eastern District of Michigan. Had I been present, I would have voted ''yea.''

VOTE ON NOMINATION OF JOSEPHINE S. TUCKER

The PRESIDING OFFICER. Is all time yielded back on the next nomination?

If so, the question is, Will the Senate advise and consent to the nomination

of Josephine Staton Tucker, of California, to be United States District Judge for the Central District of California?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider the vote on the foregoing nominations are made and laid upon the table, and the President will be notified of the Senate's action with respect to these nominations.

LEGISLATIVE SESSION

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

The Republican leader.

NOMINATIONS

Mr. MCCONNELL. Madam President, the majority leader and I have been discussing, over the last few days, clearing a number of nominees, and I am prepared—although I will defer tonight—to attempt to clear a list of over 60 nominees. The President made some reference to that over the weekend. I just want to make sure everybody understands both downtown and here that we are prepared to clear over 60 nominations and have been prepared to clear them for the last week, and I am hopeful my friend, the majority leader, will be able to indicate at some point in the near future that we might be able to go forward with these nominees.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, the Republican leader is correct. He has submitted a list of names. We have exchanged those with our respective staffs. I appreciate it very much. I have had one issue I have had to work through, and he has been very considerate on not moving forward on any consent request until I get this worked out. I think we will be able to do that tonight—if not, the first thing in the morning. So I appreciate very much our being able to move forward. I think we can do it as early as tomorrow morning—at least sometime tomorrow early.

Mr. MCCONNELL. Madam President, I thank the majority leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN of Ohio. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

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

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

The Senator from Ohio.

UNEMPLOYMENT INSURANCE AND COBRA

Mr. BROWN of Ohio. Madam President, more than 57,000 Ohioans—that is about the size of Elyria, OH, or Mansfield, OH, or twice the size of Zanesville, OH—more than 57,000 Ohioans are estimated to have lost unemployment benefits since the extension ended in May 2010, a month ago.

If the Senate does not pass an extension, that number will increase dramatically. More than 90,000 Ohioans could lose their benefits by the end of June. That is more people than live in Youngstown, more people than live in Springfield, OH, more people than live in Cleveland Heights or Lakewood, OH. Madam President, 90,000 Ohioans could lose their benefits by the end of June.

Nationwide, since the beginning of June, some 900,000 workers have run out of jobless benefits. That number will surpass 1 million by next week.

Now, those are numbers, and we can stand around here and debate back and forth, and talk about 50,000 here and 100,000 here and a million there. But later in my remarks I am going to share, as I often do, Madam President—as you and I have talked about—letters from people in Crawford County, Warren County, Pickaway County, and Hamilton County, OH, where I was earlier today—letters from people, individuals who are part of those 50,000 or 90,000 Ohioans who could lose their benefits.

Senate Republicans are denying tens of thousands of Ohioans—and thousands of people in New Hampshire and hundreds of thousands of people in California and Texas and Florida—the Republicans are denying tens of thousands of Ohioans the unemployment insurance benefits they have earned during years of hard work.

This year, this Chamber spent 9 weeks on the floor struggling to extend unemployment insurance and COBRA. Over the past week, every single Republican voted again and again to block a bill just to extend unemployment insurance. They chose to vote against extending COBRA, a critical benefit for workers who not only lose their jobs but also their health insurance.

You know how this happens, Madam President. Someone is laid off from their job. They lose their income. Then they cannot afford their insurance. They lose their insurance—unless they are enrolled in COBRA. COBRA is a bit of a cruel hoax. In order to keep your insurance, you have to pay what you were paying as an employee when you had a job and full pay and you have to pay the employer side of the insurance in order to continue your insurance. That is why a year ago, in the stimulus package, for the first time in American history, the Federal Government helped people who had lost their insurance keep their insurance by paying about two-thirds of the COBRA premium.

If you lose your job, you get a little bit of unemployment insurance, although the Republicans have blocked that. Then you lose your insurance. Then if you get sick, you are going to lose your house. When I hear my colleagues on the other side of the aisle talk the way they do about unemployment insurance, they act as if it is a welfare program. Unemployment insurance, decidedly, is not a welfare program. We do not call it unemployment welfare. We call it unemployment insurance.

What does that mean? It means when you are working—if you are an ironworker in New Hampshire, if you are a steelworker in Ohio or you work at Burger King in Cleveland—wherever you are working, you pay into this unemployment insurance plan. When you lose your job, if you are full time, you get money back, some of the money you paid in. It is called insurance. That is why we call it insurance. Yet my Republican colleagues act as if unemployment insurance is welfare. Well, it is not. It really is insurance.

I think it is important we think about someone losing their job and not getting unemployment insurance, and then losing their health care, and then, very likely, in many cases, losing their home. We do not know many people like that because we dress like this and we make a good bit of money here and a good many of our colleagues are pretty insulated. They do not know a lot of people who have lost their job or lost their insurance or lost their home. But think about it, we should try to put ourselves in the position of someone who has lost their job, then lost their insurance, then lost their home.

You are a family in Lima, OH, or Zanesville, OH, or Gallipolis or Dayton. First the breadwinner loses her job. Then they cannot afford the insurance. Then they get not really sick but sick enough that they have bills that have piled up. Then they cannot keep up with paying for their home mortgage. Then they get 3 or 4 months behind. Then they get a notice from the bank that they are going to lose their house. Think of what that does.

Say you have two kids. You live in Dayton, OH. You have lost your job. You have lost your insurance. Now you are about to lose your house. You have to explain to your son and daughter in Huber Heights, a suburb of Dayton: Well, little Johnny and Jane, we are going to have to move, and we are going to move to a really small, little apartment, and we don't have any place to put all this stuff, and we are going to have to sell it or give it away. I don't know where you are going to go to school next fall because I am just really unsure of things.

The son or daughter says: Well, mom, what about my friends? Where are we

going to school? She says: I don't know yet because we don't have an apartment. I don't think my colleagues, particularly my Republican colleagues—who vote no on unemployment insurance benefits, who vote no on COBRA and helping people with their insurance and are unwilling to do anything about these foreclosures—I do not think they think about these individual situations. They look at statistics, like we do. They look at numbers, like we do. They debate this stuff. But I do not think they think about what it would be like if someone they knew or they themselves had to lose their job and their health insurance and their benefits.

It is pretty simple in so many ways. As I said, employees pay into the unemployment fund when they are working. When they are laid off—they did not ask to be laid off—they receive help from that fund. But when it comes to helping middle-class Americans, Republicans too often look the other way. They start talking about deficit spending. I am empathetic with that because I think we have to get our budget house in order.

But all I can think of is where was this concern, where were my Republican colleagues, where were they when they voted for two wars—a war with Afghanistan and a war with Iraq—and did not pay for those wars? They took the cost of those wars, which is $1 trillion, which is 1,000 billion. That is 1,000 billion. A billion is a thousand million. So it is a thousand million: a trillion dollars. I know that is a little confusing. But they are spending $1 trillion. They are just charging it to our grandkids for the wars in Iraq and Afghanistan. They do not worry about that being added to our grandkids' tab.

Then where were these Republicans, where was the concern of the Republicans when they passed George Bush's tax cuts for the rich? That is why we have this huge budget deficit.

In 2000, as the Presiding Officer knows, we had a budget surplus in our country, and then George Bush and the Republicans took over. Two wars; did not pay for it; charged it to our grandchildren. Tax cuts for the rich; did not pay for it; charged it to our grandchildren. A giveaway to the drug and insurance companies in the name of Medicare privatization; did not pay for it; charged it to our grandchildren.

Now, when it is not giving money to the drug companies or paying for a war, or giving tax cuts to the richest people in America, now, all of a sudden, when it is unemployment insurance, a bunch of people who are laid off—or it is a bunch of people who have lost their health insurance—middle-class families, then, all of a sudden, they are concerned about the budget deficit. They did not care when it was shoveling money—hundreds of billions of dollars—for a war. They did not care when it was shoveling out money, hundreds of billions of dollars, for tax cuts for the rich. They did not care about the budget deficit when it was just shoveling hundreds of billions of dollars to the drug companies and the insurance companies. That did not matter. They did not care about the budget deficit then.

Now, Republicans tell us: Oh, we can't extend unemployment benefits because it would add to the deficit. We cannot help with COBRA. We cannot help give some assistance to people for health care because that would add to the deficit. We cannot help the States with what is called FMAP, helping the States deal with their Medicaid costs going to many previously working families who have lost insurance. We cannot do any of that because all of a sudden the budget deficit is the most important moral question of our times. Where was this important moral question of our times when they added $100 billion—hundreds of billions of dollars—to the deficit for a war, for tax cuts, and for the giveaway to the drug insurance companies?

I was in the House when the so-called prescription drug benefit, when they created that huge doughnut hole and gave all those subsidies to the drug companies and insurance companies. That vote took place in the dead of night while most Americans were asleep. Literally, that vote—the rollcall—started at 3 o'clock in the morning. I was down the hall working there then. The vote started at 3 o'clock in the morning. An overwhelming number of Democrats opposed it. Some Republicans who actually believed that deficit spending was a problem—a few of them—not very many voted against it. So the vote started at 3 o'clock. Usually, a vote in the House of Representatives takes 15 or 20 minutes.

Three hours later, they woke up the President of the United States and had him start calling Republicans—George Bush then—to change their vote and vote yes. Finally, after 3 hours—history-making because the House of Representatives never took 3 hours ever; when my colleague from Oklahoma or my colleague from Maine, who are sitting here, were in the House of Representatives, they never saw us do anything like that—3 hours later, finally, President Bush twisted two arms—a Congressman from Idaho and a Congressman from Oklahoma—to change their votes, and they passed the bill in the middle of the night, this huge bailout. It was a bailout—there is no other word for it—a bailout to the drug companies and the insurance companies.

It was not a benefit for seniors. We could have done that much more directly and much less expensively and given seniors a prescription drug benefit. No, the Republicans wanted to do a Medicare prescription drug bill. When you give tens of billions of dollars—hundreds of billions of dollars—to the drug and insurance companies and let some trickle down to seniors, that is really the way they believe in doing government.

All of this hypocrisy must end. It is wrong. It does a disservice to the American people.

Let me share a handful of letters that say this way better than I can say it about why unemployment insurance and COBRA are so important.

Barbara from Hancock County—that is south of Toledo. Barbara writes:

> I cared for my cancer-stricken father while working full-time and raising my three young children. After my father died, I went back to college. I got an associate's degree, three certificates, and a bachelor's degree. Last year I lost my job. I have been looking for work ever since. I have mouths to feed and student loans to pay back. I don't take fancy vacations. I don't buy flashy expensive clothes. I am over 50. I should be preparing for retirement. Because I can't find a job, though, my small savings is gone. Without unemployment insurance, there is no help for me. I send out dozens of resumes, but no one is hiring. Please tell me what I can do. Because the extension has not passed, I will be living on the streets with my three children.

Think about that. She is playing by the rules. She worked hard. She took care of her dying father. She has three children. She went back to school. Now she has lost her job, No. 1. No. 2, she has a mortgage; she wants to keep her house. She has children to feed. She has student debt because she did what so many of us want people to do, which is to go back to school and make something better of themselves. She lost her job. She can't get unemployment insurance because my Republican colleagues have said no to extending unemployment insurance.

This isn't a political game. This isn't playing with a bunch of facts and figures. This is people like Barbara from Hancock County, OH. We all have Barbaras in every State of this country—people who have lost their jobs and need that unemployment compensation just to tread water. We don't want them to drown. They are not going to get ahead receiving unemployment benefits. They are not going to get rich.

Remember, as my Republican friends forget, unemployment insurance is not welfare; it is insurance. You pay into it when you are working, you get help when you are unemployed.

I know the Presiding Officer—whether it is in Eugene or whether it is in Portland or wherever it is in Oregon—understands these are people who are working hard. They lost their jobs. They paid into insurance. They should be eligible to receive unemployment compensation.

Rebecca is from Crawford County, just 8 or 9 miles from where I grew up in Mansfield.

> Today is another day I am spending in tears and obsessed with fear. I am in the ranks of the unemployed. I was brought up with a sense of personal accountability and values. I have attempted every method I can think of to obtain a job to support myself. I won't burden you with a discussion of what it feels like to be uninsured and not be able to see a doctor when I am sick. You keep your fingers crossed. You pray you can treat

what ails you with over-the-counter remedies. My unemployment insurance was allowing me to keep a roof over my head, although incurring massive credit card debt for the remainder of my essentials—food, gasoline, eating. Most of us who are looking for work want to return to a normal life. Please pass an unemployment extension so we can continue to survive and maintain a degree of dignity. Allow us to rebuild our country and our economy. I know I am one of millions and my voice alone means very little. Please ask your fellow Senators to at least acknowledge us.

Think about what she said. She is obsessed with fear. Her future is uncertain. She has lost her unemployment. She has lost her job. She is not getting unemployment insurance now. She said she was brought up to believe in personal accountability, personal responsibility, and those values. She said: My unemployment insurance was helping me to at least get along, even though I was adding to my debt because unemployment insurance is never really enough to do all you need to do. She points out that, as most people do, she wants to work. She sends out resumes every week. You don't just get unemployment insurance by going like this. You get unemployment insurance by filing for it, showing that you are out of work. You have to show that you are searching for work, seeking work, and you can't find it in this economy.

Whether it is Rebecca in Crawford County or Barbara in Hancock County or whether it is somebody from Oregon, you don't just automatically get a job.

It is clear that it is hard to find work, and these are people who are out trying. If they are not able to find a job, they should be getting this unemployment extension.

Three more letters, briefly.

Georgetta from Warren County:

I am an unemployed single mother of two children, 10 and 14. I was laid off through no fault of my own. I have been doing what I can to secure a new job. I am about to lose my unemployment insurance. How can I feed my children? How can I keep a roof over their heads? What am I supposed to do? My savings are gone. I have no health insurance. I am trying to find a job. I can take the pain, but I can't sit by and watch my children suffer through no fault of their own. Please help me. Please pass an unemployment insurance extension.

I wish my colleagues who walk down into this well and, when their name is called, vote no—I wish they would meet people like Georgetta. I wish they would sit down with the Georgettas in their State and listen to their stories. I wish they would look at the pain in her face that she has because of her children suffering, not getting the food they need, the clothes, the books they need for school, not even sure she is going to have a roof over their heads. Think about that.

Again, I think we don't know very many people—my colleagues who vote against unemployment insurance, my guess is most of them don't know anybody who lost their job, lost their insurance, lost their house. My guess is they haven't thought through the conversation a parent has with a son or a father has with his daughter telling them the news that they are going to have to move out of their house, maybe move into a different school district, maybe just not know about the future because they are about to lose their home they have lived in for the last 5 or 6 years. What is that like for a parent to explain that to a child?

I ask my colleagues to try to empathize and try to put themselves in that position, when that conversation takes place, when parents have lost jobs and then health insurance and then their homes.

Joe from Pickaway County, south of Columbus:

I was laid off last year after working at a company for 13 years. I am still unemployed. I have lost my house, my car, my credit rating, and my liberty. I relied on unemployment benefits to feed my family. If UI is not extended, there will be people and families starving. Please do what you can to help us.

This is in another part of the State, southern Ohio, Appalachia, OH. Joe worked at a place for 13 years. The company laid him off. He is unemployed. He has lost his house and his car and he is struggling. If we don't extend unemployment benefits—even with unemployment benefits, his life is not going to be very easy, but without it where does he turn? What does he do? He goes to food banks. He lives on the street. What does Joe do in Pickaway County if we don't extend unemployment this week? He shouldn't be waiting any longer.

The last letter is from Amy from Hamilton County. That is where I was today, near Cincinnati. Amy is writing saying:

I am among the many Ohioans who lost their job due to the economic downturn that started 2 years ago. My husband and I did not live beyond our means. We bought a modest house. We lived reasonably on what we could afford. I encourage you to continue to push through passage of the UI extension. It will help pay for basic bills like our mortgage, food and utilities. UI is crucial to my family's viability. Please do whatever you can to pass the extension. We want to restore our basic way of life.

She is saying unemployment benefits would not make her life easy, would not even make her life comfortable in any way, but unemployment insurance would give her the bridge until she can, when the economy gets better, find a job.

I conclude by just saying again that I hope my Republican colleagues, who have consistently voted no on extending unemployment benefits and helping people keep their health insurance, will open their eyes and look around their States and talk to people, look at the mail they are getting, look at what they are hearing from constituents on the Internet and e-mails and try to put themselves in the shoes of a father who lost his job and his insurance and has to explain to his kids they lost their house or a single mother who was renting and can't even pay the rent because she has lost her insurance and she is going to have to figure out how to explain to her children they will be in a different school district and they don't even know what it will be yet.

As people without jobs often do, they change from one school district to another one, and their kids fall farther and farther behind.

I ask my Republican colleagues who consistently vote no to try to empathize with those who have less privileges than we do, who don't have huge staffs and don't have a good salary and don't have good insurance and don't have a secure place to live, what their lives would be like if any one of us lost all of those privileges. I think it would make a difference in how they vote.

Mr. President, I yield the floor.

(Mr. MERKLEY assumed the Chair.)

2009 METRO ACCIDENT

Mr. WARNER. Mr. President, I rise today to mark a sad day for the National Capital region. On the eve of the 1 year anniversary of the deadliest accident in Metro's history, I would like to extend my deepest condolences to the families of the nine victims who perished on June 22, 2009. On that day around 5 p.m., a Red Line train collided with another train that sat stopped between the Takoma and Fort Totten stops as it waited for the Fort Totten station to clear. The first car of the moving train, an outdated model over 30 years old, sustained tremendous structural damage which resulted in significant casualties. As Virginian, this issue is especially important to me because 1 of the 9 victims who died—the train's operator—as well as 15 of the 80 people injured were fellow Virginians.

The unfortunate events of that day shed light on some glaring problems with our Nation's public transportation systems, and should provide us with a sense of urgency to accomplish the task of ensuring the safety of public transportation users.

Metro itself and its oversight agency—the Tri-State Oversight Committee—TOC—are both in dire need of reform. While it has taken steps towards addressing the problem, Metro needs to continue to make safety its top priority. Full analysis of potential hazards and safety concerns needs to be done, and Metro must start regimented data collection efforts so that safety problems can be tracked and prioritized. Top Metro executives—those with decisionmaking authority—need to be involved in critical safety conversations, and need to have the relevant information in their hands when making important safety decisions.

I am proud that we have been able to provide $1.5 billion in Federal funds over 10 years to make capital improvements to Metro, but this cannot be a blank check. Replacing the outdated 1000 series railcars is a huge priority, and Metro is poised to sign the contract that will enable them to phase

out the older cars with newer, safer models. But more needs to be done. Metro needs to demonstrate safety improvements it has been making and ensure that it will continue to make safety its top priority if it expects continued financial support.

More broadly, this accident has highlighted that the safety of our public transportation systems should be a priority nationwide. We have been working in the Senate developing a legislative approach to ensuring proper safety standards are in place. Incredibly, FTA currently has no authority to regulate our Nation's transit agencies or develop national safety standards. A new draft bill developed by Senators DODD, SHELBY, and MENENDEZ will give FTA the tools to develop a national transit safety plan while also providing states the resources and flexibility to develop more robust transit safety oversight. The Banking Committee, of which I am a member, will soon consider this legislation and I am pleased that we are moving towards making progress in this area so that preventable tragedies, such as the one that occurred a year ago, will be a thing of the past.

HONORING OUR ARMED FORCES

SPECIALIST CHRISTOPHER W. OPAT

Mr. GRASSLEY. Mr. President, I would like to pay tribute to SPC Christopher W. Opat, an Iowan who gave his life in service to his country as part of Operation Iraqi Freedom. He was from Lime Springs, IA, and graduated from Crestwood High School in 1999. Christopher attended Iowa Lakes Community College before enlisting in the Army. He was remembered as a hard worker with a good sense of humor. Specialist Opat was serving his third deployment to Iraq. During his brief military career, he was twice awarded the Army Good Conduct Medal and also received the National Defense Service Medal, the Global War on Terrorism Service Medal, the Army Service Ribbon, and the Overseas Service Ribbon. Our Nation is indebted to individuals like Specialist Opat whose tremendous sacrifice in defense of freedom must never be forgotten. The loss of such a dedicated, patriotic American is extremely sad and my prayers will be with Christopher's mother Mary Katherine, his father Leslie, and all his family and friends at this difficult time. I ask all my colleagues in the Senate to join me today in paying tribute to the courageous and selfless service of SPC Christopher Opat.

NOMINATION OF S. LESLIE IRELAND

Mrs. FEINSTEIN. Mr. President, I rise today to urge the confirmation of Ms. Leslie Ireland, the President's nominee to be the Assistant Secretary of the Treasury for Intelligence and Analysis.

This is an individual who is well qualified, nominated to an important national security position, and whose nomination has sparked no opposition or controversy to the best of my knowledge. Nonetheless, for more than 3 weeks her nomination has languished on the Senate calendar as Ms. Ireland has waited to be confirmed.

Let me speak briefly about Ms. Ireland and the position to which she has been nominated.

Leslie Ireland is a 25-year veteran of the Central Intelligence Agency. She has substantial experience in just about all aspects of the intelligence profession. Following a successful career at the CIA, her two most recent positions were that of Iran mission manager in the Office of the Director of National Intelligence and as one of the President's daily intelligence briefers.

In both capacities, she has worked extensively with all parts of the intelligence community. As the President's briefer, Ms. Ireland has been familiar not only with the breadth of intelligence analysis the community produces, but also the policy context in which intelligence is used.

She worked directly for the Nation's premier intelligence consumer—the President. His evaluation of her professionalism and capability is reflected in the fact that he nominated her for this Senate-confirmed position.

As Iran mission manager, Leslie Ireland was given the responsibility over intelligence collection and analysis of what is perhaps our Nation's most challenging intelligence target. She oversaw, prioritized, and directed efforts to understand the Iranian government, nuclear program, military, and society. This is a position with deep management and analytic challenges.

Through Ms. Ireland's work as Iran mission manager, she was already well known to the Senate Select Committee on Intelligence before she was nominated to be an Assistant Secretary of Treasury. She had appeared at numerous hearings and far more briefings, both for committee members and the staff.

Under the leadership of both of our past chairmen, Senators ROBERTS and ROCKEFELLER, the committee had an Iran study group to follow, oversee, and authorize intelligence activities with respect to Iran. The staff met often with Ms. Ireland, and I believe it was a productive relationship on both sides.

So it was no surprise that when Ms. Ireland was nominated on April 12, the committee moved quickly to consider the nomination. She was voted out of the committee on May 25 with the committee's unanimous support. She is ready to assume her new duties, and it is well past time for the Senate to act.

For the benefit of my colleagues, let me say a few words about the Assistant Secretary's position. It is a fairly new one, having been created in December 2003 in that year's Intelligence Authorization Act.

The Office of Intelligence and Analysis at Treasury has one foot within the Department of the Treasury, assisting the Secretary and other senior departmental officials to set policies on sanctions and declarations.

A notable recent example is the effort by the Treasury Department to push, successfully, for the strongest international sanctions to date against Iran in United Nations Security Council Resolution No. 1929. Sanctions and international efforts such as this require careful analysis and are the product of intelligence designed to shine a light on the financial and other illicit activities of bad actors, including in this case the Iranian Revolutionary Guard Corps.

At the same time, the Office of Intelligence and Analysis has its other foot inside the intelligence community. Its personnel focus and help prioritize the financial intelligence collection efforts of those agencies that collect human, signals, and geospatial intelligence that analysts need.

The Treasury office also provides expertise on financial and economic matters that are necessary for broader intelligence community issues. For example, a recent issue of great interest is the financing of terrorist groups like al-Qaida and the militant and extremist groups with which they operate, like the Taliban, the Haqqani Network, and the Pakistani Taliban, the TTP. The Office of Intelligence and Analysis helps inform the intelligence community on this topic.

It is critical to understand the financial activities of these groups both to understand how they operate and to provide keys to disrupting them.

In Afghanistan, our troops face a well-funded Taliban enemy that relies on illicit funding for its lifeblood—and for the ammunition and improvised explosive devices that put our troops' lives at risk.

In the tribal areas of Pakistan, al-Qaida affiliated terrorist groups may be seeking to fund attacks on our homeland such as the unsuccessful car bomb attempt in Times Square. Among the most important impacts of the recent death of the third highest ranking al-Qaida figure, Shaykh Sa'id Al-Masri, is the anticipated loss to the organization's fundraising.

As North Korea continues its erratic violent behavior and considers a transition of power from Kim Jong Il to his son Kim Jong Eun, its economy has been further wrecked by a disastrous devaluation of the currency.

These are the issues that confront the Assistant Secretary of Treasury for Intelligence and Analysis. It is a position that has been vacant since September 2009. There is no excuse for that vacancy to continue another week. The Senate has before it a nominee who is well qualified to fill this role. She has the full support of the Intelligence Committee, and there has been no controversy or opposition to her throughout the confirmation process.

I urge the Senate to confirm Leslie Ireland.

CELEBRATING WEST VIRGINIA DAY

Mr. ROCKEFELLER. Mr. President, I call to the Senate's attention that on June 20, 147 years ago, a 35th State was added to our great Nation: West Virginia, whose birthday is a time for us to remember proudly our state's rich history, culture and unique qualities.

Nearly 150 years ago, West Virginia became the only State to have seceded from a Confederate entity to join the Union. Each year after, West Virginia has continued to develop its own identity and contribute to our Nation's fabric. Our State's history, past and present, is rich with development and progress that fills West Virginians with pride every day.

West Virginia's mountainous terrain, countless river valleys, and rich natural resources have driven our State's history and economy, and draw visitors from across the globe. Our State possesses timeless landmarks and attractions, and has an abundance of natural beauty to share.

President John F. Kennedy once said, ''The Sun does not always shine in West Virginia, but the people always do.'' This statement is a true testament not only to the kind and hospitable nature of our citizens, but also to our fortitude, determination and abiding faith.

Though a ''stranger to blue water,'' West Virginia has been no stranger to turmoil throughout its history. We have been and will continue to be undaunted in overcoming the challenges of yesterday, today, and tomorrow.

This year we stood together to face the tragic explosion at the Upper Big Branch mine that claimed the lives of 29 miners and left a community and our whole state in mourning, calling again on the steadfast spirit of our people. The devastating effects of the explosion left mining families holding their breath for news of loved ones. Rescue teams and the State's Red Cross and Salvation Army expeditiously rose to the challenge to offer much needed support. True to custom, West Virginians across the State were ready and remain eager to lend a helping hand to their neighbors affected by the disaster.

And this year, like so many others before, we have called on the West Virginia National Guard to serve the State when we need them most, and to perform invaluable duties outside our borders—providing security on a global scale. Our West Virginia National Guard has garnered top rankings for readiness for many years, showcasing the motivation and commitment behind each one of our men and women serving our country.

West Virginia possesses the unique ability to make the traditions we have historically treasured as much a part of our bright future as our accomplished past. Our State continues to retain its culture as an integral part of our identity. Festivals and events, like Bridge Day at the New River Gorge Bridge in Fayetteville and the Vandalia Gathering in Charleston, bring older and younger generations together to enjoy State treasures and traditions. Blues festivals can be found across our State, and from Martinsburg to Mullens you can find world-class artisans and craftsmen in the fields of glass blowing, classic woodwork, and folk art.

Thanks to West Virginia's dedication to education, our academic institutions consistently bring new discoveries to the fields of science and technology. And, our athletic programs continue to rank among the best in the country. West Virginia University's men's basketball team reached the Final Four in this year's NCAA Basketball Tournament representing the state on a national stage. And, football fans across our state eagerly await an upcoming football season that promises to be successful for all of our programs in West Virginia.

There is so much to honor, celebrate, and be thankful for on West Virginia's 147th birthday. Our past, present, and future are as colorful as our Appalachian hills in autumn. Our people know and live well by our motto—Montani Semper Liberi—''Mountaineers are always free,'' and our strong work ethic, one of God and family, and indubitable spirit makes our country and our State great. With these words ever present, and on behalf of myself and my fellow West Virginians, I proudly wish the happiest of birthdays to my home State, West Virginia.

TRIBUTE TO STEVE KIMBELL

Mr. LEAHY. Mr. President, I want to honor Vermont's leading policymaker, Steve Kimbell, who announced his retirement on May 20 of this year. For over three decades, Mr. Kimbell has been a major presence within the political world of Vermont and is noted as the most respected and influential policy maker to walk the halls of our Statehouse.

Mr. Kimbell started his career as a lawyer at Vermont Legal Aid after completing his juris doctor from the University of Michigan Law School. Only a few years later, he was hired as lieutenant governor candidate Madeleine Kunin's campaign manager and went on to be her State planning director after she was elected Governor. Mr. Kimbell then partnered with Governor Kunin's former press secretary Bob Sherman to form Kimbell Sherman Ellis, a government and communications company that has grown into the most successful firm of its kind in the State. Kimbell Sherman Ellis developed a nationwide clientele and has additional offices in Washington, DC and Massachusetts. Along with advising and policymaking for Vermont State government, the firm provides legislative and regulatory strategy in government affairs and manages marketing and public relations campaigns nationwide.

Steve Kimbell has been credited with helping to shape almost every piece of major legislation to pass through the Vermont Statehouse. I offer my congratulations to Mr. Kimbell upon his retirement. I ask unanimous consent to have printed in the RECORD an article from the Rutland Herald that depicts the contributions that Steve Kimbell has made to the State of Vermont.

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

[From the Rutland Herald, May 30, 2010]

POLITICIAN'S POLITICIAN

[By Peter Mallary]

Steve Kimbell can be tightly wound. But the other day sitting in his office at Kimbell, Sherman & Ellis—the Montpelier-based government and communications firm he started with Bob Sherman back in 1987—he looked completely relaxed. It is a small office, which he shares with his partner's son, Nick Sherman. Kimbell's chair was kicked back. His smile was broad and available.

Steve Kimbell just quit his job.

''I never expected to work forever,'' he said.

Well, you could have fooled most of us.

And he has.

In most cases more than once.

Kimbell is the politician's politician, a lobbyist and counselor who has built relationships unlike any other in Vermont's political world.

He started out as a Legal Aid lawyer.

''I spent my time suing state government,'' he said. ''Mostly welfare and Medicaid cases.''

And he remains a government skeptic.

''My underlying personal philosophy is that government is very dangerous,'' Kimbell said. ''It's a huge operation. And it breaks the law every day. This is the foundation of my advocacy for every client. All citizens need to be watchdogs. But we get paid to do it.''

No shock to any who know him—Steve Kimbell's decision to retire is a political one. He tied it to Jim Douglas' decision not to run for a fifth term. He pointed out that a political shift like the one we may see this election cycle only comes along every decade or so. Whatever happens there will be a new political cast. So it seemed to him like the right time to give a different generation a chance.

There was nothing sudden about his decision. The partners in the firm have been planning for this for a year. But wary of making Kimbell a lame duck in his final legislative session they kept the story close, a remarkable accomplishment in a town that does not guard political secrets particularly well.

Not at all, most of the time.

I asked him if he could really quit.

''I have gotten up and gone to work for 40 years,'' he said, ''either working for myself or somebody else. It will be a major change but it's worth a shot.''

He says he is going to tend the farm in Tunbridge.

I am not 100 percent convinced.

Kimbell's career spans the terms of every governor since Tom Salmon—Salmon, Snelling, Kunin, Snelling again, Dean and Douglas.

He reflected.

''Governors are not noted for their sense of humor,'' Kimbell said, referencing a quality he values in politicians—politicians like Art Gibb, Bob Gannett and Ralph Wright.

''Snelling made an art form of being the intimidating presence in the room.''

Not very funny.

''Howard was frantic. Not much time for levity.''

But Salmon, Kimbell said, was funny.

''He would hop into his state police car and say 'Let's go to Boston.' And he'd go to see a Red Sox game.''

Kimbell first got directly involved in electoral politics in almost as off-hand a manner.

''After the '78 session I was leaving the Statehouse with Madeleine [Kunin]. She was chair of the Appropriations Committee and running for lieutenant governor. 'I need a campaign manager,' she said. I got paid $150 a week. She beat Peter Smith by 2,500 votes.''

And he recalled how Kunin won.

''Within earshot of reporters, Peter Smith said that 'all the broads' were going to vote for Madeleine. That ill-advised comment is what swung the election.''

When Kunin was governor Kimbell served for two years as her state planning director, the person in charge of the administration's legislative program.

''I found that I didn't really like working inside the government,'' he said. ''I got out and went back to my private practice.''

Then came the partnership with Kunin's press secretary, Bob Sherman.

''We went to Seyon Pond fishing and talked about what we really ought to do. We concluded that combining law and journalism in a firm to do advocacy was a good idea.''

And to call it just that is an understatement. Kimbell Sherman & Ellis has no peer in Vermont. Not only is it the most successful lobbying firm in the state, it has also built an out-of-state client list which now represents about half of the business. It has offices in Washington and does business all over the country, tracking and reporting on issues and also specializing in crisis management.

When I asked Kimbell about the most dramatic moment in his political memory, he recalled the death of Richard Snelling in August of 1991.

''How many times does a sitting governor just drop dead,'' he said.

Howard Dean was in touch almost immediately.

''Howard called Sherman and said 'I need a speech within an hour,'' Kimbell recalled. ''And we helped the new governor make the transition. He was here for a lot of meetings. And we took some heat. The press said 'How can these lobbyists advise the new governor.' A lot of the criticism was probably warranted, but sometimes you just have to do things.''

And Howard Dean is not the only politician to have beaten a path to Steve Kimbell's door. For a couple of decades now candidates and potential candidates have come to Kimbell & company. They want to know—from someone who does—if they should or if they shouldn't.

''We are in the business of politics,'' Kimbell said. ''It doesn't matter where they come from. If they want to talk to us, we give advice.''

And Steve Kimbell has brought this sort of matter-of-fact attitude to all his efforts. Despite his highly visible work for civil unions and gay marriage, he insists that his approach is always the same.

''I'm an advocate,'' Kimbell said. ''I take a hard-nosed approach. To do this job you have got to be well prepared, emotionless and tenacious. Gay marriage was a hugely emotional issue. I worked very hard to be analytical and strategic. It is my personal belief that that is what people pay us for.''

Hard-nosed. True enough.

Savvy. Unparalleled.

Matter-of-fact. Certainly.

Passionate. Despite protestations.

And funny.

The politician's politician.

ADDITIONAL STATEMENTS

TRIBUTE TO PATRICIA J. COVINGTON

● Mr. AKAKA. Mr. President, it has been nearly five decades since Patricia J. Covington, Director of VA's Congressional Liaison Service, began her public service, and nearly all of it has been with VA, first when it was the Veterans Administration, and, since 1989, as the Department of Veterans Affairs. Although she served in various capacities, it is in connection with her long and distinguished tenure at the Congressional Liaison Service that my colleagues and I, along with our staffs, know her. I am sure that there is not a Member's office in the U.S. Senate that does not regularly call upon her services. Over the years, Pat has worked tirelessly to ensure that our requests for information about VA or for help for veteran constituents are handled in a timely, thorough, and nonpartisan manner. On the occasion of her upcoming retirement, I call on my colleagues to join me in thanking her for assistance to us and to countless veterans, most of whom will never know the critical role she has played in our efforts to improve their lives.

Pat entered public service in 1963. After an initial period of employment with another Federal agency, she moved to VA where she gained experience at the Board of Veterans Appeals with the appeals process for denials of disability claims. She also helped administer the Presidential Memorial Certificate Program, established by President John F. Kennedy to honor the memories of deceased veterans. As my colleagues know, each certificate bears the President's signature and conveys to the families of deceased veterans the Nation's gratitude for their service.

After gaining a hands-on understanding of many VA benefits and services, Pat joined the Congressional Liaison Service in 1971. The Committee on Veterans' Affairs, which I have the privilege of chairing, was established that year, marking the Senate's heightened commitment to addressing the then-emerging challenges facing veterans of the Vietnam war. I was not in the Senate at that time, but looking back at the large and impressive work of the early days of the committee in responding to a host of complex issues, along with the fact that there were thousands of new veterans seeking assistance from their Federal elected officials, it must have been a very challenging time in Pat's new assignment. From the start, she nevertheless kept pace with the unprecedented number of demands, deepening her knowledge about VA as she took on new responsibilities. In fact, Pat was so good at her job that over time she was repeatedly tapped to serve as Acting Director of the Congressional Liaison Service. In 2002, she was appointed as Director, and has continued to excel in that position.

Not long after I became committee chairman in 2007, a veteran arrived at the committee to seek help after being turned down by VA for additional benefits in connection with post-traumatic stress disorder. He had driven thousands of miles and related to committee staff that he had struggled with suicidal feelings. At the time, although VA had not begun to reckon with the rising tide of veteran suicides, Pat knew who to contact to provide counseling and other suicide-prevention services to the veteran and promptly secured a thorough review of his claim. Her compassionate and deeply informed assistance to this veteran was in keeping with her longstanding excellent work.

Committee staff and I have relied on Pat and the excellent staff she oversees for information about a wide range of matters relating to the large and complex dimensions of VA's mandate. From disability compensation to health care, construction and cemeteries, home long guaranties and the new G.I. bill, her office has consistently responded with the highest professional standards. With a war on two fronts and increasing numbers of returning servicemembers from Iraq and Afghanistan, along with serious issues facing veterans from earlier wars, her contributions have never been more valued nor her services more needed. Yet to everything there is a season, and a time to every purpose under the heaven. Pat is ending this chapter in her life and will soon open a new one. Again, I thank her for her long service to the committee and her unsurpassed commitment to the veterans of the Nation. I wish her every happiness in the days to come. We shall miss her.●

WILDROSE, NORTH DAKOTA

● Mr. CONRAD. Mr. President, today, I am pleased to recognize a community in North Dakota that is celebrating its 100th anniversary. From July 2–4, the residents of Wildrose, ND, will gather to celebrate their community's founding.

Wildrose, ND, is a Great Northern Railroad town site founded in 1910 in Hazel Township of Williams County. The post office for Wildrose was established on July 13, 1910. The site for the town was platted in 1910 and became an incorporated village in 1913. Until 1916, Wildrose was the terminus of the railroad line and billed itself as the largest primary grain market in the United States. Wildrose reached its peak population of 518 in 1930.

Grace Lutheran Church, located in Wildrose, will also celebrate its 100th anniversary on July 4. Wildrose Lutheran Church was founded in 1910.

Shortly after the 50th anniversary, Stordahl, Grong, Bethel, and Wildrose Lutheran Churches merged into one church, and in January of 1962 the name Grace Lutheran Church was adopted.

In honor of the city's 100th anniversary, community leaders have organized a parade, a beard contest, a street dance, and many other fun and exciting events.

I ask that my colleagues in the U.S. Senate join me in congratulating Wildrose, ND, and its residents on their first 100 years and in wishing them well in the future. By honoring Wildrose and all other historic small towns of North Dakota, we keep the great pioneering frontier spirit alive for future generations. It is places such as Wildrose that have helped shape this country into what it is today, which is why this fine community is deserving of our recognition.

Wildrose has a proud past and a bright future.●

PETTIBONE, NORTH DAKOTA

● Mr. CONRAD. Mr. President, I am pleased to recognize a community in North Dakota that will be celebrating its 100th anniversary. On July 3–4, the residents of Pettibone will gather to celebrate their community's history and founding.

Pettibone began as a Northern Pacific Railroad station, and was founded in 1910 by Lee C. Pettibone, who named the growing community after himself. The post office was established on September 1 of that year. Pettibone is the home of the late William Hurley, a successful civil rights lawyer who won the first monetary settlement against the Ku Klux Klan in the 1960s.

Today, Pettibone is a town of about 75 people located in the northeastern part of Kidder County. It contains several different businesses including a Cenex, a grocery store, two bars, a cafe, and a post office. With its gently rolling hills, German-Russian, Scandinavian, and Dutch immigrants found the land suitable to cultivating large fields of the crops they knew how to farm. Today, their descendants grow wheat, barley, oats, potatoes, flax, and beans—all crops that continue to be important to our country's agricultural industry.

The 100th anniversary festivities will include a parade, a carnival, a magician, fireworks display, demolition derby, and other celebratory events.

I ask the U.S. Senate to join me in congratulating Pettibone, ND, and its residents on their first 100 years and in wishing them well in the future. By honoring Pettibone and all the other historic small towns of North Dakota, we keep the great pioneering frontier spirit alive for future generations. It is places such as Pettibone that have helped to shape this country into what it is today, which is why this fine community is deserving of our recognition.

Pettibone has a proud past and a bright future.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Foreign Relations.

(The nomination received today is printed at the end of the Senate proceedings.)

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 5297. An act to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–6265. A communication from the Director of Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Para-Aramid Fibers and Yarns Manufactured in a Qualifying Country'' (DFARS Case 2008–D024) received in the Office of the President of the Senate on June 18, 2010; to the Committee on Armed Services.

EC–6266. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Lieutenant General Franklin L. Hagenbeck, United States Army, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC–6267. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Vice Admiral Thomas J. Kilcline, Jr., United States Navy, and his advancement to the grade of vice admiral on the retired list; to the Committee on Armed Services.

EC–6268. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting the report of (14) officers authorized to wear the insignia of the grade of major general and brigadier general, as appropriate, in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

EC–6269. A communication from the Secretary of Defense, transmitting, pursuant to law, a report relative to the Department of Defense's intent to expand the role of women in the Marine Corps; to the Committee on Armed Services.

EC–6270. A communication from the Assistant Secretary of Defense (Reserve Affairs), transmitting, pursuant to law, the annual report for fiscal year 2009 of the National Guard Youth Challenge Program; to the Committee on Armed Services.

EC–6271. A communication from the Administrator, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, a report relative to the cost of response and recovery efforts for FEMA–3309–EM in the State of North Dakota has exceeded the $5,000,000 limit for a single emergency declaration; to the Committee on Banking, Housing, and Urban Affairs.

EC–6272. A communication from the Chairman of the Board of Governors, Federal Reserve System, transmitting, pursuant to law, a report entitled ''Report to the Congress on Profitability of Credit Card Operations of Depository Institutions''; to the Committee on Banking, Housing, and Urban Affairs.

EC–6273. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report entitled ''Annual Energy Outlook 2010''; to the Committee on Energy and Natural Resources.

EC–6274. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 704(c) Remedial Regulations'' ((TD 9485)(RIN1545–BF28)) received in the Office of the President of the Senate on June 17, 2010; to the Committee on Finance.

EC–6275. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Amplifying Rev. Rul. 2003–20 to Apply to Recourse Debt'' (Rev. Rul. 2010–17) received in the Office of the President of the Senate on June 17, 2010; to the Committee on Finance.

EC–6276. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report relative to U.S. contributions to the United Nations and its affiliated agencies during fiscal year 2009; to the Committee on Foreign Relations.

EC–6277. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act'' (RIN1210–AB42) received in the Office of the President of the Senate on June 17, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–6278. A communication from the Program Manager, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act'' (RIN0991–AB68) received in the Office of the President of the Senate on June 17, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–6279. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Tobacco Prevention and Control Activities in the United States, 2005–2007''; to the Committee on Health, Education, Labor, and Pensions.

EC–6280. A communication from the Assistant General Counsel for Regulatory Services, Office of Special Education and Rehabilitative Services, Department of Education,

transmitting, pursuant to law, the report of a rule entitled ''Disability and Rehabilitation Research Project—Reducing Obesity and Obesity-Related Secondary Health Conditions Among Adolescents and Young Adults with Disabilities From Diverse Race and Ethnic Backgrounds'' (CFDA No. 84.133A–7) received in the Office of the President of the Senate on June 17, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–6281. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled, ''Fiscal Year 2009 Annual Report on Advisory Neighborhood Commissions''; to the Committee on Homeland Security and Governmental Affairs.

EC–6282. A communication from the Commissioner of the Social Security Administration, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from October 1, 2009, through March 31, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6283. A communication from the Secretary of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–485, ''Sense of the Council in Support of the Uniting American Families Act Resolution of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–6284. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–431, ''SOME, Inc., Technical Amendment Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–6285. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–430, ''UNCF Tax Abatement and Relocation to the District Assistance Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–6286. A communication from the Director, Employee Services, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Absence and Leave; Definitions of 'Family Member', 'Immediate Relative', and Related Terms'' (RIN3206–AL93) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6287. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2009–026, Compensation for Personal Services'' (RIN9000–AL54) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6288. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2009–025, Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns'' (RIN9000–AL58) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6289. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2009–013, Nonavailable Articles'' (RIN9000–AL40) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6290. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2009–014, New Designated Country—Taiwan'' (RIN9000–AL34) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6291. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2009–011, American Recovery and Reinvestment Act of 2009 (Recovery Act)—GAO/IG Access'' (RIN9000–AL20) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6292. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2008–007, Additional Requirements for Market Research'' (RIN9000–AL50) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6293. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2008–003, Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts—Section 844 of the National Defense Authorization Act for Fiscal Year 2008'' (RIN9000–AL13) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6294. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2009–010, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions'' (RIN9000–AL24) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6295. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2005–040, Electronic Subcontracting Reporting System (eSRS)'' (RIN9000–AK95) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6296. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2009–012, American Recovery and Reinvestment Act of 2009 (Recovery Act)—Whistleblower Protections'' (RIN9000–AL19) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6297. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2005–42; Introduction'' (FAC 2005–42) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6298. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2009–018, Payrolls and Basic Records'' (RIN9000–AL53) received in the Office of the President of the Senate on June 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6299. A communication from the Senior Associate General Counsel, Office of the Director of National Intelligence, transmitting, pursuant to law, a report relative to a vacancy in the position of Director of National Intelligence, received in the Office of the President of the Senate on June 16, 2010; to the Select Committee on Intelligence.

EC–6300. A communication from the Director of Regulation Policy and Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Loan Guaranty: Elimination of Redundant Regulations'' (RIN2900–AN71) received in the Office of the President of the Senate on June 18, 2010; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. BOXER, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 2724. A bill to provide for environmental restoration activities and forest management activities in the Lake Tahoe Basin (Rept. No. 111–211).

By Mrs. BOXER, from the Committee on Environment and Public Works, without amendment:

S. 3250. A bill to provide for the training of Federal building personnel, and for other purposes (Rept. No. 111–212).

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with amendments:

S. 2872. A bill to authorize appropriations for the National Historical Publications and Records Commission through fiscal year 2014, and for other purposes (Rept. No. 111–213).

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. BAUCUS (for himself and Mr. GRASSLEY):

S. 3513. A bill to amend the Internal Revenue Code of 1986 to extend for one year the special depreciation allowances for certain property; to the Committee on Finance.

By Mr. BEGICH (for himself, Mr. WYDEN, and Ms. KLOBUCHAR):

S. 3514. A bill to amend the Outer Continental Shelf Lands Act to prohibit a person from entering into any Federal oil or gas lease or contract unless the person pays into an Oil Spill Recovery Fund, or posts a bond, in an amount equal to the total of the outstanding liability of the person and any removal costs incurred by, or on behalf of, the

person with respect to any oil discharge for which the person has outstanding liability, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. SHAHEEN (for herself, Mr. UDALL of Colorado, and Mr. BINGAMAN):

S. 3515. A bill to authorize and enhance the programs of the Department of the Interior relating to the detection of, response to, and mitigation and cleanup of oil spills on Federal land managed by the Department, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BINGAMAN (for himself, Ms. MURKOWSKI, and Mr. DORGAN):

S. 3516. A resolution to amend the Outer Continental Shelf Lands Act to reform the management of energy and mineral resources on the Outer Continental Shelf, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. KERRY (for himself and Mr. LUGAR) (by request):

S.J. Res. 34. A joint resolution relating to the approval of the proposed agreement for nuclear cooperation between the United States and the Russian Federation; to the Committee on Foreign Relations for a period not to exceed 45 session days pursuant to 42 U.S.C. 2159.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BURR (for himself, Mr. DODD, Mr. INHOFE, and Ms. COLLINS):

S. Res. 561. A resolution designating June 25, 2010, as ''National Huntington's Disease Awareness Day''; considered and agreed to.

ADDITIONAL COSPONSORS

S. 583

At the request of Mr. PRYOR, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 583, a bill to provide grants and loan guarantees for the development and construction of science parks to promote the clustering of innovation through high technology activities.

S. 624

At the request of Mr. DURBIN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 624, a bill to provide 100,000,000 people with first-time access to safe drinking water and sanitation on a sustainable basis by 2015 by improving the capacity of the United States Government to fully implement the Senator Paul Simon Water for the Poor Act of 2005.

S. 696

At the request of Mr. CARDIN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 696, a bill to amend the Federal Water Pollution Control Act to include a definition of fill material.

S. 831

At the request of Mr. KERRY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 831, a bill to amend title 10, United States Code, to include service after September 11, 2001, as service qualifying for the determination of a reduced eligibility age for receipt of non-regular service retired pay.

S. 864

At the request of Mr. DORGAN, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 864, a bill to amend the Internal Revenue Code of 1986 to expand tax-free distributions from individual retirement accounts for charitable purposes.

S. 987

At the request of Mr. DURBIN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 987, a bill to protect girls in developing countries through the prevention of child marriage, and for other purposes.

S. 1005

At the request of Mr. CARDIN, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1005, a bill to amend the Federal Water Pollution Control Act and the Safe Drinking Water Act to improve water and wastewater infrastructure in the United States.

S. 1055

At the request of Mrs. BOXER, the names of the Senator from New York (Mr. SCHUMER), the Senator from Nebraska (Mr. NELSON) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1055, a bill to grant the congressional gold medal, collectively, to the 100th Infantry Battalion and the 442nd Regimental Combat Team, United States Army, in recognition of their dedicated service during World War II.

S. 1237

At the request of Mrs. MURRAY, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1237, a bill to amend title 38, United States Code, to expand the grant program for homeless veterans with special needs to include male homeless veterans with minor dependents and to establish a grant program for reintegration of homeless women veterans and homeless veterans with children, and for other purposes.

S. 1244

At the request of Mr. MERKLEY, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1244, a bill to amend the Civil Rights Act of 1964 to protect breastfeeding by new mothers, to provide for a performance standard for breast pumps, and to provide tax incentives to encourage breastfeeding.

S. 1275

At the request of Mr. WARNER, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1275, a bill to establish a National Foundation on Physical Fitness and Sports to carry out activities to support and supplement the mission of the President's Council on Physical Fitness and Sports.

S. 1445

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1445, a bill to amend the Public Health Service Act to improve the health of children and reduce the occurrence of sudden unexpected infant death and to enhance public health activities related to stillbirth.

S. 1589

At the request of Ms. CANTWELL, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1589, a bill to amend the Internal Revenue Code of 1986 to modify the incentives for the production of biodiesel.

S. 2747

At the request of Mr. BINGAMAN, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 2747, a bill to amend the Land and Water Conservation Fund Act of 1965 to provide consistent and reliable authority for, and for the funding of, the land and water conservation fund to maximize the effectiveness of the fund for future generations, and for other purposes.

S. 2882

At the request of Mr. KERRY, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 2882, a bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the treatment of individuals as independent contractors or employees, and for other purposes.

S. 3034

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 3034, a bill to require the Secretary of the Treasury to strike medals in commemoration of the 10th anniversary of the September 11, 2001, terrorist attacks on the United States and the establishment of the National September 11 Memorial & Museum at the World Trade Center.

S. 3120

At the request of Mr. SPECTER, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 3120, a bill to encourage the entry of felony warrants into the National Crime Information Center database by States and provide additional resources for extradition.

S. 3211

At the request of Mrs. SHAHEEN, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 3211, a bill to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by designating certain certified diabetes educators as certified providers for purposes of outpatient diabetes self-management training services under part B of the Medicare Program.

S. 3238

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 3238, a bill to provide for a medal of appropriate design to be awarded by

the President to the next of kin or other representative of those individuals killed as a result of the terrorist attacks of September 11, 2001, and to the memorials established at the 3 sites that were attacked on that day.

S. 3320

At the request of Mr. WHITEHOUSE, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 3320, a bill to amend the Public Health Service Act to provide for a Pancreatic Cancer Initiative, and for other purposes.

S. 3326

At the request of Ms. CANTWELL, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 3326, a bill to provide grants to States for low-income housing projects in lieu of low-income housing credits, and to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of the low-income housing credit, and for other purposes.

S. 3339

At the request of Mr. KERRY, the names of the Senator from Georgia (Mr. ISAKSON) and the Senator from Oregon (Mr. MERKLEY) were added as cosponsors of S. 3339, a bill to amend the Internal Revenue Code of 1986 to provide a reduced rate of excise tax on beer produced domestically by certain small producers.

S. 3363

At the request of Mr. CARDIN, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 3363, a bill to amend the Water Resources Research Act of 1984 to reauthorize grants for and require applied water supply research regarding the water resources research and technology institutes established under that Act.

S. 3397

At the request of Ms. KLOBUCHAR, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 3397, a bill to amend the Controlled Substances Act to provide for take-back disposal of controlled substances in certain instances, and for other purposes.

S. 3409

At the request of Ms. LANDRIEU, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 3409, a bill to make certain adjustments to the price analysis of propane prepared by the Secretary of Commerce.

S. 3411

At the request of Mrs. GILLIBRAND, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 3411, a bill to provide for the adjustment of status for certain Haitian orphans paroled into the United States after the earthquake of January 12, 2010.

S. 3434

At the request of Mr. BINGAMAN, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of S. 3434, a bill to provide for the establishment of a Home Star Retrofit Rebate Program, and for other purposes.

S. 3474

At the request of Mr. FEINGOLD, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 3474, a bill to provide an optional fast-track procedure the President may use when submitting rescission requests, and for other purposes.

S. 3477

At the request of Mr. WEBB, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 3477, a bill to ensure that the right of an individual to display the Service Flag on residential property not be abridged.

S. RES. 411

At the request of Mrs. LINCOLN, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. Res. 411, a resolution recognizing the importance and sustainability of the United States hardwoods industry and urging that United States hardwoods and the products derived from United States hardwoods be given full consideration in any program to promote construction of environmentally preferable commercial, public, or private buildings.

S. RES. 541

At the request of Mr. CONRAD, the names of the Senator from Vermont (Mr. SANDERS), the Senator from New York (Mr. SCHUMER), the Senator from Maine (Ms. SNOWE), the Senator from North Dakota (Mr. DORGAN), the Senator from Kansas (Mr. BROWNBACK), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Minnesota (Mr. FRANKEN), the Senator from Virginia (Mr. WARNER), the Senator from Illinois (Mr. DURBIN), the Senator from Ohio (Mr. BROWN) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. Res. 541, a resolution designating June 27, 2010, as ''National Post-Traumatic Stress Disorder Awareness Day''.

S. RES. 552

At the request of Mr. BENNET, the names of the Senator from California (Mrs. FEINSTEIN), the Senator from Colorado (Mr. UDALL), the Senator from Maine (Ms. SNOWE), the Senator from Kansas (Mr. BROWNBACK) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. Res. 552, a resolution designating June 23, 2010, as ''Olympic Day''.

AMENDMENT NO. 4382

At the request of Mrs. LINCOLN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of amendment No. 4382 intended to be proposed to H.R. 4213, a bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAUCUS (for himself and Mr. GRASSLEY):

S. 3513. A bill to amend the Internal Revenue Code of 1986 to extend for one year the special depreciation allowances for certain property; to the Committee on Finance.

Mr. BAUCUS. Mr. President, over the past several months, we have seen some improvement in our economy.

One year ago, in the first quarter of 2009, GDP was declining at an annual rate of more than 6 percent. Just 1 year later, in the first quarter of 2010, GDP grew at an annual rate of 3 percent.

This marks the third consecutive quarter of real economic growth.

It is not just the GDP that is growing. Consumer spending has risen at an annual rate of 3.5 percent this year. Manufacturing output rose 9 percent over the first 4 months of the year. Businesses have increased spending on equipment and boosted their inventory investments.

But one economic indicator continues to lag behind—employment.

The national unemployment rate stands at 9.7 percent. Over the course of this Great Recession, the American economy has lost more than 8 million jobs. In total, 15 million Americans remain out of work.

We must act to create jobs and get Americans back to work.

We began creating jobs with the 2009 Recovery Act. The nonpartisan Congressional Budget Office reports that last year's Recovery Act added 1.2 to 2.8 million people to America's payrolls.

In March, Congress passed the HIRE Act. The HIRE Act, which includes a payroll tax exemption for new hires, should help to bolster job creation in the coming months.

This week, we are considering the American Jobs and Closing Tax Loopholes Act. That bill will create jobs by providing tax cuts and certainty to American businesses. It will create jobs by improving our nation's infrastructure. And it will create jobs by making direct investments in jobs for young adults and needy families.

After we consider the American Jobs and Closing Tax Loopholes Act, the Senate will consider a small business jobs bill. The Finance and Small Business committees are currently writing that bill.

Today, I am introducing another important jobs bill. This bill will extend bonus depreciation through 2010. I am introducing this extension as a standalone bill because of the unique ability of bonus depreciation to help businesses and create jobs.

In 2008, Congress temporarily allowed businesses to recover the costs of certain capital expenditures more quickly than under ordinary depreciation schedules. The 2008 law allowed businesses to immediately write off 50 percent of the cost of depreciable property placed in service in 2008.

The Recovery Act extended bonus depreciation. But the provision expired at the end of 2009.

My bill would extend bonus depreciation to property placed in service in 2010.

Bonus depreciation provides a double benefit. It helps two sets of businesses. It helps the business that purchases the equipment. It helps the business that sells the equipment.

The businesses that purchase equipment can write off those purchases more quickly.

This provides a significant tax savings. That savings makes equipment more affordable and encourages purchases.

The savings gained from expensing, rather than the slower depreciation, allows businesses to use that money to invest in the business itself. Businesses can use those savings to hire employees.

The more purchases that are made, the more other businesses are helped. This proposal will help manufacturers and suppliers to retain and hire employees as their businesses rebound.

I have heard from a number of business owners in Montana that bonus depreciation has been extremely helpful for their business.

An extension of bonus depreciation will boost economic activity by hundreds of millions of dollars. It will create hundreds of jobs in my home state of Montana.

Bonus depreciation is a cost-effective provision that provides real relief for businesses. Bonus depreciation creates jobs.

I urge my Colleagues to support this important bill.

By Mr. BEGICH (for himself, Mr. WYDEN, and Ms. KLOBUCHAR):

S. 3514. A bill to amend the Outer Continental Shelf Lands Act to prohibit a person from entering into any Federal oil or gas lease or contract unless the person pays into an Oil Spill Recovery Fund, or posts a bond, in an amount equal to the total of the outstanding liability of the person and any removal costs incurred by, or on behalf of, the person with respect to any oil discharge for which the person has outstanding liability, and for other purposes; to the Committee on Environment and Public Works.

Mr. BEGICH. Mr. President, I rise to introduce legislation requiring BP and other oil companies to set aside ample funding in an escrow account controlled—not by the company but by the Federal Government—to address the damage and claims from a major catastrophic oil spill like the current Gulf of Mexico spill.

Twenty-one years ago, the oil tanker Exxon Valdez ran aground, gushing an estimated 11 million gallons of crude oil into Alaska waters. This was the worst oil spill in American history, with oil hitting 1,300 miles of shoreline and killing hundreds of thousands of birds and marine mammals. Thousands of hard-working Alaskans, just like the residents of the Gulf, lost millions of dollars as their livelihoods collapsed.

To add insult to injury, for nearly two decades Exxon fought the legitimate claims of Alaskans harmed by the spill for nearly two decades. The case went all the way to the Supreme Court when in 2008, the Court issued a final judgment, reducing Exxon's punitive liability to just 10 percent of what the original court had ordered. During those 19 years, hundreds of Alaskans entitled to damages had died; thousands of others' lives were forever harmed.

We Alaskans learned many lessons from the Exxon Valdez spill. One of the most important was to set up a system as early as possible to guarantee that those affected by oil spills are justly compensated. That is what my bill is designed to do. I am certainly pleased BP has agreed to set up an escrow account voluntarily, but I believe Congress should underscore their commitment in law and to protect Americans from future spills.

This bill, the Guaranteed Oil Spill Compensation Act of 2010, requires BP or any other party responsible for an oil spill interested in future Federal oil and gas leases to deposit into an escrow account held by the U.S. Government enough money to compensate those affected by a spill. In the event of a spill, the Secretary of Interior can make an assessment of outstanding liability under provisions of the Federal legislation passed in the aftermath of the Exxon Valdez, the Oil Pollution Act of 1990, OPA 90. The spiller must then deposit funds equal to the total liability minus the liability established for incident by OPA 90 into a separate fund to be administered by the Secretary for claims and costs related to that spill. Unexpended funds would be returned to the spiller at the earlier of 5 years after the date of deposit or the date the Secretary determines all Federal, State, and civil claims have been satisfied. The measure would have no affect on other liability.

I believe this legislation achieves what many of us want: ensuring Americans damaged by this oil spill and future catastrophic spills are fairly compensated in a timely way. This didn't happen to Alaskans with the Exxon Valdez. We must ensure it does happen for our Americans in the Gulf of Mexico. This is another tool as Congress works on liability reform designed to make those injured whole again, while at the same time allowing responsible companies to provide oil our country needs.

The Guaranteed Oil Spill Compensation Act of 2010 is the first of a package of bills I intend to introduce designed to make oil companies financially responsible for the cost of oil spills; expand scientific research, especially in the Arctic; provide a steady source of Federal funding for additional science and resources needed in the Far North to deal with oil and gas development; and provide greater citizen involvement in oil development.

By Mrs. SHAHEEN (for herself, Mr. UDALL of Colorado, and Mr. BINGAMAN):

S. 3515. A bill to authorize and enhance the programs of the Department of the Interior relating to the detection of, response to, and mitigation and cleanup of oil spills on Federal land managed by the Department, and for other purposes; to the Committee on Environment and Public Works.

Mrs. SHAHEEN. Mr. President, I rise today to join with my colleagues Senator MARK UDALL and Chairman JEFF BINGAMAN of the Senate Energy Committee to introduce the Department of the Interior Research and Technologies for Oil Spill Prevention and Response Act of 2010. Legislation intended to make sure we have the proper resources available to respond to future oil spills.

While we are still getting to the bottom of what caused the Deepwater Horizon disaster in the Gulf, one thing is absolutely clear: BP was totally unprepared to respond, contain and clean-up this kind of spill.

From ''junk shots'' to containment domes that failed to work at depth, BP was caught totally flat footed by this spill. Even BP's CEO, Tony Hayward, admitted that BP didn't ''have the tools in the toolbox'' to respond to this spill.

The oil and gas industry has poured significant sums of money into developing technologies to find and produce oil and gas, but when I asked oil executives at a recent Energy Committee hearing what they've done in the way of research and development to respond to and clean up oil spills the response I got was: little to nothing.

The technologies being used today in the Gulf are the same technologies we used twenty years ago to clean-up the Exxon Valdez spill. The oil and gas industry needs to do better. Since they won't do it themselves, they can pay the government to lead on research and development. We need to have updated, innovative, and effective technologies at the ready to clean up after any oil spill—large or small.

We have to make sure that—through proper research and development—we are prepared to prevent and respond to future oil spills. And that is what my legislation is intended to do.

The legislation I am introducing today with Senators UDALL and BINGAMAN does the following:

It creates a new Oil Spill research and development program within the Interior Department to focus on research and development technologies to respond to, contain and clean up oil spills and ensure we're prepared to respond to future spills.

It establishes an independent Scientific Advisory Board to identify gaps and focus the research and development program on priority areas. We know the concerns of the scientists were ignored leading up to the Deepwater Horizon explosion. This provision will make sure their important voices are heard.

It makes the oil and gas industry pay for this critical research and development. In order to make sure this import effort has the resources it need to be successful, my legislation creates a dedicated funding source to pay for this research and development, and

this funding will come entirely from royalties, rent, and bonuses from domestic oil and gas producers.

This legislation is one part of a broader effort to ensure that we are prepared for future oil spills and that the catastrophe in the Gulf never happens again.

I look forward to working with my colleagues to incorporate this legislation into comprehensive legislation the Senate is crafting to respond to the Deepwater Horizon spill and reform the federal agency responsible for oil and gas development in the outer continental shelf. I urge my colleagues to support this legislation so that we can ensure we are prepared to handle future oil spills.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3515

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of the Interior Research and Technologies for Oil Spill Prevention and Response Act of 2010''.

SEC. 2. PURPOSE.

The purpose of this Act is to maintain and enhance the world-class research and facilities of the Department of the Interior and to ensure that there is adequate knowledge, practices, and technologies to detect, respond to, contain, and clean up oil spills occurring on Federal land managed by the Department of the Interior, whether onshore or on the outer Continental Shelf.

SEC. 3. DEFINITIONS.

In this Act:

(1) BOARD.—The term ''Board'' means the Science and Technology Advisory Board established under section 5(a).

(2) FUND.—The term ''Fund'' means the Oil Spill Technology and Research Fund established by section 13(a).

(3) PROGRAM.—The term ''program'' means the program established under section 4(a).

SEC. 4. AUTHORIZATION OF DEPARTMENT OF THE INTERIOR OIL SPILL RESEARCH AND DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall carry out a program of research, development, technology demonstration, and risk assessment to address issues associated with the detection of, response to, and mitigation and cleanup of oil spills occurring on Federal land managed by the Department of the Interior, whether onshore or on the outer Continental Shelf.

(b) SPECIFIC AREAS OF FOCUS.—The program shall include research, development, demonstration, validation, personnel training, and other activities relating to—

(1) technologies, materials, methods, and practices—

(A) to detect the release of hydrocarbons from leaking exploration or production equipment;

(B) to characterize the rates of flow from leaking exploration and production equipment in locations that are remote or difficult to access;

(C) to protect the safety of workers addressing hydrocarbon releases from exploration and production equipment;

(D) to contain, respond to, and clean up oil spills, including with the use of dispersants, containment vessels, booms, and skimmers, particularly under worst-case release scenarios;

(E) to contain, respond to, and clean up an oil spill in extreme or harsh conditions on the outer Continental Shelf; and

(F) for environmental assessment, restoration, and long-term monitoring;

(2) fundamental scientific characterization of the behavior of oil and natural gas in and on soil and water, including miscibility, plume behavior, emulsification, physical separation, and chemical and biological degradation;

(3) behavior and effects of emulsified, dispersed, and submerged oil in water; and

(4) modeling, simulation, and prediction of oil flows from releases and the trajectories of releases on the surface, the subsurface, and in water.

SEC. 5. SCIENCE AND TECHNOLOGY ADVISORY BOARD.

(a) IN GENERAL.—The Secretary shall enter into appropriate arrangements with the National Academy of Sciences to establish an independent committee, to be known as the ''Science and Technology Advisory Board'', to provide scientific and technical advice to the program, including—

(1) the identification of knowledge gaps that the program should address;

(2) the establishment of scientific and technical priorities; and

(3) an annual review of the results and effectiveness of the program, including successful technology development.

(b) REPORTS.—Reports and recommendations of the Board shall promptly be made available to Congress and the public.

SEC. 6. RESEARCH AND TECHNOLOGY PLAN.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and every 2 years thereafter, the Secretary, in consultation with the Board, shall develop and publish a research and technology plan for the program.

(b) CONTENTS.—The plan under this section shall—

(1) identify research needs and opportunities;

(2) propose areas of focus for the program;

(3) establish program priorities, including priorities for the research centers of excellence under section 7, demonstration projects under section 8, and research grants under section 9; and

(4) estimate—

(A) the extent of resources needed to conduct the program; and

(B) timetables for completing research tasks under the program.

(c) PUBLICATION.—The Secretary shall timely publish—

(1) the plan under this section; and

(2) a review of the plan by the Board.

SEC. 7. RESEARCH CENTERS OF EXCELLENCE.

(a) RESPONSE TECHNOLOGIES FOR DEEPWATER, ULTRA DEEPWATER, AND OTHER EXTREME ENVIRONMENT OIL SPILLS.—

(1) ESTABLISHMENT.—The Secretary shall establish at 1 or more institutions of higher education a research center of excellence for the research, development, and demonstration of technologies necessary to respond to, contain, mitigate, and clean up deepwater, ultra deepwater, and other extreme environment oil spills.

(2) GRANTS.—The Secretary shall provide grants to the research center of excellence established under paragraph (1) to conduct and oversee basic and applied research in the technologies described in that paragraph.

(b) OIL SPILL RESPONSE AND RESTORATION.—

(1) ESTABLISHMENT.—The Secretary, in coordination with the Undersecretary of Commerce for Oceans and Atmosphere, shall establish at 1 or more institutions of higher education a research center of excellence for research and innovation in oil spill fate, behavior and effects, and damage assessment and restoration.

(2) GRANTS.—The Secretary shall provide grants to the research center of excellence established under paragraph (1) to conduct and oversee basic and applied research in the areas described in that paragraph.

(c) OTHER RESEARCH CENTERS OF EXCELLENCE.—The Secretary may establish such other research centers of excellence as the Secretary determines to be necessary for the research, development, and demonstration of technologies necessary to carry out this Act.

SEC. 8. DEMONSTRATION PROJECTS.

(a) IN GENERAL.—In carrying out the program, the Secretary shall conduct deepwater, ultra deepwater, and other extreme environment oil spill response demonstration projects for the purpose of developing and demonstrating new integrated deepwater oil spill mitigation and response systems that use the information and implement the improved practices and technologies developed from the program.

(b) REQUIREMENTS.—The mitigation and response systems developed under subsection (a) shall use technologies and management practices for improving the response capabilities to deepwater oil spills, including—

(1) improved oil flow monitoring and calculation;

(2) improved oil spill response capability;

(3) improved subsurface mitigation technologies;

(4) improved capability to track and predict the flow and effects of oil discharges in both subsurface and surface areas for the purposes of making oil mitigation and response decisions; and

(5) any other activities necessary to achieve the purposes of the program.

SEC. 9. RESEARCH GRANTS.

In carrying out the program, the Secretary may award competitive grants in coordination with research centers of excellence under section 7 and consistent with the research and technology plan under section 6 to institutions of higher education or other research institutions—

(1) to carry out projects that are relevant to the goals and priorities of the research and technology plan; and—

(2)(A) to advance research and development; or

(B) to demonstrate technologies.

SEC. 10. PILOT PROGRAMS FOR FIELD TESTING TECHNOLOGIES.

(a) IN GENERAL.—The Secretary, in coordination with the Administrator of the Environmental Protection Agency, shall conduct a pilot program to conduct field tests on new oil spill response, mitigation, and cleanup technologies developed under the program in the waters of the United States.

(b) RESULTS.—The results of the field tests conducted under subsection (a) shall be used—

(1) to refine oil spill technology research and development; and

(2) to assist the Secretary and the Administrator of the Environmental Protection Agency in the development of safety and environmental regulations under this Act and other applicable laws.

SEC. 11. PEER REVIEW OF PROPOSALS AND RESEARCH.

(a) IN GENERAL.—Any award of funds under the program shall be made only after the Secretary has carried out an impartial peer review of the scientific and technical merit of the proposals for the award.

(b) REQUIREMENTS.—The Secretary shall ensure that any research conducted under the program shall be peer-reviewed, transparent, and made available to the public.

SEC. 12. COORDINATION WITH OTHER AGENCIES.

(a) IN GENERAL.—In carrying out this Act, the Secretary shall consult and coordinate, as appropriate, with other Federal agencies and programs, including the Interagency Coordinating Committee on Oil Pollution Research established under section 7001 of the Oil Pollution Act of 1990 (33 U.S.C. 2761).

(b) RESPONSIBILITY OF THE SECRETARY.—Notwithstanding any requirements to consult or coordinate, the Secretary shall maintain authority, direction, and control of the program.

SEC. 13. OIL SPILL TECHNOLOGY AND RESEARCH FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund, to be known as the ''Oil Spill Technology and Research Fund'', consisting of such amounts as are transferred to the Fund under subsection (b), to be administered by the Secretary, to be available without fiscal year limitation and not subject to appropriation, to carry out the program.

(b) TRANSFERS TO FUND.—From any Federal royalties, rents, and bonuses derived from Federal onshore and offshore oil and gas leases issued the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or the Mineral Leasing Act (30 U.S.C. 181 et seq.) that are deposited in the Treasury, and after distribution of any funds described in subsection (c), there shall be transferred to the Fund $25,000,000 for each of fiscal years 2010 through 2020, to remain available until expended.

(c) PRIOR DISTRIBUTIONS.—The distributions referred to in subsection (b) are those required by law—

(1) to States and to the Reclamation Fund under section 35(a) of the Mineral Leasing Act (30 U.S.C. 191(a)); and

(2) to other funds receiving amounts from Federal oil and gas leasing programs, including—

(A) any recipients pursuant to section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g));

(B) the land and water conservation fund, pursuant to section 2(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–5(c));

(C) the Historic Preservation Fund, pursuant to section 108 of the National Historic Preservation Act (16 U.S.C. 470h); and

(D) the coastal impact assistance program established under section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a).

(d) PROHIBITION.—Amounts in the Fund may not be made available for any purpose other than a purpose described in subsection (a).

(e) ANNUAL REPORTS.—

(1) IN GENERAL.—Not later than 60 days after the end of each fiscal year beginning with fiscal year 2010, the Secretary shall submit to the Committee on Appropriations of the House of Representatives, the Committee on Appropriations of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Natural Resources of the House of Representatives a report on the operation of the Fund during the fiscal year.

(2) CONTENTS.—Each report shall include, for the fiscal year covered by the report, the following:

(A) A statement of the amounts deposited into the Fund.

(B) A description of the expenditures made from the Fund for the fiscal year, including the purpose of the expenditures.

(C) Recommendations for additional authorities to fulfill the purpose of the Fund.

(D) A statement of the balance remaining in the Fund at the end of the fiscal year.

By Mr. BINGAMAN (for himself, Ms. MURKOWSKI, and Mr. DORGAN):

S. 3516. A resolution to amend the Outer Continental Shelf Lands Act to reform the management of energy and mineral resources on the Outer Continental Shelf, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, today I am pleased to introduce the Outer Continental Shelf Reform Act of 2010. This act takes a number of important steps to ensure that the Outer Continental Shelf will be managed in a balanced, prudent, and vigilant way, to ensure energy production, safety, and protection of the environment. Its goal is to create a culture of excellence in this endeavor that benefits those who work in the oil industry, those who depend on other marine resources, and all Americans who care deeply about our oceans and coastal environment.

This legislation is being introduced against the backdrop of oil still gushing into the Gulf of Mexico more than 60 days after the initial explosion of the Deepwater Horizon rig. As the Congress formulates its overall response to this disaster, its first order of business must be to continue to care for the families of those who lost their lives in the rig explosion and those Gulf residents who are suffering every day through loss of livelihood and of places and wildlife that they love. Several Senate committees have important roles to play in formulating legislation in that regard.

At the same time, it also is essential that we look to the future, and to creating a better structure and system within the regulatory agency. That is a particular responsibility of the Committee on Energy and Natural Resources. One goal must be, of course, to prevent future disasters. But we can and must do more than that.

Congress should create organizational resources and a set of principles and requirements that will have safety, environmental protection, and innovation at its core. We should require that both industry and agency employees have the expertise, experience, and commitment to quality necessary to handle the complex issues involved. If we do this right, it is my hope that we can see tangible results on all fronts, and a shift away from the cascade of failures that led to the Deepwater Horizon accident and towards work of the highest quality.

Thus, this bill clarifies the multiple responsibilities of the Department of the Interior in managing the Outer Continental Shelf—appropriate energy and other economic development and the protection of human health and safety and the marine and coastal environment. It reforms the structure of the regulatory apparatus of the Department consistent with these responsibilities. The new organizational structure requires that the Department avoid organizational conflicts of interest between its revenue-raising missions and its planning, permitting, and regulatory missions.

The bill increases the safety requirements for drilling wells, focusing on best available technology, a systems analysis, risk assessment, an evidentiary safety case, and a full engineering review. In furtherance of the development of these standards and their evolution of new and better technology, it requires new research programs within the Department, independent of the leasing program, whose data must be considered by the regulators. It provides dedicated funding for the highest priority research, including in the areas of well control and spill response, and an independent science advisory board outside the agency to provide oversight.

It establishes new requirements for investigation of all accidents and the public sharing of data from those reviews so that all can learn from mistakes before they become major problems. It allows the National Transportation Safety Board to provide an independent and highly skilled investigation of any accident at the request of the Secretary.

In order to fully enforce the safety requirements, the bill imposes an inspection fee on industry participants to fully fund enough well-trained inspectors to perform real and meaningful inspections more often. It also increases the sanctions on poor operators, including increased civil and criminal penalties applicable to those who violate the law, and the financial responsibility requirements to ensure that those who participate in development of the Outer Continental Shelf can afford to pay for any damage they cause.

The bill provides the Department of the Interior with adequate time to carry out necessary reviews, clarifies the issues that need to be addressed, and makes the input of other Federal agencies occur in a transparent way. In this way, the process will have more predictability and all stakeholders will have greater understanding of what is under consideration. The result will be better decisions that will be capable of being implemented with greater certainty.

Finally, the bill takes steps to ensure that the taxpayers will get a fair return for development of energy resources. The Secretary will be required to regularly review the amounts of royalties and other charges applicable to those developing the Outer Continental Shelf, compare them to charges levied by States and other countries, and consider whether adjustments are necessary to achieve fair fiscal policies.

I believe these policies and resources can set us on a new and constructive path toward managing the incredible natural resources of the Outer Continental Shelf. I welcome ideas from others that may enhance our ability in this regard. We must commit ourselves to the goal of excellence in this important endeavor. We start today.

I am pleased to be joined by Senator MURKOWSKI, ranking Republican on the Energy and Natural Resources Committee, and Senator DORGAN, as original cosponsors of this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3516

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Outer Continental Shelf Reform Act of 2010''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to rationalize and reform the responsibilities of the Secretary of the Interior with respect to the management of the outer Continental Shelf in order to improve the management, oversight, accountability, safety, and environmental protection of all the resources on the outer Continental Shelf;

(2) to provide independent development and enforcement of safety and environmental laws (including regulations) governing—

(A) energy development and mineral extraction activities on the outer Continental Shelf; and

(B) related offshore activities; and

(3) to ensure a fair return to the taxpayer from, and independent management of, royalty and revenue collection and disbursement activities from mineral and energy resources.

SEC. 3. DEFINITIONS.

In this Act:

(1) DEPARTMENT.—The term ''Department'' means the Department of the Interior.

(2) OUTER CONTINENTAL SHELF.—The term ''outer Continental Shelf'' has the meaning given the term in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 4. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF.

Section 3 of the Outer Continental Shelf Lands Act (43 U.S.C. 1332) is amended—

(1) by striking paragraph (3) and inserting the following:

''(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be managed in a manner that recognizes—

''(A) the need of the United States for domestic sources of energy, food, minerals, and other resources;

''(B) the potential impacts of development of those resources on the marine and coastal environment and on human health and safety; and

''(C) the long-term economic value to the United States of the balanced and orderly management of those resources that safeguards the environment and respects the multiple values and uses of the outer Continental Shelf;'';

(2) in paragraph (4)(C), by striking the period at the end and inserting a semicolon;

(3) in paragraph (5), by striking ''; and'' and inserting a semicolon;

(4) by redesignating paragraph (6) as paragraph (7);

(5) by inserting after paragraph (5) the following:

''(6) exploration, development, and production of energy and minerals on the outer Continental Shelf should be allowed only when those activities can be accomplished in a manner that provides reasonable assurance of adequate protection against harm to life, health, the environment, property, or other users of the waters, seabed, or subsoil; and''; and

(6) in paragraph (7) (as so redesignated)—

(A) by striking ''should be'' and inserting ''shall be''; and

(B) by adding ''best available'' after ''using''.

SEC. 5. STRUCTURAL REFORM OF OUTER CONTINENTAL SHELF PROGRAM MANAGEMENT.

(a) IN GENERAL.—The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding to the end the following:

''SEC. 32. STRUCTURAL REFORM OF OUTER CONTINENTAL SHELF PROGRAM MANAGEMENT.

''(a) LEASING, PERMITTING, AND REGULATION BUREAUS.—

''(1) ESTABLISHMENT OF BUREAUS.—

''(A) IN GENERAL.—Subject to the discretion granted by Reorganization Plan Number 3 of 1950 (64 Stat. 1262; 43 U.S.C. 1451 note), the Secretary shall establish in the Department of the Interior not more than 2 bureaus to carry out the leasing, permitting, and safety and environmental regulatory functions vested in the Secretary by this Act and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) related to the outer Continental Shelf.

''(B) CONFLICTS OF INTEREST.—In establishing the bureaus under subparagraph (A), the Secretary shall ensure, to the maximum extent practicable, that any potential organizational conflicts of interest related to leasing, revenue creation, environmental protection, and safety are eliminated.

''(2) DIRECTOR.—Each bureau shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

''(3) COMPENSATION.—Each Director shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

''(4) QUALIFICATIONS.—Each Director shall be a person who, by reason of professional background and demonstrated ability and experience, is specially qualified to carry out the duties of the office.

''(b) ROYALTY AND REVENUE OFFICE.—

''(1) ESTABLISHMENT OF OFFICE.—Subject to the discretion granted by Reorganization Plan Number 3 of 1950 (64 Stat. 1262; 43 U.S.C. 1451 note), the Secretary shall establish in the Department of the Interior an office to carry out the royalty and revenue management functions vested in the Secretary by this Act and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).

''(2) DIRECTOR.—The office established under paragraph (1) shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

''(3) COMPENSATION.—The Director shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

''(4) QUALIFICATIONS.—The Director shall be a person who, by reason of professional background and demonstrated ability and experience, is specially qualified to carry out the duties of the office.

''(c) OCS SAFETY AND ENVIRONMENTAL ADVISORY BOARD.—

''(1) ESTABLISHMENT.—The Secretary shall establish, under the Federal Advisory Committee Act (5 U.S.C. App.), an Outer Continental Shelf Safety and Environmental Advisory Board (referred to in this subsection as the 'Board'), to provide the Secretary and the Directors of the bureaus established under this section with independent scientific and technical advice on safe and environmentally compliant energy and mineral resource exploration, development, and production activities.

''(2) MEMBERSHIP.—

''(A) SIZE.—

''(i) IN GENERAL.—The Board shall consist of not more than 12 members, chosen to reflect a range of expertise in scientific, engineering, management, and other disciplines related to safe and environmentally compliant energy and mineral resource exploration, development, and production activities.

''(ii) CONSULTATION.—The Secretary shall consult with the National Academy of Sciences and the National Academy of Engineering to identify potential candidates for membership on the Board.

''(B) TERM.—The Secretary shall appoint Board members to staggered terms of not more than 4 years, and shall not appoint a member for more than 2 consecutive terms.

''(C) CHAIR.—The Secretary shall appoint the Chair for the Board.

''(3) MEETINGS.—The Board shall—

''(A) meet not less than 3 times per year; and

''(B) at least once per year, shall host a public forum to review and assess the overall safety and environmental performance of outer Continental Shelf energy and mineral resource activities.

''(4) REPORTS.—Reports of the Board shall—

''(A) be submitted to Congress; and

''(B) made available to the public in an electronically accessible form.

''(5) TRAVEL EXPENSES.—Members of the Board, other than full-time employees of the Federal government, while attending a meeting of the Board or while otherwise serving at the request of the Secretary or the Director while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Federal Government serving without pay.

''(d) SPECIAL PERSONNEL AUTHORITIES.—

''(1) DIRECT HIRING AUTHORITY FOR CRITICAL PERSONNEL.—

''(A) IN GENERAL.—Notwithstanding sections 3104, 3304, and 3309 through 3318 of title 5, United States Code, the Secretary may, upon a determination that there is a severe shortage of candidates or a critical hiring need for particular positions, recruit and directly appoint highly qualified accountants, scientists, engineers, or critical technical personnel into the competitive service, as officers or employees of any of the organizational units established under this section.

''(B) REQUIREMENTS.—In exercising the authority granted under subparagraph (A), the Secretary shall ensure that any action taken by the Secretary—

''(i) is consistent with the merit principles of chapter 23 of title 5, United States Code; and

''(ii) complies with the public notice requirements of section 3327 of title 5, United States Code.

''(2) CRITICAL PAY AUTHORITY.—

''(A) IN GENERAL.—Notwithstanding section 5377 of title 5, United States Code, and without regard to the provisions of that title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 of that title (relating to classification and pay rates), the Secretary may establish, fix the compensation of, and appoint individuals to critical positions needed to carry out the functions of any of the organizational units established under this section, if the Secretary certifies that—

''(i) the positions—

''(I) require expertise of an extremely high level in a scientific or technical field; and

''(II) any of the organizational units established in this section would not successfully accomplish an important mission without such an individual; and

''(ii) exercise of the authority is necessary to recruit an individual exceptionally well qualified for the position.

''(B) LIMITATIONS.—The authority granted under subparagraph (A) shall be subject to the following conditions:

''(i) The number of critical positions authorized by subparagraph (A) may not exceed 40 at any 1 time in either of the bureaus established under this section.

''(ii) The term of an appointment under subparagraph (A) may not exceed 4 years.

''(iii) An individual appointed under subparagraph (A) may not have been an employee of the Department of the Interior during the 2-year period prior to the date of appointment.

''(iv) Total annual compensation for any individual appointed under subparagraph (A) may not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3, United States Code.

''(v) An individual appointed under subparagraph (A) may not be considered to be an employee for purposes of subchapter II of chapter 75 of title 5, United States Code.

''(C) NOTIFICATION.—Each year, the Secretary shall submit to Congress a notification that lists each individual appointed under this paragraph.

''(3) REEMPLOYMENT OF CIVILIAN RETIREES.—

''(A) IN GENERAL.—Notwithstanding part 553 of title 5, Code of Federal Regulations (relating to reemployment of civilian retirees to meet exceptional employment needs), or successor regulations, the Secretary may approve the reemployment of an individual to a particular position without reduction or termination of annuity if the hiring of the individual is necessary to carry out a critical function of any of the organizational units established under this section for which suitably qualified candidates do not exist.

''(B) LIMITATIONS.—An annuitant hired with full salary and annuities under the authority granted by subparagraph (A)—

''(i) shall not be considered an employee for purposes of subchapter III of chapter 83 and chapter 84 of title 5, United States Code;

''(ii) may not elect to have retirement contributions withheld from the pay of the annuitant;

''(iii) may not use any employment under this paragraph as a basis for a supplemental or recomputed annuity; and

''(iv) may not participate in the Thrift Savings Plan under subchapter III of chapter 84 of title 5, United States Code.

''(C) LIMITATION ON TERM.—The term of employment of any individual hired under subparagraph (A) may not exceed an initial term of 2 years, with an additional 2-year appointment under exceptional circumstances.

''(e) CONTINUITY OF AUTHORITY.—Subject to the discretion granted by Reorganization Plan Number 3 of 1950 (64 Stat. 1262; 43 U.S.C. 1451 note), any reference in any law, rule, regulation, directive, or instruction, or certificate or other official document, in force immediately prior to the date of enactment of this section—

''(1) to the Minerals Management Service that pertains to any of the duties and authorities described in this section shall be deemed to refer and apply to the appropriate bureaus and offices established under this section;

''(2) to the Director of the Minerals Management Service that pertains to any of the duties and authorities described in this section shall be deemed to refer and apply to the Director of the bureau or office under this section to whom the Secretary has assigned the respective duty or authority; and

''(3) to any other position in the Minerals Management Service that pertains to any of the duties and authorities described in this section shall be deemed to refer and apply to that same or equivalent position in the appropriate bureau or office established under this section.''.

(b) CONFORMING AMENDMENT.—Section 5316 of title 5, United States Code, is amended by striking ''Director, Bureau of Mines, Department of the Interior'' and inserting the following:

''Bureau Directors, Department of the Interior (2).

''Director, Royalty and Revenue Office, Department of the Interior.''.

SEC. 6. SAFETY, ENVIRONMENTAL, AND FINANCIAL REFORM OF THE OUTER CONTINENTAL SHELF LANDS ACT.

(a) DEFINITIONS.—Section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331) is amended by adding at the end the following:

''(r) SAFETY CASE.—The term 'safety case' means a body of evidence that provides a basis for determining whether a system is adequately safe for a given application in a given environment.''.

(b) ADMINISTRATION OF LEASING.—Section 5(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(a)) is amended in the second sentence—

(1) by striking ''The Secretary may at any time'' and inserting ''The Secretary shall''; and

(2) by inserting after ''provide for'' the following: ''operational safety, the protection of the marine and coastal environment,''.

(c) MAINTENANCE OF LEASES.—Section 6 of the Outer Continental Shelf Lands Act (43 U.S.C. 1335) is amended by adding at the end the following:

''(f) REVIEW OF BOND AND SURETY AMOUNTS.—Not later than May 1, 2011, and every 5 years thereafter, the Secretary shall—

''(1) review the minimum bond amounts for mineral leases under subsection (a)(11); and

''(2) set any bonds, surety, or other evidence of financial responsibility required in amounts adequate to permit lessees to fulfill all obligations under this Act or the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

''(g) PERIODIC FISCAL REVIEWS AND REPORTS.—

''(1) ROYALTY RATES.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection and every 3 years thereafter, the Secretary shall carry out a review of, and prepare a report that describes—

''(i) the royalty and rental rates included in new offshore oil and gas leases and the rationale for the rates;

''(ii) whether, in the view of the Secretary, the royalty and rental rates described in subparagraph (A) would yield a fair return to the public while promoting the production of oil and gas resources in a timely manner; and

''(iii) whether, based on the review, the Secretary intends to modify the royalty or rental rates.

''(B) PUBLIC PARTICIPATION.—In carrying out a review and preparing a report under subparagraph (A), the Secretary shall provide to the public an opportunity to participate.

''(2) COMPARATIVE REVIEW OF FISCAL SYSTEM.—

''(A) IN GENERAL.—Not later than 2 years after the date of enactment of this subsection and every 5 years thereafter, the Secretary in consultation with the Secretary of the Treasury, shall carry out a comprehensive review of all components of the Federal offshore oil and gas fiscal system, including requirements for bonus bids, rental rates, royalties, oil and gas taxes, and oil and gas fees.

''(B) INCLUSIONS.—The review shall include—

''(i) information and analyses comparing the offshore bonus bids, rents, royalties, taxes, and fees of the Federal Government to the offshore bonus bids, rents, royalties, taxes, and fees of other resource owners (including States and foreign countries); and

''(ii) an assessment of the overall offshore oil and gas fiscal system in the United States, as compared to foreign countries.

''(C) INDEPENDENT ADVISORY COMMITTEE.—In carrying out a review under this paragraph, the Secretary shall convene and seek the advice of an independent advisory committee comprised of oil and gas and fiscal experts from States, Indian tribes, academia, the energy industry, and appropriate nongovernmental organizations.

''(D) REPORT.—The Secretary shall prepare a report that contains—

''(i) the contents and results of the review carried out under this paragraph for the period covered by the report; and

''(ii) any recommendations of the Secretary and the Secretary of the Treasury based on the contents and results of the review.

''(3) REPORT DEADLINE.—Not later than 30 days after the date on which the Secretary completes each report under this subsection, the Secretary shall submit copies of the report to—

''(A) the Committee on Energy and Natural Resources of the Senate;

''(B) the Committee on Finance of the Senate;

''(C) the Committee on Natural Resources of the House of Representatives; and

''(D) the Committee on Ways and Means of the House of Representatives.''.

(d) LEASES, EASEMENTS, AND RIGHTS-OF-WAY.—Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended by striking subsection (d) and inserting the following:

''(d) DISQUALIFICATION FROM BIDDING.—No bid for a lease may be submitted by any entity that the Secretary finds, after notice and opportunity for a hearing—

''(1) is not meeting due diligence, safety, or environmental requirements on other leases; or

''(2)(A) is a responsible party for a vessel or a facility from which oil is discharged, for purposes of section 1002 of the Oil Pollution Act of 1990 (33 U.S.C. 2702); and

''(B) has failed to meet the obligations of the responsible party under that Act to provide compensation for covered removal costs and damages.''.

(e) EXPLORATION PLANS.—Section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) is amended—

(1) in subsection (c)—

(A) in the fourth sentence of paragraph (1), by striking ''within thirty days of its submission'' and inserting ''by the deadline described in paragraph (5)'';

(B) by striking paragraph (3) and inserting the following:

''(3) MINIMUM REQUIREMENTS.—

''(A) IN GENERAL.—An exploration plan submitted under this subsection shall include, in such degree of detail as the Secretary by regulation may require—

''(i) a complete description and schedule of the exploration activities to be undertaken;

''(ii) a description of the equipment to be used for the exploration activities, including—

''(I) a description of the drilling unit;

''(II) a statement of the design and condition of major safety-related pieces of equipment;

''(III) a description of any new technology to be used; and

''(IV) a statement demonstrating that the equipment to be used meets the best available technology requirements under section 21(b);

''(iii) a map showing the location of each well to be drilled;

''(iv)(I) a scenario for the potential blowout of the well involving the highest potential volume of liquid hydrocarbons; and

''(II) a complete description of a response plan to control the blowout and manage the accompanying discharge of hydrocarbons, including—

''(aa) the technology and timeline for regaining control of the well; and

''(bb) the strategy, organization, and resources necessary to avoid harm to the environment and human health from hydrocarbons; and

''(v) any other information determined to be relevant by the Secretary.

''(B) DEEPWATER WELLS.—

''(i) IN GENERAL.—Before conducting exploration activities in water depths greater than 500 feet, the holder of a lease shall submit to the Secretary for approval a deepwater operations plan prepared by the lessee in accordance with this subparagraph.

''(ii) TECHNOLOGY REQUIREMENTS.—A deepwater operations plan under this subparagraph shall be based on the best available technology to ensure safety in carrying out the exploration activity and the blowout response plan.

''(iii) SYSTEMS ANALYSIS REQUIRED.—The Secretary shall not approve a deepwater operations plan under this subparagraph unless the plan includes a technical systems analysis of—

''(I) the safety of the proposed exploration activity;

''(II) the blowout prevention technology; and

''(III) the blowout and spill response plans.''; and

(C) by adding at the end the following:

''(5) DEADLINE FOR APPROVAL.—

''(A) IN GENERAL.—In the case of a lease issued under a sale held after March 17, 2010, the deadline for approval of an exploration plan referred to in the fourth sentence of paragraph (1) is—

''(i) the date that is 90 days after the date on which the plan or the modifications to the plan are submitted; or

''(ii) the date that is not later than an additional 180 days after the deadline described in clause (i), if the Secretary makes a finding that additional time is necessary to complete any environmental, safety, or other reviews.

''(B) EXISTING LEASES.—In the case of a lease issued under a sale held on or before March 17, 2010, the Secretary, with the consent of the holder of the lease, may extend the deadline applicable to the lease for such additional time as the Secretary determines is necessary to complete any environmental, safety, or other reviews.'';

(2) by redesignating subsections (e) through (h) as subsections (f) through (i), respectively; and

(3) by striking subsection (d) and inserting the following:

''(d) DRILLING PERMITS.—

''(1) IN GENERAL.—The Secretary shall, by regulation, require that any lessee operating under an approved exploration plan obtain a permit—

''(A) before the lessee drills a well in accordance with the plan; and

''(B) before the lessee significantly modifies the well design originally approved by the Secretary.

''(2) ENGINEERING REVIEW REQUIRED.—The Secretary may not grant any drilling permit until the date of completion of a full engineering review of the well system, including a determination that—

''(A) critical safety systems (including blowout prevention) will use best available technology; and

''(B) blowout prevention systems will include redundancy and remote triggering capability.

''(3) MODIFICATION REVIEW REQUIRED.—The Secretary may not approve any modification of a permit without a determination, after an additional engineering review, that the modification will not degrade the safety of the well system previously approved.

''(4) OPERATOR SAFETY AND ENVIRONMENTAL MANAGEMENT REQUIRED.—The Secretary may not grant any drilling permit or modification of the permit until the date of completion and approval of a safety and environmental management plan that—

''(A) is to be used by the operator during all well operations; and

''(B) includes—

''(i) a description of the expertise and experience level of crew members who will be present on the rig; and

''(ii) designation of at least 2 environmental and safety managers that—

''(I) are employees of the operator;

''(II) would be present on the rig at all times; and

''(III) have overall responsibility for the safety and environmental management of the well system and spill response plan; and

''(C) not later than May 1, 2012, requires that all employees on the rig meet the training and experience requirements under section 21(b)(4).

''(e) DISAPPROVAL OF EXPLORATION PLAN.—

''(1) IN GENERAL.—The Secretary shall disapprove an exploration plan submitted under this section if the Secretary determines that, because of exceptional geological conditions in the lease areas, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that—

''(A) implementation of the exploration plan would probably cause serious harm or damage to life (including fish and other aquatic life), property, mineral deposits, national security or defense, or the marine, coastal or human environments;

''(B) the threat of harm or damage would not disappear or decrease to an acceptable extent within a reasonable period of time; and

''(C) the advantages of disapproving the exploration plan outweigh the advantages of exploration.

''(2) COMPENSATION.—If an exploration plan is disapproved under this subsection, the provisions of subparagraphs (B) and (C) of section 25(h)(2) shall apply to the lease and the plan or any modified plan, except that the reference in section 25(h)(2)(C) to a development and production plan shall be considered to be a reference to an exploration plan.''.

(f) OUTER CONTINENTAL SHELF LEASING PROGRAM.—Section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is amended—

(1) in subsection (a)—

(A) in the second sentence, by inserting after ''national energy needs'' the following: ''and the need for the protection of the marine and coastal environment and resources'';

(B) in paragraph (1), by striking ''considers'' and inserting ''gives equal consideration to''; and

(C) in paragraph (3), by striking '', to the maximum extent practicable,'';

(2) in subsection (b)—

(A) in paragraph (3), by striking ''and'' at the end;

(B) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(5) provide technical review and oversight of the exploration plan and a systems review of the safety of the well design and other operational decisions;

''(6) conduct regular and thorough safety reviews and inspections, and;

''(7) enforce all applicable laws (including regulations).'';

(3) in the second sentence of subsection (d)(2), by inserting '', the head of an interested Federal agency,'' after ''Attorney General'';

(4) in the first sentence of subsection (g), by inserting before the period at the end the following: '', including existing inventories and mapping of marine resources previously undertaken by the Department of the Interior and the National Oceanic and Atmospheric Administration, information provided by the Department of Defense, and other available data regarding energy or mineral resource potential, navigation uses, fisheries, aquaculture uses, recreational uses, habitat, conservation, and military uses on the outer Continental Shelf''; and

(5) by adding at the end the following:

''(i) RESEARCH AND DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary shall carry out a program of research and development to ensure the continued improvement of methodologies for characterizing resources of the outer Continental Shelf and conditions that may affect the ability to develop and use those resources in a safe, sound, and environmentally responsible manner.

''(2) INCLUSIONS.—Research and development activities carried out under paragraph (1) may include activities to provide accurate estimates of energy and mineral reserves and potential on the outer Continental Shelf and any activities that may assist in filling gaps in environmental data needed to develop each leasing program under this section.

''(3) LEASING ACTIVITIES.—Research and development activities carried out under paragraph (1) shall not be considered to be leasing or pre-leasing activities for purposes of this Act.''.

(g) ENVIRONMENTAL STUDIES.—Section 20 of the Outer Continental Shelf Lands Act (43 U.S.C. 1346) is amended—

(1) by redesignating subsections (a) through (f) as subsections (b) through (g), respectively;

(2) by inserting before subsection (b) (as so redesignated) the following:

''(a) COMPREHENSIVE AND INDEPENDENT STUDIES.—

''(1) IN GENERAL.—The Secretary shall develop and carry out programs for the collection, evaluation, assembly, analysis, and dissemination of environmental and other resource data that are relevant to carrying out the purposes of this Act.

''(2) SCOPE OF RESEARCH.—The programs under this subsection shall include—

''(A) the gathering of baseline data in areas before energy or mineral resource development activities occur;

''(B) ecosystem research and monitoring studies to support integrated resource management decisions; and

''(C) the improvement of scientific understanding of the fate, transport, and effects of discharges and spilled materials, including deep water hydrocarbon spills, in the marine environment.

''(3) USE OF DATA.—The Secretary shall ensure that information from the studies carried out under this section—

''(A) informs the management of energy and mineral resources on the outer Continental Shelf including any areas under consideration for oil and gas leasing; and

''(B) contributes to a broader coordination of energy and mineral resource development activities within the context of best available science.

''(4) INDEPENDENCE.—The Secretary shall create a program within the appropriate bureau established under section 32 that shall—

''(A) be programmatically separate and distinct from the leasing program;

''(B) carry out the environmental studies under this section;

''(C) conduct additional environmental studies relevant to the sound management of energy and mineral resources on the outer Continental Shelf;

''(D) provide for external scientific review of studies under this section, including through appropriate arrangements with the National Academy of Sciences; and

''(E) subject to the restrictions of subsections (g) and (h) of section 18, make available to the public studies conducted and data gathered under this section.''; and

(3) in the first sentence of subsection (b)(1) (as so redesignated), by inserting ''every 3 years'' after ''shall conduct''.

(h) SAFETY RESEARCH AND REGULATIONS.—Section 21 of the Outer Continental Shelf Lands Act (43 U.S.C. 1347) is amended—

(1) in the first sentence of subsection (a), by striking ''Upon the date of enactment of this section,'' and inserting ''Not later than May 1, 2011, and every 3 years thereafter,'';

(2) by striking subsection (b) and inserting the following:

''(b) BEST AVAILABLE TECHNOLOGIES AND PRACTICES.—

''(1) IN GENERAL.—In exercising respective responsibilities under this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, to the maximum extent practicable, on existing operations, the use of the best available and safest technologies and practices, if the failure of equipment would have a significant effect on safety, health, or the environment.

''(2) IDENTIFICATION OF BEST AVAILABLE TECHNOLOGIES.—Not later than May 1, 2011, and not later than every 3 years thereafter, the Secretary shall identify and publish an updated list of best available technologies for key areas of well design and operation, including blowout prevention and blowout and oil spill response.

''(3) SAFETY CASE.—Not later than May 1, 2011, the Secretary shall promulgate regulations requiring a safety case be submitted along with each new application for a permit to drill on the outer Continental Shelf.

''(4) EMPLOYEE TRAINING.—

''(A) IN GENERAL.—Not later than May 1, 2011, the Secretary shall promulgate regulations setting standards for training for all workers on offshore facilities (including mobile offshore drilling units) conducting energy and mineral resource exploration, development, and production operations on the outer Continental Shelf.

''(B) REQUIREMENTS.—The training standards under this paragraph shall require that employers of workers described in subparagraph (A)—

''(i) establish training programs approved by the Secretary; and

''(ii) demonstrate that employees involved in the offshore operations meet standards that demonstrate the aptitude of the employees in critical technical skills.

''(C) EXPERIENCE.—The training standards under this section shall require that any offshore worker with less than 5 years of applied experience in offshore facilities operations pass a certification requirement after receiving the appropriate training.

''(D) MONITORING TRAINING COURSES.—The Secretary shall ensure that Department employees responsible for inspecting offshore facilities monitor, observe, and report on training courses established under this paragraph, including attending a representative number of the training sessions, as determined by the Secretary.''; and

(3) by adding at the end the following:

''(g) TECHNOLOGY RESEARCH AND RISK ASSESSMENT PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a program of research, development, and risk assessment to address technology and development issues associated with outer Continental Shelf energy and mineral resource activities, with the primary purpose of informing the role of research, development, and risk assessment relating to safety, environmental protection, and spill response.

''(2) SPECIFIC AREAS OF FOCUS.—The program under this subsection shall include research, development, and other activities related to—

''(A) risk assessment, using all available data from safety and compliance records both within the United States and internationally;

''(B) analysis of industry trends in technology, investment, and interest in frontier areas;

''(C) analysis of incidents investigated under section 22;

''(D) reviews of best available technologies, including technologies associated with pipelines, blowout preventer mechanisms, casing, well design, and other associated infrastructure related to offshore energy development;

''(E) oil spill response and mitigation;

''(F) risks associated with human factors; and

''(G) renewable energy operations.

''(3) INFORMATION SHARING ACTIVITIES.—

''(A) DOMESTIC ACTIVITIES.—The Secretary shall carry out programs to facilitate the exchange and dissemination of scientific and technical information and best practices related to the management of safety and environmental issues associated with energy and mineral resource exploration, development, and production.

''(B) INTERNATIONAL COOPERATION.—The Secretary shall carry out programs to cooperate with international organizations and foreign governments to share information and best practices related to the management of safety and environmental issues associated with energy and mineral resource exploration, development, and production.

''(4) REPORTS.—The program under this subsection shall provide to the Secretary, each Bureau Director under section 32, and the public quarterly reports that address—

''(A) developments in each of the areas under paragraph (2); and

''(B)(i) any accidents that have occurred in the past quarter; and

''(ii) appropriate responses to the accidents.

''(5) INDEPENDENCE.—The Secretary shall create a program within the appropriate bureau established under section 32 that shall—

''(A) be programmatically separate and distinct from the leasing program;

''(B) carry out the studies, analyses, and other activities under this subsection;

''(C) provide for external scientific review of studies under this section, including through appropriate arrangements with the National Academy of Sciences; and

''(D) make available to the public studies conducted and data gathered under this section.

''(6) USE OF DATA.—The Secretary shall ensure that the information from the studies and research carried out under this section inform the development of safety practices and regulations as required by this Act and other applicable laws.''.

(i) ENFORCEMENT.—Section 22 of the Outer Continental Shelf Lands Act (43 U.S.C. 1348) is amended—

(1) in subsection (d)—

(A) in paragraph (1)—

(i) in the first sentence, by inserting '', each loss of well control, blowout, activation of the blowout preventer, and other accident that presented a serious risk to human or environmental safety,'' after ''fire''; and

(ii) in the last sentence, by inserting ''as a condition of the lease'' before the period at the end;

(B) in the last sentence of paragraph (2), by inserting ''as a condition of lease'' before the period at the end;

(2) in subsection (e)—

(A) by striking ''(e) The'' and inserting the following:

''(e) REVIEW OF ALLEGED SAFETY VIOLATIONS.—

''(1) IN GENERAL.—The'';

(B) by adding at the end the following:

''(2) INVESTIGATION.—The Secretary shall investigate any allegation from any employee of the lessee or any subcontractor of the lessee made under paragraph (1).''; and

(3) by adding at the end of the section the following:

''(g) INDEPENDENT INVESTIGATION.—

''(1) IN GENERAL.—At the request of the Secretary, the National Transportation Safety Board may conduct an independent investigation of any accident, occurring in the outer Continental Shelf and involving activities under this Act, that does not otherwise fall within the definition of an accident or major marine casualty, as those terms are used in chapter 11 of title 49, United States Code.

''(2) TRANSPORTATION ACCIDENT.—For purposes of an investigation under this subsection, the accident that is the subject of the request by the Secretary shall be determined to be a transportation accident within the meaning of that term in chapter 11 of title 49, United States Code.

''(h) INFORMATION ON CAUSES AND CORRECTIVE ACTIONS.—

''(1) IN GENERAL.—For each incident investigated under this section, the Secretary shall promptly make available to all lessees and the public technical information about the causes and corrective actions taken.

''(2) PUBLIC DATABASE.—All data and reports related to an incident described in paragraph (1) shall be maintained in a database that is available to the public.

''(i) INSPECTION FEE.—

''(1) IN GENERAL.—The Secretary shall collect a non-refundable inspection fee, which shall be deposited in the Ocean Energy Enforcement Fund established under paragraph (3), from the designated operator for facilities subject to inspection under subsection (c).

''(2) ESTABLISHMENT.—The Secretary shall establish, by rule, inspection fees—

''(A) at an aggregate level equal to the amount necessary to offset the annual expenses of inspections of outer Continental Shelf facilities (including mobile offshore drilling units) by the Department of the Interior; and

''(B) using a schedule that reflects the differences in complexity among the classes of facilities to be inspected.

''(3) OCEAN ENERGY ENFORCEMENT FUND.—There is established in the Treasury a fund, to be known as the 'Ocean Energy Enforcement Fund' (referred to in this subsection as the 'Fund'), into which shall be deposited amounts collected under paragraph (1) and which shall be available as provided under paragraph (4).

''(4) AVAILABILITY OF FEES.—Notwithstanding section 3302 of title 31, United States Code, all amounts collected by the Secretary under this section—

''(A) shall be credited as offsetting collections;

''(B) shall be available for expenditure only for purposes of carrying out inspections of outer Continental Shelf facilities (including mobile offshore drilling units) and the administration of the inspection program;

''(C) shall be available only to the extent provided for in advance in an appropriations Act; and

''(D) shall remain available until expended.

''(5) ANNUAL REPORTS.—

''(A) IN GENERAL.—Not later than 60 days after the end of each fiscal year beginning with fiscal year 2011, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report on the operation of the Fund during the fiscal year.

''(B) CONTENTS.—Each report shall include, for the fiscal year covered by the report, the following:

''(i) A statement of the amounts deposited into the Fund.

''(ii) A description of the expenditures made from the Fund for the fiscal year, including the purpose of the expenditures.

''(iii) Recommendations for additional authorities to fulfill the purpose of the Fund.

''(iv) A statement of the balance remaining in the Fund at the end of the fiscal year.''.

(j) REMEDIES AND PENALTIES.—Section 24 of the Outer Continental Shelf Lands Act (43 U.S.C. 1350) is amended—

(1) by striking subsection (b) and inserting the following:

''(b) CIVIL PENALTY.—

''(1) IN GENERAL.—Subject to paragraphs (2) through (3), if any person fails to comply with this Act, any term of a lease or permit issued under this Act, or any regulation or order issued under this Act, the person shall be liable for a civil administrative penalty of not more than $75,000 for each day of continuance of each failure.

''(2) ADMINISTRATION.—The Secretary may assess, collect, and compromise any penalty under paragraph (1).

''(3) HEARING.—No penalty shall be assessed under this subsection until the person charged with a violation has been given the opportunity for a hearing.

''(4) ADJUSTMENT.—The penalty amount specified in this subsection shall increase each year to reflect any increases in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.'';

(2) in subsection (c)—

(A) in the first sentence, by striking ''$100,000'' and inserting ''$10,000,000''; and

(B) by adding at the end the following: ''The penalty amount specified in this subsection shall increase each year to reflect any increases in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.''; and

(3) in subsection (d), by inserting '', or with reckless disregard,'' after ''knowingly and willfully''.

(k) OIL AND GAS DEVELOPMENT AND PRODUCTION.—Section 25 of the Outer Continental Shelf Lands Act (43 U.S.C. 1351) is amended by striking '', other than the Gulf of Mexico,'' each place it appears in subsections (a)(1), (b), and (e)(1).

SEC. 7. REFORM OF OTHER LAWS.

(a) COORDINATED MAPPING INITIATIVE.—Section 388(b) of the Energy Policy Act of 2005 (43 U.S.C. 1337 note; Public Law 109–58) is amended by adding at the end the following:

''(4) FEDERAL AGENCIES.—Any head of a Federal department or agency shall, on request of the Secretary, provide to the Secretary all data and information that the Secretary determines to be necessary for the purpose of including the data and information in the mapping initiative, except that no Federal department or agency shall be required to provide any data or information that is privileged or proprietary.''.

(b) DEDICATED FUNDING FOR OUTER CONTINENTAL SHELF RESEARCH ACTIVITIES.—Section 999H(d) of the Energy Policy Act of 2005 (42 U.S.C. 16378(d)) is amended by striking paragraph (4) and inserting the following:

''(4) 25 percent shall be used for research activities required under sections 20 and 21 of the Outer Continental Shelf Lands Act (43 U.S.C. 1346, 1347).''.

SEC. 8. SAVINGS PROVISIONS.

(a) EXISTING LAW.—All regulations, rules, standards, determinations, contracts and agreements, memoranda of understanding, certifications, authorizations, appointments, delegations, results and findings of investigations, or any other actions issued, made, or taken by, or pursuant to or under, the authority of any law (including regulations) that resulted in the assignment of functions or activities to the Secretary, the Director of the Minerals Management Service (including by delegation from the Secretary), or the Department (as related to the implementation of the purposes referenced in this Act) that were in effect on the date of enactment of this Act shall continue in full force and effect after the date of enactment of this Act unless previously scheduled to expire or until otherwise modified or rescinded by this Act or any other Act.

(b) EFFECT ON OTHER AUTHORITIES.—This Act does not amend or alter the provisions of other applicable laws, unless otherwise noted.

SEC. 9. 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.

By Mr. KERRY. (for himself and Mr. LUGAR) (by request):

S.J. Res. 34. A joint resolution relating to the approval of the proposed agreement for nuclear cooperation between the United States and the Russian Federation; to the Committee on Foreign Relations for a period not to exceed 45 session days pursuant to 42 U.S.C. 2159.

Mr. KERRY. Mr. President, today Senator LUGAR and I introduce, by request, a resolution of approval of the proposed agreement for peaceful nuclear cooperation between the United States and the Russian Federation, which the President transmitted to Congress on May 10, 2010, pursuant to section 123 b. and 123 d. of the Atomic Energy Act. Pursuant to Section 130 i.(2) of that Act, the majority and minority leaders have designated Senator LUGAR and me to introduce this resolution.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 561—DESIGNATING JUNE 25, 2010, AS ''NATIONAL HUNTINGTON'S DISEASE AWARENESS DAY''

Mr. BURR (for himself, Mr. DODD, Mr. INHOFE, and Ms. COLLINS) submitted the following resolution; which was considered and agreed to:

S. RES. 561

Whereas Huntington's Disease is a progressive degenerative neurological disease that causes total physical and mental deterioration throughout a 15- to 20-year period;

Whereas each child of a parent with Huntington's Disease has a 50-percent chance of inheriting the Huntington's Disease gene;

Whereas the onset of Huntington's Disease typically begins in mid-life, between the ages of 30 and 45, though onset may occur as early as the age of 2;

Whereas children who develop the juvenile form of Huntington's Disease rarely live to adulthood;

Whereas, after the onset of Huntington's Disease, the average lifespan of an individual with Huntington's Disease is 15 to 20 years, and the younger the age of onset, the more rapid the progression of the disease;

Whereas Huntington's Disease affects approximately 30,000 individuals and 200,000 genetically ''at risk'' individuals in the United States;

Whereas, since the discovery of the gene that causes Huntington's Disease in 1993, the pace of Huntington's Disease research has accelerated;

Whereas, although no effective treatment or cure for Huntington's Disease exists as of the date of this resolution, scientists and researchers are hopeful that breakthroughs will be forthcoming;

Whereas researchers across the United States are conducting important research projects involving Huntington's Disease; and

Whereas the Senate is an institution that can raise awareness in the general public and the medical community of Huntington's Disease: Now, therefore, be it

Resolved, That the Senate—

(1) designates June 25, 2010, as ''National Huntington's Disease Awareness Day''; and

(2) recognizes that all people of the United States should become more informed about and aware of Huntington's Disease.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4385. Mrs. HUTCHISON (for herself, Mr. LEMIEUX, and Mr. CORNYN) submitted an

amendment intended to be proposed by her to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4385. Mrs. HUTCHISON (for herself, Mr. LEMIEUX, and Mr. CORNYN) submitted an amendment intended to be proposed by her to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC.——.OIL SPILL RESPONSE VESSEL JONES ACT WAIVER.

Notwithstanding any other provision of law, section 12112 and chapter 551 of title 46, United States Code, shall not apply to any vessel documented under the laws of a foreign country while that vessel is engaged in containment, remediation, or associated activities in the Gulf of Mexico in connection with the mobile offshore drilling unit *Deepwater Horizon* oil spill.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the hearing scheduled before the Senate Committee on Energy and Natural Resources previously announced for June 24, 2010, at 9:30 a.m., has been rescheduled and will now be held on Thursday, July 1, 2010, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on S. 3452, a bill to designate the Valles Caldera National Preserve as a unit of the National Park System, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by e-mail to testimony@energy.senate.gov.

For further information, please contact David Brooks or Allison Seyferth.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. SCHUMER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Wednesday, June 23, 2010, at 10 a.m., to hear testimony on ''Examining the Filibuster: Silent Filibusters, Holds and the Senate Confirmation Process.''

For further information regarding this meeting, please contact Lynden Armstrong at the Rules and Administration Committee.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CARDIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a business meeting on June 21, 2010.

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

EXECUTIVE SESSION

NOMINATIONS DISCHARGED

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Senate proceed to executive session and that the Environment and Public Works Committee be discharged of the following and that they then be placed on the Executive Calendar; that the Senate then resume legislative session: PN1730, Malcolm Jackson; PN1672, Christopher Masingill; PN1572, Rafael Moure-Eraso; and PN1574, Mark Griffon.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

RECOGNIZING THE IMMEASURABLE CONTRIBUTIONS OF FATHERS

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 560, and the Senate proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution, (S. Res. 560), recognizing the immeasurable contributions of fathers in the healthy development of children, supporting responsible fatherhood, and encouraging greater involvement of fathers in the lives of their families, especially on Father's Day.

There being no objection, the Senate proceeded to consider the resolution.

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 relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 560) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 560

Whereas responsible fatherhood is a priority for the United States;

Whereas the most important factor in the upbringing of a child is whether the child is brought up in a healthy and supportive environment;

Whereas father-child interaction, like mother-child interaction, has been shown to promote the positive physical, social, emotional, and mental development of children;

Whereas research shows that men are more likely to live healthier, longer, and more fulfilling lives when they are involved in the lives of their children and participate in caregiving;

Whereas programs to encourage responsible fatherhood should promote and provide support services for—

(1) fostering loving and healthy relationships between parents and children; and

(2) increasing the responsibility of noncustodial parents for the long-term care and financial well-being of their children;

Whereas research shows that working with men and boys to change attitudes towards women can have a profound impact on reducing violence against women;

Whereas research shows that women are significantly more satisfied in relationships when responsible fathers participate in the daily care of children;

Whereas children around the world do better in school and are less delinquent when fathers participate closely in their lives;

Whereas responsible fatherhood is an important component of successful development policies and programs in countries throughout the world;

Whereas the United States Agency for International Development recognizes the importance of caregiving fathers for more stable and effective development efforts; and

Whereas Father's Day is the third Sunday in June: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes June 20, 2010, as Father's Day;

(2) honors the men in the United States and around the world who are active in the lives of their children, which in turn, has a significant impact on their children, their families, and their communities;

(3) underscores the need for increased public awareness and activities regarding responsible fatherhood and healthy families; and

(4) reaffirms the commitment of the United States to supporting and encouraging global fatherhood initiatives that significantly benefit international development efforts.

NATIONAL HUNTINGTON'S DISEASE AWARENESS DAY

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 561, which was submitted earlier today.

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

The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 561) designating June 25, 2010, as ''National Huntington's Disease Awareness Day.''

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, and the

motion to reconsider be laid upon the table.

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

The resolution (S. Res. 561) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 561

Whereas Huntington's Disease is a progressive degenerative neurological disease that causes total physical and mental deterioration throughout a 15- to 20-year period;

Whereas each child of a parent with Huntington's Disease has a 50-percent chance of inheriting the Huntington's Disease gene;

Whereas the onset of Huntington's Disease typically begins in mid-life, between the ages of 30 and 45, though onset may occur as early as the age of 2;

Whereas children who develop the juvenile form of Huntington's Disease rarely live to adulthood;

Whereas, after the onset of Huntington's Disease, the average lifespan of an individual with Huntington's Disease is 15 to 20 years, and the younger the age of onset, the more rapid the progression of the disease;

Whereas Huntington's Disease affects approximately 30,000 individuals and 200,000 genetically ''at risk'' individuals in the United States;

Whereas, since the discovery of the gene that causes Huntington's Disease in 1993, the pace of Huntington's Disease research has accelerated;

Whereas, although no effective treatment or cure for Huntington's Disease exists as of the date of this resolution, scientists and researchers are hopeful that breakthroughs will be forthcoming;

Whereas researchers across the United States are conducting important research projects involving Huntington's Disease; and

Whereas the Senate is an institution that can raise awareness in the general public and the medical community of Huntington's Disease: Now, therefore, be it

Resolved, That the Senate—

(1) designates June 25, 2010, as ''National Huntington's Disease Awareness Day''; and

(2) recognizes that all people of the United States should become more informed about and aware of Huntington's Disease.

ORDERS FOR TUESDAY, JUNE 22, 2010

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Tuesday, June 22; 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, and that following any leader remarks, the Senate proceed to a period of morning business until 12:30 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first 30 minutes and Republicans controlling the next 30 minutes, and the majority controlling the final 30 minutes.

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

ORDER FOR RECESS

Mr. BROWN of Ohio. Mr. President, I also ask unanimous consent that the Senate recess from 12:30 until 2:15 tomorrow to allow for the weekly caucus luncheons.

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

ORDER FOR ADJOURNMENT

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 following the remarks of the senior Senator from Oklahoma, Senator INHOFE.

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

The Senator from Oklahoma.

ARMED SERVICES COMMITTEE ISSUES

Mr. INHOFE. Mr. President, I came here to talk about a couple of issues on the Armed Services Committee that we are going to be facing.

I only say to my good friend from Ohio that, yes, it is true that 9/11 occurred, and that we have al-Qaida out there, and there are the Taliban and other terrorists who want to kill everyone in this room and all throughout America, and that we were not in a position, financially, to go and defend our country after 9/11.

I suggest that, after Pearl Harbor, the same situation took place. We didn't have time or the luxury of saying do we have the resources to go into this. But it was necessary and it did happen.

Unfortunately, back in the 1990s, during the Clinton administration, the amount of money funding our military reduced by about 40 percent—not just the money but resources too. It went down in terms of force structure, modernization, and operations and personnel, about 40 percent. There was kind of a euphoric attitude at that time, and people were saying that the Cold War was over and we no longer needed the military. I remember it so well. Then, of course, with the downgrading of the military and the peace dividend—we all remember the peace dividend—we would take the money that was going to go to the military and declare a peace dividend.

Unfortunately, peace is not there, and 9/11 happened. This President and this Congress inherited a war, an attack on America, the most vicious attack we have had on our homeland in the continental United States. We had to fight with a reduced army. We had to rebuild the army at the same time.

If I had known the statement was going to be made by my good friend from Ohio, I would have brought my charts to show clearly what happened to the military during the 1990s.

Yes, we do have that problem. It is an expensive war. It is an enduring war. We have all been over there. We know we are going to win. Things look very good right now in Iraq. It is going to be a little more difficult. It is necessary to do because if we had not done it, we would have had the Taliban and al-Qaida—all of these groups—running rampant over there.

The big difference now in terms of how it affects the United States of America is that back in the days before they had the nuclear weapons and the proliferation of weapons of mass destruction, a terrorist could have a case bomb, something such as that. Now we are talking about weapons of mass destruction. We are talking about Iran which, according to our intelligence estimates, as early as 2015 could have an ICBM capable of hitting the United States of America on the east coast. That is why it is so much more difficult.

Also, my good friend from Ohio talks about the Republicans. It was not the Republicans who did the $787 billion stimulus program that did not stimulate. Those were the Democrats. That is not why I am here.

NEW START TREATY

Mr. President, I noticed on this week's agenda—and I am reading now; I think this is right—we are going to have three more hearings in the Senate Foreign Relations Committee on the New START treaty. That means we will have had, when that is over, 16 Senate Foreign Relations witnesses, over 7 hearings, all of them supporting the New START treaty.

I am reminded of what happened back when we were considering another treaty, the Law of the Sea Treaty. That passed the Senate Foreign Relations Committee 16 to 0, as I recall. When it came to the floor, I recognized—and, frankly, not many others did—that this was a very serious issue. This is the treaty against which Ronald Reagan fought so hard. It was coming up. That was a Republican administration. That was the first President Bush. They were going to run this thing through.

We held hearings. At that time, the Republicans were in the majority. I made sure we had hearings in both of my committees—the Environment and Public Works Committee, as well as the Senate Armed Services Committee.

I see the same thing happening. I gave a lengthy talk last week—I am not going to repeat it now—about why we should oppose the New START treaty. We all remember START I. We all remember START II. Keep in mind, the treaty we are talking about is a treaty not with the countries where we are anticipating problems. It is between Russia and the United States and it has to do with weapons of mass destruction, with nuclear warheads, reducing them in conjunction with reductions that would be imposed upon Russia and, at the same time, delivery systems. We have three ways of delivering them. One is, of course, ICBMs, one is SLCMs, submarine-launched missiles,

and the other is through aircraft, such as the B–52 and B–2.

The problem with that is we have been talking about our nuclear warheads and how we have not been able to modernize them or even to test them for a matter of decades. So we do not know what we have.

In the way of force structure, we do know we have a declining force structure. This administration put down the new system that would have been the next generation bomber. We are stuck with the B–52. The first variety of that came out in 1964 before a lot of people around here were born, and, of course, the B–2. We are not going to modernize that.

The missile defense system—we saw what happened over in Poland. This President made a determination to stop the construction of a ground system in Poland that would have had the capability by 2012 of knocking down an ICBM from Iran to the eastern United States. That is gone.

There is no verification, very much the same as the verification we talked about with the Law of the Sea Treaty and others.

I hope when this treaty comes up, we can keep talking about it and not let it run through. I am going to make this very clear. I happen to serve on the Foreign Relations Committee, as well as the Armed Services Committee. We will be having hearings. We have three more this week. Not one of these hearings has a witness who is opposed to the New START treaty. They are all witnesses who are right there with the President and part of that program.

DON'T ASK, DON'T TELL

The other issue that is coming up—no one is talking about it now, but it is something that did come up in the Senate Armed Services Committee reauthorization hearing and we will be considering that before too long. They made strong statements to do away with don't ask, don't tell. I remind my colleagues, back in 1993, we had this problem of how to deal with gays in the military. The Clinton administration came up with the program don't ask, don't tell. Quite frankly, it has worked very well since 1994, since it went into effect.

For us to unilaterally say we are going to change that and have gays open in the service so that people are really not there to serve but to use the military to advance a personal agenda is wrong.

Here is the interesting thing about it because all the military agrees with what I am saying right now. At least they did until the White House got involved. I am not sure where they are now.

On April 28, both Secretary Gates and Admiral Mullen said in a joint statement:

We believe in the strongest possible terms the department must prior to any legislative action be allowed an opportunity to conduct a thorough, objective and systematic assessment of the impact of such a policy change.

So they did. They decided they would conduct this study and report back this December 1.

To let you know where the military is on this issue—all the chiefs of the military—General Casey of the Army said:

I remain convinced that it is critically important to get a better understanding of where our soldiers and families are on the issue and what the impacts on readiness and unit cohesion might be so that I can provide informed military advice to the President and to the Congress.

He said also:

I also believe that repealing the law——

We are talking about the don't ask, don't tell law——

before the completion of the review will be seen by the men and women of the Army as a reversal of our commitment to hear their views before moving forward.

What he is talking about is he made a commitment—we made a commitment—to all the military that before we repeal this law that has been working well since 1994, we want to get all the inputs. So we set up a mechanism where they—they, I am talking about all the troops that are out there—can evaluate this and make a determination as to how change in that law could impair our readiness situation.

Admiral Roughhead of the U.S. Navy said:

We need this review to fully assess our force and carefully examine potential impacts of a change in the law.

My concern is that legislative changes at this point, regardless of the precise language used, may cause confusion on the status of the law in the Fleet and disrupt the review process itself by leading sailors to question whether their input matters.

We asked for their input, then we declare what the results are, which they have done in the House and actually in the Senate committee with language.

General Conway of the Marines said:

I encourage the Congress to let the process the Secretary of Defense created to run its course.

That is the study that goes to December 1.

Collectively, we must make logical and pragmatic decisions about the long-term policies of our Armed Forces—which so effectively defend this great nation.

General Schwartz of the Air Force said:

I believe it is important, a matter of keeping faith with those currently serving in the Armed Forces, that the Secretary of Defense commissioned review be completed before there is any legislation to repeal the [don't ask, don't tell] law. Such action allows me to provide the best military advice to the President, and sends an important signal to our Airmen—

Of course, he is the Air Force Chief, so he is concerned about airmen—

and their families that their opinion matters. To do otherwise, in my view, would be presumptive and would reflect an intent to act before all relevant factors are assessed, digested and understood.

That is the military. That is what they all agree. I think it is very important that we keep in mind that we made the request, a preliminary review of some 13,000 service members and families being interviewed. That is 13,000 interviews; 400,000 would undergo a survey. We would get their input through a survey. Our military is not asking for this change.

So that is what it is all about. That is what we are faced with. And I think the only way to stop this if we really believe the military is right and that we are right—and I would say this: I have a letter that is signed by myself and Senator MCCAIN—from all of the Senate Armed Services Committee: Senators BROWN, INHOFE, THUNE, BURR, SESSIONS, WICKER, VITTER, CHAMBLISS, and LEMIEUX, all of us—saying that we need to wait until such time as the results are in before doing something.

I am very concerned about this. The 1993 law states—and I am reading from the 1993 law now—''There is no constitutional right to serve.'' The military is a ''specialized society'' that is ''fundamentally different from civilian life.'' In living conditions offering little or no privacy, homosexuality presents an ''unacceptable risk'' to good order, discipline, morale, and unit cohesion—qualities essential for combat readiness. Making this retroactive is another serious problem with this change they are talking about.

So I think those of us who are on the relevant committees are going to be trying to appeal to this body to consider that those issues, those amendments that were passed right down party lines be reconsidered on the floor and that individuals are going to have to have an up-or-down vote on this very critical issue. It is very interesting that when we had a report that was due December 1, now all of a sudden it has to be done before the election. Obviously, it is all for political reasons.

So I guess I would just say to my colleagues, get ready because we are going to have an open debate on this floor. And I would think that myself and some others might want to make this a major issue for discussion and even require a cloture vote before it is over.

With that, I yield the floor.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow.

Thereupon, the Senate, at 7:27 p.m., adjourned until Tuesday, June 22, 2010, at 10 a.m.

NOMINATIONS

Executive nomination received by the Senate:

DEPARTMENT OF STATE

MICHAEL S. OWEN, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SIERRA LEONE.

DISCHARGED NOMINATIONS

The Senate Committee on Environment and Public Works was discharged from further consideration of the following nominations by unanimous consent and the nominations were placed on the Executive Calendar:

*MALCOLM D. JACKSON, OF ILLINOIS, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.

*CHRISTOPHER A. MASINGILL, OF ARKANSAS, TO BE FEDERAL COCHAIRPERSON, DELTA REGIONAL AUTHORITY.

*RAFAEL MOURE-ERASO, OF MASSACHUSETTS, TO BE CHAIRPERSON OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS.

*MARK A. GRIFFON, OF NEW HAMPSHIRE, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS.

*Nominee has committed to respond to requests to appear and testify before any duly constituted committee of the Senate.

CONFIRMATIONS

Executive nominations confirmed by the Senate, Monday, June 21, 2010:

THE JUDICIARY

MARK A. GOLDSMITH, OF MICHIGAN, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN.

MARC T. TREADWELL, OF GEORGIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA.

JOSEPHINE STATON TUCKER, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA.