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Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. LEAHY).

PRAYER

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

Let us pray.

Eternal Spirit, the fountain of our joy, You see our thoughts from a distance, comprehending the nuances of our motives. Lord, You understand our desire to please and honor You with our lives. You know our remorse for neglected duties, missed opportunities, and selfish pursuits. Give our lawmakers strength for today and hope for tomorrow. Today, meet the needs of our Senators as they confront our dangerous world, providing them with more than human wisdom to accomplish Your will. Give them faith to trust that Your sovereign providence will prevail in the unfolding events of our world. Remind them that they are never alone, for You will never leave or forsake them. We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore 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.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Following my remarks and those of the Republican leader, if any, the Senate will be in a period of morning business for an hour, with Senators permitted to speak during that time for up to 10 minutes each, with the Republicans controlling the first 30 minutes and the majority the final 30 minutes. Following morning business the Senate will resume consideration of a motion to proceed to S.J. Res. 19 postcloture. The Senate will recess from 12:30 to 2:15 p.m. to allow for our weekly caucus meetings.

MEASURE PLACED ON THE CALENDAR

Mr. REID. Mr. President, S. 2779 is at the desk, I understand, and is due for its second reading.

The PRESIDING OFFICER (Mr. BOOKER). The clerk will read the bill by title for the second time.

The legislative clerk read as follows:

A bill (S. 2779) to amend section 349 of the Immigration and Nationality Act to deem specified activities in support of terrorism as renunciation of United States nationality.

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

The PRESIDING OFFICER. The objection having been heard, the bill will be placed on the calendar.

CAMPAIGN FINANCE REFORM

Mr. REID. Mr. President, I want to start today by reading a few quotes on the issue of campaign finance reform. Here is the first one from 1987:

What we ought to do is eliminate the political action committee contributions because those are the ones that raise the specter of undue influence. And those can be gone tomorrow. We can pass a bill tomorrow to take care of that problem.

Another quote from the next year:

We Republicans have put together a responsible and constitutional campaign reform agenda. It would restrict the power of special interest PACs, stop the flow of all soft money, keep wealthy individuals from buying public office.

Two years later, 1990:

We would eliminate PACs altogether. It would be interesting to see whether our colleagues on the other side of the aisle will be willing to eliminate PACs altogether. And we would have the money come from individuals in small and fully disclosed amounts.

A few years later, 1997:

Public disclosure of campaign contributions and spending should be expedited so voters can judge for themselves what is appropriate. These are reforms which respect the Constitution and would enhance our democracy.

Three years later, in 2000, another quote:

We need to have real disclosure. And so what we ought to do is broaden the disclosure to include at least labor unions and tax-exempt business associations and trial lawyers so that you include the major political players in America. Why would a little disclosure be better than a lot of disclosure?

A quote from 2003:

Money is essential in politics and not something we should feel squeamish about, provided the donations are limited and disclosed, everyone knows who is supporting everyone else.

So, Mr. President, who did these statements come from? TOM UDALL, the sponsor of the vote that we had last night? MICHAEL BENNET from Colorado? He and TOM UDALL sponsored the constitutional amendment. Did it come from them or some other Democrat?

No, that is not the case.

Let me quote a few more things:

Keep wealthy individuals from buying public office and stop the flow of soft money and public campaign contributions and spending should be expedited so voters can judge for themselves what's appropriate.

Those are quotes. Did these quotes come from BERNIE SANDERS, who is known as being a liberal? He has been an outspoken advocate for campaign finance reform.

The author of these quotes is none other than my friend the distinguished Republican leader, the senior Senator from Kentucky. These are all his quotes word for word. The senior Senator from Kentucky has a track record of campaign finance reform spanning two decades or more. I was with him

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

there 25 years ago, fighting the undue influence of unlimited campaign donations. I cosponsored his 1989 constitutional amendment that would have given Congress power to enact laws regulating the amount of independent expenditures. I was there with him. But I guess times have changed. I am aware that the Republican leader has stated that his views on the matter of campaign finance have changed over the years. What a gross understatement. But as Victor Hugo wrote:

Change your opinions, but keep your principles. Change your leaves, but keep your roots.

At one time the Republican leader was rooted in the principle that the wealthy shouldn't be able to buy public office whether for themselves or for others. Even as recently as late in 2007 he was preaching donor disclosure. What has changed in the last few years?

Over the last several years we have witnessed the Koch brothers trying to buy America, to pump untold millions into our democracy, hoping to get a government that would serve their bottom line and make them more money. The news today says they are out promoting themselves, and that is easy to do because they are worth $150 billion.

So we are watching the corrupting influence that the Republican leader foretold 27 years ago and many years thereafter before our very eyes. He switched teams. What could have possibly convinced the senior Senator from Kentucky that limitless, untraceable campaign donations aren't really that bad after all?

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Republican leader is recognized.

MIDDLE EAST STRATEGY

Mr. MCCONNELL. Mr. President, now that the President has conducted initial consultations with our allies and stated his objective to degrade and destroy ISIL, it is time to present a strategy to Congress. I hope he will begin to do that today.

He needs to identify military objectives and explain how those ends will be accomplished. He needs to present this plan to Congress and the American people, and where the President believes he lacks authority to execute such a strategy, he needs to explain to Congress how additional authority for the use of force will protect America. The threat from ISIL is real and is growing. It is time for President Obama to exercise some leadership in launching a response.

We know the administration has authorized military actions to protect American lives. Now we need to hear what additional measures will be taken to defeat ISIL.

SPEECH SUPPRESSION

Earlier today one Democratic Senator urged his colleagues to get serious about the real challenges facing our country—challenges such as dealing with the threat of ISIL. He implored fellow Democrats not to focus all their time instead ''doing things that are of lesser importance.''

Yet his voice seems to have been ignored by the Democrats who run the Senate, because here we stand debating their proposal on whether to take an eraser—an eraser—to the First Amendment. Here we are debating whether to grant politicians the extraordinary authority to ban speech they don't like. That is what Democratic leaders have brought to the floor this week as their top priority. It is a measure so extreme it could even open the door to government officials banning books and pamphlets that threaten or annoy them. That is not my argument. That is essentially the Obama administration's own position, one that his own lawyers advocated in the Supreme Court in the Citizens United case. As one USA Today columnist put it at the time: ''It isn't often that a government lawyer stands before the Supreme Court and acknowledges that, yes, it would be constitutional to ban a book. But that is what happened.''

Truly shocking.

These are the depths to which the Obama administration and its Democratic majority appear willing to drag our country in order to retain their hold on power. They are tired of listening to criticism of their failed policies. They are sick of having to sell the middle class on ideas that actually hurt the middle class. And with the Democrats' fragile Senate majority hanging by a thread, it seems they are done playing with the normal rules of democracy. It seems they would rather just rewrite the rules altogether to shut up their critics and shut down their opponents, even as they continue to give a path to leftwing tycoons they like—folks who preach higher taxes and more regulations for everybody else—while jealously guarding pet projects and sweetheart deals for themselves.

The aim here, just as with the IRS scandal, is to use the levers of power to shut down the voice of we the people when we the people don't see things their way. The First Amendment is the only thing standing in the way.

We all know the real reason Senate Democrats are so determined to push this measure now. They are not actually all that serious about passing it this week. In fact, they designed it to fail because they think its failure would help turn more leftwingers out to the polls. The entire spectacle is mostly about saving the jobs of Democratic Senators come November. Yet it must be admitted that it is getting harder to tell which of our Democratic friends are cynical in their support of this and which are sincere, because the number of true believers in speech suppression appears to be growing on the other side, and that is really worrying for the future of our democracy.

So look, if the Democrats who run Washington are so determined to force the Senate into debate over repealing the free speech protections of the First Amendment, then fine, let's have a full and proper debate. Let's make the country see what this is really all about. Let's expose this extremist effort to the light of public scrutiny.

I suspect our Democratic friends don't really want that, though. I suspect they hope to just drop a few talking points, have their proposal fail, shoot some indignant e-mails to their supporters and move on. I don't think they counted on Senators standing up for the American people. I don't think they counted on Senators exposing their plans to entrench the tools of government speech suppression. So they would rather not have a debate they can't win.

Then here is a better idea. We all just spent the past several weeks back in our home States talking to our constituents. They have a lot on their minds these days—important issues they expect the Democrat-run Senate to address—things such as high unemployment, rising health care costs, and an ongoing crisis at the border. I, for one, will be interested to hear how repealing part of the First Amendment creates jobs for Americans or reduces health care costs. The answer of course is it doesn't, and the Republican-controlled House has already sent over countless bills that continue to collect dust on the majority leader's desk. There are many bills on job creation alone, including legislation that passed the House, with significant bipartisan support.

So if Senate Democrats want to take up some of that serious House-passed legislation instead of endless designed-to-fail political votes, we will be happy to do it. Just say the word.

Let's end the Democrats' endless gridlock and get some bills to the President's desk for once because Americans are not demanding that Congress repeal the free speech protections of the First Amendment. That is certainly not on their minds. They are looking to us to work together to get some things done for them for a change, and we can as soon as our Democratic friends want to get serious.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I agree with the Republican leader's defense of the First Amendment, but the constitutional amendment before us is not about limiting free speech. My Democratic colleagues and I are trying to address the special interest money that threatens to create a government of elected officials who are beholden to a few wealthy individuals.

As the respected Justice John Paul Stevens recently told us, money is not speech. Of course it isn't, and we know that.

Last week there was a recorded speech given at the Koch brothers' secret meeting place in San Diego or thereabouts. It was a secret meeting on their political strategy. They called it a summit. They had security guards. They cleared everybody who could come. It was very delicate. You had to be the right person or they would not let you into the meeting. However, there was one person who was able to record what went on at that meeting.

One of the speakers who was recorded—no others—was a man by the name of Richard Fink, who is vice president of Koch Industries. He is a big shot with the Koch brothers. Of course the Koch brothers were there listening to his speech. He said some pretty terrible and vicious things about unemployed Americans. He basically called them lazy. He went on to say that the minimum wage leads to fascism. I am not making this up. That is what he said—fascism. He even compared minimum wage with tactics utilized by Nazi Germany and modern-day suicide bombers. That is what the Koch brothers' representative said in their presence and in the presence of a number of higher ranking Republican officials.

He has a right to say whatever he wants; that is the country we live in. But as Senators we have a responsibility to stand for constituents who are unemployed or on minimum wage, and on this side of the aisle we have done that. The American people agree with us—not just Democrats and Independents. Republicans believe there should be an increase in the minimum wage.

The Republican leader was at the summit the very day Mr. Fink made his offensive remarks. He was there. Why has he not gone on Record repudiating these vicious and unfair comments about the poor? In fact, it has been reported the Republican leader referred to the speeches given at the Koch brothers' conference that day as inspiring—inspiring.

There are 150,000 unemployed Kentuckians. Are they leaning toward fascism? There are families in Kentucky who live on minimum wage—or try to. I don't think my friend the Republican leader views them as fascist stooges or lazy, but he should stand and repudiate what the Koch brothers, through their representatives, said at the conference he attended. If any Member of this body said as much, I have no doubt my friend would come to his constituents' immediate defense. But be careful what you say about the Koch brothers. They are very sensitive. They want that to protect their $75 billion. There are two of them, and together they are worth $150 billion. Nobody messes with them because they have money to try to buy America, and that is what they are trying to do.

Do we need campaign finance reform? Of course we do. I gave some quotes earlier, and my friend the Presiding Officer is a very smart man. As well as being a Rhodes Scholar, he graduated from one of the most famous educational institutions in the world, Stanford University. He is a pretty bright guy as a Presiding Officer. But you don't have to be a bright guy to understand the flip-flop. I don't know how else to describe it. He gave his little speech a minute ago about the First Amendment. I am not making this up. This is what the man said. The same man complaining about how the First Amendment has been violated is the same man who has sponsored basically the same legislation we are now trying to pass.

I will give some of his quotes again. Let's make sure they are spread across the RECORD.

What we ought to do is eliminate the political action committee contributions, because those are the ones that raise the specter of undue influence. And those can be gone tomorrow. We can pass a bill tomorrow to take care of that problem.

Here is another quote:

We Republicans have put together a responsible and Constitutional campaign reform agenda. It would restrict the power of special interest PACS, stop the flow of all soft money, keep wealthy individuals from buying public office.

Hallelujah. I am glad he said that.

He also said:

We would eliminate PACs altogether. It will be interesting to see whether our colleagues—

Talking about Democrats—

on the other side of the aisle will be willing to eliminate PACs altogether. And we would have the money come from individuals in small and fully undisclosed amounts.

Next quote:

Public disclosure of campaign contributions and spending should be expedited so voters can judge for themselves what is appropriate. These are the reforms which respect the Constitution and would enhance our democracy.

I didn't rewrite this. This is a direct, word-for-word quote. Next:

We need to have real disclosure. And so what we ought to do is broaden the disclosure to include at least labor unions and tax-exempt business associations and trial lawyers so that you include the major political players in America. Why would a little disclosure be better than a lot of disclosure?

He also went on to say:

Money is essential in politics, and not something that we should feel squeamish about, provided the donations are limited and disclosed, everyone knows who's supporting everyone else.

I repeat. The Presiding Officer is one of the smartest people we have in the entire Senate. With all due respect to the Presiding Officer, you don't have to be a Rhodes Scholar or a graduate from Stanford University to understand how absolutely irrational my friend is with what he just came and said. He said this constitutional amendment is violating the First Amendment of our Constitution. I am using his remarks to state and show the importance of our amendment.

Congress and the States have the authority—or they should have the authority—to set reasonable limits on campaign spending. It is just common sense. Americans clearly believe in this amendment. The amendment would restore the authority back to Congress and the States, not to two wealthy brothers who are trying to buy America—two wealthy brothers who control most of the tar sands in the world. They have a huge oil, gas, and chemical interest. They control lots of stuff.

Today the paper said they are going to spend their millions to tell everybody what great people they are. That is all over the news today. Be aware of the Koch brothers because they have unlimited sums of money. They are going to tell you how they are all about apple pie and motherhood and great for America. They are not great for America. They are trying to buy America.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

POLITICAL SPEECH

Mr. LEE. Mr. President, political speech is not on the fringes of the First Amendment, it is the core freedom of democracy. The entire point of the First Amendment is to say the government has no business telling the citizens what constitutes reasonable political speech.

Congress is not allowed to ban books. Congress is not allowed to ban magazines or pamphlets. Congress is not allowed to silence dissent. The idea behind this amendment is that government should have the power to silence criticism of the government. This amendment, referring to Senate Joint Resolution 19, is an attempt to control the words Americans speak and the ideas Americans hear. Every great movement in our democracy has been based on ideas that were at one time or another at the outset deemed unreasonable by the government. It is dangerous and it is un-American in the extreme. Under this proposed amendment, the Federal Government would have the power to decide which groups, which causes, which arguments, and ultimately which citizens would be allowed to enter the public square.

The amendment would even empower Congress to distinguish between natural individuals and artificial entities; that is, rich and powerful people will still be free to influence our government but everyone else can be barred

from coming together and pooling their resources for that very purpose.

What is an artificial entity with restricted speech rights? Churches, neighborhood associations, civic groups, single-issue organizations such as the national right to life, or NARAL, trade associations, businesses or labor unions, schools. The target of this amendment is America. Civil society. When politicians talk about outside groups, they mean outside Washington. They mean ordinary citizens coming together, rallying behind a common cause. They mean the abolition movement, the women's suffrage movement, and the labor movement, as well as the civil rights movement, antiwar movements, the pro-life movement, and the consumer rights movement. They mean citizens. That is who the authors of this amendment believe are outside intruders whose speech somehow needs to be regulated, needs to be restricted by Congress—people with ideas that are ''unreasonable,'' people such as Thomas Paine or Thomas Jefferson and Frederick Douglass and Susan B. Anthony and Martin Luther King, Jr.

The true danger of the idea is even put into the text in the section 3 carveout for the press. So wealthy individuals, those who happen to own newspapers or happen to own a television station or a radio network, do, under this proposed amendment, continue to have free speech. But the people who read and watch the media do not. Or the people who do not own those companies, do they not have the same rights? Under this proposed amendment, they would not. This is Orwellian. Under this amendment, Congress could establish a Federal ministry of truth of sorts to monitor the political speech of citizens and make sure they are reasonable, to make sure the activities in which they engage, those that are attempted to influence elections, are, in fact, reasonable.

Congress would, of course, be empowered to define what constitutes journalism, what falls within the parameters of this freedom of the press carveout so that irritating bloggers and reporters and producers could perhaps be silenced, assuming they were carved out of that definition. This provision will not guarantee equality. It will rather guarantee inequality.

It is right there in the text of the amendment. Some citizens' rights to free speech would be more equal than others under this proposed amendment. It is sometimes appealing at a surface level to start from the proposition that something such as this might be desirable to some for the simple reason that we do not want any one person or any one group of persons having a disproportionate impact on the electoral process. We do not want anyone or anything to be able to buy an election. But that misses the point. This would not solve that problem. In fact, this would make that problem worse.

Consider, for example, the fact that under this proposed amendment, as I read it, and as I think most would read it, an individual would be free to spend unlimited amounts of money, thousands, tens of thousands, hundreds of thousands, maybe even millions or tens of millions of dollars supporting the candidate of her choice if that individual happens to own a newspaper or if that individual perhaps happened to own a television company or a radio broadcast network. That would be no problem. That would be beyond the scope of this proposed amendment, because under section 3 of Senate Joint Resolution 19, it makes clear that: ''Nothing in this article shall be construed to grant Congress or the States the power to abridge the freedom of the press.''

So in light of section 3, everything else in Senate Joint Resolution 19 might either do a lot or it might do a little. It might do practically nothing or it might do practically everything.

Let me explain what I mean. Let's examine the text of the first two sections of this provision.

Section 1 says: ''To advance democratic self-government and political equality, and to protect the integrity of the government and the electoral process, Congress and the States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.''

If your intent is deemed to involve influencing the outcome of an election, then you are subject to these reasonable limits. Well, what people in Congress think is reasonable might be different than what the American people think is reasonable.

Then in section 2 it says that: ''Congress and the States shall have power to implement and enforce this article by appropriate legislation, and may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections.''

Herein lies the problem: Getting back to our hypothetical a few minutes ago, if the idea behind this is to prevent any person or any group of persons from having too much influence over elections taking place in the United States of America, this does not do that. Depending on how broadly or how narrowly Congress chooses to define this contest of freedom of the press, which it carves out and holds harmless, this legislation might do everything or it might do nothing. Let me explain what I mean.

Most of the money that is spent by political campaigns, whether by individual candidates or by organizations attempting to influence the outcome of elections, comes in the form of disseminating a message, comes in the form of either printed material, in the form of pamphlets or the electronic equivalent of pamphlets, or it comes in the form of some type of advertising. Maybe it is an advertisement in a newspaper, maybe it is an advertisement on television. But that is where most political money ends up getting spent.

As understood by the founding generation and as understood and interpreted by the Supreme Court to this day, most of that material is protected in the sense that most of that material constitutes something that falls under the category of freedom of the press. Freedom of the press, of course, does not belong solely, does not belong exclusively, to those who have a press badge or those who are part of what has historically been considered our news media.

If, on the other hand, those who have drafted this amendment—if, on the other hand, those who would decide what laws to pass under this amendment to give it force, if they were to conclude that they wanted to more narrowly define ''press'' to include only credentialed media, perhaps newspaper reporters, perhaps newspaper reporters and radio and television reporters, then they would be significantly changing the First Amendment as interpreted by the Supreme Court. They would be significantly changing the nature of freedom of the press as recognized by the Supreme Court over the last two centuries.

If, in fact, they choose to do it that way, then we would find ourselves in an awful situation in which the owner of a newspaper would be able to spend potentially millions of dollars, perhaps tens of millions, promoting the candidate of her choice simply because she owns a newspaper. But what about someone who does not own a newspaper but nonetheless wants her views to be expressed, wants to have some way of contributing to the national debate? What if there is someone out there who is really concerned, concerned about a particular issue?

Let's say there is a voter who is concerned about the PATRIOT Act and she wants to contribute to an organization, let's say the ACLU, which would, in turn, perhaps make statements to try to influence the public debate about the PATRIOT Act. This could run afoul of all of that. In fact, under the plain language of it, it likely would. In fact, the ACLU itself has expressed this concern in a letter dated June 3, 2014, to Chairman PAT LEAHY of the Senate Judiciary Committee on which I sit.

On page 4 of that letter, the ACLU presents the following hypothetical:

> For instance, would an ACLU ad urging Members of Congress to support Patriot Act reform, which runs shortly before the November 2004 election, when that issue is at play in the election, be construed as an issue ad exhorting voters to support reform, or a covert attempt to influence voters who oppose Members who do not support reform?
>
> Similarly, would an ad by a group urging repeal of the Affordable Care Act, which runs before the 2012 presidential election, be issue advocacy or covert express advocacy?

These are questions raised by the ACLU itself.

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

Mr. LEE. I ask unanimous consent that I be given 2 additional minutes to wrap up my remarks.

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

Mr. LEE. What all of this boils down to is that the core values, the core protections underlying the First Amendment are not just important, they are not just nice to talk about, they are at the very foundation of our representative democracy. They are at the very foundation of our Republic and how it operates. If this amendment were to pass, if this were to become part of the Constitution of the United States, Congress would become more powerful at the expense of the American people.

Ultimately this will inure to the benefit of the political establishment in Washington. It would inure to the benefit, perhaps, of two political parties but everybody else would suffer. It would be more difficult for more Americans to speak on issues that concerned them. Congress would have more power and the States would have more power to restrict the speech of the American people.

It has been said in the past that this is about restricting money, not speech. It is a little bit like saying a city ordinance prohibiting people from using either an automobile or a subway car to get to a protest rally isn't restricting their access to a protest rally or the right to participate in that protest rally.

When money is the means by which the American people can have the ability to express their concern on an issue voters are facing in an upcoming election, that should concern us all. This is an attempt to weaken the most fundamental components of our rights as U.S. citizens. I must, therefore, oppose Senate Joint Resolution 19 and urge my colleagues to do the same.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Wyoming.

HEALTH CARE

Mr. BARRASSO. Mr. President, I know many Senators were back home over the last number of weeks talking to and listening to their constituents about issues on their minds. I was also at home. As a doctor and as a Senator, I heard from many people in my home State of Wyoming who have a lot of concerns about the health care law and the devastating side effects the law has on them.

Over the past few weeks there have been headlines just about every day all across the country with bad news about the health care law and its impact on the American people. Just this morning the local newspaper, The Hill, has a headline: ''Support for ObamaCare continues to fall.''

Public approval of ObamaCare continued to sink this summer, issuing the latest warning for vulnerable Democrats who will face voters this fall after backing the law.

It says that just 35 percent of voters now support the health care law. This is a monthly poll done by the Kaiser Health Foundation which was released yesterday.

It says:

Healthcare remains one of the most important issues in midterm elections, ranking only behind the economy and jobs as voters' top issue.

I talk about health care repeatedly because I am a physician. I have taken care of patients for 25 years in my home State of Wyoming, and I have taken care of families from all around the State. They come to me with their concerns about the health care law.

President Obama says the Democrats who voted for the law should, as he said, ''forcefully defend and be proud of the law.'' Is the President proud of the ways families across America are suffering because of his health care law and the dangerous side effects people continue to face?

Here is a headline from last Friday, September 5, front page of the Wall Street Journal. It says: ''Hacker Breaches Part Of Federal Health Site.'' A computer hacker breached the Federal health site. The article says the hacker broke into part of the healthcare.gov Web site in July—in July—and uploaded malicious software, according to Federal officials.

The administration now admits it. It goes on to say that ''the break-in raised concerns among Federal officials because of how easily the intruder gained access and how much damage could have occurred.'' This is a concern Republicans have warned about for a long time.

The Obama administration didn't do the basic things any business in America would have done to protect people and their personal information. According to this report, part of the problem in this case was that the Web site's developers never—and taxpayers have paid plenty to these developers—bothered to change a default password for the system. No one can believe it. Hackers didn't have to go around some complicated security system or break in through a back door. Oh, no. The Obama administration official admitted to the Wall Street Journal there was a door left open—a door left open.

The Obama administration said that so far the hackers haven't stolen anybody's personal information that they know of. Apparently, they didn't know about this breach for weeks. The hacker walked in through an open door in July, and the Obama administration didn't know anything about it until August 25. Healthcare.gov stores huge amounts of personal and private information about people, including their access information and their health care information, and people have a right to know the information is secure.

Where are the Democrats on the floor of the Senate today ready to forcefully defend leaving the door open for these hackers?

Here is another headline from the September 2 New York Times: ''Bracing for New Challenges in Year Two of Health Care Law.''

We all remember how terrible the launch of the health care program was last fall. We remember right after the President sat down with Bill Clinton and he said: Oh, easier to use than Amazon, cheaper than your cell phone bill, and you can keep your doctor.

America knows those things weren't true.

We all remember the terrible launch last October. The new head of the exchange talked about what he expects it to be like this year, year two. They have had a full year now to get ready and fix the problems. Yet this Obama administration official just recently told the New York Times: ''In some respects, it's going to be more complicated. Part of me thinks that this year is going to make last year look like the good old days.''

America is not ready to go back to the Obama Web site good old days. That is what the Obama administration's person in charge of the health care exchange told the New York Times. Are the Democrats going to come to the floor and forcefully defend this kind of chaos and confusion with the health care enrollment for a second year in a row? It is another disgraceful side effect of the President's unworkable, unmanageable health care law.

I will give one more example of what the American people are learning about how the health care law is harming them individually. Insurance companies have been releasing their preliminary rates for 2015, and in many places for many people, premiums are going up. According to the consulting group PricewaterhouseCoopers, premiums are going up about 8 percent on average across the country. That is not what Democrats promised when they wrote the health care law. Democrats in Washington, here in the Senate, promised the rates would go down. President Obama went around the country and said people would see their health care costs go down by an average of $2,500 per family per year. NANCY PELOSI went on ''Meet the Press'' and said rates will go down for everyone. That hasn't happened. Premiums have gone up. Copays are up. Deductibles have gone up. Out-of-pocket costs have gone up for millions of Americans.

As chairman of the Republican policy committee, one of the things I do is look around the country and try to find out how the policies that come out of Washington affect people all across the country. I have traveled over the past month and heard from many people that the President's health care law is hurting them individually and costing them more.

One place people are really being hurt by the health care law is Alaska. Here is a headline from The Hill newspaper on Monday: ''Alaska insurance rates set to spike.'' According to the article, Alaskans buying health insurance through the State's exchange can expect a surprise spike of more than 30 percent on average.

Another place being hit is Iowa. PricewaterhouseCoopers says the average person in Iowa who buys health insurance through the exchange is going to pay 11.5 percent more next year in premiums. For others, premiums will be as high as 14 percent higher. Those Iowa families aren't getting a cut of $2,500 as promised by the Democrats who voted for this health care law and as the President said. What they are getting instead is an increase of 14 percent—more money out of their pockets.

We can go round and round with individual stories. They are paying more. So it is no surprise then that today the headline in The Hill newspaper is that it is more unpopular now and continues to lose popularity.

Then the impact. It is astonishing. I picked up today's Investor's Business Daily. The headline is ''ObamaCare Spurs College Blues For Working Students.'' A lot of students have to work their way through college. Page 1, above the fold, ''ObamaCare Goes To College.''

More than 200 colleges and universities—

This is because of the law, the way they define part-time work and full-time work, and full-time is defined as 30 hours.

''ObamaCare Goes To College.''

More than 200 colleges and universities have restricted work hours for students, for part-time faculty, or both, citing the costs of complying with the employer mandate related to the President's health care law.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BARRASSO. I ask unanimous consent for 1 additional minute.

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

Mr. BARRASSO. Mr. President, what I do is come to the floor to talk about the concerns I have for Americans who are concerned about their jobs, concerned about the economy, concerned about their opportunity to get the care they need from a doctor they choose at a lower cost. They see all of these issues as troublesome under the President's health care law. So I am going to continue to talk about this and the impact this has on the American family. I am going to talk about restoring people's freedom to buy insurance that works for them and their families because they know what is best for them, not the Obama administration. I am going to talk about reforms that get people the care they need from a doctor they choose at lower costs. I am going to talk about giving people choices, not Washington mandates.

Republicans are going to keep offering real solutions for better health care without all of these tragic side effects.

Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

AFFORDABLE HIGHER EDUCATION

Mr. CARDIN. Mr. President, I take this time to talk about a fair shot for American families on quality, affordable higher education. It is very appropriate that the Senator from New Jersey is presiding because he has been one of the great leaders in the Senate on the affordability of higher education, and it has been a pleasure to work with him.

Let me go through some of the numbers because they are somewhat shocking. We have 20 million students who enter college every year, and 60 percent will exit with student debt. The majority of students who now attend college will have to borrow money in order to be able to get a college education. Thirty-seven million Americans today have college loans that are outstanding. Yes, we know some are young professionals and some are older people. I was surprised to learn that almost 8 million Americans over the age of 50 have college loans that are still outstanding. So this is a burden many American families will have for the rest of their lives.

The average debt today is $29,000, and that number is rising dramatically every year. So when a student graduates, the average debt they carry is $29,000. There is $1.2 trillion in outstanding college loans—more than credit card debt.

As the Senator from New Jersey pointed out earlier today, the percentage of a family's disposable income they need in order to pay for a college education—which we need for global competition and for competition in this country—is far higher than any other industrialized country in the world by far, equaling almost 50 percent of disposable income. That is a shocking number. Education is the great equalizer, and for many American families it is out of reach because of the cost and the necessity to borrow money.

Let me get beyond the numbers for a moment and talk a little bit about the people. Last Thursday Senator MIKULSKI and I were on the campus of Bowie State University and UMBC. Bowie State is one of our historically Black colleges and universities in Maryland, located in Prince George's County. We had a chance to not only meet with Dr. Mickey Burnim, the president of Bowie State University, but with students as well around a table to talk about how they go about trying to arrange for scholarships and loans in order to be able to afford a college education.

Bowie State University is a good buy compared to other colleges; tuition is only around $5,000. One would think those students are in good shape, but let me tell my colleagues about the realities.

Dr. Burnim was explaining to us that on the first day of school, many students who they thought would be enrolled were not enrolled. Why? Because they couldn't put together the total financial package in order to satisfy the tuition costs, so they were not formally enrolled.

I was talking to some students at that roundtable discussion who explained to me that there were students who showed up for the first day of class without the textbook because they couldn't afford the textbook. Now they are going to be behind before they even start because of the high cost of a college education.

Here we are at a State college, and the average debt held by a student graduating from Bowie is $27,800—at a State college. That is a shocking number.

The same number, if we go through the same thing at UMBC—where the president is Dr. Freeman Hrabowski—one of the great universities of our country—they find so many tools to help their students with loans, scholarships, work-study programs, and the debt there is also over $20,000 a year for their graduating seniors. It is affecting their ability to perform in college.

What do I mean by that? There are large amounts of debt they have to take care of. The students do everything they can to reduce their debt, so they work. In some cases they work more than one job and attend college. It affects their ability to perform and successfully complete college.

At Bowie State it takes about 6 years to do a 4-year program because the students are working and are having a hard time meeting the credit requirements.

In some cases I was told there are students who want to take a summer class because it was offered, it was needed for their major, and it would allow them to graduate in a more timely way, but they couldn't afford to take the summer class because the Pell grants aren't available in the summertime.

I thank Senator HARKIN, the chairman of the committee of jurisdiction, for offering legislation that would correct that, that would allow for Pell grants to be available on a 12-month basis. That would help.

Yes, the effect of the high cost of education is first and foremost on the individual. Too many children are not going to college, too many children are not going to the college of their choice, and too many students are taking too many years to graduate because of the high cost of college. Too many students aren't going on to those advanced degrees because they have too much debt, they have to work, and they have to pay off their student loans.

Too many students don't have all the training they need in order to do the best for themselves, and it is affecting their ability to succeed economically. They are delayed in their career choices because of extra years of college, and it is affecting their ability to buy homes because they have student debt.

It is affecting our communities. There are less retail consumers than there would otherwise be. Yes, it is affecting our global competition; yes, we have to increase Pell grants; yes, we have to increase public support; and,

yes, we have to increase transparency, but we can, this week and next, do something about it by passing the Bank on Students Emergency Loan Refinancing Act.

I thank Senator WARREN and Senator FRANKEN for leading our effort. This will allow us to refinance loans. People can't today, they can't refinance student loans. They can't take advantage of the lower interest rates. People who have student loans are paying thousands of dollars of extra interest costs.

Let's refinance it. The government shouldn't be making money off the backs of student loan holders because the interest rates are lower than what they are charging. Let's refinance. That will save thousands of dollars for families and would help us have more affordable opportunities for education in our community.

Let's give a fair shot to American families. Let's take up and pass the Bank on Student Emergency Loan Refinancing Act to allow those millions of Americans who are currently holding student debt to refinance at lower rates, saving thousands of dollars and helping Americans afford a college education.

I yield the floor.

The PRESIDING OFFICER (Mr. SCHATZ). The Senator from Minnesota.

EXPORT-IMPORT BANK

Ms. KLOBUCHAR. Mr. President, I rise today to speak in support of reauthorizing the Export-Import Bank. I am on the floor with the Senator from Washington, Senator CANTWELL, who has been such a leader as head of the small business committee on this issue.

As I heard the Senator from Maryland talk about the importance of student loans to our economy and the importance to our economy for having people being able to go out there and get the education and fill the jobs today, another piece of this is to make sure those markets are available, to make sure our businesses are able to compete internationally, both small and big, with companies from across the world. This means jobs in America. Exports are critical to the U.S. economy, and we need to help our businesses, small and large, boost their exports.

When 95 percent of the world's customers live outside of our borders, there is literally a world of opportunity out there for U.S. business. It used to be we were just focused on Canada, especially in Minnesota, and Mexico, but we know there is a world of opportunity in emerging markets in places such as Asia and Africa, for us to finally be making things in America and having people buy them in other countries.

As a Senator, I have been working to boost America's ability to compete in the global economy and to open up these markets. That is why I strongly support reauthorizing the Export-Import Bank.

I thank Senator CANTWELL for her efforts in leading this fight, and I thank leadership on both sides of the banking committee.

As Senate chair of the Joint Economic Committee, today I am releasing a report on ''The Contribution of Exports to Economic Growth and the Important Role of the Export-Import Bank.''

According to one analysis, exports are projected to account for almost 40 percent of real U.S. GDP growth over this decade.

We know we have stabilized the economy in America, but the only way we are going to be able to expand it, to add more jobs, to make sure people are working at their fullest potential, is to be able to export things to other countries with these emerging middle classes in places such as India and other countries where we can actually sell our goods.

This report highlights that the Export-Import Bank plays a crucial role in supporting businesses, particularly small businesses, to find markets for their products. What does the report show? Well, first it shows the economy has expanded for the past 4 years and U.S. exports have been the ticket to that growth.

Last year U.S. exports of goods reached an all-time high, $2.3 trillion or 13.5 percent of U.S. GDP, an increase of 35 percent since 2009. Think of the jobs that means in America.

In 2013, U.S. exports of goods and services were responsible for 11.3 million jobs, an increase of 1.6 million jobs since 2009.

Manufacturing and agricultural producers have also been able to increase their exports, supporting economic recovery and job growth. In the manufacturing sector, nearly 25 percent of production is exported and these exports are responsible for about 3 million jobs.

I see this in Minnesota. In 2013, our goods and services exports rose to $20.7 billion, and Minnesota was ranked the fourth largest agriculture exporting State in 2012, up from sixth in 2011.

Do you know what that means in real terms? Our unemployment rate is down to 4.5 percent. Our Twin Cities area has the lowest unemployment rate of any metropolitan area in the country, and it is very much about exports. Companies—not just the big ones, but the small ones—that have learned to export and are willing to use the tools to export, means using the Export-Import Bank.

Yet U.S. exporters, as we all know, are competing with foreign producers in places such as Germany, France, and China, which are backed by their own countries' credit export programs and often receive other government subsidies.

I ask my friends who are slowing down this reauthorization, how can we say to our U.S. companies, big and small, that we are going to allow 60 other countries, including the top 10 exporting countries globally—that they can have credit export programs but our companies can't have them in the United States?

I will show you what I mean by this report.

I commend to colleagues the September 2014 Joint Economic Committee report, ''The Contribution of Exports to Economic Growth and the Important Role of the Export-Import Bank,'' that I referred to earlier.

On the graph and report in figure 2 we show ''Comparison between U.S. and Other Countries' Export Credit Subsidies.''

What do these numbers show? This number is about ''New medium- and long-term official export credit volumes, 2013, billions of U.S. dollars.'' It shows that China's medium- and long-term credit export volumes are at $45.5 billion.

That is what we are doing and that is why we see them—as Senator CANTWELL will discuss—going into markets such as Africa and opening those markets up for their companies, because they are willing to help them out of their own version of the Export-Import Bank—$45.5 billion in China.

Germany, a very successful economy, is at $22.6 billion in credit volume. Where is the United States? We are at $14.5 billion. We are above countries such as France, Italy, and Brazil, but we are below countries such as China, Germany, and South Korea.

You can imagine the impact if we got rid of the Export-Import Bank. You can imagine—which we cannot allow to happen.

The Export-Import Bank was first authorized in 1934. It supports U.S. businesses by providing financing that the private sector that may be unable or unwilling to do at competitive rates. The Export-Import Bank does this by providing loans, loan guarantees, and insurance policies to increase export opportunities.

In 2013, as our study shows, the Export-Import Bank supported approximately 205,000 U.S. jobs and $37.4 billion in U.S. exports. It made 745 new loans and loan guarantees worth $21.8 billion.

By issuing these loans, loan guarantees, and insurance policies, the Export-Import Bank helped provide funding for projects ranging from short-term investments to more complex and long-term transactions such as transportation and other infrastructure projects.

The Export-Import Bank also steps in to provide credit to open up these new markets such as Africa, as I have focused on. For example, in the past 4 years the Export-Import Bank has provided authorization for more than $4 billion in support for U.S. export to sub-Saharan Africa, yet China is still ahead of us.

The Export-Import Bank provides support to many industries, everything from gas and oil, to space and telecommunications, to agribusiness.

The Export-Import Bank supports U.S. exports to more than 150 countries, small business. This is what I

hear all across our State since 114 small Minnesota businesses have received financing over the past few years.

The big businesses tend to have trade exports, right? They have exports they want to go to Uruguay or Kazakhstan or somewhere in the world. They can have some special person who knows the language and who can help them and hire a consultant in the country. How can a small business do that? Yet they know their product is going to sell in these other countries.

That is where the Export-Import Bank comes in, because working with our foreign commercial service, they are able to get the tools they need, small businesses, to compete at the same level as big businesses.

In August I visited Balzer, an agricultural equipment manufacturer based in Mountain Lake, MN, a town of about 2,000 people. Balzer currently employs 74 people in Mountain Lake, 74 people out of 2,000. It has made a real difference, the Export-Import Bank, for their company. Exports are approximately 15 percent of their sales.

Or how about Superior Industries in Morris. There are 5,000 people in that town and 500 people employed at the company. They are now exporting, thanks to the Ex-Im Bank, to Canada, Australia, Russia, Argentina, Chile, Uruguay, and Brazil.

How would they would get into Uruguay? Do we think their small community bank—which we love—is going to be able to help them figure out Uruguay financing? No.

That is why we have the Ex-Im Bank. It helps these small businesses to make major decisions, to finance major products and major deals, so they can actually have jobs in the United States that are providing exports to these other countries.

That is what this is all about. It is critical. We have to reauthorize this proven Ex-Im Bank and make sure our exporters are competing on a level playing field in a global market.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I rise to congratulate my colleague, cochair of the Joint Economic Committee, for her report on the importance of the contribution of exports to our economy and for the Export-Import Bank.

The report she is issuing today has a picture of cargo container ships leaving the Port of Miami. I could say that this picture could be any number of ports around the United States of America, certainly in my State, where one in three jobs is related to trade.

I very much appreciate the Joint Economic Committee highlighting at this point in time how important the export economy is to the U.S. economy. My colleague comes from a similar State where we like to say we make a lot of great manufactured products—and we are very proud they are sold in the international marketplace—but now is no time to basically curtail credit agencies' ability to help make those sales a reality when we have had fabulous U.S.-made products.

So I very much appreciate the Joint Economic Committee's release of this report. It is showing that our economy—even though we faced this very disastrous financial collapse 6 years ago—that report basically shows that last week the trade deficit continued to decline. A headline just recently said: ''Trade deficit at 6-month low as exports climb.''

So it does not take a rocket scientist to figure out that a growing middle class around the globe is an excellent opportunity for us to sell U.S. manufactured products. In fact, the middle class is going to double over the next 15 years. So that is a great opportunity for us to take American-made products and get them into this marketplace.

In fact, last year American companies exported more goods and services—totaling $2.3 trillion in value, 13.5 percent of our gross domestic product. So that is a step in the right direction. But that is being threatened if Congress does not reauthorize this important credit agency to make sure these deals get closed. That is why today we are here to make sure that a long-term reauthorization of the Export-Import Bank is implemented.

Now, I know we already have about 240 Members of the House of Representatives who are on record saying they support a long-term extension of the Export-Import Bank. I know there are many Senators here in the Senate who support that. So why is this taking so long? Some people are even suggesting that we can do just a 2-month extension or a 3-month extension. Well, I can tell you how ridiculous that idea is because it does not give any certainty and predictability to businesses that are trying to close deals.

In fact, one business exporter from Texas said:

> The Export-Import Bank is absolutely essential to maintain and grow our businesses. . . . Recent reports on the uncertainty of the Bank's future may have already impacted our bottom line. Our customers need the certainty of export credit to continue many of their sales abroad.

So this individual Texas company is such a reflection of the fact that exports are U.S. jobs. In fact, it is $2.3 trillion in goods and services, and 11.3 million jobs in the United States are related to exports, many of those in manufactured products.

So why would we take and risk these kinds of numbers with the uncertainty of a credit agency that helps close these deals? With that many jobs and that much economic impact at stake, why would we suggest that we only want to reauthorize it for a couple of months? I think that is a very wrongheaded approach.

We have heard from many other companies. One from Georgia was able to increase its annual sales from roughly $500,000 to over $20 million in just a few years and was able to do so with the Export-Import Bank.

We have 21 days left to get this right and to help our economy continue to grow, but we have to do something here in the Senate; and that is, pass the reauthorization of the Export-Import Bank.

While we were home in August, we heard many people talk about this issue. In fact, I would like to put up a few newspaper headlines that we saw around the country. One is from the Roanoke Times, which was an editorial that said: ''In our view, small businesses need this.'' They called for the reauthorization of the Export-Import Bank. Another newspaper, the Wichita Eagle, editorialized in support: ''Reauthorize the Ex-Im Bank.'' And the Columbus Dispatch editorialized: ''Ohioans benefit from Export-Import bank.''

So these are just three of the editorials heard all around the country that are asking us to reauthorize this important credit agency and make sure we are giving small businesses and manufacturers the tools it takes to export.

But my colleague, who is the Joint Economic Committee chair, brought up an even more specific point; that is, where are we going to be in competition as it relates to China when they are chasing economic opportunity all around the globe? In fact, an editorial that was in the Chicago Tribune on August 15 said: ''Sub-Saharan Africa's economy is growing about 5.4 percent a year—outpacing the global rate of 3.6 percent . . .'' So here is Africa with lots of economic opportunity. It is home to many very fast-growing economies in Angola, Nigeria, and Ethiopia. They go on to say: ''The Ex-Im Bank plays a vital niche role in the U.S. economy as backstop because commercial banks and other financial firms often find ways to say 'no' to deals involving selling goods in developing countries.'' That is from the Chicago Tribune.

So newspapers around America get it. This is a key tool for us to access new opportunities that are emerging in developing countries. The fact is, China is already there, they are selling products, they are using their credit agency to help close deals. Why? Because a lot of banks are uncomfortable, either with the size of the deal, the lack of financial players in those emerging markets, and the inability to get these deals closed without the export bank and its assistants.

Another editorial that was in the Boston Globe actually talked about a U.S. company that lost a deal because of our inability to make a decision here. A California company ''lost a $57 million contract this year because of ideological posturing in Washington.'' It is ''a self-inflicted economic wound.'' They are talking about a firm that ''lost its bid to sell technology'' that was going to be used in the Philippines only because the Korean competitor

could guarantee that their export-import bank would be there.

That is another example that we are not even waiting right now to have the negative impact; we are already having the negative impact because we are not getting this done.

So it is very important we make sure we reauthorize the Export-Import Bank. As one company in my State said, the Norwest Ingredients company: ''Loss of the export insurance provided by EX-IM Bank would be devastating to my business . . .,'' that a short-term extension of the Export-Import Bank does not provide the certainty that we need to finance these deals.

I think this is so much what we need to be focusing on. I appreciate my colleague's contribution from the Joint Economic Committee to this report. She talked again about the specifics of what other countries are doing.

This chart shows you the percentage of credit agency resources against a country's GDP—how much they are investing in selling their products around the globe. So we can see what India, China, France, and Germany are doing to basically dwarf what we are doing as far as making sure our products are sold around the globe.

I wish the financial market was there to help close these transactions. But just as we have a small business administration that helps get financial backers to back small businesses, the Export-Import Bank helps U.S. manufacturers sell their products overseas.

We have too much of a supply chain in the United States of America, with manufacturing in aerospace, in agriculture, and in automobiles, to give it all away by simply not reauthorizing the Export-Import Bank in a timely fashion.

So I again appreciate the cochair of the Joint Economic Committee in the release of a report focusing on why exports are so important to our economy.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Republicans have no time remaining. There are 3 minutes on the Democratic side.

Mr. GRAHAM. Mr. President, I just want to be recognized for the 3 minutes.

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

Mr. GRAHAM. Mr. President, one, I want to thank my colleague, Senator KLOBUCHAR from Minnesota, of the Joint Economic Committee, for making the case on why the Ex-Im Bank is a good government program essential to creating jobs in America from export sales.

Boeing is in South Carolina; they are in Washington. Senator CANTWELL has been a champion of this issue as long as I have been around. Now that Boeing is making 787s in South Carolina, I will just put this on the table: 8 out of 10 787s made in South Carolina are Ex-Im financed. We are competing in the wide-body market with countries such as France; China will be getting in this market. Every competitor of Boeing—GE makes gas turbines in Greenville. Most of those are sold in the Mideast through Ex-Im financing. Every competitor of these two large companies in South Carolina has an Ex-Im Bank.

So to my colleagues in the House, I think I am a pretty conservative guy, but I am also practical. Why in the world would we shut our bank down when China is growing their bank? The Chinese would support closing the Ex-Im Bank in America; so would the French; so would the Canadians; so would the British. If you really want to give the American economy a kick in the wrong place, shut our bank down and allow the other countries that compete with us to keep theirs open.

There is plenty of waste in the government. So we pick one program that is small in number, in terms of actual volume that makes money for the Treasury and creates hundreds of thousands of job opportunities. This is smart conservatism? This is what conservatism has come to be, that you take a program—that allows American companies to compete in the international market, that makes money for the American taxpayer—and you shut it down just to prove to people you are ideologically pure? That is not conservatism. That is crazy, and we are not going to let it happen.

To my Democratic friends, we should have reauthorized this a long time ago in a process befitting the Senate. There is well over half of my conference ready to vote for reforms on the Ex-Im Bank, but we are not doing anything in this body, and you are not going to pick our amendments. So there is plenty of blame to go around.

I hope we are smart enough as a House and a Senate to get this right, not to shut down the Ex-Im Bank that makes money for the taxpayer, creates thousands of American jobs, for some ideological reason disconnected with reality.

China would love this. France would love this. When it comes to my State, it would be devastating to the small businesses that benefit from Ex-Im financing. If you can close their banks down, count me in, we will close ours. But I will be damned if we are going to close ours when they have theirs up and running to put people out of work in my State and all over this country when you are talking about the best-paying jobs in America.

I look forward to a further discussion on this topic.

The PRESIDING OFFICER. All time for debate has expired.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO CONTRIBUTIONS AND EXPENDITURES INTENDED TO AFFECT ELECTIONS—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senates will resume consideration of the motion to proceed to S.J. Res. 19, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 471, S.J. Res. 19, a joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

The PRESIDING OFFICER. The Senator from Indiana.

ISIS

Mr. COATS. Mr. President, I rise to speak about the situation that the United States is facing regarding the new terrorist threat from the new caliphate—so-called caliphate state of ISIS.

The President has announced that tomorrow he will address the American people and explain what he proposes to do about this new situation that faces us, this Islamic state of Iraq and Syria, otherwise called ISIS or IS.

We are at a critical moment facing a serious danger, and now is the time to act together. For action to be effective, it needs our united support. That is why the President's address tomorrow is so important.

I was alarmed by his admission in a press conference 10 days ago that he had no strategic policy in mind. So I welcome this opportunity now to learn what this strategy is, and I truly hope that it will be articulated fully and completely with clarity so that not only the American people but their representatives here in the House and the Senate know exactly what the President intends on doing and proposing.

The unspeakable depravities committed by ISIS seem to have no limits. The alarm bells have become louder as ISIS henchmen continue their beheadings and their brutality and their barbarism. One of the most acute dangers ISIS poses is the wide scope of their ambitions.

First Syria, then Iraq, now Lebanon, later possibly Jordan, Saudi Arabia, and others are in their target sites.

ISIS is now widely and correctly judged to be the largest, best organized, best financed, most capable, and most ambitious terrorist organization in history.

So when the President explains his plan to degrade and defeat ISIS, I plan to carefully examine it and look through what I believe are the essential elements and hallmarks necessary for us to succeed: its determination, its courage, its resources to enact the plan, its vision for where we want to

go, a clearly outlined goal that we want to achieve, and a realism that we can be successful.

President Obama must outline the task of defending our Nation and degrading and defeating ISIS and clearly lay out before us how we will accomplish this.

When I first addressed this subject last month, I outlined five areas in which I believed urgent action was required, and I hope the President's plan will include these five areas.

First, as I have just said, I called for the Obama administration to articulate their own plan to confront ISIS and protect America. I trust this will happen tomorrow.

Second, I called for a vigorous, concerted push with Islamic states and communities to stand up to the outrageous ISIS perversion of their religion and their culture. We haven't seen outrage in the region from those moderates, the leadership, the political as well as the people who simply see this action of ISIS as a perversion of their religion. As destructive and brutal as it is, where have they been? It is time for them to step up. I believe we must make a concerted push with Islamic states and communities to stand up to this outrage that is taking place.

We should work with all political and religious authorities to speak out about how their faith and their culture is being co-opted and perverted by these ISIS criminals. We then must press them to take effective action to undercut the popular, political, and economic support ISIS extremists are getting. Genuine Muslim leaders—imams and others—need to take center stage to discredit the violent radicals and weaken their outreach and recruitment among Muslim youth.

Third, last month I called for much greater security assistance for our potential partners in this fight against ISIS. The United States should move quickly to provide arms, training, and other requested assistance to Iraqi Kurdistan's Peshmerga forces and to other states that need and request support and will work with us to address this challenge. We need to find effective ways to support and directly arm the reliable, vetted Sunni tribes and Sunni leaders in Iraq who are essential partners in combating this ISIS extremism that ultimately are Sunni Islam's greatest interest and threat.

Fourth, it is clear ISIS cannot be defeated without our participation. Therefore, I believe our current bombing campaign against ISIS targets should be continued and expanded to include ISIS bases in Syria.

If we have learned anything from the wars in Vietnam, Korea and Serbia and our experience along the Afghanistan-Pakistan border, we have learned the futility of attacking military forces that have safe haven bases just across the border or nearby leads to less than success and leads to potential defeat.

Fifth, and lastly, I believe we need to address new dangers to our homeland by reassessing border security and determining whether it can be improved to address the threat of foreign fighters returning to the United States.

The threat of Western, homegrown, radical, and violent jihadist terrorists is real and it is growing. We know that. ISIS boasts that they have trained and motivated fighters who are already embedded in many countries throughout the world and that they have their sights trained on the United States and Europe. There is no reason to disbelieve them. So we must respond to this threat to our country in every possible way.

One effective step is to reevaluate our entry procedures, including the Visa Waiver Program. I know this is controversial. I know countries that have been loyal allies will raise alarms. But we have to understand that we need to conduct a thorough, candid assessment of how this Visa Waiver Program affects our national security interests and whether there are changes to the program that would enhance our security.

Similar reviews of our refugee and asylum policies are also necessary. As the ranking member of the Appropriations Homeland Security Subcommittee and a member of the Select Committee on Intelligence, I will seek such an assessment and pursue legislation that is responsive to the new danger we face.

In conclusion, when President Obama unveils his strategy to defeat ISIS—not manage ISIS, not contain ISIS, but to defeat ISIS—I am hopeful his presentation will include at least the essential elements I talked about: clarity and coherence, sound diplomacy to bring Muslim nations and communities into firm opposition to ISIS extremism, appropriate expanded security assistance to partners in the struggle, enhanced military action to include Syria, and greater attention to border security.

If what the President says tomorrow includes these elements, and hopefully more, then I will look very carefully as to how I can support the President and the strategy and encourage my colleagues to do the same, because I believe it is essential that to succeed against this threat, we need to speak with one voice.

We need to be united as Americans—as a Congress and Americans throughout the country in terms of the nature of the threat, what we need to do to address it, and the plan and strategy to successfully achieve that goal.

If it falls short, then I hope the Congress can work with the President to bring about the necessary steps to give us every opportunity to succeed in this challenging task. I hope we don't come to that point. I hope we can unite. I look forward to carefully examining the proposal. I trust we will be receiving at last leadership from the President of the United States and his team in terms of addressing what I think is a major crisis that cannot wait, cannot be managed. It cannot be classified as hoping something will work out.

The world is yearning for leadership. On matters of foreign policy, it looks to the United States and it looks to the leader of the United States. We need to restore their confidence that we are taking this threat seriously and that we are engaging in an effort to address this successfully.

So we wait with great anticipation for the remarks of the President that will occur tomorrow.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. 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. THUNE. Mr. President, during the past month, two American journalists were murdered by a fanatical Islamic terrorist group, the Islamic State, known as ISIL. The murder of these two journalists is part of a campaign of horrific brutality that has included crucifixions, rape, the slaughter of civilians, and prosecution of religious minorities, including Christians and Yazidis.

Currently ISIL holds large sections of land in both Iraq and Syria, and the group has made clear that its ambitions extend even further. Meanwhile, Iran continues its efforts to enrich uranium, Ukraine is struggling to prevent further Russian incursions, and the Islamic militants in Libya recently seized the U.S. Embassy compound after Americans were forced to evacuate the war-torn country.

Here at home we are facing a crisis on our southern border thanks to the President's policies which have encouraged thousands of unaccompanied children to undertake the dangerous journey to the United States.

On the economic front, millions of middle-class families are being squeezed by the Obama economy and Obamacare. Job growth last month was a disappointing 142,000 jobs, the worst report this year, and far from the numbers we need to get the economy going again. Unemployment remains high, and the unemployment rate would be even higher if millions of Americans hadn't gotten so discouraged by the lack of job prospects that they gave up looking for work altogether.

Meanwhile, ObamaCare has not only failed to fix the problems in our health care system, it has made them worse. American families are facing higher health care premiums and fewer health care choices. In short, our country is facing serious challenges both at home and abroad.

What are Democrats doing about all these challenges? Well, this week they are taking up legislation that limits

Americans' First Amendment rights. That is right; instead of taking up any of the 40 House-passed jobs bills, addressing our border crisis, or focusing on the international challenges we are facing, Democrats have decided to spend the first part of a brief 2-week session rewriting the First Amendment. It is no wonder a George Washington University Battleground poll found that 70 percent of Americans think the country is on the wrong track.

Our First Amendment right to freedom of speech is one of our most fundamental rights. It is the right that helps protect all of our other rights by keeping government accountable and ensuring that all Americans, not just those whose party is in power, get to make their voices heard.

The Democrats' proposed constitutional amendment would severely curtail this freedom by giving Congress and State governments the authority to regulate political speech. That means Congress will get to decide how much of a voice Americans are allowed in the political process. And that is bad news for Americans of every political affiliation. Under the Democrats' legislation, the party in power could effectively silence the voices of those who disagree with them.

Democrats are unhappy about recent decisions by the Supreme Court that rolled back some of the restrictions on free speech and increased individuals' voices in the political process. So their solution is a constitutional amendment to shut down the voices of those who disagree with them. Apparently they don't realize that is not the way the American system works.

In America, if you don't like what your opponents are saying, you have the freedom to persuade your opponents to adopt your position or you persuade the American people to vote against them. You don't try to revoke their right to speak. That is what they do in totalitarian societies. It is not what we do here in America.

In the United States your political power is supposed to exist in proportion to the strength of your ideas, not in proportion to your ability to silence your critics. Fortunately for Americans of every political persuasion, the Democrats' amendment is unlikely to go anywhere in Congress—as Democrats well know.

So why are they taking up this legislation this week when there are so many problems, foreign and domestic, that need to be addressed? The answer is simple. Democrats are worried about reelection, and they think this legislation somehow will help them get reelected. They have passed this amendment to appeal to members in the far-left base who want restrictions on political speech or at least on political speech with which they disagree. Democrats are betting that seeing this amendment defeated in Congress will encourage members of their political base to come to the polls in November. That, of course, has been Democrats' legislative strategy all year.

The New York Times reported back in March that Democrats plan to spend the spring and summer on messaging votes, ''timed''—and I quote, ''to coincide with campaign-style trips by President Obama.''

''Democrats concede,'' the Times reported, ''that making new laws is not really the point. Rather, they are trying to force Republicans to vote against them.''

Let me repeat that. Despite the economic challenges facing American families and steadily growing international unrest, the Democrats have spent the past several months pursuing a legislative strategy in which ''making new laws is really not the point.''

We have seen that time and time again here over the past several months on the floor of the Senate where we come here on a daily basis casting political show votes, knowing they are not going anywhere, designed to appeal to a political constituency that they hope will come out and support them during the November elections. Instead of pursuing political consensus—the only way to actually accomplish anything in a divided Congress—Senate Democrats have brought up bill after bill to pander to their political base. It is disappointing that the Democrats have put their electoral prospects over Americans' freedom of speech this week. And it is disappointing that Democrats have spent this entire year on political show votes instead of substantial legislation to address the many challenges that are facing American families. The President has been no help. Instead of urging Democrats in Congress to work with Republicans on Senate legislation to deal with our country's most serious problems, he has been focused on campaigning. It wouldn't be a stretch to say that campaigning has been the President's main concern for the majority of his Presidency, whether it is involved in delaying Obama regulations to protect Democrats in the 2012 elections or his decision last week to defer his executive action on immigration until after the election in what White House officials essentially admitted was an attempt to protect Democrats in November.

There is a place for campaigning—we all know that. We all do it—but it is not in the halls of Congress or in the Oval Office. We were elected to govern, and that means we should be spending our time on legislation to meet our Nation's challenges. We should be taking up legislation to support job creation. We should be fighting to give middle-class families a break from ObamaCare's high premiums and reduced choices. We should be taking up measures to advance energy independence in this country and make energy more affordable for working families. We should be focused on what we need to do to address the crises abroad and America's security here at home.

Republicans are working to create jobs; Democrats are trying to save their own. It is not too late for Democrats to join Republicans to come up with bipartisan solutions to the challenges facing our country. The House of Representatives passed somewhere on the order of 350 bills, all of which are collecting dust here in the Senate, 40 of which specifically deal with the issues of the economy and job creation which every poll says is the American people's No. 1 priority. Yet here we are again in a shortened work period where we have a couple of weeks to actually do some things that would bend the curve in the direction of lowering the unemployment rate, growing the economy, creating more jobs. We have a whole series of bills that have been passed by the other Chamber, the House of Representatives, that have been sent here which specifically deal with the issue of jobs and the economy that are sitting at the desk collecting dust because the majority leader has chosen instead to try to bring to the floor a whole bunch of things he thinks are additive in terms of getting the vote out for Democrats in November elections but frankly do absolutely nothing to address the serious concerns and challenges that are facing middle-class families all across this country. The people's representatives can do better. The people's representatives should do better. Whenever Democrats here decide they are ready to stop campaigning and start governing, Republicans are ready to go to work.

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. FRANKEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. HEITKAMP). Without objection, it is so ordered.

Mr. FRANKEN. Madam President, I will just come out and say it. Citizens United was one of the worst decisions in the history of the Supreme Court. It was a disaster, a radical exercise of pro-corporate judicial activism. It was seriously flawed both legally and factually.

Legally, the Court trampled its own precedence—cases such as Austin v. Michigan Chamber of Commerce and McConnell v. Federal Elections Commission, which had been on the books for years and stood for the obvious proposition that the people can enact reasonable limits on money and politics.

Factually, the Court rested its conclusions on the faultiest of premises—that unlimited campaign expenditures by outside groups, including corporations, do not give rise to corruption or even the appearance of corruption. That assessment is disconnected from reality and is horribly out of touch with the sentiments of most Americans. For example, the Minnesota

League of Women Voters issued a report in which it concluded that ''the influence of money in politics represents a dangerous threat to the health of our democracy in Minnesota and nationally.'' I think if you asked most people whether unlimited spending on campaigns has a corrupting effect, they would agree and say, yes, of course it does, and I think they would be right. But the decision in Citizens United was based on this unfounded and unbelievable idea that we have no reason to be concerned about the effects of unlimited campaign spending.

So we have this 5-to-4 Supreme Court decision that ignores the law, ignores precedent, invents facts, and as a result we ended up with a campaign finance system in tatters—one in which deep-pocketed corporations, superwealthy individuals, and well-funded special interests can flood our elections with money, thereby drowning out the voices of middle-class Americans who don't have the luxury of spending hundreds of thousands of dollars or millions of dollars or hundreds of millions of dollars to influence the political process.

This is real. Spending by outside groups more than tripled from the 2008 Presidential campaign to the 2012 Presidential campaign when it topped $1 billion. Outside spending went from $330 million in 2008 to over $1 billion in 2012. What happened in the interim? Well, it was Citizens United in 2010 and the floodgates were opened.

The middle class is not just being flooded, it is being blindfolded too, because these wealthy special interest groups can often spend the money anonymously, so voters have no idea who is behind the endless attack ads that fill the airwaves.

Here is how it works: If you have millions of dollars you want to spend, you can funnel it through back channels so that it ends up in the hands of a group—typically one with a generic and benign-sounding name.

I was trying to invent a name, such as ''Americans for More America'' and ''American America.'' I was kind of joking around, and it turns out there is group that has that name. They use this money to buy ads and very often without disclosing the source of their funds. To me, this whole thing looks a lot like money laundering, except now it is perfectly legal.

Again, this is real. A study just came out which showed that in the current election cycle alone there have already been over 150,000 ads run by groups that don't have to disclose the source of their funding, and things are just getting worse. Earlier this year, in a case called McCutcheon v. Federal Election Commission, the Supreme Court was at it again, recklessly doing away with a law that prohibited people from giving more than $123,000 in the aggregate directly to candidates in an election cycle. The limit had been $123,000. Who has that kind of money? Who has that kind of money lying around to spend on elections? Well, I guess the superrich have that kind of money, but the middle class certainly doesn't. The folks I meet with in Minnesota are trying to make ends meet, pay off their student loans, train for a new job, or save some money to start a family. They sure don't have that kind of money just lying around, and they are the folks who need a voice here in Washington.

In June the Judiciary Committee held a hearing on the subject, and we heard from a witness whose presentation I found particularly persuasive and compelling. I suggest that my colleagues read his testimony. He was a State senator from North Carolina. He said:

> Suddenly, no matter what the race was, money came flooding in. Even elected officials who had been in office for decades told me they'd never seen anything like it. We were barraged by television ads that were uglier and less honest than I would have thought possible. And they all seemed to be coming from groups with names we had never heard of. But it was clear that corporations and individuals who could write giant checks had a new level of power in the state.

He went on to explain that the vast majority of outside money that was spent on State races, including the Governor's race, came from one man—just one man—who reportedly poured hundreds of thousands of dollars into State politics. Before the Governor was even sworn into office, he announced who would write the State's budget. Yes, it was that same donor. Apparently, the donor got his money's worth. The budget he drafted was loaded with goodies for corporate interests and the super-rich, provided at the expense of middle-class and working folks.

I find this whole thing incredibly disturbing, this idea that a handful of superwealthy corporate interests in effect can buy our democracy—or in this case one guy. That is not how it is supposed to work. Everyone is supposed to have an equal say in our democracy regardless of his or her wealth. The guy in the assembly line gets as many votes as the CEO—one. You don't get extra influence just because you have extra money—or you shouldn't. The government should be responsive to everyone and not just the wealthiest among us.

The way I see it is we can go two ways from here. On the one hand, we can continue to let Citizens United be the law of the land. We can perpetuate the fallacy that corporations have the constitutional right to flood our elections with undisclosed money. We can let deep-pocketed special interests buy influence and access and then set the agenda for the rest of the country or we can say enough is enough. We can restore the law to what it was before Citizens United was decided. More to the point, we can restore the voice to millions upon millions of everyday Americans who want nothing more than to see their government represent them. That is the choice we have before us this week. For those of us who believe the measure of democracy's strength is in votes cast, not dollars spent—for us, I think it is an easy choice.

I am going to vote to reverse Citizens United, and I urge my colleagues to do the same.

I thank the Presiding Officer.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I ask unanimous consent to speak for 25 minutes.

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

Mr. GRASSLEY. Madam President, the proceedings on the amendment before us show just how broken the Senate is under the current leadership.

Yesterday the majority leader stated:

> We're going to have a cloture vote to stop debate on this. [Republicans] say, well, great, we'll go ahead and support that because we can stall.

He also said:

> There will be no amendments. Either you're for campaign spending reform or not. So my Republican colleagues, they can stall for time here.

This is an ''Alice in Wonderland,'' upside-down world the majority leader is describing. You can bet that if Republicans were blocking Democrats from describing this amendment, we would be accused of obstruction. But when we vote to proceed to this amendment, as we did yesterday, we are also accused of obstruction. It goes to show that whatever Republicans do, we will be accused of obstruction. That is a catch-22. That is the majority's game plan—bring up partisan measures for political posturing, avoid working together to solve problems, and blame the other side no matter what the other side does. That is why the Senate is broken.

The amendment before us would amend the Bill of Rights and do it for the first time. It would amend one of the most important of those rights—the right of free speech. The First Amendment provides that Congress shall make no law abridging freedom of speech. The proposed amendment would give Congress and States the power to abridge that freedom of free speech. According to the amendment, it would allow them to impose reasonable limits, whatever those reasonable limits might be, on contributions and expenditures—in other words, limiting speech that influences elections. It would allow speech by corporations that would influence elections to be banned altogether.

This amendment is as dangerous as anything Congress could pass. Passing for the first time an amendment to the Constitution amending the Bill of Rights is a slippery slope. Were it to be adopted—and I believe it will not be—the damage done could be reversed only if two-thirds of both Houses of Congress voted to repeal it through a new constitutional amendment, with three-fourths of the States ratifying that new amendment.

So let's start with first principles. The Declaration of Independence states

that everyone is endowed by their Creator with unalienable rights that governments are created to protect. Those preexisting rights include the right to liberty.

The Constitution was adopted to secure the blessings of liberty to Americans. Americans rejected the view that the structural limits on governmental power contained in the original Constitution would adequately protect the liberties they had fought in that revolution to preserve. So before the Colonies would approve the Constitution, the Colonies—or then the States under the Articles of Confederation—insisted on the adoption—or the addition to the original Constitution—of the Bill of Rights.

The Bill of Rights protects individual rights regardless of whether the government or a majority approves of their use. The First Amendment in the Bill of Rights protects the freedom of speech. That freedom is basic to self-government. Other parts of the Constitution foster equality or justice or representative government, but the Bill of Rights is only about individual freedom.

Free speech creates a marketplace of ideas in which citizens can learn, debate, and persuade fellow citizens on the issues of the day. At its core, it enables our citizenry to be educated, to cast votes, to elect their leaders.

Today freedom of speech is threatened as it has not been in many decades. Too many people do not seem to want to listen and debate and persuade. Instead, they want to punish, intimidate, and silence those with whom they disagree. For instance, a corporate executive who opposed same-sex marriage—the same position President Obama held at that very time—is to be fired. Universities that are supposed to be fostering academic freedom cancel graduation speeches by speakers some students find offensive. Government officials order other government officials not to deviate from the party line concerning proposed legislation.

The resolution before us—the proposed constitutional amendment cut from the same cloth—would amend the Constitution for the first time to diminish an important right of Americans that is contained in the Bill of Rights. In fact, it will cut back on one of the most important of those rights—core free speech about who should be elected to govern.

The proposed constitutional amendment would enable governments to limit funds contributed to candidates and funds spent to influence elections. That would give the government the ability to limit speech. The amendment would allow the government to set the limit at low levels. There could be little in the way of contributions or election spending. There would be restrictions on public debate on who should be elected. For sure, incumbents—those of us who sit in this body—would find that outcome to be acceptable because it would weaken possible opposition. They would know no challenger could run an effective campaign against them.

What precedent would this amendment create? Suppose Congress passed limits on what people could spend on abortion or what doctors or hospitals could spend to perform them. What if Congress limited the amount of money people can spend on guns or limited how much people could spend of their own money on health care? Under this amendment Congress could do what the Citizens United decision rightfully said it could not; example: Make it a criminal offense for the Sierra Club to run an ad urging the public to defeat a Congressman who favors logging in the national forests; another example: Prohibiting the National Rifle Association from publishing a book seeking public support for a challenger to a Senator who favors a handgun ban or for the ACLU to post on its Web site a plea for voters to support a Presidential candidate because of his stance on free speech. Nobody wants a government that powerful which could enforce those examples I just gave as well as other examples.

Don't take my word for it. In fact, at oral argument in Citizens United, the Obama administration told the Court it would be legal for a corporation to be prosecuted for publishing a book that expressly advocated for or against the election of a candidate. Sounds impossible, but that is what was said. Consequently, the Obama administration and the Democratic leadership support banning books they don't agree with. Consequently, that should be a frightening prospect for all of us.

Under this amendment, Congress and the States could limit campaign contributions and expenditures without complying with existing constitutional provisions. Congress could pass a law limiting expenditures by Democrats but not by Republicans, by opponents of ObamaCare but not by its supporters.

What does the amendment mean when it says Congress can limit funds spent to influence elections? If an elected official says he or she plans to run again, long before any election, Congress under this amendment could criminalize criticism of that official as spending to influence elections. A Senator on the Senate floor, as I am right now, appearing on C–SPAN free of charge, could, with constitutional immunity, defame a private citizen. The Member could say the citizen was buying elections. If the citizen spent what Congress said was too much money to rebut that charge, he could possibly go to jail. We would be back to the days when criticism of elected officials was a criminal offense. If people think that cannot happen, it did happen in 1798 when the Alien and Sedition Acts were passed—and that is since our country was formed and since our Constitution has been governing our relationships.

Yet the supporters of this constitutional amendment say this amendment is necessary for democracy. That is outrageous. The only existing right the amendment says it will not harm is freedom of the press. So Congress and the States could limit the speech of anyone except the corporations that control the media. In other words, under this amendment, some corporations are OK and other corporations are not OK. That would produce an Orwellian world in which every speaker is equal, but some speakers are more equal than others. Freedom of the press has never been understood to give the media special constitutional rights denied to others.

Even though the amendment by its terms would not affect freedom of the press, I was heartened to read that the largest newspaper in my State, the Des Moines Register, editorialized against this proposed constitutional amendment. They cited testimony from the Judiciary Committee hearing, and they recognized the threat the proposed amendment poses to freedom.

But in light of recent Supreme Court decisions, an amendment soon may not be needed at all. Four Justices right now would allow core political speech to be restricted. Were a fifth Justice with this same view to be appointed, there would be no need to amend the Constitution to cut back on this political freedom.

Justice Breyer's dissent for these four Justices in the McCutcheon decision does not view freedom of speech as an end in itself, as was so important to our Founding Fathers. He thinks free political speech is about advancing, in his words, ''the public's interest in preserving a democratic order in which collective speech matters.''

To be sure, individual rights often do advance socially desirable goals, but our constitutional rights do not depend on whether unelected judges believe they advance democracy as they conceive it. Our constitutional rights are individual. They are not ''collective''—the word the Justice used. Never in 225 years has any Supreme Court opinion described our rights as collective. Our rights come from God and not from the government or from the public, and if they did, they could be taken away from us at any time. So I don't put much stock in the comment from one Justice quoted on the floor today that the Court's campaign finance decisions are wrong.

Consider the history of the last 100 years. Freedom has flourished where rights belonged to individuals that governments were bound to respect. Where rights were collective and existed only at the whim of a government that determines when they serve socially desirable purposes, the results in those countries have been literally horrific.

We should not move even 1 inch in the direction the liberal Justices and this amendment would take us. The stakes could not be higher for all Americans who value their rights and their freedoms.

Speech concerning who the people's elected representatives should be,

speech setting the agenda for public discourse, speech designed to open and change the minds of our fellow citizens, speech criticizing politicians, speech challenging government policies—all of these forms of speech are vital rights. This amendment puts all of those examples in jeopardy upon penalty of imprisonment.

It would make America no longer America.

Contrary to the arguments of its supporters, the amendment would not advance self-government against corruption and the drowning out of voices of ordinary citizens. Quite the opposite. It would harm the rights of ordinary citizens, individually and in free association, to advance their political views and to elect candidates who support their views. By limiting campaign speech, it would limit the information voters receive in deciding how to vote, and it would limit the amount people can spend on advancing what they consider to be the best political ideas.

Its restrictions on speech apply to individuals. Politicians could apply the same rules to individuals who govern corporations. Perhaps individuals cannot be totally prohibited from speaking, but the word ''reasonable'' is in this amendment. Reasonable limits can mean almost anything. Incumbents likely would set a low limit on how much an individual can spend to criticize him. Then the individual will have to risk criminal prosecution in deciding whether to speak, hoping a court would later find the limit he or she exceeded was unreasonable. That would create not a chilling effect on speech but a freezing effect.

This does not further democratic self-government like we are used to in this country.

When supporters such as the Senator from Illinois say that those who spend money in campaigns silence their critics, they have it exactly backwards. One person speaking does not silence anyone, but the government prosecuting people for speaking does.

My friend says that candidates, unlike individual groups, ''abide by strict rules on . . . how much is being spent.'' This is simply not so. That Senator is factually wrong. The rules are the same. The First Amendment requires that candidates be able to spend as much as they want. That is true for individuals, corporations, and unions as well. Individuals are limited in current law on how much they can contribute to candidates. Corporations cannot contribute to candidates at all.

The rules for expenditures are different. Candidate expenditures are expenditures by others independent of the candidate and are unlimited because they are simply free expression. Individuals and corporations cannot and, in fact, do not make unlimited campaign contributions under current law.

My friend also discussed fraud in voting, which he says does not exist, and opposed voter ID laws. The amendment before us has nothing to do with voting. Even if it did, polls consistently show that about 75 percent of Americans support a requirement that voters produce photo ID.

Prevention of fraud is common sense. Voter fraud exists, despite the tactic of voter ID opponents repeating over and over that it does not. In my State of Iowa, there have been successful prosecutions for in-person voter fraud.

In North Carolina recently, 765 registered voters appeared, based on their names, birth dates, and last four digits of their Social Security numbers, to have voted in another State. That certainly warrants investigation. We would have more evidence of voter fraud if this administration did not block efforts to prosecute its existence.

When Florida sought from the Department of Homeland Security a list of noncitizens it could compare against its voter rolls, the Department refused to supply it.

Let's turn back to the amendment before us, which affects only free speech rights, not voting rights. Keep our eye on the ball. The amendment would apply to some campaign speech that could not give rise to corruption.

As my friend from Illinois stated, under current law an individual could spend any amount of his or her own money to run for office, but an individual could not corrupt himself by his own money and could not be bought by others if he or she did not rely on outside money.

Yet the amendment would allow Congress and the States to strictly limit what an individual could contribute to or spend on his or her own campaign. That would make beating the incumbents who would benefit from the new powers to restrict speech much more difficult.

In practice, individuals seeking to elect candidates in the democratic process must exercise their First Amendment freedom of association in order to work together with others for a common political purpose. This amendment could prohibit that altogether. It would permit Congress and the States to prohibit ''corporations or artificial entities . . . from spending money to influence elections.''

That means labor unions. That means nonprofit corporations such as the NAACP Legal and Educational Defense Fund, Inc. That means political parties.

The amendment would allow Congress to prohibit political parties from spending money to influence the elections. If they can't spend money on elections, then these political parties would be rendered as mere social clubs.

The prohibition on political spending by for-profit corporations also does not advance democracy. Were this amendment to take effect, a company that wanted to advertise beer or deodorant would be given more constitutional protection than a corporation of any kind that wanted to influence an election.

The philosophy of the amendment, as you can see, is very elitist. It says the ordinary citizen cannot be trusted to listen, to understand political arguments, and evaluate which ones are persuasive. Instead, incumbent politicians interested in securing their own reelection are trusted to be high-minded. Surely they would not use this new power to develop rules that could silence not only their actual opposing candidate but associations of ordinary citizens who have the nerve to want to vote them out of office.

As First Amendment luminary Floyd Abrams told the Judiciary Committee:

> [P]ermitting unlimited expenditures from virtually all parties leads to more speech from more candidates for longer time periods, and ultimately to more competitive elections.

Why would anybody want to destroy that political environment—more speech, more candidates, longer time periods, and ultimately competitive elections? Incumbents are unlikely to use this new power to welcome competition.

In fact, the committee report indicates that State and Federal legislators are not the only people who would have the ability to limit campaign speech under the amendment. It says States and the Federal Government can promulgate regulations to enforce the amendment. So unelected State and Federal bureaucrats who do not answer to anyone would be empowered to regulate what is now the freedom of speech for individuals and entities that has been protected for 227 years by our Bill of Rights. That would make a mockery of the idea that this proposed amendment advances democracy.

Another argument for the amendment—some voices should not drown out others—also runs counter to free speech, and it is also very elitist. It assumes voters will be manipulated into voting against their interests because large sums will produce so much speech as to drown out others and blind them to the voters' true interests.

We had a perfect example very recently in Virginia's Seventh Congressional District. The incumbent Congressman outspent his opponent 26 to 1. Newspaper reports state that large sums were spent on independent expenditures on the incumbent's behalf, many by corporations. No independent expenditures were made for his opponent. His opponent won. That sounds like really drowning out a political point of view.

That appears to be undue influence? No. The winner of that primary spent just over $200,000 to win 55 percent of the vote.

Since a limit that allowed a challenger to win would presumably be ''reasonable'' under the amendment, Congress or the States could limit spending on House primaries to as little as $200,000, all by the candidate, with no obviously unnecessary outside spending allowed.

The second set of unpersuasive arguments used by the proponents concerns

Citizens United. That case has been mischaracterized as activist. As Mr. Abrams stated, that case continues a view of free speech rights by unions and corporations that was expressed by President Truman and by liberal Justices in the 1950s. What Citizens United overruled was the departure from precedent, and Citizens United did not give rise to unfettered campaign spending.

The Supreme Court in 1976, in Buckley v. Valeo, ruled that independent expenditures could not be limited. That decision was not the work of supposed conservative judicial activists.

Wealthy individuals have been able to spend unlimited amounts since then. And corporations and others have been able to make unlimited donations to 501(c)(4) corporations since then as well.

As Mr. Abrams wrote to the Judiciary Committee in questions for the record, ''What Citizens United did do, however, is permit corporations to contribute to PACs that are required to disclose all donors and engage only in independent expenditures. If anything, Citizens United is a pro-disclosure ruling which brought corporate money further into the light.'' So I do not think my colleagues are correct in saying that this amendment is about so-called ''dark money.'' And limiting speech is totally separate from disclosure of speech. This amendment says nothing about disclosure.

And it is the amendment, not Citizens United, that fails to respect precedent. It does not simply overturn one case.

As Mr. Abrams responded, it overturns 12 cases, some of which date back almost 40 years. As the amendment has been redrafted, it may be 11½ now, depending on what ''reasonable'' means.

Justice Stevens, whom the Committee Democrats relied on at length in support of the amendment, voted with the majority in three of the cases the amendment would overturn.

Some members of the Committee may not like the long established broad protections for free speech that the Supreme Court has reaffirmed. But that does not mean there are 5 activists on the Supreme Court. The Court ruled unanimously in more cases this year than it has in 60 or 75 years, depending on whose figures you use. Its unanimity was frequently demonstrated in rejecting arguments of the Obama administration.

I have made clear that this amendment abridges fundamental freedoms that are the birthright of Americans. The arguments made to support it are unconvincing. The amendment will weaken, not strengthen, democracy. It will not reduce corruption, but will open the door for elected officials to bend democracy's rules to benefit themselves.

The fact that the Senate is considering such a dreadful amendment is a great testament to the wisdom of our Founding Fathers in insisting on and adopting a Bill of Rights in the first place.

As Justice Jackson famously wrote, ''The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.

''One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.''

We must preserve our Bill of Rights including our rights to free speech. We must not allow officials to diminish and ration that right. We must not let this proposal become the supreme law of the land.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. I ask unanimous consent to speak for up to 10 minutes.

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

Mr. MERKLEY. We have heard on this floor some lengthy speeches that brought a number of arguments to bear in an effort to appear learned, insightful, founded in law and founded in history, all to obscure the fundamental fact before this body, which is some on this floor today want to see a government owned and operated by the powerful, not the people. But that is exactly the opposite of what our Constitution was set up to do. The Founders of our Nation proceeded to lay out in very clear terms that the entire premise of our government would not be ruled by the few over the many. It would not be a system of government set up of, by, and for the powerful. They laid that vision out in the very first words of our Constitution.

This premise is so well-known to citizens that when you say: What are the first three words of our Constitution, they will say, together: ''We the People,'' because that is what animates our system of government—''We the People.'' Those who came to argue for the government by and for the powerful are simply trying to destroy our Constitution and our vision of government.

Citizens United, a court case that absolutely ignores the fundamental premises on which our Nation is founded, is a dagger poised at the heart of our democracy. It is a decision by five Justices that this framework doesn't matter.

The writers of the Constitution felt this was so important to convey to every citizen that this is the meaning, the core meaning of what our government is about, that they proceeded to write those words in a font that is approximately 10 times the size of everything that comes after ''We the People of the United States. . . .'' And all that follows is to illuminate, expand on that vision.

It was President Lincoln who summarized the genius of our democracy in his speech at Gettysburg: '' . . . of the people, by the people, and for the people.'' He proceeded to say that we must not let this vision perish from this Earth.

Yet Citizens United, day by day, election by election, is diminishing and destroying the very vision that President Lincoln summarized in that speech on the battlefield at Gettysburg.

What does Citizens United say? It says that entities that are not individuals, that have no claim to the Bill of Rights, can spend unlimited sums to inundate the airwaves and drown out the voice of the people.

Imagine, if you will, the town square. Let's turn the clock back to the early phase of our democracy.

There we are at the town square and everyone is supposed to have their chance to have their say in influencing the decisions that are to come. The town council says: Do you know what, Mr. Jones or Mrs. Anderson, you get 30 seconds, but now over here we are going to give 4 hours to your opponent. Would anyone consider that an exercise in democracy? Oh, yes, the individuals get 30 seconds, but the powerful entity—maybe the big landholder—gets 4 hours to make his or her case. That is not democracy. That is not ''We the People.'' That is rules that are twisted to fix the game on behalf of the powerful against the people, and that is what Citizens United represents.

Our system of government is such that it is essential that citizens believe that every citizen has a fair shot to participate because if they do not believe there is a fair shot, then, in fact, the premise of democracy—''We the People''—is destroyed because why participate if the system is rigged? That is what we are talking about—the rigging of the system. I think those five Justices simply have not read the Constitution, have not read the first three words, do not understand the premise, the foundation, the heart of our system of government and what it is intended to accomplish. It is as if they scratched out the first three words of the Constitution and said: We are rewriting it. We are going to rig the system for ''We the Powerful'' over the people. That is what this debate is about.

In Citizens United, these five Justices—a one-vote majority over the four who protested against this bizarre effort to destroy the premises of our democracy—said: Unlimited sums, dark money—such sums ''do not give rise to corruption or the appearance of corruption.'' They could not be more wrong. Corruption in this sense is the rigging of the game such that citizens do not have a fair voice, and rigging the game is exactly what Citizens United does. It is so obvious that, of course, it gives rise to the appearance that the game is rigged because it is.

Think about the situation I described where the town council says to Mr. Anderson or Mrs. Jones: You get 30 seconds; the opponent on the other side

gets 4 hours. That is exactly what we are seeing in elections across the country. You may see in some elections that the average donation may be $50. Along come the Koch brothers, who in most States would be out-of-State, out-of-State oil and coal billionaires, coming in and maybe spending $3 million or $5 million or more through a variety of front groups they have set up.

How many individual donations does it take to get the same time to present your case as the Koch brothers spending, say, $3 million? Well, it would take about 60,000 $50 donations to buy the same opportunity to speak. So Citizens United is very much like that town council saying: You, madam citizen, get 30 seconds, but you, mister rich, powerful individual, get 4 hours. So, of course, it is corrosive and corrupting. It erodes fair opportunity for all citizens to have their voice heard. And because it does erode the ability of all citizens to have their voice heard, of course, it enhances the belief, that is, the appearance that the system is rigged, the appearance of corruption.

It changes the debate in this Chamber because colleagues look at these millions of dollars brought to bear by just a couple individuals and they say to themselves in the back of their head: I better not step on the toes of that group that can now spend millions of dollars in my election way down in a southern State or way out in a western State or way up in the northeast. I better not step on their toes. If that is not corrosive and corrupting to a ''We the People'' debate and decisionmaking, I do not know what is.

Let's take an example. Not so long ago the party across the aisle was saying: We think we have a good idea on how to use a market-based system to control sulfur dioxide. Rather than putting a limit on each smokestack, we will create an overall limit and allow the market to allocate the most cost-effective way to reduce that sulfur dioxide pollution. That cap-and-trade system invented across the aisle, proposed across the aisle, passed across the aisle, actually worked pretty well. In fact, it worked spectacularly. Sulfur dioxide and acid rain were decreased faster, more cheaply than anyone envisioned. If the range of possible outcomes was considered to be 1 through 10, this was a 25. It was a resounding success.

But along come two individuals who have these billions of dollars who are getting into elections all over the country, who are threatening to put millions in to those who disagree, and they say: No, no, no. Sulfur dioxide, hmm, do not apply this idea that worked so well for the carbon dioxide pollution; do not do that; no matter how well this idea worked, do not do that because we won't fund your election. If you are with us, we will fund massive amounts of campaign ads to attack your opponents. That is exactly what the Koch brothers have done, and they reversed the entire position of my colleagues across the aisle in a couple years—in about a 2-year period—from a market-based control of a major pollutant, carbon dioxide, to arguing that no, no, no, it cannot be controlled. That would be an energy tax.

Well, this happens time and time again, and the people across this Nation do, in fact, pay attention. They are seeing the system is rigged. That is why in one poll 92 percent of Americans said this program is broken. I thought to myself: What is wrong with the other 8 percent? Haven't they paid attention? Don't they know how much this system is being corrupted by Citizens United, by the decision of those five Justices?

Well, in addition, there is another form of corruption that comes from Citizens United; and that is those individuals who have been elected by these vast sums are beholden to those who elected them and they will choose no policy that goes against those who have pulled their strings and gotten them elected. That is definitely a form of serious corruption in a democracy, where ideas are supposed to be debated and decided, analyzed, not where vast corporate or individual wealthy billionaires pull the strings. So it is destroying the competition between ideas on how to take a path that works for ''We the People'' instead of ''We the Powerful.''

When people back home see those in this Chamber arguing to cut food stamps while not cutting a single egregious tax giveaway to powerful oil companies, they see the corrosive influence of Citizens United. When they see folks across the aisle arguing that you should not eliminate these subsidies that go to companies that ship our jobs overseas, and that you should oppose subsidies to bring those jobs home, they see the powerful influence of Citizens United. The list could go on and on.

We have a particular challenge because the concentration of wealth in America is greater than it has been since 1920, greater than it has been for virtually a century. And now we have a system, thanks to our Supreme Court majority of five, that says wealth can be brought to bear to buy elections across this Nation. This is not the system that colonists thought about when they were trying to set up a government that would serve every American—not the few—that would serve humble, ordinary working Americans—not the most powerful—that would serve those in every economic level for a better vision, a better opportunity for employment, a better opportunity for health, a better opportunity to live a quality life, instead of just those who have the biggest bank checkbooks.

I urge my colleagues, let's take up this issue. How could any issue be more important than this issue that goes to the very core of our democracy? Let's not try to run these lengthy, lengthy speeches with learned, learned quotes, to try to disguise what this is about: the wealthiest, the most powerful oppressing the fundamental nature of our democracy.

Together we can stay the hand that holds the dagger aimed at the heart of democracy, and it is our responsibility to do so for this generation and for the generations to come.

Thank you, Madam President.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:56 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Ms. BALDWIN).

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO CONTRIBUTIONS AND EXPENDITURES INTENDED TO AFFECT ELECTIONS—MOTION TO PROCEED—Continued

The PRESIDING OFFICER (Ms. BALDWIN). The Senator from Utah.

Mr. HATCH. Madam President, more than 40 years ago, in New York Times v. Sullivan, Justice William Brennan described ''a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'' The measure now before the Senate shows that this commitment is in serious jeopardy.

Next week marks the 227th anniversary of the drafting of the U.S. Constitution. Those who participated in that process agreed that individual liberty requires limits on government power, but they differed on how explicit and extensive those limits should be. Many thought the simple act of delegating enumerated powers to the Federal Government and reserving the rest to the States would be enough. Others were more skeptical of government power and insisted that the Constitution needed a bill of rights. Those skeptics, however, were not skeptical enough. The measure before us today, S.J. Res. 19, would allow the government to control and even prohibit what Americans say and do in the political process.

Yesterday a member of the majority leadership said this measure is ''narrowly tailored.'' It is possible to believe that only if you have never read S.J. Res. 19 and know nothing about either the Supreme Court's precedents or past proposals of this kind. This is not the first attempt at empowering the government to suppress political speech, but it is the most extreme.

Four elements of this proposal are particularly troubling.

First, its purpose is to advance what it calls ''political equality.'' None of the constitutional amendments previously proposed to control political speech has made such a claim. The irony is astounding. At the very time in our history when technology is naturally leveling the political playing

field, this proposal would give the power to define political equality to government. If simply suggesting that the government should have the power to enforce its own version of political equality is not enough to oppose this proposal, then our liberties are in even greater danger than I thought.

In addition to its stated purpose, this proposal is also troubling because of the power it would give to government. Past proposals of this kind were very specific about what government could or should regulate. One measure, for example, covered expenditures made ''to expressly advocate the election or defeat of a clearly identified candidate for Federal office.'' More recently, proposed amendments covered expenditures made ''in support of, or opposition to, a candidate.'' The proposal before us today, however, says that government may regulate ''the raising and spending of money by candidates and others to influence elections.'' That is all it says. It would allow government to control the raising and spending of money by anyone doing anything at any time to influence elections. No proposal of this kind has ever been drafted more broadly.

The same Democratic Senator who yesterday claimed this proposal is narrowly tailored referred to big-money campaign donors, high rollers, and for-profit corporations with unlimited budgets. I urge not only my colleagues but everyone listening to this debate to read S.J. Res. 19. Just read it. My liberal friends may want to paint certain billionaires or for-profit corporations as the big bad wolf, but this proposal goes far beyond that. It would allow government to regulate the raising and spending of money not only by billionaires or corporations but by what it simply labels ''others.'' That means everyone everywhere. It means individuals as well as groups, rich as well as poor, for-profits, nonprofits. Under this proposal, government could control them all.

It takes no imagination whatsoever to realize that virtually everything can influence elections. Voter registration drives, get-out-the-vote efforts, nonpartisan voter information, discussion about issues, town meetings—all of these activities and many more influence elections.

Once again, I urge everyone to read the proposal before us. It would give government the power to regulate anything done by anyone at any time to influence elections.

The third troubling element of this proposal is that it would suppress the First Amendment freedom of speech for individual citizens but protect the First Amendment freedom of the press for Big Media. Supporters of this amendment want to manipulate and control how individual citizens influence elections but are perfectly happy with how Big Media influences elections. This proposal would allow government to prohibit nonprofit organizations from raising or spending a single dollar to influence elections but leaves multibillion-dollar media corporations free to influence elections as much as they choose. That set of priorities represents a twisted sense of political equality that I cannot believe most Americans share.

Finally, this proposal would allow government to distinguish between what it calls natural persons and ''corporations or other artificial entities created by law.'' Unlike other provisions of the Bill of Rights, such as the Fourth or Fifth Amendment, the First Amendment does not use the word ''person;'' it simply protects the freedom of speech—a freedom that obviously can be exercised not only individually but also collectively.

Yesterday a Democratic Senator dismissed the notion that corporations can be treated as persons under the law because corporations never get married, raise kids, or care for sick relatives.

Is he kidding? A corporation cannot care for sick relatives, but it certainly can speak, and that is what this debate is all about. As the Supreme Court observed more than a century ago, corporations are ''merely associations of individuals.''

Perhaps I need to remind my colleagues that the first section of the first title of the United States Code is the Dictionary Act. It defines the word ''person'' to include ''corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.''

Many of what this proposal labels ''artificial entities''—such as nonprofit organizations, associations, or societies—exist to magnify the voices of individuals. The Supreme Court case that sparked this debate, Citizens United v. Federal Election Commission, was brought not by a for-profit corporation but by a nonprofit organization. S.J. Res. 19 would allow government not only to regulate but to prohibit the raising or spending of money by these nonprofits, associations, and societies to influence elections. They could be banned from speaking on behalf of what my Democratic colleagues like to refer to as ordinary, average Americans. Suppressing the speech of organizations that speak for individuals would leave millions of those Americans with no voice at all.

We should eliminate rather than create barriers to participation in the political process. We should encourage rather than discourage activities by our fellow citizens to influence the election of their leaders. We should prohibit rather than empower government to control how Americans participate in the political process. We should, to return to Justice Brennan's words, strengthen rather than dismantle our national commitment to uninhibited, robust, and wide-open debate on public issues. Making S.J. Res. 19 part of the Constitution would instead make that debate inhibited, weak, and closed.

As the Supreme Court has recognized, the First Amendment is premised on a mistrust of government power. Neither the nature of government power nor its impact on individual liberty has changed. S.J. Res. 19, therefore, proves three things. It proves that the government's temptation to control what Americans say and do in the political process is as strong as ever. It proves that the majority believes it can retain power only by suppressing the liberties of our fellow Americans. It proves that the profound national consensus Justice Brennan described may no longer exist.

Another irony is that the majority in what we often call the world's greatest deliberative body is trying to stifle the free speech of citizens with whom they disagree. This is nothing more than election-year misdirection, an attempt to distract attention from the majority's complete failure to address the real problems facing our Nation.

We should heed the advice of our late colleague from Massachusetts, my friend Senator Ted Kennedy. We were often called ''the odd couple'' because we worked so well together but came from disparate or different political areas. In March 1997 this body was debating another proposed constitutional amendment to control political speech. That measure, I want my colleagues to know, was more narrowly drawn than the one before us today. It was limited to expenditures supporting or opposing candidates and did not exempt Big Media. Yet Senator Kennedy rose to oppose it and said:

> In the entire history of the Constitution, we have never amended the Bill of Rights, and now is no time to start. It would be wrong to carve an exception in the First Amendment. Campaign finance reform is a serious problem, but it does not require that we twist the meaning of the Constitution.

That was said by Senator Kennedy, and he was right. The Senate voted 38 to 61 against that proposal. And Senator Kennedy's words apply with even more force today, there is no question about it.

The real purpose of S.J. Res. 19 is exactly what America's Founders ratified the First Amendment to prevent. Supporters of this radical proposal apparently believe that freedom itself is the problem. That view is contrary to the most fundamental principles of this Republic and incompatible with a free society. Freedom is not the problem; it is the solution.

I am really amazed that my colleagues on the other side would attempt to pull this stunt at this time in our country's history, when almost anybody who looks at it knows it is done just for publicity and political reasons. At the same time, what an awful amendment it is. It makes one wonder if people in the Congress today are really as serious about our country as they were back at the beginning of this country. Those people didn't have nearly the knowledge from books of learning and capacities we have today,

but for some reason they were inspired. They were well educated. They were strong people. They knew what was right, they stood up for what was right, and they did it in very carefully selected words, which would be surely diminished by what the Democrats are trying to do here today.

I sometimes wonder, is politics more important than the Constitution? They know they are not going to pass this resolution. We are not going to let them pass it. It is crazy. It is wrong. It is out of whack. It is against almost everything the Founding Fathers stood for. It is against Supreme Court precedent. It basically would limit the rights of far too many people.

I know my colleagues are going to ultimately vote this down. This will never get 67 votes and never should. It never should have seen the light of day and never should have seen a minute on the floor of this august body. It diminishes this body, that this type of amendment is being brought to the floor of the Senate.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. I ask unanimous consent to speak as if in morning business for 10 minutes.

The PRESIDING OFFICER. Without objection.

FAIR SHOT AGENDA

Mrs. MURRAY. Madam President, over the last several weeks I spent a lot of time traveling across my home State of Washington hearing from workers and families about the challenges they face in today's economy. While there is no question the economy has made a lot of progress, I spoke with far too many people who are working as hard as they can and still feel as though they are running in place. Despite their best efforts, they have not achieved the kind of economic security that allows them to buy a home or save for retirement or start the new business they have been thinking about. I think we can all agree more Americans should have those kinds of opportunities.

So I am proud that this year Senate Democrats have focused on legislation that would go a long way toward giving our families and Americans a fair shot. We have made the case for giving millions of Americans across this country a raise, helping students get out from the crushing burden of student loan debt, ensuring that in the 21st century working women get equal pay, and so much more.

In the coming days we are going to bring these issues to the forefront once again and make another push for our Republican colleagues to join us. Each one of these policies would do so much for our families and for economic growth, and that is especially true because each would help women in today's workforce. I have come to the floor to focus on that last point in particular and talk about why each of these bills would make a real difference for women across the country.

You may remember that my Republican colleagues blocked these bills the last time the Democrats brought them to the floor. So I am going to encourage my Republican colleagues to say something besides no when it comes to higher wages for workers or college affordability or pay equity, because if they have a reason for opposing legislation that would help women and families get ahead, I think the American people deserve to hear it.

The role of women and families in our economy has shifted dramatically in the last several decades. Today 60 percent of families rely on earnings from both parents—up from 37 percent in 1975. Women today make up nearly half of the workforce, and more than ever women are likely to be the primary breadwinner in their families. Women are making a difference across the economy in boardrooms and lecture halls and small businesses, but our Nation's policies have not caught up with the times. In fact, today they are holding women back.

Across the country women still earn 77 cents on the dollar on average compared to men. That difference adds up. In Seattle last year women earned 73 cents on the dollar compared to their male counterparts, and that translated to a yearly gap for women of $16,346. Nationwide, over a typical woman's lifetime, pay discrimination amounts to $464,320 in lost wages. The gender wage gap makes dealing with other financial burdens such as student loans even more challenging.

This past spring I invited a woman from Massachusetts named AnnMarie Duchon to our Budget Committee hearing to testify about her own personal experience with pay inequity. AnnMarie told us that over the years she missed out on more than $12,000 in wages compared to a male coworker who was doing the same job. She told us she and her husband both have student loan debt and those lost wages—$12,000—would have covered 10 months of payments. AnnMarie said thinking about that setback was ''heartbreaking.''

AnnMarie said she was ultimately able to go back and convince her employers to give her equal pay, but unfortunately most women are not able to do that. Many don't even know they are earning unequal wages. That is a real loss, both for our families and for our economy as a whole. That is why we need the Paycheck Fairness Act to tackle pay discrimination head-on and help ensure that in this 21st century workers are compensated based on how they do their job, not on their gender.

Another policy that needs an update is our Federal minimum wage. Two-thirds of minimum wage workers are women. Many of them are the sole breadwinners and sole caregivers for their family, and I know if you ask them how $7.25 an hour translates to a grocery trip for a family of four or shopping for school supplies or just paying transportation to and from work, they will give you a straight answer: It doesn't. Democrats know it is time they got a raise. Republicans disagree. They said no earlier this year to a raise for 15 million women, and I think the American people deserve to hear why.

Women aren't the only ones affected by these challenges, because when working women aren't getting equal pay, when they haven't gotten a raise in years, when they are struggling to make ends meet, that means their families are too—and our economy as a whole is weaker for it.

Democrats have put forward ideas throughout this year that would help level the playing field. It has been, I must say, deeply disappointing that time after time our Republican colleagues have simply said no—no to tax and pay discrimination through the Paycheck Fairness Act, no to giving millions of workers across the country—including 15 million women—a raise, no to legislation that would relieve some of the crushing burden of student loan debt, and the list goes on.

Republicans rejected so much as a debate on each of those bills just a few months ago, and that is a shame because we know these are issues women and families truly care about. They rightly expect us to be working together to come up with solutions. If Republicans are just going to reject our ideas, I think their constituents deserve to hear what else they have to offer.

When I was in my home State of Washington last month I spoke with an entrepreneur named Leilani Finau. Leilani has worked very hard to get her own business off the ground. She told me for the last 12 years she has only been able to pay the interest on her student loans. So more than a decade later she still owes the same amount of principal.

I also talked to a woman named Veronica Donoso. She is an administrative specialist and a single mom from my home State. Veronica told me about the financial burdens she is dealing with—not only student loans but childcare for her daughter. She said, ''I try not to let my daughter see my struggles, but I feel terrible knowing that she is suffering too.''

I think women such as AnnMarie, Leilani, Veronica, and a lot of other women across the country deserve to hear more than just no from Republicans when it comes to legislation that could make a difference for them and their families.

In the next few days Republicans will have an opportunity to take a different approach than they have so far this year. I am calling on the Senate Republican leader to take advantage of it. We should be able to debate these important issues. Democrats have put solutions on the table, a higher minimum wage, student debt relief, giving women more tools to fight pay discrimination, and more. If Republicans have more to say than no, it is time for them to do it.

Thank you. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Thank you, Madam President. I would ask to speak for up to 10 minutes as if in morning business.

The PRESIDING OFFICER. Without objection.

Ms. STABENOW. Thank you. First, I thank the distinguished chair of the Budget Committee for her words and her work on focusing on middle-class families and making sure the economy grows for everyone. I wish to echo and expand upon the very same topics our distinguished chairwoman has been talking about.

First, I think it is important to note that we have seen an improvement in the economy. We are seeing a stock market that has doubled since President Obama took office. We have seen deficits going down. We are seeing projections of slowing increases as they relate to health care and Medicare costs. We are seeing more jobs being created.

The challenge for us is making sure everyone has an opportunity in that economy. We see an economy that has turned, but yet we see way too many people who are not able to benefit from that economy and who don't have a fair shot to create the opportunities for themselves and their families.

So there is more work to be done and that is what the ''fair shot'' agenda is all about. I thank the Presiding Officer for her leadership around this whole question of how to make sure the economy works for everyone, how to make sure we have a middle class in this country—and we will not have a middle class unless everybody has a fair shot to make it.

We have put together five issues we have voted on that we will continue to bring up over and over again until they get passed—and certainly there are other issues as well but five that would make a tremendous difference to Americans in terms of creating opportunity.

The first one is the minimum wage. If you work, you ought to be receiving more wages than if you were in poverty. Why not be over the poverty line if you are working 40 hours a week. We ought to value work in our economy. Raising the minimum wage is an important piece of that. It is the floor, the foundation that is high enough that your family is not in poverty if you are working 40 hours a week. We raised this issue and we voted on this issue of raising the minimum wage above the poverty line and it was blocked by our Republican colleagues in April.

We then came back and looked at the fact that another part of the burden on middle-class families and those aspiring to get into the middle class is the cost of student loans. In fact, it is shocking to know we have more student loan debt than credit card debt in this country. We are seeing that people are able to refinance their homes to lower interest rates and benefit from lower interest rates for a variety of things, but they cannot refinance their student loans. People are locked in, whether it is current students, people recently out of college—we know there is a certain percentage of the trillion dollars in student loans that are paid by people who are retired, actually on Medicare and still paying off student loans. The law currently does not allow them to even just refinance to the low rates that one can get in other parts of the economy. Back in June we put forward a refinancing bill that would help 25 million Americans—including 1 million in Michigan alone—reduce their student loan debt, put more money in their pocket so they can buy a house, they can raise a family. I know realtors in my State of Michigan and those who are involved in mortgage banking are now deeply concerned about this issue because the debt they have is disqualifying people from buying a home or being able to make other investments, starting a small business or other opportunities for refinancing.

So this is a critically important issue. If someone is following the rules of working hard and doing what we all say to do, getting skills so they can compete and be part of the new economy and get a job, but folks find themselves in a situation where all they can do is create crushing debt in all of this and spend years and years and years, oftentimes hundreds of thousands of dollars in student loan debt, this is a concern. This is getting in the way of allowing people to be successful and have a middle class in this country. We have our student loan bill based on students, and it was unfortunately voted down by Republicans in June.

Then we go on to an issue we didn't originally have on our agenda until the Supreme Court made what I believe was an outrageous decision that affects women in their personal health care decisions, basically saying that for a woman to get a certain kind of coverage for birth control or contraception, she would have to walk into her boss's office and sit down and explain her personal health care issues and get approval for birth control. I don't know any other part of the health care system that requires a boss to oversee a decision made by an employee. But this was something that was decided as being a legitimate option under a Supreme Court decision called the Hobby Lobby decision.

So we put forth legislation to make it clear it is not your boss's business, that women ought to be able to receive coverage for preventive care for women just as men do for their health care decisions. We voted on a bill that would make sure women could make their own basic health decisions in privacy, and that was blocked in July by Republicans, indicating they did not believe women should have the opportunity to make their own health care decisions.

Then a bill of mine with Senator WALSH called the Bring Jobs Home Act came before us. It is a very simple premise again. We are a global economy. We want to export our products but not our jobs, and we have tax policy right now that incentivizes those who want to take the jobs overseas. Some of this is craziness in the Tax Code, I believe.

One of those very simple policies that has sent a message that it is OK to ship jobs overseas is the fact that if a company closes shop in places such as Michigan or Wisconsin or Ohio or anywhere in the country—we have seen too much of this in Michigan over the last decade—they can actually write off the cost of the move. The employer can say to the employees, you pack up the boxes, and by the way—through the Tax Code—you will end up paying for the move. The Bring Jobs Home Act says, no, we are not paying, as American taxpayers, for your move if you are moving outside the country with those jobs. If you want to come back, great, you can not only write off those costs, we will give you an extra 20-percent tax credit for the cost on top of it.

Very simply put, the Bring Jobs Home Act is for those who want to come home to America. We are all for it. We will support you and help you do that. If you want to leave America, you are on your own. That was blocked by the Republicans in July.

As if blocking those four very important, commonsense bills was not outrageous enough, Republicans once again blocked a bill to guarantee women equal pay for equal work. I can't believe we are talking about this in 2014. Everybody says, wait a minute, we have equal pay for equal work. We have a law on the books that is not enforced at this point in time. We have court decisions that do not allow the actual equal pay for equal work statute to truly be enforced in this country, which is why we find ourselves in a situation where nationally women still only receive 77 cents on a dollar. In Michigan, it is 74 cents on a dollar.

It is hard to believe that in this day and age—in 2014—42 of our Republican colleagues voted against the Paycheck Fairness Act. I hope we are going to have another chance in the near future to vote on that and again give them an opportunity to support equal pay for equal work.

When we look at Michigan, where women are working very hard every day, I find it stunning that they are making only 74 cents on every dollar. They are getting 26 cents less for every dollar that they work. When you go to the grocery store, you don't get a 26-percent reduction. They can't say: Hey, I am paid less. Here is my 26-percent discount. When they go to the gas station, they don't get a 26-percent discount. When they pay their mortgage, they don't get a 26-percent discount. Obviously it doesn't make sense and the numbers don't add up, but it is much more than just about numbers.

I remember when Kerri Sleeman from Houghton, MI—up in the Upper

Peninsula—came here to testify in the Senate. She was a senior engineer supervising a group of engineers at the company. After the company closed and went bankrupt, she was reviewing the legal documents and found that she, as the engineering supervisor, had, in fact, been paid less than those whom she supervised.

Madam President, I ask unanimous consent for another minute.

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

Ms. STABENOW. Kerri Sleeman, as a supervisor, deserved to receive the kind of pay she should receive as a supervisor.

One of the things I find outrageous is when we hear folks on the other side of the aisle say equal pay for equal work is nonsense; the bill is nonsense. It is a distraction. In Michigan we have heard people say: Women don't care about equal pay, they want flexibility. Well, flexibility doesn't pay for my groceries. The truth of the matter is women want to have the opportunity to receive equal pay.

We are at a point in time where we ought to move forward quickly in passing each one of these issues. As we know, this is about the economy and growing the middle class in this country. We are not going to have a middle class unless everybody has a fair shot to participate and work hard and be successful, and we need to get about the business of making sure that happens.

I yield the floor.

The PRESIDING OFFICER. The Republican whip.

Mr. CORNYN. Madam President, I can't tell you how disappointed I am that the majority leader has continued to persist in blocking votes on more than 300 different pieces of bipartisan legislation that have passed the House of Representatives and that he refuses to bring up in the Senate. Rather than work together on a bipartisan basis to try to get the economy moving and get Americans back to work, we have these focus group, poll-tested show votes. The distinguished Senator from Michigan just admitted that equal pay for equal work is already the law of the land and then said we need to vote on it again. Well, it should be renamed ''The Trial Lawyer Relief Act'' because that is what it is. It is going to benefit the trial lawyers by encouraging litigation and will do nothing to make sure there is equal pay for equal work. We all agree that is and should be the law of the land, but encouraging legislation such as lawsuits against small businesses would do nothing to create jobs and grow the economy.

There is a reason why the congressional approval rating is at 14 percent. The distinguished senior Senator from Arizona, Mr. MCCAIN—in a display of what I guess could be called gallows humor—said we are down to paid staff and blood relatives. Those are the only ones who still approve of what Congress is doing, and it is easy to understand why.

We just came back off of a recess where we had a chance to go back home and talk to our constituents. More importantly than talk to them, we had a chance to listen to them and hear what is on their minds. What are their concerns? What are their hopes? What are their dreams? What are they worried about? I guarantee that none of my constituents suggested we need to repeal the First Amendment to the U.S. Constitution. That is the particular legislation that is on the floor today. That is the priority of the Democratic majority leader. It is a show vote to try to deny people an equal opportunity to participate in the political process—to shut them out if you disagree with them and silence them. Tell them to sit down, be quiet, we are in charge and in control.

I cannot tell you how disappointed I am that it seems as though it is all politics all the time. Every perceived or real problem that our Democratic friends seem to identify—what is their solution? It is more government. The most feared words in the English language where I come from are ''I'm from the Federal Government and I'm here to help.''

We had an experiment over the last 5½ years since President Obama was elected and the electorate gave the Democratic Party control of both the House and Senate. We have had a scientific experiment in the size and role of government and the results are in, and they are pretty pathetic. Unemployment is still unacceptably high. The labor participation rate, which is the percentage of people actually participating in the workforce, is at a 30-year low. People have given up looking for work, which is a great human tragedy.

Then there is the President's approval rating. He is doing better than Congress, I will give him that, but it is down around 40 percent. Here is the troubling thing—and this is not a partisan comment. As an American, I worry when the Commander in Chief has the sort of poll numbers we are talking about. There was a poll reported by the Washington Post and ABC News on September 9. The poll showed that Americans say, by 52 percent to 42 percent, that President Obama has been more of a failure than a success as President of the United States. That is terrible. But it demonstrates his refusal to engage with Congress on a bipartisan basis to do the country's work. It also reflects the mistakes he has made when it comes to leadership around the world.

President Obama wanted his second term to be about nation building here at home rather than conflicts and crises abroad. But, as we all know by now, the world is not cooperating. Even worse, the President is not leading. Instead, he has embraced a dangerously reactive foreign policy marked by empty rhetoric and wishful thinking, and the results are now plain to see.

When we look at the Middle East, we see a massive terrorist enclave spanning western Iraq and eastern Syria. The border between Syria and Iraq is gone. It is the site of a new caliphate. They are the Islamic radicals who were deemed so bad that Al Qaeda didn't want to have anything to do with them—ISIS. They have created what they believe is an Islamic state or caliphate, where Shari'a law will rule and women will have virtually no rights and people will have no liberty or freedom. We have seen American journalists being decapitated on video. We see a brutal Syrian civil war in which about 200,000 civilians have been killed—200,000 human beings are dead as a result of a Syrian civil war—and millions more Syrians have been displaced internally within this country or else living in refugee camps in Turkey, Lebanon, and Jordan.

We see a failed state in Libya. We see a terrorist-sponsoring Iranian theocracy that continues to pursue a nuclear weapon, and we see a violent Iranian axis stretching from Tehran to Damascus to Beirut and Gaza.

Meanwhile, let's not forget about Eastern Europe. We see an aggressive, autocratic gangster state conducting a cross-border invasion of democratic neighbors and taking sovereign territory by force in a manner not seen on the European continent since World War II.

A few weeks ago the President announced that Western sanctions against Russia were working as intended. Yet, in late August a large number of Russian troops began launching major incursions into Eastern and Southern Ukraine in the hopes of seizing even more territory. They already have Crimea; that is yesterday's news. Now they are making further gains in Eastern and Southern Ukraine. One Ukrainian official called it a full-scale invasion. It doesn't sound to me as though the sanctions that were issued by the United States are working as intended as the President has said.

Our existing sanctions are inadequate. They are not working as intended. Vladimir Putin is not deterred by economic sanctions. In fact, according to one Italian newspaper, Putin recently told the President of the European Commission that if Russia wanted to, it could take Kiev in 2 weeks. I am sure Mr. Putin is OK if it takes a little bit longer, just as long as he gets the territory he needs to try to restore the Russian empire to his former visions of glory.

White House officials famously describe the President's foreign policy as ''don't do stupid stuff.'' That is one for the history textbooks. That is the sort of policy our students need to study in high school: Don't do stupid stuff. Come on.

Time and time again in country after country on issue after issue, this administration has, by its inaction and its ambivalence, undermined America's partners, adversaries are emboldened, and it has weakened American credibility.

Let's start with the Middle East. In Libya, President Obama launched a war against Moammar Qadhafi in Libya and then he did virtually nothing to help stabilize the country after Qadhafi's fall. That neglect ultimately led to the tragic death of four Americans in Benghazi in September 2012. It also led to the emergence of terrorist havens. What do they look for other than a power vacuum that they can fill where they can seek sanctuary and launch attacks in the region or against other adversaries? This has led to Libya's collapse as a functioning state. It is a failed state.

It has also enabled jihadist groups in Mali and Africa until they were driven out by the French.

Then there is Syria. Remember when the President said Bashir Assad needs to step down? He then did virtually nothing to help see that happen. He did nothing to arm the moderate rebel forces opposing Assad in the Syrian civil war. The irony is that U.S. officials had a plan to support those rebels, and they recommended it to the President in the summer of 2012 a plan proposed by then-Secretary of Defense Leon Panetta, then-Secretary of State Hillary Clinton, then-CIA Director David Petraeus, and Joint Chiefs of Staff Chairman Mark Dempsey. They recommended a plan to deal with Assad and to facilitate the regime change President Obama called for. What did the President do? He rejected it, even though his stated policy in Syria since August 2011 has been regime change.

It has become commonplace to say that the United States has no good options in Syria. But President Obama's chronic passivity has helped the jihadists. I know that is not his intention, but it has helped the result. It has helped embolden the Iranians, and it has made the Syrian war even more dangerous for the United States and the United States' interests.

Then there is Iraq. President Obama failed to secure a new status of forces or bilateral security agreement that would have protected American forces that served on a transitional basis in Iraq after the conclusion of the Iraq war. We kept troops in Japan and Germany after World War II, and indeed the Americans were the only glue capable of holding the country of Iraq together and avoiding the sort of sectarian civil war we have seen ensue. But his complete withdrawal of U.S. forces in 2011 was a huge gift to Iraq's Shiite militias, their Iranian patrons, and the Sunni terrorists of Al Qaeda who would later form the so-called Islamic State or ISIS or ISIL, as they are now called. I have to tell my colleagues, as I reflect on the American casualties in Ramadi, in Fallujah—our marines, our brave American soldiers, men and women, their loss of life or injuries incurred in liberating Iraq from Saddam Hussein and to see all of that forfeited by the President's unwillingness to secure a bilateral security agreement and leave a transitional, small footprint force there to help the Iraqis transition to self government and democracy—it breaks my heart. I don't know how we explain that to someone who lost a loved one in Ramadi or Fallujah or anywhere else in the Iraq war.

According to the Wall Street Journal, at least 8 million Syrians and Iraqis live under full or partial Islamic State control. Eight million Syrians and Iraqis are living under the rule of medieval barbarians who not only decapitated two American captives but have accumulated a frightening amount of territory and wealth. They control a lot of the natural resources, the oil wells, in Iraq now because we have allowed them to capture it, and now that is the source of revenue for them to continue their terror. They have accumulated a frightening amount of territory and wealth by robbing, raping, extorting, and murdering innocent civilians.

By allowing the Islamic State to take over such a large part of Iraq and Syrian territory, President Obama has neglected one of the key recommendations of the 9/11 Commission. We remember the 9/11 Commission. It was a bipartisan commission set up after the tragedy of 9/11 to ask: How do we keep this from ever happening again?

One of the key recommendations of the 9/11 Commission is that the U.S. Government identify and prioritize actual or potential terrorist sanctuaries; in other words, safe havens. Instead, the President has stood by and watched like a spectator while the Islamic State, over the course of many months, carved out its own safe haven, right in the heart of the Middle East.

I am grateful to the President that he now has made a pledge to destroy ISIS. I believe this is not a threat that can be managed; I think it needs to be eliminated. So I congratulate the President for having evolved to this point where he understands the nature of the threat to American interests and to the American people, and I hope he is serious about doing that. But as one person recently noted, the Obama administration has persuaded just about every leadership cadre in the Middle East that the United States can be safely ignored when its principals make threats or promises. Remember the red line in Syria with chemical weapons. Well, the red line was crossed, and there were virtually no consequences associated with it. What is the lesson we learn? I guess I can get away with it and I am going to keep on coming—such as Vladimir Putin in Crimea and Ukraine.

Speaking of threats and promises, President Obama has repeatedly threatened Russia with serious consequences over its invasion of Ukraine, and he has repeatedly promised to help the Ukrainian people uphold their sovereignty. Yet he continues to stubbornly refuse to provide the very arms to the Ukrainian patriots needed in order to deter and deflect and defeat Russian aggression. What are we giving them? Our good wishes? Sending them some food and medical supplies? That is fine as far as it goes. But without the actual weapons and the training they need in order to defeat Russian aggression and to raise the cost for Vladimir Putin, he is not going to stop. Yet the President's threats haven't been reinforced with the kind of action necessary to change Moscow's calculations, and his promises to the government of Kiev now look rather empty.

The tragedy is it seems as though there is one world crisis after another, and we have long since forgotten about Libya, Syria, and the red lines and the chemical weapons there. They seem like a vague and distant memory because now we are focused on ISIS. But they are all part of the same problem.

There is a very real danger in Ukraine that last week's cease-fire will only solidify Russia's recent territorial gains and legitimize its ongoing invasion and further embolden Vladimir Putin to seize even more Ukrainian territory or the territory of another Eastern European country when the time seems right. Amidst all of this upheaval, all of this violence, all of these challenges, all of these threats to U.S. interests and allies, the President seems disturbingly aloof. Here is what he said about the ongoing global turmoil at a recent fundraising event on August 29. This was reported in the press. He said:

> The world has always been messy. In part, we are just noticing it now because of social media and our capacity to see in intimate detail the hardships that people are going through.

But make no mistake about it. The Middle East has not always been consumed by the type of violence and chaos we are seeing today, and European countries have not always been facing cross-border invasions such as that posed by Russia today.

The world needs strong American leadership. Ronald Reagan was right. We have a safer, more peaceful world when America is strong and does not create the safe havens for terrorists or by our timidity or our rhetoric that is not followed up on by actions that create the impression that people can get away with it. It just encourages the thugs, the dictators, and the terrorists.

The President's refusal to accept any real responsibility for the consequences of his foreign policy is troubling enough, but what is even more troubling is he doesn't seem to fully grasp the magnitude of the threats and challenges that America is now dealing with. If he thinks this is all about social media and people being aware of things that were happening before but they weren't aware of before, I hope he will think again. Indeed, his overall record is looking more and more like a case study in the perils of weaknesses, naivete, and indecision. I can only hope that recent events will force him to change course.

That could start by his coming to Congress with a strategy to eliminate

ISIS, to eliminate this threat. I believe there would be bipartisan support for a strategy the President would present that has a reasonable chance of success. But just to have open-ended air strikes and maybe just a strategy comprising hopes and dreams but not one with the likelihood of working is not good enough. But if he came to us and worked with Congress, I think it would serve multiple purposes.

First, it would comply with the Constitution and the laws of the United States. That is important.

Second, by engaging in bipartisan support in Congress, he would build support necessarily for this policy among the American people. I don't believe Americans should ever go to war without the support of the American people. We see what happens when that support fades and crumbles, and it is not good.

The third reason he ought to come to Congress is I read in some of the news clips today he is going to come and ask us for $5 billion to fight ISIS. Well, the President—who is famous for saying, I am going to go it alone; I have a pen and a phone—can't go it alone when it comes to appropriating money. He needs Congress to appropriate that money. And Congress should not appropriate money without a strategy that has a reasonable likelihood of working or without an explanation of how this strategy is going to protect America and Americans' interests.

So in his remarks on U.S. policy toward the Islamic State in Iraq and Syria tomorrow night when he makes this nationwide address, I urge the President to go beyond the rhetoric and offer a clear explanation of our military objectives and our strategic objectives. I urge him to explain how and why the Islamic State poses a dangerous threat to U.S. national security interests, which I believe it does and I believe he thinks it does. So I hope he will explain it to the American people so they can understand it. I urge him to explain how U.S. allies and partners can help support America's mission, because we can't and should not do it alone. Indeed, we do need that coalition, particularly of people in the region who have the most direct interest and stake in the outcome. We need them to come to the table and help too.

Finally, I urge him to explain what his strategy is and how U.S. operations in Iraq and Syria fit within the broader role on radical Islamic terrorism. If the President gave such a speech—and I hope he does—I hope it is followed with true negotiations and deliberations and consultation with Congress. I know Minority Leader PELOSI and Majority Leader REID and the Republican leader of the Senate, Senator MCCONNELL, and Speaker BOEHNER and Majority Leader KEVIN MCCARTHY are visiting with the President perhaps as I speak. Maybe that is just the beginning of the kind of consultation that should take place. But I hope it is followed on by true collaboration and consultation with all Members of Congress so that we as Americans can come together and do what is in our national interests. But we can't do it without leadership, and we don't do it without a strategy to accomplish that goal.

I think in the process the President could inject some much needed clarity and direction into a foreign policy that has become hopelessly muddled and aimless.

I yield the floor.

The PRESIDING OFFICER (Mr. MANCHIN). The Senator from Illinois.

FOREIGN POLICY

Mr. DURBIN. I am going to give a brief statement about corporate inversion, but before I do I wish to respond to the Senator from Texas, who is my friend, and we have served together for many years. He has taken the floor for a period of time and spoken about some of the problems facing this Nation at home and abroad and has been largely been critical of the President in both categories. I didn't arrive early enough to hear his parade of horribles when it came to domestic policy; I just caught the end of it when he suggested there was something wrong with this President because America's labor force, its workforce, is shrinking. People are giving up looking for work. Well, that is a serious concern, and we ought to ask a question: Why are they giving up looking for work? It turns out it has, perhaps, something to do with the policy of our government, but it also has something to do with the life expectancy of Americans.

I am a little older than the Presiding Officer, and I just barely missed what we call baby boomers. Baby boomers are those born after World War II when the returning soldiers and their wives and spouses sat down and said: We are going to build a family. And they did. A lot of kids were born in America. It was called a baby boom.

Guess what. Baby boomers are facing retirement age. The workforce is shrinking because they are retiring. I would like to blame Barack Obama for that, but I think maybe that is a stretch. I don't think you can blame him for the baby boom. He wasn't even around after World War II, and he certainly can't be blamed because people decide to retire. Longevity kind of suggests when that might happen.

But still in all, it is another one of the things that is ticked off: The shrinking labor pool is an indication of the failure of the Obama labor policy. No. It is an indication of the shrinking baby boomers, who are aging out and retiring—and God bless them; they are entitled to it. Folks ought to think twice about that particular criticism.

I would like to address the foreign policy side, and I do wish to put in perspective what the Senator from Texas had to say, which was a long list—going all across the world—of problems this President has either failed to fix or has created.

I listened carefully, and I always do, because critics of the President have every right to do that. That is part of democracy. But they also bear some responsibility to suggest what we should do as an alternative. Many of them said we have to be more manly, we have to stand up, and we have to show the world we are assertive. What does that mean? What are they saying?

What the President is saying is that we have to be careful that we invest American lives, American treasure, and the American military in this world in places where we can make a difference and take care not to do, as they said inartfully, stupid stuff by sending our military into places where they cannot achieve their goal and reasonably come home in a short period of time. That is the President's position.

I have not heard those on the other side be more specific when they say we have to be more assertive in America.

The date was October 11, 2002, on the floor of the Senate—and I was here. It was 12 years ago, and it was the night we voted on giving President George W. Bush the authority to invade Iraq. The rollcall took place late at night, and I stuck around afterward. There were about three or four of us left on the floor. In the final rollcall there were 23 Senators who voted no on the invasion of Iraq. I was one of them. There was 1 Republican, and the rest were Democrats—1 Independent and 21 Democrats, I should say. Twenty-three of us voted no on invading Iraq. Twenty-three of us questioned whether being assertive at that moment in history was the right thing to do. Remember, we were told about weapons of mass destruction and threats to the United States. Some of us were skeptical. The case had not been made. But we went forward.

I would like to make a note as well that even though there was a difference of opinion about the policy of Iraq under President George W. Bush after the decision was made to go forward, many of us who voted no joined in with those who voted yes to say: Now that we have made the decision, we stand together as a nation. We are going to provide for President George W. Bush the resources for these men and women in uniform so they can accomplish their mission and come home safely.

In other words, partisanship ended at the water's edge after we had made our decision. I still think that is the right course in foreign policy. Even though I voted against that war, I voted for the resources for the troop to execute it.

I thought: What if it were your son, Senator? What if it were someone you loved? Do you want them to have everything they need to get them home safely?

Of course.

I wish that longstanding tradition in Congress would return. Wouldn't it be healthy and inspiring if after a heated debate over a foreign policy issue we said: Now we stand together. The decision has been made. We are going to stand as a nation.

But instead what I hear from the other side when it comes to foreign policy issues: We are going to be critical

of whatever he does, whenever he does it, wherever he does it.

I don't think that is constructive. I don't think it speaks well of the United States. The debate is important. The debate is part of us, part of who we are as a democracy. But after the debate, let's get on with working together.

Do you remember that it wasn't that long ago when they discovered chemical weapons in Syria? The President said: This isn't just a threat to Syria; this is a threat to the Middle East and beyond. I am going to make a stand to dismantle those chemical weapons in Syria, and I ask Congress for the authority not to send in troops but, if necessary, a missile, a bomber, a fighter plane to support our efforts to eradicate this chemical weapons stockpile.

Do you remember what happened? I do. What happened was we had a debate in the Senate Foreign Relations Committee and a vote—a bipartisan vote—which supported the President. Then we couldn't bring it to the floor because there was not adequate support from the other side of the aisle to stand by the President when it came to dismantling chemical weapons in Syria. He went forward, working then with Russian leader Vladimir Putin, and basically all of those weapons have been dismantled. When the President asked for the authority to dismantle those weapons, he couldn't get the support of the other party. That was the reality.

Now we face a new challenge, and there are those who say that if we had just been bold and assertive—and I wonder if what they are saying is if we had just shown the strength we showed with the invasion of Iraq, this might not have occurred.

Make no mistake. I am honored to chair the Defense Appropriations Subcommittee. It is the biggest. Our budget is just under $600 billion a year. It is almost half of domestic discretionary spending. I have come to learn that our military is really the best in the world, starting with the men and women who serve but way beyond that—our technology, our intelligence. We have the very best, but we have learned the hard way that even the best military in the world can run into obstacles they did not anticipate.

The first time I went to Walter Reed, I visited with a disabled Iraqi veteran. He was a sergeant from Ohio who had his right leg blown off below the knee.

I said: What happened?

He said: It was an IED.

I said: What is that?

He said: Well, it is an explosive device, roadside bomb. And we were in the best military equipment in the world, and this crude roadside bomb went off and blew off my leg.

I thought to myself: I wonder, if the greatest military in the world with the greatest technology in the world can be brought to a stop by a crude roadside bomb, if we are properly evaluating war today, fighting terrorism today.

What the President is trying to do is to find effective ways to stop this onset of terrorism in the Middle East, this new round of terrorism in the Middle East, this group called Islamic State.

Why are we picking this group out of all the other terrorist groups—and there are many of them. They are quantitatively, qualitatively different. They are the first terrorist group we know that has taken and held territory. Usually terrorist groups set off a bomb in the marketplace and they are gone. No, they take and hold territory. They capture banks—go inside and take all the resources out—so they have a treasury. Some people think they earn as much as $1 million a week off the oil wells they are controlling in Iraq. They use American equipment that has been left behind or stolen, and they engage in the worst level of savagery we have seen in modern times. The beheading of those two innocent Americans was heartbreaking—heartbreaking in one respect as I thought about their poor families and what they face, but it also enraged me to think that this group, the Islamic State, would do that to two innocent Americans, defying us and saying to us: This is just the beginning. It is a serious threat, and it is a threat to the stability in Iraq.

Here we are 12 years after we invaded Iraq, after we have lost 4,476 American lives in Iraq, after 30,000 of our troops have come home seriously injured, after we put $1 trillion more on our national debt to pay for the Iraqi struggle, and the country is virtually in chaos.

The President is saying to the American people: I want to fight terrorism, I want to do it effectively, and I want to do it smartly. I want to do it in a way where we are not sending in troops who are there for long periods of time to just be targets for terrorists. Let's use our resources and our forces in a thoughtful way.

I am awaiting a speech tomorrow night because I want to hear, as he lays this out, what he hopes to accomplish, how long we are going to be there, where we are going to be, and by what authority he is moving forward and using these military resources. Those are all legitimate questions, and it is right for the loyal opposition to raise questions about where he is going, why he is going, and what he wants to do. But for the time being, I think the American people want the President to present his case and then make their judgment as to what is fair to bring stability to this critical part of the world.

CORPORATE INVERSION

Mr. DURBIN. Mr. President, when a company moves its corporate headquarters overseas, but only on paper so it can avoid paying its fair share of U.S. taxes, these companies , are called corporate inverters. But let's call them what they really are: corporate deserters.

These companies profit using roads and bridges built with American tax dollars to deliver goods to U.S. customers. They benefit from access to America's educated workforce . . . American investments in basic research . . . and American patent protections. And some have even made millions, if not billions, of dollars from taxpayer-funded government contracts and programs like Medicare.

But when it comes time to pay their fair share of U.S. taxes—the very taxes that pay America's roads and bridges . . . our colleges and universities . . . basic research . . . patent protections . . . Medicare . . . and other competitive advantages—these companies do everything they can to dodge U.S. taxes. And they have gotten very good at shirking their fair share.

Let me tell you how this corporate ''Three Card Monte'' works. First, a company in the U.S. purchases a company in Switzerland, Ireland or another country with a lower corporate tax rate. The U.S. company then files papers saying it is relocating overseas.

In many cases, almost nothing changes. The CEO and other senior executives stay in the U.S., no new headquarters are opened overseas, and up to 80 percent of the shareholders are the same, but suddenly the company gets a huge tax break.

But this is only the beginning of the story. Next, the new parent company—headquartered overseas—shifts the debts off its own books and onto the books of its U.S. subsidiary. Abracadabra: Another huge tax break, because the company can write off its debt and interests on that debt. This is called ''earnings stripping.''

Now, here is the third card in the Three Card Monte: the hopscotch loophole. U.S. corporations currently have nearly $2 trillion in foreign earnings stashed overseas. As long as they keep that money parked overseas, they can defer paying taxes on it.

But when a company ''inverts,'' the inverted company—the corporate deserter—can access the millions—sometimes billions—of dollars they I have parked overseas without paying US taxes on the money. So the ''hopscotch loophole'' gives these corporations another massive tax break. The inverted company can use the money it had parked overseas to pay back the loans it used to finance the inversion . . . or to pay dividends to U.S. investors—and pay little to no taxes.

Let me give you an example. Let's say a U.S. company wants a big tax break by inverting and purchasing an overseas company.

It doesn't have enough cash in the U.S. to buy the overseas company and it doesn't want to use the money it has stashed overseas—because once the money comes home, it is subject to U.S. taxes. So what does the corporation do?

First, it gets a short-term loan from a bank to fund the inversion. Once that transaction is complete, the company can use the money it has stashed overseas to pay off the short-term loan while dodging U.S. taxes on those overseas profits.

The result of this corporate Three Card Monte? Corporate deserters are able to avoid billions in U.S. taxes—and other folks—families and companies that are working hard to make it in America—have to pay more taxes. To add insult to injury, some of these corporate deserters have made their millions and billions off of federal contracts paid for by U.S. taxpayers—the very taxpayers who will have to pay for their tax dodging.

I'm not the only person who thinks this is wrong. Mark Cuban is a billionaire investor. Listen to this warning he tweeted to corporate deserters—quote: ''If I own stock in your company and you move offshore for tax reasons I'm selling your stock.''

Why did he say that? Because when companies move off shore to save on taxes, American workers and companies that stay in America, that believe in America, have to make up the shortfall.

That's not right, it's not fair, and we should take action to stop these corporations from dodging taxes and taking advantage of earning stripping and hopscotch loopholes.

REDUCING CORPORATE TAX RATES NOT A SOLUTION

Many of our Republicans colleagues point to our broken tax code and say if we just reduce the corporate tax rate, it will stop companies from inverting.

They are wrong, plain and simple. Absolutely, our tax code is broken and Congress should reform it. We should close loopholes that allow some to avoid paying their fair share of taxes. We should fix the tax system so it works for hard-working Americans and for companies that want to help America succeed.

But let's not try to fool people into thinking that if we just lower our corporate tax rate the deficit will disappear and all of our economic challenges will be solved. There is no realistic tax reform proposal that would reduce U.S. tax rates to compete with Ireland, which has a tax rate of 12.5 percent, or Switzerland, with its 17 percent corporate tax rate.

This is a race to the bottom the United States can't win and should not be lured into entering.

Instead, we should immediately act to stop companies from inverting and then we should get to work on reforming our tax code. Before a doctor can perform heart surgery, she or he first has to stop the bleeding and that is what we need to do.

There are at least a dozen companies that have announced they are inverting or are considering inversion. We should act now—either through Congressional or executive action—to close the tax loopholes that allow inverters—these corporate deserters—to avoid their fair share of taxes and push their tax obligations off onto the rest of us. Once we stop the bleeding, we can turn our attention to real tax reform where and a long-term, comprehensive solution.

Senator LEVIN's bill would stop the bleeding by placing a 2-year moratorium on many inversions. Only inversions where no more than 50 percent of the shareholders remain the same after the inversion would be allowed to go forward.

We should also limit the damage caused by inversions by limiting the practice of ''earnings stripping''—that's the tax-lawyer's trick where you load all the debt onto the U.S. subsidiary and then write off the debt and the interest payments as a tax deduction.

That is the purpose of a bill I am introducing tomorrow (Wednesday) with Senator SCHUMER. Our proposal would prevent certain corporations from taking excessive interest deductions and sticking U.S. taxpayers with the tab.

Our bill would reduce the cap on interest deductions from 50 percent of adjusted taxable income to 25 percent. It would eliminate the ability of a company to carry forward any excluded interest.

It would also require the IRS to preapprove related-party transactions for up to 10 years after these companies move their headquarters overseas to ensure greater transparency.

This bill is a targeted approach to a serious problem.

I urge my colleagues to support the bill.

There's more we need to do. I plan to work with my colleagues to develop a more comprehensive proposal to address both earnings stripping by foreign corporations and the hopscotch rule.

Foreign corporations should not be allowed to load up the U.S. subsidiaries with debt and expect U.S. taxpayers to pay their debts. Inverted corporations should not be rewarded with additional tax breaks by dodging taxes on their profits earned overseas.

These two proposals, along with Senator LEVIN's Stop Corporate Inversion Act, must be part of any comprehensive tax reform proposal.

Before I close, let me mention one other issue.

Some of the very companies that move their headquarters overseas in order to avoid paying their fair share of U.S. taxes then have the nerve to come back to the U.S. with their hand out asking to profit from U.S. government contracts.

Yes, that is right. Over the past 5 years, these corporate deserters have received $1 billion in federal contracts paid for by U.S. taxpayers, while avoiding U.S. taxes. This has to stop.

That is why I introduced a bill with Senators LEVIN and JACK REED to ban federal contracts for these corporate deserters. There is a companion bill in the House that is sponsored by Representatives DELAURO, DOGGETT and SANDER LEVIN.

This isn't a new idea. In 2008, Congress prohibited inverted corporations from obtaining any Federal contract under the annual appropriations bills, and for the most part this ban has worked.

But these companies found a loophole. That is why they pay their tax attorneys and advisors the big bucks—to find the little loopholes worth billions of dollars. We need to close this loophole so that corporate deserters aren't able to profit from taxpayer-funded government contracts.

About 50 companies have inverted in the last decade. Another dozen companies—including three headquartered in my State of Illinois—have announced that they are planning or considering inversion. If these companies want to renounce their corporate citizenship, that is their choice. I think It is a bad choice, but it is their choice.

But they should not expect American workers and other American companies to pick up the tab for them while they take advantage of all that America offers. That is not a free market. That is freeloading.

This isn't a partisan issue. Every inversion increases the burden on you and me to make up for the lost tax revenue.

I look forward to working with my colleagues on both sides of the aisle and the President to address this important issue.

It was about 2 weeks ago that I was in central Illinois and I was heading to a forum for Senate candidates. It was put on by the farmers in downstate Illinois. I have a lot of friends there. We went off to a farm, and before we arrived I had an extra 45 minutes. I hadn't had lunch. So we were driving around Bloomington-Normal, IL, in McLean County.

I said: Let's stop and get a sandwich somewhere.

My driver said: Well, there is a Burger King.

I said: No, thanks. There is a Steak 'n Shake—which happens to be a franchise we are very proud of in the Midwest and in Illinois.

I consciously decided not to stop at Burger King. Why? Because in the past several weeks Burger King has consciously decided they are leaving the United States. This iconic hamburger chain—second largest in the world—has bought a doughnut chain in Canada, and now they want to move their headquarters to Canada from Miami, FL. Why would they move their corporate headquarters out of the United States of America, where they have most of their restaurants? To cut their taxes. It is called inversion.

If you can pick up and on paper move your corporation to Switzerland, Ireland, the island of Jersey, Canada—you name it—there are ways that accountants and lawyers have figured out how to reduce your tax burden. But, of course, as companies decide to do that, they are also making conscious decisions to stop paying U.S. taxes or avoid paying U.S. taxes—at least some part of them.

We have seen a lot of companies announce this. AbbVie, which is a pharmaceutical company in the northern

suburbs of Chicago, used to be Abbott Laboratories. AbbVie has decided they want to move overseas.

I took a look at it and thought for a moment: Interesting. A pharmaceutical company wants to move overseas.

How important was the United States to the success of a pharmaceutical company such as AbbVie, to the fact they developed drugs and products that were profitable? How important was this country to that company? I would say critically important. Companies don't usually come up with all the ideas for new drugs. They rely on the National Institutes of Health, the premier biomedical research agency in the world. The annual budget is in the range of $31 billion, and they do research which they then turn over free of charge to pharmaceutical companies to develop drugs to make money. The National Institutes of Health is supported by American taxpayers.

If a pharmaceutical company develops a new drug they think has the potential to be a blockbuster and sell a lot, there is another step. They have to go to the U.S. Food and Drug Administration, and the FDA tests it.

If at the end of testing they come up with the conclusion that it is not only safe but effective for what it is being used for, they give it a seal of approval. It is the gold standard of safety of pharmaceuticals. The Food and Drug Administration is supported by the U.S. Government and American taxpayers. Then it is not over. There is at least one last stop. You go to the patent office to make sure you protect your intellectual property, this pharmaceutical formula. The U.S. patent office is supported by the government and U.S. taxpayers.

So here is a pharmaceutical company using research, using testing, and using protections of patents from our government that says: Incidentally, we are leaving. We don't want to pay taxes to this government. We want to reduce our tax burden to this government.

There is something wrong with this picture. Mr. President, 49 or 50 corporations have done it, and more are threatening. Take Burger King. The sale of hamburgers does not involve a great deal of research, but the product that you are cooking at your store has been inspected for safety by the U.S. Federal Government. And the place where your store is located probably is on a highway or street supported by our government.

But then there is one other element. The people who work in fast food in America are not usually paid a lot of money. Their income is supplemented by government programs such as food stamps. It turns out to the tune of about $7 billion a year. That is what taxpayers in America pay to subsidize the income of workers in fast food restaurants. So here is Burger King that is using the largess, protection, rule of law in the United States to do their business, counting on our government to step in and supplement the income of the person frying the hamburgers and serving it, and saying: Incidentally, we are leaving; we don't have any obligation to this country to pay taxes; we are going to Canada—on paper.

There is something wrong with this picture. To me, if you are going to desert this country as a corporation, consumers first ought to be aware of it. That is why I drove past Burger King. I do not care to do business with a company that does not think it owes its fair share of taxes. Because if they do not pay their fair share of taxes, other good American companies will be forced to pay more and other individuals will too.

So it is right for us to speak up now about this process of inversion and bringing it to an end. It is not just a matter of escaping taxes. There are accounting techniques. There are countless techniques which these inverted corporations can use to even reduce their corporate taxation more.

Some people say the U.S. corporate income tax is too high. The nominal rate is 35 percent. The effective rate is closer to 25 percent, and the major corporations pay in the range of 10 to 15 percent. When you look at the countries they are going to—Ireland, I believe their corporate income tax rate is 12.5 percent; the Cayman Islands, zero. So we cannot play it to the lowest denominator, play to the bottom line, the bottom corporate income tax. It is a lose-lose situation.

What we have to do is to make sure that the inversion comes with a price. I am joined with Senator SCHUMER. We will put in a bill later this week to talk about this whole question of inversion as it relates to the Tax Code. It is a technical bill Senator SCHUMER has largely written as a member of the Senate Finance Committee and asked me to join him on because of my interest on the subject. It limits the practice of ''earnings stripping''—a tax lawyer's trick where you load all the debt on to the U.S. subsidiary and then write off the debt and the interest payments as a tax deduction. The bill which I will introduce with Senator SCHUMER is designed to prevent corporations from taking excessive interest deductions and sticking U.S. taxpayers with the tab. There are other parts of that bill.

I believe the Tax Code should be written in a positive fashion. It is not positive in our Tax Code to set the stage for corporations to move their jobs and headquarters overseas. In fact, we allow under our Tax Code for these corporations to deduct their moving expenses if they are going overseas. What are we thinking? Why would we create an incentive, a deduction, for taking jobs out of America? I think there is a better approach. When the time comes for tax reform—and I hope it is soon—I am going to propose that we have something called the patriot employer tax credit. Here is what it says. It is pretty simple. If your headquarters for your corporation are in the United States; if you have kept your jobs here in the United States; if at least 90 percent of your employees are paid at least $15 an hour; if you have good health insurance, according to the standards of the Affordable Care Act; if you will contribute at least 5 percent of your employees' earnings toward their retirement; and if you will give a veterans preference, we will give you a tax credit.

We want to reward—we should reward—and incentivize companies that build their future in America, companies that believe in America, companies that pay a decent wage in benefits to the people who work for them.

That is what should be in the Tax Code. Let's start incentivizing job building and job expansion here in the United States. Let's stop these deductions for moving jobs overseas. And let's put an end to this corporate inversion.

These folks have to realize we are not going to stand still for them gaming the Tax Code to avoid their responsibility to the country which, by and large, created the success of most of their corporations.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Mr. President:

> Attention all citizens. To assure the fairness of elections by preventing disproportionate expression of the views of any single powerful group, your Government has decided that the following associations of persons shall be prohibited from speaking or writing in support of any candidate. . . .

This is a statement that I have taken directly from a dissenting opinion issued by Associate Justice Antonin Scalia in a case called Austin v. Michigan Chamber of Commerce—a 1989 ruling of the Supreme Court of the United States.

The concern expressed in that dissenting opinion, the opening line of which I have just read, comes to mind when we review the legislation in front of this body right now, S.J. Res. 19—an attempt, a wholesale effort to repeal the First Amendment of the United States, to undo its most fundamental protections, protections that protect the right of every American to speak out on issues of public concern, to try to influence the outcome of elections, to try to dictate the course of our entire country.

Now, fortunately, this precedent that Justice Scalia was expressing concerns with was overruled. It was overruled in a case called Citizens United, which has itself become the target of S.J. Res. 19. In other words, because the Constitution has now been properly interpreted to protect the right of the American people to join together and form voluntarily associations and to use those associations to try to influence the outcome of elections, my colleagues across the aisle have decided—rather than to follow the Constitution

to change it, rather than to follow its dictates to get rid of those portions that would interfere with the power of government—this is something we cannot tolerate, this is something we cannot ignore, this is something that we must do something about, and we have to do it today.

As Justice Scalia explained in his dissent in the Austin case, this principle, this type of approach whereby we allow the government to limit the expressive capabilities of the American people, to limit the ability of the American people to form voluntarily associations and speak out on matters of public concern, is utterly contrary not only to our case law but to the text of the First Amendment, and it is inconsistent with the absolutely central proof underlying the First Amendment. The idea here is that government cannot be trusted to assure through censorship—and make no mistake, that is what this is about, censorship—the ''fairness of political debate.''

So we are here ostensibly to debate the relative merits of S.J. Res. 19, which would up end well over two centuries of understanding that there are certain things the government cannot do, that there are certain things that the government can never be trusted to, that the government cannot censor our speech, particularly our political speech. We are here to debate that, and yet among those who have introduced this legislation, among those who have sponsored this legislation, we have heard, if I am not mistaken, from only three today. We have heard only three speeches today.

This is a profound and disturbing message to the American people. We are trying to upend the cornerstone of American republican democracy, and yet we have had two speeches in support of it. This is something that ought to alarm us terribly.

I was pleased to hear moments ago from my distinguished colleague, the senior Senator from Illinois. I respect the senior Senator from Illinois. He and I have worked together on a lot of pieces of legislation. We have worked together most recently on the Smarter Sentencing Act, which I think is an important bipartisan attempt to reform our Federal criminal sentencing code, which is in serious need of being reformed.

I also respect the senior Senator from Illinois for some statements he made a few years ago when another amendment had been proposed. I at least respect the approach that he took in urging caution before undertaking any effort to undo, to weaken, to undermine the Bill of Rights. Here is a statement that he made on June 26, 2006: ''The Bill of Rights has served this Nation since 1791, and with one swift blow of this ax, we are going to chop into the first amendment.'' He was concerned about that.

He was concerned also when on the same day he made a similar comment, instructive here, I think, when he noted: ''It is a matter which we will likely debate the rest of this week''—the week in which he was speaking in 2006—meaning this is an urgent matter, it is a matter of great concern to the American people when we are talking about changing the First Amendment or any component of the Bill of Rights. He continued:

> The reason we are going to spend this much time on it is because this one-page document represents a historic change in America. If this amendment were to be ratified, it would mark the first time in our nation's history that we would amend the Bill of Rights [to the United States Constitution].

On the same day he also said:

> It takes a great deal of audacity for anyone to step up and suggest to change the Constitution. . . . I think we should show a little humility around here when it comes to changing the Constitution. So many of my colleagues are anxious to take a roller to a Rembrandt.

I could not agree more, especially when we are talking about not just freedom of speech but core political speech, which is the subject of S.J. Res. 19. Make no mistake, the fundamental purpose, the most important objective underlying the free speech clause and the free press clause was to protect the right of the people to engage in political speech. And make no mistake, the purpose of this is to enhance Congress's power to restrict political speech. In fact, its entire purpose focuses on efforts to spend money to influence elections—the core of political speech.

Let's go back for a minute to the dissenting opinion issued by Justice Scalia in the Austin case I referenced a few minutes ago. He explained in that dissenting opinion that there are some things that we understandably do not want government to do. There are a lot of things we do in the Constitution that are all about outlining what the powers of government are. We explain what power Congress has, what power the President has. We explain further that powers not delegated to Congress are reserved to the States or the people.

Then we also identify in the Bill of Rights that there are certain areas that are just out of bounds for government, areas where we do not want government to tread. This is one of those areas. As Justice Scalia explained:

> The premise of our Bill of Rights . . . is that there are some things—even some seemingly desirable things—that government cannot be trusted to do. The very first of these is establishing the restrictions upon speech that will assure ''fair'' political debate. The incumbent politician who says he welcomes full and fair debate is no more to be believed than the entrenched monopolist who says he welcomes full and fair competition.

This is what we face here. This is the risk we face here. We are assured by the proponents of this legislation—that is, both of them, both of those who have shown up so far to speak in support of this—that this will still allow debate to occur. Yet how are we to believe this when what they are proposing is to expand Congress's power to limit that right to participate in an open, public debate, to undertake efforts to influence the outcome of elections and thus dictate the course of an entire Nation.

Justice Scalia concluded with the thought that, as he put it:

> The premise of our system is that there is no such thing as too much speech—that the people are not foolish, but intelligent, and will separate the wheat from the chaff.

He refutes the notion:

> . . . that a healthy democratic system can survive the legislative power to prescribe how much political speech is too much, who may speak, and who may not.

When we try to weaken this understanding, we are playing with fire. Whenever Congress attempts to expand its power—for that matter, whenever any government attempts to expand its power—it does so inevitably at the expense of individual liberty.

Here, where it tries to expand its influence over political debate, where it purports to have the ability to expand its power over core political speech, it does so—inevitably, inescapably, unavoidably—at the expense of the free expressive rights of a free people.

This is one of the main core principles upon which our country was founded. We became a nation against a backdrop in which we found ourselves subject to a large, distant, powerful national government, one headed by a king and a parliament. Our former London-based national government recognized no boundaries around its authority. It had for centuries interfered with the right of the people to express their grievances. It had for centuries supported criminal actions against persons who engaged in what they described under their laws as seditious libel. In other words, if you criticized the government—if you criticized a government official—you could be, and presumably would be, criminally prosecuted for doing so. The truth was not a defense. In fact, truth made it even worse from the viewpoint of the government, because it was more difficult to refute. So people were routinely prosecuted for criticizing the government.

We cannot—we must not—take even one step in the direction of expanding government's authority when it comes to speech that is at the core of our political system.

Look, our political system isn't perfect. Our political system isn't something that everybody necessarily is inclined to enjoy. But our political system does keep us free, and it keeps us free only to the extent that individuals are allowed to speak their mind without fear of retribution from the government, only to the extent that individuals, rich and poor alike, are able to say what they want and join together and form voluntary associations for the purpose of influencing the outcome of elections so they can have some chance at standing up to a big government that affects so many of their

rights, that affects so much of how they are going to provide for the needs of their families and their communities.

When the people are intimidated by a government that recognizes no boundaries around its authority, everyone suffers. This is an issue that is neither Republican nor Democratic, it is neither liberal nor conservative. It is simply American.

It is time for the American people to stop simply expecting Congress to continue to expand its power at the expense of their individual liberty. It is time for the American people to stop simply expecting their rights have to bow to the interests of an all-powerful incumbency in Washington, DC. It is time for the American people to expect more. It is time for the American people to expect freedom.

We expect freedom, and we will defend freedom when we defeat Senate Joint Resolution 19.

The PRESIDING OFFICER. The Senator from Virginia.

ISIL

Mr. KAINE. Mr. President, 1 month ago the President initiated an air campaign against ISIL in Iraq. ISIL is a dangerous terrorist organization committing atrocities against thousands of people, including American hostages, and a strong American response, to include military action, is certainly warranted.

In the first month of this air campaign, two explanations for the mission were given by the President. We began with a mission for humanitarian purpose and also the need to protect American embassy personnel. Since that time, the White House has stated that the air strikes may go on for some open-ended period of time. Despite a pledge not to place American boots on the ground, more American military personnel have been deployed to Iraq as advisers and are on the ground there now.

In order to clarify what is at stake and set out a path forward, many of my colleagues and I have called for the President to bring before Congress and the Nation a clear plan for defeating ISIL. I am gratified that the President will address the Nation on this topic tomorrow night.

I am supportive generally of the limited and prudent steps taken thus far, while Congress was in recess, to slow ISIL's momentum. I expect to hear a comprehensive strategy tomorrow.

I support the strong U.S. diplomatic push that has forced Iraqi government formation, and I am pleased with Iraqi political developments to form a unity government. Now Iraqi leaders must govern inclusively.

I am especially heartened by reports that the administration has worked to find a number of nations willing to partner with America to deal with the ISIL threat, including nations in the region. The United States cannot be a police force for a region unwilling to police itself. The United States should not bear the sole burden of defeating a terrorist organization that poses a more imminent threat to many other nations than the threat it does to America.

I look forward to the President's address, and I am confident that a well-thought-out plan against ISIL will compel the support of the Nation and of Congress.

We are a nation of laws but also of values. I rise today particularly to urge the President to not just inform us of what he plans to do but to follow the Constitution and to seek congressional approval to defeat ISIL. I do so for two reasons.

First, I don't believe the President has the authority to go on the offense and wage an open-ended war on ISIL without congressional approval; and, second, in making the momentous decision to authorize military action, we owe it to our troops who risk their lives to do our collective jobs and reach a consensus supporting the military mission they are ordered to complete.

Let me first deal with the legal issue. The Constitution is clear. It is the job of Congress, not the President, to declare war. Some parts of the Constitution frankly are vague and open to interpretation: What is due process? What is cruel and unusual punishment? Some parts of the Constitution are clear and specific: You have to be 35 years old to be President of the United States. The power to declare war is a clear and specific power. It is an enumerated power of Congress in article I.

The clear wording of the Constitution is additionally illuminated by writings of the principal drafter, the Virginian James Madison. In a letter to Thomas Jefferson after the Constitution was ratified, Madison explained the war powers clause in article I:

> Our Constitution supposes what the history of all governments demonstrates—that the Executive is the branch of power most interested in war and most prone to it. It has accordingly with studied care vested the question of war in the Legislature.

So a President must seek congressional approval for significant military action. As Commander in Chief, a President can always take steps to defend America from imminent threats. The Framers understood this. But even in those instances, they intended that the President return to Congress to seek ratification of such actions.

If we take the Constitution seriously, as we pledge to do when we take our oaths of office, we must follow the command that the President must come to Congress to initiate major military action.

During a congressional recess, President Obama began a new military action against ISIL. He has indicated that the military action may continue for an extended period of time. He has stated that the action is evolving from a narrow effort to protect Americans from imminent threat to a campaign to go on offense in order to degrade the ability of ISIL to cause harm. This is precisely the kind of situation that calls for congressional action and approval.

Some have asserted that the administration need not seek congressional approval for an extended campaign of air strikes. Humbly and respectfully, I deeply disagree with that assertion. The President's article II power allows him to defend America from imminent threat, but it does not allow him the ability to wage an offensive war without Congress. The 2001 Authorization for Use of Military Force, crafted by President Bush and Congress in the days after the 9/11 attacks, limits the President's power to actions against the perpetrators of those attacks. ISIL was not a 9/11 perpetrator. It didn't form until 2003.

President Bush sought a broader AUMF at that time to allow action against terrorist groups posing a threat to the United States. Had Congress granted such a power, the war against ISIL would have been covered by that AUMF. But Congress explicitly rejected giving the President power to wage preemptive war against unnamed terrorist organizations without additional congressional approval. Any attempt to justify action against ISIL by reference to the 2001 AUMF would fly directly in the face of the clear congressional action rejecting the preemptive war doctrine.

Congress passed a second AUMF in 2002 to allow military action to topple the Iraqi regime of Saddam Hussein. That task was completed long ago. American troops left Iraq in 2011, and the administration has testified recently before the Senate that the Iraq AUMF is now obsolete and should be repealed. It provides no support for military action against ISIL. There is no treaty of collective defense ratified by Congress that would justify the President commencing military action against ISIL. The Iraqi Government has asked for our help, which solves international law sovereignty questions, but that request does not create its own domestic legal justification.

Finally, the 1973 War Powers Resolution creates a set of timing rules for Presidential action and congressional response in matters of war. The resolution has been widely viewed as unconstitutional for a variety of reasons. But even accepting its validity—and the President, like most, almost certainly does not accept its 60-day limitation on his article II powers—it does not change the basic constitutional framework vesting the declaration of war in the legislative branch.

I believe a reluctance to engage Congress on this mission against ISIL is less due to any legal analysis supporting broad executive power than to a general attitude, held by all Presidents, that coming to Congress on a

question such as this is too cumbersome and unpredictable. That attitude is shared on the Hill by some who view questions of military action, especially in a difficult circumstance such as this, as politically explosive and best avoided, if at all possible

I urge the President and my colleagues to resist the understandable temptation to cut corners on this process. There is no more important business done in the Halls of Congress than weighing whether to take military action and send servicemembers into harm's way. If we have learned nothing else in the last 13 years, we should have certainly learned that. Coming to Congress is challenging, but the Framers designed it to be so, and we all pledged to serve in a government known for particular checks and balances between the branches of government.

Remember in the days after 9/11, whose anniversary we commemorate this week, the President brought to Congress a request for military action. The ruins of the Pentagon and the World Trade Center were still smoking and the search for the lost was still ongoing. Certainly the American public would have supported the President's strong and immediate Executive action in that circumstance, but President Bush knew that the Nation would be stronger if he came to Congress to seek authority. Similarly President Bush came to Congress prior to initiating military action in Iraq. So many painful lessons were learned in the aftermath of that authorization, but it is important to remember that it was not a unilateral Executive decision but Congress was included and voted to support the mission.

I believe it would be a grievous mistake after 13 years of war to evolve toward a new strategy of taking prolonged military action without bothering to seek congressional approval, and I particularly worry about the precedent it would create for future Presidents to assert that they have the unilateral right to engage in long-term military action without the full participation of the people's legislative branch. As President Obama said last year when announcing that he would come to Congress to seek military authorization to combat the use of chemical weapons in Syria:

> This is not about who occupies the office at any given time, it is about who we are as a country. I believe the people's representatives must be invested in what America does abroad . . .

Mr. President, I focus my remarks on the legal reasons for the President to engage Congress on any plan to defeat ISIL.

Let me conclude by offering an additional reason—even a more important reason—about why the President and Congress should work together to craft a suitable mission for this important effort. When we engage in military action, even only an air campaign, we ask our troops to risk their lives and their health—physical and mental. Of course we pray for their complete safety and success, but let's be realistic enough to acknowledge that some may die or be injured or be captured or see these things happen to their comrades in arms. Even those who come home physically safe may see or do things in war that will affect them for the rest of their lives. The long lines of people waiting for VA appointments today or hoping to have their VA disability benefit claims adjudicated are proof of this.

In short, during a time of war we ask our troops to give their best, even to the point of sacrificing their own lives. When compared against that, how much of a sacrifice is it for a President to engage in a possibly contentious debate with Congress about whether military action is a good idea? How much of a sacrifice is it for a Member of Congress to debate and vote about whether military action is a good idea? While Congressional Members face the political costs of debate on military action, our servicemembers bear the human cost of those decisions. If we choose to avoid debate, avoid accountability, avoid a hard decision, how can we demand that our military willingly sacrifice their very lives?

So I await the President's address on the real and significant threat posed by ISIL with a firm willingness to offer support to a well-crafted military mission. I believe the American public and this Congress will support such a mission. It is my deepest hope that we have the opportunity to debate and vote on the mission in the halls of Congress as our Framers intended and as our troops deserve.

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

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I am glad I had the opportunity to be on the floor today to hear the remarks of the Senator from Virginia. All of us look forward to the President's remarks tomorrow night. I am going to reserve my comments because of the seriousness of the subject and out of respect for the Office of the President until after the President addresses the Nation. But I would say this. Having heard the Senator from Virginia, I hope the President and his advisers listened carefully to what the Senator from Virginia said. None of us want to see another military adventure in the Middle East. As in Virginia and West Virginia and Tennessee, we have had thousands—tens of thousands of Tennesseans who have been in Iraq and Afghanistan three, four, five, or six times on tours of duty. But this ISIS threat is a different kind of threat to civilization, and very well could be a threat to the United States. It requires a response. It requires the President's leadership. He is the Commander in Chief, and it is his job to lay out for us a firm and clear strategy for, in the words of his administration, how we will defeat and destroy this new movement.

In thinking about whether to come to the Congress, I think it is useful for the President to think back to the first President Bush and the decision he had to make. I was in his cabinet. I came just about that time and the idea of a ground war in the Middle East was a shocking thought. We had not had something like that in this country for a while, and the President was reluctant at first to come to the Congress to seek approval for that, but he did it. And he said after he had done it that in retrospect he was glad he did. What did he gain?

Even though it was a contentious debate and the margin of the vote wasn't large, it gave a clear signal to the world that we were united as a country against the threat at that time. It gave a clear signal to the country that regardless of party we were united with the President of the United States on what he saw as an urgent mission for our country. As a result of that, he had an enormously successful operation. It was well planned, funded by other countries, primarily, and had a limited objective. They got to the gates of Baghdad, the objective was realized, and we came home. I think the fact that the President sought the advice of Congress was a part of that.

In this case I think this President would find in this body careful listeners to what he has to say, a willingness on both sides of the aisle to consider his strategy, and a willingness to support a carefully crafted plan to meet his objectives. This is not Libya, this is not Grenada, and this is not Panama. This is at least 2 or 3 years. Any time our country is expected to have a military action especially in the Middle East again, it needs to have the full support of the American people, and that starts here.

So I will wait until Wednesday night to hear what the President has to say, but the Senator from Virginia has given some very careful and reasonable advice, and I hope the President and his advisers will consider that very carefully.

I am here today to speak on another subject. I am here today because Senate Democrats want to amend the Bill of Rights—at least 48 of them do. Forty-eight of them want to say: Let's amend the United States Constitution and the free exercise clause of the First Amendment. Let's amend the guarantee of free speech. That is an extraordinary development.

If passed, Senate Joint Resolution 19, which is the subject on the floor today, would give Congress and State governments the power to decide which Americans can speak in elections, what they can say, when they can say it, and how they say it. This measure would gut the free speech provisions of the First Amendment. It is a shocking proposal—a shocking proposal made even more so by the fact that it is supported by 48 Democratic Senators and President Obama. I wonder if any of them have taken the time to see the writing

on the wall of the Newseum down the street. In big bold letters carved into the concrete it says: ''Congress shall make no law . . . abridging the freedom of speech . . . '' That is in the First Amendment to the United States Constitution.

Our Founders passed the Constitution, and they said, well, we forgot to do the Bill of Rights. So they came back with the Bill of Rights, and this is in the First Amendment. Free speech is one of the defining characteristics of liberal democracies worldwide. No country has embraced free speech and protected it as much as has the United States of America. Other countries look to us as a model for this remarkable freedom. So why would anyone attempt to amend the Constitution, amend the Bill of Rights, and change the free speech clause in the First Amendment?

When we look at the Democratic leadership in the Senate we see a pattern of using a gag rule to silence Senators who were sent here on behalf of the people who elected them to represent their views. The majority leader has prevented Tennesseans, for example, from having their say through their Senators, their elected officials, for years now, by using the gag rule in this body to keep amendments from being considered and voted on. Senators have listened to their constituents and proposed amendments on ObamaCare, taxes, the National Labor Relations Board, Egypt, Iran, Iraq, etc., and they are told by the Democratic leadership that they won't get votes. I have said on this floor many times, it is like being invited to join the Grand Ole Opry and not being allowed to sing.

But the consequences are much more serious than that. It is not just my amendment or my colleague Senator CORKER's amendment, and it is not just Tennesseans' amendments. It is the voters of every State who sent us here to have a say on their behalf. Senator BARRASSO from Wyoming has counted that since July of 2013, last year, only 14 Republican amendments and 9 Democratic amendments have received votes. That is an astounding number. There are 100 Senators here representing more than 300 million Americans. This is said to be the world's greatest deliberative body. The new book ''The American Senate'' describes this body, saying: ''This is the one authentic touch of genius in the American political system.'' What makes it ''the one authentic touch of genius in the American political system'' then? It is that you take a difficult message or a difficult bill, you put it on the floor, and you talk about it and you talk about it, and you debate it, and you amend it, until finally you say that is enough and 60 of us say it is time to cut off debate. Let's vote and have a result.

Yet in a year's time there have only been 23 amendments to legislation that have received votes. Some Members of this body who are running for re-election and have never had a vote on any amendment they offered on the Senate floor. Someone might well ask, well, what have you been doing?

Then this summer the Democrats extended the gag rule from the Senate floor to the Senate committee rooms. The bills of some members of the Appropriations Committee, on which I serve, were indefinitely postponed because the Senate leadership wanted to avoid difficult votes on those amendments—no vote on clean water, no vote on energy, no vote because it was a difficult vote.

Now in this provision Democrats and the President are trying to extend the gag rule to the free speech clause of the First Amendment. What this proposal would do is give Congress the power to silence the groups or organizations that threaten their reelection. For example, the government could tell a gun owner in Johnson City, TN, that he or she cannot spend money to advocate in defense of Second Amendment rights if that speech falls too close to an election and threatens to influence the campaign of incumbents. Or similarly, Congress might tell Tennessee Right to Life: You cannot advertise to protect the rights of the unborn. Congress could decide that such speech should be restricted or prohibited because incumbents fear it is really an endorsement of a candidate for political office.

Also incumbents could seek to stop new political movements like the tea party by placing unachievable conditions on their ability to raise and spend funds on behalf of candidates they support. They can do this under the guise of protecting donors by saying you can't receive donations unless you've been successful in a previous election or you have a real chance of being successful in the future. The decision of whether a new political movement is politically viable would of course be made by their political competitors. Or Congress might criminalize expenditures by organizations like the U.S. Chamber of Commerce, who might oppose a plan by Senate Democrats to increase the minimum wage on the grounds that the funds spent by the U.S. Chamber of Commerce are the equivalent of attack ads against Democratic candidates in tight reelection races.

Who might be exempt from this gag rule on free speech? Well, freedom of the press—that is mentioned in the amendment. And who would freedom of the press be? Who might this be? Well, it would be billionaires who could buy television stations, billionaires who could buy a newspaper and buy any form of this new media that we see around us. So ordinary Americans could have their ability to advocate their views restricted, but billionaires could buy TV stations or buy a newspaper or buy any form of media and say whatever they think. Those are the people exempt from the gag rule proposed by the Democrats.

What about millionaire candidates? It has been considered by the Supreme Court and by all who looked at it that while Congress might put rules on raising from others that it could never place on spending your own money. So we have candidates running for President, running for the Senate, who spend their own money. So we might not be limiting the millionaire candidates to the Senate and their right to free speech. We might not be limiting the billionaire owners of television stations and newspapers and their right to free speech, but ordinary Americans would have a gag rule. So the gag rule that began on the Senate floor and went to the Senate hearing rooms would now be applied by Congress to the ordinary Americans across this country. The Founders would never have imagined that. They passed the First Amendment to protect against this very concern—that government censors would tell ordinary Americans what they can and cannot say.

President Harry Truman, who liked to exercise a lot of free speech himself, warned about this in a message to Congress on August 8, 1950. He said:

> Once a government is committed to the principle of silencing the voice of opposition, it has only one way to go, and that is down the path of increasingly repressive measures until it becomes a source of terror to all of its citizens and creates a country where everyone lives in fear.

That is President Harry Truman.

That is not a description of this country. That is not a description of America. That is a description of our enemies.

Look through our history. How would this law apply in our history? What about Harriet Beecher Stowe before the Civil War, writing ''Uncle Tom's Cabin?'' Maybe she would want to buy an ad in the local newspaper saying: Mr. Lincoln is a nice man. Read my book. The State might not like that. They might like holding slaves. They might not like what she says and what she wants to advertise.

What about Thomas Payne at the beginning of our country's history writing ''Common Sense''? Would a law such as this apply to his tract—the 1 he published or if he published 10 or if he published 20?

Taken to its logical conclusion, this proposal could be used by a Congress or a State to ban books, to ban writings. It is shocking that we are standing here today and debating such a proposal. It is not surprising that so few from the other side of the aisle are streaming through the door and standing on the floor—as the Senator from Utah mentioned—to defend this proposal.

Every American ought to be concerned about this proposal to amend the Bill of Rights and the free speech clause in the First Amendment. They should be deeply concerned that the Senate majority leader and his gag rule have effectively silenced their elected representatives here in the Senate, and now he wants to silence them.

I thank the Presiding Officer.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I rise today, as I have for many years, to urge my colleagues to fix our Nation's broken campaign finance system. I do so after much deliberation and consideration of a series of Supreme Court decisions and the explosion of undisclosed and potentially unlimited campaign spending that has Americans of all political backgrounds concerned. Indeed, I remember when this was an issue that brought Republicans and Democrats together, and I was proud to support Senator MCCAIN's efforts at campaign finance reform.

Unfortunately, the recent Supreme Court decisions, such as Citizens United and McCutcheon, have given more than the mere appearance that money—and corporate money at that—has a louder voice than everyday Americans. Indeed, Justice Breyer wrote in his McCutcheon dissent that ''taken together with Citizens United . . . [McCutcheon] eviscerates our Nation's campaign finance laws, leaving a remnant incapable of dealing with the grave problems of democratic legitimacy that those laws were intended to resolve.'' In my view, these misguided decisions by a slim majority of the Court have allowed spending on political campaigns to get out of control.

There is a pervasive and corrosive view of politics felt by too many in this country that their ability to express their concerns and wishes to their elected officials is being crowded out by narrow interests and campaign funds. Rhode Islanders don't want their voices drowned out by unlimited money with little or no transparency or no disclosure on where that money comes from.

In order to have a broad-based democratic system, we need reasonable campaign finance laws which ensure that those with large financial resources cannot drown out the voice of everyday Americans. That is what this constitutional amendment we are seeking to debate is all about.

The system is broken, and as much as individual candidates can pledge to provide more disclosure or take other steps to increase transparency, that is not the solution to fixing the problem. We need to give Congress and the States the ability to set reasonable rules for all candidates.

The constitutional amendment we are considering today does three straightforward things:

First, in order to advance democratic self-governance and political equality, it gives Congress and the States the power to regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.

Second, it grants Congress and States the power to enforce the amendment and to distinguish between people and corporations or other artificial entities.

Third, it ensures that nothing in the amendment could be used to abridge the freedom of the press.

This amendment doesn't create any new and specific campaign finance rules; rather, it gives Congress and the States the power to pass legislation and to distinguish between real people and legally created artificial entities, such as corporations. Whatever legislation that would be enacted pursuant to this constitutional amendment would be the result of a serious and lengthy debate in Congress and in the States. I welcome that debate, and I believe most Americans want that debate as well. It would begin a process that is so necessary to rebuild a sense of trust in our government and our electoral system.

I urge my colleagues to support this constitutional amendment to fix our broken campaign finance system by giving Congress and the States the power to reasonably regulate political spending, thereby reducing the influence of wealthy special interests. It is these same wealthy special interests that obfuscate the facts of a debate and block efforts that could give our country and our economy a shot in the arm.

Indeed, I hope we can also find bipartisan support to give more Americans the ability to have a fair shot at success. For example, we need to make college more affordable and ease the burden of student debt on millions of Americans, invest in our infrastructure, raise the minimum wage, expand job training, close the pay gap for women, boost jobs through manufacturing—and that is just for starters.

We need to pass these kinds of bills and send them to the House and urge them to act. The Senate was able to come together and pass a bill to provide relief to the long-term unemployed earlier this year, but with 9.6 million Americans still out of a job and looking for work—3 million of whom have been doing so for more than 6 months—House Republicans have refused to follow suit. It is imperative that we keep working to strengthen our economy, create jobs, and provide a fair shot for everyone.

I believe fixing the campaign finance system through this constitutional amendment will provide a foundation so we can have reasonable debate that is responsive to the interests of the American people and not responsive to the interests of a narrow class of Americans.

I urge my colleagues to take up this bill, pass it, and get on with the business of giving everyone a fair chance at success.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CRUZ. 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. CRUZ. Mr. President, at a time of extraordinary challenges across the globe and here at home, we are not gathered in the Senate to discuss how to confront the threat of ISIS. We are not gathered in the Senate to discuss how to prevent Putin's Russia from invading its neighbors. We are not gathered in the Senate today to discuss how to solve the humanitarian crisis at the border with some 90,000 unaccompanied children coming into the country this year. We are not gathered in the Senate today to discuss how to bring back jobs and economic growth, or how to correct the fact that the Obama economy has produced the lowest labor force participation since 1978—92 million Americans not working today. And we are not gathered in the Senate to discuss how to stop the disaster that has been ObamaCare, which has caused millions of Americans to lose their jobs, to be forced into part-time work, to lose their health insurance, to lose their doctors, and to see their premiums skyrocket. No.

Instead, we are gathered today in the Senate for a very different topic. The majority leader and the Democratic majority in this Senate have determined that the most important priority this Senate has, which we are spending the entire week addressing, is the proposal of 49 Democrats to repeal the free speech provisions of the First Amendment. That is not hyperbole. Typically, when Americans hear that Members of the Senate are proposing repealing the free speech protections of the First Amendment, the usual reaction is a gasp of disbelief. Could we really have entered a world so extreme that our common ground no longer even includes the First Amendment of the Constitution?

The First Amendment protects our most foundational rights. Yet, under the amendment we are debating today that 49 Democrats have signed their name to, the First Amendment would, in effect, have crossed out freedom of speech. Why? Because 49 Democrats have cosponsored a constitutional amendment that is currently on the floor of the Senate, being voted on this week, that would give Congress blanket authority to regulate political speech.

From the dawn of our Republic we have respected the rights of citizens to express their views. It is the right upon which every other civil liberty is predicated. But in the Democratic Senate of 2014, citizens' free speech rights are tools for partisan warfare.

This proposal before the Senate is, bar none, the most radical proposal that has been considered by the Senate in the time I have served. If this proposal were to pass, its effects would be breathtaking. It would be the most massive intrusion on civil liberties and expansion of Federal Government power in modern times.

Let's talk about how and why that is the case. The text of the amendment that is currently in the Bill of Rights

says, Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech. So right now we operate under a First Amendment that says Congress shall make no law abridging the freedom of speech—not some laws; not laws that some politicians think would help them politically; but no law abridging the freedom of speech is what our First Amendment says.

What would the new First Amendment say? Well, according to our Democratic friends, the new First Amendment would have two sections. The first section says, Congress and States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections. Now, ''reasonable.'' Who could oppose reasonable limits? Isn't that the essence of reasonableness? Perhaps I have forgotten my spectacles, but I don't see in the current First Amendment, Congress can make reasonable restrictions on the freedom of speech. It doesn't say that. It says Congress shall make no law abridging the freedom of speech.

What is the difference? The First Amendment is not about reasonable speech. The First Amendment was enacted to protect unreasonable speech. I, for one, certainly don't want our speech limited to speech that elected politicians in Washington think is reasonable.

There was a time this body thought the Alien and Sedition Acts prohibiting criticizing the government were reasonable. There is a reason the Constitution doesn't say let's trust politicians to determine what speech is reasonable and what isn't.

I would note the Supreme Court has long made clear the First Amendment is all about unreasonable speech. For example, when the Nazis wanted to march on Skokie, IL—Nazi speeches, the paradigm example of unreasonable speech; it is hateful, bigoted, ignorant speech—the Supreme Court said the Nazis have a constitutional right to march down the street in Skokie, IL, with their hateful, bigoted, ignorant speech. Now every one of us then has a moral obligation to condemn it as hateful and bigoted and ignorant. But the First Amendment is all about saying government doesn't get to decide what you say is reasonable and what you say is not.

The First Amendment is all about saying we will not censor American citizens. What is this amendment about? Saying the Federal Government now has the power to censor each and every American who dares speak about politics. So if a person has a political view at home, they better hope politicians in Washington think that view is reasonable. I will tell my colleagues that very little of what we do in this town is reasonable and the idea that elected politicians would seek to arrogate power to themselves to censor the citizens is anathema to who we are as a country.

This bill, if adopted, raises three simple questions—questions I raised at three hearings in the Judiciary Committee and in the Constitution subcommittee, and I am the ranking member on the Constitution subcommittee of the Senate Judiciary Committee. We have had extensive debates on this amendment. I wish to pose three simple questions that I would ask every Democrat who has put his name to this—and I notice, sadly, my friend, the Presiding Officer, is one of them, but he didn't serve on the committee. So I would ask him to consider these questions, and I would hope every Democrat who has put his name to this, upon thinking about it, will have second thoughts and pull his name off.

So here are three questions every one of us should ask. No. 1, should Congress have the constitutional authority to ban movies?

No. 2, should Congress have the constitutional authority to ban books?

And No. 3, should Congress have the constitutional authority to ban the NAACP from speaking about politics?

My answer to these three questions is unequivocally, unquestionably no. Yet every single Democrat who has put his name on this amendment has no choice but to answer yes to all three of these questions.

I posed these questions in the Constitution subcommittee. When I posed them to the committee, the chairman of the committee, Senator DURBIN, gaveled the hearing shut because he could not answer those questions. But at the full Judiciary Committee hearing, I was told by my Democratic friends: This is hyperbole. This is exaggeration. We don't intend to ban movies or books or the NAACP. My response in those hearings was that this is the Senate. Forty-nine Senators are proposing an amendment to the Bill of Rights. The inchoate intentions that may be buried in the hearts of each and every Senator are utterly irrelevant to the question. The question is, What is the language that would be inserted into the Bill of Rights of our Constitution?

Let's look to the language. Section 2 of this amendment says Congress and the States shall have the power to implement and enforce this article by appropriate legislation and may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections.

That is very specific language that would now become part of our Bill of Rights. It is breathtaking. It is staggering in its scope.

I wish to take these one at a time because the Democrats, I am sure—all 49 Democrats—say, We don't intend to ban movies, books, or ban the NAACP. Well, let's look to the language they put their names to.

No. 1, let's start with movies. We have all heard a lot about the Citizens United case. In fact, we remember President Obama during the State of the Union hectoring the Supreme Court of the United States for the Citizens United case.

Relatively few people know the facts that underlie the Citizens United case. The facts in those circumstances are that a nonprofit corporation made a movie critical of Hillary Clinton, and for making a movie critical of Hillary Clinton the Obama administration tried to impose massive fines on them. Citizens United, which President Obama and the Senate Democrats decry as the most pernicious thing in modern times, it seems, was all about the government trying to fine a movie maker for daring to make a movie about Hillary Clinton.

Listen, let me be very clear. There are movie makers—Michael Moore's movies I think are complete nonsense. To quote the bard, they are full of sound and fury, signifying nothing. Michael Moore has a right to keep making those movies over and over again and spewing his nonsense as long as he likes. The First Amendment protects his right to be wrong.

And as a simple legal matter, would this amendment give Congress the constitutional authority to ban movies?

Paramount Pictures is a corporation. Under the text of the amendment, what could Congress do to a corporation? It can prohibit—and that is the language in the amendment—it can prohibit the corporation from spending money to influence elections. So if a movie talks about politics, Congress can make it a criminal offense. Go down to Hollywood, take the producers, the directors, the actors and everyone involved in the movie and put them in handcuffs. That is breathtaking.

Now, again, the Democratic Senators say, We don't intend to do that. Then why did they submit a constitutional amendment to the Bill of Rights that says Congress can prohibit Paramount Pictures from speaking about politics? That means Congress can ban movies.

How about the second question: Should Congress be able to ban books? That is an extreme question by anyone's measure. Surely, nobody in Washington is talking about banning books. Well, if we assumed that, our assumption would be wrong. Indeed, during the oral argument in Citizens United, the Supreme Court asked the Obama administration: Your position is that under the Constitution, the sale for the book itself could be prohibited. The answer from the Obama administration: Yes, if the book contained the functional equivalent of express advocacy. The Obama administration went in front of the Supreme Court and argued: We have the power to ban books.

This is in the record. This is in the official transcript. People can go and listen to this argument, listen to the Obama administration say they believe the Federal Government has the ability to ban books from your house. That is breathtaking.

I recognize in today's partisan society there are some people who may be

watching these remarks who aren't inclined to believe me. They might say: Listen, you are a Republican. You are a conservative. And coming from the spot in the political aisle that I do, I don't tend to trust Republicans or conservatives.

I understand that. I would tell you that if you don't believe me, perhaps you would believe that famed right-wing organization, the ACLU. The ACLU said this amendment, to which 49 Democrats have signed their names—what would it do? It would ''fundamentally 'break' the Constitution and endanger civil rights and civil liberties for generations.'' I said a few minutes ago that this was the most radical legislation that has been put before this body. Why is that? Because it is legislation the ACLU says would ''fundamentally 'break' the Constitution.'' Breaking the Constitution is no minor matter, and endangering civil rights and civil liberties for generations ought to concern every Member of this body.

One still might say: Surely banning books is hyperbole.

Well, if you don't believe me, the ACLU in writing told the Senate this amendment—to which 49 Democrats have put their names—would give Congress the power to ban Hillary Clinton's new book, ''Hard Choices.'' I want that to sink in for a moment. Forty-nine Democrats have just put their names to a constitutional amendment, and the ACLU rightly tells us that the express language of the amendment gives the government the power to ban Hillary Clinton's new book, ''Hard Choices.''

I have that letter from the ACLU. I also have a subsequent letter from the ACLU doing something which they haven't done before and which I don't know they will do again—thanking me and thanking all of us who have been fighting against this amendment for standing up for civil liberties. It is truly a shame the Democratic Party is not among them.

I ask unanimous consent to have printed in the RECORD both of the letters from the ACLU I referred to earlier.

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

LEGISLATIVE OFFICE,
AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, June 3, 2014.

Re ACLU Opposes the Udall Amendment.

Hon. PATRICK LEAHY,
U.S. Senate, Committee on the Judiciary, Washington, DC.

Hon. CHARLES GRASSLEY,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: The American Civil Liberties Union strongly opposes S.J. Res. 19, a proposed constitutional amendment, sponsored by Sen. Tom Udall (D–NM), that would severely limit the First Amendment, lead directly to government censorship of political speech and result in a host of unintended consequences that would undermine the goals the amendment has been introduced to advance—namely encouraging vigorous political dissent and providing voice to the voiceless, which we, of course, support.

As we have said in the past, this and similar constitutional amendments would ''fundamentally break' the Constitution and endanger civil rights and civil liberties for generations.''

Were it to pass, the amendment would be the first time, save for the failed policies of Prohibition, that the Constitution has ever been amended to limit rights and freedoms. Congress has had the wisdom to reject other rights-limiting amendments in the past, including the Federal Marriage Amendment, the School Prayer Amendment, the Victims' Rights Amendment and, of course, the Flag Desecration Amendment, which many of the sponsors of this resolution opposed. It should likewise reject the Udall amendment.

1. DESCRIPTION OF THE AMENDMENT

While short, the Udall amendment is deceptively complex and presents several concerns.

Section 1 provides that ''[t]o advance the fundamental principle of political equality for all, and to protect the integrity of the legislative and electoral processes, Congress shall have power to regulate the raising and spending of money and in-kind equivalents with respect to Federal elections.''

Specifically, Subsection (1)(1) would allow limits on ''contributions to candidates for nomination for election to, or for election to, Federal office.'' Subsection (1)(2) would allow limits on ''the amount of funds that may be spent by, in support of, or in opposition to such candidates.'' Section 2 provides the same authorities to each state with respect to state elections.

Section 3 says that ''[n]othing in this article shall be construed to grant Congress the power to abridge the freedom of the press.'' And, Section 4 grants express authority to the states and Congress to implement these limits through ''appropriate legislation.''

2. THE AMENDMENT IS UNNECESSARY AND WOULD BE CORROSIVE TO VIGOROUS POLITICAL DEBATE ABOUT THE ISSUES OF THE DAY

Congress and the states already have the authority to limit contributions to candidates, including limits on expenditures like advertisements in support of a campaign or candidate paid for by an outside group and coordinated with that campaign or candidate. They have had this authority since the landmark Buckley v. Valeo Supreme Court case in the 1970s, which remains good law and only placed First Amendment limits on the ability of the government to control independent expenditures (that is, uncoordinated express advocacy for or against a candidate).

Citizens United's holding, that corporations (including non-profit advocacy groups like the ACLU and thousands of others) and labor organizations may spend general treasury funds on independent expenditures, is entirely consistent with the reasoning of Buckley.

Subsections (1)(1) and (2)(1) are therefore both unnecessary and redundant of existing law, which, notably, already also places some limits on independent expenditures, namely reporting requirements and less favorable tax treatment. Such redundancy can be dangerous for civil liberties, in that it invites courts to ask why lawmakers said the same thing twice, and whether duplication means that the second statement confers additional powers.

In other words, while the inclusion of contribution limits in the Udall amendment is presumably an attempt to get at McCutcheon's ban on aggregate limits, it could also permit other laws limiting contributions that would severely harm political debate, exacerbate the incumbency advantage, give certain political parties an unfair leg up and disproportionately impair third parties, many of whom cannot afford the sophisticated legal counsel necessary to navigate the complex new laws this amendment would allow. The contribution section could, for instance, allow a federal law limiting contributions to the point where challengers cannot mount an effective campaign, and third parties simply can't afford to stay in business.

More important, however, is the proposed change in Subsections (1)(2) and (2)(2), which would permit the federal and state governments to limit the amount of funds spent ''in support of, or in opposition to'' candidates for office. Right now, under existing law, there is a distinction between express advocacy (''vote Romney/Ryan'' or ''support Obama/Biden'') and ''issue advocacy'' (''call Speaker Boehner and tell him to stop blocking NSA surveillance reform''). Historically, campaign finance reform efforts, including constitutional amendments such as this one, have sought to restrict ''sham'' issue advocacy—that is, communications that some claim are express advocacy disguised as issue advocacy.

As a practical matter, however, the staff vested with the responsibility of distinguishing between the two at the Federal Election Commission (''FEC'') or the Exempt Organizations Division of the Internal Revenue Service are ill-equipped to draw these lines in a consistent and principled manner.

For instance, would an ACLU ad urging members of Congress to support Patriot Act reform, which runs shortly before the November 2004 election (when that issue is at play in the election), be construed as an issue ad exhorting voters to support reform or a covert attempt to influence voters to oppose members who do not support reform? Similarly, would an ad by a group urging repeal of the Affordable Care Act, which runs before the 2012 presidential election, be issue advocacy or covert express advocacy?

Given the inability of the world's best election law lawyers, let alone overworked line revenue agents and attorney-advisors, to make a principled determination on any such ads, lawmakers tend to overcorrect and restrict all issue advocacy in order to suppress any covert express advocacy. The Bipartisan Campaign Reform Act attempted to do exactly that by criminalizing any broadcast, cable or satellite communication that simply mentioned a candidate in the 30 days before a primary or 60 days before a general election.

Recognizing both the severe harm to political debate through overbroad laws that suppress all issue advocacy mentioning a candidate for office, and the difficulty in making principled distinctions between issue and express advocacy under a totality of the circumstances approach, the courts have rightly rejected measures that allow the government to restrict issue advocacy at all.

Sections (1)(2) and (2)(2) are designed to, and would, completely overturn that legal distinction between issue and express advocacy and permit the government to criminalize and censor all issue advocacy that mentions or refers to a candidate under the argument that it supports or opposes that candidate.

To give just a few hypotheticals of what would be possible in a world where the Udall proposal is the 28th Amendment:

Congress would be allowed to restrict the publication of Secretary Hillary Clinton's forthcoming memoir ''Hard Choices'' were she to run for office;

Congress could criminalize a blog on the Huffington Post by Gene Karpinski, president of the League of Conservation Voters,

that accuses Sen. Marco Rubio (R–FL) of being a ''climate change denier'';

Congress could regulate this website by reform group Public Citizen, which urges voters to contact their members of Congress in support of a constitutional amendment addressing Citizens United and the recent McCutcheon case, under the theory that it is, in effect, a sham issue communication in favor of the Democratic Party;

A state election agency, run by a corrupt patronage appointee, could use state law to limit speech by anti-corruption groups supporting reform;

A local sheriff running for reelection and facing vociferous public criticism for draconian immigration policies and prisoner abuse could use state campaign finance laws to harass and prosecute his own detractors;

A district attorney running for reelection could selectively prosecute political opponents using state campaign finance restrictions; and

Congress could pass a law regulating this letter for noting that all 41 sponsors of this amendment, which the ACLU opposes, are Democrats (or independents who caucus with Democrats).

Such examples are not only plausible, they are endless. Currently, we do not have to worry about viewpoint discrimination, selective enforcement and unreasonable regulations that unnecessarily stifle free speech without advancing a legitimate state interest because of the First Amendment, and these protections would not apply to speech covered by this proposed amendment. Tinkering with the First Amendment in this way opens the door to vague and overbroad laws, which both fail to address the problem that Congress wishes to solve and invariably pull in vast amounts of protected speech.

Vague and overbroad laws regulating pure speech are also exceedingly dangerous to democratic processes because they can be misused by various parochial interests. During the civil rights era, for instance, southern states often tried to use laws forcing groups exercising their First Amendment rights to disclose their membership, in a bid to run them out of town.

Rather than ''equalizing'' the debate and giving voice to the voiceless, laws that allow criminalization of issue advocacy—which this, on its face, would permit—actually give the advantage to special interests with significant resources, because they can now call on the law to regulate their policy opponents. By exempting this class of political speech from the scope of the First Amendment (and potentially other rights), it would provide no protection at all for disfavored minority groups on both the left and right. Congress would, for instance, be free to pass laws targeting only ''political'' speech by groups like ACORN.

3. THE AMENDMENT COULD PERVERSELY HARM FREEDOM OF THE PRESS AND WOULD DIRECTLY EVISCERATE THE FREEDOMS OF SPEECH, ASSEMBLY AND PETITION

In addition to allowing Congress and the states to criminalize issue advocacy, the amendment's third section, exempting ''freedom of the press'' from its reach, poses four major problems.

First, it could actually make matters worse. Those with enough money can afford to buy newspapers or journalistic websites, which are indisputably press outlets, and would be completely outside the scope of the laws permitted by this amendment. William Randolph Hearst's newspaper empire, for instance, was at first a vigorously partisan supporter of Franklin Roosevelt (and then critic), and such partisan electioneering by the mass media would unquestionably be permitted under this amendment.

Second, it invites government inquiry into what constitutes ''the press,'' which is increasingly problematic in the age of citizen journalism and the internet. Here, the government would have to determine if the Daily Kos or Red State qualify as ''the press.'' If yes, they can blog freely. If no, they could be censored or even go to jail. The potential for abuse is obvious.

Accordingly, the reference to freedom of the press could perversely limit that freedom. Legally, ''the press'' has been defined broadly. It encompasses not only the ''large metropolitan publisher'' but also the ''lonely pamphleteer.'' ''Freedom of the press is a fundamental personal right,'' the Supreme Court has written, ''which is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.''

The reference to freedom of the press will force the government and courts to draw difficult lines between non-traditional media and the ''large metropolitan publisher.'' More often than not, the latter, simply because of the breadth of issues covered in their media, is going to appear less ''political'' than the pamphleteer handing out circulars urging greater gun control, reproductive freedom or a path to citizenship for undocumented immigrants. The courts interpreting the laws permitted by this amendment are therefore more likely to move away from the notion of ''lonely pamphleteer'' as press.

Finally, fourth, the reference to the press clause expressly incorporates the speech, assembly and petition clauses into the Udall amendment by omission. In other words, the amendment makes clear—through lack of reference to the speech clause—that this amendment is meant to directly constrain the existing speech, assembly and petition rights, and potentially all other constitutional rights that could conceivably apply, with respect to both the state and federal governments. That is both unprecedented and exceedingly worrisome.

Additionally, we note that Section 3 appears to only apply to Congress, suggesting that states may be free to ''abridge'' the freedom of the press.

4. AMENDING THE CONSTITUTION TO LIMIT A SPECIFICALLY ENUMERATED CONSTITUTIONAL RIGHT IS UNPRECEDENTED IN THE HISTORY OF THE REPUBLIC

It bears emphasizing that this would be the first time the amendatory process has been used to directly limit specifically enumerated rights and freedoms. Many argue that such an amendment is not unprecedented. What they mean, however, is that amending the Constitution in response to an unpopular court case is not unprecedented. In those cases, however, the amendment either had little to do with individual rights or it restored lost rights. In no case, did it limit the right and freedom that vouchsafes our ability to advocate for all of our other rights and freedoms.

Finally, while rights-limiting amendments are unprecedented, proposals to do so are legion.

The ACLU has aggressively lobbied against, to name just a few, the Flag Desecration Amendment, which would have overturned the Supreme Court cases prohibiting the state and federal governments from criminalizing defacement of the American flag; the Victims' Rights Amendment, which would have limited the rights of criminal defendants; an amendment to deny automatic citizenship to all persons born in the United States; the School Prayer Amendment, which would have given school officials the power to dictate how, when and where students pray; and the Federal Marriage Amendment, which would have denied marriage rights to same-sex couples in committed relationships.

Were this to pass, the Udall amendment would grease the skids of these and other proposals to limit fundamental constitutional rights.

For all of these reasons, we strongly urge you to oppose the Udall amendment, and to focus Congress's attention on enacting effective public financing laws, tightening up the coordination rules, ensuring prosecutors have effective resources to pursue straw donations and other common sense measures for promoting the integrity of our political system.

What you must not do is ''break'' the Constitution by amending the First Amendment.

Please do not hesitate to contact Legislative Counsel/Policy Advisor Gabe Rottman at 202–675–2325 or grottman@aclu.org if you have any questions or comments.

Sincerely,

LAURA W. MURPHY,
Director, Washington Legislative Office.
GABRIEL ROTTMAN,
Legislative Counsel/Policy Advisor.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, August 6, 2014.

Hon. TED CRUZ,
U.S. Senate, Dirksen Senate Office Bldg., Washington, DC.

DEAR SENATOR CRUZ: We write to offer our thanks for your co-sponsorship of the USA Freedom Act and your ardent defense of the First Amendment in two important areas. As you so aptly said, ''Republicans and Democrats are showing America that the government can respect the privacy rights of law-abiding Americans, while at the same time, giving law enforcement the tools needed to target terrorists.''

The American Civil Liberties Union has long sought to work with members at all points on the political spectrum to advance fundamental American principles of individual liberty and personal privacy. We are heartened that you have been willing to reach across the aisle to further those essential values and implement needed reforms of our growing surveillance state.

We would also note that, while many of the objections to the bulk surveillance programs revealed in the past year have focused on privacy, the ACLU has long been critical of mass surveillance on First Amendment grounds as well. Indiscriminate government spying abrogates our constitutional right to anonymous speech and chills associational activity.

Indeed, it raises many of the same concerns that have led the Supreme Court to prohibit the compelled disclosure of political associations and beliefs in landmark cases like National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449 (1958); Shelton v. Tucker, 364 U.S. 479 (1960); Gibson v. Florida Legislative Committee, 372 U.S. 539 (1963); Brown v. Socialist Workers Party, 459 U.S. 87 (1982); McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995); and Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150 (2002).

One of the key civil liberties concerns with indiscriminate bulk surveillance, for either criminal investigative purposes or national security, is that it gives the government a detailed record of those dissenting from official policy—on both the right and left. Surveillance chills such dissent, which results in poor policy outcomes. Anonymity is essential for the dissemination of unpopular ideas, which often enrich the marketplace of ideas. Anonymous speech and association have

driven social progress on numerous fronts, from civil and labor rights to, tellingly, our expansive modern view of free speech.

For these and other reasons, the ACLU also opposes S.J. Res. 19, a proposed constitutional amendment that would limit the First Amendment to allow the government—federal and state—to ''regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.''

While we certainly appreciate the good intentions of the measure's supporters, we fear—based on long historical experience—that such an open ended remit would result in the censorship of pure issue advocacy by non-partisan, non-profit groups. Likewise, we anticipate the amendment would be used, much like programmatic national security surveillance, to compel disclosure of constitutionally protected anonymous political activity and association by those espousing controversial or minority views.

The fact this would be the first time any enumerated right in the Constitution has been restricted through the amendatory process underscores the gravity of the threat to the First Amendment posed by S.J. Res 19. We thank you for your support for the First Amendment in your staunch opposition to the constitutional amendment and your original co-sponsorship of the USA Freedom Act.

We look forward to working with you on other First Amendment issues. Please contact Legislative Counsel/Policy Advisor Gabe Rottman if you should have any questions at 202–675–2325 or grottman@aclu.org.

Sincerely,

LAURA W. MURPHY,
Director, Washington Legislative Office.
MICHAEL W. MACLEOD-BALL,
Chief of Staff/First Amendment Counsel.
GABRIEL ROTTMAN,
Legislative Counsel/Policy Advisor.

Mr. CRUZ. The third question every Senator who has put his name to this amendment must answer is this: Should Congress have the constitutional authority to ban the NAACP from speaking about politics? Well, why is that? Because the NAACP is a corporation. We hear the word ''corporation,'' and we tend to think of ExxonMobil, Walmart, or what have you, but the NAACP is a corporation. What could Congress do under this amendment, under the explicit language of this amendment? Congress could prohibit the NAACP from speaking about politics.

Let me state some other corporations Congress would have the constitutional authority to silence. The ACLU is a corporation. The AARP—the American Association of Retired Persons—is a corporation. People for the Ethical Treatment of Animals is a corporation. Amnesty International is a corporation. Americans United for Separation of Church and State is a corporation. The Gay & Lesbian Advocates & Defenders is a corporation. The National Organization for Women is a corporation. The Center for Reproductive Rights is a corporation. The Sierra Club is a corporation. La Raza is a corporation. NARAL is a corporation. Planned Parenthood is a corporation. Moveon.org is a corporation. The Human Rights Campaign is a corporation. Greenpeace is a corporation.

People will note that every one I listed is a group that in our political discourse is often associated with being on the left. Many of those groups are not particular fans of mine as an elected official, and that is their right. Indeed, it is their right to scream from the mountaintops their criticism of my political positions. I will defend their right to criticize me or any other Member of this body all day long because the Bill of Rights says Congress shall make no law abridging the freedom of speech.

Forty-nine Democrats just said that every organization I read—that it should be constitutional for Congress to prohibit them from speaking about politics.

It seems to me that when we return to our home States, every Senate Democrat who put his or her name to this amendment should expect to answer questions from citizens: Senator, why did you vote for a constitutional amendment to silence my free speech rights? That is a question we should all expect.

I would like to address a couple of red herrings in this debate because there are arguments put forth by the Democrats who say: No, no, no. Pay no attention to the text of the amendment we have introduced. Pay no attention to the fact that it would give Congress the power to ban movies, books, and to silence the NAACP. Pay no attention to any of that. It is something else.

There are three red herrings that are tossed forward.

First, money is not speech. How many times have we heard that over and over in floor speeches? Yesterday and today Democrats have stood and said: Money is not speech. Money is not speech. It has been repeated over and over. It is a good talking point. It is simply, on its face, demonstrably false. It is certainly true that all money is not speech.

If you go out and buy a Ferrari, that is not speech, but if you go out and erect a billboard and pay money to put up a billboard that says ''Senator JOE MANCHIN is a terrific guy,'' that is speech. It takes money to do that. They don't put up billboards with pixie dust. It actually takes some dollars to erect that billboard and to express that speech.

If you decide you want to run a radio ad saying that Senator so-and-so is terrible or wonderful, they don't run radio ads just because you asked ''pretty please.'' It takes money.

Let's say you want to run a television ad. It takes money.

Let's say you want to launch a Web site. Have you ever launched a Web site for free?

Let's say you are a little old lady who wants to put a yard sign on your front yard, and it is going to take $5 to buy some poster board and a stick and some crayons and markers and write: I love the First Amendment; I love free speech. That takes money.

The Federalist Papers were the essence of speech, and it took money to print them. Thomas Paine's ''Common Sense''—it took money to print it. It took money to print pamphlets.

Everyone in the tech community—and I would note that all of our Democratic friends and sponsors of this amendment almost to a person go routinely to the tech community and say: Give us money. Give us campaign contributions.

Every Senate Democrat should expect the tech community to say: Wait a second. Why did you vote for a constitutional amendment to give Congress the power to regulate every Web site in America?

If a Web site talks about politics, this amendment gives Congress the power to regulate that Web site.

Listen, I understand there are Members in this body on both sides of the aisle who find it really pesky when citizens dare criticize us. If you don't want to be criticized, don't run for office. Democracy is messy.

I guarantee there is no one in this country who truly believes money is not speech. It is a talking point, but those examples are unquestionably speech, and they have been from the very first days of our Republic.

A second canard is that corporations are not people. That is often said. Citizens United said that corporations are people.

Of course corporations are not people, but that is not the right question. It never was the question. Nobody thinks corporations are people. They don't breathe, they don't walk, and they are not human beings. The question is, Do corporations have rights under our Constitution? Again, I guarantee that every person in this Chamber and every person in the gallery believes the answer to that question is yes. If they don't, the New York Times is a corporation. Do we really think the New York Times has no First Amendment rights?

If the canard were true—corporations are not people, so they don't have rights—Congress could pass a law tomorrow that says the New York Times can never again criticize any Republican Member of Congress. I think the paper would probably go out of publication if it had to remove that from its content.

But it, of course, cannot. Why can't it? Because corporations have rights. Every one of us knows that. We would be horrified. That legislation would be blatantly unconstitutional. Why? Because the New York Times has a First Amendment right to speak about politics however it likes, whether wrong-headed or right-headed.

The groups I mentioned before—the NAACP is a corporation. I challenge any Senator to stand and say the NAACP has no First Amendment rights. But every Senator who has said on this Senate floor that corporations

aren't people, that they have no rights, has said the NAACP has no constitutional rights—if you were a first-year law student and put that answer in any constitutional law class in the country, you would get an F. It wouldn't be a D-plus or a D-minus; it would be an F. It is an obviously blatantly false statement. Yet 49 Democrats rely on it to justify trying to gut the First Amendment.

The third red herring the Democrats in this body point to is they paint a specter of evil billionaires coming to steal our democracy.

We have all heard of our friends the Koch brothers—in part because the majority leader has launched an unprecedented slander campaign on two private citizens. Almost on a daily basis the majority leader stands and demagogues two private citizens who have committed the sin of creating hundreds of thousands of jobs, being successful in the private sector, and then exercising their First Amendment rights to speak out about the grave challenges facing this country.

If one Member of this body impugns the integrity of another Member of this body, we can rise on a point of personal privilege. I ask the Presiding Officer, where is the point of personal privilege for a private citizen when the majority leader drags his name through the mud day after day?

What Senator REID is doing to two private citizens who are fighting to exercise their free speech rights is reprehensible. It is an embarrassment to this institution. Yet perhaps one might say there is some truth to the matter. We are told these nefarious brothers are responsible for almost everything bad in the world, so it must be that they are playing a huge role in our body politic.

Well, if you go look at OpenSecrets, which compiles campaign giving from 1989 to 2014, so for the past 25 years—and it compiles them from the biggest givers down to the smallest givers—if you look at first 16 names on that list—I have heard what our Democratic Members of this body have said: There are evil, nefarious Republicans trying to steal our democracy. And the implication is that they are backing Republicans. So my assumption is, as I look at the list of the top donors, the top 16—how many of them give predominantly to Republicans? Well, one would assume, given how great the magnitude is, that it has to be a lot of them, probably all of them, or if not all of them, most of them—at least half of them.

Mr. President, do you know how many of the top 16 groups give predominantly to Republicans? Zero. The top 16 political donors in this country all give either overwhelmingly to Democrats or at best evenly between the two parties. You have to fall to No. 17 to find a group that gives more heavily to Republicans than to Democrats. Now, that is curious given the story that is being told by our Democratic friends about these evil Republican billionaires stealing democracy. Gosh, the top 16 donors are not Republicans.

And how about the Koch brothers who we are told are somewhat like the Grinch who stole Christmas? Where do they fall? We have to go down to No. 59 on the list to find Koch Industries.

But perhaps you believe there is something to this claim of secret money. That too is a red herring. The Federal Election Commission estimates that over $7 billion was spent in the 2012 election cycle. We have heard from Democrat after Democrat after Democrat that secret money—money where the donors are not disclosed—is this enormous problem in our democracy that justifies gutting the First Amendment. So of that $7 billion, I assume a lot of that is secret money. Well, if you were to assume that, you would be wrong. The Center for Responsive Politics estimates that in 2012 about $315 million was spent by groups that do not disclose all of their donors. That is less than 4.5 percent of all the political speech in 2012.

So this entire effort to gut the First Amendment, to give Congress the power to ban movies, books, and the NAACP from speaking about politics is justified because of 4.5 percent of political spending, a whole bunch of which is being spent to help Democrats. Those are the facts. As John Adams famously said: Facts are stubborn things.

(Ms. WARREN assumed the Chair.)

So it raises the question: If the problems they are telling us about are not real, why are the Democrats doing this? Why are we spending a week debating this constitutional amendment, the most radical constitutional amendment this body has ever considered, particularly because every single Member of this body knows the outcome? There are not sufficient votes to adopt this amendment. The Democrats all know this. The Republicans all know this. Then why would they be doing it?

Well, if you are a Democrat running for reelection in 2014, you cannot run on the economy. The Obama economy is a disaster. Millions of people are out of work. The people who have been hurt the most by the Obama economy are the most vulnerable among us—young people, Hispanics, African Americans, single moms. We have not seen such a low labor force participation since 1978, since the stagnation and misery and malaise under Jimmy Carter. The Obama economy has recreated that. So if you are a Democrat, you cannot run on the disastrous economic record of the Obama administration.

If you are a Democrat, you certainly cannot run on ObamaCare—the most harmful social services legislation in modern times that has cost millions of Americans their jobs, their health care, their doctors. If you do not believe me, take a look at how the Democrats are running in their States. You do not see Democrats running saying: We passed ObamaCare. When you take away millions of people's health care and doctors, and when you look in the TV camera and repeatedly state falsehoods: If you like your health insurance plan, you can keep it, if you like your doctor, you can keep them, you do not really want to remind the American people that you deliberately lied to them.

And the Democrats certainly cannot run on the Obama-Clinton foreign policy—a policy about which we heard last week the President has no strategy for dealing with the great threats facing this country. Leading from behind is not a strategy, and we can see the consequences of the Obama-Clinton foreign policy, which is that the entire world is on fire.

If you are a Democratic Senator running for reelection in 2014, you have a problem. You cannot run on your record because the record is abysmal. So what is done instead? It is smoke and mirrors. It is distraction.

The only explanation I can come up with for why we are spending a week—with all the challenges in the world—a week debating an amendment that will never ever pass is this is designed to fuel a bunch of TV commercials for Democratic Senators, to paint the picture of nefarious billionaires coming to steal our democracy. Facts do not get in the way of their story. But yet the breadth of this is rather enormous.

I serve on the constitution subcommittee with the Senator from Minnesota, who before being a Senator was a very talented comedic actor and comedic writer on ''Saturday Night Live.'' I grew up watching ''Saturday Night Live.'' I love ''Saturday Night Live.''

''Saturday Night Live'' over the years has had some of the most tremendous political satire—for decades. Who can forget Chevy Chase tripping and falling over just about everything? Who can forget portrayals—Dana Carvey's George Herbert Walker Bush: ''Not going to do it.'' Who can forget Bill Clinton, Ronald Reagan, Al Gore? Who can forget in 2008 the ''Saturday Night Live'' wickedly funny characterization of the Republican Vice Presidential nominee Sarah Palin? It was wickedly funny and also had a profoundly powerful effect on people's assessment of Governor Palin, who is a friend of mine.

When I asked the Senator from Minnesota in the Senate Judiciary Committee: Do you believe that Congress should have the constitutional authority to prohibit ''Saturday Night Live'' from making fun of politicians, the good Senator promptly reassured me he had no intention of doing any such thing. But what we are debating is not the intentions of 100 Senators. What we are debating is a constitutional amendment that 49 Democrats are proposing to be inserted into the Bill of Rights.

The only question—it is not the intention of those Senators—but, rather, what would that amendment say? What the amendment says is for any corporation Congress would have the constitutional authority to prohibit it from engaging in political speech.

Well, NBC, which airs ''Saturday Night Live,'' is a corporation. Under this amendment 49 Democrats have signed their name to, Congress would have the power to make it a criminal offense. Lorne Michaels could be put in jail under this amendment for making fun of any politician. That is extraordinary, it is breathtaking, and it is dangerous.

The idea of banning books is not new. Advocates of government power, statists, have long favored silencing the citizenry. It is why our First Amendment was such a revolutionary concept, the idea that the individual citizen has the authority to challenge any elected official, from local magistrate all the way up to the President of the United States.

But if you are an advocate of governmental power, the citizens having the liberty to speak out is inconvenient; it can lead to inconvenient truths. So on some level it should not be surprising that the modern Democratic Party, which has become the party of government power over every aspect of our lives, would take it to the final conclusion of giving government the power to silence our political speech and to ban books.

I am reminded, in Ray Bradbury's immortal book ''Fahrenheit 451,'' of the words of Captain Beatty: ''If you don't want a man unhappy politically, don't give him two sides to a question to worry him; give him one. Better yet, give him none.'' That was, of course, the chief fireman in charge of burning books in ''Fahrenheit 451.'' In the book that is the temperature at which book paper ignites. It breaks my heart that today we are seeing the Fahrenheit 451 Democrats. Today we have seen 49 Democrats put their name to a constitutional amendment that would give Congress the power to ban books.

Some might dismiss it and say: What does it matter? It is an exercise in politics. They do not really believe it. They know it is not going to pass. Politicians will be politicians. No wonder the American people are cynical. I would be embarrassed if one Senator put his or her name to an amendment repealing the free speech protections of the First Amendment. Instead of one, it is 49. And much like with Sherlock Holmes and ''the dog that didn't bark,'' every bit as troubling as the 49 names of the Senators who are willing to repeal the free speech protections of the First Amendment are the Senators who are not speaking out. In particular, we have not seen a single Democrat have the courage to speak out against this abominable provision.

It was not always so. There was a time not long ago when there was bipartisan agreement on questions of civil liberties. There was a time when you could find Democrats for whom the First Amendment meant something.

In 1997, Democrats attempted a similar amendment to give Congress the power to regulate free speech, and that lion of the left Ted Kennedy stood up and said: ''In the entire history of the Constitution, we have never amended the Bill of Rights, and now is no time to start.''

Where are the Ted Kennedys? Where are the Democrats? Where are the liberals?

Also in 1997, Senator Russ Feingold, another passionate liberal, stood up and said:

> . . . the Constitution of this country was not a rough draft. We must stop treating it as such. The First Amendment is the bedrock of the Bill of Rights. It has as its underpinnings that each individual has a natural and fundamental right to disagree with their elected leaders.

I agree with Ted Kennedy, I agree with Russ Feingold, and I will tell you, privately I have urged Democratic colleagues to come and join me in defense of the First Amendment—the handful who have not put their names to this amendment—and all I can surmise is that the partisan pressures of Washington are too much.

This amendment is not going to pass, but it is profoundly dangerous that in the U.S. Senate not a single Democratic Senator will come to the floor in defense of the First Amendment. It is profoundly dangerous that the modern Democratic Party now thinks it is good politics to campaign on repealing the First Amendment. The hashtag #don'trepeal1A has echoed through twitter as individual citizens are amazed.

Earlier this year we saw all 55 Democrats stand together against religious liberty, supporting an amendment that would gut the Religious Freedom Restoration Act which was passed with overwhelming bipartisan support and signed into law by Bill Clinton.

It used to be on religious liberty there was a bipartisan consensus. The same used to be true on free speech. When did Democrats abandon the Bill of Rights? When did Democrats abandon civil liberties? I assure you, if it were my party proposing this egregious amendment, I would be standing on the floor of this Senate giving the very same speech trying to hold my party to account. Because at the end of the day, when we take our oath of office, it is not to a Democratic Party or the Republican Party, it is to represent the citizens of our State—in my case, 26 million Texans—to fight for their rights and to defend and uphold the Constitution of the United States.

There is nothing the United States has done in the just under 2 years that I have been in this body that I find more disturbing and more dangerous than the fact that 49 Democrats would put their name to a proposal to repeal the First Amendment.

When my daughters Caroline, 6, and Catherine, 3, came up from Texas to Washington for a weekend to visit, I took them to the Newseum. It is a terrific museum. The front facade of the Newseum has in gigantic letters the text of the First Amendment carved in granite.

If the Democratic Party has its way, the Bill of Rights will be forever altered. We will have to send up workmen to that facade to carve with jackhammers the words of the First Amendment out of the granite in the front of the Newseum.

In the Senate Judiciary Committee I introduced a substitute amendment. It was an amendment to replace every word of this extraordinarily dangerous amendment with the following words:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

It was word-for-word verbatim the text of the First Amendment of the Constitution of the United States, and I am sorry to tell you every single Senate Democrat on the Judiciary Committee voted against the text of the First Amendment. It was a straight party-line vote.

Going back to Senator Kennedy, Senator Kennedy and I would have agreed on very little. On matters of policy, he was a big government man and I most assuredly am not. On matters of foreign policy, he supported a far weaker military than do I and a far weaker defense of our Nation. But on the question of the First Amendment, I am proud to stand side by side with Ted Kennedy.

What does it say about the modern Democratic Party that not a single Democrat is willing to honor Senator Kennedy's legacy? His words are every bit as true now as they were in 1997.

> In the entire history of the Constitution, we have never amended the Bill of Rights, and now is no time to start.

It is my plea to the Democratic Members of this body that they reconsider the decision of putting their name on this amendment. It may seem like harmless election-year politicking that will help in political campaigns, but it is dangerous when 49 Senators come together and say: We no longer support the First Amendment.

We have a two-party system—a two-party system on which there should be robust debate. It is even more dangerous when one of the two parties becomes so extreme and so radical that it becomes seen as good politics to campaign against the First Amendment.

This will not pass this week, but I hope my Democratic colleagues will have second thoughts. I hope we can return to the day where there is a bipartisan consensus in favor of civil liberties, in favor of protecting the free speech rights of every American.

I hope we will listen to the wise counsel of Senator Kennedy, and I hope we will recognize, as Senator Kennedy and Senator Finegold observed, that there are no James Madisons or Thomas Jeffersons serving in this body today.

The Bill of Rights is not a rough draft, and the U.S. Senate should not

be proposing to repeal the First Amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Ms. HIRONO. Madam President, listening to the good Senator from Texas, I feel as though I am in a parallel universe.

I rise to support S.J. Res. 19, an amendment to the U.S. Constitution that ensures our democracy is for the people—for the people, not for corporations.

I am proud to cosponsor this measure. I am also proud to stand with the overwhelming majority of this country in support of restoring commonsense and fair campaign finance rules.

The current Supreme Court has been noted as among the most pro-corporate Supreme Courts in our history. In decision after decision, a narrow conservative majority of the Court has placed the voices of the corporations and special interests over the voices of the people.

The Court decided Citizens United in 2010. Corporations are people with free speech rights, said the Court's 5-to-4 majority. Under this construct that corporations are people, this ruling, Citizens United, granted special interests the right to use corporate treasuries to drown out the voices of the people without being subject to meaningful disclosure requirements.

We have already seen the impact of this decision. According to the Center for Responsive Politics, this election year outside groups have spent triple the amount they had at the same time in 2010, and the election is still months away.

The Court thrust the floodgates even wider with the ruling in the McCutcheon case. This ruling struck down aggregate limits on contributions by individuals. So now billionaires could spend hundreds of millions of dollars to influence elections—and they are doing just that.

In these two decisions, the majority willfully ignored the reality of the corrupting influence of Big Money in our democracy. It is clear to me that the Court got it wrong in both cases. To fix what has been done, Congress must act.

The need for action is not just a Democratic or Republican issue. Nearly 80 percent of Americans support overturning the Supreme Court's Citizens United decision. Campaign spending is out of control, and the American people strongly support reform. Seventy-one percent believe that individual contributions should be limited, and 76 percent believe that spending by outside groups should also be limited.

The American public is clear on this issue. Only in Washington, DC, has this become such a polarized debate. Unchecked and unaccountable, spending on campaigns impacts politics and policy across the country, even at the State and local levels. From Arizona to Montana to my home State of Hawaii, the Supreme Court's extreme decisions on campaign finance are undermining fair, democratic processes.

The Citizens United and McCutcheon cases also limit the ability of Congress and the States to fix the problems caused by these decisions. Why? Because the Supreme Court has decided that unfettered spending in elections is a constitutional right. So the only way we can fix these wrong decisions is by amending the Constitution.

The Supreme Court's majority claims that allowing unlimited spending in elections is essential to protecting the First Amendment, that unlimited spending by corporations and individuals is a constitutional right.

Guess what. Before the Supreme Court's decision in Citizens United and McCutcheon, the First Amendment and constitutional rights were alive and well. So the Court argued that restricting campaign spending would limit the right of individuals and groups to participate in our democratic process—never mind that they have been participating in our democratic processes before these decisions.

In reality, these rulings institutionalize the power of Big Money in politics at the expense of regular Americans. The Court's decisions have the effect of saying that in our democracy those with the most money should have the loudest voices and that the very identity of those voices can be hidden from the voters. The huge undisclosed expenditures that these decisions allow have diluted the core principle of democracy: one person, one vote.

The vast majority of the American people disagree with the Supreme Court's unprecedented interpretation of the First Amendment. The Court has left us with the option we are pursuing today—amending the U.S. Constitution. When the Supreme Court said that women did not have the right to vote, Congress and the people passed the 19th Amendment. So amending the Constitution to protect our democracy is not some new or radical idea. When the Supreme Court said States could impose poll taxes on the poor, Congress and the people passed the 24th Amendment, and the list goes on. Why? Because the Supreme Court is made up of human beings, and as human beings they sometimes get it wrong, as they did in the Citizens United and McCutcheon decisions.

As retired Justice John Paul Stevens wrote in his dissent to Citizens United:

> The Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt.

Justice Stevens has it right and so does the overwhelming majority of Americans. Republicans, Democrats, and Independents all agree that the Court's ruling in Citizen's United and McCutcheon stand for something that is completely inconsistent with America's Constitution, history, and values. I say that the First Amendment was alive and well before the Citizens United and the McCutcheon decisions.

The constitutional amendment before us does not repeal anything in the Constitution; rather, it undoes the damage that five members of the Supreme Court have done to free and fair elections. By the way, money buys speech, it is not speech. I urge my colleagues to support S.J. Res. 19.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. UDALL of New Mexico. Thank you, Madam President. Let me first say how much I appreciate all of my colleagues coming to the floor and talking about this amendment. Senator HIRONO is here. I know Senator WHITEHOUSE is coming down. A number of Senators have come down and spoken very eloquently. The Presiding Officer has also taken a good strong position and we so much appreciate all of her good work.

An earlier speaker said that the NAACP is against this amendment. In fact, the NAACP is for this amendment.

I ask unanimous consent to have printed in the RECORD a statement off their Web page of their endorsement of the constitutional amendment I am going to talk about.

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

[From the NAACP.org]

CONSTITUTIONAL AMENDMENT TO LIMIT CORRUPTING ROLE OF BIG MONEY CONTRIBUTIONS TO POLITICAL CAMPAIGNS

S.J. RES. 19/H.J. RES. 20, WOULD MAKE CLEAR THAT CONGRESS, INDIVIDUAL STATES AND THE AMERICAN PEOPLE HAVE THE AUTHORITY TO MEANINGFULLY REGULATE CAMPAIGN FINANCE

It is no secret that the role of money in politics is ever increasing, and that money plays a major role in who stands for office, who wins, and, most critically, the eventual public policy Congress enacts. With the decisions by the U.S. Supreme Court in the 2010 Citizens United v. Federal Election Commission (FEC) and 2014 McCutcheon vs. FEC cases, the role of big money, donated by wealthy corporations and individuals, will only continue to grow.

Because it is becoming increasingly clear that income and wealth inequality is rooted in political inequality, the NAACP strongly supports several legislative initiatives—including H.R. 20, the Government By the People Act, and S. 2023, the Fair Elections Now Act, which put voluntary curbs on campaign spending. Together, these two bills are comprehensive reform packages designed to combat the influence of big money politics, raise civic engagement and amplify the voices of everyday Americans.

Yet some have concerns about the voluntary nature of these bills—candidates may opt out of participating and adhering to limits on the amounts raised and spent Thus, in addition to supporting the legislation, the NAACP supports a constitutional amendment that would make clear that Congress, individual states and the American people have the authority to meaningfully regulate campaign finance and to restore transparency and safeguard the role of individual

voices in our elections. The constitutional amendment has been proposed by Senator Tom Udall (NM) (S.J. Res. 19) and in the House of Representatives by Congressman Jim McGovern (MA) (H.J. Res. 20).

Amending the Constitution is hard—and it should be. But it is not impossible. Already 16 states and hundreds of local governments across the country have called on Congress to take action, showing strong public support for reform from all sides of the political spectrum. Furthermore, supporters of a Constitutional amendment have been promised a vote by the full Senate on S.J. Res. 19 before the end of the year.

Mr. UDALL of New Mexico. Thank you, Madam President.

Some of our opponents have come down to the floor and asked: Why do this now? Why bother? I would answer: Ask the American people. I think they will tell you. People are listening—not just Democrats but Republicans too—all across the Nation. They are listening and here is what they are hearing. They are hearing that the Supreme Court has put a for sale sign on our elections. They are hearing our political process is on life support, drowning in cash, and most of it coming from just a few people.

Sixty percent of all super PAC money in 2012 was doled out by 100 billionaires and corporations. They are hearing about elections bought and paid for by shadowy outside groups given a green light by the Supreme Court. Special interests are shelling out at least $216 million in 2014 and likely $1 billion by election day. That is 15 times more money than in 2006 before Citizens United, before the Supreme Court defied common sense and said corporations are people. They are hearing that a lot of money is hidden when over half the money spent in this year's top nine Senate races is not fully disclosed, over half not fully disclosed. So in 2 months we will know the outcome of these elections, but we will not know who paid for them.

The result is not surprising. The American people have lost faith in us as they watch this merry-go-round, this constant money chasing, and very little else getting done. This is a vital debate about what democracy we will have and whether democracy will survive. Will we have one that caters to billionaires and the privileged few or one that listens to the American people; one that keeps chasing money from special interests or one that says it is the quality of our ideas, not the size of our bank accounts, that should matter; a democracy that answers to the middle class or to the moneyed class?

This debate is crucial. This debate is absolutely crucial to the future of our country, and I believe the American people are not only listening, they are demanding to be heard, because every voice counts, and that is why the majority of Americans support reform. They know the system is broken.

There is only one way to truly fix it. Give power back to the elected representatives of the people, to the Congress, and to the States. We have a job to do, but the Supreme Court has rendered us powerless to do it. There is one way to change this, one way for real reform; that is, a constitutional amendment.

That is what this debate is all about. The Supreme Court opened the floodgates. The American people want us to close them.

The Huffington Post published an article yesterday titled ''Is Washington The Only Place Where Campaign Finance Is A Partisan Issue?'' The answer is yes. Poll after poll shows this.

A strong majority of Democrats and Republicans outside of Washington want reform, Republicans such as my good friend former Senator Al Simpson from Wyoming. Yesterday The Hill published an op-ed that Al and I wrote together. As most people know, he has always been someone to speak his mind. When Al edited our draft he added that ''the playing field in our democracy is far from level, and that is driving cynicism, disgust, and mistrust of the political process to dangerous levels.''

Sadly, he is right. It is time for us to listen to our constituents. Over 3 million people have signed petitions in support of a constitutional amendment. There are 16 States, over 550 cities and towns pushing for reform, demanding a more level playing field and fairness, including 75 percent of the voters in Montana, a State where Mitt Romney won by a 10-point margin. So this is a partisan issue only in Washington and in the backrooms of billionaires determined to keep the money flowing and the influence intact.

So opponents have ramped up the noise and distraction about the First Amendment and free speech. I would not lose any sleep about billionaires and their free speech, but a lot of us are up late nights thinking about the rest of America.

As Justice Breyer wrote in his dissent to McCutcheon, ''Where enough money calls the tune, the general public will not be heard.'' Too many Americans feel they are not being heard. The First Amendment has already been hijacked. Our amendment rescues it.

Congress has a long history of regulating campaign finance, of doing its job and standing up to Big Money and powerful interests. We can go all the way back to 1867, and later with the Pendleton Act, the Hatch Act, the Bipartisan Campaign Act of 2002—a long history and I would argue an honorable one, and without banning books, suppressing teachers, suppressing preachers or shutting down newspapers. Reforms have been modest, reasonable, and responsive, passed by both Houses of Congress, signed by the President.

The other side can talk about imaginary horribles. That is one way to go. But that argument is not supported by history, by logic or by the law. Our amendment is not radical. It is a simple idea. It will give power back to the elected representatives of the people, to Congress, and to the States. That is it, period.

What is so terrifying about this? Not one thing, except for wealthy special interests that have their place at the table bought and paid for and want to keep it. That is the bottom line. They oppose any reforms, any restrictions on campaign spending. They are listening too. Their message is very clear and unyielding: No reform. None. They want to keep writing their checks and staying at the head of the table.

This debate is about special interests trying to buy elections in secret with no limits. The Supreme Court says that is just fine. We say, no, in fact, it isn't. Our amendment has a long bipartisan tradition back to 1983 when Senator Ted Stevens, a Republican, was the lead sponsor. It is common sense. It is fair.

We do not dictate specific reforms. We do say Congress has a duty and a right to enact sensible campaign finance reform. Any specific proposals are debatable and answerable to the American people. This amendment has the support of most Americans because they understand beyond all the noise, beyond all the tortured logic of our opponents that we have a train wreck and we need to get the train back on track before yet another scandal, before we are back in the Watergate era.

The voice of Americans should not be drowned out by billionaires lobbying for favors, hiding in the corner with gold-plated megaphones. It is time to limit the power of Big Money, to give everyone a say, not just the rich, not just the powerful—everyone.

Americans are listening, they are watching, and they are waiting because they know and we know a simple truth: We cannot hand over our democracy to the biggest spender.

Thank you, Madam President.

I ask unanimous consent to have printed in the RECORD the op-ed I mentioned authored by myself and Senator Simpson and that the Huffington Post article I referenced be printed in the RECORD.

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

[From thehill.com, Sept. 8, 2014]

BIPARTISAN CASE FOR A CONSTITUTIONAL AMENDMENT ON CAMPAIGN FINANCE

(By Sen. Tom Udall (D–N.M.) and former Sen. Alan Simpson (R–Wy.))

Following recent U.S. Supreme Court decisions dismantling our nation's campaign finance laws, all Americans are certainly not equal on Election Day. With 5–4 split decisions, the court has given corporations the ability to spend unlimited money to persuade voters, and also declared limits on large donations to be the equivalent of infringement on speech. The result is an electoral system in which a billionaire can influence elections across the country, while regular voters have just one shot—by casting a single ballot.

This is surely not the equality as envisioned by our founders, who would be appalled by corporate spending in elections and unlimited personal donations by billionaires. The solution is to clarify the Constitution so that the people may decide how, when and why to regulate campaign finance. This

week, the Senate will vote to begin debate on a constitutional amendment which now has the support of nearly half the Senate, 16 states and over 550 municipalities, including large cities like New York, Los Angeles, Chicago and Philadelphia—all of whom are sick of out-of-control spending in elections and disturbed at the direction the court has taken.

The original and honest intent of our campaign finance laws is to rein in the culture of money in politics and ensure that a few donors can't buy an election by spending to benefit one candidate over another. They are rooted in the public's disgust with political corruption. Yet the court's rulings indicate we are headed back to that pre-Watergate era of corruption. We were troubled that Chief Justice Roberts wrote in the McCutcheon decision that quid pro quo corruption—bribery—is the only sufficient justification for Congress to pass regulations. As a result, we are likely to see new challenges against laws that limit the amount an individual may contribute to a candidate, or laws prohibiting contributions to candidates from corporations. The largest corporations are multi-national organizations worth hundreds of billions of dollars and the Supreme Court is leaving us with no way to set reasonable standards.

McCutcheon is the most recent case, but there is a history of the court narrowly overturning reasonable campaign finance laws. In 2010, Citizens United v. FEC gave free speech rights to corporations and special interests. But this problem goes all the way back to 1976, when the court held in Buckley v. Valeo that restricting independent campaign expenditures violates the First Amendment right to free speech. In effect, the court said money and speech are the same thing.

This is tortured logic that leads to an unacceptable result—that a citizen's access to a constitutional right is dependent on his or her net worth. A result that says the wealthy get to shout, but the rest of you may only whisper.

The constitutional amendment would make it clear that campaign finance regulations are up to voters who elect Congress and state legislatures. It would not dictate any specific policies or regulations, but instead would protect sensible and workable campaign finance laws from constitutional challenges.

Critics have claimed that the amendment would repeal the First Amendment's free speech protections. But it does the exact opposite—the proposal is an effort to restore the First Amendment so that it applies equally to all Americans. When a few billionaires can drown out the voices of millions of Americans, we can't have any real political debate.

The amendment would not simply benefit one party or incumbent. It is similar to bipartisan proposals introduced in nearly every Congress since 1983, when Republican Sen. Ted Stevens (Alaska) was the lead sponsor. Over the years, it has been supported by many Republicans, including Sens. John McCain (Ariz.), Thad Cochran (Miss.), Arlen Specter (Pa.), and Nancy Kassebaum (Kan.), as well as many Democrats.

In April, retired Supreme Court Justice John Paul Stevens said in his testimony before the Senate Rules Committee that campaign finance regulations ''should create a level playing field . . . to give rival candidates—irrespective of their political party and incumbency status—an equal opportunity to persuade citizens to vote for them.'' Most Americans would agree with Justice Stevens. However, until the Constitution is amended, such laws would be struck down by the current court.

The national debate should not be dictated by a handful of wealthy individuals and corporations. After the McCutcheon decision wealthy donors can, and many will, contribute up to $3.6 million in an election cycle. For an average person making minimum wage, it would take 239 years to make that much money. The playing field in our democracy is far from level, and that is driving cynicism, disgust and mistrust of the political process to dangerous levels.

Over the course of our Senate careers, spending on campaigns has gotten out of control. According to a joint study by Brookings and the American Enterprise Institute, outside groups spent $457 million to influence Senate and House races in 2012. In the 1978 election, when Senator Simpson was first elected, outside groups spent only $303,000. There is a deeply troubling trend here, and we cannot let it continue.

Amending the Constitution is difficult—as it should be—but it is long past time to have an honest and thoughtful national dialogue about our broken electoral process and how we voters can fix it.

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[From the Huffington Post, Sept. 8, 2014]

IS WASHINGTON THE ONLY PLACE WHERE CAMPAIGN FINANCE IS A PARTISAN ISSUE?

(By Paul Blumenthal)

WASHINGTON.—The Senate voted Monday to debate a constitutional amendment overturning the Supreme Court's 2010 Citizens United decision and allowing Congress and the states to enhance limits on the amount of money raised and spent in elections. The proposed amendment is nearly universally supported by Democrats and opposed by Republicans.

Division over the role of money in politics, however, is far less severe among the broader populace. In fact, the majority of Americans in both parties say they think there is too much big money in politics and support the rationale offered by amendment proponents as a reason to amend the Constitution.

The amendment up for Senate debate would roll back Supreme Court rulings on campaign finance from the 1976 Buckley v. Valeo decision that first applied First Amendment free speech protection to money raised and spent in elections. That decision allowed Congress to limit contributions, but held that spending limits were a burden on spenders' free speech rights.

Americans appear to broadly disagree that money used in political campaigns should be protected by the First Amendment.

In February 2013, 55 percent of respondents to a HuffPost/YouGov poll said they did not consider ''money given to political candidates to be a form of free speech protected by the First Amendment to the Constitution.'' Just 23 percent agreed that campaign contributions were a form of free speech.

That poll touches only on the issue of campaign contributions. The main issue supporters of the constitutional amendment have with the Buckley decision and subsequent court rulings is the full free speech rights granted to campaign spending.

A Gallup poll taken in June 2013 found that 79 percent supported limiting both the amounts politicians can raise and the amounts they can spend. This was supported at almost equal rates by Democrats, Republicans and independents, and in every part of the country.

There also are a handful of polls commissioned by groups campaigning for the amendment that asked more specific questions. In one such poll, the reform group Public Citizen released findings in August showing 55 percent in support of a constitutional amendment to overturn the Citizens United decision. Support topped so percent for Democrats, Republicans and independents.

The divide between Republican voters and their representatives in Washington also can be seen at the state and local levels. The pro-amendment group Free Speech For People has compiled a list of 137 current and former state Republican officials who support an amendment to enhance limits on campaign finance.

This list includes a number of Republican officials who voted for resolutions in support of an amendment to overturn Citizens United and establish other limits to campaign finance. Overall, 16 states have backed resolutions calling for an amendment.

In Colorado and Montana, the resolutions were sent to the electorate as ballot initiatives in 2012. In both states—one a tossup in presidential elections, the other solid red—more than 70 percent of voters approved the resolutions. In both states, the amendment outpolled both President Barack Obama, the victor in Colorado, and Mitt Romney, who won Montana.

Mr. WHITEHOUSE. Madam President, may I ask that at the conclusion of Senator WALSH's remarks I be recognized?

The PRESIDING OFFICER. Without objection.

The Senator from Montana.

Mr. WALSH. I rise to speak in support of S.J. Res. 19, a constitutional amendment that would give both States and Congress the power to undo the damage caused by Citizens United and restore our Democratic traditions.

Passing this amendment is vital if we are going to begin to roll back the coercive influence of money in our democracy. Because of the Supreme Court's decision in Citizens United, political power has become increasingly concentrated in the hands of corporations and modern-day copper kings. In fact, less than 1 percent of Americans provide over two-thirds of the money spent on elections. The voices of everyday Americans are simply being silenced.

In Montana we have seen firsthand the damage to the process. Turn-of-the-century mining companies made rich off the copper seams in Butte, MT, my hometown, bought up the State press and bought off the State legislature. In response to these abuses, Montana banned corporate political spending by citizen initiative over 100 years ago. However, the recent Supreme Court's Citizens United decision overturned this century-old protection in an instant, silencing Montanans' voices with dark, secretive money and corporate political spending.

Montana's experience with the Butte copper kings shows that corporate political spending, even if it is supposedly independent, corrupts the political process. We cannot let anonymous, unaccountable corporate spending drown out the voices of everyday Americans. When the voices of individual voters become less relevant to politicians, policy decisions are divorced from the folks they impact.

We simply cannot allow a dysfunctional system of campaign finance to eliminate our government's responsiveness to its citizens or its ability to tax our most pressing issues. Montana's history should be learned from, and it is our responsibility to ensure it never happens again.

That is why this amendment is so important to the American people. In 2012 Montana voters overwhelmingly directed the congressional delegation to work to overturn Citizens United to get corporate money out of politics. I have heard from thousands of Montanans that they want Congress to refocus on issues that are important to them, to come together and to do our jobs. Passing this amendment will help us do just that.

Thank you. I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, before I given my ''Time to Wake Up'' speech, I want to react to something that was said on the Senate floor about this joint resolution to correct the error of Citizens United. What was said on the floor was that the position of those of us who support this joint resolution and who think Citizens United was wrongly decided, that our position is an attack on the First Amendment, that we are attacking the First Amendment. That may have some rhetorical utility, but it is simply not accurate.

The very question we are here to answer is whether the First Amendment properly allows unlimited corporate spending. It never did. It never did until Citizens United came along. So the question before this body is, Was Citizens United correctly decided?

To say we are attacking the First Amendment is to presume that Citizens United was correctly decided. You don't win an argument by presuming you are right; you win an argument by making the case why you are right.

Frankly, I have great reverence for the First Amendment, and I think it is extremely unfortunate that an argument would be made that is really nothing more than a rhetorical trick and does not respond to the gravamen of the dispute, which is whether the First Amendment should protect unlimited corporate spending when in the history of this country—until the decision by Citizens United—it never had.

TRIBUTE TO AARON GOLDNER

Before I continue, I wish to express my gratitude to Dr. Aaron Goldner. He has been instrumental in helping me research and prepare the ''Time to Wake Up'' speeches, and his fellowship in my office came to an end yesterday.

Aaron earned his Ph.D. in Earth, atmospheric, and planetary sciences at Purdue University. He came to my office as an American member of the Geophysical Union Congressional Science Fellow, whose research specialty was the development of sophisticated models to help build greater understanding of the past, present, and future effects of carbon pollution on our climate.

He lent his considerable scientific expertise and analysis to these floor speeches. He also did research for legislation and prepared for hearings in the Environment and Public Works Committee. Since we apparently somehow were not keeping him busy enough, he managed to find the time to publish a peer-reviewed article over the summer in the prestigious journal Nature on the climatic conditions surrounding the origination of the Antarctic ice cap.

Aaron said this week as he left that he gained a sense of humor working here, which is probably fitting for a scientist having to deal with this body in its present state.

I gained the benefit of Aaron's hard work and gracious spirit, and the Senate and the American people gained the benefit of Aaron's passion for bringing the best scientific thinking to address our greatest challenges.

Aaron is now taking his talents to the Department of Energy, where he will continue to help our government tackle these important questions. I am grateful for his service in my office and wish him the best success.

CLIMATE CHANGE

The 113th Congress is now winding down, an election is upon us that will decide the makeup of the next Congress, and I am here for the 77th time to say it is time for my Republican colleagues to wake up to the threat of climate change both for the good of our country and our world and ultimately for the good of their own party. No political party can long remain a credible force in our democracy if their position on one of the defining threats of our time is to deny its existence or to plead total ignorance about it. ''I am not a scientist,'' some have begun to say. Well, when it comes to interfering with women's rights, they don't say, ''I am not a gynecologist.'' But when it is carbon pollution, they say, ''I am not a scientist.'' Some would say that if you are not a scientist, all the more reason to listen to the scientists.

Look at what the scientists are saying today. The top person at the World Meteorological Organization, which knows a little bit about this area, just said:

> We know without any doubt that our climate is changing and our weather is becoming more extreme due to human activities such as the burning of fossil fuels.

Here is the point: ''I am not a scientist'' is not the stance of a party that is ready to lead; it is the stance of a party that is beholden to polluting interests, petrified of losing the millions in polluter campaign spending supporting their candidates.

We have heard over and over during the last 6 years that Republicans want President Obama to lead. It is a familiar chorus: ''It is time to lead.'' ''Where is the leadership?'' ''Why isn't America leading?''

One of my Republican Senate colleagues put it this way:

> Every American can agree that the light of peace and liberty would benefit our world. But who will spread it if not America? There is no other Nation that can, and that is why, despite the challenges we face here at home, America must continue to hold this torch. America must continue to lead the way.

Well, on climate change we are finally leading the way thanks in large part to President Obama's Climate Action Plan and Secretary Kerry's passionate efforts. Yet they criticize the Obama administration's leadership on climate change because other countries, such as China and India, are also big carbon emitters. So Republicans want America to lead except on climate change. On this one issue they would prefer to await leadership from China or India. How convenient that is when you think of all the polluter money funding the Republicans and how badly out of step with America. Just look at the numbers. A recent Wall Street Journal poll showed—notwithstanding years of relentless polluter propaganda—that 61 percent of Americans agree that climate change is occurring and that action should be taken, and 67 percent of Americans support the administration's proposed rule to limit carbon pollution from powerplants.

Here is my personal favorite: A survey conducted for the League of Conservation Voters found that more than half of young Republican voters—to be specific, 53 percent of Republicans under the age of 35—would describe a politician who denies climate change is happening as ''ignorant,'' ''out of touch,'' or ''crazy.'' That is the young Republican view of the Republican position on climate change.

On September 21 thousands of concerned Americans will converge on New York City for what will be known as the People's Climate March. Organizers expect that as many as half a million people will take part in this historic citizen action to call attention to the global crisis of climate change.

However you look at it, the American people are sending a message loud and clear: They want responsible leadership on carbon pollution. What is the Republican answer? Well, look at the House. Given control of the House, Republicans have already forced over 100 votes to undermine the EPA. That is even more times than they have voted to repeal ObamaCare.

PAUL RYAN, the Republican chairman of the House Budget Committee, said last week that the Republican strategy next year will be to send the President bills they know he will veto, including approval of the Keystone XL tar sands crude pipeline, and thereby create ''shutdown by veto.''

Over here in the Senate, our Republican leader already threatens—if the Republicans win the Senate—to force onto key legislation what he called ''a lot of restrictions on the activities of the bureaucracy.'' Gee, what agency could he possibly mean? The threat is plain: Give the Republicans polluter-backed, anti-environment legislation or they will shut down the government. Again. This is the Republican version of leadership.

What about out on the campaign trail? Republicans in Congress ignore the public's call for climate action, but

are Republican candidates out there listening to the people or are they listening to the polluters led by the infamous Koch brothers? Look at how much money the polluters are spending on Republicans and take a wild guess. News flash: They are not listening to the people.

The Republican nominee for Senate in Iowa has said of climate change: ''I'm skeptical. It's been changing since the dawn of time. I'm not going to blame it . . . on the human race.''

In New Hampshire the leading Republican Senate candidate recently said that he does not believe manmade climate change has been scientifically proven. Never mind that the underlying science was first measured back when Abraham Lincoln was President.

In North Carolina the Republican nominee has referred to climate change as ''false science.''

Well, in the last year I visited Iowa and New Hampshire and North Carolina, and I saw firsthand how climate change is already affecting those States. I heard over and over deep concern about climate change. I heard about cold-weather sports and tourism threatened by warming temperatures in New Hampshire. I heard about crops threatened by shifting weather patterns and about how a booming wind power industry has emerged in Iowa. In North Carolina I heard about homes and businesses and even air bases threatened by rising seas.

If you doubt me, go to the State universities in Iowa and New Hampshire and North Carolina. They are not denying it. They are actively working on and warning about climate change. Iowa State has an entire climate science program and wants to be a ''leader in the science of regional climate change.'' The University of New Hampshire scientists told me about the danger to New Hampshire's iconic moose from tick infestations because of climate change. Researchers from the University of North Carolina, Duke University, and North Carolina State took me out on a research vessel to see firsthand the effects of climate change on North Carolina's shoreline. The home State universities are clear; it is just the polluter-funded candidates who are denying.

It is the same story across the country. Republicans running for the Senate, from Alaska to Georgia, from Colorado to West Virginia, question or outright deny the established climate science. Figure it out. Do the math. There is overwhelming consensus among knowledgeable scientists that climate change is real and being caused by humans. Denying that fact serves the economic interest of a narrow group of big-spending polluters, and the polluters are spending vast fortunes to support climate deniers.

Senate Republican candidates even attended a secret retreat organized by the Koch brothers earlier this year and praised the Kochs' political network for helping to support their campaign—the polluter political lifeline to the Republican Party.

A lot of blame here attaches to the Republicans' confederates on the Supreme Court—the five Republican-appointed Justices who kicked open the floodgates of corporate special interest spending for Republicans in the disastrous Citizens United decision in January of 2010. With Citizens United in their pocket, the polluters went right to work.

By the 2012 election cycle, the Washington Post and the Center for Responsive Politics determined that a donor network organized by the Koch brothers spent $400 million to influence that election. This graphic shows the complex apparatus the Koch brothers used to pull those political strings.

In the 2014 election cycle, the government accountability group Common Cause has tallied over $34 million in political donations already from 30 of the country's largest oil, gas, coal, and utility corporations. That does not include the dark money fossil fuel corporations have given to political groups which do not disclose their donors—groups such as the American Petroleum Institute, the U.S. Chamber of Commerce, the Koch brothers own so-called Americans for Prosperity organization, or the secretive identity-laundering machine known as the Donors Trust. We don't know how much these groups have actually raised or spent on election activities, but the Koch network is expected to spend nearly $300 million on the 2014 midterm elections.

The Center for Public Integrity reported last week that the Koch brothers are sponsoring 10 percent of all ads in competitive Senate races. That is more than 43,900 Senate ads between January 2013 and last month. Americans for Prosperity alone—that Koch brothers organization—sponsored 27,000 ads. That is one in every 16 ads in all Senate races this cycle. And, of course, those polluter-funded ads make up way more than 10 percent of just the Republican ads. Why is that? Because the focus of this apparatus is on Republicans, on buying and co-opting the Republican Party as the polluters' political instrument.

The numbers are staggering. Let's be clear about one thing: Their intention is not to add to constructive debate on carbon pollution and climate change. The polluters are determined to silence meaningful debate on the catastrophic effects of their carbon pollution, and it is working. There was a lot of Republican activity on climate change until January of 2010 when Citizens United was brought down. And after that, we can't find carbon pollution activity on the Republican side. They have been buried in the threats and the promises of that polluter funding.

Well, climate denial may work for Republicans in the short run if it keeps wide open that spigot of polluter money that is funding Republican candidates. We will see how that works out. But no matter how much money the polluters pour into the Republican Party, even a Republican Senate cannot repeal the laws of science—of physics, of chemistry, of oceanography.

If they win the Senate, it is not just going to be time for them to wake up, it is going to be time for them to grow up. Being in the majority means responsibility, not just obstruction and mischief. Being in the majority means answering your country and the world, not just your polluter funding base. Being in the majority means hearing the vast majority of Americans who want U.S. leadership on climate change, not telling voters the problem doesn't exist or that America should abdicate any responsibility for forging an international solution.

Our Republican colleagues will discover, if they don't know it already—and many do know it already—that former Senator and Secretary of State Hillary Clinton was right when she recently called climate change the ''most consequential, urgent, sweeping collection of challenges we face as a nation and a world.''

Secretary Clinton went on to say:

> The data is unforgiving no matter what the deniers try to assert. . . . If we come together to make the hard choices, the smart investment in infrastructure, technology and environmental protection, America can be the clean energy superpower of the 21st century. . . . This is about our strategic position in the world, this is about our competitiveness, our job creation, our economic growth as well as dealing with a challenge that we ignore at our detriment and our peril.

So the choice for Republicans stands before them: America as a clean energy superpower, leading the world, or America bedeviled with polluter-fueled political gridlock and climate denial. Their choice so far is obvious.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Madam President, I wish to return to the discussion of the constitutional amendment to restrict speech. I made considerable comments yesterday, and there are some other comments I feel should be said about this—probably a dozen or more things. However, I wish to return to that discussion.

We have heard a lot in this debate about commercials. Everybody is concerned about commercials—those 30-second ads that are driving everybody crazy, that everyone wants taken off the air, and that we want to regulate and restrict and punish. We don't like them. No one likes them. We want to make them go away.

Well, let's forget about the commercials for just a second. Let's talk about the show. Does anybody watch the show? It sometimes seems as though the only thing on TV that my colleagues care about are the commercials about themselves. But there actually are other things on TV. There are actual programs that fill up the time between the commercials. Let's talk about those.

There is, of course, all sorts of programming on television: sports, movies, sitcoms, reality shows. Pretty much everything—and I mean everything—is on TV now.

There are a lot of politics on TV. The politics come in a range of formats. It comes unvarnished on C–SPAN. It is delivered through news and commentary on cable channels. It is satirized and made fun of on the late night shows. It appears in documentaries and feature films.

The Citizens United case itself was the result of a political film—a film about Hillary Clinton. During the litigation there were arguments over whether the film and its advertisements could be treated as ''electioneering communications'' and, therefore, regulated and restricted by campaign finance laws. In rendering its decision, the Court properly saw, in my view, the film for what it was: An encouragement for people to vote against Hillary Clinton. This is what the Court said in its holding: The movie, in essence, is a feature-length negative advertisement that urges viewers to vote against then-Senator Clinton for President. In light of this historical footage, interviews with persons critical of her, and voiceover narration, the film would be understood by most viewers as an extended criticism of the Senator's character and her fitness for the Office of the Presidency. The narrative may contain more suggestions and arguments than facts, but there is little doubt that the thesis of the film is that she is unfit for the Presidency.

Then the Court went on to say:

The narrator reminds viewers that Americans have never been keen on dynasties and that a vote for Hillary is a vote to continue 20 years of a Bush or a Clinton in the White House.

Then the Court found this:

There is no reasonable interpretation of Hillary other than as an appeal to vote against Senator Clinton. The film qualifies as the functional equivalent of express advocacy.

Having made that determination, the question then becomes, Should the government be able to prevent it from being seen? The court held the answer to that question was no and struck down as unconstitutional the laws that would prevent or constrain the distribution of the film.

My colleagues on the other side want those laws to be put back in place. They believe the government should be able to control the content, the financing, the distribution of films that reference candidates for office, and they are pushing this constitutional amendment to make that possible.

Now, we can expect there will be a lot more about Hillary Clinton on TV over the next couple of years. Some of it will be favorable and some of it will be unfavorable. Thanks to the Citizens United decision, the government won't be able to control what is said about her or any other potential candidate for the presidency—either party.

My colleagues do not have much to worry about when it comes to programming about Hillary Clinton. I don't think they need to worry about the show. They know there are a small number of conservative film makers who will attack her and whatever they produce is unlikely to reach a wide audience.

On the other hand, there is a huge multitude of liberal film producers, directors, and writers who like—if not love—Hillary Clinton and want to see her get elected to the Presidency, and they will do whatever they can to help her achieve that goal.

Secretary Clinton's recent book tour provided a good preview of the kind of programming we can expect to see more of should she decide to run for President. And luckily for her, there are plenty of television personalities who will help her sell herself to Americans, not just her book.

For example, one recent appearance on the Stephen Colbert show was clearly designed to soften her image. In an extended segment that could be seen as either amusing or nauseating, depending on your perspective, Colbert conducted a phony interview designed to show his viewers how smart and funny Hillary Clinton is.

Of course, Colbert can do whatever he wants with his show. No one questions that. But it should be obvious that the show amounts to a corporate-financed and political expenditure. Everything on the show—the studio, the host, the equipment, the writers, the director, the cameraman—everything is paid for by a corporation. Is there anyone in the Chamber who thinks that a corporation doesn't have the right to do that? Of course not. They like the show. And those on the other side know they can expect all sorts of similar programming in the months and years ahead. That doesn't bother them.

But the commercials are a different story. What if someone wanted to buy a 30-second ad during the show to present an alternative perspective. Well, we can't have that, can we? That would be intolerable. It would present a threat to our democracy. We have to amend the Constitution to prevent that. The absurdity is evident.

My colleagues on the other side of the aisle think our First Amendment allows one sort of programming to have unrestricted and unhindered access to the media, while other sorts must be limited and constrained. I submit that is preposterous.

In our system of government, all voices have the right to be heard. The First Amendment gives them that right. There is so much nonsense in this debate about buying elections and drowning out voices. We have a system that allows all voices to be heard, even those that oppose the majority. That is not the antithetical to democracy; it is the essence of democracy.

So it is time, it seems to me, to stop pretending that allowing more voices to be heard somehow poses a danger just because we don't like what they are saying.

Elections can't be bought. Voters will decide who wins them. They will make that decision based on what they think of the candidates, and what they think will be based on what they see and hear of the candidates. Then they will vote. When they do so, their vote will be equal to that of every other citizen. It doesn't matter how rich they are or what they do for a living or whether they even have their own TV show or never even watch TV. Every citizen gets one vote.

As they make their decision about how we are going to cast it, we need to make sure they are able to hear all voices. That is what the First Amendment does. It ensures that all voices have the right to be heard, and we don't need to change it to make that happen.

Those who are pushing this constitutional amendment don't want more voices to be heard, they want less.

There should never be any confusion about the intent of this constitutional amendment. It is to allow this majority to pass laws that will silence their opponents and ignores all the pious claims about the grand intent to recognize it for what it is—a cynical attempt to protect themselves from criticism.

Don't be fooled.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN. Madam President, one man, one woman, one American, one vote—that is what the writers of our Constitution put in the Constitution—not one corporation, one vote.

What I hear on the Senate floor today and yesterday from those candidates who seem to rely on corporate money, who are the beneficiaries of a showering of—not thousands, not tens of thousands, not hundreds of thousands, not millions—tens of millions of dollars, candidates who benefit from the showering of tens of millions of dollars for their campaigns, what they are saying on this Senate floor is almost laughable.

It would be laughable if it weren't so serious. It would be laughable if it didn't contribute to the corruption of this institution, of this government of which we are so proud—''of the people, by the people, for the people''—one man, one American, one vote.

With Citizens United, with McCutcheon the Supreme Court has effectively ruled the more money you have, the more influence you have over our democracy.

When what I hear from the other side—again, those who are the beneficiaries of the millions, of the tens of millions of corporate dollars, often Wall Street, often oil companies, often big drug companies, often big tobacco companies—when they come to the floor and plead, they are pleading in many ways that the supporters of this constitutional amendment are restricting the right to free speech. I agree.

Whether it is the Koch brothers, whether it is the Big Tobacco executives, they should get one vote.

But when they can spend millions and millions of dollars and shower some of my colleagues with this kind of corporate money to get their way, we know what is happening in this country. We know for the richest 1 percent of this country incomes have grown and grown, gone up and up.

We know for the broad middle, for the bottom 90 percent, for the middle, for the great majority of people in this country, their wages have been flat. No, they have actually been worse than flat over the past 20 years.

The wealthy are getting extraordinarily wealthy, extraordinarily wealthier. The middle class, even sort of the upper middle class—let alone those who are making minimum wage or making $15 an hour, their wages have been stagnant or worse.

One reason for that is—the Presiding Officer from Massachusetts has spoken out about this nationally over and over again—one of the reasons wages have been flat in this country—and the rich are getting richer and richer—is the corruption of Big Money in our political system.

I know how it works. In my race for reelection in 2012—and I am not complaining about this. As my wife's book publisher said: No whining on the yacht. If you get to be in the Senate, don't complain. But I also understand when they spent $42 million against me in my campaign—I am a big boy, I can take it—it was oil money, it was tobacco money, it was mostly out-of-State money. It was money from some of the richest people in the United States of America.

What did they want? They didn't dislike me personally, I assume. Maybe they did. I don't really care. But what it was really about is they wanted—whether the person came from Troy, OH, or Troy, MI, or Troy, NY—a politician in office from Ohio, as they wanted in Massachusetts, as they want this year in New Hampshire, as they want this year in Arkansas, as they want this year in Kansas, as they want this year in North Carolina, in Louisiana, Alaska, and Colorado—they want a lap dog. They want somebody who will go to the well and vote with Big Tobacco, go to the well and vote for Wall Street, and go to the well and vote for oil companies.

That is what they will get if we continue this corrupt way of campaign financing.

The Presiding Officer remembers—after we passed the Dodd-Frank legislation in this Congress 4 years ago and when she was working to establish a consumer protection agency—after the vote on Dodd-Frank, do we remember what the leading financial services lobbyist in this town said? The President signed the bill—within an hour or two, or at least the same day—and the lobbyist said: Well, folks, it is half-time.

What did that mean? He wasn't talking about the NFL. He was talking about: Well, we lost in Congress. They actually passed a bill that Wall Street wasn't wild about. They actually passed a bill that the largest financial institutions were not particularly happy about, but they knew they could use their lobbying, and they have thousands of lobbyists in this town.

They have a number of lobbyists for every Member of Congress. They knew they could use their lobbying force.

They knew they could use the politicians they had—I won't say people here were bought, but you might suggest they are on a long-term lease in some cases. They were suggesting just the threat of spending money.

So if you cast a vote in this institution next week, let's say, on a controversial issue, we know a couple of things. You know you should do the right thing. You know what your constituents back in Florida, Massachusetts or Ohio are saying, but you also know one other thing. You know if you cast a vote that Wall Street might not like, if you cast a vote that Big Tobacco might not like, if you cast a vote that oil companies may not like, do you know what is going to happen? What is in your mind if they come to your State in the next election and spend $10 million or $20 million or $30 million or $40 million.

I had $40 million spent against me because I don't do what Wall Street wants. I don't do what tobacco wants. I don't do what the oil industry wants. Of course, they are going to come after me.

They fell short in 2012—not by much but they fell short. But we know they will do it again. We know every time we cast a vote they are keeping a scorecard and saying: Well, we like what that Senator did, we will help him or her—usually him in that case. We don't like what she did, we don't like what he did, so we may be looking out to spend that kind of money. One man, one woman, one American, one vote—not one corporation, one vote.

Fortune 500 companies straddle the globe. They reap millions of dollars of profits. American corporations are at their most profitable time perhaps in their history sitting on tens, hundreds of millions of dollars in profit.

It doesn't take a Ph.D. in math to understand they spent a small, small, microfraction of the money they are making to protect those profits.

How do they do it? They come to Ohio, they come to Massachusetts, they come to Florida, they come anywhere in the country and they spend millions. They spend tens of millions to protect themselves on behalf of Wall Street, on behalf of Big Oil, on behalf of these big tobacco companies. It is all pretty simple: one man, one woman, one American, one vote.

Citizens United and McCutcheon make clear there is now an entry fee for participating in our democracy. That is why I support the constitutional amendment proposed by Senator UDALL that curbs unlimited campaign spending: one man, one woman, one American.

This amendment grants Congress the authority to regulate and limit the raising and spending of money. We are not shutting anybody off. Anybody can still give fairly significant amounts of money. But we do know—do the math. After the McCutcheon decision, donors can now contribute up to $3.6 million an election cycle.

I don't know for sure, because I have not met most of the 300 million people in our country, but I don't think there are all that many that have the wherewithal financially to contribute $3.6 million. But I also know—because my staff did the math on this one, I acknowledge—the average person making minimum wage at $7.25 an hour—and, parenthetically, the same people who love McCutcheon love the millions of dollars spent, showered on us from Wall Street or against us from Wall Street, from Big Tobacco or from Big Oil. Those same people are stopping the minimum wage from being increased.

The minimum wage is at its lowest level in buying power since 1968. It has been stuck at $7.25 an hour.

Back in the era of bipartisanship on minimum wage—we actually passed one in 2007, my first year in the Senate, signed by Republican President Bush. Those days seem to be past.

Think about the math. At $7.25 an hour, people are allowed to give $3.6 million under the McCutcheon decision—pushed by corporations and handed down by the Supreme Court—that says corporations are people too, more or less.

For a minimum wage worker, it would take 239 years, working full time, making $7.25 an hour, to make $3.6 million. And then they would have to give it all away in that election cycle to be able to compete with the oil companies, the drug companies, and Big Tobacco and Wall Street.

This is very clear. We can change it.

Again, back to the arguments on the other side. They are laughable at home. I don't think I know anybody who thinks it is OK that we are allowing somebody to come in and spend—except for colleagues whom I like. Most of the people on the other side of this issue, I like them personally, but I don't know very many people, unless they are in Washington, unless they have a stake in this system—I don't know people who think it is a great idea to let people spend $3.6 million. They are not spending it out of their charitable whims. They are spending it because they want their people, their water boys, their water girls for the drug companies, the water boys and the water girls for Wall Street, the water boys and the water girls for Big Tobacco, they want those people elected, not people who will stand up to those interest groups and do the right thing.

To restore voters' faith in the political system, to ensure voters that their voices are being heard, one man, one

woman, one American, one vote, that is what we stand for. Those are our values. That is why this is an important issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN. Madam President, I thank the Senator from Florida for allowing me to do this before his final remarks of the evening.

MORNING BUSINESS

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

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

MEETING HOUSE FARM CENTENNIAL

Mr. LEAHY. Madam President, Vermont has always been a farming State, and it is the dairy, livestock, vegetable, and fruit farms to which we owe thanks for the open pastures and spectacular vistas that Vermonters and all those who visit our State cherish. None is more beautiful than Meeting House Farm in Norwich, owned by Deb and Jay Van Arman. The farm, located on a hill outside of the village, with an expansive view down the beautiful Connecticut River Valley, has been in the family since Deb's and her brother David Pierce's grandparents arrived in a Sears, Roebuck & Company wagon from Quechee in 1914.

On Saturday, August 2, Deb, Jay and David hosted a centennial reunion for a grateful crowd of family and friends who came from as far as California, Holland and South America. The reunion was a celebration of farming, family, and community for those who grew up on or visited the farm over the years. They shared stories of haying and collecting maple sap with Deb and David's father ''Bub,'' riding the tractor and collecting eggs, and sitting around the kitchen table sharing one of their mother Janet's bountiful meals. Janet ran a day care at the farm for local children and later became Norwich's beloved town clerk.

The dairy herd was sold in the 1980s, but the haying goes on. There are goats and Deb's big vegetable garden, and half a dozen Holstein cows from another farm graze the hillside. Meeting House Farm represents the best of Vermont, and we owe a debt of gratitude to the Pierce-Van Arman family for keeping it a farm all these years.

I ask unanimous consent that an article about the centennial on the front page of the August 3rd Valley News be printed in the RECORD.

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

[From The Valley News, Aug. 3, 2014]

A CENTURY OF FARMING IN NORWICH: FAMILY MEMBERS FLOCK FROM AROUND THE WORLD TO MARK ANNIVERSARY

(By Aimee Caruso)

NORWICH.—A Norwich family marked 100 years of farm life yesterday with hayrides, games and dinner, photographs, storytelling and socializing.

Meeting House Farm, owned by Jay and Deb Van Arman, has been in the family for a century, and the trend is set to continue into the future.

Yesterday, however, was all about celebrating the crop of longtime friendships and family bonds the Union Village Road farm has produced over the decades. Wearing name tags, people of all ages mingled yesterday, snacking and sharing memories. Milling near a table laden with pies, candy-studded cookies and other goodies, they described the farm as a warm and lively place.

Jeff Bradley, who grew up just down the road, was in 4–H with the Van Armans' children and spent many days on the farm, tossing hay bales and collecting sap for maple syrup. He longingly recalled the yeast doughnuts and dill pickles, both of which were eaten dipped in maple syrup, made by Deb's late mother, Janet. And he remembered something else that left a big impression on him.

''No matter what, you stopped by and they had time for you,'' said Bradley, who now lives in Massachusetts with his family. ''Time for a story, time to sit down and have coffee.''

People have always dropped in and visited the farm, said Deb Van Arman, seated under a large white tent set up for the occasion. ''It's been important to encourage that so we have a sense of community. We have that, and we're very grateful.''

Yesterday's gathering, months in the making, drew about 240 people from across the country and beyond, including 26 of 27 first cousins. The 27th wanted to come, but couldn't make it because his wife was sick, Deb Van Arman explained.

The Van Armans' children and their families came in from New York state, Chile and Holland. One family friend came from Taipei, Taiwan; others made the trip from Hamburg, Germany. In addition to relatives, the group included people who had worked on the farm, neighbors, and former neighbors, ''people who have helped us over the years,'' Deb said, choking up. ''It's just great.''

Some spent the night on the farm; others bunked with neighbors who had opened their houses for the occasion and provided food and beer, said the Van Armans' son, Tom. ''It's like Airbnb on steroids.''

The 116-acre farm, established in the 1780s, is thought to be the town's oldest working farm. It's named for the timbers in the original barn. When Norwich's first meeting house was torn down, the farm's owner, Constant Murdock, bought the beams for his barn, said Nancy Hoggson, president of the Norwich Historical Society. Initially a subsistence farm, it would eventually grow into a dairy business.

Deb Van Arman's grandparents, Charles and Lucy Pierce, bought the property in 1913 and moved there from a small farm in Quechee. The Pierces' son, Charles ''Bub'' Pierce, and his wife, Janet, lived with them on the farm, where Janet ran a day care and Bub farmed until he became ill in 1970, the same year the Van Armans married. Bub died the following year, and Janet farmed with the neighbors' help until later in 1971, when Jay took over. They expanded their herd and carried on with the dairy business until 1986.

With three children to put through college, a farmer's pay wouldn't cut it, so the couple took part in a federal herd buy-out program, selling their dairy cows. Both are officially retired—Jay was a mail carrier in Norwich, and Deb, a physical therapist, worked at the VA. But their work on the farm didn't end. Deb keeps up the grounds, including the vegetable, herb and flower gardens. Jay runs a composting business and makes hay—he puts up and sells about 14,000 bales a year, their main income. They also depend on the state's current use plan to reduce taxes, he said. ''If it wasn't for current use, we wouldn't be here.''

Theirs is one of eight farms featured in Cycles of Change: Farming in Norwich, now on display at the historical society. The exhibit, comprising photographs, video, oral histories and text, will run through next spring.

Farming has seen big changes over the past several decades, and rolling with the times has taken perseverance, financial investments and plenty of hard work. New federal regulations in the mid 1900s meant expensive upgrades for dairy farms, Hoggson said. ''A lot of small farmers couldn't adjust to those changes, so they had to close up shop.''

She called the fact that the same family has owned Meeting House Farm for a century ''extraordinary.''

''Keeping that land together has been really, really important to the whole family,'' she said. ''It's very unusual, I think, and a real credit to them as individuals and to their commitment to the land, the importance of family, and place that they have been able to do this.''

Yesterday's event was, in part, a tribute to that effort.

''We wanted to celebrate all the happiness (the farm) has brought and all the hard work my parents have done through thick and thin,'' said daughter Emily Myers. ''It's not easy, having a lot of property. . . . It can be very expensive, especially with taxes, and they have been able to make it work.''

As with most farm kids, summers and the hours after school found the Van Arman children tending to chores. Growing up on the farm has had a lasting impact on them, Myers said. ''It gave us great morals, great values and always a sense of home.''

On display yesterday was the Sears and Roebuck wagon Deb's grandparents bought to travel to the farm with their young children. The family had hitched their cows to the wagon, and on the way, one gave birth on Christian Street. Her father retrieved the calf the following day. Their move from Quechee to the farm, made in mud season, was quite a journey, Deb Van Arman said.

Within the next few years, a similar, if much more modern, trek will take place, as the Van Armans' daughters, Kate and Emily, plan to return to the farm with their families.

''The only thing I ever knew was this farm,'' Deb Van Arman said. Knowing her children will carry on the tradition ''is very special.''

VIOLENCE AGAINST WOMEN ACT 20TH ANNIVERSARY

Ms. MIKULSKI. Madam President, today we commemorate the 20th anniversary of the Violence Against Women Act, a landmark piece of legislation that continues to improve the lives of millions of women, their families, and the communities that support them. I was proud to cosponsor this legislation when it was originally enacted in 1994, led by then-Senator, now-Vice President BIDEN. And I was proud to fight for its reauthorizations in 2000, 2005,

and 2013, each time refining and building upon the great work that VAWA does each day.

This legislation stands today as an as an example of what we are really called here to do—meeting people's day-to-day needs. That means protecting people, making their lives better, and providing vital resources to those in need. No woman in this country should live in fear that her partner will hurt or kill her or her kids. I have zero tolerance for domestic violence. If you are beaten and abused, you should have somewhere to turn for help and a path to recovery.

VAWA is crucial in all of our communities. Every day VAWA is providing services to families in desperate need. I hear from my constituents far too often about the challenges they are facing, often involving significant economic struggles only to be complicated by deep emotional pain and fear.

Here are the statistics: 1 in 4 women will be victims of domestic violence. 16 million children are exposed to domestic violence every day. And over 2 million will be victims themselves of physical or sexual violence each year. 20,000 of these cases are in my own State of Maryland. Since we created the legislation in 1994, the national hotline has received millions of calls. Millions of women felt in danger and had the chance of being rescued.

In my own State of Maryland VAWA is making recovery possible for victims by finding them legal help to separate from their abusers. They are also getting vital services at rape crisis centers and navigating our immigration system to ensure protection.

Through the years I have heard from too many Marylanders about their struggles. Fortunately, VAWA programs existed to help them. I heard from one of my constituents, Jean on the Eastern Shore of Maryland. Jean was married to her husband for 10 years and shared 2 children. She benefited from VAWA's Legal Assistance for Victims Grant after being abused so brutally one evening. Jean called the hotline and got the legal assistance to file for a protective order, which she ultimately was awarded and is now living her life safely with her children.

I also heard from Danielle. Danielle was sexually assaulted at the age of 19 by an associate that she knew. She was aided by VAWA's Sexual Assault Services program when she made the connection with the rape crisis center a few days after her attack. Danielle got the support she needed at the crisis center. She received personalized safety planning and counseling and was provided a lawyer to help her get a peace order.

I also hear from law enforcement in Maryland who say VAWA is helping them make communities safer. The Lethality Assessment Program, pioneered in Maryland and now a model for the Nation, was strengthened in the last VAWA reauthorization. The program is used to identify high risk situations at the outset to link up local police with domestic violence professionals to provide wrap around services and empowerment to get victims out of harm's way and reduce homicides. This was made possible because of VAWA which provided the Federal funding to make this a reality.

As chair of the appropriations subcommittee that funds the Justice Department, I have secured funding for the Violence Against Women Act programs at the highest levels ever. These programs ensure tougher penalties for abusers, coordinated assistance with community organizations, and court advocates for abused women to boost reporting and prosecution.

In the fiscal year 2015 CJS spending bill I provided a robust $430 million for Violence Against Women grants, continuing a strong commitment to VAWA programs. I also provide strong investments in core VAWA programs including: $195 million for STOP formula grants, which coordinates community response to domestic violence and also trains police, prosecutors and judicial staff; $30 million for sexual assault services that direct services for victims of rape; $26 million for transitional housing grants so victims have safe and affordable housing after shelters; and $50 million for Grants to Encourage Arrests, which teaches police and prosecutors how to support victims and ensure offender accountability.

So today, as we mark 20 years of VAWA, we reflect on what it has done for families across our country and women in desperate need. But we also reflect with the renewed knowledge that the programs that have been in place are reducing domestic violence and improving outcomes. If it is anything that the last 20 years have shown us, it is that VAWA works. I am proud of it and am so happy to mark this important milestone.

VOTE EXPLANATION

Mr. SCHATZ. Madam President, I was absent on July 28, 2014, and missed the opportunity to vote on the confirmation of Ms. Pamela Harris to be U.S. Circuit Judge for the Fourth Circuit, Vote No. 242.

I wish to state for the record my support for Ms. Harris's nomination, and that I would have voted aye on Ms. Harris's nomination.

RECOGNIZING JOE SCOTT

Mr. BARRASSO. Madam President, on September 16, the Boys and Girls Club of Central Wyoming will celebrate their 16th Annual Awards and Recognition Breakfast. During the event, they will honor a member of the community who has significantly contributed to the Boys and Girls Club. I am delighted that this year's honoree is Joe Scott, a Casper, Wyoming-native, entrepreneur, and philanthropist.

Joe was born and raised in Casper. He attended St. Anthony's Catholic School, East Junior High, and Kelly Walsh High School. His uncle, Jack Sullivan, put Joe to work on the family's ranch in Wyoming's Shirley Basin. Joe collected his first paycheck when he was in the third grade and has continued to work hard ever since. As a young man he worked as an oil pumper for McMurry Oil Company. The McMurry's could always count on Joe to get the job done. Joe stayed with the company through the 1990s as they discovered and developed the Jonah Field. Following his long career with McMurry Oil, he used his tenacity and entrepreneurial spirit to found energy ventures, including a water treatment company and a mud motor company.

The Boys and Girls Clubs of Central Wyoming are grateful for Joe Scott's contributions to their critically important mission. The club offers programs and services that promote and enhance the development of our youth. Their activities provide the youth with a sense of competence, usefulness and belonging.

My wife Bobbi joins me in extending our congratulations to Joe and thanking him for his dedication to Wyoming and its youth. He is the perfect example of a citizen who has truly paid back to his community.

ADDITIONAL STATEMENTS

TRIBUTE TO COLONEL STEPHANIE A. HOLCOMBE

• Mr. INHOFE. Madam President, I wish to recognize Oklahoma resident Col. Stephanie A. Holcombe of the Joint Improvised Explosive Device Defeat Organization, or JIEDDO, who will retire from the U.S. Air Force on January 1, 2015, after 25 years of distinguished service. Col. Holcombe significantly impacted the global fight against improvised explosive devices during her final tour of duty as JIEDDO's chief of public affairs. She directly contributed to creating a global awareness about the IED threat; and helped inform and educate people about JIEDDO's work to reduce the effectiveness of IEDs and eliminate the enemy networks that seek to use these devices to harm our troops.

Col. Holcombe is a distinguished graduate of Oklahoma State University's Reserve Officers' Training Corps in Stillwater, OK, class of 1989, with a degree in photo journalism. She also achieved two master's degrees from the University of Florida and the National War College.

During her 25-year long career as a public affairs officer, she held assignments with Air Combat Command, Air Mobility Command, Air Force Material Command, Air Force Special Operations Command and on the Headquarters Air Staff. In 2004, she deployed to Baghdad where she worked with the U.S. Embassy and conducted operations for Multi-National Forces—Iraq.

Col. Holcombe earned numerous awards and decorations including the

Defense Meritorious Service Medal, the Meritorious Service Medal, the Joint Service Commendation Medal, the Air Force Commendation Medal and the Air Force Achievement Medal, among others. She also received Air Force wide accolades for her excellence in journalism, twice earning the Thomas Jefferson Award.

I am proud to share in the celebration of Col. Stephanie A. Holcombe's military career. I wish her all the best in her retirement.●

HONORING OUR ARMED FORCES

SPECIALIST WILLIAM E. ALLMON

● Mr. INHOFE. Madam President, it is my honor to pay tribute to the life and sacrifice of Army SPC William E. Allmon, of Ardmore, OK who died on April 12, 2008, of wounds suffered when his vehicle encountered an improvised explosive device while serving his Nation in Baghdad, Iraq.

William was a combat engineer who joined the Army in June 2000 and was on his second deployment to Iraq. He previously deployed as part of Operation Iraqi Freedom from January 2005 to January 2006. He was assigned to 1st Battalion, 64th Armor Regiment, 2nd Brigade Combat Team, 3rd Infantry Division, Fort Stewart, GA.

''If you didn't know him, you missed out on a lot,'' wrote SGT Richard White in a letter read tearfully by his wife during a funeral service. ''You are not only my best friend, you are my brother.''

A funeral service was held on April 22, 2008 at Pleasant Valley South Baptist Church in Silver Creek, GA.

William is survived by his wife Jennifer, their son Damien and stepson Jason ''Luke'' Johnson, his mother Donna Fortune, and his father William Allmon.

He loved his family and his children. ''We're going to miss his smile and his antics—he was a kid at heart. When we went to Chuck E. Cheese, he'd get as much out of it as the kids,'' said the soldier's father, William Allmon.

Today we remember Army SPC William E. Allmon, a young man who loved his family and country, and gave his life as a sacrifice for freedom.

STAFF SERGEANT KEVIN R. BROWN

Mr. INHOFE. Madam President, it is my honor to also honor the life and sacrifice of Army SSG Kevin R. Brown, of Harrah, OK who died on September 25, 2007, of wounds suffered from a roadside bomb while serving his Nation in Muqdadiyah, Iraq.

A cavalry scout, Brown joined the military in September 1988, a year after graduating from Harrah High School. He was inspired to join the military by his father Richard Haynes Brown, a senior master sergeant who retired at Tinker Air Force Base, OK after 22 years of service.

In April 2006 he was assigned 6th Squadron, 9th Cavalry Regiment, 3rd Brigade Combat Team, 1st Cavalry Division, based in Fort Hood, TX and deployed for his second tour to Iraq in October 2006.

A funeral service was held at the Brown family plot in Rineyville, KY, near Fort Knox, TN.

Kevin is survived by his parents Glenda and Richard Haynes Brown, his wife Lena of Killeen, TX, the couple's daughters Maria, 13, and Charlene, 14, a sister Brandy Ross of Moore, OK, and two stepchildren Jeremy and Pamela.

I extend our deepest gratitude and condolences to Kevin's family. He lived a life of love for his family, friends, and our country. He will be remembered for his commitment to and belief in the greatness of our Nation. I am honored to pay tribute to this true American hero who twice volunteered to go into the fight and made the ultimate sacrifice of his life for our freedom.

PRIVATE FIRST CLASS CODY M. CARVER

Mr. INHOFE. Madam President, I also wish to remember Army PFC Cody M. Carver who died on October 30, 2007 of wounds sustained when enemy forces engaged his unit with small-arms fire and an improvised explosive device in Baghdad, Iraq.

Born June 23, 1988, Cody joined the Army in November 2006. Upon completing basic training he returned to Oklahoma to serve as a hometown recruiter. He was then assigned to 1st Battalion, 15th Infantry Regiment, 3rd Brigade Combat Team, 3rd Infantry Division, Fort Benning, GA where he was deployed to Iraq on September 28, 2007.

Cody's father, Darrell Lee Carver, was wounded during the Vietnam war. That, along with the September 11, 2001 attacks was his motivation for joining the Army, his mother said. ''He had talked about joining the Army since the ninth grade. I guess it was about the same time 9/11 happened. That bothered him so bad, he just wanted to go and make it right,'' she said.

A memorial service was held on November 10, 2007 at Coweta High School, with burial at the Vernon Cemetery in Coweta, OK.

His mother remembers him as very much a single man with a huge sense of humor. ''I asked him at Valentine's Day if there was anyone he wanted me to send flowers to,'' said his mother. ''He said, 'Mom, that would be too many flowers. You couldn't afford it.' ''

Cody is survived by his parents Darrel and Pam Carver of Haskell, OK, brothers Lee and Jake Carver of Haskell, OK, and his grandparents Charles Orsburn and Barbara Phillippe of Wagoner, OK, and Ronald and Edna Carver of Coweta, OK.

Today we remember Army PFC Cody M. Carver, a young man who loved his family and country, and gave his life as a sacrifice for freedom.

SERGEANT FIRST CLASS DAVID R. HURST

Mr. INHOFE. Madam President, it is my honor to also honor the life and sacrifice of Army SFC David R. Hurst, of Fort Sill, OK who died on June 8, 2008, of wounds suffered from a roadside bomb while serving his Nation in Baghdad, Iraq.

Born October 21, 1976, David was a 1994 graduate of Ridgewood Prep School in Metairie, LA. He enlisted in the Army in March 1995 and completed basic and advanced individual training at Fort Benning, GA before being honorably discharged in June 1998.

Returning to active duty in August 1999, he served as a basic training drill sergeant at Fort Sill, OK, from November 2005 to October 2007 and was then reassigned to 2nd Battalion, 30th Infantry Regiment, 4th Brigade Combat Team, 10th Mountain Division (Light Infantry), Fort Polk, LA.

A funeral service was held on June 17, 2008 at Schoen Funeral home with internment at Lake Lawn Park Cemetery and Mausoleum in New Orleans, LA.

David is preceded in death by his mother Harrette Kock and survived by his father Max Wayne Hurst, his stepmother Lillian T. Hurst, his brothers Chris and Mark Hurst, and numerous nieces, nephews, other relatives, and friends.

I extend our deepest gratitude and condolences to David's family. He lived a life of love for his family, friends, and our country. He will be remembered for his commitment to and belief in the greatness of our Nation. I am honored to pay tribute to this true American hero who twice volunteered to go into the fight and made the ultimate sacrifice of his life for our freedom.

SERGEANT FIRST CLASS JEFFRY D. KETTLE

Mr. INHOFE. Madam President, it is my honor to also honor the life and sacrifice of Army SFC Jeffry D. Kettle who died on August 12, 2007 of wounds suffered from a roadside bomb while serving his Nation in Nangarhar province near Kuzkalakhel, Afghanistan.

Born August 26, 1975 and listing Madill, OK as his home of record, Jeff was a product of Texas City, TX. Military service ran in his family with his grandfather, uncles, brother, and father also completing service time. ''Jeff was the ultimate warrior,'' said Ronald Kettle, noting his son joined the Army in 1993 right after graduating from high school. He was assigned to 2nd Battalion, 7th Special Forces Group based at Fort Bragg, NC and was on his fourth deployment.

A memorial service was held August 31, 2007, at Calvary Baptist Church in Texas City, TX. Jeff was buried with military honors at Arlington National Cemetery on August 22, 2007. His flag-draped coffin was carried to the grave site by a six-man casket team of soldiers from the 3rd Infantry Regiment. In the brief ceremony, relatives including his parents and his wife recited the Lord's Prayer. His father said his son, 31, wished to be at Arlington because ''he wanted to be buried among heroes.''

Jeff is survived by his parents Ron and Cindy Kettle, his wife Brandi Kettle, two sons Jeffrey and Logan, grandmother Anne Moore, and two brothers Ryan and Clay Kettle.

I extend our deepest gratitude and condolences to Jeff's family. He lived a

life of love for his family, friends, and our country. He will be remembered for his commitment to and belief in the greatness of our Nation. I am honored to pay tribute to this true American hero who volunteered to go into the fight and made the ultimate sacrifice of his life for our freedom.

CAPTAIN TORRE R. MALLARD

Mr. INHOFE. Madam President, I wish to remember another remarkable young man, Army CPT Torre R. Mallard. Assigned to 2nd Squadron, 3rd Armored Cavalry Regiment, Fort Hood, TX. Torre died March 10, 2008 of wounds suffered from an improvised explosive device while serving his Nation in Balad Ruz, Iraq in support of Operation Iraqi Freedom.

The son of a retired army master sergeant, Torre was born August 20, 1980 in Anniston, AL, and lived throughout the United States and Europe, eventually graduating from Salmen High School in Slidell, LA, in 1998.

While attending the U.S. Military Academy at West Point, Torre was actively involved in the boxing and football programs. During the spring semester of his sophomore year at the academy he served a 4-month term as a company commander, one of the highest positions in the Cadet Chain of Command at the academy. In June 2002 he earned a commission in the Army and graduated with a degree in computer science.

A memorial service was held on March 12, 2008 in Anniston, with burial in the U.S. Military Academy Post Cemetery at West Point, NY.

Torre is survived by his wife Bonita, two young sons Torre Jr. and Joshua, and his parents Mose and Robin Mallard.

Today we remember Army CPT Torre R. Mallard, a young man who loved his family and country, and gave his life as a sacrifice for freedom.

SPECIALIST MICHAEL E. PHILLIPS

Mr. INHOFE. Madam President, it is my honor to also pay tribute to the life and sacrifice of Army SPC Michael E. Phillips who died on February 24, 2008 in Baghdad, Iraq.

Michael left for basic training on June 24, 2006. Upon finishing advanced infantry training, he was assigned to Bravo Company 1 of the 502nd Strike Brigade of the 101st Airborne Division.

On October 13, 2007, he and his teammates deployed to Iraq in support of Operation Iraqi Freedom. Just 4 months into his deployment an improvised explosive device tore through the door of the vehicle he was driving. Despite the severity of his injuries he continued to smile and reassure those taking care of him. Even in the most grim and serious times, Michael still fought and lifted up those around him.

He is survived by his parents Steven and Angelia Phillips, his brothers David and Anthony, and his sister Barbara—all of Ardmore, OK.

Michael excelled at drawing and had been offered admission to the San Francisco Art Institute, his mother said. But serving his country meant more than going to college, she said.

''He came home one day and said he wanted to join the Army, and we got in the car and went down to the recruiting station,'' Anglia Phillips said. ''He said terrorism was like a virus. It had to be stopped. It had to be contained.'' Her son was reenlisting to join for 2 more years because ''he didn't want to leave his squad, his guys,'' she said.

Today we remember Army SPC Michael E. Phillips, a young man who loved his family and country, and gave his life as a sacrifice for freedom.

CORPORAL BRYAN J. SCRIPSICK

Mr. INHOFE. Madam President, I also wish to remember Marine Corps Cpl Bryan J. Scripsick who, along with three other Marines, succumbed to injuries sustained after a suicide bomber attacked their position in Anbar province north of Baghdad, Iraq on September 6, 2007.

Bryan was born August 21, 1985. Although the family home is in Wayne, OK, he graduated in 2004 from Pauls Valley High School, where he played safety and wide receiver on the football team.

Rather than pursuing his dream of playing college football, Bryan chose to join the Marine Corps right after his 19th birthday in August 2004. He was assigned to 3rd Assault amphibian Battalion, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA and was on his second tour to Iraq.

More than 100 people filled the First United Methodist Church for a memorial service held on September 13, 2007. Burial took place at the Mount Olivet Cemetery in Pauls Valley, OK. At the cemetery, members of the Marine honor guard carried the casket to the gravesite where the flag was folded above the casket and presented to Bryan's parents and his brother. He was then honored with three volleys from a rifle party and the playing of taps.

Bryan is survived by his parents Jon and Jan Scripsick, and his brother Brett Scripsick of Pauls Valley, OK.

Today we remember Marine Corps Cpl Bryan J. Scripsick, a young man who loved his family and country, and gave his life as a sacrifice for freedom.●

CONGRATULATING THE MARLTON REDS BASEBALL TEAM

● Mr. MENENDEZ. Madam President, I wish to honor the 12 young athletes of the Marlton Reds 10-and-Under Baseball Team from Evesham Township, NJ for their commendable victory at the 2014 Cal Ripken 10-Year-Old World Series on August 16, 2014. Led by the unwavering leadership of Manager Robert Reynolds, Coach Mark Bergstrom, and Coach Joe Morgan, the Marlton Reds won the 2014 10-and-Under Babe Ruth/Cal Ripken Baseball New Jersey District 5 Championship, the New Jersey State Championship, the Mid-Atlantic Regional Championship, and the 10-Year-Old Cal Ripken World Series. The twelve players of the Marlton Reds 10-and-Under Baseball Team that won the World Series are: Colby Reynolds, Jackson Edelman, Zach Weiner, Blake Weinstein, Chris Bonafiglia, Adrian Hernandez, Aaron Bergstrom, Blake Morgan, Raymond Stutzer, Josh Free, Ryan Furman, and Ethan Stith.

These wonderful young athletes have displayed the hard work and dedication that make goals and dreams attainable. Throughout their victorious season, the Marlton Reds garnered the support of their community, receiving countless donations to help them travel to Winchester, VA for the World Series tournament. Upon arrival, the Marlton Reds won all 6 of their games, including the Cal Ripken 10-and-Under Championship Game against a very talented team from Southeastern Lexington, KY by a score of 9 to 1. While every member of the Marlton Reds played exceptionally well, Blake Morgan made the All World Series Team while winning the World Series Batting Title and Most Outstanding Player award, while Jackson Edelman made the All World Series Team and the All Defensive Team.

I would also like to applaud the parents, coaches, and volunteers that work tirelessly to ensure athletes like the 12 members of the Marlton Reds have a place to grow and achieve in sports and in life. It is through the commitment of the entire community that our youth will develop into champions, both on and off the field. I commend the Marlton Reds 10-and-Under Baseball Team, as well as the people of Evesham Township who supported them throughout the season, for winning the Cal Ripken 10–Year-Old World Series.●

CONGRATULATING THE BROOKLAWN BROOKERS BASEBALL TEAM

● Mr. MENENDEZ. Madam President, today I wish to honor the eighteen young athletes of the Brooklawn Brookers Baseball Team of the American Legion Post 72 from Brooklawn, NJ for their commendable victory at the 2014 American Legion Senior World Series on August 19, 2014. Led by the unwavering leadership of coach Dennis Barth, the Brooklawn Brookers won the 2014 New Jersey State American Legion Championship, the Mid-Atlantic Regional Championship, and their second consecutive American Legion World Series Championship. The 18 players of the Brooklawn Brookers Team that won the World Series are: Eric Becker, Joe Bobiak, Sean Breen, Austin Darrow, Phil Dickinson, Pete Farlow, Eric Grafton, John Malatesta, Anthony Harrold, Rocco Mazzeo, Steven Mondile, Tyler Mondile, Eric Schorr, Ray Taylor, Kevin Terifay, Fran Kinsey, Tre Todd, and Matt Parr.

These wonderful young athletes have displayed the hard work and dedication that make goals and dreams attainable. Throughout their victorious season, the Brooklawn Brookers played

with the passion and determination that made it possible to collectively win a championship despite the passing of their longtime Manager, Joe Barth, Sr. Upon their arrival at the World Series in Shelby, NC, the Brookers won all five of their games, including the American Legion Senior World Series Championship Game against a very talented team from Midland, MI. While every member of the Brookers played exceptionally well, Sean Breen was named the 2014 World Series Tournament Most Valuable Player while also receiving the 2014 George W. Rulon Player of the Year Award, the 2014 Louisville Slugger Batting Championship, and sharing the 2014 Rawlings Big Stick Award with teammate Anthony Harrold.

I would also like to applaud the parents, coaches, and volunteers that work tirelessly to ensure athletes like the 18 members of the Brooklawn Brookers have a place to grow and achieve in sports and in life. It is through the commitment of the entire community that our youth will develop into champions, both on and off the field. I commend the Brooklawn Brookers American Legion Post 72 Baseball Team, as well as the people of the State of New Jersey who supported them throughout the season, for winning the 2014 American Legion Senior World Series.●

REMEMBERING THE REVEREND JOSEPH DAY

● Mr. SESSIONS. Madam President, it is appropriate that the Senate take note on occasion of those who ably and honestly serve the country and their fellow man. Our government has many who do so every day.

The Reverend Joseph Day was born in rural Dixons Mill, AL, being one of eight children. He grew up in Toulminville, near Mobile, AL, and was a contemporary of baseball great Hank Aaron. They played baseball together and both attended the Greater Morningstar Missionary Baptist Church.

He started work as a U.S. government civilian employee at Brookley Air Force Base in Mobile. When Brookley closed, Day transferred to what is now Robins Air Force Base, in Warner Robins, GA, retiring after 40 years of service. After returning to Mobile, he then spent 17 years working for Volkert, Inc., in Mobile.

He was passionate about helping others. He served as executive director of the Macon, GA chapter of the Southern Christian Leadership Conference, and while in Macon was called to preach. Returning to Mobile, he founded the House of Joshua Christian Center Church where he pastored until his death. His influence is demonstrated in the remarkable fact that the Day family has produced several Christian ministers.

He was an activist and a leader in the causes he believed in. In 1991, he stood for 7 hours before bulldozers to save a spring fed lake. In the end, the Mobile City Council voted to save the lake and named it Day Lake in his honor.

His wife of 65 years, Ruby Nell James Day, predeceased him. She was a wonderful and beloved woman and a member of the respected James family of Mobile.

Reverend Day's funeral service was a true celebration of a remarkable life well-lived. Speakers at the service included former Mobile Mayor Sam Jones, State Representative James Busky, State Senator Vivian Figures, and City Councilman Fred Richardson. I was also honored to speak. Several prominent pastors from Mobile conducted the service. They were: Ronald McCree, pastor—Greater Morning Star Baptist Church (Eulogy); Clinton Johnson, pastor—New Shiloh Baptist Church (Officiating); Fleet Bell, pastor—Rock of Faith Baptist Church (Song); Darlett-Lucy Gulley, pastor—New Life Methodist Church (Prayer of Comfort); Minister Ronald Suggs, Greater Morning Star Baptist Church (Old Testament Reading); and Minister Gregory Palmer, Sr., Greater Morning Star Baptist Church (New Testament Reading). These pastors have earned the respect of the community over many years for their faith and service to others.

I came to know and respect Reverend Day's son, Eric, when I hired him as the law enforcement coordinator for the U.S. attorney's office in Mobile, where he still works. He reflects the integrity and faith of his father. I am also proud that Eric's wonderful wife Valerie Day has served as my field representative since I was elected to the Senate almost 18 years ago.

This Nation must continue to produce leaders like Reverend Day who, in turn, produce families of energy, drive, faith and service. It is they who provide the vision and faith, and the service, that are the qualities that make America exceptional. ●

REMEMBERING EDMOND LEE JUNEAU

● Mr. TESTER. Madam President, I wish to honor Edmond Lee Juneau, a veteran of the U.S. Army.

It is my honor to share the story of Edmond's service because no veteran's story should ever go unrecognized.

Edmond was born in Green Bay, WI, on November 9, 1920, but grew up in Browning, MT, where he was known for his tremendous athleticism, playing football, basketball, and baseball.

He graduated from Browning High School and married the love of his life Margie Bird Juneau. He and Margie had eight children: seven boys and one girl.

On June 22, 1944, Edmond began his service in the U.S. Army with the 69th Armored Infantry Battalion Company A. He served alongside his cousin William ''Bill'' Big Springs and former Montana Governor, Tim Babcock. Edmond and Tim became close friends, and it was their time overseas that built a strong bond between the two men.

Edmond served in three different campaigns: Rhineland, the Ardennes, and Central Europe. Edmond didn't talk much about the war but told his son Stan one specific memory.

Near the end of the war, Edmond and his fellow soldiers were sitting on their tanks at the Russian border waiting for orders to advance. The Russians, just a short distance away, were also sitting on their tanks waiting for their orders. The orders never came, so at night the two units would come together and talk. Edmond was doing diplomacy with the Russians before the Cold War even started.

Edmond separated from the military on October 23, 1945, passing on his military legacy to his family. Three of his sons, Edmond Jr., Samson, and Robert, all went on to bravely serve our country.

Edmond's life of service extended far beyond the military. His work as a schoolbus driver and officer for the Browning Public Schools demonstrates an unwavering commitment to civic duty and responsibility. Edmond passed away on September 20, 1967.

Last week, in the presence of his family, it was my honor to present Stan Juneau and the entire Juneau family with Edmond's medals. The first medal was the highest medal I had ever given out: the Distinguished Service Medal. It is awarded to any person who, while serving in any capacity with the U.S. Army, has distinguished him or herself with exceptionally meritorious service to the government in a duty of great responsibility. The act must merit recognition for service which is clearly exceptional.

Edmond also earned the following medals: the Bronze Star, Purple Heart, and the Good Conduct Medal.

It was my honor to present a European-African-Middle Eastern Campaign Medal with Three Bronze Service Stars, a World War II Victory Medal, and the Combat Infantryman Badge First Award.

I was also honored to present the Sharpshooter Badge with Rifle Bar and the Honorable Service Lapel Button, World War II.

These decorations are small tokens but powerful symbols of true heroism, sacrifice, and dedication to service.

These medals are presented on behalf of a grateful nation.●

MESSAGE FROM THE HOUSE

At 2:22 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 231. An act to reauthorize the Multinational Species Conservation Funds Semipostal Stamp.

The message further announced that the House has passed the following

bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 78. An act to designate the facility of the United States Postal Service located at 4110 Almeda Road in Houston, Texas, as the ''George Thomas 'Mickey' Leland Post Office Building''.

H.R. 744. An act to provide effective criminal prosecutions for certain identity thefts, and for other purposes.

H.R. 2495. An act to amend the Department of Energy High-End Computing Revitalization Act of 2004 to improve the high-end computing research and development program of the Department of Energy, and for other purposes.

H.R. 2819. An act to designate the facility of the United States Postal Service located at 275 Front Street in Marietta, Ohio, as the ''Veterans Memorial Post Office Building''.

H.R. 3109. An act to amend the Migratory Bird Treaty Act to exempt certain Alaskan Native articles from prohibitions against sale of items containing nonedible migratory bird parts, and for other purposes.

H.R. 3957. An act to designate the facility of the United States Postal Service located at 218–10 Merrick Boulevard in Springfield Gardens, New York, as the ''Cynthia Jenkins Post Office Building''.

H.R. 4189. An act to designate the facility of the United States Postal Service located at 4000 Leap Road in Hilliard, Ohio, as the ''Master Sergeant Shawn T. Hannon, Master Sergeant Jeffrey J. Rieck and Veterans Memorial Post Office Building''.

H.R. 4283. An act to amend the Wild and Scenic Rivers Act to authorize the Secretary of the Interior to maintain or replace certain facilities and structures for commercial recreation services at Smith Gulch in Idaho, and for other purposes.

H.R. 4443. An act to designate the facility of the United States Postal Service located at 90 Vermilyea Avenue, in New York, New York, as the ''Corporal Juan Mariel Alcantara Post Office Building''.

H.R. 4527. An act to remove a use restriction on land formerly a part of Acadia National Park that was transferred to the town of Tremont, Maine, and for other purposes.

H.R. 4651. An act to designate the facility of the United States Postal Service located at 601 West Baker Road in Baytown, Texas, as the ''Specialist Keith Erin Grace, Jr. Memorial Post Office''.

H.R. 4939. An act to designate the facility of the United States Postal Service located at 2551 Galena Avenue in Simi Valley, California, as the ''Neil Havens Post Office''.

H.R. 5019. An act to designate the facility of the United States Postal Service located at 1335 Jefferson Road in Rochester, New York, as the ''Specialist Theodore Matthew Glende Post Office''.

H.R. 5030. An act to designate the facility of the United States Postal Service located at 13500 SW 250 Street in Princeton, Florida, as the ''Corporal Christian A. Guzman Rivera Post Office Building''.

H.R. 5089. An act to designate the facility of the United States Postal Service located at 2000 Mulford Road in Mulberry, Florida, as the ''Sergeant First Class Daniel M. Ferguson Post Office''.

H.R. 5106. An act to designate the facility of the United States Postal Service located at 100 Admiral Callaghan Lane in Vallejo, California, as the ''Philmore Graham Post Office Building''.

H.R. 5309. An act to authorize and strengthen the tsunami detection, forecast, warning, research, and mitigation program of the National Oceanic and Atmospheric Administration, and for other purposes.

H.J. Res. 120. Joint resolution approving the location of a memorial to commemorate the more than 5,000 slaves and free Black persons who fought for independence in the American Revolution.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 78. An act to designate the facility of the United States Postal Service located at 4110 Almeda Road in Houston, Texas, as the ''George Thomas 'Mickey' Leland Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 2495. An act to amend the Department of Energy High-End Computing Revitalization Act of 2004 to improve the high-end computing research and development program of the Department of Energy, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2819. An act to designate the facility of the United States Postal Service located at 275 Front Street in Marietta, Ohio, as the ''Veterans Memorial Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 3109. An act to amend the Migratory Bird Treaty Act to exempt certain Alaskan Native articles from prohibitions against sale of items containing nonedible migratory bird parts, and for other purposes; to the Committee on Environment and Public Works.

H.R. 3957. An act to designate the facility of the United States Postal Service located at 218–10 Merrick Boulevard in Springfield Gardens, New York, as the ''Cynthia Jenkins Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 4189. An act to designate the facility of the United States Postal Service located at 4000 Leap Road in Hilliard, Ohio, as the ''Master Sergeant Shawn T. Hannon, Master Sergeant Jeffrey J. Rieck and Veterans Memorial Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 4283. An act to amend the Wild and Scenic Rivers Act to authorize the Secretary of the Interior to maintain or replace certain facilities and structures for commercial recreation services at Smith Gulch in Idaho, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4443. An act to designate the facility of the United States Postal Service located at 90 Vermilyea Avenue, in New York, New York, as the ''Corporal Juan Mariel Alcantara Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 4527. An act to remove a use restriction on land formerly a part of Acadia National Park that was transferred to the town of Tremont, Maine, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4651. An act to designate the facility of the United States Postal Service located at 601 West Baker Road in Baytown, Texas, as the ''Specialist Keith Erin Grace, Jr. Memorial Post Office''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 4939. An act to designate the facility of the United States Postal Service located at 2551 Galena Avenue in Simi Valley, California, as the ''Neil Havens Post Office''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 5019. An act to designate the facility of the United States Postal Service located at 1335 Jefferson Road in Rochester, New York, as the ''Specialist Theodore Matthew Glende Post Office''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 5030. An act to designate the facility of the United States Postal Service located at 13500 SW 250 Street in Princeton, Florida, as the ''Corporal Christian A. Guzman Rivera Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 5089. An act to designate the facility of the United States Postal Service located at 2000 Mulford Road in Mulberry, Florida, as the ''Sergeant First Class Daniel M. Ferguson Post Office''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 5106. An act to designate the facility of the United States Postal Service located at 100 Admiral Callaghan Lane in Vallejo, California, as the ''Philmore Graham Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 5309. An act to authorize and strengthen the tsunami detection, forecast, warning, research, and mitigation program of the National Oceanic and Atmospheric Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 2779. A bill to amend section 349 of the Immigration and Nationality Act to deem specified activities in support of terrorism as renunciation of United States nationality.

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 744. An act to provide effective criminal prosecutions for certain identity thefts, 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–6764. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Protected Resources, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Subsistence Taking of Northern Fur Seals on the Pribilof Islands; Final Annual Harvest Estimates for 2014–2016'' (RIN0648–BE03) received during adjournment of the Senate in the Office of the President of the Senate on August 14, 2014; to the Committee on Environment and Public Works.

EC–6765. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, an annual report relative to the implementation of the Formaldehyde Standards for Composite Wood Products Act; to the Committee on Environment and Public Works.

EC–6766. 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 ''Material Advisor Penalty for Failure to Furnish Information Regarding Reportable Transactions'' ((RIN1545–BF59) (TD 9686)) received during adjournment of the Senate in the Office of

the President of the Senate on August 11, 2014; to the Committee on Finance.

EC–6767. 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 ''Foreign Tax Credit Guidance under Section 901(m)'' (Notice 2014–45) received during adjournment of the Senate in the Office of the President of the Senate on August 11, 2014; to the Committee on Finance.

EC–6768. 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 ''Segregation Rule Effective Date'' ((RIN1545–BM18) (TD 9685)) received during adjournment of the Senate in the Office of the President of the Senate on August 11, 2014; to the Committee on Finance.

EC–6769. 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 ''Dixon v. Commissioner, 141 T.C. No. 3 (2013)'' (AOD 2014–01) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2014; to the Committee on Finance.

EC–6770. 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 ''2014 National Pool'' (Rev. Proc. 2014–52) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2014; to the Committee on Finance.

EC–6771. 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 ''Clarification and Modification of Notice 2013–29 and Notice 2013–60'' (Notice 2014–46) received during adjournment of the Senate in the Office of the President of the Senate on August 14, 2014; to the Committee on Finance.

EC–6772. 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 ''Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates'' (Notice 2014–48) received during adjournment of the Senate in the Office of the President of the Senate on August 14, 2014; to the Committee on Finance.

EC–6773. 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 ''Awards for Information Relating to Detecting Underpayments of Tax or Violations of the Internal Revenue Laws'' ((RIN1545–BL08) (TD 9687)) received during adjournment of the Senate in the Office of the President of the Senate on August 14, 2014; to the Committee on Finance.

EC–6774. A communication from the Deputy Director, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015'' (RIN0938–AS07) received in the Office of the President of the Senate on July 31, 2014; to the Committee on Finance.

EC–6775. A communication from the Deputy Director, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2015'' ((RIN0938–AS09) (CMS–1608–F)) received in the Office of the President of the Senate on July 31, 2014; to the Committee on Finance.

EC–6776. A communication from the Deputy Director, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2014 (FY 2015)'' ((RIN0938–AS08) (CMS–1606–F)) received in the Office of the President of the Senate on July 31, 2014; to the Committee on Finance.

EC–6777. A communication from the Senior Counsel for Regulatory Affairs, Office of Fiscal Assistant Secretary, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund'' ((RIN1505–AC44) (31 CFR Part 34)) received during adjournment of the Senate in the Office of the President of the Senate on August 15, 2014; to the Committee on Finance.

EC–6778. A communication from the Federal Register Liaison Officer, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Establishment of the Manton Valley Viticultural Area'' (RIN1513–AC03) received during adjournment of the Senate in the Office of the President of the Senate on August 14, 2014; to the Committee on Finance.

EC–6779. A communication from the Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, an addendum to a certification, of the proposed sale or export of defense articles and/or defense services to a Middle East country (OSS–2014–1229); to the Committee on Foreign Relations.

EC–6780. A communication from the Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, an addendum to a certification, of the proposed sale or export of defense articles and/or defense services to a Middle East country (OSS–2014–1154); to the Committee on Foreign Relations.

EC–6781. A communication from the Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, an addendum to a certification, of the proposed sale or export of defense articles and/or defense services to a Middle East country (OSS–2014–1152); to the Committee on Foreign Relations.

EC–6782. A communication from the Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, an addendum to a certification, of the proposed sale or export of defense articles and/or defense services to a Middle East country (OSS–2014–1153); to the Committee on Foreign Relations.

EC–6783. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the designation of a group as a Foreign Terrorist Organization by the Secretary of State (OSS–2014–1173); to the Committee on Foreign Relations.

EC–6784. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 14–087); to the Committee on Foreign Relations.

EC–6785. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 14–031); to the Committee on Foreign Relations.

EC–6786. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 14–061); to the Committee on Foreign Relations.

EC–6787. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 14–075); to the Committee on Foreign Relations.

EC–6788. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 14–083); to the Committee on Foreign Relations.

EC–6789. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 14–055); to the Committee on Foreign Relations.

EC–6790. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 14–086); to the Committee on Foreign Relations.

EC–6791. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(d) of the Arms Export Control Act (DDTC 14–040); to the Committee on Foreign Relations.

EC–6792. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2014–0090—2014–0094); to the Committee on Foreign Relations.

EC–6793. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, eighteen (18) reports relative to vacancies in the Department of State, received during adjournment of the Senate in the Office of the President of the Senate on August 15, 2014; to the Committee on Foreign Relations.

EC–6794. A communication from the Acting Assistant Secretary for Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Final Priority. Technical Assistance on State Data Collection—IDEA Data Management Center'' (CFDA No. 84.373M.) received during adjournment of the Senate in the Office of the President of the Senate on August 13, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6795. A communication from the Director, Office of Special Education Programs, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Final priority. Rehabilitation Training: Rehabilitation Long-Term Training Program—Rehabilitation Specialty Areas'' (CFDA Nos. 84.129C, E, F, H, J, P, Q, R, and W.) received in the Office of the President of the Senate on July 31, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6796. A communication from the Deputy Director, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Administrative Simplification: Change to the Compliance Date for the International Classification of Diseases, 10th Revision (ICD–10-CM and ICD–10-PCS) Medical Data Code Sets''

((RIN0938–AS31) (CMS–0043-F)) received in the Office of the President of the Senate on July 31, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6797. A communication from the Acting 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 ''Final Priority; Rehabilitation Services Administration-Assistive Technology Alternative Financing Program'' (CFDA No. 84.224D.) received during adjournment of the Senate in the Office of the President of the Senate on August 28, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6798. A communication from the Acting 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 ''Final Priority; Technical Assistance on State Data Collection—IDEA Fiscal Data Center'' (34 CFR Chapter III) received during adjournment of the Senate in the Office of the President of the Senate on August 28, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6799. A communication from the Acting 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 ''Final Priority; Technical Assistance on State Data Collection—IDEA Data Management Center'' (CFDA No. 84.373M.) received during adjournment of the Senate in the Office of the President of the Senate on August 28, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6800. A communication from the Acting 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 ''Final Priority; Rehabilitation Training: Rehabilitation Long-Term Training Program—Rehabilitation Specialty Areas'' ((34 CFR Chapter III) (Docket No. ED–2014–OSERS–0068)) received during adjournment of the Senate in the Office of the President of the Senate on August 28, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6801. A communication from the Acting 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 ''Final Priorities; Rehabilitation Services Administration—Capacity Building Program for Traditionally Underserved Populations—Vocational Rehabilitation Training Institute for the Preparation of Personnel in American Indian Vocational Rehabilitation Services Projects'' ((CFDA No. 84.315C.) (Docket No. ED–2014–OSERS–0024)) received during adjournment of the Senate in the Office of the President of the Senate on August 28, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6802. A communication from the Acting 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 ''Final Priority. Rehabilitation Training: Job-Driven Vocational Rehabilitation Technical Assistance Center'' (CFDA No. 84.264A.) received during adjournment of the Senate in the Office of the President of the Senate on August 28, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6803. A communication from the General Counsel, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits'' (29 CFR Part 4022) received during adjournment of the Senate in the Office of the President of the Senate on August 11, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6804. A communication from the Executive Analyst, Office of the Secretary, Department of Health and Human Services, transmitting, pursuant to law, a report relative to a vacancy in the position of Assistant Secretary for Health, Department of Health and Human Services; to the Committee on Health, Education, Labor, and Pensions.

EC–6805. A communication from the Executive Analyst, Office of the Secretary, Department of Health and Human Services, transmitting, pursuant to law, a report relative to a vacancy in the position of Commissioner on Children, Youth, and Families, Department of Health and Human Services; to the Committee on Health, Education, Labor, and Pensions.

EC–6806. A communication from the Assistant Secretary for Occupational Safety and Health, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Procedures for Handling Retaliation Complaints Under the Employee Protection Provision of the Consumer Financial Protection Act of 2010'' (RIN1218–AC58) received in the Office of the President of the Senate on July 31, 2014; to the Committee on Health, Education, Labor, and Pensions.

EC–6807. A communication from the Chief of the Border Security Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Technical Amendment to the List of CBP Preclearance Offices in Foreign Countries: Addition of Abu Dhabi, United Arab Emirates'' (CBP Dec. 14–09) received during adjournment of the Senate in the Office of the President of the Senate on August 11, 2014; to the Committee on Homeland Security and Governmental Affairs.

EC–6808. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Nondiscrimination Provisions'' (RIN3206–AM77) received during adjournment of the Senate in the Office of the President of the Senate on August 14, 2014; to the Committee on Homeland Security and Governmental Affairs.

EC–6809. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Phased Retirement'' (RIN3206–AM71) received during adjournment of the Senate in the Office of the President of the Senate on August 14, 2014; to the Committee on Homeland Security and Governmental Affairs.

EC–6810. A communication from the Associate General Counsel for General Law, Department of Homeland Security, transmitting, pursuant to law, a report relative to a vacancy in the position of Chief Financial Officer, Department of Homeland Security, received in the Office of the President of the Senate on August 1, 2014; to the Committee on Homeland Security and Governmental Affairs.

EC–6811. A communication from the Associate General Counsel for General Law, Department of Homeland Security, transmitting, pursuant to law, a report relative to a vacancy in the position of Deputy Administrator, Federal Emergency Management Agency, Department of Homeland Security, received in the Office of the President of the Senate on August 1, 2014; to the Committee on Homeland Security and Governmental Affairs.

EC–6812. A communication from the Acting District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Sufficiency Certification for the Washington Convention and Sports Authority's (Trading As Events DC) Projected Revenues and Excess Reserve to Meet Projected Operating and Debt Service Expenditures and Reserve Requirements for Fiscal Year 2015''; to the Committee on Homeland Security and Governmental Affairs.

EC–6813. A communication from the Acting District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Audit of the District's Eastern Market Program and Fund''; to the Committee on Homeland Security and Governmental Affairs.

EC–6814. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, the Board's Fiscal Year 2013 Annual Report on The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002; to the Committee on Homeland Security and Governmental Affairs.

EC–6815. A communication from the General Counsel and Senior Policy Advisor, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, three (3) reports relative to vacancies in the Office of Management and Budget, received during adjournment of the Senate in the Office of the President of the Senate on August 15, 2014; to the Committee on Homeland Security and Governmental Affairs.

EC–6816. A communication from the Chairman, Merit Systems Protection Board, transmitting, pursuant to law, a report entitled ''Veteran Hiring in the Civil Service: Practices and Perceptions''; to the Committee on Homeland Security and Governmental Affairs.

EC–6817. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a report on the Department's activities during calendar year 2013 relative to the Equal Credit Opportunity Act; to the Committee on the Judiciary.

EC–6818. A communication from the Chief of the Office of Regulatory Affairs, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Elimination of Firearms Transaction Record, ATF Form 4473 (Low Volume) (2008R–21P)'' (RIN1140–AA34) received during adjournment of the Senate in the Office of the President of the Senate on August 11, 2014; to the Committee on the Judiciary.

EC–6819. A communication from the Librarian of Congress, transmitting, pursuant to law, the Annual Report of the Librarian of Congress for fiscal year 2013; to the Committee on Rules and Administration.

EC–6820. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a report entitled ''Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) Quarterly Report to Congress; Third Quarter of Fiscal Year 2014''; to the Committee on Veterans' Affairs.

EC–6821. A communication from the Chief of the Regulation Policy and Management Office of the General Counsel, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Servicemembers' Group Life Insurance—Veterans' Group Life Insurance Regulation Update—ABO, VGLI Application, SGLI 2-Year Disability Extension'' (RIN2900–AO74)

received in the Office of the President of the Senate on July 31, 2014; to the Committee on Veterans' Affairs.

EC–6822. A communication from the Director of the Regulation Policy and Management Office of the General Counsel, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Schedule for Rating Disabilities—Mental Disorders and Definition of Psychosis for Certain VA Purposes'' (RIN2900–AO96) received in the Office of the President of the Senate on July 31, 2014; to the Committee on Veterans' Affairs.

EC–6823. A communication from the Director of the Regulation Policy and Management Office of the General Counsel, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Servicemembers' Group Life Insurance and Veterans' Group Life Insurance Information Access'' (RIN2900–AO42) received during adjournment of the Senate in the Office of the President of the Senate on August 14, 2014; to the Committee on Veterans' Affairs.

EC–6824. A communication from the Executive Director, Office of Compliance, transmitting, pursuant to the Congressional Accountability Act, a report relative to proposed procedural rulemaking; to the Committee on Homeland Security and Governmental Affairs.

EC–6825. A communication from the Executive Director, Office of Compliance, transmitting, pursuant to the Congressional Accountability Act, a report relative to proposed rulemaking; to the Committee on Homeland Security and Governmental Affairs.

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. MCCONNELL:

S. 2780. A bill to direct the Secretary of the Interior to conduct a special resource study to evaluate the significance of the Mill Springs Battlefield located in Pulaski and Wayne Counties, Kentucky, and the feasibility of its inclusion in the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GRASSLEY (for himself and Mrs. MCCASKILL):

S. 2781. A bill to improve student and exchange visitor visa programs; to the Committee on the Judiciary.

By Mr. SANDERS (for himself and Mr. BLUMENTHAL):

S. 2782. A bill to amend title 36, United States Code, to improve the Federal charter for the Veterans of Foreign Wars of the United States, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. SHAHEEN (for herself, Ms. AYOTTE, Mr. NELSON, Mr. RUBIO, and Mr. MENENDEZ):

S. Res. 538. A resolution expressing the condolences of the Senate to the families of James Foley and Steven Sotloff, and condemning the terrorist acts of the Islamic State of Iraq and the Levant; considered and agreed to.

By Mr. LEAHY (for himself, Mr. SANDERS, Mr. REID, Mr. MCCONNELL, Mr. ALEXANDER, Ms. AYOTTE, Ms. BALDWIN, Mr. BARRASSO, Mr. BEGICH, Mr. BENNET, Mr. BLUMENTHAL, Mr. BLUNT, Mr. BOOKER, Mr. BOOZMAN, Mrs. BOXER, Mr. BROWN, Mr. BURR, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. CHAMBLISS, Mr. COATS, Mr. COBURN, Mr. COCHRAN, Ms. COLLINS, Mr. COONS, Mr. CORKER, Mr. CORNYN, Mr. CRAPO, Mr. CRUZ, Mr. DONNELLY, Mr. DURBIN, Mr. ENZI, Mrs. FEINSTEIN, Mrs. FISCHER, Mr. FLAKE, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. GRAHAM, Mr. GRASSLEY, Mrs. HAGAN, Mr. HARKIN, Mr. HATCH, Mr. HEINRICH, Ms. HEITKAMP, Mr. HELLER, Ms. HIRONO, Mr. HOEVEN, Mr. INHOFE, Mr. ISAKSON, Mr. JOHANNS, Mr. JOHNSON of Wisconsin, Mr. JOHNSON of South Dakota, Mr. KAINE, Mr. KING, Mr. KIRK, Ms. KLOBUCHAR, Ms. LANDRIEU, Mr. LEE, Mr. LEVIN, Mr. MANCHIN, Mr. MARKEY, Mr. MCCAIN, Mrs. MCCASKILL, Mr. MENENDEZ, Mr. MERKLEY, Ms. MIKULSKI, Mr. MORAN, Ms. MURKOWSKI, Mr. MURPHY, Mrs. MURRAY, Mr. NELSON, Mr. PAUL, Mr. PORTMAN, Mr. PRYOR, Mr. REED, Mr. RISCH, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. RUBIO, Mr. SCHATZ, Mr. SCHUMER, Mr. SCOTT, Mr. SESSIONS, Mrs. SHAHEEN, Mr. SHELBY, Ms. STABENOW, Mr. TESTER, Mr. THUNE, Mr. TOOMEY, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VITTER, Mr. WALSH, Mr. WARNER, Ms. WARREN, Mr. WHITEHOUSE, Mr. WICKER, and Mr. WYDEN):

S. Res. 539. A resolution relative to the death of James M. Jeffords, former United States Senator for the State of Vermont; considered and agreed to.

ADDITIONAL COSPONSORS

S. 375

At the request of Mr. TESTER, the name of the Senator from New Hampshire (Ms. AYOTTE) was added as a cosponsor of S. 375, a bill to require Senate candidates to file designations, statements, and reports in electronic form.

S. 641

At the request of Mr. WYDEN, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 641, a bill to amend the Public Health Service Act to increase the number of permanent faculty in palliative care at accredited allopathic and osteopathic medical schools, nursing schools, and other programs, to promote education in palliative care and hospice, and to support the development of faculty careers in academic palliative medicine.

S. 1088

At the request of Mr. FRANKEN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1088, a bill to end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

S. 1249

At the request of Mr. BLUMENTHAL, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1249, a bill to rename the Office to Monitor and Combat Trafficking of the Department of State the Bureau to Monitor and Combat Trafficking in Persons and to provide for an Assistant Secretary to head such Bureau, and for other purposes.

S. 1251

At the request of Mr. REED, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 1251, a bill to establish programs with respect to childhood, adolescent, and young adult cancer.

S. 1495

At the request of Mr. CASEY, the name of the Senator from New Jersey (Mr. BOOKER) was added as a cosponsor of S. 1495, a bill to direct the Administrator of the Federal Aviation Administration to issue an order with respect to secondary cockpit barriers, and for other purposes.

S. 1628

At the request of Mr. MERKLEY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1628, a bill to provide Federal death and disability benefits for contractors who serve as firefighters of the Forest Service, Department of the Interior agencies, or any State or local entity.

S. 1695

At the request of Ms. CANTWELL, the names of the Senator from Colorado (Mr. BENNET) and the Senator from Connecticut (Mr. BLUMENTHAL) were added as cosponsors of S. 1695, a bill to designate a portion of the Arctic National Wildlife Refuge as wilderness.

S. 1739

At the request of Mr. HOEVEN, the name of the Senator from Wyoming (Mr. BARRASSO) was added as a cosponsor of S. 1739, a bill to modify the efficiency standards for grid-enabled water heaters.

S. 2156

At the request of Mr. VITTER, the name of the Senator from Kentucky (Mr. PAUL) was added as a cosponsor of S. 2156, a bill to amend the Federal Water Pollution Control Act to confirm the scope of the authority of the Administrator of the Environmental Protection Agency to deny or restrict the use of defined areas as disposal sites.

S. 2223

At the request of Mr. HARKIN, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 2223, a bill to provide for an increase in the Federal minimum wage and to amend the Internal Revenue Code of 1986 to extend increased expensing limitations and the treatment of certain real property as section 179 property.

S. 2258

At the request of Mr. BEGICH, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 2258, a bill to provide for an increase, effective December 1, 2014, in the rates of compensation for veterans with service-connected disabilities and

the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes.

S. 2462

At the request of Mr. THUNE, the name of the Senator from New Hampshire (Ms. AYOTTE) was added as a cosponsor of S. 2462, a bill to amend the Internal Revenue Code of 1986 to exempt certain educational institutions from the employer health insurance mandate.

S. 2496

At the request of Mr. BARRASSO, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 2496, a bill to preserve existing rights and responsibilities with respect to waters of the United States.

S. 2545

At the request of Ms. AYOTTE, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 2545, a bill to require the Secretary of Veterans Affairs to revoke bonuses paid to employees involved in electronic wait list manipulations, and for other purposes.

S. 2591

At the request of Mr. RUBIO, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2591, a bill to authorize the Secretary of State and the Administrator of the United States Agency for International Development to provide assistance to support the rights of women and girls in developing countries, and for other purposes.

S. 2643

At the request of Mr. BOOKER, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 2643, a bill to require a report by the Federal Communications Commission on designated market areas.

S. 2646

At the request of Mr. LEAHY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2646, a bill to reauthorize the Runaway and Homeless Youth Act, and for other purposes.

S. 2650

At the request of Mr. CORKER, the name of the Senator from Missouri (Mr. BLUNT) was added as a cosponsor of S. 2650, a bill to provide for congressional review of agreements relating to Iran's nuclear program, and for other purposes.

S. 2655

At the request of Ms. KLOBUCHAR, the names of the Senator from Ohio (Mr. BROWN) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 2655, a bill to reauthorize the Young Women's Breast Health Education and Awareness Requires Learning Young Act of 2009.

S. 2694

At the request of Mr. BROWN, the names of the Senator from California (Mrs. BOXER) and the Senator from Hawaii (Mr. SCHATZ) were added as cosponsors of S. 2694, a bill to amend title XIX of the Social Security Act to extend the application of the Medicare payment rate floor to primary care services furnished under Medicaid and to apply the rate floor to additional providers of primary care services.

S. 2706

At the request of Mr. ENZI, the names of the Senator from Arkansas (Mr. BOOZMAN) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. 2706, a bill to ensure that organizations with religious or moral convictions are allowed to continue to provide services for children.

S. 2709

At the request of Mr. MANCHIN, the name of the Senator from Maine (Mr. KING) was added as a cosponsor of S. 2709, a bill to extend and reauthorize the Export-Import Bank of the United States, and for other purposes.

S. 2710

At the request of Mr. THUNE, the name of the Senator from Kansas (Mr. MORAN) was added as a cosponsor of S. 2710, a bill to amend the Internal Revenue Code of 1986 to exempt private foundations from the tax on excess business holdings in the case of certain philanthropic enterprises which are independently supervised, and for other purposes.

S. 2714

At the request of Mr. BLUNT, the names of the Senator from Ohio (Mr. BROWN) and the Senator from Nebraska (Mr. JOHANNS) were added as cosponsors of S. 2714, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of World War I.

S. 2732

At the request of Mr. TOOMEY, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 2732, a bill to increase from $10,000,000,000 to $50,000,000,000 the threshold figure at which regulated depository institutions are subject to direct examination and reporting requirements of the Bureau of Consumer Financial Protection, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCONNELL:

S. 2780. A bill to direct the Secretary of the Interior to conduct a special resource study to evaluate the significance of the Mill Springs Battlefield located in Pulaski and Wayne Counties, Kentucky, and the feasibility of its inclusion in the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MCCONNELL. 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. 2780

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BATTLE OF MILL SPRINGS STUDY.

(a) FINDINGS.—Congress finds as follows:

(1) In 1994, the Mills Springs Battlefield in Pulaski and Wayne Counties in Kentucky was designated as a National Historic Landmark by the Department of the Interior.

(2) The Battle of Mill Springs was the first significant Union victory in the western theater of the Civil War.

(3) The outcome of the Battle of Mill Springs, along with Union victories at Fort Henry and Fort Donelson paved the way for a major battle at Shiloh, Tennessee.

(4) In 1991, the National Park Service placed the Mill Springs Battlefield on a list of endangered battlefields, noting the impact of this battle to the course of the Civil War.

(5) In 1992, the Mill Springs Battlefield Association formed, and utilizing Federal, State, and local support has managed to preserve important tracts of the battlefield, construct an interactive visitor center, and educate the public about this historic event.

(6) There is strong community interest in incorporating the Mill Springs Battlefield into the National Park Service.

(7) The Mill Springs Battlefield Association has expressed its desire to give the preserved battlefield as a gift to the United States.

(b) DEFINITIONS.—For purposes of this Act:

(1) MILL SPRINGS BATTLEFIELD.—The term ''Mill Springs Battlefield'' means the area encompassed by the National Historic Landmark designations relating to the 1862 Battle of Mill Springs located in the counties of Pulaski and Wayne in Kentucky.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(c) STUDY.—Not later than 3 years from the date funds are made available, the Secretary shall conduct a special resource study to evaluate the significance of the Mill Springs Battlefield in Kentucky, and the feasibility of its inclusion in the National Park System.

(d) CRITERIA FOR STUDY.—The Secretary shall conduct the study authorized by this Act in accordance with 8(b) of Public Law 91–383 (16 U.S.C. 1a–5(b)).

(e) CONTENT OF STUDY.—The study shall include an analysis of the following:

(1) The significance of the Battle of Mill Springs to the outcome of the Civil War.

(2) Opportunities for public education about the Civil War in Kentucky.

(3) Operational issues that should be considered if the National Park System were to incorporate the Mill Springs Battlefield.

(4) The feasibility of administering the Mill Springs Battlefield considering its size, configuration, and other factors, to include an annual cost estimate.

(5) The economic, educational, and other impacts the inclusion of Mill Springs Battlefield into the National Park System would have on the surrounding communities in Pulaski and Wayne Counties.

(6) The effect of the designation of the Mill Springs Battlefield as a unit of the National Park System on—

(A) existing commercial and recreational activities, including by not limited to hunting, fishing, and recreational shooting, and on the authorization, construction, operation, maintenance, or improvement of energy production and transmission infrastructure; and

(B) the authority of State and local governments to manage those activities.

(7) The identification of any authorities, including condemnation, that will compel or permit the Secretary to influence or participate in local land use decisions (such as zoning) or place restrictions on non-Federal

lands if the Mill Springs Battlefield is designated a unit of the National Park System.

(f) NOTIFICATION OF PRIVATE PROPERTY OWNERS.—Upon commencement of the study, owners of private property adjacent to the battlefield will be notified of the study's commencement and scope.

(g) SUBMISSION OF REPORT.—Upon completion of the study, the Secretary shall submit a report on the findings of the study to the Committee on Natural Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 538—EXPRESSING THE CONDOLENCES OF THE SENATE TO THE FAMILIES OF JAMES FOLEY AND STEVEN SOTLOFF, AND CONDEMNING THE TERRORIST ACTS OF THE ISLAMIC STATE OF IRAQ AND THE LEVANT

Mrs. SHAHEEN (for herself, Ms. AYOTTE, Mr. NELSON, Mr. RUBIO, and Mr. MENENDEZ) submitted the following resolution; which was considered and agreed to:

S. RES. 538

Whereas James Foley and Steven Sotloff were highly respected journalists whose integrity and dedication were a credit to their profession;

Whereas James Foley and Steven Sotloff embodied the spirit of our Nation's First Amendment liberties, including the freedom of the press;

Whereas James Foley and Steven Sotloff made significant contributions to our Nation through their courageous reporting of events in Libya, Syria, and elsewhere;

Whereas the Islamic State of Iraq and the Levant (ISIL) is a terrorist organization responsible for committing barbaric acts against United States citizens;

Whereas ISIL continues to hold hostages in blatant contravention of international law;

Whereas ISIL has committed despicable acts of violence against Iraqi Christians, forcing many to flee their ancient homeland;

Whereas ISIL has committed despicable acts of violence against Muslims who do not subscribe to ISIL's depraved, violent, and oppressive ideology;

Whereas ISIL has threatened to decimate the ancient Yazidi population of Iraq while abducting Yazidi women and children and subjecting them to rape, forced marriage, and slavery;

Whereas ISIL has targeted many other religious and ethnic minority groups, including Turkmen populations; and

Whereas ISIL threatens to conduct terrorist attacks internationally: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF THE SENATE.

The Senate—

(1) strongly condemns the terrorist acts of ISIL, including the barbaric and deplorable murders of James Foley and Steven Sotloff;

(2) mourns the deaths of James Foley and Steven Sotloff and expresses its condolences to their families;

(3) salutes James Foley and Steven Sotloff for their unwavering and courageous pursuit of journalistic excellence under the most difficult and dangerous of conditions;

(4) supports efforts to vigorously pursue and bring to justice those responsible for the murders of James Foley and Steven Sotloff;

(5) demands the immediate and unconditional release of all hostages being held by ISIL; and

(6) calls on the United States and the international community, working in partnership with the governments and citizens of the Middle East, to address the threat posed by ISIL.

SEC. 2. RULE OF CONSTRUCTION.

Nothing in this resolution shall be construed as a declaration of war or authorization to use force.

SENATE RESOLUTION 539—RELATIVE TO THE DEATH OF JAMES M. JEFFORDS, FORMER UNITED STATES SENATOR FOR THE STATE OF VERMONT

Mr. LEAHY (for himself, Mr. SANDERS, Mr. REID of Nevada, Mr. MCCONNELL, Mr. ALEXANDER, Ms. AYOTTE, Ms. BALDWIN, Mr. BARRASSO, Mr. BEGICH, Mr. BENNET, Mr. BLUMENTHAL, Mr. BLUNT, Mr. BOOKER, Mr. BOOZMAN, Mrs. BOXER, Mr. BROWN, Mr. BURR, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. CHAMBLISS, Mr. COATS, Mr. COBURN, Mr. COCHRAN, Ms. COLLINS, Mr. COONS, Mr. CORKER, Mr. CORNYN, Mr. CRAPO, Mr. CRUZ, Mr. DONNELLY, Mr. DURBIN, Mr. ENZI, Mrs. FEINSTEIN, Mrs. FISCHER, Mr. FLAKE, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. GRAHAM, Mr. GRASSLEY, Mrs. HAGAN, Mr. HARKIN, Mr. HATCH, Mr. HEINRICH, Ms. HEITKAMP, Mr. HELLER, Ms. HIRONO, Mr. HOEVEN, Mr. INHOFE, Mr. ISAKSON, Mr. JOHANNS, Mr. JOHNSON of Wisconsin, Mr. JOHNSON of South Dakota, Mr. KAINE, Mr. KING, Mr. KIRK, Ms. KLOBUCHAR, Ms. LANDRIEU, Mr. LEE, Mr. LEVIN, Mr. MANCHIN, Mr. MARKEY, Mr. MCCAIN, Mrs. MCCASKILL, Mr. MENENDEZ, Mr. MERKLEY, Ms. MIKULSKI, Mr. MORAN, Ms. MURKOWSKI, Mr. MURPHY, Mrs. MURRAY, Mr. NELSON, Mr. PAUL, Mr. PORTMAN, Mr. PRYOR, Mr. REED of Rhode Island, Mr. RISCH, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. RUBIO, Mr. SCHATZ, Mr. SCHUMER, Mr. SCOTT, Mr. SESSIONS, Mrs. SHAHEEN, Mr. SHELBY, Ms. STABENOW, Mr. TESTER, Mr. THUNE, Mr. TOOMEY, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VITTER, Mr. WALSH, Mr. WARNER, Ms. WARREN, Mr. WHITEHOUSE, Mr. WICKER, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 539

Whereas James M. Jeffords was born in the state of Vermont, and graduated Yale University and Harvard Law School;

Whereas James M. Jeffords served in the United States Navy from 1956 to 1959 and later in the Naval Reserve, retiring as captain;

Whereas James M. Jeffords began his service to his beloved state of Vermont by serving in the Vermont Senate from 1967 to 1968 and as Vermont Attorney General from 1969 to 1973;

Whereas James M. Jeffords was first elected to the United States House of Representatives in 1974 and served seven terms as Representative from the State of Vermont;

Whereas in 1988, James M. Jeffords was first elected to the United States Senate and faithfully served the people of the State of Vermont for three terms as a Senator;

Whereas James M. Jeffords held a lifetime voting percentage of 96.2, casting over 5,800 votes over 18 years;

Whereas James M. Jeffords served as the Chairman of the Committee on Labor and Human Resources, the Committee on Health, Education, Labor, and Pensions, and the Committee on Environment and Public Works: Now, therefore, be it

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable James M. Jeffords, former member of the United States Senate.

Resolved, That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns today, it stand adjourned as a further mark of respect to the memory of the Honorable James M. Jeffords.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3787. Mr. COBURN submitted an amendment intended to be proposed by him to the joint resolution S.J. Res. 19, proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections; which was ordered to lie on the table.

SA 3788. Mr. MORAN submitted an amendment intended to be proposed by him to the bill S. 2410, to authorize appropriations for fiscal year 2015 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table.

SA 3789. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill S. 2410, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3787. Mr. COBURN submitted an amendment intended to be proposed by him to the joint resolution S.J. Res. 19, proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections; which was ordered to lie on the table; as follows:

Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission by the Congress:

''ARTICLE —

''SECTION 1. No person who has served 3 terms as a Representative shall be eligible for election to the House of Representatives. For purposes of this section, the election of a person to fill a vacancy in the House of Representatives shall be included as 1 term in determining the number of terms that such person has served as a Representative if the person fills the vacancy for more than 1 year.

''SECTION 2. No person who has served 2 terms as a Senator shall be eligible for election or appointment to the Senate. For purposes of this section, the election or appointment of a person to fill a vacancy in the Senate shall be included as 1 term in determining the number of terms that such person has served as a Senator if the person fills the vacancy for more than 3 years.

''SECTION 3. No term beginning before the date of the ratification of this article shall be taken into account in determining eligibility for election or appointment under this article.''.

SA 3788. Mr. MORAN submitted an amendment intended to be proposed by him to the bill S. 2410, to authorize appropriations for fiscal year 2015 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title XVI, add the following:

SEC. 1647. ALIGNMENT AND OPERATIONAL REPORTING OF CYBER RED TEAMS OF AIR NATIONAL GUARD.

(a) DETERMINATION.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall determine the appropriate alignment and operational reporting for the personnel and capacity of the cyber red teams of the Air National Guard of the United States.

(2) ANALYSIS.—The determination required by paragraph (1) shall include an analysis regarding the rebalance of personnel or capacity of the cyber red teams of the Air National Guard of the United States with respect to cyber red team requirements of the Air Force, cyber team requirements of the United States Cyber Command, and assimilation into the cyber mission force of the Department of Defense.

(b) LIMITATION.—The Secretary may not reduce or rebalance the personnel or capacity of the cyber red teams of the Air National Guard of the United States unless the Secretary submits to the congressional defense committees a certification that—

(1) the capabilities to be reduced or rebalanced are not required by components of the Department of Defense that use cyber red team capabilities; or

(2) based on the findings of the Secretary with respect to the determination made under subsection (a), such capabilities will be retained under an altered operational reporting construct.

SA 3789. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill S. 2410, to authorize appropriations for fiscal year 2015 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

On page 186, strike line 23 and all that follows through page 188, line 4.

NOTICE OF HEARING

COMMITTEE ON INDIAN AFFAIRS

Mr. TESTER. Mr. President, I would like to announce that the Committee on Indian Affairs will meet during the session of the Senate on Wednesday, September 10, 2014, in room SD–628 of the Dirksen Senate Office Building, at 2:30 p.m., to conduct an oversight hearing to receive testimony on ''Irrigation Projects in Indian Country.'' Those wishing additional information may contact the Indian Affairs Committee at (202) 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on September 9, 2014, at 10 a.m. to conduct a hearing entitled ''Wall Street Reform: Assessing and Enhancing the Financial Regulatory System.''

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate of September 9, 2014, at 10 a.m. in room SD–406 of the Dirksen Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on September 9, 2014, at 4 p.m., to hold a hearing entitled, ''CLOSED/TS/SCI: Arms Control Compliance Issues.''

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, on September 9, 2014, at 10 a.m., in room SD–430 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Hearing on the nomination of Sharon Block to serve as a Member of the National Labor Relations Board.''

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on September 9, 2014, at 10:30 a.m. to conduct a hearing entitled ''Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies.''

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

COMMITTEE ON THE JUDICIARY

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on September 9, 2014, at 10 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Judicial Nominations.''

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on September 9, 2014, at 10 a.m. in room SH–216 of the Hart Senate Office Building to conduct a hearing entitled ''The State of VA Health Care.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on September 9, 2014, at 2:30 p.m.

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

PRIVILEGES OF THE FLOOR

Mr. LEE. Mr. President, I ask unanimous consent that Benji McMurray, a detailee in my office from the Federal Public Defender's Office in Salt Lake City, be granted floor privileges during the duration of the debate on Senate Joint Resolution 19.

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

Ms. HIRONO. Mr. President, I ask unanimous consent that privileges of the floor be granted to the following member of my staff, Maeve Whelan-Wuest, for the duration of today, September 9, 2014.

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

NOTICE OF PROPOSED RULEMAKING (''NPRM''), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES

Mr. LEAHY. Mr. President, I ask unanimous consent that the attached documentation from the Office of Compliance be printed in the RECORD.

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

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, September 9, 2014.

Hon. PATRICK J. LEAHY,
President Pro Tempore of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Section 210(e) of the Congressional Accountability Act (''CAA''), 2 U.S.C. §1331(e), requires the Board of Directors of the Office of Compliance (''the Board'') to issue regulations implementing Section 210 of the CAA relating to provisions of Titles II and III of the Americans with Disabilities Act (''ADA''), 42 U.S.C. §§12131–12150, 12182, 12183 and 12198, made applicable

to the legislative branch by the CAA. 2 U.S.C. §1331(b)(1).

Section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), requires that the Board issue a general notice of proposed rulemaking by transmitting ''such notice to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal.''

On behalf of the Board, I am hereby transmitting the attached notice of proposed rulemaking to the President Pro Tempore of the Senate. I request that this notice be published in the Senate section of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal. In compliance with Section 304(b)(2) of the CAA, a comment period of 30 days after the publication of this notice of proposed rulemaking is being provided before adoption of the rules.

All inquiries regarding this notice should be addressed to Barbara J. Sapin, Executive Director of the Office of Compliance, Room LA–200, 110 2nd Street, S.E., Washington, DC 20540; (202) 724–9250.

Sincerely,

BARBARA L. CAMENS,
Chair of the Board of Directors,
Office of Compliance.

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE: NOTICE OF PROPOSED RULEMAKING (''NPRM''), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES.

REGULATIONS EXTENDING RIGHTS AND PROTECTIONS UNDER THE AMERICANS WITH DISABILITIES ACT (''ADA'') RELATING TO PUBLIC SERVICES AND ACCOMMODATIONS, NOTICE OF PROPOSED RULEMAKING, AS REQUIRED BY 2 U.S.C. §1331, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED (''CAA'').

Background:

The purpose of this Notice is to propose substantive regulations that will implement Section 210 of the CAA, which provides that the rights and protections against discrimination in the provision of public services and accommodation under Titles II and III of the ADA shall apply to entities covered by the CAA.

What is the authority under the CAA for these proposed substantive regulations?

Section 210(b) of the CAA provides that the rights and protections against discrimination in the provision of public services and accommodations established by the provisions of Titles II and III (sections 201 through 230, 302, 303, and 309) of the Americans With Disabilities Act of 1990, 42 U.S.C. §§12131–12150, 12182, 12183, and 12189 (''ADA'') shall apply to the following entities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Office of Congressional Accessibility Services;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

2 U.S.C. 1331(b).

Title II of the ADA generally prohibits discrimination on the basis of disability in the provision of services, programs, or activities by any ''public entity''. Section 210(b)(2) of the CAA defines the term ''public entity'' for Title II purposes as any entity listed above that provides public services, programs, or activities. 2 U.S.C. §1331(b)(2).

Title III of the ADA generally prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with accessibility standards. Section 225(f) of the CAA provides that, ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions of the [ADA] shall apply under this Act.'' 2 U.S.C. §1361(f)(1).

Section 210(f) of the CAA requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and report to Congress on compliance with disability access standards under section 210. 2 U.S.C. §1331(f).

Section 210(e) of the CAA requires the Board of Directors of the Office of Compliance (''the Board'') established under the CAA to issue regulations implementing the section. 2 U.S.C. §1331(e). Section 210(e) further states that such regulations ''shall be the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' *Id.* Section 210(e) further provides that the regulations shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (b), the entity responsible for correction of a particular violation. 2 U.S.C. §1331(e).

Additional authority for proposing these regulations is found in CAA Section 304, which sets forth the procedure to be followed for the rulemaking process in general, including notice and comment; Board consideration of comments and adoption of regulations; transmittal to the Speaker and President Pro Tempore for publication in the Congressional Record; and approval by the Congress.

Are there ADA public access regulations already in force under the CAA?

Yes. The CAA was enacted on January 23, 1995. It applied to the legislative branch of the federal government the protections of 12 (now 13) statutes that previously had applied to the executive branch and/or the private sector, including laws providing for family and medical leave, prohibiting discrimination against eligible veterans, and affording labor-management rights and responsibilities, among others. The CAA established the Office of Compliance as an independent agency to administer and enforce the CAA. The OOC administers an administrative dispute resolution system to resolve certain disputes arising under the Act. The General Counsel of the OOC has independent investigatory and enforcement authority for other violations of the Act, including certain portions of the ADA, 42 U.S.C. §§12131–12150, 12182, 12183, & 12189.

As set forth in the previous answer, the CAA requires the Board to issue regulations implementing the statutory protections provided by the CAA. *See, e.g.*, CAA Sections 202(d) (Family and Medical Leave Act of 1993), 206(c) (Veterans' Employment and Reemployment), 212 (d) (Federal Service Labor Management Relations Act). 2 U.S.C. sections 1312(d), 1316(c), 1351(d). The Board's regulations ''shall be the same as substantive regulations promulgated by the Attorney General and Secretary of Transportation . . . except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. §1331(e)(2).

The CAA does not simply apply to the legislative branch the substantive protections of these laws, and direct that the implementing regulations essentially mirror those of the executive branch. The statute further provides that, while the CAA rulemaking procedure is underway, the corresponding executive branch regulations are to be applied. Section 411 of the Act provides:

''Effect of failure to issue regulations.

In any proceeding under section 1405, 1406, 1407, or 1408 of this title . . . if the Board has not issued a regulation on a matter for which this chapter requires a regulation to be issued, the hearing officer, Board, or court, as the case may be, shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.''

This statutory scheme makes plain that ADA public access regulations are presently in force. First, regulations virtually identical to these were adopted by the Board, presented to the House of Representatives and the Senate on September 19, 1996, and published on January 7, 1997. 142 Cong. Rec. S10984–11018 and 143 Cong. Rec. S30–66. No action was taken and thus the regulations were not issued. As set forth above, in these circumstances the CAA applies ''the most relevant substantive executive agency regulations,'' i.e., the Departments of Justice (''DOJ'') and Department of Transportation (''DOT'') ADA public access regulations. 2 U.S.C §1411.

A contrary interpretation would render meaningless several sections of the CAA. For example, Congress directed the AOC and other employing offices to conduct an initial study of legislative branch facilities from January 23, 1995 through December 31, 1996, ''to identify any violations of subsection (b) of [section 210], to determine the costs of compliance, and to take any necessary corrective action to abate any violations.'' 2 U.S.C. section 1331(f)(3). Congress instructed the OOC to assist the employing offices by ''arranging for inspections and other technical assistance at their request.'' *Id.* The CAA was enacted on January 23, 1995. No implementing regulations could have taken effect as of that date. Plainly, Congress intended the employing offices and the OOC to look to the DOJ and DOT ADA public access regulations, with which the CAA explicitly required employing offices to comply, when conducting the initial study and abatement actions.

Other sections of the CAA support this reading. For example, the CAA requires the Board to exclude from labor relations regulations employees of Member offices, Senate and House Legislative Counsel, the Congressional Budget Office and several other employing offices if the Board finds a conflict of interest or appearance thereof. 2 U.S.C. §1351(e)(1)(B). Where, as here, a statute explicitly provides for certain regulatory exemptions, it would be illogical to interpret language that expressly provides for regulatory compliance to mean anything else. When Congress intended to exempt employing offices from regulations, the CAA did so explicitly.

Why are these regulations being proposed at this time?

As set forth in the previous answer, the CAA requires employing offices to comply with ADA public access regulations issued by the DOJ and DOT pursuant to the ADA. The CAA also requires the Board to issue its own regulations implementing the ADA public

access provisions of the CAA. The statute obligates the Board's regulations to be the same as the DOJ and DOT regulations except to the extent that the Board may determine that a modification would be more effective in implementing ADA public access protections. CAA section 210(e)(2). These proposed regulations will clarify that covered entities must comply with the ADA public access provisions applied to public entities and accommodations to implement Titles II and III of the ADA. Congressional approval and Board issuance of ADA public access under the CAA will also eliminate any question as to the ADA public access protections that are applicable in the legislative branch.

The Board adopted proposed regulations and presented them to the House of Representatives and the Senate in 1996. The regulations were published on January 7, 1997, during the 105th Congress. 142 Cong. Rec. S10984–11018 and 143 Cong. Rec. S30–66. No Congressional action was taken and therefore the regulations were not issued. The Board adopted the present proposal, with updated proposed regulations, to facilitate Congressional consideration of the ADA regulations.

Which ADA public access regulations are applied to covered entities in 2 U.S.C. § 1331(e)?

Section 210(e) of the CAA requires the Board to issue regulations that are ''the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions . . . except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. § 1331(e).

Consistent with its prior decisions on this issue, the Board has determined that all regulations promulgated after a notice and comment by the DOJ and/or the DOT to implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA are ''substantive regulations'' within the meaning of section 210(e). See, e.g., 142 Cong. Rec. S5070, S5071–72 (daily ed. May 15, 1996) (NPRM implementing section 220(d) regulations); 141 Cong. Rec. S17605 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations).

See also *Reves v. Ernst & Young*, 494 U.S. 56, 64 (1993) (where same phrase or term is used in two different places in the same statute, it is reasonable for court to give each use a similar construction); *Sorenson v. Secretary of the Treasury*, 475 U.S. 851, 860 (1986) (normal rule of statutory construction assumes that identical words in different parts of the same act are intended to have the same meaning).

In this regard, the Board has reviewed the provisions of section 210 of the CAA, the sections of the ADA applied by that section, and the regulations of the DOJ and DOT, to determine whether and to what extent those regulations are substantive regulations which implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA. As explained more fully below, the Board proposes to adopt the following otherwise applicable regulations of the DOJ published at Parts 35 and 36 of Title 28 of the Code of Federal Regulations (''CFR'') and those of the DOT published at Parts 37 and 38 of Title 49 of the CFR:

1. DOJ's regulations at Part 35 of Title 28 of the CFR: The DOJ's regulations at Part 35 implement subtitle A of Title II of the ADA (sections 201 through 205), the rights and protections of which are applied to covered entities under section 210(b) of the CAA. See 28 CFR § 35.101 (Purpose). Therefore, the Board determines that these regulations will be adopted in the proposed regulations under section 210(e).

2. DOJ's regulations at Part 36 of Title 28 of the CFR: The DOJ's regulations at Part 36 implement Title III of the ADA (sections 301 through 309). See 28 CFR § 36.101 (Purpose). Section 210(b) only applies the rights and protections of three sections of Title III with respect to public accommodations: prohibitions against discrimination (section 302), provisions regarding new construction and alterations (section 303), and provisions regarding examinations and courses (section 309). Therefore, only those regulations in Part 36 that are reasonably necessary to implement the statutory provisions of sections 302, 303, and 309 will be adopted by the Board under section 210(e) of the CAA.

3. DOT's regulations at Parts 37 and 38 of Title 49 of the CFR: The DOT's regulations at Parts 37 and 38 implement the transportation provisions of Title II and Title III of the ADA. See 49 CFR §§ 37.101 (Purpose) and 38.1 (Purpose). The provisions of Title II and Title III of the ADA relating to transportation and applied to covered entities by section 210(b) of the CAA are subtitle B of Title II (sections 221 through 230) and certain portions of section 302 of Title III. Thus, those regulations of the Secretary that are reasonably necessary to implement the statutory provisions of sections 221 through 230, 302, and 303 of the ADA will be adopted by the Board under section 210(e) of the CAA.

The Board proposes not to adopt those regulatory provisions of the regulations of the DOJ or DOT that have no conceivable applicability to operations of entities within the Legislative Branch or are unlikely to be invoked. See 141 Cong. Rec. at S17604 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations). Unless public comments demonstrate otherwise, the Board intends to include in the adopted regulations a provision stating that the Board has issued substantive regulations on all matters for which section 210(e) requires a regulation. See section 411 of the CAA, 2 U.S.C. § 1411.

In addition, the Board has proposed to make technical changes in definitions and nomenclature so that the regulations comport with the CAA and the organizational structure of the Office of Compliance. In the Board's judgment, making such changes satisfies the CAA's ''good cause'' requirement. With the exception of these technical and nomenclature changes and additional proposed regulations relating to the investigation and inspection authority granted to the General Counsel under the CAA, the Board does not propose substantial departure from otherwise applicable regulations.

The Board notes that the General Counsel applied the above-referenced standards of Parts 35 and 36 of the DOJ's regulations and Parts 37 and 38 of the DOT's regulations during the past inspections of Legislative Branch facilities pursuant to section 210(f) of the CAA. In contrast to other sections of the CAA, which generally give the Office of Compliance only adjudicatory and regulatory responsibilities, the General Counsel has the authority to investigate and prosecute alleged violations of disability standards under section 210, as well as the responsibility for inspecting covered facilities to ensure compliance. According to the General Counsel's final inspection reports, the Title II and Title III regulations encompass the following requirements:

1. Program accessibility: This standard is applied to ensure physical access to public programs, services, or activities. Under this standard, covered entities must modify policies, practices, and procedures to ensure an equal opportunity for individuals with disabilities. If policy and procedural modifications are ineffective, then structural modifications may be required.

2. Effective communication: This standard requires covered entities to make sure that their communications with individuals with disabilities (such as in the context of constituent meetings and committee hearings) are as effective as their communications with others. Covered entities are required to make information available in alternate formats such as large print, Braille, or audio tape, or use methods that provide individuals with disabilities the opportunity to effectively communicate, such as sign language interpreters or the use of pen and paper. Primary consideration must be given to the method preferred by the individual.

3. ADA Standards for Accessible Design: These standards are applied to architectural barriers, including structural barriers to communication, such as telephone booths, to ensure that existing facilities, new construction, and new alterations, are accessible to individuals with disabilities.

The Board recognizes that, as with other obligations under the CAA, covered entities will need information and guidance regarding compliance with these ADA standards as adopted in these proposed regulations, which the Office will provide as part of its education and information activities.

How do these regulations differ from those proposed by the Board on January 7, 1997?

These regulations are very similar to those proposed by the Board in 1997; however, there are three significant differences:

1. These regulations have been updated to incorporate the changes made in the DOJ and DOT regulations since 1997. One of the most significant changes made by the DOJ occurred on September 15, 2010 when the DOJ published regulations adopting the 2010 Standards for Accessible Design (''2010 Standards''). The 2010 Standards became fully effective on March 15, 2012 and replaced the 1991 Standards for Accessible Design (''1991 Standards'') that were referenced in the regulations proposed by the Board in 1997. These regulations incorporate by reference the pertinent DOJ and DOT regulations that are in effect as of the date of the publication of this notice, which means that the 2010 Standards will be applied. The Board has also changed the format of the incorporated regulations. Rather than reprinting each of the regulations with minor changes to reflect different nomenclature used in the CAA (i.e., changing references to ''Assistant Attorney General,'' ''Department of Justice,'' ''FTA Administrator,'' ''FTA regional office,'' ''Administrator,'' and ''Secretary'' to ''General Counsel''), these regulations contain a definitional section in § 1.105(a) which make these changes and incorporates the DOJ and DOT regulations by reference.

2. Unlike the Board in 1997, the current Board has decided not to propose adoption of the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. § 35.140. The Board notes that since 1997 most courts considering this issue have decided that employees of public entities must use the procedures in Title I of the ADA to pursue employment discrimination claims and that these claims cannot be pursued under Title II. *See, e.g., Brumfield v. City of Chicago*, 735 F.3d 619 (7th Cir. 2013); *Elwell v. Okla. ex rel. Bd. of Regents of the Univ. of Okla.*, 693 F.3d 1303 (10th Cir. 2012); *Zimmerman v. Or. Dep't of Justice*, 170 F.3d 1169 (9th Cir. 1999). The prohibition against employment discrimination because of disability in Title I of the ADA is incorporated into section 201(a)(3) of the CAA. 2 U.S.C. § 1311(a)(3). Under section 210(c) of the CAA, ''with respect to any claim of employment discrimination asserted by any covered employee, the exclusive remedy shall be under section 1311 of this title.'' 2 U.S.C. § 1331(c). Similarly, under section 225(e) of the CAA, ''[o]nly a covered entity

who has undertaken and completed the procedures in sections 1402 and 1403 of this title may be granted a remedy under part A of this subchapter.'' 2 U.S.C. §1361(e). When taken together, these sections of the CAA make it clear that the exclusive method for obtaining relief for employment discrimination because of disability is under section 201, which involves using the counseling and mediation procedures contained in sections 402 and 403 of the CAA. For these reasons, the Board has found good cause not to incorporate the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. §35.140, into these regulations.

3. In Parts 2 and 3 of these regulations, the Board has proposed regulations relating to the two unique statutory duties imposed by the CAA upon the General Counsel of the Office of Compliance that are not imposed upon the DOJ and DOT: (1) the investigation and prosecution of charges of discrimination using the Office's mediation and hearing processes (section 210(d) of the CAA) and (2) the biennial inspection and reporting obligations (section 210(f) of the CAA). Parts 2 and 3 of these regulations were not contained in the regulations proposed in 1997; however, the Board has determined that there is good cause to propose these regulations to fully implement section 210 of the CAA. *See,* 2 U.S.C. §1331(e)(1). In formulating the substance of these regulations, the Board has directed the Office's statutory employees to consult with stakeholders and has considered their comments and suggestions.

The Board has also reviewed the biennial ADA reports from the General Counsel and considered what the General Counsel has learned since 1995 while investigating charges of discrimination and conducting and reporting upon ADA inspections. Of particular note is the regulation proposed as §3.103(d) which addresses concerns raised by oversight and appropriations staff over finding a cost-efficient process that would allow better identification and elimination of potential ADA compliance issues during the pre-construction phases of new construction and alteration projects.

Procedural Summary:

How are substantive regulations proposed and approved under the CAA?

Pursuant to Section 304 of the CAA, 2 U.S.C. §1384, the procedure for proposing and approving such substantive regulations provides that:

(1) the Board of Directors propose substantive regulations and publish a general notice of proposed rulemaking in the Congressional Record;

(2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking;

(3) after consideration of comments by the Board of Directors, the Board adopt regulations and transmit notice of such action (together with the regulations and a recommendation regarding the method for Congressional approval of the regulations) to the Speaker of the House and President [P]ro [T]empore of the Senate for publication in the Congressional Record;

(4) there be committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and

(5) final publication of the approved regulations in the Congressional Record, with an effective date prescribed in the final publication.

For more detail, please reference the text of 2 U.S.C. §1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives?

As required by Section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), the substance of these regulations is also recommended by the Executive Director, the Deputy Executive Director for the Senate and the Deputy Executive Director for the House of Representatives.

Has the Board of Directors previously proposed substantive regulations implementing the ADA public access provisions pursuant to 2 U.S.C. §1331?

Yes. Proposed regulations were previously adopted by the Board and presented to the House of Representatives and the Senate on September 19, 1996. The regulations were published on January 7, 1997. 142 Cong. Rec. S10984–11018 and 143 Cong. Rec. S30–66. No Congressional action was taken on these regulations.

What is the approach taken by these proposed substantive regulations?

The Board will follow the procedure as enumerated above and as required by statute. The Board will review any comments received under step (2) of the outline above, and respond to the comments and make any changes necessary to ensure that the regulations fully implement section 210 of the CAA and reflect the practices and policies particular to the legislative branch.

What responsibilities would covered entities have in effectively implementing these regulations?

The CAA charges covered entities with the responsibility to comply with these regulations. CAA §210, 2 U.S.C. §1331.

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices?

No. The Board of Directors has identified no ''good cause'' for proposing different regulations for these entities and accordingly has not done so. 2 U.S.C. §1331(e)(2).

Are these proposed substantive regulations available to persons with disabilities in an alternate format?

This Notice of Proposed Regulations is available on the OOC's web site, www.compliance.gov, which is compliant with Section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Annie Leftwood, Executive Assistant, Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20540; 202–724–9250; TDD: 202–426–1912; FAX: 202–426–1913.

30 Day Comment Period Regarding the Proposed Regulations

How long do I have to submit comments regarding the proposed regulations?

Comments regarding the proposed regulations of the OOC set forth in this Notice are invited for **a period of thirty (30) days** following the date of the appearance of this Notice in the *Congressional Record*.

How do I submit comments?

Comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission. It is requested, but not required, that an electronic version of any comments be provided either on an accompanying computer disk or e-mailed to the OOC via its web site. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number).

Am I allowed to view copies of comments submitted by others?

Yes. Copies of submitted comments will be available for review on the Office's web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Summary:

The Congressional Accountability Act of 1995, PL 104–1, was enacted into law on January 23, 1995. The CAA, as amended, applies the rights and protections of thirteen federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. Section 210 of the CAA applies that the rights and protections against discrimination in the provision of public services and accommodations established by of Titles II and III (sections 201 through 230, 302, 303, and 309) of the Americans With Disabilities Act of 1990, 42 U.S.C. §12131–12150, 12182, 12183, and 12189 (''ADA'') shall apply to Legislative Branch entities covered by the CAA. The above provisions of section 210 became effective on January 1, 1997. 2 U.S.C. §1331(h).

The Board of Directors of the Office of Compliance is now publishing proposed regulations to implement Section 210 of the Congressional Accountability Act of 1995 (''CAA''), 2 U.S.C. §1301–1438, as applied to covered entities of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

In addition to inviting comment in this Notice, the Board, through the statutory appointees of the Office, sought consultation with the stakeholders regarding the development of these regulations. The Board also notes that the General Counsel of the Office of Compliance has completed inspections of covered facilities for compliance with disability access standards under section 210 of the CAA during each Congress since the CAA was enacted and has submitted reports to Congress after each of these inspections. Based on information gleaned from these consultations and the experience gained from the General Counsel's inspections, the Board is publishing these proposed regulations, pursuant to section 210(e) of the CAA, 2 §1331(e).

The purpose of these regulations is to implement section 210 of the CAA. In this Notice of Proposed Rulemaking (''NPRM'' or ''Notice'') the Board proposes that virtually identical regulations be adopted for the Senate, the House of Representatives, and the seven Congressional instrumentalities. Accordingly:

(1) Senate. It is proposed that regulations as described in this Notice be included in the body of regulations that shall apply to entities within the Senate, and this proposal regarding the Senate entities is recommended by the Office of Compliance's Deputy Executive Director for the Senate.

(2) House of Representatives. It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to entities within the House of Representatives, and this proposal regarding the House of Representatives entities is recommended by the Office of Compliance's Deputy Executive Director for the House of Representatives.

(3) Certain Congressional instrumentalities. It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the Office of Congressional Accessibility Services, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol (including the Botanic Garden), the Office of the Attending Physician, and the Office of Compliance; and this proposal regarding these six Congressional instrumentalities is recommended by the Office of Compliance's Executive Director.

Dates: Comments are due within 30 days after the date of publication of this Notice in the Congressional Record.

Supplementary Information:

The regulations set forth below (Parts 1, 2, and 3) are the substantive regulations that the Board of Directors of the Office of Compliance are proposing pursuant to section 210(e) of the CAA. Part 1 contains the general provisions applicable to all regulations under section 210, the method of identifying entities responsible for correcting a violation of section 210, and the list of executive branch regulations incorporated by reference which define and clarify the prohibition against discrimination on the basis of disability in the provision of public services and accommodations. Part 2 contains the provisions pertaining to investigation and prosecution of charges of discrimination. Part 3 contains the provisions regarding the periodic inspections and reports to Congress on compliance with the disability access standards. These three parts correspond to the three general duties imposed upon the Office of Compliance by section 210 which are as follows:

1. Under section 210(e) of the CAA, the Board of Directors of the Office of Compliance must promulgate substantive regulations which implement the rights and protections provided by section 210. 2 U.S.C. §1331(e)(1).

2. Under Section 210(d) of the CAA, the General Counsel of the Office of Compliance must receive and investigate charges of discrimination alleging violations of the rights and protections provided by Titles II and III of the ADA, may request mediation of such charges upon believing that a violation may have occurred, and, if mediation has not succeeded in resolving the dispute, may file a complaint and prosecute the complaint through the Office of Compliance's hearing and review process 2 U.S.C. §1331(d).

3. Under section 210(f) of the CAA, the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, must conduct periodic inspections of all covered facilities and report to Congress on compliance with disability access standards under section 210. 2 U.S.C. §1331(f).

Regulations proposed in Part 1.

§1.101 Purpose and scope. This section references and cites the sections of Title II and III of the ADA incorporated by reference into the CAA, follows the statutory language of the CAA to identify the covered entities and the statutory duties of the General Counsel of the Office of Compliance and describes how the regulations are organized.

§1.102 Definitions. This section describes the abbreviations that are used throughout the regulations.

§1.103 Authority of the Board. This section describes the authority of the Board of Directors of the Office of Compliance to issue regulations under section 210 of the CAA and the intended effect of the technical and nomenclature changes made to the regulations promulgated by the Attorney General and Secretary of Transportation.

§1.104 Method for identifying the entity responsible for correcting violations of section 210. The regulation in this section is required by section 210(e)(3) of the CAA. This regulation hues very closely to the DOJ Title III regulation set forth in 28 C.F.R. §36.201 which in turn is based on the statutory language in 42 U.S.C. §12182(a) (one of the ADA statutory sections incorporated by reference in section 210(b) of the CAA). Under section 302 of the ADA, owners, operators, lessors and lessees are all jointly and severally liable for ADA violations. *See, e.g., Botosan v. McNally Realty*, 216 F.3d 827, 832 (9th Cir. 2000). The proposed regulation allows consideration of relevant statutes, contracts, orders, and other enforceable arrangements or relationships to allocate responsibility. The term ''enforceable arrangement'' is used intentionally since certain indemnification and contribution contracts allocating liability under the ADA have been found to be unenforceable. *See, e.g., Equal Rights Center v. Archstone-Smith Trust*, 602 F.3d 597 (4th Cir. 2010, *cert denied*, 131 S. Ct. 504 (2010). Although the concepts of ''ownership'' or ''leasing'' do not appear to apply to Legislative Branch facilities on Capitol Hill, the Architect of the Capitol does have statutory superintendence responsibility for certain legislative branch buildings and facilities, including the Capitol Building, which includes duties and responsibilities analogous to those of a ''landlord''. See 40 U.S.C. §§163–166 (Capitol Building), 167–175 and 185a (House and Senate office buildings), 193a (Capitol grounds), 216b (Botanical Garden) and 2 U.S.C. §141(a)(1) (Library of Congress buildings). The Board believes that, where two or more entities may have compliance obligations under section 210(b) as ''responsible entities'' under the proposed regulations, those entities should have the ability to allocate responsibility by agreement similar to the case of landlords and tenants with respect to public accommodations under Title III of the ADA. Thus, the proposed regulations adopt such provisions modeled after section 36.201(b) of the DOJ regulations. However, by promulgating this provision, the Board does not intend any substantive change in the statutory responsibility of entities under section 210(b) or the applicable substantive rights and protections of the ADA applied thereunder. See 142 Cong. Rec. at S270 (final rule under section 205 of the CAA substitutes the term ''privatization'' for ''sale of business'' in the Secretary of Labor's regulations under the Worker Adjustment Retraining and Notification Act).

§1.105 Regulations incorporated by reference. As explained above, consistent with its prior decisions on this issue, the Board has determined that all regulations promulgated after a notice and comment by the DOJ and/or the DOT to implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA are ''substantive regulations'' within the meaning of section 210(e). *See, e.g.*, 142 Cong. Rec. S5070, S5071–72 (daily ed. May 15, 1996) (NPRM implementing section 220(d) regulations); 141 Cong. Rec. S17605 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations). In this regard, the Board has reviewed the provisions of section 210 of the CAA, the sections of the ADA applied by that section, and the regulations of the DOJ and DOT, to determine whether and to what extent those regulations are substantive regulations which implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA.

In **section 1.105(a)(1),** the Board has modified the nomenclature used in the incorporated regulations to comport with the CAA and the organizational structure of the Office of Compliance. In the Board's judgment, making such changes satisfies the CAA's ''good cause'' requirement. With the exception of these technical and nomenclature changes and additional proposed regulations relating to the investigation and inspection authority granted to the General Counsel under the CAA, the Board does not propose substantial departure from otherwise applicable regulations. The dates referenced in section 1.105(a)(2) reflect that the ADA public access provisions of the CAA became effective on January 1, 1997 rather than effective date of the ADA which was January 26, 1992. 2 U.S.C. §1331(h). The three year provision in section 1.105(a)(3) was developed after consultation with the Office of the Architect of the Capitol regarding what would be a reasonable time frame for implementing these provisions of the regulations. In several portions of DOJ and DOT regulations, references are made to dates such as the effective date of the regulations or effective dates derived from the statutory provisions of the ADA. The Board proposes to substitute dates which correspond to analogous periods for the purposes of the CAA. In this way covered entities under section 210 may have the same time to come into compliance relative to the effective date of section 210 of the CAA afforded public entities subject to Title II of the ADA. In the Board's judgment, such changes satisfy the CAA's ''good cause'' requirement. In section 1.105(a)(4), which was also developed based upon consultations with the Office of the Architect of the Capitol (''AOC''), the Board modified the exception for ''historic'' property to include properties, buildings, or facilities designated as an historic or heritage assets by the AOC. This was necessary because the DOJ regulations limit the definition of historic properties to those ''listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law'' 28 C.F.R. §35.104. While there are certainly properties on Capitol Hill which have historically significant features that are worthy of preservation, these properties are not eligible for listing on the National Register of Historic Places or considered historic under State of local law. *See*, *Historic Preservation Act of 1966*, 16 U.S.C. 470g (exempting the White House and its grounds, the Supreme Court building and its grounds, and the United States Capitol and its related buildings and grounds from the provisions of the Historic Preservation Act).

In section **1.105(b),** the Board has adopted a rule of interpretation to cover the few instances where there are differences between regulations implementing Title II and Title III of the ADA. The CAA is unique in that it applies both Title II and Title III provisions to covered public entities. The public accommodation provisions of Title III of the ADA are otherwise only applicable to private entities. *See*, 42 U.S.C. §12181(7). This section of the regulation reflects the Board's determination that Congress applied provisions of both Title II and Title III of the ADA to legislative branch entities to ensure that individuals with disabilities are provided the most access to public services, programs, activities and accommodations provided by law.

In section **1.105(c),** the Board has listed the specific DOJ regulations incorporated into the regulations being issued under section 210 of the CAA. As noted earlier, the Board has adopted all of the DOJ regulations implementing Titles II and III of the ADA with the following exceptions:

1. The Board is not incorporating the DOJ regulations regarding retaliation or coercion (28 C.F.R. §§35.134 & 36.206). Sections 35.134 and 36.206 of the DOJ's regulations implement section 503 of the ADA, which prohibits retaliation against any individual who exercises his or her rights under the ADA. 28 CFR pt. 35, App. A at 464 & pt. 36, App. B at 598 (section-by-section analysis). Sections 35.134 and 36.206 are not provisions which implement a right or protection applied to covered entities under section 210(b) of the CAA and, therefore, they will not be included within the adopted regulations. The Board notes, however, that section 207 of the CAA provides a comprehensive retaliation protection for employees (including applicants and former employees) who may invoke their rights under section 210, although section 207 does not apply to nonemployees who may enjoy rights and protections against discrimination under section 210.

2. As noted above, unlike the Board in 1997, the current Board has decided not to propose adoption of the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. §35.140. The Board notes that since 1997 most courts considering this issue have decided that employees of public entities must use the procedures in Title I of the ADA to pursue employment discrimination claims and that these claims cannot be pursued under Title II. *See, e.g., Brumfield v. City of Chicago,* 735 F.3d 619 (7th Cir. 2013); *Elwell v. Okla. ex rel. Bd. of Regents of the Univ. of Okla.,* 693 F.3d 1303 (10th Cir. 2012); *Zimmerman v. Or. Dep't of Justice,* 170 F.3d 1169 (9th Cir. 1999). The prohibition against employment discrimination because of disability in Title I of the ADA is incorporated into section 201(a)(3) of the CAA. 2 U.S.C. §1311(a)(3). Under section 210(c) of the CAA, ''with respect to any claim of employment discrimination asserted by any covered employee, the exclusive remedy shall be under section 1311 of this title.'' 2 U.S.C. §1331(c). Similarly, under section 225(e) of the CAA, ''[o]nly a covered entity who has undertaken and completed the procedures in sections 1402 and 1403 of this title may be granted a remedy under part A of this subchapter.'' 2 U.S.C. §1361(e). When taken together, these sections of the CAA make it clear that the exclusive method for obtaining relief for employment discrimination because of disability is under section 201, which involves using the counseling and mediation procedures contained in sections 402 and 403 of the CAA. For these reasons, the Board has found good cause not to incorporate the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. §35.140, into these regulations.

3. The Board has not incorporated Subpart F of the DOJ's regulations (28 C.F.R. §§35.170–35.189), which set forth administrative enforcement procedures under Title II. Subpart F implements the provisions of section 203 of the ADA, which is applied to covered entities under section 210 of the CAA. Although procedural in nature, such provisions address the remedies, procedures, and rights under section 203 of the ADA, and thus the otherwise applicable provisions of these regulations are ''substantive regulations'' for section 210(e) purposes. See 142 Cong. Rec. at S5071–72 (similar analysis under section 220(d) of the CAA). However, since section 303 of the CAA reserves to the Executive Director the authority to promulgate regulations that ''govern the procedures of the Office,'' and since the Board believes that the benefit of having one set of procedural rules provides the ''good cause'' for modifying the DOJ's regulations, the Board proposes to incorporate the provisions of Subpart F into the Office's procedural rules, to omit provisions that set forth procedures which conflict with express provisions of section 210 of the CAA or are already provided for under comparable provisions of the Office s rules, and to omit rules with no applicability to the Legislative Branch (such as provisions covering entities subject to section 504 of the Rehabilitation Act, provisions regarding State immunity, and provisions regarding referral of complaints to the Justice Department). See 142 Cong. Rec. at S5071–72 (similar analysis and conclusion under section 220(d) of the CAA).

4. The Board has not incorporated Subpart G of the DOJ's regulations, which designates the Federal agencies responsible for investigating complaints under Title II of the ADA. Given the structure of the CAA, such provisions are not applicable to covered Legislative Branch entities and, therefore, will not be adopted under section 210(e).

5. The Board has not incorporated the insurance provisions contained in 28 C.F.R. §36.212. Section 36.212 of the DOJ's regulations restates section 501(c) of the ADA, which provides that the ADA shall not be construed to restrict certain insurance practices on the part of insurance companies and employers, so long as such practices are not used to evade the purposes of the ADA. Section 501(c) of the ADA is not incorporated by reference into section 210 of the CAA. Because section 36.212 implements a section of the ADA which is not incorporated into the CAA and appears intended primarily to cover insurance companies which are not covered entities under the CAA, the Board finds good cause not to incorporate this regulation.

6. The Board has not incorporated Subpart E of the DOJ's regulations (sections 36.501 through 36.599) setting forth the enforcement procedures under Title III of the ADA. As the Justice Department noted in its NPRM regarding subpart E, the Department of Justice does not have the authority to establish procedures for judicial review and enforcement and, therefore, ''Subpart E generally restates the statutory procedures for enforcement''. 28 CFR pt. 36, App. B at 638 (section-by-section analysis). Additionally, the regulations derive from the provisions of section 308 of the ADA, which is not applied to covered entities under section 210(b) of the CAA. Thus, the regulations in subpart E are not promulgated by the Attorney General as substantive regulations to implement the statutory provisions of the ADA referred to in section 210(b), within the meaning of section 210(e).

7. The Board has not incorporated Subpart F of the DOJ's regulations which establishes procedures to implement section 308(b)(1)(A)(ii) of the ADA regarding compliance with State laws or building codes as evidence of compliance with accessibility standards under the ADA. 28 CFR pt. 36, App. B at 640 (section-by-section analysis). Section 308 is not one of the laws applied to covered entities under section 210(b) of the CAA and, therefore, these regulations will not be adopted under section 210(e).

In section **1.105(d),** the Board has listed the specific DOT regulations incorporated into the regulations being issued under section 210 of the CAA. As noted earlier, the Board has adopted all of the DOT regulations implementing Titles II and III of the ADA with the following exceptions:

1. Although the Board has adopted the definitions in section 37.3 of the DOT's regulations, relating to implementation of Part II of Title II of the ADA (sections 241 through 246), those definitions dealing with public transportation by intercity and commuter rail are not adopted because sections 241 through 246 of the ADA were not within the rights and protections applied to covered entities under section 210(b) and, therefore, the regulations implementing such sections are not substantive regulations of the DOT required to be adopted by the Board within the meaning of section 210(e). Accordingly, the Board will give no effect to the definitions of terms such as ''commerce,'' ''commuter authority,'' ''commuter rail car,'' ''commuter rail transportation,'' ''intercity rail passenger car,'' and ''intercity rail transportation,'' which relate to sections 241 through 246 of the ADA.

2. Although the Board has adopted the Nondiscrimination regulation set forth in section 37.5 of the DOT's regulations, subsection (f) of section 37.5 of the this regulation relates to private entities primarily engaged in the business of transporting people and whose operations affect commerce. This subsection implements section 304 of the ADA, which is not a right or protection applied to covered entities under section 210(b) of the CAA. See 56 Fed. Reg. 13856, 13858 (April 4, 1991) (preamble to NPRM regarding Part 37). Therefore, it is not a regulation of the DOT included within the scope of rulemaking under section 210(e) of the CAA and will not be considered by the Board to be included in these regulations.

3. Several portions of the DOT's regulations refer to obligations of entities regulated by state agencies administering federal transportation funds. See, e.g., sections 37.77(d) (requires filing of equivalent service certificates with state administering agency), 37.135(f) (submission of paratransit development plan to state administering agency) and 37.145 (State comments on paratransit plans). Any references to obligations not imposed on covered entities, such as state law requirements and laws regulating entities that receive Federal financial assistance, will be considered excluded from these proposed regulations.

4. The Board has not adopted section 37.11 of the DOT's regulations relating to administrative enforcement because it does not implement any provision of the ADA applied to covered entities under section 210 of the CAA. Moreover, the enforcement procedures of section 210 are explicitly provided for in section 210(d) (''Available Procedures''). Accordingly, this section will not be included within the incorporated regulations. The subject matter of enforcement procedures is addressed in the Office's procedural rules and in Part 2 of these regulations.

5. Certain sections of Subparts B (Applicability) and C (Transportation Facilities) of the Secretary's regulations were promulgated to implement sections 242 and 304 of the ADA, provisions that are not applied to covered entities under section 210(b) of the CAA or are otherwise inapplicable to Legislative Branch entities. Therefore, the Board will exclude the following sections from its substantive regulations on that basis: 37.21(a)(2) and (b) (relating to private entities under section 304 of the ADA and private entities receiving Federal assistance from the Transportation Department), 37.25 (university transportation systems), 37.29 (private taxi services), 37.33 (airport transportation systems), 37.37(a) and 37.37(e)–(g) (relating to coverage of private entities and other entities under section 304 of the ADA), and 37.49–37.57 (relating to intercity and commuter rail systems). Similarly, the Board proposes modifying sections 37.21(c), 37.37(d), and 37.37(h) and other sections where references are made to requirements or circumstances strictly encompassed by the provisions of section 304 of the ADA and, therefore, not applicable to covered entities under the CAA. See, e.g., sections 37.25–37.27 (transportation for elementary and secondary education systems).

6. Subpart D (sections 37.71 through 37.95) of the DOT's regulations relate to acquisition of accessible vehicles by public entities. Certain sections of subpart D were promulgated to implement sections 242 and 304 of the ADA, which were not applied to covered entities under section 210(b) of the CAA, or are otherwise inapplicable to Legislative Branch entities. Therefore, the Board will exclude the following sections from its substantive regulations on that basis: 37.87–37.91 and 37.93(b) (relating to intercity and commuter rail service).

7. Subpart E (sections 37.101 through 37.109) of the DOT's regulations relates to acquisition of accessible vehicles by private entities. Section 37.101, relating to acquisition of vehicles by private entities not primarily engaged in the business of transporting people, implements section 302 of the ADA, which is applied to covered entities under section 210(b). Therefore, the Board will adopt section 37.101 as part of its section 210(e) regulations. Sections 37.103, 37.107, and 37.109 of the regulations implement section 304 of the ADA, which is inapplicable to covered entities under the ADA. Therefore, the Board

proposes not to include them within its substantive regulations under section 210(e) of the CAA.

8. Part 37 of the DOT's regulations includes several appendices, only two of which the Board proposes to adopt as part of these regulations. The Board proposes to adopt as an appendix to these regulations Appendix A (Modifications to Standards for Accessible Transportation Facilities, ADA Accessibility Guidelines for Buildings and Facilities), which provides guidance regarding the design, construction, and alteration of buildings and facilities covered by Titles II and III of the ADA. 49 CFR pt. 37, App. A. Such guidelines, where not inconsistent with express provisions of the CAA or of the regulations adopted by the Board, may be relied upon by covered entities and other in proceedings under section 210 of the CAA to the same extent as similarly situated persons may rely upon them in actions brought under Title II and Title III of the ADA. See 142 Cong. Rec. at S222 and 141 Cong. Rec. at S17606 (similar resolution regarding Secretary of Labor's interpretative bulletins under the Fair Labor Standards Act for section 203 purposes). The Board proposes not to adopt Appendix B, which gives the addresses of FTA regional offices. Such information is not relevant to covered entities under the CAA. The Board also proposes not to adopt Appendix C, which contain forms for certification of equivalent service. These forms appears to be irrelevant to entities covered by the CAA and therefore will not be adopted by the Board. Finally, the Board will adopt Appendix D to Part 37, the section-by-section analysis of Part 37. The Board notes that the section-by-section analysis may have some relevance in interpreting the sections of Part 37 that the Board has adopted.

9. The Board proposes to adopt, with minimal technical and nomenclature changes, the regulations contained in Part 38 and accompanying appendix, with the exception of the following subparts which the Board has determined implement portions of the ADA not applied to covered entities under section 210(b) of the CAA and/or the Board believe have no conceivable applicability to legislative branch operations: Subpart E, Commuter Rail Cars and Systems; and Subpart F, Intercity Rail Cars and Systems.

In **section 1.105(d),** the Board has proposed the adoption of one regulation promulgated by the Access Board, 36 C.F.R. §1190.34, relating to the accessibility of leased buildings and facilities. While the DOJ does not have a regulation pertaining to leased buildings and facilities, the Access Board has promulgated this regulation that sets minimal accessible standards whenever the federal government leases a building or facility (or a portion thereof). Generally, this regulation requires that fully accessible space be leased when available, but also sets some minimal accessibility requirements when fully accessible spaces are not available. These minimum requirements include at least one accessible entrance, an accessible route to major function areas, an accessible toilet, and accessible parking (if that is included in the rent). If there is no space available that meets even these minimal requirements, the regulation does contain an exception that would permit the short term leasing of spaces that do not even meet these minimal standards. The most common ADA public access complaint received by the General Counsel from members of the public relates to the lack of ADA access to spaces being leased by legislative branch offices. The Board therefore finds good cause to clarify the ADA access obligations regarding leased spaces by adopting 36 C.F.R. §1190.34.

Regulations proposed in Part 2.

§2.101 Purpose and scope. This section references and notes that Part 2 of these regulations implements section 210(d) of the CAA which requires that the General Counsel accept and investigate charges of discrimination filed by qualified individuals with disabilities who allege a violation of Title II or Title III of the ADA by a covered entity. It also notes that by procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel will exercise the statutory authority provided by section 210(d) of the CAA. The Board notes that the Executive Director is proposing amendments to the Office's Procedural Rules that do include provisions relating to section 210(d) of the CAA.

§2.102 Definitions. This section provides definitions for the undefined terms used in section 210(d) of the CAA. In §2.102(a), the term ''charge'' is defined in a manner consistent with the Supreme Court's decision in *Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 402 (2008). In §2.102(b), the definition of the term ''file a charge'' clarifies how charges can be presented to the General Counsel by listing the methods by which the General Counsel has accepted charges in the past. In §2.102(c), the term ''occurrence of the alleged violation'' is defined in a manner that includes both isolated acts of discrimination and continuing violations. *See, e.g., Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982). In §2.102(d), the term ''the rights and protections against discrimination in the provision of public services and accommodations'' is defined by referencing the specific sections of Titles II and III that are incorporated into the CAA in section 210(b)(1). 2 U.S.C. §1331(b)(1).

§2.103 Investigatory Authority. This section explains the investigatory methods that the General Counsel will use when investigating charges of discrimination and clarifies the duty of cooperation owed by all parties. The language used to describe the investigatory methods listed in §2.103(a) is derived from the Supreme Court's decision in *Dow Chemical Co. v. United States*, 476 U.S. 227, 233 (1986) which describes what is intended when an agency is granted investigatory authority that is not otherwise defined in the statute. The duty to cooperate with investigations described in §2.103(b) is implicit in the CAA. By empowering the General Counsel to investigate potential violations of the the ADA, Congress expressed its expectation that legislative branch employees and offices would cooperate fully with investigations conducted by the General Counsel pursuant to this authority. This regulation is consistent with prior policy guidance the General Counsel has provided to covered entities.

§2.104 Mediation. This section explains when the General Counsel will request mediation of a charge of discrimination. The language in §2.104(a) is derived from section 210(d)(2) of the CAA. 2 U.S.C. §1331(d)(2). The explanation of what happens when mediation results in a settlement is contained in §2.104(b) and is consistent with the language in section 210(d)(3) and with the General Counsel's past practice of closing cases that are resolved during mediation. The language in §2.104(c) is derived from section 210(d)(3) of the CAA. 2 U.S.C. §1331(d)(3).

§2.105 Complaint. The language in this section is is derived from section 210(d)(3) of the CAA. 2 U.S.C. §1331(d)(3).

§2.106 Intervention by charging individual. The language in this section is is derived from section 210(d)(3) of the CAA. 2 U.S.C. §1331(d)(3).

§2.107 Remedies and Compliance. This section describes the remedies available and the compliance dates when a violation of section 210 is found. The remedy language in §2.107(a) is based upon the statutory language in section 210(c) of the CAA. 2 U.S.C. §1331(d)(3). The allowance of attorney's fees and costs described in §2.107(a)(1) is based upon the language in 28 C.F.R. §35.175 & 36.505 which recognize that attorney's fees may be awarded under both Titles II and III of the ADA. The availability of compensatory damages described in §2.107(a)(2) derives from sections 210(c) and of the CAA which incorporates by reference the remedies contained sections 203 and 308(a) of the ADA. Section 203 of the ADA provides that the remedies set forth in the Rehabilitation Act (at 29 U.S.C. §794a) shall be the remedies for violations of Title II of the ADA. The Supreme Court has made clear that the remedies available under Title II of the ADA and the Rehabilitation Act are ''coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964'' which includes compensatory, but not punitive, damages. *Barnes v. Gorman*, 536 U.S. 181, 185 (2002). The language in §2.107(a)(1) & (a)(2) requiring that payment be made by the covered entity responsible for correcting the violation is from section 415(c) of the CAA which requires that funds to correct ADA violations ''may be paid only from funds appropriated to the employing office or entity responsible for correcting such violations.'' 2 U.S.C. §1415(c). The compliance date set forth in §2.107(b) is from section 210(d)(5) of the CAA. 2 U.S.C. §1331(d)(5).

§2.108 Judicial Review. This section is from section 210(d)(4) of the CAA. 2 U.S.C. §1331(d)(4).

Regulations proposed in Part 3.

§3.101 Purpose and scope. This section references and notes that Part 3 of these regulations implements section 210(f) of the CAA which requires that the General Counsel, on a regular basis, at least once each Congress, inspect the facilities of covered entities to ensure compliance with the Titles II and III of the ADA and to prepare and submit a report to Congress containing the results of the periodic inspections, describing any violations, assessing any limitations in accessibility, and providing the estimated cost and time needed for abatement. It also notes that by procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel will exercise the statutory authority provided by section 210(d) of the CAA. The Board notes that the Executive Director is proposing amendments to the Office's Procedural Rules that do include provisions relating to section 210(f) of the CAA.

§3.102 Definitions. This section defines terms used in section 210(f) of the CAA which are not defined in the statute. In §3.102(a), the term ''facilities of covered entities'' is defined. The term ''facility'' is defined in 28 C.F.R. §35.104, which is incorporated by reference into these regulations. See §1.105(c). ''Facilities of covered entities'' is defined to include all facilities where covered entities provide public programs, activities, services or accommodations, including those facilities designed, maintained, altered or constructed by a covered entity. Because the General Counsel's inspections under section 210(f) of the CAA are focused upon finding barriers to access in facilities, the term ''violation'' is defined in §3.102(b) as any barrier to access caused by noncompliance with the applicable standards. The definition of ''estimated cost and time needed for abatement'' was developed in consultation with Office of the Architect of the Capitol which proposed that reporting regarding estimated abatement cost and time be provided using a range of dollar amounts and dates due to the difficulty in precisely estimating such costs and dates.

§3.103 Inspection authority. This section describes the general scope of the General

Counsel's inspection authority [§3.103(a)] and recognizes that the General Counsel has the right to review information and documents [§3.103(b)], receive cooperation from covered entities [§3.103(c)], and become involved in pre-construction review of alteration and construction projects [§3.103(d)].

The general scope of authority in §3.103(a) is derived from the language in section 210(f)(1) of the CAA. 2 U.S.C. §1331(f)(1). This subsection also describes the discretion that the General Counsel has exercised when conducting these inspections since the enactment of the CAA.

The document and information review described in §3.103(b) recognizes that a thorough inspection of facilities can require the review of documents and other information to ascertain whether a covered entity is in compliance with the ADA. The language in this subsection is based upon prior policy guidance the General Counsel has provided to covered entities.

The duty to cooperate with inspections described in §3.103(c), like the duty to cooperate with investigations described in §2.103(b), is implicit in the CAA. By empowering the General Counsel to inspect all facilities for potential violations of the the ADA, Congress expressed its expectation that legislative branch employees and offices would cooperate fully with such inspections conducted by the General Counsel pursuant to this authority. This regulation is consistent with prior policy guidance the General Counsel has provided to covered entities.

The pre-construction review of alteration and construction projects described in §3.103(d) was developed after consultation with the Office of the Architect of the Capitol and addresses concerns raised by oversight and appropriations staff over finding a cost efficient process that would allow better identification and elimination of potential ADA compliance issues during the pre-construction phases of new construction and alteration projects.

§3.104 Reporting, estimating cost & time and compliance date. This section describes the reporting obligations of the General Counsel set forth in section 210(f)(2) of the CAA. 2 U.S.C. §1331(f)(2). The language in §3.104(a) is directly from section 210(f)(2) of the CAA. Subsection 3.104(b) merely recognizes that the General Counsel needs the cooperation of covered entities to provide the cost and time estimates for abatement required by section 210(f)(2). The compliance date set forth in §3.104(c) is from section 210(d)(5) of the CAA. 2 U.S.C. §1331(d)(5).

Proposed Regulations:

PART 1—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 210 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995

§1.101 Purpose and scope.

(a) **CAA.** Enacted into law on January 23, 1995, the Congressional Accountability Act (''CAA'') in Section 210(b) provides that the rights and protections against discrimination in the provision of public services and accommodations established by the provisions of Title II and III (Sections 201 through 230, 302, 303, and 309) of the Americans With Disabilities Act of 1990, 42 U.S.C. §§12131–12150, 12182, 12183, and 12189 (''ADA'') shall apply to the following entities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Office of Congressional Accessibility Services;

(5) the United States Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance;

Title II of the ADA prohibits discrimination on the basis of disability in the provision of public services, programs, activities by any ''public entity.'' Section 210(b)(2) of the CAA provides that for the purpose of applying Title II of the ADA the term ''public entity'' means any entity listed above that provides public services, programs, or activities. Title III of the ADA prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with accessibility standards. Section 225(f) of the CAA provides that, ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions of the [ADA] shall apply under this Act.'' 2 U.S.C. §1361(f)(1).

Section 210(d) of the CAA requires that the General Counsel of the Office of Compliance accept and investigate charges of discrimination filed by qualified individuals with disabilities who allege a violation of Title II or Title III of the ADA by a covered entity. If the General Counsel believes that a violation may have occurred, the General Counsel may file with the Office a complaint against any entity responsible for correcting the violation. 2 U.S.C. §1361(d).

Section 210(f) of the CAA requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and to report to Congress on compliance with disability access standards under Section 210. 2 U.S.C. §1331(f).

(b) **Purpose and scope of regulations.** The regulations set forth herein (Parts 1, 2, and 3) are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to Section 210(e) of the CAA. Part 1 contains the general provisions applicable to all regulations under Section 210, the method of identifying entities responsible for correcting a violation of Section 210, and the list of executive branch regulations incorporated by reference which define and clarify the prohibition against discrimination on the basis of disability in the provision of public services and accommodations. Part 2 contains the provisions pertaining to investigation and prosecution of charges of discrimination. Part 3 contains the provisions regarding the periodic inspections and reports to Congress on compliance with the disability access standards.

§1.102 Definitions.

Except as otherwise specifically provided in these regulations, as used in these regulations:

(a) ***Act*** or ***CAA*** means the Congressional Accountability Act of 1995 (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) ***ADA*** means the Americans With Disabilities Act of 1990 (42 U.S.C. §§12131–12150, 12182, 12183, and 12189) as applied to covered entities by Section 210 of the CAA.

(c) ***Covered entity and public entity*** include any of the entities listed in §1.101(a) that provide public services, programs, or activities, or operates a place of public accommodation within the meaning of Section 210 of the CAA. In the regulations implementing Title III, ***private entity*** includes ***covered entities***.

(d) ***Board*** means the Board of Directors of the Office of Compliance.

(e) ***Office*** means the Office of Compliance.

(f) ***General Counsel*** means the General Counsel of the Office of Compliance.

§1.103 Authority of the Board.

Pursuant to Sections 210 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections against discrimination on the basis of disability in the provision of public services and accommodations under the ADA. Section 210(e) of the CAA directs the Board to promulgate regulations implementing Section 210 that are ''the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. §1331(e). Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) [of Section 210 of the CAA]'' that need be adopted.

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Attorney General and the Secretary of Transportation. Such changes are intended to make the provisions adopted accord more naturally to situations in the Legislative Branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Attorney General and/or the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulations or of the statutory provisions of the CAA upon which they are based.

§1.104 Method for identifying the entity responsible for correction of violations of section 210.

(a) **Purpose and scope.** Section 210(e)(3) of the CAA provides that regulations under Section 210(e) include a method of identifying, for purposes of this section and for categories of violations of Section 210(b), the entity responsible for correcting a particular violation. This section sets forth the method for identifying responsible entities for the purpose of allocating responsibility for correcting violations of Section 210(b).

(b) **Violations.** A covered entity may violate Section 210(b) if it discriminates against a qualified individual with a disability within the meaning of Title II or Title III of the ADA.

(c) **Entities Responsible for Correcting Violations.** Correction of a violation of the rights and protections against discrimination is the responsibility of the entities listed in subsection (a) of Section 210 of the CAA that provide the specific public service, program, activity, or accommodation that forms the basis for the particular violation of Title II or Title III rights and protections and, when the violation involves a physical

access barrier, the entities responsible for designing, maintaining, managing, altering or constructing the facility in which the specific public service program, activity or accommodation is conducted or provided.

(d) **Allocation of Responsibility for Correction of Title II and/or Title III Violations.** Where more than one entity is found to be an entity responsible for correction of a violation of Title II and/or Title III rights and protections under the method set forth in this section, as between those parties, allocation of responsibility for correcting the violations of Title II or Title III of the ADA may be determined by statute, contract, order, or other enforceable arrangement or relationship.

§ 1.105 Regulations incorporated by reference.

(a) **Technical and Nomenclature Changes to Regulations Incorporated by Reference.** The definitions in the regulations incorporated by reference (''incorporated regulations'') shall be used to interpret these regulations except when they differ from the definitions in § 1.102 or the modifications listed below, in which case the definition in § 1.102 or the modification listed below shall be used. The incorporated regulations are hereby modified as follows:

(1) When the incorporated regulations refer to **"Assistant Attorney General," "Department of Justice," "FTA Administrator," "FTA regional office," "Administrator," "Secretary,"** or any other executive branch office or officer, **"General Counsel"** is hereby substituted.

(2) When the incorporated regulations refer to the date **"January 26, 1992,"** the date **"January 1, 1997"** is hereby substituted.

(3) When the incorporated regulations otherwise specify a date by which some action must be completed, the date that is three years from the effective date of these regulations is hereby substituted.

(4) When the incorporated regulations contain an exception for an **"historic"** property, building, or facility that exception shall apply to properties, buildings, or facilities designated as an **historic** or **heritage asset** by the Office of the Architect of the Capitol in accordance with its preservation policy and standards and where, in accordance with its preservation policy and standards, the Office of the Architect of the Capitol determines that compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply.

(b) **Rule of Interpretation.** When a covered entity is subject to conflicting regulations implementing both Title II and Title III of the ADA, the regulation providing the most access shall apply.

(c) **Incorporated Regulations from 28 C.F.R. Parts 35 and 36.** The following regulations from 28 C.F.R. Parts 35 and 36 that are published in the Code of Federal Regulations on the effective date of these regulations are hereby incorporated by reference as though stated in detail herein:

§ 35.101 Purpose.
§ 35.102 Application.
§ 35.103 Relationship to other laws.
§ 35.104 Definitions.
§ 35.105 Self-evaluation
§ 35.106 Notice.
§ 35.107 Designation of responsible employee and adoption of grievance procedures.
§ 35.130 General prohibitions against discrimination.
§ 35.131 Illegal use of drugs.
§ 35.132 Smoking.
§ 35.133 Maintenance of accessible features.
§ 35.135 Personal devices and services.
§ 35.136 Service animals
§ 35.137 Mobility devices.
§ 35.138 Ticketing
§ 35.139 Direct threat.
§ 35.149 Discrimination prohibited.
§ 35.150 Existing facilities.
§ 35.151 New Construction and alterations.
§ 35.152 Jails, detention and correctional facilities.
§ 35.160 General.
§ 35.161 Telecommunications.
§ 35.162 Telephone emergency services.
§ 35.163 Information and signage.
§ 35.164 Duties.
§ 36.101 Purpose.
§ 36.102 Application.
§ 36.103 Relationship to other laws.
§ 36.104 Definitions.
§ 36.201 General.
§ 36.202 Activities.
§ 36.203 Integrated settings.
§ 36.204 Administrative methods.
§ 36.205 Association.
§ 36.207 Places of public accommodations located in private residences.
§ 36.208 Direct threat.
§ 36.209 Illegal use of drugs.
§ 36.210 Smoking.
§ 36.211 Maintenance of accessible features.
§ 36.213 Relationship of subpart B to subparts C and D of this part.
§ 36.301 Eligibility criteria.
§ 36.302 Modifications in policies, practices, or procedures.
§ 36.303 Auxiliary aids and services.
§ 36.304 Removal of barriers.
§ 36.305 Alternatives to barrier removal.
§ 36.306 Personal devices and services.
§ 36.307 Accessible or special goods.
§ 36.308 Seating in assembly areas.
§ 36.309 Examinations and courses.
§ 36.310 Transportation provided by public accommodations.
§ 36.402 Alterations.
§ 36.403 Alterations: Path of travel.
§ 36.404 Alterations: Elevator exemption.
§ 36.405 Alterations: Historic preservation.
§ 36.406 Standards for new construction and alterations.
Appendix A to Part 36—Standards for Accessible Design.
Appendix B to Part 36—Preamble to Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations (Published July 26, 1991).

(d) **Incorporated Regulations from 49 C.F.R. Parts 37 and 38.** The following regulations from 49 C.F.R. Parts 37 and 38 that are published in the Code of Federal Regulations on the effective date of these regulations are hereby incorporated by reference as though stated in detail herein:

§ 37.1 Purpose.
§ 37.3 Definitions.
§ 37.5 Nondiscrimination.
§ 37.7 Standards for accessible vehicles.
§ 37.9 Standards for accessible transportation facilities.
§ 37.13 Effective date for certain vehicle specifications.
§ 37.21 Applicability: General.
§ 37.23 Service under contract.
§ 37.27 Transportation for elementary and secondary education systems.
§ 37.31 Vanpools.
§ 37.37 Other applications.
§ 37.41 Construction of transportation facilities by public entities.
§ 37.43 Alteration of transportation facilities by public entities.
§ 37.45 Construction and alteration of transportation facilities by private entities.
§ 37.47 Key stations in light and rapid rail systems.
§ 37.61 Public transportation programs and activities in existing facilities.
§ 37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.
§ 37.73 Purchase or lease of used non-rail vehicles by public entities operating fixed route systems.
§ 37.75 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems.
§ 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.
§ 37.79 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.
§ 37.81 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.
§ 37.83 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.
§ 37.101 Purchase or lease of vehicles by private entities not primarily engaged in the business of transporting people.
§ 37.105 Equivalent service standard.
§ 37.121 Requirement for comparable complementary paratransit service.
§ 37.123 ADA paratransit eligibility: Standards.
§ 37.125 ADA paratransit eligibility: Process.
§ 37.127 Complementary paratransit service for visitors.
§ 37.129 Types of service.
§ 37.131 Service criteria for complementary paratransit.
§ 37.133 Subscription service.
§ 37.135 Submission of paratransit plan.
§ 37.137 Paratransit plan development.
§ 37.139 Plan contents.
§ 37.141 Requirements for a joint paratransit plan.
§ 37.143 Paratransit plan implementation.
§ 37.147 Considerations during FTA review.
§ 37.149 Disapproved plans.
§ 37.151 Waiver for undue financial burden.
§ 37.153 FTA waiver determination.
§ 37.155 Factors in decision to grant an undue financial burden waiver.
§ 37.161 Maintenance of accessible features: General.
§ 37.163 Keeping vehicle lifts in operative condition: Public entities.
§ 37.165 Lift and securement use.
§ 37.167 Other service requirements.
§ 37.171 Equivalency requirement for demand responsive service operated by private entities not primarily engaged in the business of transporting people.
§ 37.173 Training requirements.
Appendix A to Part 37—Modifications to Standards for Accessible Transportation Facilities.
Appendix D to Part 37—Construction and Interpretation of Provisions of 49 CFR Part 37.
§ 38.1 Purpose.
§ 38.2 Equivalent facilitation.
§ 38.3 Definitions.
§ 38.4 Miscellaneous instructions.
§ 38.21 General.
§ 38.23 Mobility aid accessibility.
§ 38.25 Doors, steps and thresholds.
§ 38.27 Priority seating signs.
§ 38.29 Interior circulation, handrails and stanchions.
§ 38.31 Lighting.
§ 38.33 Fare box.
§ 38.35 Public information system.
§ 38.37 Stop request.
§ 38.39 Destination and route signs.
§ 38.51 General.
§ 38.53 Doorways.
§ 38.55 Priority seating signs.
§ 38.57 Interior circulation, handrails and stanchions.

(e) **Incorporated Regulation from 36 C.F.R. Part 1190**. The following regulation from 36 C.F.R. Part 1190 that is published in the Code of Federal Regulations on the effective date of these regulations is hereby incorporated by reference as though detail herein:

§ 2.101 Purpose and Scope.

Section 210(d) of the CAA requires that the General Counsel accept and investigate charges of discrimination filed by qualified individuals with disabilities who allege a violation of Title II or Title III of the ADA by a covered entity. Part 2 of these regulations contains the provisions pertaining to investigation and prosecution of charges of discrimination. By procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel will exercise the statutory authority provided by Section 210.

§ 2.102 Definitions.

(a) ***Charge*** means any written document from a qualified individual with a disability or that individual's designated representative which suggests or alleges that a covered entity denied that individual the rights and protections against discrimination in the provision of public services and accommodations provided in Section 210(b)(1) of the CAA.

(b) ***File a charge*** means providing a charge to the General Counsel in person, by mail, by electronic transmission, or by any other means used by the General Counsel to receive documents. Charges shall be filed within 180 days of the occurrence of the alleged violation.

(c) ***The occurrence of the alleged violation*** means the later of (1) the date on which the charging individual was allegedly discriminated against; or (2) the last date on which the service, activity, program or public accommodation described by the charging party was operated in a way that denied access in the manner alleged by the charging party.

(d) ***The rights and protections against discrimination in the provision of public services and accommodations*** means all of the rights and protections provided by Section 210(b)(1) of the CAA through incorporation of Sections 201 through 230, 203, 303, and 309 of the ADA and by the regulations issued by the Board to implement Section 210 of the CAA.

§ 2.103 Investigatory Authority.

(a) **Investigatory Methods.** When investigating charges of discrimination and conducting inspections, the General Counsel is authorized to use all the modes of inquiry and investigation traditionally employed or useful to execute this investigatory authority. The authorized methods of investigation include, but are not limited to, the following: (1) requiring the parties to provide or produce ready access to: all physical areas subject to an inspection or investigation, individuals with relevant knowledge concerning the inspection or investigation who can be interviewed or questioned, and documents pertinent to the investigation; and (2) requiring the parties to provide written answers to questions, statements of position, and any other information relating to a potential violation or demonstrating compliance.

(b) **Duty to Cooperate with Investigations.** Charging individuals and covered entities shall cooperate with investigations conducted by the General Counsel. Cooperation includes providing timely responses to reasonable requests for information and documents (including the making and retention of copies of records and documents), allowing the General Counsel to review documents and interview relevant witnesses confidentially and without managerial interference or influence, and granting the General Counsel ready access to all facilities where covered services, programs and activities are being provided and all places of public accommodation.

§ 2.104 Mediation.

(a) **Belief that violation may have occurred.** If, after investigation, the General Counsel believes that a violation of the ADA may have occurred and that mediation may be helpful in resolving the dispute, prior to filing a complaint, the General Counsel may request, but not participate in, mediation under subsections (b) through (d) of Section 403 of the CAA between the charging individual and any entity responsible for correcting the alleged violation.

(b) **Settlement.** If, prior to the filing of a complaint, the charging individual and the entity responsible for correcting the violation reach a settlement agreement that fully resolves the dispute, the General Counsel shall close the investigation of the charge without taking further action.

(c) **Mediation Unsuccessful.** If mediation under (a) has not succeeded in resolving the dispute, and if the General Counsel believes that a violation of the ADA may have occurred, the General Counsel may file with the Office a complaint against any entity responsible for correcting the violation.

§ 2.105 Complaint.

The complaint filed by the General Counsel shall be submitted to a hearing officer for decision pursuant to subsections (b) through (h) of Section 405 of the CAA. The decision of the hearing officer shall be subject to review by the Board pursuant to Section 406 of the CAA.

§ 2.106 Intervention by Charging Individual.

Any person who has filed a charge may intervene as of right, with the full rights of a party, whenever a complaint is filed by the General Counsel.

§ 2.107 Remedies and Compliance.

(a) **Remedy.** The remedy for a violation of Section 210 of the CAA shall be such remedy as would be appropriate if awarded under Section 203 or 308(a) of the ADA.

(1) **Attorney Fees and Costs.** In any action commenced pursuant to Section 210 of the CAA by the General Counsel, when a charging individual has intervened, the hearing officer and the Board, in their discretion, may allow the prevailing charging individual a reasonable attorney's fee, including litigation expenses, and costs, and the covered entity responsible for correcting the violation shall pay such fees, expenses and costs from its appropriated funds as part of the funds to correct violations of Section 210 under Section 415(c) of the CAA.

(2) **Compensatory Damages.** In any action commenced pursuant to Section 210 of the CAA by the General Counsel, when a charging individual has intervened, the hearing officer and the Board, in their discretion, may award compensatory damages to the prevailing charging individual, and the covered entity responsible for correcting the violation shall pay such compensatory damages from its appropriated funds as part of the funds to correct violations of Section 210 under Section 415(c) of the CAA.

(b) **Compliance Date.** Compliance shall take place as soon as possible, but no later than the fiscal year following the end of the fiscal year in which the order requiring correction becomes final and not subject to further review.

§ 2.108 Judicial Review.

A charging individual who has intervened or any respondent to the complaint, if aggrieved by a final decision of the Board, may file a petition for review in the United States Court of Appeals for the Federal Circuit, pursuant to Section 407 of the CAA.

§ 3.101 Purpose and scope.

Section 210(f) of the CAA requires that the General Counsel, on a regular basis, at least once each Congress, inspect the facilities of covered entities to ensure compliance with the Titles II and III of the ADA and to prepare and submit a report to Congress containing the results of the periodic inspections, describing any violations, assessing any limitations in accessibility, and providing the estimated cost and time needed for abatement. Part 3 of these regulations contains the provisions pertaining to these inspection and reporting duties. By procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel will exercise this statutory authority provided by Section 210.

§ 3.102 Definitions.

(a) ***The facilities of covered entities*** means all facilities used to provide public programs, activities, services or accommodations that are designed, maintained, altered or constructed by a covered entity and all facilities where covered entities provide public programs, activities, services or accommodations.

(b) ***Violation*** means any barrier to access caused by noncompliance with the applicable standards.

(c) ***Estimated cost and time needed for abatement*** means cost and time estimates that can be reported as falling within a range of dollar amounts and dates.

§ 3.103 Inspection authority.

(a) **General scope of authority.** On a regular basis, at least once each Congress, the General Counsel shall inspect the facilities of covered entities to ensure compliance with the Titles II and III of the ADA. When conducting these inspections, the General Counsel has the discretion to decide which facilities will be inspected and how inspections will be conducted. The General Counsel may receive requests for ADA inspections, including anonymous requests, and conduct inspections for compliance with Titles II and III of

the ADA in the same manner that the General Counsel receives and investigates requests for inspections under Section 215(c)(1) of the CAA.

(b) **Review of information and documents.** When conducting inspections under Section 210(f) of the CAA, the General Counsel may request, obtain, and review any and all information or documents deemed by the General Counsel to be relevant to a determination of whether the covered entity is in compliance with Section 210 of the CAA.

(c) **Duty to cooperate.** Covered entities shall cooperate with any inspection conducted by the General Counsel in the manner provided by §2.103(b).

(d) **Pre-construction review of alteration and construction projects.** Any project involving alteration or new construction of facilities of covered entities are subject to inspection by the General Counsel for compliance with Titles II and III of the ADA during the design, pre-construction, construction, and post construction phases of the project. The Office of the Architect of the Capitol shall, within one year from the effective date of these regulations, develop a process with the General Counsel to identify potential barriers to access prior to the completion of alteration and construction projects that may include the following provisions:

(1) Design review or approval;

(2) Inspections of ongoing alteration and construction projects;

(3) Training on the applicable ADA standards;

(4) Final inspections of completed projects for compliance; and

(5) Any other provision that would likely reduce the number of ADA barriers in alterations and new construction and the costs associated with correcting them.

§3.104 Reporting, estimating cost & time and compliance date.

(a) **Reporting duty.** On a regular basis, at least once each Congress, the General Counsel shall prepare and submit a report to Congress containing the results of the periodic inspections conducted under §3.103(a), describing any violations, assessing any limitations in accessibility, and providing the estimated cost and time needed for abatement.

(b) **Estimated cost & time.** Covered entities shall cooperate with the General Counsel by providing information needed to provide the estimated cost and time needed for abatement in the manner provided by §2.103(b).

(c) **Compliance date.** All barriers to access identified by the General Counsel in its periodic reports shall be removed or otherwise corrected as soon as possible, but no later than the fiscal year following the end of the fiscal year in which the report describing the barrier to access was issued by the General Counsel.

Recommended Method of Approval:

The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and entities and facilities of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and entities and facilities of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered entities and facilities be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 9th day of September, 2014.

BARBARA L. CAMENS,
Chair of the Board, Office of Compliance.

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC.

Hon. PATRICK J. LEAHY,
President Pro Tempore of the Senate, Washington, DC.

DEAR MR. PRESIDENT: Section 303(a) of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. I383(a), requires that, with regard to the initial proposal of procedural rules under the CAA, the Executive Director ''shall, subject to the approval of the Board [of Directors], adopt rules governing the procedures of the Office . . . publish a general notice of proposed rulemaking'' and ''shall transmit such notice to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day of which both Houses are in session following such transmittal.''

Having obtained the approval of the Board as required by Section 303(b) of the CAA, 2 U.S.C. I383(b), I am transmitting the attached notice of proposed procedural rulemaking to the President pro tempore of the Senate. I request that this notice be published in the Senate section of the Congressional Record on the first day on which both Houses are in session following the receipt of this transmittal. In compliance with Section 303(b) of the CAA, a comment period of 30 days after the publication of this notice of proposed rulemaking is being provided before adoption of the rules.

Any inquiries regarding this notice should be addressed to Barbara J. Sapin, Executive Director of the Office of Compliance, Room LA–200, 110 2nd Street SE., Washington, DC 20540; 202–724–9250.

Sincerely,

BARBARA J. SAPIN,
Executive Director, Office of Compliance.

Attachment.

FROM THE EXECUTIVE DIRECTOR OF THE OFFICE OF COMPLIANCE: NOTICE OF PROPOSED RULEMAKING (''NPRM''), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES.

PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE, NOTICE OF PROPOSED RULEMAKING, AS REQUIRED BY 2 U.S.C. §1383, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED (''CAA'').

INTRODUCTORY STATEMENT

Shortly after the creation of the Office of Compliance (Office) in 1995, Procedural Rules were adopted to govern the processing of cases and controversies under the administrative procedures established in subchapter IV of the Congressional Accountability Act of 1995 (CAA) 2 U.S.C. 1401–1407. The Rules of Procedure were amended in 1998 and again in 2004. The existing Rules of Procedure are available in their entirety on the Office of Compliance's web site: *www.compliance.gov*. The web site is fully compliant with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

Pursuant to section 303(a) of the CAA (2 U.S.C. 1383(a)), the Executive Director of the Office has obtained approval of the Board of Directors of the Office of Compliance regarding certain amendments to the Rules of Procedure.

After obtaining the Board's approval, the Executive Director must then ''publish a general notice of proposed rulemaking . . . for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal.'' (Section 303(b) of the CAA, 2 U.S.C. 1383(b)).

NOTICE

Comments regarding the proposed amendments to the Rules of Procedure of the Office of Compliance set forth in this NOTICE are invited for **a period of thirty (30) days** following the date of the appearance of this NOTICE in the Congressional Record. In addition to being posted on the Office of Compliance's section 508 compliant web site (www.compliance.gov), this NOTICE is also available in the following alternative formats: Large Print, Braille. Requests for this NOTICE in an alternative format should be made to Annie Leftwood, Office of Compliance, at 202/724–9272 (voice). Submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided via e-mail to: Annie Leftwood: annie.leftwood@compliance.gov. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non toll-free number). Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission. Copies of submitted comments will be available for review at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION

The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 13 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within that Branch. Section 303 (2 U.S.C. 1383) directs that the Executive Director, as the Chief Operating Officer of the agency, adopt rules of procedure governing the Office of Compliance, subject to approval by the Board of Directors of the Office.

The rules of procedure establish the process by which alleged violations of the 13 laws made applicable to the Legislative Branch under the CAA will be considered and resolved. Subpart A covers general provisions pertaining to scope and policy, definitions, and information on various filings and computation of time. Proposed Amendments to Subpart A provide for electronic filing and clarify requirements and procedures concerning confidentiality. Subpart B provides procedures for counseling, mediation, and election between filing an administrative complaint with the Office of Compliance or filing a civil action in U.S. District Court. A new Subpart C of the Procedural Rules sets forth the proposed rules and procedures for enforcement of the inspection, investigation and complaint sections 210(d) and (f) of the CAA relating to Public Services and Accommodations under Titles II and III of the Americans with Disabilities Act (ADA). Subpart C has been reserved for these rules since 1995. Because the Office of the General Counsel conducts ADA inspections and investigates ADA charges using procedures that are similar to what are used in its Occupational, Safety and Health (OSH) inspections and investigations conducted under section 215 of the CAA, the procedural rules are similar to what are contained in Subpart D of the Procedural Rules relating to OSH inspections and investigations. The proposed Amendments to Subpart D clarify potential ambiguities in the rules and procedures and make modifications in terminology to better comport with the statutory language used in Section 215 of the CAA. Subparts E, F, and G include the process for the conduct of administrative hearings held as the result of the

filing of an administrative complaint. Subpart H sets forth the procedures for appeals of decisions by hearing officers to the Board of Directors of the Office of Compliance and for appeals of decisions by the Board of Directors to the United States Court of Appeals for the Federal Circuit. Proposed Amendments to Subpart H also reference procedures for other proceedings before the Board. Subpart I of the Rules contain other matters of general applicability to the dispute resolution process and to the operation of the Office of Compliance, including proposed Amendments concerning attorney's fees and violations of formal settlement agreements.

These proposed amendments to the Rules of Procedure are the result of the experience of the Office in processing disputes under the CAA since the original adoption of these Rules in 1995. The proposed Amendments to Subpart D of the Procedural Rules reflect the experience of the Office of General Counsel in conducting OSH inspections and investigations since 1995.

EXPLANATION REGARDING THE TEXT OF THE PROPOSED AMENDMENTS

Material from the 2004 version of the Rules is printed in roman type. The text of the proposed amendments shows *[deletions in italicized type within bold italics brackets]* and **added text in bold.** Only subsections of the Rules that include proposed amendments are reproduced in this NOTICE. The insertion of a series of small dots (. . . . .) indicates additional, unamended text within a section has not been reproduced in this document. The insertion of a series of asterisks (* * * * *) indicates that the unamended text of entire sections of the Rules have not been reproduced in this document. For the text of other portions of the Rules which are not proposed to be amended, please access the Office of Compliance web site at www.compliance.gov.

PROPOSED AMENDMENTS

Subpart A—General Provisions

§ 1.01 Scope and Policy.

These rules of the Office of Compliance govern the procedures for consideration and resolution of alleged violations of the laws made applicable under Parts A, B, C, and D of title II of the Congressional Accountability Act of 1995. The rules include **definitions,** procedures for counseling, mediation, and for electing between filing a complaint with the Office of Compliance and filing a civil action in a district court of the United States **under Part A of title II.** The rules also address the procedures for **compliance, investigation and enforcement under Part B of title II, [***variances***]** and for compliance, investigation, **[***and***]** enforcement**, and variance** under Part C of title II**. The rules include [***and***]** procedures for the conduct of hearings held as a result of the filing of a complaint and for appeals to the Board of Directors of the Office of Compliance from Hearing Officer decisions, as well as other matters of general applicability to the dispute resolution process and to the operations of the Office of Compliance. It is the policy of the Office that these rules shall be applied with due regard to the rights of all parties and in a manner that expedites the resolution of disputes.

§ 1.02 Definitions.

Except as otherwise specifically provided in these rules, for purposes of this Part:

. . . . .

(b) *Covered Employee.* The term ''covered employee'' means any employee of

. . . . .

(3) the **[***Capitol Guide Service***] Office of Congressional Accessibility Services;**

(4) the **United States** Capitol Police;

. . . . .

(9) for the purposes stated in paragraph (q) of this section, the **[***General Accounting***] Government Accountability** Office or the Library of Congress.

. . . . .

(d) *Employee of the Office of the Architect of the Capitol.* The term ''employee of the Office of the Architect of the Capitol'' includes any employee of the Office of the Architect of the Capitol, **or** the Botanic Garden **[***or the Senate Restaurants***]**.

(e) *Employee of the Capitol Police.* The term ''employee of the Capitol Police'' includes civilian employees and any member or officer of the Capitol Police.

(f) *Employee of the House of Representatives.* The term ''employee of the House of Representatives'' includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives, but not any such individual employed by any entity listed in subparagraphs **(3)** through (9) of paragraph (b) above.

(g) *Employee of the Senate.* The term ''employee of the Senate'' includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (9) of paragraph (b) above.

(h) *Employing Office.* The term ''employing office'' means:

. . . . .

(4) the **[***Capitol Guide Service***] Office of Congressional Accessibility Services,** the **United States** Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance; or

(5) for the purposes stated in paragraph **[***(q)***] (r)** of this section, the **[***General Accounting***] Government Accountability** Office and the Library of Congress

(j) *Designated Representative.* The term ''designated representative'' means an individual, firm, or other entity designated in writing by a party to represent the interests of that party in a matter filed with the Office.

. . . . .

—Re-letter subsequent paragraphs—

[*(o)***](p)** *General Counsel.* The term ''General Counsel'' means the General Counsel of the Office of Compliance **and any authorized representative or designee of the General Counsel.**

[*(p)***](q)** *Hearing Officer.* The term ''Hearing Officer'' means any individual **[***designated***] appointed** by the Executive Director to preside over a hearing conducted on matters within the Office's jurisdiction.

[*(q)***](r)** *Coverage of the* **[***General Accounting***] Government Accountability** *Office and the Library of Congress and their Employees.* The term ''employing office'' shall include the **[***General Accounting***] Government Accountability** Office and the Library of Congress, and the term ''covered employee'' shall include employees of the [General Accounting] Government Accountability Office and the Library of Congress, for purposes of the proceedings and rulemakings described in subparagraphs (1) and (2):

. . . . .

§ 1.03 Filing and Computation of Time

(a) *Method of Filing. Documents may be filed in person,* **electronically, by facsimile (FAX),** or by mail, including express, overnight and other expedited delivery. **[***When specifically requested by the Executive Director, or by a Hearing Officer in the case of a matter pending before the Hearing Officer, or by the Board of Directors in the case of an appeal to the Board, any document may also be filed by electronic transmittal in a designated format, with receipt confirmed by electronic transmittal in the same format. Requests for counseling under section 2.03, requests for mediation under section 2.04 and complaints under section 5.01 of these rules may also be filed by facsimile (FAX) transmission. In addition, the Board or a Hearing Officer may order other documents to be filed by FAX. The original copies of documents filed by FAX must also be mailed to the Office no later than the day following FAX transmission.***]** The filing of all documents is subject to the limitations set forth below. **The Board, Hearing Officer, the Executive Director, or the General Counsel may, in their discretion, determine the method by which documents may be filed in a particular proceeding, including ordering one or more parties to use mail, FAX, electronic filing, or personal delivery. Parties and their representatives are responsible for ensuring that the Office always has their current postal mailing and e-mail addresses and FAX numbers.**

. . . . .

(2) ***[Mailing] By Mail.***

(i) **Requests for Mediation.** If mailed, including express, overnight and other expedited delivery, a request for mediation **[***or a complaint***]** is deemed filed on the date of its receipt in the Office.

(ii) **Other Documents. [***A document,***] Documents,** other than a request for mediation, **[***or a complaint, is***] are** deemed filed on the date of **[***its***] their** postmark or proof of mailing to the Office. Parties, including those using franked mail, are responsible for ensuring that any mailed document bears a postmark date or other proof of the actual date of mailing. In the absence of a legible postmark a document will be deemed timely **filed** if it is received by the Office at Adams Building, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540–1999, by mail within five (5) days of the expiration of the applicable filing period.

(3) ***[Faxing Documents] By FAX.*** Documents transmitted by FAX machine will be deemed filed on the date received at the Office at 202–426–1913, or **[***, in the case of any document to be filed or submitted to the General Counsel,***]** on the date received at the Office of the General Counsel at 202–426–1663 **if received by 11:59 p.m. Eastern Time. Faxed documents received after 11:59 p.m. Eastern Time will be deemed filed the following business day.** A FAX filing will be timely only if the document is *received* no later than **[***5:00 PM***] 11:59 p.m.** Eastern Time on the last day of the applicable filing period. Any party using a FAX machine to file a document bears the responsibility for ensuring both that the document is timely and accurately transmitted and confirming that the Office has received a facsimile of the document. **[***The party or individual filing the document may rely on its FAX status report sheet to show that it filed the document in a timely manner, provided that the status report indicates the date of the FAX, the receiver's FAX number, the number of pages included in the FAX, and that transmission was completed.***] The time displayed as received by the Office on its FAX status report will be used to show the time that the document was filed. When the Office serves a document by FAX, the time displayed as sent by the Office on its FAX status report will be used to show the time that the document was served. A**

FAX filing cannot exceed 75 pages, inclusive of table of contents, table of authorities, and attachments. Attachments exceeding 75 pages must be submitted to the Office in person or by electronic delivery. The date of filing will be determined by the date the brief, motion, response, or supporting memorandum is received in the Office, rather than the date the attachments, were received in the Office.

(4) ***By Electronic Mail.*** **Documents transmitted electronically will be deemed filed on the date received at the Office at oocefile@compliance.gov, or on the date received at the Office of the General Counsel at OSH@compliance.gov if received by 11:59 p.m. Eastern Time. Documents received electronically after 11:59 p.m. Eastern Time will be deemed filed the following business day. An electronic filing will be timely only if the document is received no later than 11:59 p.m. Eastern Time on the last day of the applicable filing period. Any party filing a document electronically bears the responsibility for ensuring both that the document is timely and accurately transmitted and for confirming that the Office has received the document. The time displayed as received by the Office will be used to show the time that the document has been filed. When the Office serves a document electronically, the time displayed as sent by the Office will be used to show the time that the document was served.**

(b) Service by the Office. **At its discretion, the Office may serve documents by mail, FAX, electronic transmission, or personal or commercial delivery.**

[*(b)****]*****(c)*** *Computation of Time.* All time periods in these rules that are stated in terms of days are calendar days unless otherwise noted. However, when the period of time prescribed is five (5) days or less, intermediate Saturdays, Sundays**,** federal government holidays, **and other full days that the Office is officially closed for business** shall be excluded in the computation. To compute the number of days for taking any action required or permitted under these rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing or service shall be included in the computation. When the last day falls on a Saturday, Sunday**,** *[or]* federal government holiday, **or a day the Office is officially closed,** the last day for taking the action shall be the next regular federal government workday.

*[(c)]***(d)** *Time Allowances for Mailing,* ***Fax, or Electronic Delivery*** *of Official Notices.* Whenever a person or party has the right or is required to do some act within a prescribed period after the service of a notice or other document upon him or her and the notice or document is served by *[*regular, first-class*]* mail, five (5) days shall be added to the prescribed period. *[Only two (2) days shall be added if a document is served by express mail or other form of expedited delivery.]* When documents are served by certified mail, return receipt requested, the prescribed period shall be calculated from the date of receipt as evidenced by the return receipt. **When documents are served electronically or by FAX, the prescribed period shall be calculated from the date of transmission by the Office.**

[(d) Service or filing of documents by certified mail, return receipt requested. Whenever these rules permit or require service or filing of documents by certified mail, return receipt requested, such documents may also be served or filed by express mail or other forms of expedited delivery in which proof of date of receipt by the addressee is provided.]

[*§ 9.01****]*** **§ 1.04 Filing, Service, and Size Limitations of Motions, Briefs, Responses and Other Documents.**

(a) *Filing with the Office; Number* ***and Format.*** **One copy of requests for counseling and mediation, requests for inspection under OSH, unfair labor practice charges, charges under titles II and III of the ADA,** *[one original and three copies of]* all motions, briefs, responses, and other documents must be filed *[,whenever required,]* with the Office *[or Hearing Officer]*. *[However, when a party aggrieved by the decision of a Hearing Officer or a party to any other matter or determination reviewable by the Board files an appeal or other submission with the Board, one original and seven copies of any submission and any responses must be filed with the Office. The Office, Hearing Officer, or Board may also request a]***A** party *[to submit]* **may file** an electronic version of any submission in a *[designated]* format **designated by the Executive Director, General Counsel, Hearing Officer, or Board,** with receipt confirmed by electronic transmittal in the same format.

(b) *Service.* The parties shall serve on each other one copy of all motions, briefs, responses and other documents filed with the Office, other than the request for counseling, the request for mediation and complaint. Service shall be made by mailing, **by fax or e-mailing,** or by hand delivering a copy of the motion, brief, response or other document to each party, or if represented, the party's representative, on the service list previously provided by the Office. Each of these documents must be accompanied by a certificate of service specifying how, when and on whom service was made. It shall be the duty of each party to notify the Office and all other parties in writing of any changes in the names or addresses on the service list.

. . . . .

(d) *Size Limitations.* Except as otherwise specified *[by the Hearing Officer, or these rules,]* no brief, motion, response, or supporting memorandum filed with the Office shall exceed 35 **double-spaced** pages, *[or 8,750 words,]* exclusive of the table of contents, table of authorities and attachments. The Board, the **Executive Director,** or Hearing Officer may *[waive, raise or reduce]* **modify** this limitation **upon motion and** for good cause shown**;** or on *[its]* **their** own initiative. Briefs, motions, responses, and supporting memoranda shall be on standard letter-size paper (8–1/2″ x 11″). **To the extent that such a filing exceeds 35 double-spaced pages, the Hearing Officer, Board, or Executive Director may, in their discretion, reject the filing in whole or in part, and may provide the parties an opportunity to refile.**

[*§ 9.02****]*** **§ 1.05 Signing of Pleadings, Motions and Other Filings; Violation of Rules; Sanctions.**

(a) ***Signing.*** Every pleading, motion, and other filing of a party represented by an attorney or other designated representative shall be signed by the attorney or representative. A party who is not represented shall sign the pleading, motion or other filing. **In the case of an electronic filing, an electronic signature is acceptable.** The signature of a representative or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other filing; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(b) ***Sanctions.*** If a pleading, motion, or other filing is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person who is required to sign. If a pleading, motion, or other filing is signed in violation of this rule, a Hearing Officer or the Board, as appropriate, upon motion or upon *[its]* **their** own initiative,*[shall]* **may** impose *[upon the person who signed it, a represented party, or both,]* an appropriate sanction, which may include *[an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other filing, including a reasonable attorney's fee. A Hearing Officer or the Board, as appropriate, upon motion or its own initiative may also impose an appropriate sanction, which may include]* the sanctions specified in section 7.02 *[, for any other violation of these rules that does not result from reasonable error]*.

[*§ 1.04****]*** **§ 1.06 Availability of Official Information.**

(a) *Policy.* It is the policy of the Board, the *[Office]* **Executive Director,** and the General Counsel, except as otherwise ordered by the Board, to make available for public inspection and copying final decisions and orders of the Board and the Office, as specified and described in paragraph (d) below.

. . . . .

(c) *Copies of Forms.* Copies of blank forms prescribed by the Office for the filing of complaints and other actions or requests may be obtained from the Office **or on line at www.compliance.gov.**

. . . . .

(f) *Access by Committees of Congress.* *[At the discretion of the Executive Director, the]* **The** Executive Director**, at his or her discretion,** may provide to the Committee on Standards of Official Conduct of the House of Representatives **(House Committee on Ethics)** and the Select Committee on Ethics of the Senate **(Senate Select Committee on Ethics)** access to the records of the hearings and decisions of the Hearing Officers and the Board, including all written and oral testimony in the possession of the Office. The identifying information in these records may be redacted at the discretion of the Executive Director. The Executive Director shall not provide such access until the Executive Director has consulted with the individual filing the complaint at issue, and until a final decision has been entered under section 405(g) or 406(e) of the Act.

[*§ 1.05****]*** **§ 1.07 Designation of Representative.**

(a) *[An employee, other charging individual or]* **A** party *[a witness, a labor organization, an employing office, or an entity alleged to be responsible for correcting a violation]* wishing to be represented *[by another individual,]* must file with the Office a written notice of designation of representative. **No more than one representative,** *[or]* **firm, or other entity may be designated as representative for a party, unless approved in writing by the Hearing Officer or Executive Director.** The representative may be, but is not required to be, an attorney. **If the representative is an attorney, he or she may sign the designation of representative on behalf of the party.**

(b) *Service Where There is a Representative.* *[All service]* **Service** of documents shall be *[directed to]* **on** the representative unless **and until such time** as the represented *[individual, labor organization, or employing office]* **party or representative, with notice to the party,** *[specifies otherwise and until such time as that individual, labor organization, or employing office]* notifies the Executive Director, **in writing,** of *[an amendment]* **a modification** or revocation of the designation of representative. Where a designation of representative is in effect, all time limitations for receipt of materials *[by the represented individual or entity]* shall be computed in the same manner as for **those who are** unrepresented *[individuals or entities],* with service of the documents, however, directed to the representative*[, as provided]*.

(c) *Revocation of a Designation of Representative.* A revocation of a designation of representative, whether made by the party or by the representative with notice to the party, must be made in writing and filed with the Office. The revocation will be deemed effective the date of receipt by the Office. At the discretion of the Executive Director, General Counsel, mediator, hearing officer, or Board, additional time may be provided to allow the party to designate a new representative as consistent with the Act.

***[§ 1.06]* § 1.08 *[Maintenance of]* Confidentiality.**

(a) *Policy.**[In accord with section 416 of the Act, it is the policy of]*** **Except as provided in sections 416(d), (e), and (f) of the Act,** the Office ***[to]*** **shall** maintain ***[, to the fullest extent possible, the]*** confidentiality in counseling, mediation, **and** ***[of]*** the proceedings and deliberations **of hearing officers and the Board in accordance with sections 416(a),(b), and (c) of the Act.** ***[of the participants in proceedings conducted under sections 402, 403, 405 and 406 of the Act and these rules.]***

(b)***[At the time that any individual, employing office or party, including a designated representative, becomes a participant in counseling under section 402, mediation under section 403, the complaint and hearing process under section 405, or an appeal to the Board under section 406 of the Act, or any related proceeding, the Office will advise the participant of the confidentiality requirements of section 416 of the Act and these rules and that sanctions may be imposed for a violation of those requirements.] Participant.*** **For the purposes of this rule, participant means an individual or entity who takes part as either a party, witness, or designated representative in counseling under Section 402 of the Act, mediation under section 403, the complaint and hearing process under section 405, or an appeal to the Board under Section 406 of the Act, or any related proceeding which is expressly or by necessity deemed confidential under the Act or these rules.**

(c) *Prohibition.* Unless specifically authorized by the provisions of the Act or by these rules, no participant in counseling, mediation or other proceedings made confidential under Section 416 of the Act ("confidential proceedings") may disclose a written or oral communication that is prepared for the purpose of or that occurs during counseling, mediation, and the proceedings and deliberations of hearing officers and the Board.

(d) *Exceptions.* Nothing in these rules prohibits a party or its representative from disclosing information obtained in confidential proceedings when reasonably necessary to investigate claims, ensure compliance with the Act or prepare its prosecution or defense. However, the party making the disclosure shall take all reasonably appropriate steps to ensure that persons to whom the information is disclosed maintain the confidentiality of such information. These rules do not preclude a mediator from consulting with the Office, except that when the covered employee is an employee of the Office a mediator shall not consult with any individual within the Office who might be a party or witness. These rules do not preclude the Office from reporting statistical information to the Senate and House of Representatives.

(e) *Waiver.* Participants may agree to waive confidentiality. Such a waiver must be in writing and provided to the Office.

(f) *Sanctions.* The Office will advise the participants of the confidentiality requirements of Section 416 of the Act and that sanctions may be imposed by the Hearing Officer for a violation of those requirements. No sanctions may be imposed except for good cause and the particulars of which must be stated in the sanction order.

[§ 1.07 **Breach of Confidentiality Provisions.**

(a) In General. Section 416(a) of the CAA provides that counseling under section 402 shall be strictly confidential, except that the Office and a covered employee may agree to notify the employing office of the allegations. Section 416(b) provides that all mediation shall be strictly confidential. Section 416(c) provides that all proceedings and deliberations of Hearing Officers and the Board, including any related records shall be confidential, except for release of records necessary for judicial actions, access by certain committees of Congress, and, in accordance with section 416(f), publication of certain final decisions. Section 416(c) does not apply to proceedings under section 215 of the Act, but does apply to the deliberations of Hearing Officers and the Board under section 215. See also sections 1.06, 5.04, and 7.12 of these rules.

(b) Prohibition. Unless specifically authorized by the provisions of the CAA or by order of the Board, the Hearing Officer or a court, or by the procedural rules of the Office, no participant in counseling, mediation or other proceedings made confidential under section 416 of the CAA (''confidential proceedings'') may disclose the contents or records of those proceedings to any person or entity. Nothing in these rules prohibits a bona fide representative of a party under section 1.05 from engaging in communications with that party for the purpose of participation in the proceedings, provided that such disclosure is not made in the presence of individuals not reasonably necessary to the representative's representation of that party. Moreover, nothing in these rules prohibits a party or its representative from disclosing information obtained in confidential proceedings for the limited purposes of investigating claims, ensuring compliance with the Act or preparing its prosecution or defense, to the extent that such disclosure is reasonably necessary to accomplish the aforementioned purposes and provided that the party making the disclosure takes all reasonably appropriate steps to ensure that persons to whom the information is disclosed maintain the confidentiality of such information.

(c) Participant. For the purposes of this rule, participant means any individual or party, including a designated representative, that becomes a participant in counseling under section 402, mediation under section 403, the complaint and hearing process under section 405, or an appeal to the Board under section 406 of the Act, or any related proceeding which is expressly or by necessity deemed confidential under the Act or these rules.

(d) Contents or Records of Confidential Proceedings. For the purpose of this rule, the contents or records of counseling, mediation or other proceeding includes information disclosed by participants to the proceedings, and records disclosed by either the opposing party, witnesses or the Office. A participant is free to disclose facts and other information obtained from any source outside of the confidential proceedings. For example, an employing office or its representatives may disclose information about its employment practices and personnel actions, provided that the information was not obtained in a confidential proceeding. However, an employee who obtains that information in mediation or other confidential proceeding may not disclose such information. Similarly, information forming the basis for the allegation of a complaining employee may be disclosed by that employee, provided that the information contained in those allegations was not obtained in a confidential proceeding. However, the employing office or its representatives may not disclose that information if it was obtained a confidential proceeding.

(e) Violation of Confidentiality. Any complaint regarding a violation of the confidentiality provisions must be made to the Executive Director no later than 30 days after the date of the alleged violation. Such complaints may be referred by the Executive Director to a Hearing Officer. The Hearing Officer is also authorized to initiate proceedings on his or her own initiative, or at the direction of the Board, if the alleged violation occurred in the context of Board proceedings. Upon a finding of a violation of the confidentiality provisions, the Hearing Officer, after notice and hearing, may impose an appropriate sanction, which may include any of the sanctions listed in section 7.02 of these rules, as well as any of the following:

(1) an order that the matters regarding which the violation occurred or any other designated facts shall be taken to be established against the violating party for the purposes of the action in accordance with the claim of the other party;

(2) an order refusing to allow the violating party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(3) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing with or without prejudice the action or proceedings or any part thereof, or rendering a judgment by default against the violating party;

(4) in lieu of any of the foregoing orders or in addition thereto, the Hearing Officer shall require the party violating the confidentiality provisions or the representative advising him, or both, to pay, at such time as ordered by the Hearing Officer, the reasonable expenses, including attorney fees, caused by the violation, unless the Hearing Officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Such an order shall be subject to review on appeal of the final decision of the Hearing Officer under section 406 of the Act. No sanctions may be imposed under this section except for good cause and the particulars of which must be stated in the sanction order.]

Subpart B—Pre-Complaint Procedures Applicable to Consideration of Alleged Violations of Part A of Title II of the Congressional Accountability Act of 1995

§ 2.01 Matters Covered by Subpart B.

(a) These rules govern the processing of any allegation that sections 201 through 206 of the Act have been violated and any allegation of intimidation or reprisal prohibited under section 207 of the Act. Sections 201 through 206 of the Act apply to covered employees and employing offices certain rights and protections of the following laws:

. . . . .

(10) Chapter 35 (relating to veteran's preference) of title 5, United States Code

(11) Genetic Information Nondiscrimination Act of 2008.

(b) This subpart applies to the covered employees and employing offices as defined in section 1.02(b) and (h) of these rules and any activities within the coverage of sections 201 through 206**(a)** and 207 of the Act and referenced above in section 2.01(a) of these rules.

* * * * *

§ 2.03 Counseling.

(a) *Initiating a Proceeding; Formal Request for Counseling. **[In order]*** **To** initiate a proceeding under these rules **regarding an alleged violation of the Act, as referred to in section 2.01(a), above**, an employee shall file a written request for counseling with the Office***[]. [regarding an alleged violation of the Act, as referred to in section 2.01(a), above.]*** **The written formal request for counseling should be on an official form provided by the Office and can be found on the Office's website at www.compliance.gov.** ***[All requests for counseling shall be confidential, unless the employee agrees to waive his or her right to confidentiality under section 2.03(e)(2), below.]***

(b) *Who May Request Counseling*. A covered employee **who, in good faith**, believes that he or she has been or is the subject of a violation of the Act as referred to in section 2.01(a) may formally request counseling.

. . . . .

(d) *[Purpose]* ***Overview*** *of* ***the*** *Counseling Period*. **The Office will maintain strict confidentiality throughout the counseling period.** The *[purpose of the]* counseling period *[shall]* **should** be **used**: to discuss the employee's concerns and elicit information regarding the matter(s) which the employee believes constitute a violation(s) of the Act; to advise the employee of his or her rights and responsibilities under the Act and the procedures of the Office under these rules; to evaluate the matter; and to assist the employee in achieving an early resolution of the matter, if possible.

(e) *Confidentiality and Waiver*.

(1) Absent a waiver under paragraph 2, below, all counseling shall be **kept** strictly confidential **and shall not be subject to discovery. All participants in counseling shall be advised of the requirement for confidentiality and that disclosure of information deemed confidential could result in sanctions later in the proceedings**. Nothing in these rules shall prevent a counselor from consulting with personnel within the Office concerning a matter in counseling, except that, when the person being counseled is an employee of the Office, the counselor shall not consult with any individual within the Office who might be a party or witness without the consent of the person requesting counseling. Nothing contained in these rules shall prevent the Executive Director from **compiling and publishing statistical information such as that required by Section 301(h)(3) of the Act**. *[so long as that statistical information does not reveal the identity of the employees involved or of employing offices that are the subject of a request for counseling.]*

(2) The employee and the Office may agree to waive confidentiality *[of]* **during** the counseling process for the limited purpose of **allowing the Office** *[contacting the employing office]* to *[obtain information]* **notify the employing office of the allegations**.*[to be used in counseling the employee or to attempt a resolution of any disputed matter(s).]* Such a limited waiver must be written on the form supplied by the Office and signed by both the counselor and the employee.

. . . . .

(g) *Role of Counselor [in Defining Concerns]*. The counselor *[may]* **shall:**

(1) obtain the name, home and office mailing **and e-mail** addresses, and home and office telephone numbers of the person being counseled;

(2) obtain the name and title of the person(s) whom the employee claims has engaged in a violation of the Act**, e-mail address, if known**, and the employing office in which this person(s) works;

. . . . .

(5) obtain the name, **business and e-mail** address**es**, and telephone number of the employee's representative, if any, and whether the representative is an attorney.

*[(i)]***(h)***Counselor Not a Representative*. The counselor shall inform the person being counseled that the counselor does not represent either the employing office or the employee. The counselor provides information **regarding the Act and the Office** and may act as a third-party intermediary with the goals of increasing the individual's understanding of his or her rights and responsibilities under the Act and of promoting the early resolution of the matter.

[(j)] **(i)** *Duration of Counseling Period*. The period for counseling shall be 30 days, beginning on the date that the request for counseling is *[received by the Office]* **filed by the employee in accordance with section 1.03(a) of these rules**, unless the employee **requests in writing on a form provided by the Office to reduce the period** and the *[Office]* **Executive Director** agrees *[to reduce the period]*.

[(h)] **(j)** *Role of Counselor in Attempting Informal Resolution*. In order to attempt to resolve the matter brought to the attention of the counselor, the counselor must obtain a waiver of confidentiality pursuant to section 2.03(e)(2) of these rules. If the employee executes such a waiver, the counselor may:

(1) conduct a limited inquiry for the purpose of obtaining any information necessary to attempt an informal resolution or formal settlement;

(2) reduce to writing any formal settlement achieved and secure the signatures of the employee, his or her representative, if any, and a member of the employing office who is authorized to enter into a settlement on the employing office's behalf; and, pursuant to section 414 of the Act and section 9.05 of these rules, seek the approval of the Executive Director. Nothing in this subsection, however, precludes the employee, the employing office or their representatives from reducing to writing any formal settlement.

(k) *Duty to Proceed*. An employee who initiates a proceeding under this part shall be responsible at all times for proceeding, regardless of whether he or she has designated a representative, **and shall notify the Office in writing of any change in pertinent contact information, such as address, e-mail, fax number, etc.** An employee, however, may withdraw from counseling once without prejudice to the employee's right to reinstate counseling regarding the same matter, provided that the request to reinstate counseling **must be in writing and** is *[received in]* **filed with** the Office not later than 180 days after the date of the alleged violation of the Act and that counseling on a single matter will not last longer than a total of 30 days.

(l) *Conclusion of the Counseling Period and Notice*. The Executive Director shall notify the employee in writing of the end of the counseling period*[,]* by *[certified mail, return receipt requested,]* **first class mail**, *[or by]* personal delivery evidenced by a written receipt, **or electronic transmission**. The Executive Director, as part of the notification of the end of the counseling period, shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the Office a request for mediation within 15 days after receipt by the employee of the notice of the end of the counseling period.

(m) *Employees of the Office of the Architect of the Capitol and Capitol Police*.

(1) Where an employee of the Office of the Architect of the Capitol or of the Capitol Police requests counseling under the Act and these rules, the Executive Director, **in his or her sole discretion**, may recommend that the employee use the *[grievance]* **internal** procedures of the Architect of the Capitol or the Capitol Police **pursuant to a Memorandum of Understanding (MOU) between the Architect of the Capitol and the Office or the Capitol Police and the Office addressing certain procedural and notification requirements**. The term ''*[grievance]* **internal** procedure(s)'' refers to **any** internal procedure of the Architect of the Capitol and the Capitol Police, **including grievance procedures referred to in section 401 of the Act**, that can provide a resolution of the matter(s) about which counseling was requested. Pursuant to section 401 of the Act when the Executive Director makes such a recommendation, the following procedures shall apply:

(i) The Executive Director shall recommend **in writing** to the employee that the employee use **an** *[grievance]* **internal** procedure of the Architect of the Capitol or of the Capitol Police, as appropriate, for a period generally up to 90 days, unless the Executive Director determines, **in writing, that** a longer period is appropriate *[for resolution of the employee's complaint through the grievance procedures of the Architect of the Capitol or the Capitol Police]*. **Once the employee notifies the Office that he or she is using the internal procedure, the employee shall provide a waiver of confidentiality to allow the Executive Director to notify the Architect of the Capitol or the Capitol Police that the employee will be using the internal procedure.**

(ii) The period during which the matter is pending in the internal procedure shall not count against the time available for counseling or mediation under the Act.

(iii) If the dispute is resolved to the employee's satisfaction, the employee shall so notify the Office within 20 days after the employee has been served with a final decision.

[(ii)] **(iv)** After *[having contacted the Office and having utilized]* **using** the *[grievance]* **internal** procedures *[of the Architect of the Capitol or of the Capitol Police]*, the employee may notify the Office that he or she wishes to return to the procedures under these rules:

(A) within 60 days after the expiration of the period recommended by the Executive Director, **or longer if the Executive Director has extended the time period,** if the matter has not resulted in a final decision **or a decision not to proceed;** or

(B) within 20 days after service of a final decision **or a decision not to proceed,** resulting from the *[grievance]* **internal** procedures *[of the Architect of the Capitol or of the Capitol Police Board.]*

[(iii) The period during which the matter is pending in the internal grievance procedure shall not count against the time available for counseling or mediation under the Act. If the grievance is resolved to the employee's satisfaction, the employee shall so notify the Office within 20 days after the employee has received service of the final decision resulting from the grievance procedure. If no request to return to the procedures under these rules is received within 60 days after the expiration of the period recommended by the Executive Director the Office will issue a Notice of End of Counseling, as specified in section 2.04(i) of these Rules.]

(v) If a request to return to counseling is not made by the employee within the time periods outlined above, the Office will issue a Notice of the End of Counseling.

(2) Notice to Employees who Have Not Initiated Counseling with the Office. When an employee of the Architect of the Capitol or the Capitol Police raises in the internal procedures of the Architect of the Capitol or of the Capitol Police *[Board]* an allegation which may also be raised under the procedures set forth in this subpart, the Architect of the Capitol or the Capitol Police *[Board should]* **shall, in accordance with the MOU with the Office,** advise the employee in writing that a request for counseling about the allegation must be initiated with the Office within 180 days after the alleged violation of law occurred if the employee intends to use the procedures of the Office.

(3) Notice in Final Decisions when Employees Have Not Initiated Counseling with the Office. When an employee raises in the internal procedures of the Architect of the Capitol or of the Capitol Police *[Board]* an allegation which may also be raised under the procedures set forth in this subpart, any *[final]* decision **issued** *[pursuant to the procedures of the Architect of the Capitol or of the Capitol Police Board should]* **under such procedure, shall, pursuant to the MOU with the Office,** include notice to the employee of his or her right to initiate the procedures under

these rules within 180 days after the alleged violation occurred.

(4) Notice in Final Decisions when There Has Been a Recommendation by the Executive Director. When the Executive Director has made a recommendation under paragraph 1 above, the Architect of the Capitol or the Capitol Police *[Board should]* **shall, pursuant to the MOU with the Office,** include with the final decision notice to the employee of his or her right to resume the procedures under these rules within 20 days after service on the employee of the final decision and shall transmit a copy of the final decision, settlement agreement, or other final disposition of the case to the Executive Director.

§ 2.04 Mediation.

(a) **[Explanation] Overview.** Mediation is a process in which employees, employing offices and their representatives, if any, meet separately and/or jointly with a *[neutral]* **mediator** trained to assist them in resolving disputes. As *[parties to]* **participants in** the mediation, employees, employing offices, and their representatives discuss alternatives to continuing their dispute, including the possibility of reaching a voluntary, mutually satisfactory resolution. The *[neutral]* **mediator** has no power to impose a specific resolution, and the mediation process, whether or not a resolution is reached, is strictly confidential, pursuant to section 416 of the Act.

(b) *Initiation.* Not more than 15 days after receipt by the employee of the notice of the conclusion of the counseling period under section 2.03(1), the employee may file with the Office a written request for mediation**. Except to provide for the services of a mediator and notice to the employing office, the invocation of mediation shall be kept confidential by the Office.** The request for mediation shall contain the employee's name, **home and e-mail** address**es**, *[and]* telephone number, and the name of the employing office that is the subject of the request. Failure to request mediation within the prescribed period *[will]* **may** preclude the employee's further pursuit of his or her claim. **If a request for mediation is not filed within 15 days of receipt of a Notice of the End of Counseling, without good cause shown, the case will be closed and the employee will be so notified.**

. . . . .

(d) *Selection of [Neutrals] Mediators; Disqualification.* Upon receipt of the request for mediation, the Executive Director shall assign one or more *[neutrals]* **mediators** to commence the mediation process. In the event that a *[neutral]* **mediator** considers him or herself unable to perform in a neutral role in a given situation, he or she shall withdraw from the matter and immediately shall notify the Office of the withdrawal. Any party may ask the Office to disqualify a *[neutral]* **mediator** by filing a written request, including the reasons for such request, with the Executive Director. This request shall be filed as soon as the party has reason to believe there is a basis for disqualification. The Executive Director's decision on this request shall be final and unreviewable.

(e) *Duration and Extension.*

. . . . .

(2) The *[Office]* **Executive Director** may extend the mediation period upon the joint written request of the parties, or of the appointed mediator on behalf of the parties*[, to the attention of the Executive Director]*. The request shall be written and filed with the *[Office]* **Executive Director** no later than the last day of the mediation period. The request shall set forth the joint nature of the request and the reasons therefore, and specify when the parties expect to conclude their discussions. Requests for additional extensions may be made in the same manner. Approval of any extensions shall be within the sole discretion of the *[Office]* **Executive Director.**

(f) *Procedures.*

(1) The *[Neutral's]* **Mediator's** Role. After assignment of the case, the *[neutral]* **mediator** will promptly contact the parties. The *[neutral]* **mediator** has the responsibility to conduct the mediation, including deciding how many meetings are necessary and who may participate in each meeting. The *[neutral]* **mediator** may accept and may ask the parties to provide written submissions.

(2) The Agreement to Mediate. At the commencement of the mediation, the *[neutral]* **mediator** will ask the *[parties]* **participants and/or their representatives** to sign an agreement prepared by the Office (''the Agreement to Mediate''). The Agreement to Mediate will **define what is to be kept confidential during mediation and** set out the conditions under which mediation will occur, including the requirement that the participants adhere to the confidentiality of the process **and a notice that a breach of the mediation agreement could result in sanctions later in the proceedings.** The Agreement to Mediate will also provide that the parties to the mediation will not seek to have the counselor or the *[neutral]* **mediator** participate, testify or otherwise present evidence in **any subsequent administrative action under section 405 or** any civil action under section 408 of the Act or any other proceeding.

(g) Who May Participate. The covered employee*[,]* **and** the employing office *[, their respective representatives, and the Office may meet, jointly or separately, with the neutral. A representative of the employee and a representative of the employing who has actual authority to agree to a settlement agreement on behalf of the employee or the employing office, as the case may be, must be present at the mediation or must be immediately accessible by telephone during the mediation .]* **may elect to participate in mediation proceedings through a designated representative, provided, that the representative has actual authority to agree to a settlement agreement or has immediate access by telephone to someone with actual settlement authority, and provided further, that should the mediator deem it appropriate at any time, the physical presence in mediation of any party may be required. The Office may participate in the mediation process through a representative and/or observer. The mediator will determine, as best serves the interests of mediation, whether the participants may meet jointly or separately with the mediator.**

(h) *Informal Resolutions and Settlement Agreements.* At any time during mediation the parties may resolve or settle a dispute in accordance with section *[9.05]* **9.03** of these rules.

(i) *Conclusion of the Mediation Period and Notice.* If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the Office shall provide the employee, and the employing office, and their representatives, with written notice that the mediation period has concluded. The written notice *[to the employee]* will be *[sent by certified mail, return receipt requested, or will be]* personally delivered evidenced by a written receipt, **or sent by first class mail, e-mail, or fax.** *[, and it]* **The notice will specify the mode of delivery** and also *[notify]* **provide information about** the employee**'s** *[of his or her]* right to elect to file a complaint with the Office in accordance with section 405 of the Act and section 5.01 of these rules or to file a civil action pursuant to section 408 of the Act and section *[2.06]* **2.07** of these rules.

(j) *Independence of the Mediation Process and the [Neutral] Mediator.* The Office will maintain the independence of the mediation process and the *[neutral]* **mediator.** No individual, who is appointed by the Executive Director to mediate, may conduct or aid in a hearing conducted under section 405 of the Act with respect to the same matter or shall be subject to subpoena or any other compulsory process with respect to the same matter.

[(k) Confidentiality. Except as necessary to consult with the parties, the parties' their counsel or other designated representatives, the parties to, the mediation, the neutral and the Office shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process. This rule shall not preclude a neutral from consulting with the Office, except that when the covered employee is an employee of the Office a neutral shall not consult with any individual within the Office who might be a party or witness. This rule shall also not preclude the Office from reporting statistical information to the Senate and House of Representatives that does not reveal the identity of the employees or employing offices involved in the mediation. All parties to the action and their representatives will be advised of the confidentiality requirements of this process and of the sanctions that might be imposed for violating these requirements.]

(k) *Violation of Confidentiality in Mediation.* An allegation regarding a violation of the confidentiality provisions may be made by a party in a mediation to the mediator during the mediation period and, if not resolved by agreement in mediation, to a Hearing Officer during proceedings brought under Section 405 of the Act.

. . . . .

§ 2.05 Election of Proceeding.

(a) Pursuant to section 404 of the Act, not later than 90 days after a covered employee receives notice of the end of mediation under section 2.04(i) of these rules but no sooner than 30 days after that date, the covered employee may either:

. . . . .

(2) file a civil action in accordance with section 408 of the Act and section *2.06* **2.07**, below in the United States *[District Court]* **district court** for the district in which the employee is employed or for the District of Columbia.

(b) A covered employee who files a civil action pursuant to section *[2.06]* **408 of the Act and section 2.07 below**, may not thereafter file a complaint under section **405 of the Act and section 5.01 below** on the same matter.

§ 2.06 Certification of the Official Record

(a) Certification of the Official Record shall contain the date the Request for Counseling was made; the date and method of delivery the Notification of End of Counseling Period was sent to the complainant; the date the Notice was deemed by the Office to have been received by the complainant; the date the Request for Mediation was filed; the date and method of delivery the Notification of End of Mediation Period was sent to the complainant; and the date the Notice was deemed by the Office to have been received by the complainant.

(b) At any time after a complaint has been filed with the Office in accordance with section 405 of the Act and the procedure set out in section 5.01, below; or a civil action filed in accordance with section 408 of the Act and section 2.07 below in the United States district court, a party may request and receive from the Office Certification of the Official Record.

(c) Certification of the Official Record will not be provided until after a complaint has been filed with the Office or the Office has been notified that a civil action has been filed in district court.

§ [2.06] 2.07 Filing of Civil Action.

. . . . .

(c) Communication Regarding Civil Actions Filed with District Court. The party filing any civil action with the United States District Court pursuant to sections 404(2) and 408 of the Act shall provide a written notice to the Office that the party has filed a civil action, specifying the district court in which the civil action was filed and the case number. **Failure to notify the Office that such action has been filed may result in delay in the preparation and receipt of the Certification of the Official Record.**

Subpart C—Compliance, Investigation, and Enforcement under Section 210 of the CAA (ADA Public Services)—Inspections and Complaints

§ 3.01 Purpose and Scope.

The purpose of sections 3.01 through 3.18 of this subpart is to prescribe rules and procedures for enforcement of the inspection and complaint provisions of sections 210(d) and (f) of the CAA. For the purpose of sections 3.01 through 3.18, references to the "General Counsel" include any authorized representative of the General Counsel. In situations where sections 3.01 through 3.18 set forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the General Counsel or the General Counsel's designee determines that an alternative course of action would better serve the objectives of section 210 of the CAA.

§ 3.02 Authority for Inspection.

(a) Under section 210(f)(1) of the CAA, the General Counsel is authorized to enter without delay and at reasonable times any facility of any entity listed in section 210(a) ("covered entities"), to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any facility, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any covered entity, employee, operator, or agent; and to review records maintained by or under the control of the covered entity.

(b) Prior to inspecting areas containing information which is classified by an agency of the United States Government (and/or by any congressional committee or other authorized entity within the Legislative Branch) in the interest of national security, and for which security clearance is required as a condition for access to the area(s) to be inspected, the individual(s) conducting the inspection shall have obtained the appropriate security clearance.

§ 3.03 Requests for Inspections by Members of the Public and Covered Entities.

(a) *By Members of the Public.*

(1) Any person who believes that a violation of section 210 of the CAA exists in any facility of a covered entity may request an inspection of such facility by giving notice of the alleged violation to the General Counsel. Any such notice shall be reduced to writing on a form available from the Office, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the person or the representative of the person. A copy shall be provided to the covered entity or its agent by the General Counsel or the General Counsel's designee no later than at the time of inspection, except that, upon the written request of the person giving such notice, his or her name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the General Counsel. If the person making the request is a qualified individual with a disability, as defined by section 201(2) of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12131(2)), the request for inspection shall be considered a charge of discrimination within the meaning of section 210(d)(1) of the CAA.

(2) If upon receipt of such notification the General Counsel's designee determines that the notice meets the requirements set forth in subparagraph (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he or she shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the notice.

(3) Prior to or during any inspection of a facility, any person may notify the General Counsel's designee, in writing, of any violation of section 210 of the CAA which he or she has reason to believe exists in such facility. Any such notice shall comply with the requirements of subparagraph (1) of this section.

(b) *By Covered Entities.* Upon written request of any covered entity, the General Counsel or the General Counsel's designee shall inspect and investigate facilities of covered entities under section 210(d) of the CAA. Any such requests shall be reduced to writing on a form available from the Office.

§ 3.04 Objection to Inspection.

Upon a refusal to permit the General Counsel's designee, in exercise of his or her official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any covered entity, operator, agent, or employee, in accordance with section 3.02 or to permit a representative of employees to accompany the General Counsel's designee during the physical inspection of any facility in accordance with section 3.07, the General Counsel's designee shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The General Counsel's designee shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the General Counsel, who shall take appropriate action.

§ 3.05 Entry Not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action under section 210 of the CAA.

§ 3.06 Advance Notice of Inspections.

(a) Advance notice of inspections may not be given, except in the following situations:

(1) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

(2) where necessary to assure the presence of representatives of the covered entity and employees or the appropriate personnel needed to aid in the inspection; and

(3) in other circumstances where the General Counsel determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in paragraph (a) of this section, advance notice of inspections may be given only if authorized by the General Counsel or by the General Counsel's designee.

§ 3.07 Conduct of Inspections.

(a) Subject to the provisions of section 3.02, inspections shall take place at such times and in such places of employment as the General Counsel may direct. At the beginning of an inspection, the General Counsel's designee shall present his or her credentials to the operator of the facility or the management employee in charge at the facility to be inspected; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in section 3.02 which he or she wishes to review. However, such designation of records shall not preclude access to additional records specified in section 3.02.

(b) The General Counsel's designee shall have authority to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately, any covered entity, operator, agent or employee of a covered facility. As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of measuring devices, testing equipment, or other equipment used to assess accessibility or compliance with the ADA Standards.

(c) In taking photographs and samples, the General Counsel's designees shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. The General Counsel's designees shall comply with all employing office safety and health rules and practices at the workplace or location being inspected, and they shall wear and use appropriate protective clothing and equipment.

(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the covered entity.

(e) At the conclusion of an inspection, the General Counsel's designee shall confer with the covered entity or its representative and informally advise it of any apparent ADA violations disclosed by the inspection. During such conference, the employing office shall be afforded an opportunity to bring to the attention of the General Counsel's designee any pertinent information regarding accessibility in the facility.

(f) Inspections shall be conducted in accordance with the requirements of this subpart.

§ 3.08 Representatives of Covered Entities.

(a) The General Counsel's designee shall be in charge of inspections and questioning of persons. A representative of the covered entity shall be given an opportunity to accompany the General Counsel's designee during the physical inspection of any facility for the purpose of aiding such inspection. The General Counsel's designee may permit additional representatives from the covered entity to accompany the designee where he or she determines that such additional representatives will further aid the inspection. A different covered entity representative may accompany the General Counsel's designee during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) The General Counsel's designee shall have authority to resolve all disputes as to whom is the representative authorized by the covered entity for the purpose of this section.

(c) If in the judgment of the General Counsel's designee, good cause has been shown why accompaniment by a third party who is not the requestor or an employee of the covered entity (such as a sign language interpreter, braille reader, architect or accessibility expert) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the General Counsel's designee during the inspection.

(d) The General Counsel's designee may deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. With regard to information classified by an agency of the U.S. Government (and/or by any congressional committee or other authorized entity within the Legislative Branch) in the interest of national security, only persons authorized to have access to such information may accompany the General Counsel's designee in areas containing such information.

§ 3.09 Consultation with Individuals with Disabilities

The General Counsel's designee may consult with individuals with disabilities concerning matters of accessibility to the extent he or she deems necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any person shall be afforded an opportunity to bring any violation of section 210 of the CAA which he or she has reason to believe exists in the facility to the attention of the General Counsel's designee.

§ 3.10 Inspection Not Warranted; Informal Review.

(a) If the General Counsel's designee determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists under section 210 of the CAA, he or she shall notify the party making the request of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the General Counsel and, at the same time, providing the covered entity with a copy of such statement. The covered entity may submit an opposing written statement of position with the General Counsel and, at the same time, provide the complaining party with a copy of such statement. Upon the request of the complaining party or the covered entity, the General Counsel, at his or her discretion, may hold an informal conference in which the complaining party and the covered entity may orally present their views. After considering all written and oral views presented, the General Counsel shall affirm, modify, or reverse the designee's determination and furnish the complaining party and the covered entity with written notification of this decision and the reasons therefor. The decision of the General Counsel shall be final and not reviewable.

(b) If the General Counsel's designee determines that an inspection is not warranted because the requirements of section 3.03(a)(1) have not been met, he or she shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new notice of alleged violation meeting the requirements of section 3.03(a)(1).

§ 3.11 Charge filed with the General Counsel.

(a) Who may file.

(1) Any qualified individual with a disability, as defined in section 201(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131(2)), as applied by section 210 of the CAA, who believes that he or she has been subjected to discrimination on the basis of a disability in violation of section 210 of the CAA by a covered entity, may file a charge against any entity responsible for correcting the violation with the General Counsel. A charge may not be filed under section 210 of the CAA by a covered employee alleging employment discrimination on the basis of disability; the exclusive remedy for such discrimination are the procedures under section 201 of the CAA and subpart B of the Office's procedural rules.

(b) When to file. A charge under this section must be filed with the General Counsel not later than 180 days from the date of the alleged discrimination.

(c) Form and Contents. A charge shall be written or typed on a charge form available from the Office. All charges shall be signed and verified by the qualified individual with a disability (hereinafter referred to as the "charging party"), or his or her representative, and shall contain the following information:

(i) the full name, mail and e-mail addresses, and telephone number(s) of the charging party;

(ii) the name, mail and e-mail addresses, and telephone number of the covered entit(ies) against which the charge is brought, if known (hereinafter referred to as the " respondent");

(iii) the name(s) and title(s) of the individual(s), if known, involved in the conduct that the charging party claims is a violation of section 210 and/or the location and description of the places or conditions within covered facilities that the charging party claims is a violation of section 210;

(iv) a description of the conduct, locations, or conditions that form the basis of the charge, and a brief description of why the charging party believes the conduct, locations, or conditions is a violation of section 210; and (v) the name, mail and e-mail addresses, and telephone number of the representative, if any, who will act on behalf of the charging party.

§ 3.12 Service of charge or notice of charge.

Within ten (10) days after the filing of a charge with the General Counsel's Office (excluding weekends or holidays), the General Counsel shall serve the respondent with a copy of the charge, except when it is determined that providing a copy of the charge would impede the law enforcement functions of the General Counsel. Where a copy of the charge is not provided, the respondent will be served with a notice of the charge within ten (10) days after the filing of the charge. The notice shall include the date, place and circumstances of the alleged violation of section 210. The notice may not include the identity of the person filing the charge if that person has requested anonymity.

§ 3.13 Investigations by the General Counsel.

The General Counsel or the General Counsel's designated representative shall promptly investigate each charge alleging violations of section 210 of the CAA. As part of the investigation, the General Counsel will accept any statement of position or evidence with respect to the charge which the charging party or the respondent wishes to submit. The General Counsel will use other methods to investigate the charge, as appropriate.

§ 3.14 Mediation.

If, upon investigation, the General Counsel believes that a violation of section 210 may have occurred and that mediation may be helpful in resolving the dispute, the General Counsel may request, but not participate in, mediation under subsections (b) through (d) of section 403 of the CAA and the Office's procedural rules thereunder, between the charging party and any entity responsible for correcting the alleged violation.

§ 3.15 Dismissal of charge.

Where the General Counsel determines that a complaint will not be filed, the General Counsel shall dismiss the charge.

§ 3.16 Complaint by the General Counsel.

(a) After completing the investigation, and where mediation under section 3.14, if any, has not succeeded in resolving the dispute, and where the General Counsel has not settled or dismissed the charge, and if the General Counsel believes that a violation of section 210 may have occurred, the General Counsel may file with the Office a complaint against any entity responsible for correcting the violation.

(b) The complaint filed by the General Counsel under subsection (a) shall be submitted to a hearing officer for decision pursuant to subsections (b) through (h) of section 405 of the CAA. Any person who has filed a charge under section 3.11 of these rules may intervene as of right with the full rights of a party. The procedures of sections 405 through 407 of the CAA and the Office's procedural rules thereunder shall apply to hearings and related proceedings under this subpart.

§ 3.17 Settlement.

Any settlement entered into by the parties to any process described in section 210 of the CAA shall be in writing and not become effective unless it is approved by the Executive Director under section 414 of the CAA and the Office's procedural rules thereunder.

§ 3.18 Compliance Date.

In any proceedings under this section, compliance shall take place as soon as possible, but not later than the fiscal year following the end of the fiscal year in which the order requiring correction becomes final and not subject to further review.

Subpart D—Compliance, Investigation, Enforcement and Variance Process under Section 215 of the CAA (Occupational Safety and Health Act of 1970)—Inspections, Citations, and Complaints

Rules of Practice for Variances, Limitations, Variations, Tolerances, and Exemptions

* * * * *

§ 4.02 Authority for Inspection.

(a) Under section 215(c)(1) of the CAA, upon written request of any employing office or covered employee, the General Counsel is authorized to enter without delay and at reasonable times any place **where covered employees work ("place of employment")** **[***of employment under the jurisdiction of an employing office***]**; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employing office, operator, agent or employee; and to review records **maintained by or under the control of the covered entity.** **[***required by the CAA and regulations promulgated thereunder, and other records which are directly related to the purpose of the inspection.***]**

§ 4.03 Requests for Inspections by Employees and Covered Employing Offices.

(a) *By Covered Employees and Representatives.*

(1) Any covered employee or representative of covered employees who believes that a violation of section 215 of the CAA exists in any place of employment **[***under the jurisdiction of employing offices***]** may request an inspection of such place of employment by giving notice of the alleged violation to the General Counsel. Any such notice shall be reduced to writing on a form available from the Office, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or the representative of the employees. A copy shall be provided to the employing office or its agent by the General Counsel or the General Counsel's designee no later than at the time of inspection, except that, upon the written request of the person giving such notice, his or her name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the General Counsel.

* * * * *

(b) *By Employing Offices.* Upon written request of any employing office, the General Counsel or the General Counsel's designee shall inspect and investigate places of employment **[***under the jurisdiction of employing offices***]** under section 215(c)(1) of the CAA. Any such requests shall be reduced to writing on a form available from the Office.

* * * * *

§ 4.10 Inspection Not Warranted; Informal Review.

(a) If the General Counsel's designee determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a notice of violation under section 4.03(a), he or she shall notify the party giving the notice **[***in writing***]** of such determination **in writing**. The complaining party may obtain review of such determination by submitting **and serving** a written statement of position with the General Counsel**[**,**]** and **[**, *at the same time, providing***]** the employing office **[***with a copy of such statement by certified mail***]**. The employing office may submit **and serve** an opposing written statement of position with the General Counsel**[**,**]** **[**and **[**, at the same time, provide**]** the complaining party **[**with a copy of such statement by certified mail**]**.

Upon the request of the complaining party or the employing office, the General Counsel, at his or her discretion, may hold an informal conference in which the complaining party and the employing office may orally present their views. After considering all written and oral views presented, the General Counsel shall affirm, modify, or reverse the designee's determination and furnish the complaining party and the employing office with written notification of this decision and the reasons therefor. The decision of the General Counsel shall be final and not reviewable.

* * * * *

§ 4.11 Citations.

(a) If, on the basis of the inspection, the General Counsel believes that a violation of any requirement of section 215 of the CAA, **[***or of***]** **including** any **occupational safety or health standard promulgated by the Secretary of Labor under Title 29 of the U.S. Code, section 655, or of any other regulation** **[***standard***]**, rule or order promulgated pursuant to section 215 of the CAA, has occurred, he or she shall issue to the employing office responsible for correction of the violation **[**, *as determined under section 1.106 of the Board's regulations implementing section 215 of the CAA,***]** either a citation or a notice of de minimis violations that **[**have**]** **has** no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though, after being informed of an alleged violation by the General Counsel, the employing office immediately abates, or initiates steps to abate, such alleged violation. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this section after the expiration of 6 months following the occurrence of any alleged violation **unless the violation is continuing or the employing office has agreed to toll the deadline for filing the citation.**

* * * * *

§ 4.13 Posting of Citations.

(a) Upon receipt of any citation under section 215 of the CAA, the employing office shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employing office's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employing offices are engaged in activities which are physically dispersed, the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. **When a citation contains security information as defined in Title 2 of the U.S. Code, section 1979, the General Counsel may edit or redact the security information from the copy of the citation used for posting or may provide to the employing office a notice for posting that describes the alleged violation without referencing the security information.** The employing office shall take steps to ensure that the citation **or notice** is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

(b) Each citation, **notice**, or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days, whichever is later. The pendency of any proceedings regarding the citation shall not affect its posting responsibility under this section unless and until the Board issues a final order vacating the citation.

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§ 4.15 Informal Conferences.

At the request of an affected employing office, employee, or representative of employees, the General Counsel may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, or notice issued by the General Counsel. Any settlement entered into by the parties at such conference shall be subject to the approval of the Executive Director under section 414 of the CAA and section **[9.05] 9.03** of these rules. If the conference is requested by the employing office, an affected employee or the employee's representative shall be afforded an opportunity to participate, at the discretion of the General Counsel. If the conference is requested by an employee or representative of employees, the employing office shall be afforded an opportunity to participate, at the discretion of the General Counsel. Any party may be represented by counsel at such conference.

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Subpart E—Complaints

§ 5.01 Complaints.

(a) *Who May File.*

(1) An employee who has completed **the** mediation **period** under section 2.04 may timely file a complaint with the Office alleging any violation of sections 201 through 207 of the Act**[**.**]**, **under the Genetic Information Nondiscrimination Act, or any other statute made applicable under the Act.**

(2) The General Counsel may **timely** file a complaint alleging a violation of section 210, 215 or 220 of the Act.

(b) *When to File.*

(1) A complaint may be filed by an employee no sooner than 30 days after the date of receipt of the notice under section 2.04(i), but no later than 90 days after receipt of that notice. **In cases where a complaint is filed with the Office sooner than 30 days after the date of receipt of the notice under section 2.04(i), the Executive Director, at his or her discretion, may return the complaint to the employee for filing during the prescribed period without prejudice and with an explanation of the prescribed period of filing.**

. . . . .

(c) *Form and Contents.*

(1) *Complaints Filed by Covered Employees.* A complaint shall be **in writing and may be** written or typed on a complaint form available from the Office. All complaints shall be signed by the covered employee, or his or her representative, and shall contain the following information:

(i) the name, mailing and **e-mail** address**es**, and telephone number(s) of the complainant;

. . . . .

(v) a brief description of why the complainant believes the challenged conduct is a violation of **the Act or the relevant sections of the Genetic Information Nondiscrimination Act** and the section(s) of the Act involved;

. . . . .

(vii) the name, **mailing and e-mail** addresses, and telephone number of the representative, if any, who will act on behalf of the complainant.

(2) *Complaints Filed by the General Counsel.* A complaint filed by the General Counsel shall be in writing, signed by the General Counsel or his designee and shall contain the following information:

(i) the name, **mail and e-mail** address**es, if available,** and telephone number of, as applicable, (A) each entity responsible for correction of an alleged violation of section 210(b), (B) each employing office alleged to have violated section 215, or (C) each employing office and/or labor organization alleged to have violated section 220, against which complaint is brought;

. . . . . .

(e) *Service of Complaint.* Upon receipt of a complaint or an amended complaint, the Office shall serve the respondent, or its designated representative, by hand delivery ***[****or certified mail****]*** **or first class mail, e-mail, or facsimile** with a copy of the complaint or amended complaint and ***[****a copy of these rules****]*** **written notice of the availability of these rules at www.compliance.gov. A copy of these rules may also be provided if requested by either party.** The Office shall include a service list containing the names and addresses of the parties and their designated representatives.

(f) *Answer.* Within 15 days after receipt of a copy of a complaint or an amended complaint, the respondent shall file an answer with the Office and serve one copy on the complainant. ***[****The answer shall contain a statement of the position of the respondent on each of the issues raised in the complaint or amended complaint, including admissions, denials, or explanations of each allegation made in the complaint and any affirmative defenses or other defenses to the complaint.****]*** **In answering a complaint, a party must state in short and plain terms its defenses to each claim asserted against it and admit or deny the allegations asserted against it by an opposing party.** Failure to ***[****file an answer****]*** **deny an allegation, other than one relating to the amount of damages,** or to raise a claim or defense as to any allegation(s) shall constitute an admission of such allegation(s). Affirmative defenses not raised in an answer that could have reasonably been anticipated based on the facts alleged in the complaint shall be deemed waived. A respondent's motion for leave to amend an answer to interpose a denial or affirmative defense will ordinarily be granted unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

(g) ***Motion to Dismiss.*** **In addition to an answer, a respondent may file a motion to dismiss, or other responsive pleading with the Office and serve one copy on the complainant. Responses to any motions shall be in compliance with section 1.04(c) of these rules.**

(h) ***Confidentiality.*** **The fact that a complaint has been filed with the Office by a covered employee shall be kept confidential by the Office, except as allowed by these rules.**

§ 5.02 Appointment of the Hearing Officer.

Upon the filing of a complaint, the Executive Director will appoint an independent Hearing Officer, who shall have the authority specified in sections 5.03 and 7.01(b) below. The Hearing Officer shall not be the counselor involved in or the ***[****neutral****]*** **mediator** who mediated the matter under sections 2.03 and 2.04 of these rules.

§ 5.03 Dismissal, Summary Judgment and Withdrawal of Complaints.

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(f) *Withdrawal of Complaint by Complainant.* At any time a complainant may withdraw his or her own complaint by filing a notice with the Office for transmittal to the Hearing Officer and by serving a copy on the employing office or representative. Any such withdrawal must be approved by the Hearing Officer **and may be with or without prejudice to refile at the Hearing Officer's discretion.**

(g) *Withdrawal of Complaint by the General Counsel.* At any time prior to the opening of the hearing the General Counsel may withdraw his complaint by filing a notice with the Executive Director and the Hearing Officer and by serving a copy on the respondent. After opening of the hearing, any such withdrawal must be approved by the Hearing Officer **and may be with or without prejudice to refile at the Hearing Officer's discretion.**

(h) ***Withdrawal From a Case by a Representative.*** **A representative must provide sufficient notice to the Hearing Officer and the parties of record of his or her withdrawal. Until the party designates another representative in writing, the party will be regarded as *pro se*.**

§ 5.04 Confidentiality.

Pursuant to section 416(c) of the Act, except as provided in sub-sections 416(d), (e) and (f), all proceedings and deliberations of Hearing Officers and the Board, including any related records, shall be confidential. Section 416(c) does not apply to proceedings under section 215 of the Act, but does apply to the deliberations of Hearing Officers and the Board under section 215. A violation of the confidentiality requirements of the Act and these rules ***[****could****]*** **may** result in the imposition of **procedural or evidentiary** sanctions. ***[****Nothing in these rules shall prevent the Executive Director from reporting statistical information to the Senate and House of Representatives, so long as that statistical information does not reveal the identity of the employees involved or of employing offices that are the subject of a matter.****]*** See also sections ***[****1.06****]*** ***[****1.07****]*** **1.08** and 7.12 of these rules.

Subpart F—Discovery and Subpoenas

§ 6.01 Discovery.

(a) ***[****Explanation****]*** ***Description.*** Discovery is the process by which a party may obtain from another person, including a party, information, not privileged, reasonably calculated to lead to the discovery of admissible evidence, for the purpose of assisting that party in developing, preparing and presenting its case at the hearing. **No discovery, oral or written, by any party shall** ***[****This provision shall not be construed to permit any discovery, oral or written, to****]*** be taken **of, or** from**, an** employee of the Office **of Compliance,** ***[****or the****]*** counselor***[****(s)****]***, or **mediator** ***[****the neutral(s) involved in counseling and mediation.****]*****, including files, records, or notes produced during counseling and mediation and maintained by the Office.**

(b) ***Initial Disclosure.*** ***[****Office Policy Regarding Discovery. It is the policy of the Office to encourage the early and voluntary exchange of relevant and material nonprivileged information between the parties, including the names and addresses of witnesses and copies of relevant and material documents, and to encourage Hearing Officers to develop procedures which allow for the greatest exchange of relevant and material information and which minimizes the need for parties to formally request such information.****]*** **Within 14 days after the pre-hearing conference and except as otherwise stipulated or ordered by the Hearing Officer, a party must, without awaiting a discovery request, provide to the other parties: the name and, if known, mail and e-mail addresses and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses; and a copy or a description by category and location of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses.**

(c) *Discovery Availability.* Pursuant to section 405(e) of the Act, ***[****the Hearing Officer in his or her discretion may permit****]*** **the parties may engage in** reasonable prehearing discovery. ***[****In exercising that discretion, the Hearing Officer may be guided by the Federal Rules of Civil Procedure.****]***

(1) The ***[****Hearing Officer may authorize****]*** **parties may take** discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection or other purposes; physical and mental examinations; and requests for admission.

(2) The Hearing Officer may **adopt standing orders** or make any order setting forth the forms and extent of discovery, including orders limiting the number of depositions, interrogatories, and requests for production of documents, and may also limit the length of depositions.

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(d) *Claims of Privilege.*

(1) Information Withheld. Whenever a party withholds information otherwise discoverable under these rules by claiming that it is privileged or confidential or subject to protection as hearing or trial preparation materials, the party shall make the claim expressly **in writing** and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. **A party must make a claim for privilege no later than the due date for the production of the information.**

(2) Information Produced As Inadvertent Disclosure. If information produced in discovery is subject to a claim of privilege or of protection as hearing preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Hearing Officer or the Board under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

§ 6.02 Request for Subpoena.

(a) *Authority to Issue Subpoenas.* At the request of a party, a Hearing Officer may issue subpoenas for the attendance and testimony of witnesses and for the production of correspondence, books, papers, documents, or other records. The attendance of witnesses and the production of records may be required from any place within the United States. However, no subpoena by any party may be issued for the attendance or testimony of an employee ***[****with****]*** **of** the Office of Compliance, **a counselor, or a mediator, including files, records, or notes produced during counseling and mediation and maintained by the Office. Employing offices shall make their employees available for discovery and hearing without requiring a subpoena.**

(d) *Rulings.* The Hearing Officer shall promptly rule on the request **for the subpoena.**

* * * * *

Subpart G—Hearings

§ 7.01 The Hearing Officer.

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(b) *Authority*. Hearing Officers shall conduct fair and impartial hearings and take all necessary action to avoid undue delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

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(14) maintain **and enforce** the confidentiality of proceedings; and

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§ 7.02 Sanctions.

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(b) The Hearing Officer may impose sanctions upon the parties under, but not limited to, the circumstances set forth in this section.

(1) *Failure to Comply with an Order*. When a party fails to comply with an order (including an order for the taking of a deposition, for the production of evidence within the party's control, or for production of witnesses), the Hearing Officer may:

[*(a)***](A)** draw an inference in favor of the requesting party on the issue related to the information sought;

[*(b)***](B)** stay further proceedings until the order is obeyed;

[*(c)***](C)** prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, evidence relating to the information sought;

[*(d)***](D)** permit the requesting party to introduce secondary evidence concerning the information sought;

[*(e)***](E)** strike, **in whole or in part, [***any part of***]** the complaint, briefs, answer, or other submissions of the party failing to comply with the order, **as appropriate;**

[*(f)***](F)** direct judgment against the non-complying party in whole or in part; or

[*(g)***](G)** order that the non-complying party, or the representative advising that party, pay all or part of the attorney's fees and reasonable expenses of the other party or parties or of the Office, caused by such non-compliance, unless the Hearing Officer or the Board finds that the failure was substantially justified or that other circumstances make an award of attorney's fees and/or expenses unjust.

(2) *Failure to Prosecute or Defend*. If a party fails to prosecute or defend a position, the Hearing Officer may dismiss the action with prejudice or **[***rule for the complainant***] decide the matter, where appropriate.**

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(4) ***Filing of frivolous claims.*** **If a party files a frivolous claim, the Hearing Officer may dismiss the claim, in whole or in part, with prejudice or decide the matter for the party alleging the filing of the frivolous claim.**

(5) ***Failure to maintain confidentiality.*** **An allegation regarding a violation of the confidentiality provisions may be made to a Hearing Officer in proceedings under Section 405 of the CAA. If, after notice and hearing, the Hearing Officer determines that a party has violated the confidentiality provisions, the Hearing Officer may:**

(A) direct that the matters related to the breach of confidentiality or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(B) prohibit the party breaching confidentiality from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(C) strike the pleadings in whole or in part;

(D) stay further proceedings until the breach of confidentiality is resolved to the extent possible;

(E) dismiss the action or proceeding in whole or in part; or

(F) render a default judgment against the party breaching confidentiality.

(c) No sanctions may be imposed under this section except for good cause and the particulars of which must be stated in the sanction order.

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§ 7.04 Motions and Prehearing Conference.

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(b) *Scheduling of the Prehearing Conference*. Within 7 days after assignment, the Hearing Officer shall serve on the parties and their designated representatives written notice setting forth the time, date, and place of the prehearing conference, **except that the Executive Director may, for good cause, extend up to an additional 7 days the time for serving notice of the prehearing conference.**

(c) *Prehearing Conference Memoranda*. The Hearing Officer may order each party to prepare a prehearing conference memorandum. **At his or her discretion, the Hearing Officer may direct the filing of the memorandum after discovery by the parties has concluded. [***That***] The** memorandum may include:

. . . . .

(3) the specific relief**, including, where known, a calculation** of **[***the amount of***] any** monetary relief **[**,**] or damages** that is being or will be requested;

(4) the names of potential witnesses for the party's case, except for potential **impeachment or** rebuttal witnesses, and the purpose for which they will be called and a list of documents that the party is seeking from the opposing party, and, if discovery was permitted, the status of any pending request for discovery. (It is not necessary to list each document requested. Instead, the party may refer to the request for discovery.)**;** and

. . . . .

(d) At the prehearing conference, the Hearing Officer may discuss the subjects specified in paragraph (c) above and the manner in which the hearing will be conducted **[***and proceed***]**. In addition, the Hearing Officer may explore settlement possibilities and consider how the factual and legal issues might be simplified and any other issues that might expedite the resolution of the dispute. The Hearing Officer shall issue an order, which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions, **stipulations,** or agreements of the parties. Such order, when entered, shall control the course of the proceeding, subject to later modification by the Hearing Officer by his or her own motion or upon proper request of a party for good cause shown.

§ 7.05 Scheduling the Hearing.

. . . . .

(b) *Motions for Postponement or a Continuance*. Motions for postponement or for a continuance by either party shall be made in writing to the **[***Office***] Hearing Officer,** shall set forth the reasons for the request, and shall state whether the opposing party consents to such postponement. Such a motion may be granted **by the Hearing Officer** upon a showing of good cause. In no event will a hearing commence later than 90 days after the filing of the complaint.

§ 7.06 Consolidation and Joinder of Cases.

. . . . .

(b) ***Authority.*** **The Executive Director prior to the assignment of a complaint to a Hearing Officer; a Hearing Officer during the hearing; or t**he Board **[**, *the Office, or a Hearing Officer***] during an appeal** may consolidate or join cases on their own initiative or on the motion of a party if to do so would expedite processing of the cases and not adversely affect the interests of the parties, taking into account the confidentiality requirements of section 416 of the Act.

§ 7.07 Conduct of Hearing; Disqualification of Representatives.

. . . . .

(c) No later than the opening of the hearing, or as otherwise ordered by the Hearing Officer, each party shall submit to the Hearing Officer and to the opposing party typed lists of the hearing exhibits and the witnesses **expected to be called to testify,** excluding **impeachment or** rebuttal witnesses **[**, *expected to be called to testify***]**.

. . . . .

(f) Failure of either party to appear, present witnesses, or respond to an evidentiary order may result in an adverse finding or ruling by the Hearing Officer. At the discretion of the Hearing Officer, the hearing may also be held in absence of the complaining party if the representative for that party is present.

[*(f)***](g)** If the Hearing Officer concludes that a representative of an employee, a witness, a charging party, a labor organization, an employing office, or an entity alleged to be responsible for correcting a violation has a conflict of interest, he or she may, after giving the representative an opportunity to respond, disqualify the representative. In that event, within the time limits for hearing and decision established by the Act, the affected party shall be afforded reasonable time to retain other representation.

§ 7.08 Transcript.

. . . . .

(b) *Corrections*. Corrections to the official transcript will be permitted. Motions for correction must be submitted within 10 days of service of the transcript upon the **[***party***] parties.** Corrections of the official transcript will be permitted only upon approval of the Hearing Officer. The Hearing Officer may make corrections at any time with notice to the parties.

. . . . .

§ 7.12 Confidentiality.

(a) Pursuant to section 416 of the Act **and section 1.08 of these Rules,** all proceedings and deliberations of Hearing Officers and the Board, including the transcripts of hearings and any related records, shall be confidential, except as specified in section**s** 416(d), (e), and (f) of the Act **and section 1.08(d) of these Rules.** All parties to the proceeding and their representatives, and witnesses who appear at the hearing, will be advised of the importance of confidentiality in this process and of their obligations, subject to sanctions, to maintain it. This provision shall not apply to proceedings under section 215 of the Act, but shall apply to the deliberations of Hearing Officers and the Board under that section.

(b) ***Violation of Confidentiality.*** **An allegation regarding a violation of confidentiality occurring during a hearing may be resolved by a Hearing Officer in proceedings under Section 405 of the CAA. After providing notice and an opportunity to the parties to be heard, the Hearing Officer, in accordance with section 1.08(f) of these Rules, may make a finding of a violation of confidentiality and impose appropriate procedural or evidentiary sanctions, which may include any of the sanctions listed in section 7.02 of these Rules.**

§ 7.13 Immediate Board Review of a Ruling by a Hearing Officer.

. . . . .

(b) *Time for Filing.* A motion by a party for interlocutory review of a ruling of the Hearing Officer shall be filed with the Hearing Officer within 5 days after service of the ruling upon the parties. The motion shall include arguments in support of both interlocutory review and the determination requested to be made by the Board upon review. Responses, if any, shall be filed with the Hearing Officer within 3 days after service of the motion.

***[(b)]*(c)** *Standards for Review.* In determining whether to **certify and** forward a request for interlocutory review to the Board, the Hearing Officer shall consider **all of** the following:

. . . . .

[(c) Time for Filing. A motion by a party for interlocutory review of a ruling of the Hearing Officer shall be filed with the Hearing Officer within 5 days after service of the ruling upon the parties. The motion shall include arguments in support of both interlocutory review and the determination requested to be made by the Board upon review. Responses, if any, shall be filed with the Hearing Officer within 3 days after service of the motion.]

(d) *Hearing Officer Action.* If **all** the conditions set forth in paragraph ***[(b)]*(c)** above are met, the Hearing Officer shall **certify and** forward a request for interlocutory review to the Board for its immediate consideration. Any such submission shall explain the basis on which the Hearing Officer concluded that the standards in paragraph ***[(b)]*(c)** have been met. **The decision of the Hearing Office to forward or decline to forward a request for review is not appealable.**

(e) *Grant of Interlocutory Review Within Board's Sole Discretion.* **Upon the Hearing Officer's certification and decision to forward a request for review, *[T]*the** Board, in its sole discretion, may grant interlocutory review. **The Board's decision to grant or deny interlocutory review is not appealable.**

. . . . .

[(g) Denial of Motion not Appealable; Mandamus. The grant or denial of a motion for a request for interlocutory review shall not be appealable. The Hearing Officer shall promptly bring a denial of such a motion, and the reasons therefor, to the attention of the Board. If, upon consideration of the motion and the reason for denial, the Board believes that interlocutory review is warranted, it may grant the review sua sponte. In addition, the Board may in its discretion, in extraordinary circumstances, entertain directly from a party a writ of mandamus to review a ruling of a Hearing Officer.]

[(h)]*(g)** *Procedures before Board.* Upon its *[acceptance of a ruling of the Hearing Officer for]* ***decision to grant interlocutory review, the Board shall issue an order setting forth the procedures that will be followed in the conduct of that review.

***[(i)]*(h)** *Review of a Final Decision.* Denial of interlocutory review will not affect a party's right to challenge rulings, which are otherwise appealable, as part of an appeal to the Board under section 8.01 from the Hearing Officer's decision issued under section 7.16 of these rules.

§ 7.14 Proposed Findings of Fact and Conclusions of Law; Posthearing Briefs.

[(a)] *May be **[**Filed**]** **Required.*** The Hearing Officer may ***[**permit**]*** require the parties to file **proposed findings of fact and conclusions of law and/or** posthearing briefs on the factual and the legal issues presented in the case.

***[(b) Length. No principal brief shall exceed 50 pages, or 12,500 words, and no reply brief shall exceed 25 pages, or 6,250 words, exclusive of tables and pages limited only to quotations of statutes, rules, and the like. Motions to file extended briefs shall be granted only for good cause shown; the Hearing Officer may in his or her discretion also reduce the page limits. Briefs in excess of 10 pages shall include an index and a table of authorities.*

*(c) Format. Every brief must be easily readable. Briefs must have double spacing between each line of text, except for quoted texts and footnotes, which may be single-spaced.]***

§ 7.15 Closing the Record of the Hearing.

(a) Except as provided in section 7.14, the record shall be closed at the conclusion of the hearing. However, when the Hearing Officer allows the parties to submit **argument, briefs, documents or** additional evidence previously identified for introduction, **the record will remain open for as much time as the judge grants for that purpose *[**additional evidence previously identified for introduction, the Hearing Officer may allow an additional period before the conclusion of the hearing as is necessary for that purpose**]***.

(b) Once the record is closed, no additional evidence or argument shall be accepted into the hearing record except upon a showing that new and material evidence has become available that was not available despite due diligence prior to the closing of the record **or it is in rebuttal to new evidence or argument submitted by the other party just before the record closed. *[**However, the**]*** **The Hearing Officer shall also** make part of the record any ***[**motions for attorney fees, supporting documentation, and determinations thereon, and**]*** approved correction to the transcript.

§ 7.16 Hearing Officer Decisions; Entry in Records of the Office; Corrections to the Record; Motions to Alter, Amend or Vacate the Decision.

. . . . .

(b) **The Hearing Officer's written decision shall:**

(1) state the issues raised in the complaint;

(2) describe the evidence in record;

(3) contain findings of fact and conclusions of law, and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record;

(4) contain a determination of whether a violation has occurred; and (5) order such remedies as are appropriate under the CAA.

***[(b)]*(c)** Upon issuance, the decision and order of the Hearing Officer shall be entered into the records of the Office.

***[(c)]*(d)** The Office shall promptly provide a copy of the decision and order of the Hearing Officer to the parties.

***[(d)]*(e)** If there is no appeal of a decision and order of a Hearing Officer, that decision becomes a final decision of the Office, which is subject to enforcement under section 8.03 of these rules.

(f) Corrections to the Record. After a decision of the Hearing Officer has been issued, but before an appeal is made to the Board, or in the absence of an appeal, before the decision becomes final, the Hearing Officer may issue an erratum notice to correct simple errors or easily correctible mistakes. The Hearing Officer may do so on motion of the parties or on his or her own motion with or without advance notice.

(g) After a decision of the Hearing Officer has been issued, but before an appeal is made to the Board, or in the absence of an appeal, before the decision becomes final, a party to the proceeding before the Hearing Officer may move to alter, amend or vacate the decision. The moving party must establish that relief from the decision is warranted because: (1) of mistake, inadvertence, surprise, or excusable neglect; (2) there is newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new hearing; (3) there has been fraud (misrepresentation, or misconduct by an opposing party; (4) the decision is void; or (5) the decision has been satisfied, released, or discharged; it is based on an earlier decision that has been reversed or vacated; or applying it prospectively is no longer equitable. The motion shall be filed within 15 days after service of the Hearing Officer's decision. No response shall be filed unless the Hearing Officer so orders. The filing and pendency of a motion under this provision shall not relieve a party of the obligation to file a timely appeal or operate to stay the action of the Hearing Officer unless so ordered by the Hearing Officer.

Subpart H—Proceedings before the Board

§ 8.01 Appeal to the Board.

(a) No later than 30 days after the entry of the **final** decision and order of the Hearing Officer in the records of the Office, an aggrieved party may seek review of that decision and order by the Board by filing with the Office a petition for review by the Board. The appeal must be served on the opposing party or its representative.

. . . . .

(3) ***[**Upon written delegation by the Board,**]*** **In any case in which the Board has not rendered a determination on the merits,** the Executive Director is authorized to: determine any request for extensions of time to file any post-petition for review document or submission with the Board ***[**in any case in which the Executive Director has not rendered a determination on the merits,**]*****; determine any request for enlargement of page limitation of any post-petition for review document or submission with the Board; or require proof of service where there are questions of proper service.** ***[**Such delegation shall continue until revoked by the Board.**]***

. . . . .

(d) Upon appeal, the Board shall issue a written decision setting forth the reasons for its decision. The Board may **dismiss the appeal or** affirm, reverse, modify or remand the decision and order of the Hearing Officer in whole or in part. Where there is no remand the decision of the Board shall be entered in the records of the Office as the final decision of the Board and shall be subject to judicial review.

(e) The Board may remand the matter to ***[**the**]*** **a** Hearing Officer for further action or proceedings, including the reopening of the record for the taking of additional evidence. **The decision by the Board to remand a case is not subject to judicial review under Section 407 of the Act. The procedures for a remanded hearing shall be governed by subparts F, G, and H of these Rules.** The Hearing Officer shall render a decision or report to

the Board, as ordered, at the conclusion of proceedings on the remanded matters. [*Upon receipt of the decision or report, the Board shall determine whether the views of the parties on the content of the decision or report should be obtained in writing and, where necessary, shall fix by order the time for the submission of those views.*] A decision of the Board following completion of the remand shall be entered in the records of the Office as the final decision of the Board and shall be subject to judicial review **under Section 407 of the Act.**

. . . . .

(h) *Record*. The **docket sheet,** complaint and any amendments, notice of hearing, answer and any amendments, motions, rulings, orders, stipulations, exhibits, documentary evidence, any portions of depositions admitted into evidence, **docketed Memoranda for the Record, or correspondence between the Office and the parties,** and the transcript of the hearing (together with any electronic recording of the hearing if the original reporting was performed electronically) together with the Hearing Officer's decision and the petition for review, any response thereto, any reply to the response and any other pleadings shall constitute the record in the case.

. . . . .

(j) An appellant may move to withdraw a petition for review at any time before the Board renders a decision. The motion must be in writing and submitted to the Board. The Board, at its discretion, may grant such a motion and take whatever action is required.

§ 8.02 Reconsideration.

After a final decision or order of the Board has been issued, a party to the proceeding before the Board, who can establish in its moving papers that reconsideration is necessary because the Board has overlooked or misapprehended points of law or fact, may move for reconsideration of such final decision or order. The motion shall be filed within 15 days after service of the Board's decision or order. No response shall be filed unless the Board so orders. The filing and pendency of a motion under this provision shall not relieve a party of the obligation to file a timely appeal or operate to stay the action of the Board unless so ordered by the Board. **The decision to grant or deny a motion for reconsideration is within the sole discretion of the Board and is not appealable.**

§ 8.03 Compliance with Final Decisions, Requests for Enforcement.

(a) Unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of an appeal pursuant to section 407 **of the Act**, and except as provided in sections 210(d)(5) and 215(c)(6) of the Act, a party required to take any action under the terms of a final decision of the Office shall carry out its terms promptly, and shall within 30 days after the decision or order becomes final and goes into effect by its terms, provide the Office and all other parties to the proceedings with a compliance report specifying the manner in which compliance with the provisions of the decision or order has been accomplished. If complete compliance has not been accomplished within 30 days, the party required to take any such action shall submit a compliance report specifying why compliance with any provision of the decision or order has not yet been fully accomplished, the steps being taken to assure full compliance, and the anticipated date by which full compliance will be achieved. **A party may also file a petition for attorneys fees and/or damages unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of the appeal pursuant to Section 407 of the Act.**

. . . . .

(d) **To the extent provided in Section 407(a) of the Act and Section 8.04 of this section, the appropriate** [*Any*] party may petition the Board for enforcement of a final decision of the Office or the Board. The petition shall specifically set forth the reasons why the petitioner believes enforcement is necessary.

. . . . .

. . .

§ 8.05 Application for Review of an Executive Director Action.

For additional rules on the procedures pertaining to the Board's review of an Executive Director action in Representation proceedings, refer to Parts 2422.30—31 of the Substantive Regulations of the Board, available at www.compliance.gov.

§ 8.06 Expedited Review of Negotiability Issues.

For additional rules on the procedures pertaining to the Board's expedited review of negotiability issues, refer to Part 2424 of the Substantive Regulations of the Board, available at www.compliance.gov.

§ 8.07 Review of Arbitration Awards.

For additional rules on the procedures pertaining to the Board's review of arbitration awards, refer to Part 2425 of the Substantive Regulations of the Board, available at www.compliance.gov.

§ 8.08 Procedures of the Board in Impasse Proceedings.

For additional rules on the procedures of the Board in impasse proceedings, refer to Part 2471 of the Substantive Regulations of the Board, available at www.compliance.gov.

Subpart I—Other Matters of General Applicability

[§ 9.01 Filing, Service, and Size Limitations of Motions, Briefs, Responses and Other Documents.

(a) Filing with the Office; Number. One original and three copies of all motions, briefs, responses, and other documents, must be filed, whenever required, with the Office or Hearing Officer. However, when a party aggrieved by the decision of a Hearing Officer or a party to any other matter or determination reviewable by the Board files an appeal or other submission with the Board, one original and seven copies of any submission and any responses must be filed with the Office. The Office, Hearing Officer, or Board may also request a party to submit an electronic version of any submission in a designated format, with receipt confirmed by electronic transmittal in the same format.

(b) Service. The parties shall serve on each other one copy of all motions, briefs, responses and other documents filed with the Office, other than the request for counseling, the request for mediation and complaint. Service shall be made by mailing or by hand delivering a copy of the motion, brief, response or other document to each party, or if represented, the party's representative, on the service list previously provided by the Office. Each of these documents, must be accompanied by a certificate of service specifying how, when and on whom service was made. It shall be the duty of each party to notify the Office and all other parties in writing of any changes in the names or addresses on the service list.

(c) Time Limitations for Response to Motions or Briefs and Reply. Unless otherwise specified by the Hearing Officer or these rules, a party shall file a response to a motion or brief within 15 days of the service of the motion or brief upon the party. Any reply to such response shall be filed and served within 5 days of the service of the response. Only with the Hearing Officer's advance approval may either party file additional responses or replies.

(d) Size Limitations. Except as otherwise specified by the Hearing Officer or these rules, no brief, motion, response, or supporting memorandum filed with the Office shall exceed 35 pages, or 8,750 words, exclusive of the table of contents, table of authorities and attachments. The Board, the Office, Executive Director, or Hearing Officer may waive, raise or reduce this limitation for good cause shown or on its own initiative. Briefs, motions, responses, and supporting memoranda shall be on standard letter-size paper (8½″ x 11″).

§ 9.02 Signing of Pleadings, Motions and Other Filings; Violation of Rules; Sanctions.

Every pleading, motion, and other filing of a party represented by an attorney or other designated representative shall be signed by the attorney or representative. A party who is not represented shall sign the pleading, motion or other filing. The signature of a representative or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other filing; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other filing is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person who is required to sign. If a pleading, motion, or other filing is signed in violation of this rule, a Hearing Officer or the Board, as appropriate, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other filing, including a reasonable attorney's fee. A Hearing Officer, the Executive Director, or the Board, as appropriate, upon motion or its own initiative may also impose an appropriate sanction, which may include the sanctions specified in section 7.02, for any other violation of these rules that does not result from reasonable error.]

[§ 9.03] **§ 9.01 Attorney's Fees and Costs.**

(a) Request. No later than *[20]* **30** days after the entry of a **final** *[Hearing Officer's]* decision **of the Office,** *[under section 7.16, or after service of a Board decision by the Office the complainant, if he or she is a]* **the** prevailing party*[,]* may submit to the Hearing Officer **or Arbitrator** who *[heard]* **decided** the case *[initially]* a motion for the award of reasonable attorney's fees and costs, following the form specified in paragraph (b) below. *[All motions for attorney's fees and costs shall be submitted to the Hearing Officer.]* The Hearing Officer **or Arbitrator**, after giving the respondent an opportunity to reply, shall rule on the motion. Decisions regarding attorney's fees and costs are collateral and do not affect the finality or appealability of a final decision issued by the *[Hearing Officer]* **Office.** *[A ruling on a motion for attorney's fees and costs may be appealed together with the final decision of the Hearing Officer. If the motion for attorney's fees is ruled on after the final decision has been issued by the Hearing Officer, the ruling may be appealed in the same manner as a final decision, pursuant to section 8.01 of these Rules.]*

(b) *Form of Motion.* In addition to setting forth the legal and factual bases upon which the attorney's fees and/or costs are sought, a motion for an award of attorney's fees and/or costs shall be accompanied by:

. . . . .

(3) the attorney's customary billing rate for similar work **with evidence that the rate is consistent with the prevailing community rate for similar services in the community in which the attorney ordinarily practices;** ***[****and****]***

(4) an itemization of costs related to the matter in question***[****.****]*** **; and**

(5) evidence of an established attorney-client relationship.

[*§ 9.04****]*** **§ 9.02 Ex parte Communications.**

(a) *Definitions.*

. . . . .

(3) For purposes of section ***[****9.04****]*** **9.02**, the term *proceeding* means the complaint and hearing proceeding under section 405 of the CAA, an appeal to the Board under section 406 of the CAA, a pre-election investigatory hearing under section 220 of the CAA, and any other proceeding of the Office established pursuant to regulations issued by the Board under the CAA.

. . . . .

(b) Prohibited Ex Parte Communications and Exceptions.

(2) The Hearing Officer or the Office may initiate attempts to settle a matter informally at any time. The parties may agree to waive the prohibitions against *ex parte* communications during settlement discussions, and they may agree to any limits on the waiver.

—Renumber subsequent paragraphs in subsection—

[*§ 9.05****]*** **§ 9.03 Informal Resolutions and Settlement Agreements.**

(b) *Formal Settlement Agreement.* The parties may agree formally to settle all or part of a disputed matter in accordance with section 414 of the Act. In that event, the agreement shall be in writing and submitted to the Executive Director for review and approval. **The settlement is not effective until it has been approved by the Executive Director.** If the Executive Director does not approve the settlement, such disapproval shall be in writing, shall set forth the grounds therefor, and shall render the settlement ineffective.

(c) *Requirements for a Formal Settlement Agreement.* A formal settlement agreement requires the signature of all parties or their designated representatives on the agreement document before the agreement can be submitted to the Executive Director **for signature. A formal settlement agreement cannot be submitted to the Executive Director for signature until the appropriate revocation periods have expired.** A formal settlement agreement cannot be rescinded after the signatures of all parties have been affixed to the agreement, unless by written revocation of the agreement voluntarily signed by all parties, or as otherwise permitted by law.

(d) *Violation of a Formal Settlement Agreement.* If a party should allege that a formal settlement agreement has been violated, the issue shall be determined by reference to the formal dispute resolution procedures of the agreement. **Parties are encouraged to include in their settlements specific dispute resolution procedures.** If the ***[****particular****]*** formal settlement agreement does not have a stipulated method for dispute resolution of an alleged violation ***[****of the agreement****]*****, the Office may provide assistance in resolving the dispute, including the services of a mediator as determined by the Executive Director. [****the following dispute resolution procedure shall be deemed to be a part of each formal settlement agreement approved by the Executive Director pursuant to section 414 of the Act:****]*** **Where the settlement agreement does not have a stipulated method for resolving violation allegations, [****Any complaint****]* *an allegation [****regarding****]* *of* a violation ***[****of a formal settlement agreement may****]*** **must** be filed with the Executive Director no later than 60 days after the party to the agreement becomes aware of the alleged violation. Such ***[****complaints may be referred by the Executive Director to a Hearing Officer for a final decision. The procedures for hearing and determining such complaints shall be governed by subparts F, G, and H of these Rule.****]*** **allegations will be reviewed, investigated or mediated, as appropriate, by the Executive Director or designee.**

[*§ 9.06****]*** **§ 9.04 Payments required pursuant to Decisions, Awards, or Settlements under section 415(a) of the Act.**

Whenever a **final** decision or award pursuant to sections 405(g), 406(e), 407, or 408 of the Act, or an approved settlement pursuant to section 414 of the Act, require the payment of funds pursuant to section 415(a) of the Act, the decision, award, or settlement shall be submitted to the Executive Director to be processed by the Office for requisition from the account of the Office of Compliance in the Department of the Treasury, and payment. **No payment shall be made from such account until the time for appeal of a decision has expired.**

[*§ 9.07****]*** **§ 9.05 Revocation, Amendment or Waiver of Rules.**

(a) The Executive Director, subject to the approval of the Board, may revoke or amend these rules by publishing proposed changes in the Congressional Record and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the Congressional Record.

(b) The Board or a Hearing Officer may waive a procedural rule contained in this Part in an individual case for good cause shown if application of the rule is not required by law.

CLIFFORD P. HANSEN FEDERAL COURTHOUSE CONVEYANCE ACT

ALBUQUERQUE, NEW MEXICO, FEDERAL LAND CONVEYANCE ACT

Mr. BROWN. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 423, S. 1934, and Calendar No. 418, S. 898 en bloc.

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

The Senate proceeded to consider the bill (S. 1934) to direct the Administrator of General Services to convey the Clifford P. Hansen Federal Courthouse back to Teton County, Wyoming, which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

S. 1934

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Clifford P. Hansen Federal Courthouse Conveyance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of General Services.

(2) COUNTY.—The term ''County'' means Teton County, Wyoming.

(3) COURTHOUSE.—The term ''Courthouse'' means—

(A) the parcel of land located at 145 East Simpson Street, Jackson, Wyoming; and

(B) the building located on the land described in subparagraph (A), which is known as the ''Clifford P. Hansen Federal Courthouse''.

SEC. 3. CONVEYANCE OF FEDERAL COURTHOUSE TO TETON COUNTY, WYOMING.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator shall offer to convey to the County all right, title, and interest of the United States in and to the Courthouse.

(b) CONSIDERATION.—In exchange for the conveyance of the Courthouse to the County under this Act, the Administrator shall require the County to pay to the Administrator—

(1) nominal consideration for the parcel of land described in section 2(3)(A); and

(2) subject to subsection (c), consideration in an amount equal to the fair market value of the building described in section 2(3)(B), as determined based on an appraisal of the building that is acceptable to the Administrator.

(c) CREDITS.—In lieu of all or a portion of the amount of consideration for the building described in section 2(3)(B), the Administrator may accept as consideration for the conveyance of the building under subsection (b)(2) any credits or waivers against lease payments, amounts expended by the County under facility maintenance agreements, or other charges for the continued occupancy or use by the Federal Government of the building.

(d) RESTRICTIONS ON USE.—The deed for the conveyance of the Courthouse to the County under this Act shall include a covenant that provides that the Courthouse will be used for public use purposes.

(e) COSTS OF CONVEYANCE.—The County shall be responsible for paying—

(1) the costs of an appraisal conducted under subsection (b)(2); and

(2) any other costs relating to the conveyance of the Courthouse under this Act.

(f) PROCEEDS.—

(1) DEPOSIT.—Any net proceeds received by the Administrator as a result of the conveyance under this Act, as applicable, shall be paid into the Federal Buildings Fund established under section 592 of title 40, United States Code.

(2) EXPENDITURE.—Amounts paid into the Federal Buildings Fund under paragraph (1) shall be available to the Administrator, in amounts specified in appropriations Acts, for expenditure for any lawful purpose consistent with existing authorities granted to the Administrator.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Administrator may establish such additional terms and conditions with respect to the conveyance under this Act as the Administrator considers to be appropriate to protect the interests of the United States.

The Senate proceeded to consider the bill (S. 898) to authorize the Administrator of General Services to convey a parcel of real property in Albuquerque, New Mexico, to the Amy Biehl High School Foundation.

Mr. BROWN. Madam President, I ask unanimous consent that the amendment to S. 1934 be agreed to, the bills, as amended if amended, be read a third time and passed en bloc, and that the title amendment to S. 1934 be agreed to, and that the motions to reconsider be considered made and laid upon the table.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1934), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

The title amendment was agreed to, as follows:

Amend the title so as to read: ''A bill to direct the Administrator of General Services to convey the Clifford P. Hansen Federal Courthouse to Teton County, Wyoming.''.

The bill (S. 898) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 898

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 ''Albuquerque, New Mexico, Federal Land Conveyance Act of 2013''.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of General Services.

(2) FEDERAL LAND.—The term ''Federal land'' means the real property located in Albuquerque, New Mexico, that, as determined by the Administrator, subject to survey, generally consists of lots 12 through 19, and for the westerly boundary, the portion of either lot 19 or 20 which is the outside west wall of the basement level of the Old Post Office building, and which has a municipal address of 123 Fourth Street, SW, in Block 18, New Mexico Town Company's Original Townsite, Albuquerque, New Mexico.

(3) FOUNDATION.—The term ''Foundation'' means the Amy Biehl High School Foundation.

SEC. 3. CONVEYANCE OF REAL PROPERTY IN ALBUQUERQUE, NEW MEXICO, TO THE AMY BIEHL HIGH SCHOOL FOUNDATION.

(a) CONVEYANCE.—Notwithstanding any other provision of law, not later than 90 days after the date of enactment of this Act, the Administrator shall offer to convey to the Foundation, by quitclaim deed, all right, title, and interest of the United States in and to the Federal land.

(b) CONSIDERATION.—As consideration for conveyance of the Federal land under subsection (a), the Administrator shall require the Foundation to pay to the Administrator consideration in an amount equal to the fair market value of the Federal land, as determined based on an appraisal that is acceptable to the Administrator.

(c) COSTS OF CONVEYANCE.—The Foundation shall be responsible for paying—

(1) the costs of an appraisal conducted under subsection (b); and

(2) any other costs relating to the conveyance of the Federal land under this Act.

(d) PROCEEDS.—

(1) DEPOSIT.—Net proceeds received under subsection (b) shall be paid into the Federal Buildings Fund established under section 592 of title 40, United States Code.

(2) EXPENDITURE.—Amounts paid into the Federal Buildings Fund under paragraph (1) shall be available to the Administrator, in amounts specified in appropriations Acts, for expenditure for any lawful purpose consistent with existing authorities granted to the Administrator, except that the Administrator shall provide to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate 30 days advance written notice of any expenditure of the proceeds.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Administrator may require that any conveyance under subsection (a) be subject to such additional terms and conditions as the Administrator considers appropriate to protect the interests of the United States.

(f) DEADLINE.—The conveyance of the Federal land under this Act shall occur not later than 3 years after the date of enactment of this Act.

EXPRESSING CONDOLENCES TO THE FAMILIES OF JAMES FOLEY AND STEVEN SOTLOFF

Mr. BROWN. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 538, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 538) expressing the condolences of the Senate to the families of James Foley and Steven Sotloff, and condemning the terrorist acts of the Islamic State of Iraq and the Levant.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BROWN. Madam President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be made and laid upon the table, with no intervening action or debate.

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

The resolution (S. Res. 538) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

RELATIVE TO THE DEATH OF JAMES M. JEFFORDS, FORMER UNITED STATES SENATOR FOR THE STATE OF VERMONT

Mr. BROWN. Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 539, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 539) relative to the death of James M. Jeffords, former United States Senator for the State of Vermont.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BROWN. Madam President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 539) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

ORDERS FOR WEDNESDAY, SEPTEMBER 10, 2014

Mr. BROWN. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, September 10, 2014; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; and that following any leader remarks, the Senate resume consideration of the motion to proceed to S.J. Res. 19 postcloture; further, that at 2 p.m. all postcloture time be considered expired and the Senate proceed to vote on the motion to proceed.

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

PROGRAM

Mr. BROWN. Madam President, we expect a voice vote on the motion to proceed to the constitutional amendment on campaign finance reform. Shortly after 2 p.m., we expect a rollcall vote relative to the paycheck fairness bill.

ORDER FOR ADJOURNMENT

Mr. BROWN. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the provisions of S. Res. 539, as a further mark of respect to the memory of the late Senator James M. Jeffords, former United States Senator for the State of Vermont, following the remarks of Senator RUBIO. And a special mention: My chief of staff, Mark Powden, who used to be the chief of staff for Senator Jeffords, gave a eulogy at his funeral and had immense respect for the late Senator from Vermont.

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

The Senator from Florida.

CONGRATULATING BOOKER T. WASHINGTON HIGH SCHOOL

Mr. RUBIO. Madam President, I appreciate the opportunity to speak for a few moments this evening before the Senate adjourns its workday.

I begin with a couple points of personal privilege. One is to congratulate a local high school in Miami, FL, by the name of Booker T. Washington. This is a school which has now won 29 consecutive games. They were the national champions last year in high school football, and I think they are headed to that again this year.

But what really impresses me about this program is the work they do with these young men. These young men come from a very challenging part of Miami, of Overtown, and have really overcome tremendous obstacles in their personal lives to achieve both in the classroom and on the field.

What I am most impressed about, as I tell Coach Harris every time I get to see him, is that it is not the kind of football players he has made them—because they are excellent—but the kind

of young men they are becoming. I think they are worthy of congratulations.

I was at their game on Friday against another very good team from South Florida, both ranked in the top 10 nationally in high school. I assure my colleagues from States such as California and Texas that while their football is good, our football is special.

Enough bragging on them. They are a great team, and we are fortunate to be able to witness what they have been able to do over the last couple of years.

REMEMBERING STEVEN SOTLOFF

The second point, which is related to my comments here in a moment, is toward the family of Steven Sotloff, who lost his life tragically in the Middle East over the last few days. We are all familiar with that horrific tale.

Steven actually lived in Miami, FL, with his family literally blocks away from where I go to church, literally blocks away from where I live. He was a member of our community.

As I said last week at his memorial service, Steven had dedicated his life to revealing the suffering and the reality of what was happening in some of the most dangerous areas of the world. And while he lost his life tragically, I think it is both ironic and appropriate that in his last act, as he lost his life he revealed the true nature of what we confront in that part of the world and the true nature of the Islamic State, who they are, and what they are all about. This was a young man who, as I said, dedicated his life not just to journalism but to journalism in the most dangerous part of the world and in so doing was able to bring that reality to us even in the last moments of his life.

CONSTITUTIONAL AMENDMENT

Intriguing, of course, is the debate which has occurred here over the last couple of days on this very interesting political matter. There is a lot of hyperbole being thrown around about the influence money has on our political process. I have found there is plenty of money on both sides of every issue, and certainly all of my colleagues here, including those who support this amendment before us, have been the beneficiaries of vast amounts of campaign spending. In fact, as some of my colleagues pointed to earlier, the majority of the money being raised and spent in political campaigns, including from Wall Street, is on behalf of many of the same people who are now here condemning it. If in fact it is so unseemly, as they say, then perhaps they should take a unilateral pledge not to accept these sources of funds. Of course they won't, but it is an interesting dynamic at a time when our Nation faces so many struggles.

ECONOMIC CHALLENGES

What I hope and wish is that more time in this Chamber would be dedicated to the issues this country faces, the ones that threaten our status as a special and unique nation.

When we look across the country today at the economic challenges our people are facing, they are pervasive and they are real. We see that the 21st century has brought extraordinary and rapid change to our lives. The economy that once produced millions of jobs which allowed people to make it to the middle class and achieve that American dream—many of those jobs have been outsourced. They are automated. They have gone away.

Millions of people who have worked their entire lives are now struggling to find a job that allows them to keep pace with the cost of living. People are stuck in low-wage jobs, and I will have more to say about that later this week. People are working for $9 or $10 an hour and cannot make ends meet, especially when the cost of living continues to rise in every facet of our lives.

We have students who have gone to school, graduated with a degree, have done everything they were told they needed to do to succeed, and now cannot find a job with the degree they sought, but they potentially owe tens of thousands of dollars in student loans—an issue I am both sensitive to and familiar with because I myself owed well over $100,000, including on the day I swore into the Senate. This is a real strain on people.

Whatever it may be, there are millions of Americans who are starting to doubt whether that fundamental promise of America—that if they work hard, they can get ahead and achieve happiness as they define it—is still true. We understand the reasons why, and this is something we need to address, and we address it by addressing the core challenges of our time, which are not the different issues I heard thrown around here today.

The core challenges of our time are that, first and foremost, the nature of our economy has changed rapidly. America faces more global competition than ever for investment and for innovation. There are more countries than ever competing with us for investment and for innovation, and tragically we haven't kept pace with that change. We still have policies in this country deeply rooted in the last century, in an era that has come and gone. We continue to impose taxes and regulations and a national debt and a health care law and all sorts of other measures that put us at a competitive disadvantage.

I wish the No. 1 priority of the Senate was to make America once again the single-best place in the world to invest and to innovate so we could create millions of higher paying 21st-century jobs.

I wish that were our No. 1 priority, followed closely by our No. 2 priority, which is equipping people with the skills they need for the jobs of the 21st century. It wasn't that long ago that someone could come to this country or grow up in this country, not have a lot of advanced education, and still make it to the middle class. My parents did it. They worked service sector jobs. My mother was a maid and a cashier at hotels, and my father was a banquet bartender. They never made a lot of money. Yet they achieved the American dream.

The American dream has never been about how much money you make or how many things you own; it is about achieving happiness. For them, achieving happiness was giving us the chance to do all the things they never could, and they were able to do that in the 20th century in service sector jobs.

That is still possible in America for many people, but it is increasingly more difficult. I wish we would address that because the reason it has become more difficult is because almost all the higher paying jobs of the 21st century require some sort of advanced skill acquisition, and millions of our people simply don't have it. The reason is because our educational system is not a 21st-century one. Why have we stigmatized vocational education in America? Why have we told people that if they want to be an electrician or a plumber or a truckdriver or a welder or any other number of vocational professions—why have we stigmatized that when we know there are jobs available in those fields and we need people to fill them?

The second issue is, what about the people trapped in those low-paying jobs—the single mother who works as a home health aide for $10 an hour, the receptionist at a law firm making $11 an hour, the people working in a fast food restaurant for $9 an hour? There is nothing wrong with those jobs, but I am sure that as time goes on they want more, and we have to equip them with the skills to be able to do more so that the home health aide can become an ultrasound technician or a dental hygienist not making $12 an hour but making $30 an hour, so that the young man who is on the unemployment line can become a welder or a building specialist or some other 21st-century career or profession that gives him the skills he needs for those better paying jobs. I wish we were focused on that.

By the way, how about informing our college students about the true value of their degrees? In America—a free country—you can study anything you want, but before you borrow $50,000 to attain a major in Greek philosophy, you deserve to know that the market for Greek philosophers is tight and that it is going to be difficult to pay off that loan. I think every student in America who is taking out student loans has the right to know how much people make when they graduate from their school with that degree so they can make informed and educated decisions about whether they should borrow money to pay for the specific degree they seek.

This is an important issue, and I wish that was our second top priority here, that we would focus more on how to help people trapped in low-paying jobs, how to help people who are struggling with the challenges of the 21st century, how to help these people acquire the skills they need for better paying jobs.

We have seen virtually no conversations about those two issues here in the last few days.

No wonder people are disgusted with Washington. We don't spend any time here talking about what they are worried about. We spend very little time talking about what they are concerned about. Our discourse in this body is so irrelevant to their daily lives that they have reason not just to be disgusted with politics but quite frankly to be tempted to give up on us and our ability to address any of these challenges.

WORLD EVENTS

There is a third 21st-century challenge and one I hope to speak about in the moments I have remaining; that is, the reality that world events have an impact on us greater than ever before. I am not saying world events never used to matter. Of course they did. But we are increasingly members of a growing global economy, which means that today when there is instability on this planet, it isn't just our national security that is threatened, it is our economic security as well.

We are 6 percent of the world's population. In order to achieve more prosperity, we have to sell more things to more people everywhere in the world. But that depends on peace and stability across the planet, and we can't have peace and stability when the world is in chaos. So I would say today that foreign relations and foreign policy matter more from an economic perspective than they ever have in the history of this Nation. I wish there were more focus in this body on what is happening all over the world because the world is in total chaos.

In the Asia-Pacific region, China is undergoing a dramatic modernization of its military capabilities—increasingly challenging, for example, U.S. air power in the region and increasingly acting out on illegitimate territorial claims.

In Latin America we have seen an erosion of democratic order, the rise of antidemocratic governments that threaten to erode almost two decades of democratic progress in the region.

By the way, in this body we have endeavored to address one of those challenges in Venezuela—an outrage, a place full of corruption and human rights violations, an anti-American government that does everything possible to undermine us and our interests, not just the interests of their own people. We have been blocked in our efforts to address it because somehow the Venezuelan Government, acting through CITGO—a wholly owned company of the Venezuelan Government—got lobbyists to come here to the Senate and lobby for blockage and stoppage of a measure we were ready to pass by unanimous consent.

So I come to the floor to ask the majority leader to please schedule a vote on these sanctions on Venezuela because it will pass overwhelmingly. Do not allow lobbyists for the Venezuelan Government to be able to come to Washington, DC, and impede action on this matter.

In Europe we see chaos too. Russia has invaded Ukraine. Maybe they switched uniforms and have lied about it, but they have invaded Ukraine, and NATO has been helpless to do anything about it. I hope we will be more forceful in our response because the implications not just for that region but for the world are very significant.

But the one I want to close on tonight is focused on—and this relates to Steven Sotloff, as discussed a moment ago—what is happening with ISIL.

Tomorrow night I believe the President will give the most important address of his Presidency—perhaps the most important address of any Presidency in the last decade. Tomorrow night I hope he comes before the American people and explains to them what is truly at stake. I was about to say that I thought he should have done this weeks ago, maybe months ago, but I am glad he is doing this.

I would ask my Republican colleagues—all of my colleagues—that at this time of such critical national security importance, we try as much as possible to rally behind our efforts to address this challenge because it is a real challenge. If and when this group comes after the United States, both around the world or here at home, they will not be coming after Republicans and they will not be coming after Democrats; they will be coming after Americans; the threat we face is real.

We have a tradition in this government of rallying together and acting in a nonpartisan way when it comes to national security. That is not just something we do because it is polite; it is something we must do because unity is important in order to address these challenges.

I have been critical of the President. I have been critical of the slow response. I think it is valid to point out the mistakes he has made so we can learn and so he can be held accountable. But I also think it is important to look forward at what we can do now.

While I thought that what the President is about to do he should have done weeks and months ago, I am glad he is finally doing it. Tomorrow night's address to the Nation is an important one. I hope all Americans tune in.

Here are the three points I hope the President will make: First, I hope he clearly outlines to our fellow Americans what is at stake here. ISIL is not just a collection of crazy terrorists. It is the single most dangerous terrorist challenge this Nation has ever faced. We faced some dangerous terrorists before. We are familiar with Al Qaeda and their capability. We are familiar with some of the nation-states we faced down in the past.

This group is uniquely dangerous for a number of reasons. First, it is by far the best funded terrorist operation perhaps in all of human history. They are generating millions of dollars a day alone just from oil revenue. Second, they are replete with foreign fighters, including thousands of foreign fighters that have visa waiver passports from countries where all they have to do is buy a plane ticket to come to the United States. Among those, by the way, are Americans, including one who is from Florida who even came back to the United States for a number of weeks and then returned and conducted a suicide attack on behalf of this group.

Last but not least, they control territory. We know that in order to carry out the 9/11 attacks Al Qaeda needed a safe haven in parts of Afghanistan. These folks in the Islamic State—these lunatics—control a vast space. Most of northern Syria and vast portions of Iraq are under their control. This makes this group very significant and dangerous with intentions not just on taking over Iraq but dominating the region, ultimately moving into Jordan, Saudi Arabia, Lebanon, and other places, and conducting attacks against the United States.

It is simple. ISIL cannot fulfill its regional ambitions if it doesn't drive the United States out of the Middle East, and the only way they can draw us out of the Middle East is by terrorizing us out of the Middle East. To terrorize us they will have to conduct terrorist attacks against us both abroad and here in the homeland. Here we have the most well-funded, most capable terrorist group in modern history with a clear intention and desire to attack us in order to terrorize us out of the region. This is a very serious national security threat, and it is important for the President to clearly explain that to our fellow Americans.

The second thing I hope we will do is outline a clear goal about what we intend to achieve and that goal should be unequivocal: the complete defeat and annihilation of ISIL. That goal is accomplished in three steps: first, by stopping their continued spread; second, by eroding their capability and control of territory; and ultimately by defeating them as an organization—by eliminating them as an organization.

So after he has outlined who this group is and why it is in our national interest to defeat them and he has outlined his goal to defeat them, I hope the President will explain to the American people in as much detail as possible—and clearly there are things he cannot share for operational security purposes—but in as much detail as possible how he intends to defeat them.

I think this is a multi-faceted process, but it should include the continued air strikes in northern Iraq. Air strikes are most successful when they are done in coordination with Kurds and Iraqi ground forces there on the ground now—by continuing to supply and equip the Kurds by giving them logistical support they need in order to take on the supplies and get them out to the troops by hopefully working with the new Iraqi government that was just formed to stand as a unified

Iraqi government that is capable not just of supplying a government that unites all of the people of Iraq but also one that is capable of fielding security forces capable of conducting operations without dividing the country along the Shia and Sunni lines.

We also need more cooperation from Arabs in the region because they are immediately threatened. They are coming after the Crown in Saudi Arabia; they are coming after the Crown in Jordan. They are eventually going to move into Lebanon as well. They pose a real and present threat to all the nations in this region and they must act. We need their cooperation both militarily and diplomatically but also by using the megaphone that the government and state-run media provides to stigmatize this group by revealing them for who they truly are. There should be nothing romantic about ISIL in the minds of any Arab, about joining their ranks or their efforts. We need the government's help in spreading that word and revealing that reality.

By the way, we also need to work with them and other regional governments—especially the Turks—to help cut off ISIL's access to funds and to fighters. The Turks need to step up and do a better job of securing that border. Cutting off their funds requires us to go after their most significant source of funds and that is the refinery capacity in Syria. I will have more to say about that in a moment. We should target that because the black market sale of oil in Syria is the single and fastest growing source of revenue for ISIL, but it is also a fuel for their terrorist operations.

But ultimately there is no way to defeat ISIL without defeating them in Syria. Someone is going to have to confront them in Syria and defeat them. It is my hope that it will be a combination of U.S. air power and qualified, well-equipped, well-trained competent moderate rebel forces within Syria, because here is the problem: If you eliminate ISIL but you don't have some sort of capable moderate group left behind, then all you are doing is replacing ISIL with al-Nusra or some other radical Islamic group on the ground there. So it is important that we do both.

I know no one wants to get into another conflict. We have no choice. We are going to have to deal with ISIL. The choice is not whether we deal with them. The choice is do we deal with them now while they are still growing or do we deal with them later when they have grown and when they have controlled vast and larger territories than they do now, when they have more fighters and are better funded. That is the choice before us.

I submit to you that I know of no medical condition that is easier to treat later rather than earlier. Every medical condition that I know—ISIL has been compared to cancer—every cancer that I know is easier to treat if you catch it earlier rather than later. I would say this is true with this cancer, ISIL. If we deal with them sooner, it will not be costless or fast, but it will be easier to deal with them then, than if we wait until later. But to do so will ultimately require someone to confront them and defeat them within Syria itself, and defeating them in Syria alone is not enough. We have to ensure that there is some group there on the ground, some moderate rebel force that can take over not just from them but from the Assad regime.

There is collusion between Assad and ISIL. The refineries that ISIL controls in Syria are former Assad refineries which he won't bomb because he hopes to take them one day intact so he can use them. There is collusion between them. If anybody has any illusions about who Assad really is, I hope the President will outline this for us tomorrow. It is important for us and for our future.

I will make one more point about why this is the most important speech that the President will give. Because this threat will probably outlive his Presidency. We have to be prepared for the fact that ISIL may not be defeated in 24 months, that the next President of the United States and many of us—whether it is serving here, whether it is controlled by Republicans or Democrats—will have to remain committed to this goal, because this threat in all likelihood will outlive the Presidency of Barack Obama. It is important for him to put in place a clear goal and a plan that can survive his Presidency so that we can carry out this task. It is critical for our country.

I wish the President the best on his address tomorrow, and I hope we can come together in a bipartisan way to confront and defeat this evil before it is too late.

Madam President, I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow under the provisions of S. Res. 539, as a further mark of respect to the memory of the Honorable James M. Jeffords.

Thereupon, the Senate, at 6:53 p.m., adjourned until Wednesday, September 10, 2014, at 9:30 a.m.